

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Stewart Clinton Malloy (CRD No.
1029931),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016051299201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Stewart Clinton Malloy (Malloy”) failed to appear and provide testimony pursuant to FINRA Rule 8210 on two occasions. As a result, Malloy violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Malloy joined the securities industry in November 1981 as a financial consultant with a FINRA member firm, where he became associated as a Series 7 registered General Securities Representative (“GSR”) in January 16, 1982. In August 1996, Malloy became associated with Morgan Stanley (or the “Firm”) as a GSR. Between March 1982 and October 1994, he obtained the following FINRA registrations: Series 5 (Interest Rate Options Representative); Series 63 (State Agent Registration); and Series 65 (Investment Advisor).

3. In August 2015, Malloy consented to FINRA's findings contained in a Letter of Acceptance, Waiver and Consent (No. 2013035953801) that he violated (a) NASD Rule 2510(b); and (b) FINRA Rule 2010 for effecting discretionary transactions in the joint accounts of two Morgan Stanley customers without written authorization from the customers and written acceptance of the accounts as discretionary by Morgan Stanley and inaccurately asserting on a Firm annual compliance questionnaire that he did not have any accounts in which he exercised discretion. In the August 2015 AWC, Malloy consented to a sanction of a 30 business-day suspension and a \$5,000 fine.

4. On October 2, 2015, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), reporting that the Firm had terminated Malloy's registration based on "concerns related to [a] FINRA letter of acceptance, waiver and consent executed by [Malloy] in resolution of alleged rule violation."

5. On October 31, 2015, Morgan Stanley filed an amended Form U5 reporting a customer complaint alleging that Malloy had purchased unsuitable energy stocks in the customer's Firm account. On September 12, 2016, Morgan Stanley filed another amended Form U5, reporting for the first time a different complaint and arbitration filing by two additional customers who alleged that Malloy had effected unauthorized and unsuitable trades in their accounts while Malloy was associated with Morgan Stanley.

6. Although Malloy is no longer registered or associated with a FINRA broker-dealer, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (1) the Complaint was filed within two years after the effective date of Morgan Stanley's filing of an amended Form U5 on September 12, 2016, in which it reported new allegations that had not been raised in prior filings; and (2) the

Complaint charges him with failing to appear for testimony pursuant to FINRA Rule 8210 during the two-year period after the date upon which Morgan Stanley filed the September 12, 2016 amended Form U5.

CAUSE OF ACTION
FAILURE TO APPEAR FOR ON-THE-RECORD TESTIMONY
(FINRA Rules 8210 and 2010)

7. The Department realleges and incorporates by reference paragraphs 1 - 6 above.
8. On February 23, 2018, FINRA staff contacted Malloy by telephone. Malloy stated that he was willing to provide on-the-record testimony regarding the allegations against him but asked that it be scheduled for a date at the end of May, 2018.
9. On February 28, 2018, FINRA staff sent a letter to Malloy (the "First Request Letter") pursuant to FINRA Rule 8210 requesting that he appear and provide testimony under oath on May 30, 2018.
10. The First Request Letter informed Malloy that he was obligated to appear for testimony on May 30, 2018 pursuant to FINRA Rule 8210. The First Request Letter also advised Malloy that "[f]ailure to answer any questions completely and truthfully, or failure to provide any information requested by the staff, could violate Rule 8210 and could be the basis for the initiation of a disciplinary proceeding that could lead to the imposition of sanctions, including a bar from the industry, suspension, censure and/or fine."
11. FINRA sent the First Request Letter by First Class Mail and Certified Mail to Malloy's address as reflected in the Central Registration Depository ("CRD Address"). FINRA also sent the First Request Letter to an e-mail address that Malloy had provided to FINRA staff ("Malloy's E-mail Address").

12. The Certified Mail return receipt for the First Request Letter was returned to FINRA on March 14, 2018, showing what appears to be Malloy's signature dated March 5, 2018. The USPS website reflects that USPS delivered the First Request Letter on March 5, 2018.

13. The First Request Letter that FINRA sent by First Class Mail to Malloy's CRD address was not returned to FINRA.

14. On May 22, 2018, FINRA staff called Malloy by phone, at a telephone number he had provided to FINRA, and had previously used to speak with FINRA, to remind him of his upcoming testimony. He did not answer and FINRA staff left a voice mail message with information about his upcoming appearance and how to contact FINRA staff if he had any questions or concerns. On the same day, May 22, 2018, FINRA staff sent an e-mail to Malloy reminding him of his obligation to appear on May 30, 2018.

15. On May 25, 2018, FINRA staff sent a second e-mail to Malloy asking him to confirm that he would appear on May 30, 2018.

16. On May 29, 2018, Enforcement called Malloy by phone, at a telephone number he had provided and had previously used to speak with Enforcement, to remind Malloy of his upcoming testimony. He did not answer and FINRA staff left a voice mail message with information about his upcoming appearance and how to contact FINRA staff if he had any questions or concerns.

17. Malloy did not contact Enforcement to reschedule his testimony.

18. Malloy did not appear for testimony on May 30, 2018.

19. On May 30, 2018, FINRA staff sent Malloy a second letter pursuant to FINRA Rule 8210 (the “Second Request Letter”) requesting that Malloy appear and provide testimony under oath on June 6, 2018.

20. The Second Request Letter informed Malloy that he was obligated to appear for testimony pursuant to FINRA Rule 8210. The Second Request Letter also advised Malloy that “[f]ailure to answer any questions completely and truthfully, or failure to provide any information requested by the staff, could violate Rule 8210 and could be the basis for the initiation of a disciplinary proceeding that could lead to the imposition of sanctions, including a bar from the industry, suspension, censure and/or fine.”

21. FINRA sent the Second Request Letter was sent by First Class Mail and Certified Mail to Malloy’s CRD Address. FINRA also sent the Second Request Letter to Malloy’s E-Mail Address.

22. The Certified Mail receipt for the Second Request Letter was returned to FINRA on June 6, 2018, showing what appears to be Malloy’s signature dated June 2, 2018. The USPS website reflects that USPS delivered the First Request Letter on June 2, 2018.

23. The Second Request Letter that FINRA sent by First Class Mail to Malloy’s CRD address was not returned to FINRA.

24. Malloy did not contact Enforcement to reschedule his testimony.

25. Malloy did not appear for testimony on June 6, 2018.

26. As a result of the foregoing conduct, Malloy violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Malloy committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Malloy bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 24, 2018



Myles L. Orosco, Senior Counsel
Gina Petrocelli, Chief Counsel
Sara Raisner, Director
FINRA Department of Enforcement
Brookfield Place, 200 Liberty Street, 11th Floor
New York, NY 10281-1003
Phone: (646) 315-7383; Fax: (202) 689-3419
myles.orosco@finra.org