

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Atiq U. Khan (CRD No. 4727750),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016052504602

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On September 8, 2017 and October 11, 2017, Atiq U. Khan failed to appear for testimony in response to two requests sent to him by FINRA Staff pursuant to FINRA Rule 8210. Khan did not appear for testimony until after FINRA instituted FINRA Rule 9552 proceedings against him, resulting in a failure to provide a timely response to FINRA 8210 requests. Subsequently, between March 14, 2018 and April 17, 2018, Khan completely failed to respond to two additional requests for documents sent to him by FINRA Staff pursuant to FINRA Rule 8210. Accordingly, Khan violated FINRA Rules 8210 and 2010, both by failing to timely respond to FINRA Staff's Rule 8210 requests and, later, by completely failing to respond to them.

RESPONDENT AND JURISDICTION

2. Khan first entered the securities industry in January 2004 as an Investment Company and Variable Contracts Products Representative of a former FINRA member firm where he remained employed until January 6, 2012. Khan became associated with Transamerica Financial Advisors, Inc. (“Transamerica” or “Firm”) and registered with FINRA on January 6, 2012 as an Investment Company and Variable Contracts Products Principal and an Investment Company and Variable Contracts Products Representative. On February 24, 2012, Khan became registered as a General Securities Representative.
3. On December 13, 2016, Transamerica filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) for Khan, which disclosed that Khan had been soliciting Firm customers to purchase general securities products, in violation of the Firm’s procedures. The Form U5 also disclosed that an insurance provider had informed the Firm that Khan had “improperly inserted himself as the beneficiary on a customer account.”
4. Khan’s association with Transamerica and his registration with FINRA were terminated on December 13, 2016. Khan has not been associated with a FINRA member since December 13, 2016.
5. Although Khan is no longer registered or associated with a FINRA member, 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 termination of Respondent’s registration with Transamerica, namely, December 13, 2016; and (2) the Complaint charges him

with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

**Failure to Provide Timely Responses to
FINRA Requests for Information and Documents**
(Violation of FINRA Rules 8210 and 2010)

6. The Department of Enforcement realleges and incorporates by reference paragraphs 1 – 5 above.
7. FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA Staff has the right to require a person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically and to testify at a location specified by FINRA Staff.
8. FINRA Rule 8210(c) provides that, “[n]o member or person shall fail to provide information or testimony... pursuant to this Rule.”
9. FINRA Rule 8210(d) specifies that notice under Rule 8210 shall be deemed received by a current or former registered representative to whom it is directed by mailing or otherwise transmitting the notice to the last known residential address of the registered representative as reflected in FINRA’s Central Registration Depository system or “CRD” (hereinafter, “CRD Address”).
10. FINRA Rule 2010 requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade. Failing to comply with FINRA Staff requests for documents and information sent pursuant to

Rule 8210 is conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade and, thus, violates Rule 2010.

11. After receipt of Transamerica's Form U5 filing for Khan, FINRA Staff opened an investigation into whether Khan had improperly solicited general securities and whether Khan had improperly inserted himself as the beneficiary on a customer's insurance policy.
12. On August 21, 2017, pursuant to FINRA Rule 8210, FINRA Staff sent Khan a request to appear for testimony at 300 South Grand Avenue, Suite 1600, Los Angeles, California, on September 8, 2017 beginning at 9:30 a.m. (the "August 21, 2017 Request").
13. The August 21, 2017 Request was sent by both certified mail and first class U.S. mail to Khan's CRD Address in Gardena, California.
14. Information for the certified mailing shown on the USPS.com tracking website states "Delivered, Left with Individual" at Khan's CRD Address on August 24, 2017. In addition, USPS.com reflects a signed delivery, but the signature is illegible. Although it appears, based upon the USPS website, that the August 21, 2017 request was delivered, the certified letter was returned to the FINRA New Orleans District Office on October 16, 2017, with the handwritten notation: "Return to Sender." The copy of the August 21, 2017 Request sent by first class U.S. mail was returned to FINRA on October 16, 2017, with a label, stating "Return to Sender, Attempted – Not Known, Unable to Forward" and the handwritten notation: "Return to Sender."

15. The August 21, 2017 Request directed that Khan return an attached pre-testimony questionnaire by September 1, 2017 and provided a FINRA Staff phone number for Khan to call if he had any questions.
16. Khan did not return the pre-testimony questionnaire and did not contact FINRA Staff prior to the testimony scheduled for September 8, 2017.
17. Khan failed to appear for testimony on September 8, 2017, as requested by FINRA Staff.
18. On September 25, 2017, pursuant to FINRA Rule 8210, FINRA Staff sent Khan a request to appear for testimony at 300 South Grand Avenue, Suite 1600, Los Angeles, California, on October 11, 2017 beginning at 9:30 a.m. (the “September 25, 2017 Request”).
19. The September 25, 2017 Request was sent by both certified mail and first class U.S. mail to Khan’s CRD Address in Gardena, California.
20. The certified mailing and first class mailing for the September 25, 2017 Request sent to Khan’s CRD Address were both returned to FINRA. Information for the certified mailing shown on the USPS.com tracking website states “Notice Left (No Authorized Recipient Available)” at Khan’s CRD Address on September 30, 2017 and states that the delivery was “Refused.” Information on the returned envelope for the first class mailing states “Return to Sender, Attempted, Not Known, Unable to Forward.”
21. On October 10, 2017, FINRA Staff called Khan at a telephone number he had previously provided to the Staff and left a message requesting that he return the

- Staff's call to inform the Staff whether he intended to appear for testimony on October 11, 2017.
22. Khan did not return the call or otherwise contact the Staff prior to his testimony scheduled for October 11, 2017.
 23. Khan failed to appear for testimony on October 11, 2017, as requested by FINRA Staff.
 24. As a result of Khan's repeated failure to appear for testimony in response to FINRA Staff's 8210 requests, FINRA Staff initiated an expedited proceeding against Khan pursuant to FINRA Rule 9552.
 25. On November 2, 2017, FINRA Staff sent Khan a Notice of Suspension Letter ("Notice Letter") by certified mail and first class mail to Khan's CRD address and via email to an email address Khan had used to communicate with FINRA Staff.
 26. The Notice Letter informed Khan that he would be suspended on November 27, 2017, pursuant to FINRA Rule 9552, for failure to appear in response to FINRA Rule 8210 requests to provide testimony on September 8, 2017 and October 11, 2017, attached thereto.
 27. The certified mailing of the Notice Letter to Khan's CRD Address was returned to FINRA marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing of the Notice Letter to Khan's CRD Address was not returned to FINRA. FINRA Staff has no indication that the email address used to send the Notice Letter to Khan was not a valid email address for Khan or that Staff's November 2, 2017 email message sending the Notice Letter was otherwise undeliverable.

28. Khan did not respond to the Notice Letter.
29. On November 27, 2017, FINRA Staff sent Khan a Suspension Letter (“Suspension Letter”) by certified mail and first class mail to Khan’s CRD address and to Khan’s email address.
30. The Suspension Letter informed Khan that he was suspended as of November 27, 2017 and would be barred as of February 5, 2018, if he did not request termination of the suspension pursuant to FINRA Rule 9552.
31. The certified mailing and first class mailing of the Suspension Letter sent to Khan’s CRD Address were not returned to FINRA. Information for the certified mailing shown on the USPS.com tracking website states that delivery was made at Khan’s CRD address on December 1, 2017 and shows a signature of the recipient. The initial “A” on this signature is legible, but the remaining letters are not. FINRA Staff has no indication that the email address used to send the Suspension Letter to Khan was not a valid email address for Khan or that the Staff’s November 27, 2017 email was otherwise undeliverable.
32. On January 5, 2018, Khan responded to the Suspension Letter by calling FINRA Staff. He confirmed that he had received the Suspension Letter in the mail, confirmed the email address that the Staff had been using, and provided a current address in Los Angeles, CA (the “New Address”). During the phone call, FINRA Staff informed Khan that he would need to appear for testimony before February 5, 2018 to avoid a bar.

33. On January 25, 2018, Khan appeared for testimony in FINRA's Los Angeles office pursuant to an 8210 request and fully responded to the questions asked by FINRA Staff.
34. On January 30, 2018, in light of Khan's appearance for testimony, FINRA terminated Khan's suspension and the Rule 9552 proceedings against him.
35. The testimony requested by FINRA Staff regarding Khan's solicitation of general securities transactions and the potential improper naming as a beneficiary on a customer's insurance policy were material to FINRA's investigation. Khan's untimely response impeded and substantially delayed FINRA's investigation concerning his alleged failure to disclose his alleged solicitation of general securities transactions and alleged influence of a customer to name him as a beneficiary. FINRA relied upon Khan to timely appear for testimony and fully respond to questions asked in the testimony due to FINRA's limited jurisdiction to obtain the information through other sources.
36. In fact, over five months passed from the time of FINRA's initial August 21, 2017 request that Khan appear for testimony until Khan finally appeared for testimony before FINRA Staff on January 25, 2018. During that time, FINRA Staff sent Khan two different Rule 8210 request letters, but still he failed to respond to FINRA Staff's Rule 8210 requests. It was only after FINRA underwent the extraordinary regulatory effort of filing a Rule 9552 proceeding against Khan that he finally responded and appeared to provide testimony.

37. By virtue of the foregoing, Khan violated FINRA Rules 8210 and 2010 because he failed to timely appear for testimony in response to FINRA Staff's August 21, 2017 and September 25, 2017 Requests sent to him pursuant to Rule 8210.

SECOND CAUSE OF ACTION

Failure to Respond to FINRA Requests for Information and Documents
(Violation of FINRA Rules 8210 and 2010)

38. The Department of Enforcement realleges and incorporates by reference paragraphs 1 - 37 above.

39. Following the termination of Khan's suspension and the Rule 9552 proceedings against him, FINRA Staff renewed its investigation of Khan's improper solicitation of general securities and potential unethical conduct in being named as beneficiary on a customer's life insurance policy.

40. During the investigation, Khan stated that it was proper for him to be named as beneficiary of an unrelated customer, because in his culture, one could become an unofficially "adopted" son. According to Khan, as an "adopted" son, he should inherit in place of the younger biological children and use the inheritance to provide for them.

41. Khan further stated in his defense that he had deposited the proceeds that he received from his customer's life insurance policy into his sister-in-law's bank account and had wired the funds to his customer's biological children in Pakistan. Khan further stated that he used his sister-in-law's bank account as his own bank account through agreement with his sister-in-law. His sister-in-law provided him with an ATM card and personal identification number to make withdrawals from the account.

42. On March 14, 2018, pursuant to FINRA Rule 8210, FINRA Staff sent a letter to Khan (the “March 14, 2018 Request”), requesting copies of all monthly account statements for the bank account belonging to Khan’s sister-in-law, FB, which he accessed via use of an ATM card and made wire transfers from, for the time period February 1, 2016 through February 28, 2018. The deadline for Khan’s response to the March 14, 2018 Request was March 28, 2018.
43. The March 14, 2018 Request was sent by certified mail and first class U.S. mail to Khan’s CRD address, to the New Address, and to Khan’s email address.
44. Information for the certified mailing shown on the USPS.com tracking website states that delivery of the March 14, 2018 Request was made at Khan’s CRD address on March 21, 2018 and shows an illegible signature of the recipient. The certified mailing of the March 14, 2018 Request sent to Khan’s New Address was returned to FINRA with the notation “Return to Sender – Unclaimed – Unable to Forward.” The first class mailing of the March 14, 2018 Request sent to Khan’s New Address was not returned to FINRA. FINRA Staff has no indication that the email address used to send the March 14, 2018 Request to Khan was not a valid email address for Khan or that the Staff’s March 14, 2018 email was otherwise undeliverable.
45. Khan failed to respond to the March 14, 2018 Request by March 28, 2018, as requested by FINRA Staff.
46. On April 3, 2018, pursuant to FINRA Rule 8210, FINRA Staff sent a second letter (the “April 3, 2018 Request”) requesting that Khan provide the documents that were the subject of the March 14, 2018 Request no later than April 17, 2018.

47. The April 3, 2018 Request was sent by certified mail and first class U.S. mail to Khan's CRD address and to Khan's New Address and to Khan's email address.
48. Information for the certified mailing of the April 3, 2018 Request shown on the USPS.com tracking website states that delivery was made at Khan's CRD address on April 7, 2018. The certified mailing of the April 3, 2018 Request sent to Khan's New Address was returned to FINRA with the notation "Return to Sender – Unclaimed – Unable to Forward." The first class mailing of the April 3, 2018 Request sent to Khan's New Address was not returned to FINRA. FINRA Staff has no indication that the email address used to send the April 3, 2018 Request to Khan was not a valid email address for Khan or that the Staff's April 3, 2018 Request email was otherwise undeliverable.
49. Khan failed to respond to the April 3, 2018 Request by April 17, 2018, as requested by FINRA Staff.
50. Khan failed to respond to the March 14, 2018 Request and the April 3, 2018 Request, and, to date, has not provided any of the documents requested by FINRA Staff in those requests.
51. The requested documents were material to FINRA's investigation concerning whether Khan engaged in potentially unethical conduct by being named as a beneficiary on a customer's life insurance policy.
52. Khan had control over the bank records requested by FINRA. He used his sister-in-law's bank account as his own, making deposits, withdrawals, and sending wires. Given his access to the account, he had the practical ability and influence over the

person holding the records to obtain the records in response to FINRA's request.

Because the financial documentation requested by FINRA is under Khan's custody and control, and he failed to provide such documents in response to FINRA Staff's repeated requests, FINRA has been unable to complete its investigation.

53. By virtue of the foregoing, Khan violated FINRA Rules 8210 and 2010 by failing to respond to FINRA Staff's March 14, 2018 and April 3, 2018 Requests.

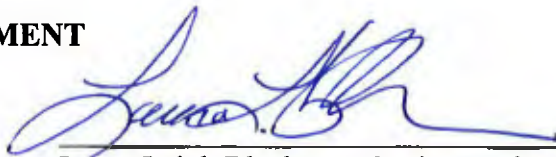
RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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 Respondent 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: June 8, 2018



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