**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**OFFICE OF HEARING OFFICERS**

| | |
|---|---|
| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>WINSTON WADE TURNER<br>(CRD No. 5965386),<br><br>Respondent. | Disciplinary Proceeding<br>No. 2013038398401<br><br>Hearing Officer — MAD<br><br>**DEFAULT DECISION**<br><br>July 8, 2016 |

**Respondent is barred from associating with any FINRA member firm in any capacity for: (1) providing false information and engaging in deceptive acts in connection with his variable annuity sales, in violation of FINRA Rule 2010, and providing false information on documents relating to his variable annuity sales, in violation of FINRA Rules 4511 and 2010; (2) fraudulently misrepresenting and omitting material facts to customers, in willful violation of Section 10(b) of the Exchange Act, Rule 10b-5, and in violation of FINRA Rules 2020 and 2010; and (3) failing to provide testimony and information, in violation of FINRA Rules 8210 and 2010.**

*Appearances*

For Complainant: Jonathan Golomb, Esq., and Emily D. Barnes, Esq., Financial Industry Regulatory Authority's Department of Enforcement.

No appearance by or on behalf of Respondent Winston Wade Turner.

## DECISION

### I. Introduction

The Department of Enforcement instituted this disciplinary action against Respondent Winston Wade Turner after his former firm, Pruco Securities, Inc. ("Pruco"), filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that Turner may have engaged in wrongful conduct while he was associated with the firm. Specifically, Pruco disclosed that Turner made an unsuitable variable annuity recommendation and provided inaccurate information to the company concerning the transaction.

Enforcement investigated the conduct described in the Form U5 and determined that Turner engaged in a course of deception and other misconduct in connection with sales and exchanges of variable annuities involving numerous customers.

On February 25, 2016, Enforcement filed a seven-count Complaint against Turner. The first three causes charge Turner with (1) providing false information in connection with variable annuity transactions, (2) falsifying firm books and records, and (3) making fraudulent misrepresentations and omissions to three customers regarding their variable annuity investments. Causes four and five allege that Turner provided his firm with inadequate and untimely disclosures of his outside business activities and engaged in private securities transactions without providing notice to, and obtaining authorization from, his firm. Causes six and seven allege that Turner failed to provide information and testimony to FINRA.

Turner failed to answer or otherwise respond to the Complaint. Thus, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion").[1] Turner did not respond to the Default Motion.

As stated in detail below, the Hearing Officer finds Turner in default, grants Enforcement's Default Motion, and deems the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f), 9241(f), and 9269(a).

## II. Findings of Fact and Conclusions of Law

### A. Turner's Background

Turner entered the securities industry in August 2011 when he became associated with MetLife Securities, LLC ("MetLife").[2] On July 8, 2013, he became associated with Pruco.[3] At both MetLife and Pruco, Turner was registered with FINRA as a General Securities Representative and an Investment Company Products/Variable Contracts Representative.[4]

Pruco discharged Turner in August 2015 for making an unsuitable recommendation and providing inaccurate information regarding the transaction.[5] Pruco filed a Form U5, terminating

---

[1] Enforcement also filed a Declaration, with five attached exhibits, and a Supplemental Declaration. Both the Declaration and the Supplemental Declaration were signed by Emily D. Barnes, Esq. Citations to the Declaration are noted as "Decl. ¶ ___," citations to the Supplemental Declaration are noted as "Supp. Decl. ¶ ___," and citations to the exhibits are noted as "CX-___."

[2] Decl. ¶ 6.

[3] Decl. ¶ 7; CX-1, at 2.

[4] CX-1, at 2.

[5] Decl. ¶ 4.

Turner's registration with FINRA effective August 26, 2015.[6] Turner remains unregistered and is not associated with another FINRA member firm.[7]

### B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Enforcement filed the Complaint within two years after August 26, 2015, the effective date of the termination of his registration with Pruco, and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member, and with failing to provide information and testimony during the two-year period after the date upon which he ceased to be registered with a FINRA member.[8]

### C. Origin of the Investigation

This proceeding arose from the investigation FINRA initiated in response to the Form U5 Pruco filed on August 26, 2015, disclosing possible violations of FINRA Rules.[9]

### D. Turner's Default

Enforcement served the Complaint on Turner in accordance with FINRA's Rules. On February 25, 2016, Enforcement sent the Complaint and Notice of Complaint to Turner by certified mail to (1) his last known residential address as reflected in the Central Registration Depository ("CRD Address"), (2) an alternate address, and (3) his former counsel's address.[10] Turner did not file an Answer or otherwise respond to the Complaint by the required deadline under Rule 9215(f). Enforcement then served Turner with a Second Notice of Complaint by certified mail sent to the CRD Address, the alternate address, and his former counsel's address.[11] Turner did not respond to the Second Notice of Complaint. Thus, the Hearing Officer finds Turner in default.[12]

---

[6] Decl. ¶ 4.

[7] Decl. ¶ 9; CX-1.

[8] *See* Article V, Sec. 4, FINRA By-Laws; Decl. ¶ 9.

[9] Decl. ¶¶ 4-5.

[10] Decl. ¶ 15.

[11] Decl. ¶ 20. On March 28, 2016, Enforcement received a voice-mail message from Turner's former counsel stating that counsel was not representing Turner in this proceeding. Decl. ¶ 24.

[12] Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

### E. Turner Engaged in Violative Conduct in the Sales of Variable Annuities as Alleged in Causes One, Two, and Three

Causes one, two, and three allege that Turner violated FINRA Rules and federal securities regulations by (1) providing false information in connection with variable annuity transactions, (2) falsifying firm books and records, and (3) making fraudulent misrepresentations and omissions to three customers regarding their variable annuity investments.

When Turner was associated with MetLife and then Pruco, he sold variable annuities, some of which were variable annuity exchanges.[13] Variable annuity exchanges are transactions in which customers surrender their existing annuities to fund the purchase of new variable annuities.[14] These transactions require additional supervisory scrutiny and documentation requirements because of their relatively high commissions and costs.[15] Comparing the customer's overall costs and benefits between the old and new variable annuity products can be complex.[16] With variable annuity exchanges, a customer might incur surrender fees,[17] forfeit accrued interest or other benefits, or both.[18]

Turner was aware of the additional supervisory scrutiny and documentation requirements, but he deliberately circumvented them.[19] He concealed from his firm that he was inducing many customers to surrender existing variable annuities—or in some cases to liquidate other investments—to fund their purchases of the new variable annuities that he was recommending and selling to them.[20] Turner accomplished this by recommending that customers deposit the proceeds received from the surrender of their existing variable annuities (or the liquidation of some other investments) into their bank accounts before forwarding those proceeds to Pruco to fund their new variable annuities.[21] In many cases, Turner contemporaneously prepared and submitted to his firm documentation for the new variable annuities that concealed the true sources of the customer funds, and falsely stated that those customer funds did not come from

---

[13] Complaint ("Compl.") ¶¶ 10-13.

[14] *Id.* ¶¶ 10-12.

[15] *Id.* ¶ 10.

[16] *Id.*

[17] A surrender fee is a type of sales charge you must pay if you sell a variable annuity or withdraw money from a variable annuity during the surrender period, a time period that typically lasts six to eight years after you purchase the annuity. Surrender charges will reduce the value of-and the return on-a variable annuity investment. https://www.sec.gov/answers/annuitysurrender.htm.

[18] Compl. ¶ 10.

[19] *Id.* ¶ 11.

[20] *Id.* ¶ 12.

[21] *Id.*

the surrender of existing variable annuities.[22] In addition, Turner made misrepresentations and omissions of material fact to customers in connection with some of his variable annuity recommendations, and, in some cases, lied to firm supervisory and compliance personnel when they sought additional information concerning his recommendations.[23]

From late 2012 through July 2015, Turner sold variable annuities to the 12 customers identified in the Complaint.[24] The facts and circumstances surrounding the customers' transactions are discussed below.

**Customer CP**

Customer CP had a retirement account with her former employer, which was held at another broker-dealer.[25] Because of her age and the circumstances surrounding the termination of her employment, she was permitted to withdraw funds from this retirement account without a tax penalty.[26]

In November 2012, Turner induced CP to transfer her retirement assets of approximately $108,000 into a MetLife variable annuity.[27] He assured her that she would earn 4.5% per year on the annuity.[28] However, there was no guaranteed annual return on the variable annuity. In reality, the variable annuity had a 4.5% Guaranteed Minimum Income Benefit ("GMIB"), which provided a 4.5% increase in the protected amount that did not affect the actual market value of the investment held within the annuity or represent actual earnings.[29] Turner and CP scheduled systematic monthly withdrawals (at a 4.5% annual rate) from the annuity account.[30] As a result, CP thought she was withdrawing her "guaranteed" earnings of 4.5% per year; in reality, she was diminishing the value of her annuity by that amount.[31]

When CP asked Turner about potential tax consequences of the transaction, Turner falsely assured her that there would be none.[32] He told her that she could continue to withdraw

---

[22] Compl. ¶ 12.

[23] *Id.* ¶ 13.

[24] *Id.* ¶¶ 10-13.

[25] *Id.* ¶ 14.

[26] *Id.* ¶ 14.

[27] *Id.* ¶ 15.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.* ¶ 16.

the money she needed, but he did not tell her that, by removing her assets from her retirement account to fund the annuity, she would lose the ability to withdraw funds without paying a 10% tax penalty on her withdrawals.[33]

Turner knew that CP's variable annuity was not certain to earn 4.5% per year and knew, or was reckless in not ascertaining, that she could incur significant tax consequences by (1) moving her investment out of her retirement account and into a MetLife variable annuity, and (2) engaging in the intended systematic withdrawals.[34]

**Customer TM**

Customer TM held approximately $339,000 in a specialized account offered by MetLife called a Total Control Account.[35] This account was available for assets awarded to a beneficiary pursuant to a death benefit payout on a life insurance policy, and was paying 3% simple interest.[36]

In May 2013, Turner induced TM to transfer funds from the Total Control Account into a MetLife variable annuity, by telling her that the new variable annuity would pay 4%.[37] In reality, as with CP, the 4% was actually a GMIB, not a straight return on her investment.[38] Turner knew that the MetLife variable annuity he sold to TM was not certain to generate earnings of 4%.[39]

**Customer RL**

In late July 2013, RL withdrew $100,000 from a MetLife fixed annuity that he had previously purchased through Turner.[40] In doing so, RL paid a withdrawal charge of more than $7,900 and received proceeds of $92,079.47.[41]

On August 1, 2013, RL purchased a Prudential Insurance Company of America ("Prudential") variable annuity from Turner for $92,079.47.[42] Turner submitted a variable annuity application for this transaction that falsely indicated that RL did not have any existing

---

[33] Compl. ¶ 16.

[34] *Id.* ¶ 17.

[35] *Id.* ¶ 18.

[36] *Id.*

[37] *Id.* ¶ 19.

[38] *Id.*

[39] *Id.* ¶ 20.

[40] *Id.* ¶ 21.

[41] *Id.*

[42] *Id.* ¶ 22.

annuities and that the new annuity was not replacing an existing annuity.[43] Turner also submitted a Pruco Securities customer information form for this variable annuity purchase that falsely indicated that the funds were not previously invested in an annuity or insurance policy, but rather had come from "CDs/liquid assets/savings" and "money market funds/account."[44] The customer information form indicated that RL intended to contribute an additional $300,000 into his new Prudential annuity.[45] Turner indicated that those funds would also be coming from "CDs/liquid assets/savings" and "money market funds/account."[46] Again, Turner misrepresented that these funds were not previously invested in an annuity or insurance policy.[47]

In mid-August 2013, within a few weeks of Turner's misrepresentations, RL surrendered the remaining portion of his MetLife fixed annuity.[48] RL forfeited approximately $12,000 in accrued interest and received proceeds of $242,404.81 into his bank account on August 26, 2013.[49] Two days later, on August 28, 2013, RL funded his additional variable annuity investment by writing a check to Prudential for $242,404 drawn on his personal bank account into which he had deposited the surrender proceeds.[50]

Lastly, on the documentation for RL's August 2013 Prudential variable annuity purchase, Turner provided one of his personal email addresses in place of the customer's email address, thereby ensuring that account notifications would be delivered to himself rather than to RL.[51]

**Customer MG**

In October 2013 and February 2014, Customer MG purchased a Prudential variable annuity through Turner.[52] As he had done with RL, Turner provided one of his personal email addresses as the customer's email address on the documentation for MG's October 2013 Prudential variable annuity purchase, ensuring that he would receive the account notifications rather than MG.[53]

---

[43] Compl. ¶ 23.

[44] *Id.* ¶ 24.

[45] *Id.* ¶ 25.

[46] *Id.*

[47] *Id.*

[48] *Id.* ¶ 26.

[49] *Id.*

[50] *Id.* ¶ 27.

[51] *Id.* ¶ 28.

[52] *Id.* ¶ 29.

[53] *Id.* ¶ 30.

**Customer RG**

In October 2013, Turner submitted an application for a Prudential variable annuity for Customer RG.[54] Again, Turner provided one of his personal email addresses as the customer's email address on the documentation for RG's Prudential variable annuity purchase, ensuring that he would receive the account notifications instead of RG.[55]

**Customer RH**

On or about November 14, 2013, Turner completed and submitted a Prudential variable annuity application for RH.[56] In the application, Turner falsely represented that (1) RH did not have any existing annuities, (2) the Prudential annuity was not replacing an existing annuity, and (3) none of the funds to be used for the variable annuity purchase were previously invested in an annuity.[57] In reality, as Turner knew, RH owned a MetLife variable annuity that RH had purchased through Turner a few months earlier.[58]

In late December 2013, at Turner's suggestion, RH surrendered his MetLife variable annuity, paying a surrender charge of more than $23,000 and receiving proceeds of $292,864.64.[59] RH wired the proceeds into his personal bank account on December 26, 2013.[60] On December 31, 2013, RH funded the purchase of the new Prudential variable annuity with a $292,864.64 check drawn on his personal bank account.[61]

Turner also lied during a recorded telephone call with Pruco Securities' Central Transaction Review ("CTR") unit, a division of Pruco that supervises variable annuity transactions by follow-up telephone calls to the customers.[62] The day after RH's application was electronically signed, Turner telephoned the CTR desk to ask whether the variable annuity contract was "good to go."[63] The CTR representative asked about the source of funds for the contract, and Turner falsely replied: "It's a retirement account that's been liquefied."[64] In reality,

---

[54] Compl. ¶ 31.

[55] *Id.* ¶ 32.

[56] *Id.* ¶ 33.

[57] *Id.*

[58] *Id.*

[59] *Id.* ¶ 34.

[60] *Id.*

[61] *Id.*

[62] *Id.* ¶ 37.

[63] *Id.*

[64] *Id.*

Turner knew that RH funded the Prudential variable annuity purchase by surrendering his MetLife variable annuity.[65]

**Customer DL**

In mid-December 2013, Turner induced DL to purchase a Prudential variable annuity funded by the surrender of a MetLife variable annuity, which she had purchased through Turner in June 2013.[66] On December 16, 2013, Turner submitted a Prudential variable annuity application for DL's purchase.[67] Despite knowing that the customer would be surrendering an existing variable annuity that he had sold to her only six months earlier, Turner did not designate the transaction as an exchange on the annuity application.[68] Instead, he indicated that DL did not have any existing annuities and that the annuity was not replacing an existing annuity.[69]

Turner also submitted to Pruco an annuity purchase customer information form, which falsely stated that the funds were (1) coming from DL's "CDs/liquid assets/savings," and (2) not previously invested in an annuity.[70] On the updates to DL's Pruco customer confidential questionnaire that Turner submitted, he did not include DL's MetLife variable annuity as one of her assets.[71]

Turner also lied about the source of funding for DL's Prudential contract on a recorded telephone call with Prudential's Annuities Center.[72] On December 20, 2013, four days after Turner submitted DL's Prudential variable annuity application, the Annuity Center at Prudential asked Turner when it could expect to receive the check to fund the contract.[73] Turner replied that the funds would be available in about ten days because they would be coming from a real estate closing scheduled to occur "this week."[74]

In late January 2014, DL surrendered the MetLife variable annuity that she purchased through Turner in June 2013, paying a surrender charge of more than $27,000 and receiving

---

[65] Compl. ¶ 37.

[66] *Id.* ¶ 38.

[67] *Id.* ¶ 39.

[68] *Id.*

[69] *Id.*

[70] *Id.* ¶ 40.

[71] *Id.* ¶ 41.

[72] *Id.* ¶ 41.

[73] *Id.* ¶ 42.

[74] *Id.*

proceeds of slightly more than $331,000.[75] She deposited the proceeds into her personal bank account.[76] Contrary to Turner's representation that the funds would be coming from a real estate closing, DL funded the new variable annuity with a $325,000 check drawn on her personal bank account.[77]

To ensure that he would receive any and all account notifications instead of DL, Turner provided one of his personal email addresses as the customer's email address on the documentation for DL's Prudential variable annuity purchase.[78]

**Customer JC**

In February 2014, Turner induced JC to purchase a Prudential variable annuity using funds from an equity-indexed annuity that JC had previously purchased through Turner for $353,000 in October 2013, which JC had purchased with proceeds from his surrender of another variable annuity that he had purchased from Turner in March 2012.[79]

On February 19, 2014, Turner completed and submitted to Prudential a questionnaire in which he falsely represented that JC was funding his new variable annuity with the proceeds from the sale of common stock held in his pension plan.[80] Despite knowing about the equity-indexed annuity that he had sold to JC just a few months earlier, Turner did not identify this or any other annuity when completing the questionnaire asking about JC's holdings.[81]

Turner submitted a variable annuity application to Prudential on March 12, 2014, that falsely answered "no" to the question of whether the purchased product would replace an existing annuity or insurance product.[82] He also completed and submitted a Pruco customer information form that falsely answered "no" to the questions regarding whether (1) JC had any existing deferred annuities, and (2) any of the funds used were previously invested in an annuity.[83] On March 13, 2014, the day after Turner submitted JC's Prudential variable annuity application, Turner spoke with the CTR unit and falsely reaffirmed that the source of funds was JC's pension plan, when the rollover of that pension plan had actually occurred two years earlier

---

[75] Compl. ¶ 43.

[76] *Id.*

[77] *Id.* ¶ 44.

[78] *Id.* ¶ 45.

[79] *Id.* ¶ 46.

[80] *Id.* ¶ 47.

[81] *Id.*

[82] *Id.* ¶ 48.

[83] *Id.*

to fund a separate MetLife variable annuity.[84] Turner also falsely told the CTR principal that this was JC's first annuity and that the source of funds was not any other annuity.[85]

In April 2014, JC surrendered the equity-indexed annuity he had purchased in October 2013, paying a surrender charge of more than $40,000.[86] JC used most of the proceeds (more than $226,000) to fund the new Prudential variable annuity that Turner recommended and sold to him.[87]

As he had done with other customers, Turner provided one of his personal email addresses as the customer's email address on the documentation for JC's Prudential variable annuity purchase.[88]

**Customer LS**

In February 2014, LS surrendered a MetLife variable annuity that she had purchased through Turner in April 2013, paying a surrender charge of almost $41,000.[89] On February 10, 2014, she signed a surrender request form, which Turner prepared, representing that she was withdrawing the money to build a pool and pool house and instructing MetLife not to contact her about the surrender.[90] She received proceeds of almost $530,000 by wire transfer on February 18, 2014.[91] Two days after receiving the proceeds, LS invested $339,337 in a Prudential variable annuity that Turner recommended and sold to her.[92]

On February 12, 2014, Turner submitted a Prudential variable annuity application for LS that falsely stated that LS did not have any existing annuities and that the annuity was not replacing an existing annuity.[93] Turner also submitted a customer information form to Pruco that falsely stated that (1) LS had no existing annuities, and (2) funds for the variable annuity were coming from "CDs/liquid assets/savings," not a rollover or an investment in an annuity or life insurance.[94]

---

[84] Compl. ¶ 49.

[85] *Id.*

[86] *Id.* ¶ 50.

[87] *Id.*

[88] *Id.* ¶ 51.

[89] *Id.* ¶ 52.

[90] *Id.*

[91] *Id.*

[92] *Id.* ¶ 54.

[93] *Id.* ¶ 53.

[94] *Id.*

During a recorded call from the CTR unit, Turner lied to Pruco when it inquired about LS's source of the funds.[95] He told the CTR principal that the funds for the variable annuity purchase were coming from LS's savings account.[96] He did not disclose that the funds would actually be coming from another annuity.[97]

**Customer CR**

Customer CR held funds in certificates of deposit, a savings account, and a life insurance policy.[98] CR told Turner that, due to health concerns, she needed to generate approximately $300 per month in income so that she could reduce the number of hours that she worked.[99]

In November 2014 and February 2015, Turner induced CR to purchase three Prudential variable annuities, at a total cost of approximately $42,000, by promising her that she would earn at least 5% interest on her investment in the annuities and that the value of her contracts would possibly double in about two years.[100] The Prudential variable annuities did not guarantee a 5% yield.[101] Rather, they included a Guaranteed Minimum Withdrawal Benefit that allowed CR to *withdraw* up to 5% per year.[102] Turner knew that the Prudential variable annuities he sold to CR were not certain to generate earnings of 5%.[103]

Turner also told CR that she would begin to receive monthly payments in March 2015.[104] When she did not receive her expected payments, CR called Prudential and sent text messages to Turner inquiring about why she had not received her money.[105] On May 4, 2015, Turner personally delivered two cashier's checks, each in the amount of $268.19, to CR at her home.[106] Although he used his own funds for these checks, he had the bank identify Prudential as the remitter on the checks and told CR that the cashier's checks were her income payments from Prudential for April and May.[107] On June 8, 2015, CR notified Turner that her monthly income

---

[95] Compl. ¶ 55.

[96] *Id.*

[97] *Id.*

[98] *Id.* ¶ 56.

[99] *Id.* ¶ 57.

[100] *Id.* ¶ 58.

[101] *Id.* ¶ 59.

[102] *Id.*

[103] *Id.* ¶ 60.

[104] *Id.* ¶ 61.

[105] *Id.*

[106] *Id.* ¶ 62.

[107] *Id.*

for June had not yet been deposited into her checking account.[108] After further discussions between CR and Turner, CR received a cashier's check on June 25, 2015, but her name was misspelled.[109] On July 1, 2015, Turner delivered another cashier's check in the amount of $276.19, representing CR's expected income for June.[110]

On the documentation for CR's February 2015 Prudential variable annuity purchase, Turner again provided one of his personal email addresses as the customer's email address.[111]

**Customer JJ**

In mid-November 2014, Turner completed a Prudential variable annuity application for a proposed sale to JJ, an 84-year-old woman who was suffering from diminished mental capacity.[112] On November 18, 2014, the CTR unit called JJ to discuss the purchase with her. Prior to the call, Turner arranged for the CTR unit to call JJ at a certain time because he claimed that she needed someone there to help her hear.[113] Turner told the CTR principal that "someone named Kim" would be there to assist JJ during the call.[114] The CTR principal asked if Kim was a family member or a friend, and Turner said "I think she's just a personal friend."[115] In reality, Kim was Turner's former marketing assistant, who was still periodically assisting Turner.[116] When the CTR principal called JJ, JJ had Kim get on the telephone.[117] Kim did not identify herself to CTR as being affiliated with Turner, and instead falsely "confirmed" that she was there as a friend of JJ to assist her if needed.[118]

**Customer LB**

At various times during 2014, Turner submitted at least six insurance applications and investment redemption requests to Pruco for LB containing forged signatures.[119] LB had not

---

[108] Compl. ¶ 63.

[109] *Id.*

[110] *Id.* ¶ 64.

[111] *Id.* ¶ 65.

[112] *Id.* ¶ 66.

[113] *Id.* ¶ 68.

[114] *Id.*

[115] *Id.*

[116] *Id.* ¶ 69.

[117] *Id.* ¶ 70.

[118] *Id.*

[119] *Id.* ¶ 71.

authorized Turner to sign any documents for her.[120] Turner also provided one of his personal email addresses as LB's email address on the documentation for LB's Prudential variable annuity purchase, ensuring that account notifications would be delivered to himself rather than to LB.[121]

### 1. Cause One: False Information Relating to Variable Annuity Transactions

Cause one alleges that Turner failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010, by circumventing Pruco's supervisory review process and engaging in deceptive conduct relating to his customers' variable annuity exchanges. FINRA Rule 2010 requires that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[122]

Turner structured transactions so proceeds of surrendered annuities went to customers' bank accounts, not their brokerage accounts, before being used to purchase new annuities. He falsified the variable annuity applications, misrepresenting the source of funds in application materials for five of his customers. He also submitted documents bearing forged customer signatures. To circumvent Pruco's supervisory review process, he lied to the firm's principals and others about (1) the source of funds for the variable annuity purchases by five customers, and (2) the relationship between a customer and his marketing assistant. To ensure that his customers were not contacted, he misrepresented his personal email addresses as the email address for seven of his customers. He even made payments to a customer from his own funds to create the false appearance that the funds were coming from Pruco.

The Hearing Officer finds that Turner violated FINRA Rule 2010 by providing false information and engaging in numerous deceptive acts in connection with his variable annuity sales.

### 2. Cause Two: Falsification of Books and Records

Cause two alleges that Turner violated FINRA Rules 4511 and 2010, by (1) submitting falsified variable annuity applications, questionnaires, customer information forms, and related documents for the exchanges of five of his customers; (2) submitting documents with forged signatures for one of his customers; and (3) misrepresenting his own email address as that of seven of his customers on variable annuity documents.

---

[120] Compl. ¶ 72.

[121] *Id.* ¶ 73.

[122] FINRA Rule 2010.

FINRA Rule 4511 requires members to make and preserve books and records as required under the FINRA rules, the Securities Exchange Act of 1934 ("Exchange Act"), and the applicable Securities and Exchange Commission ("SEC") Rules.[123] Entering inaccurate information in a member firm's books or records violates FINRA Rule 4511, and also violates FINRA Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.[124]

Turner provided false information on documents relating to his customers' variable annuity exchanges. The Hearing Officer finds that Turner violated FINRA Rules 4511 and 2010.

### 3. Cause Three: Misrepresentations and Omissions Regarding the Variable Annuity Investments

Cause three alleges that Turner willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and violated FINRA Rules 2020 and 2010, by inducing three customers to purchase securities by intentionally or recklessly making material misstatements and omissions regarding the earnings to be generated by their variable annuities and the tax impact of the transaction.

Section 10(b) of the Exchange Act and Rule 10b-5 make it unlawful for any person to use or employ, in connection with the purchase or sale of a security, any manipulative or deceptive device. Rule 10b-5 has three subsections. Subsection (a) prohibits directly or indirectly employing any device, scheme, or artifice to defraud. Subsection (b) prohibits directly or indirectly making an untrue statement of material fact or omitting a material fact necessary to make a statement not misleading. Subsection (c) prohibits directly or indirectly engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. Liability under the three sections requires a showing of scienter.[125] Furthermore, registered representatives have a duty to provide a customer with honest and complete information when making an investment recommendation.[126]

FINRA's anti-fraud rule, Rule 2020, prohibits FINRA members and associated persons from effecting any securities transaction, or inducing the purchase or sale of a security, by means of any manipulative, deceptive, or other fraudulent device or contrivance.[127] FINRA Rule 2010 requires adherence to high standards of commercial honor and just and equitable principles of

---

[123] FINRA Rule 4511.

[124] *See, e.g., Fox & Co. Inv. Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, *30-32 (Oct. 28, 2005).

[125] *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *40 (May 27, 2015).

[126] *See De Kwiatkowski v. Bear Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002).

[127] *See Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *38 (NAC Oct. 2, 2013) (stating that FINRA Rule 2020 "captures a broader range of activity" than Rule 10b-5(b)), *aff'd in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015).

trade. Conduct that violates the SEC's or FINRA's rules, including the anti-fraud rules, is inconsistent with high standards of commercial honor and just and equitable principles of trade.[128]

The Hearing Officer finds that Turner willfully violated Section 10(b) of the Exchange Act, Rule 10b-5, and violated FINRA Rules 2010 and 2020 by making (1) material misrepresentations and omitting material information, (2) in connection with the purchase or sale of a security, and (3) acting with scienter.[129]

Variable annuities are securities.[130] From late 2012 through July 2015, Turner sold variable annuities and made misrepresentations to customers in connection with those sales.[131] Specifically, Turner falsely told three customers, CP, TM, and CR, that their variable annuities would earn a "guaranteed" minimum annual interest when the annuities guaranteed only minimum withdrawal or annuitization rates,[132] and he made misrepresentations to CP regarding the tax implications of her variable annuity purchase.[133] He also told CR that she was receiving expected distributions from her variable annuity. In reality, he was giving her cashier's checks that he had purchased with his own money and falsely designated Prudential as the remitter on the checks.[134]

"A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available."[135] In other words, a misstated or omitted fact is material if a reasonable investor would have viewed the fact

---

[128] *See Everest Sec., Inc.*, 52 S.E.C. 958, 959 (1996), *aff'd*, 116 F.3d 1235 (8th Cir. 1997). FINRA Rules 2020 and 2010 generally apply to FINRA members and are applicable to associated persons pursuant to FINRA Rule 0140.

[129] *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996). In addition, violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. *See SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, Turner used the internet, mail, and the telephone to knowingly and willfully make false statements to customers and omit material information in connection with his sales of variable annuities to the customers. Supp. Decl. ¶¶ 4-7. Turner therefore used the means or instrumentalities of transportation or communication in interstate commerce, or the mails. *See U.S. v. Barlow*, 568 F.3d 215, 220 (5th Cir. 2009) (holding that "it is beyond debate that the Internet and email are facilities or means of interstate commerce").

[130] *See* U.S. Securities and Exchange Commission, Investor Education/Fast Answers, *available at* http://www.sec.gov/answers/annuity.htm.

[131] Compl. ¶¶ 3, 13-73.

[132] *Id.* ¶¶ 15, 17, 18-20, 58-60.

[133] *Id.* ¶¶ 16.

[134] *Id.* ¶¶ 61-64.

[135] *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *30 (Feb. 20, 2007); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

as having altered the "total mix" of information.[136] Turner's misrepresentations as to the return on investment and the tax implications of the exchange were unquestionably material.[137]

The Hearing Officer also finds that Turner acted with scienter. Scienter is the "intent to deceive, manipulate or defraud."[138] Scienter may be established by a showing that the respondent acted recklessly.[139] Turner knew the information he was providing the customers was false and intentionally made misrepresentations and omitted material information.[140]

The Hearing Officer finds that Turner willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and violated FINRA Rules 2020 and 2010, as alleged in cause three.

### F. Turner Provided Inadequate and Untimely Disclosures of Outside Business Activities as Alleged in Cause Four

Cause four alleges that Turner violated FINRA Rules 3270 and 2010 by (1) inaccurately disclosing and describing his involvement in "H&S Securities, LLC" to his firm on his Uniform Application for Securities Industry Registration or Transfer Form ("Form U4"), and (2) entering into undisclosed relationships with outside insurance companies.

FINRA Rule 3270 prohibits a registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another entity or person, or being compensated, or expecting to be compensated, as a result of any outside business activity without providing prior written notice to their member firm. The rule requires that disclosure be made at the time a new business is established or when the rights to do business are acquired, even if the person has not begun active involvement in the business.[141]

---

[136] *See In re Time Warner, Inc. Securities Litigation*, 9 F.3d 259, 267-268 (2d Cir. 1993); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). The "reasonable investor" standard is an objective one. *Id.* at 445; *Robert Tretiak*, 56 S.E.C. 209, 222 (2003).

[137] *See SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) ("The materiality of information relating to ... profitability is not subject to serious challenge."); *accord, Thomas J. Furnari*, 47 S.E.C. 1074 (1984); *Dep't of Enforcement v. Apgar,* No. C9B020046, 2004 NASD Discip. LEXIS 9, at *13-14 (NAC May 18, 2004).

[138] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976).

[139] *See DWS Securities Corp.*, 51 S.E.C. 814, 820 (1993) (finding that Respondent who engaged in "conduct at odds with the description of the proposed use of proceeds in the PPMs," made no effort to amend the offering documents and, continued to make misleading oral representations concerning investment returns acted with scienter); *SEC v. Falstaff Brewing Co.,* 629 F.2d 62, 77 (D.C. Cir. 1980) (holding that "knowledge means awareness of the underlying facts, not the labels that the law places on those facts").

[140] *See, e.g.,* Compl. ¶¶ 17, 20, 60, & 62.

[141] *Micah C. Douglas*, 52 S.E.C. 1055, 1059 (1996); *Dep't of Enforcement v. Abbondante*, No. C10020090, 2005 NASD Discip. LEXIS 43, at *30 (NAC Apr. 5, 2005); *DBCC No. 8 v. Cruz,* No. C8A930048, 1997 NASD LEXIS 123, at *97-103 (NBCC Oct. 31, 1997).

Turner created H&S Securities, LLC on September 9, 2013,[142] but he did not disclose his affiliation with this company until November 22, 2013.[143] The disclosure identified the company as "H&S LLC," and described it as a rental property co-ownership to which he devoted one hour per week.[144] Turner stated that he became associated with the company on October 6, 2013.[145] As described below in the section discussing cause five, Turner arranged for one of his customers to invest in H&S Securities.[146]

Turner's disclosure was inaccurate and untimely. By excluding the word "Securities" from the name of the company and failing to state whether the business was investment-related (information that is required on a Form U4), Turner inaccurately described the company and misled Pruco as to the nature of the business. Turner's disclosure was untimely because he made the disclosure two and one-half months after he formed the outside business company, not at the time he established the company.

In addition to his involvement with H&S Securities, Turner held or obtained appointments as an agent with ten insurance companies which were unrelated to Prudential Insurance when he was registered with Pruco.[147] Pruco's policies and procedures relating to outside business activities specifically required registered representatives to disclose appointments to outside insurance companies. However, Turner failed to disclose nine of these ten appointments to Pruco.[148] Turner received more than $130,000 in commissions from two of these undisclosed outside insurance relationships while he was registered with Pruco during 2013.[149]

The Hearing Officer finds that Turner violated FINRA Rules 3270 and 2010 by failing to disclose or provide accurate and timely disclosure of his outside business activities.

---

[142] Compl. ¶ 90.

[143] *Id.* ¶ 91.

[144] *Id.*

[145] *Id.*

[146] *Id.* ¶ 92.

[147] *Id.* ¶ 94.

[148] *Id.* ¶¶ 95-97.

[149] *Id.* ¶ 96.

### G. Turner Engaged in Private Securities Transactions as Alleged in Cause Five

Cause five alleges that Turner violated NASD Rule 3040 and FINRA Rule 2010, by failing to disclose or obtain authorization to engage in private securities transactions in which he arranged for a customer to invest in his outside business, H&S Securities.[150]

NASD Rule 3040, in effect at the time of the conduct at issue,[151] required an associated person to provide written notice to the member with which the person was associated prior to participating in any private securities transaction, describing in detail the proposed transaction and the person's proposed role therein and stating whether the person has received or may receive selling compensation in connection with the transaction. The purpose of NASD Rule 3040 is to ensure that FINRA members can adequately supervise the suitability and due diligence responsibilities of their registered persons.[152]

Turner arranged for LB to invest in his outside business company, H&S Securities.[153] LB made three investments in H&S Securities, totaling $64,040.[154] Both LB and Turner considered this to be an investment in or with H&S Securities.[155] Turner did not provide notice to, or seek authorization from, Pruco prior to entering into these private securities transactions with LB.[156]

The Hearing Officer finds that Turner violated NASD Rule 3040 and FINRA Rule 2010, by failing to disclose or obtain authorization to engage in private securities transactions.

### H. Turner Failed to Provide Investigative Testimony and Information to FINRA as Alleged in Causes Six and Seven

Causes six and seven allege that Turner violated FINRA Rules 8210 and 2010 by (1) failing to appear and testify, and (2) failing to provide information.

---

[150] Compl. ¶ 101.

[151] NASD Rule 3040 was superseded by FINRA Rule 3280 on September 21, 2015, after the transactions at issue here.

[152] *See Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39, at *8 (NAC Dec. 13, 2001).

[153] Compl. ¶ 101. When a person invests in a vehicle such as an LLC as a passive investor, with no ability to or expectation of participating in the management of the investment, the investment is deemed to be a security. *See SEC v. Lowery,* 633 F. Supp.2d 466 (W.D. Mich. 2009); *SEC v. Parkersburg Wireless LLC*, 991 F. Supp. 6, 7-9 (D.D.C. 1997); *Frank Leonesio*, 48 S.E.C. 544, 547 (1986); *Dep't of Enforcement v. De Vietien*, No. 200600754401, 2010 FINRA Discip. LEXIS 45, at *14-26 (NAC Dec. 28, 2010).

[154] Compl. ¶ 101.

[155] *Id.* ¶ 102. Turner made payments from the H&S Securities bank account to his wife and to his former marketing assistant. *Id.* ¶ 103.

[156] *Id.* ¶ 104.

FINRA Rule 8210 requires members and persons associated with a member to provide FINRA with information orally, in writing, or electronically, and to testify at a location specified by FINRA staff under oath or affirmation with respect to any matter involved in an investigation, complaint, examination, or proceeding. FINRA Rule 8210 also permits FINRA staff to inspect and copy the books, records, and accounts of such member or associated person that are within their possession, custody or control. The rule is unequivocal in its mandate and grants FINRA broad authority to obtain from an associated person information regarding matters in FINRA's investigation.[157] Associated persons must cooperate fully and may not determine whether the information FINRA has requested is material.[158] A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.[159]

### 1. Cause Six: Turner Failed to Provide Testimony to FINRA

Turner failed to appear and provide testimony to FINRA on January 28 and 29, 2016.[160] Turner and the staff had agreed to the date and time of this testimony after rescheduling and relocating it three times to accommodate Turner.[161] Enforcement notified Turner of the scheduled testimony by sending a Rule 8210 request letter to Turner's counsel via certified mail and email. Enforcement spoke to a representative from Turner's counsel's office and confirmed that Turner's counsel received the Rule 8210 request letter for the January 28 and 29 testimony.[162] Turner failed to appear for testimony on January 28. Enforcement attempted to contact his counsel, but no one at Tuner's office answered Enforcement's calls. Turner never offered any explanation for his failure to appear.[163]

The Hearing Officer finds that Turner violated FINRA Rules 8210 and 2010, by failing to appear and provide testimony to FINRA.

### 2. Cause Seven: Turner Failed to Provide Information to FINRA

Pursuant to Rule 8210, Enforcement served Turner, through his counsel, with three request letters seeking information pertinent to its investigation.[164] On each occasion, Turner failed to fully respond to the request letters.

---

[157] *See Dep't of Enforcement v. Fawcett*, No. C9A040024, 2007 NASD Discip. LEXIS 2, at *11-12 (NAC Jan. 8, 2007), *aff'd*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007).

[158] *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009).

[159] *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *13 (May 8, 2015).

[160] Compl. ¶ 112.

[161] *Id.* ¶¶ 107-112.

[162] *Id.* ¶¶ 112-115.

[163] *Id.* ¶ 115.

[164] *Id.* ¶¶ 118-119.

The first request letter, dated October 6, 2015 (the "First Request"), sought all records Turner maintained relating to the sales of financial products or investments.[165] Turner responded in November 2015 and stated that he had no such records.[166]

The second request letter, dated October 28, 2015 (the "Second Request"), sought monthly statements for Turner's bank and investment accounts, including all accounts in which he has a beneficial interest, such as the accounts of H&S Securities, or similarly-named entities, for the period June 1, 2013 to the present.[167] At the end of November 2015, Turner produced statements for one bank account in the name of H&S Securities, but only covering the period of July through September 2015.[168] Turner asserted that he had requested the remaining statements from the bank, but he has not produced any additional H&S Securities documents.[169] Turner also failed to produce any personal bank account or investment account records.[170]

The Second Request also sought a detailed explanation for the checks from LB payable to H&S Securities, or similarly-named entities, including a description of the investment opportunity discussed with LB, and information regarding payments made to or on behalf of LB in 2015.[171] Turner did not answer those questions.[172] Instead, in his November response, he stated that "[LB] has been out of town and information will be provided on Wednesday."[173] Two days later, Turner's counsel replied to the requests by sending a Demand Note Release, which indicated that LB invested $49,000 with H&S Securities.[174] Turner's counsel also provided a handwritten note signed by LB stating that LB did not file a complaint against Turner with Prudential.[175]

The third request letter, dated December 1, 2015 (the "Third Request"), required production of certain documents that had not been produced pursuant to the Second Request, including (1) account statements, and (2) information regarding transactions with LB.[176] In

---

[165] Compl. ¶ 118.

[166] *Id.*

[167] *Id.* ¶ 119.

[168] *Id.* ¶ 120.

[169] *Id.* ¶¶ 120-121.

[170] *Id.*

[171] *Id.* ¶ 122.

[172] *Id.* ¶ 124.

[173] *Id.* ¶ 123.

[174] *Id.*

[175] *Id.*

[176] *Id.* ¶ 125.

response to the request for account statements, which included personal and other bank accounts, Turner stated that he had no documents responsive to the request, without setting forth his efforts to obtain them.[177] In the Third Request, the staff noted: "You provided no explanation and you did not describe the investment opportunity discussed with [LB] or explain the reason for [LB]'s payments."[178] Turner responded and merely stated "There were two checks written on [LB]'s checking account in 2013 and 2014 totaling $48,000."[179]

The Third Request also clarified an earlier request from FINRA, stating that the request for records in the First Request included documents pertaining to H&S Securities.[180] Turner responded, stating that he would not produce documents relating to H&S Securities.[181] Specifically, Turner stated: "upon advice of counsel (not the undersigned) [I] will not provide documents relating to H&S Securities, LLC. ... [C]omplying with the request is a violation of the Financial Privacy Act of 1978."[182]

The Hearing Officer finds that Turner violated FINRA Rules 8210 and 2010 by failing to provide all of the requested information in FINRA's Rule 8210 request letters.

## III. Sanctions

The Hearing Officer bars Turner from associating with any member firm in any capacity. The Hearing Officer finds that Turner's unethical and dishonest actions and his willingness to take unfair advantage of customers who placed their trust in him demonstrate that he is unfit to remain in the securities industry. Because causes one and two address similar misconduct, the Hearing Officer provided a unitary sanction for those causes. The Hearing Officer bars Turner for (1) providing false information and engaging in deceptive acts in connection with his variable annuity sales as alleged in cause one; and (2) providing false information on documents relating to his variable annuity sales as alleged in cause two. The Hearing Officer also bars Turner for fraudulently misrepresenting and omitting material facts to customers in connection with their variable annuity purchases as alleged in cause three. Lastly, the Hearing Officer bars Turner for failing to provide testimony and information to FINRA in response to Rule 8210 requests. In light of these bars, the Hearing Officer has not imposed additional sanctions for Turner's outside business activities violation as alleged in cause four or his private securities transaction violation as alleged in cause five.

---

[177] Compl. ¶ 126.

[178] *Id.* ¶ 127.

[179] *Id.*

[180] *Id.* ¶ 125.

[181] *Id.* ¶ 126.

[182] *Id.*

### A. Falsification of Information Relating to Variable Annuity Transactions (FINRA Rule 2010) & Falsification of Books and Records (FINRA Rules 4511 & 2010)

FINRA's Sanction Guidelines for forgery and falsification of records, in violation of FINRA Rule 2010, recommend a fine of between $5,000 and $146,000, a suspension of up to two years where mitigating factors exist, or a bar in egregious cases.[183] The Guideline suggests consideration of the nature of the documents forged or falsified, and whether the respondent had a good faith belief of express or implied authority.[184] The Sanction Guideline for recordkeeping violations recommend a fine ranging from $1,000 to $15,000 and a suspension of up to 30 business days in any or all capacities for responsible individuals.[185] In the case of egregious violations, the Guideline recommends a fine ranging from $10,000 to $146,000 and consideration of a suspension of up to two years or a bar.[186] The Guideline recommends consideration of the nature and materiality of the inaccurate or misleading information in the firm records.[187]

The Hearing Officer finds that Turner's conduct is egregious. The nature of the falsified documents is significant because Turner submitted the false information on five customers' variable annuity application materials in an intentional effort to misrepresent the source of funds and circumvent Pruco's supervisory review process. To conceal his misrepresentations to the customers and circumvent Pruco's supervision, he misrepresented his personal email addresses as the email address of seven of his customers in an effort to ensure that he, and not the customers, would receive communications. He also lied to the CTR staff about the source of funds for the variable annuity purchases of five customers, submitted multiple documents bearing forged signatures of a customer, and created the false appearance that payments to a customer were coming from Prudential when they were in fact payments from his own funds. There are no mitigating factors. A bar is the appropriate remedial sanction.

### B. False Representations and Omissions Regarding Variable Annuity Investments (Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 Thereunder, and FINRA Rules 2020 & 2010)

The Sanction Guidelines for fraud, misrepresentations or material omissions of fact recommend a bar for intentional or reckless misconduct.[188] The Guidelines do not include principal considerations specific to fraud, misrepresentations or omissions, but the principal

---

[183] FINRA Sanction Guidelines at 37 (2015), http://www.finra.org/industry/sanction-guidelines.

[184] *Id.*

[185] *Id.* at 29.

[186] *Id.*

[187] *Id.*

[188] *Id.* at 88.

considerations applicable to all violations include several considerations that apply here as aggravating factors. The principal considerations set forth certain aggravating factors present here, such as whether the misconduct was the result of an intentional act or recklessness, whether the misconduct resulted in the potential for monetary gain, whether the respondent engaged in a pattern of misconduct, whether the respondent attempted to conceal the misconduct, and whether the misconduct resulted in injury to the investing public.[189] Turner acted intentionally or recklessly, made material misrepresentations to multiple customers, generated commissions from the fraudulent transactions, and caused losses to customers. In light of these aggravating factors, the absence of any mitigating factors, and the nature of Turner's misconduct, the Hearing Officer bars Turner from associating with any member firm in any capacity for violations under cause three.

### C. Failure to Testify and Provide Information to FINRA (FINRA Rules 8210 & 2010)

For Rule 8210 violations, the Sanction Guidelines recommend that if an individual does not respond to a Rule 8210 request for information in any manner, a bar in all capacities should be standard.[190] The Guidelines further provide that where an individual provides a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.[191] The Guidelines also contain principal considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA's perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reason(s) for deficiencies in the response.[192]

Here, although FINRA rescheduled Turner's testimony on three occasions to accommodate Turner, he failed to appear and provide any testimony. Because Turner provided some responses to the requests for information, the Hearing Officer applied the Guideline for a partial failure to respond.[193]

The conduct under investigation in the matter was serious. Turner failed to appear and testify about the substantial misconduct on which the Complaint is based. He also failed to provide significant and material documentation requested by FINRA's investigative staff in

---

[189] *Id.*

[190] *Id.* at 33.

[191] *Id.*

[192] *Id.*

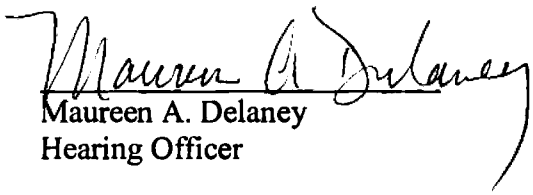
[193] *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55-56 (June 14, 2013) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at *25 & *27 (Dec. 20, 2011)).

response to the three Rule 8210 requests. He did not substantially comply with the requests for information and documents. Given the vital importance of FINRA's need to gather necessary information in order to detect possible misconduct, and FINRA staff's need to send repeated investigative requests, Turner's failures to comply are unacceptable.

FINRA Rule 8210 is the primary means by which FINRA investigators obtain the information necessary to conduct investigations and determine compliance with FINRA rules. "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest."[194] There are no mitigating factors apparent. The Hearing Officer concludes that the appropriate sanction is a bar in all capacities.

## IV. Order

Respondent Winston Wade Turner is barred from associating with any FINRA member firm in any capacity for: (1) providing false information and engaging in numerous deceptive acts in connection with his variable annuity sales, in violation of FINRA Rule 2010, and providing false information on documents relating to his customers' variable annuity exchanges, in violation of FINRA Rules 4511 and 2010; (2) fraudulently misrepresenting and omitting material facts to customers, in willful violation of Section 10(b) of the Exchange Act, Rule 10b-5, and in violation of FINRA Rules 2020 and 2010;[195] and (3) failing to provide testimony and information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Maureen A. Delaney
Hearing Officer

Dated: July 8, 2016

Copies to:

Winston Wade Turner (via overnight courier and first-class mail)
Jonathan Golomb, Esq. (via electronic and first-class mail)
Emily D. Barnes, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

---

[194] *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *22 (NAC June 3, 2014) (citation omitted).

[195] Enforcement did not seek restitution in this proceeding. Decl. ¶ 29. Accordingly, the Hearing Officer did not order restitution.