

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MYRON K. GRUENBERG
(CRD No. 1349992),

Respondent.

Expedited Proceeding

No. FPI190005

STAR No. 20180588835

Hearing Officer–DRS

**EXPEDITED HEARING PANEL
DECISION**

August 15, 2019

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide documents and information in response to FINRA Rule 8210 requests issued to him by FINRA staff. Respondent is also ordered to pay hearing costs.

Appearances

For the Complainant: Andrew C. Boldt, Esq., and Olha Kolisnyk, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se.*

DECISION

I. Introduction

The Department of Enforcement requested documents and information from Myron K. Gruenberg, formerly a registered representative of a FINRA member firm, in connection with an investigation into whether he had committed selling away and private securities violations. Under FINRA rules, if an associated person fails to provide any information or material requested pursuant to FINRA rules, FINRA may issue a suspension notice to the person. The notice specifies the nature of the failure and states that failing to take corrective action within a specified period will result in a suspension. The suspension, in turn, may convert to a bar within another specified period. When Gruenberg failed to respond to at least one request and two follow-up requests, FINRA issued a suspension notice to him. He then requested a hearing, staying the effectiveness of the notice.

A telephonic hearing was held on June 27, 2019, before a FINRA Hearing Panel. For his defense, Gruenberg explained that he had wanted to retain counsel to represent him in connection with the investigation but could not afford to do so. Thus, he declined to respond to the requests. Further, he asked that this proceeding be dismissed because during the investigation, Enforcement refused to reveal that an anonymous letter had triggered the investigation and did not provide the letter to him at that time. This conduct, he claimed, was unfair and tainted both the investigation and this proceeding. The Hearing Panel rejects Gruenberg's defenses and bars him from associating with any FINRA member firm.

II. Findings of Fact

A. Gruenberg's Background

Gruenberg entered the securities industry in 1986 when he became registered as a general securities representative with a FINRA member firm.¹ Over the course of his 32-year career, Gruenberg has been registered with eight member firms. His last registration with a member firm terminated on July 23, 2018, when Quest Capital Strategies, Inc. ("Firm") discharged him for failing to disclose an outside business activity.²

B. Gruenberg Fails to Produce Information and Documents Requested by FINRA

1. FINRA Staff Opens an Investigation into Gruenberg's Activities

The events leading to this expedited proceeding began with an anonymous complaint letter dated April 26, 2018, addressed to the Firm, FINRA, and the Securities and Exchange Commission ("SEC"). The letter stated that several years earlier, its author bought a stock that Gruenberg had recommended, and the stock then "tanked." The author claimed to have "just learned that Gruenberg has received and is receiving stock from [the issuer] for various services" and complained that Gruenberg did not disclose this arrangement. "He is not my broker," the author conceded, "but he should have put all his cards on the table." The letter concluded: "I am not providing my contact information because . . . I bought [the stock] on inside information." It identified the author only as "A pissed off chump!"³

FINRA received the letter on June 19, 2018,⁴ and, as a result, opened an investigation.⁵ Following up on the complaint letter's accusations, FINRA sent questions to the Firm, which

¹ Joint Exhibit ("JX-__") 4, at 5, 9.

² JX-4, at 3.

³ JX-1.

⁴ JX-1 (reflecting a date stamp of June 19, 2018); Hearing Transcript ("Tr. __") 39.

⁵ Tr. 29–30, 100.

responded on July 20, 2018.⁶ The response included the results of the Firm’s internal investigation, conducted at FINRA’s behest, into whether Gruenberg engaged in any violation of Firm policies, undisclosed outside business activities, or unapproved private securities transactions.⁷

The Firm attached to its response a handwritten response Gruenberg purportedly submitted to the Firm in connection with its investigation.⁸ Gruenberg’s handwritten response consisted of two, one-page handwritten documents. Each page was signed by Gruenberg and dated July 20—the same day as the Firm’s response to FINRA. The first page⁹ contained answers in numbered paragraphs corresponding to questions sent to Gruenberg by his Firm. Two of his answers on the first page reference answers on an “accompanying page,”¹⁰ apparently meaning the second handwritten page. That second page¹¹ also contained answers in numbered paragraphs, but the record does not reflect the corresponding questions that Gruenberg answered.

Gruenberg’s handwritten response represented that he had (1) provided the issuer with an introduction to another party resulting in a reverse merger; (2) provided, and continued to provide, consulting services to the issuer; (3) received shares of restricted stock from the issuer in exchange for making the introduction and performing the consulting services; (4) sold some of these shares to one “private buyer” who did not have an account at the Firm; and (5) not recommended the issuer’s stock to any “client.”¹²

The Firm’s response informed FINRA that until Gruenberg responded to the Firm’s inquiry, it had been unaware of his involvement with the issuer. Moreover, the Firm wrote, Gruenberg had previously certified that he was not engaged in any outside business activities and private securities transactions and had never notified the Firm of, nor received its approval to engage in, this activity with the issuer.¹³

Afterward, the original examiner assigned to the investigation sent at least one FINRA Rule 8210 information and document request to Gruenberg.¹⁴ Then, in the fall of 2018, after that

⁶ Tr. 40; JX-2.

⁷ JX-2.

⁸ JX-2, at 5–6; Tr. 42–43.

⁹ JX-2, at 5.

¹⁰ JX-2, at 4.

¹¹ JX-2, at 6.

¹² JX-2, at 5–6.

¹³ JX-2, at 1–2.

¹⁴ Tr. 100–02. FINRA Rule 8210(a). As discussed below, under this Rule, FINRA staff may require associated persons of FINRA member firms to provide specified information, testimony, and documents “with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding.”

examiner retired, FINRA Associate Principal Examiner Clark Hoover¹⁵ was assigned to the investigation.¹⁶ Hoover reviewed the investigative file,¹⁷ which included the Firm's response and the anonymous letter.¹⁸ According to Hoover, Gruenberg had not responded to the earlier request sent by the original examiner¹⁹ and the only documents from Gruenberg in the file were the handwritten statements the Firm submitted in connection with its response.²⁰

Based on his review, Hoover concluded that further investigation was necessary in order to understand the scope of Gruenberg's activities, including how the issuer compensated Gruenberg, whether customers were involved in his activities, and whether his conduct posed any risks to customers.²¹ And Hoover decided that, to proceed with the investigation, he needed additional documents and information from Gruenberg.²²

2. Gruenberg Fails to Respond to Three FINRA Rule 8210 Requests

On January 15, 2019, Hoover sent Gruenberg a letter requesting that he provide certain documents and information by January 30, 2019.²³ The request letter, issued under FINRA Rule 8210,²⁴ informed Gruenberg that he was "obligated to respond to this request fully, promptly, and without qualification . . .".²⁵ It also warned him that failing to comply could expose him "to sanctions, including a permanent bar from the securities industry."²⁶ At the hearing, Hoover

¹⁵ Tr. 23.

¹⁶ Tr. 27, 107–08.

¹⁷ Tr. 28, 107.

¹⁸ Tr. 44.

¹⁹ Tr. 102.

²⁰ Tr. 43–44, 46, 103–04; JX-2, at 5–6. Hoover testified that to the best of his knowledge, FINRA staff has never received any documents or information directly from Gruenberg in connection with the investigation. Tr. 102–03, 105–06. That said, the evidence is inconclusive as to whether Gruenberg responded to FINRA's earlier request(s) or only to the Firm's request, which the Firm then purportedly submitted to FINRA. Gruenberg testified that in July or August 2018, FINRA sent him questions and he provided a hand-written response, which he did not retain a copy of. Tr. 148–53, 156–58, 160–61. Gruenberg gave conflicting testimony about whether the two handwritten pages constituted responses to the Firm's questions or whether the second page was his response to FINRA's questions. Tr. 149 (testifying that both pages were responses to the Firm's questions); Tr. 150 (testifying that the second page responded to FINRA's questions); Tr. 151 (testifying he was unsure if the second page contained responses to FINRA's questions); Tr. 156–57 (testifying that neither page reflected his answers to FINRA's questions). The record does not contain an earlier FINRA Rule 8210 request sent to Gruenberg, so we could not determine whether the second page relates to an earlier request.

²¹ Tr. 44–45.

²² Tr. 47.

²³ JX-5, at 2; Tr. 51–52, 60–61.

²⁴ JX-5, at 6.

²⁵ JX-5, at 6.

²⁶ JX-5, at 6.

explained that the general purpose of the request was to enable FINRA to understand the scope and extent of Gruenberg's activities and to determine whether other persons were involved in those activities.²⁷ The request sought, among other things, his employment, consulting or other business agreements;²⁸ bank account records;²⁹ securities account information and documents;³⁰ and information and documents relating to his earlier handwritten response.³¹ Gruenberg received the request letter on January 28, 2019,³² but never complied.³³

On February 6, 2019, Hoover sent Gruenberg a second FINRA Rule 8210 request letter seeking the same information and documents requested in the January 15 letter.³⁴ This second request set a response deadline of February 22, and notified Gruenberg that if he did not provide the requested information by that date, “[the] matter may be referred to the Department of Enforcement for disciplinary action, which could result in the imposition of sanctions, including censure, fine, suspension and/or permanent bar from the securities industry.”³⁵ Gruenberg received the request on February 11, 2019.³⁶

When Gruenberg failed to respond to the second request,³⁷ FINRA sent him a third one on February 28, 2019.³⁸ The third request, also issued under FINRA Rule 8210, set a response deadline of March 20, and again warned Gruenberg that failing to provide the requested

²⁷ Tr. 54.

²⁸ JX-5, at 3, no. 5; Tr. 54–55.

²⁹ JX-5, at 5, no. 16; Tr. 55–57.

³⁰ JX-5, at 5, no. 17; Tr. 57–58.

³¹ JX-5, at 2–3, nos. 4, 8; Tr. 58–60.

³² FINRA sent the letter by certified and first-class mail to Gruenberg's address as reflected in FINRA's Central Registration Depository (“CRD Address”). Tr. 62. The certified mailing was forwarded to another address for Gruenberg (“Forwarding Address”), and on January 28, 2019, Gruenberg signed a delivery receipt for that mailing. JX-6, at 2–3; Tr. 64–65, 162–63.

³³ Tr. 66.

³⁴ Tr. 68–69.

³⁵ JX-7, at 2.

³⁶ FINRA sent the second request by first-class and certified mail to Gruenberg's CRD Address and the Forwarding Address. JX-7; JX-9. On February 11, 2019, Gruenberg signed the delivery receipt for the certified mailing sent to the Forwarding Address. JX-10. The certified mailing sent to the CRD Address was forwarded to the Forwarding Address, and Gruenberg signed the delivery receipt on February 28, 2019. JX-8.

³⁷ Tr. 66–67.

³⁸ Tr. 67, 70.

information could result in disciplinary action and sanctions up to, and including a bar from the securities industry.³⁹ Gruenberg received the third request on March 6, 2019.⁴⁰

Gruenberg did not provide the requested information and documents by March 20, 2019.⁴¹ Instead, on that date, he emailed Hoover that because of the expenses related to his ongoing divorce proceeding, he could not afford to retain an attorney to represent him in connection with the FINRA matter. Additionally, Gruenberg wrote, he was “not sure” he fully understood “some of the questions and requests” and was “uncomfortable responding at this time to [FINRA’s] letter.” And, because he did not have “access to legal advice as to how [to] proceed,” Gruenberg asked FINRA to postpone the matter “to a later date which is mutually acceptable.”⁴²

Over the next few weeks, Gruenberg and Hoover exchanged emails⁴³ about how to proceed given what Hoover described in one of his emails as Gruenberg’s “current circumstances.”⁴⁴ They also spoke by phone. “We wanted to find a way to work with Mr. Gruenberg to get these records,” Hoover testified. “[A]nd we really wanted to find out was there a time at some point when he would be able to afford an attorney” and be able to respond.⁴⁵ But according to Hoover, Gruenberg never said when he expected his situation to change so that he could respond.⁴⁶ Further, Hoover testified, he asked Gruenberg to identify those questions he did not fully understand, but Gruenberg never did.⁴⁷

Nevertheless, in order to give Gruenberg (in Hoover’s words) “every opportunity to respond,” by email dated March 27, 2019, Hoover granted him an extension until April 10 to respond to the request letter.⁴⁸ That email also reminded Gruenberg that if he did not timely respond, Enforcement would “pursue action for [his] non-response that could lead to [his] suspension and ultimate bar from the industry.”⁴⁹

³⁹ JX-13, at 2; JX-11, at 2.

⁴⁰ FINRA sent the third request letter by first-class and certified mail to both the CRD Address and the Forwarding Address. JX-11; JX-13. On March 6, 2019, Gruenberg signed the mail delivery receipt for the certified mailing sent to the Forwarding Address. JX-14. On April 1, 2019, the certified mailing sent to the CRD Address, JX-11, was delivered to the Forwarding Address. JX-12, at 2.

⁴¹ Tr. 67, 73.

⁴² JX-15, at 1.

⁴³ JX-15.

⁴⁴ JX-15, at 3.

⁴⁵ Tr. 75.

⁴⁶ Tr. 75, 77.

⁴⁷ Tr. 75–76.

⁴⁸ Tr. 77–78; JX-15, at 6.

⁴⁹ JX-15, at 6.

On April 9, the day before the extended deadline, Gruenberg emailed Hoover reiterating that he could not afford an attorney.⁵⁰ He went on to write that because he was not confident that he understood the nature of the “inquiry and when considering the adversarial nature” of the request letter, and “especially in light of no notation of an injured party,” he “would prefer not to engage in the process without an attorney.”⁵¹ That said, he made Hoover an offer: “If it helps, I would be willing to consider a final statement in which you outline any and all violations you believe I have committed, to which I neither admit guilt or argue innocence, but promise to make myself aware of the rules behind the alleged acts and to agree to never violating [sic] the rules(s). Otherwise,” he continued, “I strongly request that your office hold off on any investigation until I am done with my divorce proceedings.”⁵²

Hoover, however, did not agree to hold the investigation in abeyance.⁵³ As Hoover explained at the hearing, he was unable to complete the investigation without the requested documents and information.⁵⁴ And at no point in Hoover’s communications with Gruenberg did Gruenberg agree to produce the information Hoover requested.⁵⁵ Therefore, on April 16, Hoover emailed Gruenberg notifying him that the FINRA Rule 8210 requests “still stand and are past due,” that he had not extended the deadline again, and would not agree to an indefinite delay in Gruenberg’s production.⁵⁶

There matters remained for the next two weeks while Enforcement considered its options. And by early May, Enforcement decided on a course of action—it would issue a suspension notice to Gruenberg.

C. FINRA Issues a Notice of Suspension to Gruenberg

As discussed in greater detail below, if an associated person fails to provide information and documents requested under FINRA Rule 8210, FINRA Rule 9552 provides an expedited process for suspending and potentially barring that person. On May 2, 2019, Enforcement staff issued Gruenberg a Notice of Suspension under FINRA Rule 9552 (the “Notice”).⁵⁷ The Notice informed Gruenberg that he would be suspended from associating with any FINRA member firm in any capacity on May 28, 2019, unless he requested a hearing or complied with the outstanding requests before then.⁵⁸ The Notice further informed Gruenberg that any hearing request must

⁵⁰ JX-15, at 7.

⁵¹ JX-15, at 7.

⁵² JX-15, at 7.

⁵³ Tr. 80.

⁵⁴ Tr. 81.

⁵⁵ Tr. 81–82.

⁵⁶ JX-15, at 11.

⁵⁷ JX-16; Tr. 83–84.

⁵⁸ JX-16, at 1.

“state with specificity any and all defenses.”⁵⁹ The Notice also advised him that if, within three months of the date of the Notice (May 2), he failed to request termination of the suspension based on having complied fully with the Notice, then he would automatically be barred from association with any FINRA member in any capacity on August 5, 2019. Gruenberg received the Notice on May 9, 2019.⁶⁰

D. Gruenberg Requests a Hearing and Asserts Defenses

On May 28, 2019, the date Gruenberg’s suspension was scheduled to take effect, he filed a request for hearing. The request did not assert any defenses. The Hearing Officer originally assigned to this proceeding convened a pre-hearing conference, following which he ordered Gruenberg to file “a valid statement of his defenses.”⁶¹ On June 10, Gruenberg filed a statement setting out his defenses to the failure to produce the requested information and documents. “I have gone through and am still going through a horrific divorce that has wiped me out financially,” he wrote. “I have asked for more time to retain counsel but FINRA has refused.”⁶² Additionally, Gruenberg addressed his relationship with his former member firm employer; described the Firm’s business model; denied evoking the Firm’s name in connection with his consulting relationship with the issuer; denied recommending the issuer’s stock to anyone; denied the claims in the anonymous letter; stated that he had no idea who wrote the letter but speculated that “it very possibly could of been my ex-wife or someone associated with her for the express purpose to harm me”; and denied having anything to do with the letter writer’s decision to buy the stock.⁶³

On June 20, 2019, the newly assigned Hearing Officer held a pre-hearing conference and sought clarification from Gruenberg about his defenses. At the pre-hearing conference, Gruenberg explained that FINRA and his Firm had asked him a series of questions in the summer of 2018 and that he timely responded to them.⁶⁴ Then, he said, FINRA sent him additional questions, at which point he had been advised (he did not specify by whom) to retain counsel. But, Gruenberg continued, he could not afford to do so because of the cost of the

⁵⁹ JX-16, at 1.

⁶⁰ In accordance with FINRA Rule 9552(b), FINRA served the Notice sent to Gruenberg’s CRD and Forwarding Addresses by certified and first-class mail. JX-16, at 1. On May 9, 2019, Gruenberg signed the delivery receipt for the certified mailing sent to his Forwarding Address. JX-17, at 2. On May 20, 2019, he signed the delivery receipt for the certified mailing sent to his CRD Address (and forwarded to his Forwarding Address). JX-17, at 1.

⁶¹ Order Directing Respondent to File Statement of Defense; Notice of Hearing; and Case Management and Scheduling Order, at 2 (June 3, 2019).

⁶² See Statement of Defense (June 10, 2019).

⁶³ Statement of Defense (June 10, 2019).

⁶⁴ Pre-Hearing Conference Transcript (“PHC Tr. __”) (June 20, 2019) 6–7.

divorce proceedings; he therefore decided not to respond to FINRA’s questions until his finances improved and he was able to hire an attorney.⁶⁵

As of the date of the hearing (June 27, 2019), Gruenberg had not provided any of the documents or information sought in the January 15, 2019 FINRA Rule 8210 request and the two follow-up requests.⁶⁶ According to Hoover, Gruenberg’s failure to comply has affected his ability to investigate the potential misconduct and, as a result, Hoover did not understand all the relevant facts and circumstances about the potential conduct under investigation.⁶⁷

III. Conclusions of Law

A. The Applicable Law

FINRA Rule 8210 authorizes FINRA staff, with respect to any matter involved in an investigation, complaint, examination, or proceeding, to (1) request information from associated persons and (2) inspect their books, records, and accounts that are in their possession, custody, or control.⁶⁸ FINRA Rule 8210 “is the principal means by which FINRA obtains information from member firms and associated persons in order to detect and address industry misconduct.”⁶⁹ The SEC considers the Rule “essential to FINRA’s ability to investigate possible misconduct by its members and associated persons,”⁷⁰ especially because FINRA lacks subpoena power.⁷¹ Likewise, FINRA’s National Adjudicatory Council (“NAC”) has described the importance of FINRA Rule 8210 as “paramount.”⁷² Therefore, failing to provide information in response to a FINRA Rule 8210 request “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”⁷³

If an associated person fails to comply with a FINRA Rule 8210 request, FINRA Rule 9552 authorizes FINRA staff to initiate an expedited process to suspend and potentially bar that person:

⁶⁵ PHC Tr. 7–10.

⁶⁶ Tr. 87–88.

⁶⁷ Tr. 89–90.

⁶⁸ FINRA Rule 8210(a)(1), (2).

⁶⁹ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *54 n.46 (Sept. 24, 2015).

⁷⁰ *Mielke*, 2015 SEC LEXIS 3927, at *54.

⁷¹ *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007).

⁷² *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *13 (NAC Feb. 18, 2016).

⁷³ *Dep’t of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *20 (NAC July 21, 2014) (citing *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008)), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *aff’d*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

If a . . . person associated with a member . . . fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, . . . FINRA staff may provide written notice to such . . . person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.⁷⁴

An associated person served with this notice has until the effective date of the suspension to file a written request for a hearing with FINRA’s Office of Hearing Officers. The hearing request “must set forth with specificity any and all defenses to the FINRA action.”⁷⁵ A timely filed hearing request stays the effectiveness of the notice.⁷⁶

The evidence established that FINRA staff issued three requests for information and documents from Gruenberg in accordance with FINRA Rule 8210. Gruenberg received each request⁷⁷ and does not dispute that he failed to comply with them.⁷⁸ FINRA issued the Notice in accordance with FINRA Rule 9552. Gruenberg received the Notice and filed a statement of defense. The issue, then, is whether Gruenberg established a defense for failing to respond to the information and document requests. So, next, we turn to his defenses.

B. Gruenberg’s Defenses Are Meritless

Gruenberg asserted two defenses at the hearing. First, he argued that his failure to respond to the three requests should be excused because he was (and remains) unable to afford an attorney to represent him in connection with the investigation.⁷⁹

Second, Gruenberg claimed that FINRA staff misconduct tainted the investigation and, as a result, the proceeding should be dismissed.⁸⁰ Specifically, Gruenberg maintained that the investigation was “flawed from the outset”⁸¹ because it was based on an anonymous letter that

⁷⁴ FINRA Rule 9552(a). The suspended person “may file a written request for termination of the suspension on the ground of full compliance with the notice or decision . . . [and] [t]he head of the appropriate department or office may grant relief for good cause shown.” FINRA Rule 9552(f). But if that person fails to do so “within three months of issuance of the original notice of suspension,” then the person will “automatically be . . . barred.” FINRA Rule 9552(h).

⁷⁵ FINRA Rule 9552(e).

⁷⁶ FINRA Rule 9559(c)(1).

⁷⁷ Gruenberg testified that all signatures on the mail receipts were genuine. Tr. 163.

⁷⁸ Gruenberg does not dispute that he failed to respond to the three FINRA Rule 8210 requests. Tr. 159–61.

⁷⁹ Tr. 19–20 (opening), 127.

⁸⁰ Tr. 129, 182–83.

⁸¹ Tr. 124, 179–80 (closing).

may have been written by someone acting out of spite toward him.⁸² Therefore, he continued, FINRA acted improperly by using it as a basis to begin an investigation rather than discarding it.⁸³ According to Gruenberg, the staff then compounded its misconduct, by manipulating and coercing him into answering its questions in the summer of 2018 without disclosing the existence of the letter or producing it to him, and by refusing to tell him what prompted the investigation.⁸⁴ In his view, the staff unfairly denied him the opportunity to face his accuser.⁸⁵

We reject both defenses. First, Gruenberg’s inability to afford counsel is not a valid defense. While associated persons may be represented by counsel during a FINRA investigation, they have no right to counsel.⁸⁶ Further, FINRA Rule 8210’s “requirements are ‘unequivocal’ and ‘unqualified,’ and compliance is mandatory.”⁸⁷ Associated persons therefore cannot set conditions on their compliance.⁸⁸

We also reject Gruenberg’s staff-misconduct defense. As a threshold matter, Gruenberg did not raise this defense in his statement of defense. Instead, he raised it for the first time during the hearing. Gruenberg explained at the hearing that he was only able to assert this defense once FINRA provided the letter to him, which was after he filed his statement of defense. Only then, Gruenberg explained, did he appreciate the letter’s impact on him.⁸⁹ He also said that when he spoke with Hoover (apparently during the investigation), Hoover failed to tell him about the anonymous letter and this omission impacted his ability to formulate his defense.⁹⁰ We are not

⁸² Gruenberg surmised that his ex-wife or an associate of hers authored the complaint letter to harm him, or that it was written by someone to whom he may have in passing mentioned the issuer and the reverse merger it was planning or had recently consummated. Tr. 126–27. *See also* Tr. 18 (opening) (suggesting that the complaint letter could have been sent by his ex-wife or an associate of hers to injure him).

⁸³ Tr. 18 (opening) (arguing that because the letter was anonymous, FINRA should have immediately discarded it), 33, 124.

⁸⁴ Tr. 19 (opening) (complaining that he was not treated fairly by FINRA because it led him on), 35–36, 124–25, 128–29, 137–38, 140.

⁸⁵ Tr. 30, 33, 124, 127–28.

⁸⁶ Cf. *Dist. Bus. Conduct Comm. v. Gallison*, No. C02960001, 1999 NASD Discip. LEXIS 8, at *60 (NAC Feb. 5, 1999) (rejecting respondents’ argument that they had a right to counsel during an NASD examination because they did not have a constitutional or statutory right to counsel during a disciplinary proceeding “and there is no policy justification for granting such a right to counsel during an examination”); *Dep’t of Enforcement v. Newport Coast Sec.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *226 n.118 (NAC May 23, 2018) (“Although FINRA ‘permit[s] the participation of counsel,’ ‘there is no constitutional or statutory right to counsel in [FINRA] disciplinary proceedings.’”) (quoting *Falcon Trading Group, Ltd.*, 52 S.E.C. 554, 559 (1995), aff’d, 102 F.3d 579 (D.C. Cir. 1996)), *appeal docketed*, No. 3-18555 (SEC July 27, 2018).

⁸⁷ *Lundgren*, 2016 FINRA Discip. LEXIS 2, at *12 (and authorities cited therein).

⁸⁸ *Lundgren*, 2016 FINRA Discip. LEXIS 2, at *16 (citing *David K. Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *18 (July 27, 2015)); *Mielke*, 2015 SEC LEXIS 3927, at *70 (Sept. 24, 2015) (same).

⁸⁹ Tr. 132–33.

⁹⁰ Tr. 137–40.

persuaded by these arguments. Even if Gruenberg was unaware of the letter until he received it after submitting his statement of defense and attending the June 20 pre-hearing conference, he received the letter as a joint exhibit on the day of that conference.⁹¹ Yet, he waited to assert the defense until after the hearing began, seven days later. The defense was thus untimely raised, and we deem it waived.⁹²

Moreover, the defense has no merit. There was nothing improper about Enforcement commencing an investigation—and issuing FINRA Rule 8210 requests to Gruenberg in connection with it—without disclosing the existence of the letter or providing it to him. FINRA Rule 8210 authorizes FINRA staff to request documents and information in connection with an investigation. Here, the staff decided that it needed certain information and documents in connection with its investigation. Gruenberg is precluded from challenging that decision. “Whether information and documents are needed in an investigation ‘is a determination made by the [FINRA] staff’ and FINRA Rule 8210 ‘does not require that [FINRA] explain its reasons for making the information request . . .’”⁹³ Further, “recipients of Rule 8210 requests cannot second-guess whether compliance with a particular request is necessary.”⁹⁴ Nor, for the reasons explained above, could Gruenberg condition his response upon FINRA disclosing the basis of the investigation. Finally, Gruenberg has not claimed or “shown that Enforcement instituted the investigation for an improper purpose . . .”⁹⁵

In sum, we reject Gruenberg’s defenses and conclude that Gruenberg violated FINRA Rule 8210 by not producing the information and documents sought by FINRA staff in the three requests.

IV. Sanctions

The Hearing Panel has broad discretion to impose an appropriate sanction in this expedited proceeding. FINRA Rule 9559 provides that the Hearing Panel “may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and . . . may also impose any other fitting sanction,”⁹⁶ as well as costs.⁹⁷

⁹¹ See Joint Exhibit List Submitted by Enforcement, Certificate of Service.

⁹² See *Dep’t of Enforcement v. Toomer*, No. FPI160009, 2016 FINRA Discip. LEXIS 46, at *18–19 (OHO Oct. 5, 2016) (precluding respondent from asserting defenses at the hearing and in written submissions that he did not raise in his hearing request).

⁹³ *Lundgren*, 2016 FINRA Discip. LEXIS 2, at *16 (quoting *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *12–13 (Nov. 8, 2007), *aff’d*, 316 F. App’x 865 (11th Cir. 2008)) (internal quotations omitted).

⁹⁴ *Id.* at *16 (quoting *Evansen*, 2015 SEC LEXIS 3080, at *18–19 & n.19).

⁹⁵ *Id.*

⁹⁶ FINRA Rule 9559(n)(1).

⁹⁷ FINRA Rule 9559(n)(4).

In determining the appropriate sanctions to impose on Gruenberg, we begin by considering both the nature of this proceeding and the facts and circumstances of this case. As the NAC explained, “Expedited proceedings under FINRA Rule 9552 generally involve straightforward issues and limited defenses. The streamlined procedures and specified, shortened timeframe under the rules support the swift resolution of these matters.”⁹⁸ Enforcement issued the first of the three FINRA Rule 8210 requests that led to this proceeding over six months ago. Yet, “[d]espite the well settled jurisprudence that respondents must fully and promptly cooperate with FINRA and cannot second guess FINRA information requests, [Gruenberg] made no meaningful attempt to comply with” the three requests.⁹⁹ Instead, he improperly conditioned compliance on his ability to retain counsel; attacked the basis for the investigation; and accused the staff, without basis, of engaging in misconduct.

Further, Gruenberg made it clear at the hearing that even if given another opportunity to respond, he would not do so immediately; he still conditioned compliance on his ability to retain counsel, which he did not foresee being able to do for another eight to ten months.¹⁰⁰ This additional delay would be unacceptable and could thwart FINRA’s ability to fulfill its regulatory responsibilities. This risk is especially acute because Gruenberg is not currently associated with a FINRA member firm and FINRA loses jurisdiction to bring disciplinary action against him—should it conclude that it is warranted—in less than a year.¹⁰¹

We also consider the Sanction Guidelines for failure to respond to FINRA Rule 8210 requests for information.¹⁰² They recommend that if an individual did not respond in any manner, a bar in all capacities should be standard and a fine of \$25,000 to \$73,000 should be imposed. The Guidelines direct adjudicators to consider, from FINRA’s perspective, the importance of the information requested.¹⁰³ As Hoover testified, the requested information and documents were important. And, because of Gruenberg’s failure to respond, Hoover was unable to learn all the relevant facts and circumstances regarding the subject matter of the investigation.

⁹⁸ *Lundgren*, 2016 FINRA Discip. LEXIS 2, at *26 (citing Notice of Filing of Proposed Rule Change, Exchange Act Release No. 48887, 2003 SEC LEXIS 2919, at *16 (Dec. 5, 2003), adopted by Order Approving Proposed Rule Change, Exchange Act Release No. 49380, 2004 SEC LEXIS 552 (Mar. 9, 2004)).

⁹⁹ *Id.* at *27.

¹⁰⁰ Tr. 154–55.

¹⁰¹ Under Article V, Section 4(a)(i) of FINRA’s By-Laws, FINRA retains jurisdiction to bring a disciplinary action against formerly registered persons for two years after the effective date of their last termination from a member firm. Accordingly, FINRA’s jurisdiction over Gruenberg expires on July 23, 2020, two years after the effective date of his termination from the Firm.

¹⁰² Guidelines at 33.

¹⁰³ Guidelines at 33 (Principal Consideration for Failure to Respond or to Respond Truthfully, No. 1).

Where mitigation exists, the Guidelines instruct adjudicators to consider suspending the individual in any or all capacities for up to two years.¹⁰⁴ We found no mitigation. With respect to FINRA Rule 8210 compliance, personal circumstances, including financial distress, are not mitigating.¹⁰⁵ Additionally, we reject Gruenberg's mitigative arguments. He urged us to consider that his conduct did not injure anyone;¹⁰⁶ that he has been in the industry for over three decades without a customer complaint;¹⁰⁷ that he did not recommend the issuer's stock to anyone;¹⁰⁸ and that no Firm customers owned the stock.¹⁰⁹ These arguments fail. Lack of customer harm is irrelevant and does not mitigate a FINRA Rule 8210 violation;¹¹⁰ the absence of customer complaints is not mitigating;¹¹¹ and whether Gruenberg recommended that customers buy the issuer's stock (and whether any did in fact buy it) is irrelevant to a sanctions determination for a FINRA Rule 8210 violation.

* * *

In conclusion, after carefully considering the nature of this proceeding, the facts and circumstances present in this case, and the Guidelines, the Hearing Panel finds that the appropriate sanction is to bar Gruenberg from associating with any FINRA member firm in any capacity and to order him to pay the hearing costs.¹¹²

¹⁰⁴ The Guidelines also address partial but incomplete responses. In that situation, the Guidelines advise that a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request. The Guidelines also recommend a fine of \$10,000 to \$73,000. Guidelines at 33. If an associated person provides responses to earlier FINRA Rule 8210 requests, but not to later ones in the same investigation, then the later failure should be treated as a partial response for sanctions purposes. See *John Joseph Plunkett*, Exchange Act Release No. No. 69766, 2013 SEC LEXIS 1699, at *34, *56–57 (June 14, 2013) (holding that because respondent “meaningfully” responded to several earlier FINRA Rule 8210 requests during the same investigation, his failure to respond to two later ones until after the filing of a complaint constituted conduct “closer to” a partial failure to respond than to a complete failure). As discussed above, the evidence did not establish that Gruenberg meaningfully responded to earlier FINRA requests. We therefore treat his failure to respond to the three requests as a complete failure to respond.

¹⁰⁵ *Dep’t of Enforcement v. Eplboim*, No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *42 (NAC May 14, 2014).

¹⁰⁶ Tr. 20 (opening), 125, 181 (closing).

¹⁰⁷ Tr. 17–18 (opening), 125.

¹⁰⁸ Tr. 125.

¹⁰⁹ Tr. 18 (opening).

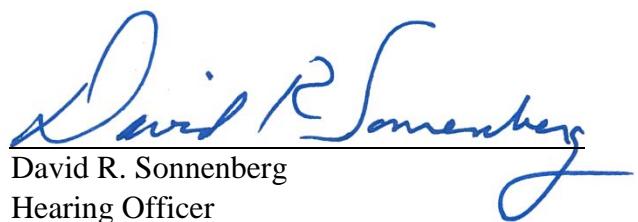
¹¹⁰ *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *38 (NAC Mar. 9, 2015).

¹¹¹ *Eplboim*, 2014 FINRA Discip. LEXIS 8, at *41.

¹¹² In light of the bar, we decline to impose monetary sanctions. Guidelines at 10 (Technical Matters—Monetary sanctions—Imposition and collection of monetary sanctions) (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”).

V. Order

Respondent Myron K. Gruenberg is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents, in violation of FINRA Rules 8210 and 2010. Pursuant to Rule 9559(n)(4), Respondent is also ordered to pay hearing costs of \$ 2835.63, which includes a \$750 administrative fee and the cost of the hearing transcript. The bar shall take effect as of the date of this Decision. The costs shall be due and payable on a date set by FINRA but not sooner than 30 days after the date of this Decision.¹¹³



David R. Sonnenberg
Hearing Officer
For the Hearing Panel

Copies to:

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¹¹³ The Hearing Panel considered and rejected without discussion all other arguments of the parties.