

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASPER E. BOYKIN, JR.  
(CRD No. 3141703),

Respondent.

Disciplinary Proceeding  
No. 2016049508602

Hearing Officer – CC

**DEFAULT DECISION**

February 12, 2018

**Respondent failed to respond timely to three Rule 8210 requests in 2016 and failed to respond at all to three Rule 8210 requests in 2017 related to the same investigation. For this misconduct, Respondent is barred.**

**Appearances**

For Complainant: Sarah B. Belter-Pylant, Esq., David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent: No appearance.

**DECISION**

**I. Introduction**

On October 16, 2017, FINRA’s Department of Enforcement filed a two-cause Complaint with FINRA’s Office of Hearing Officers (“OHO”). The Complaint alleged in cause one that, while associated with member firm MSI Financial Services, Inc., formerly known as MetLife Securities Inc. (hereinafter “MSI”), Respondent Jasper E. Boykin, Jr. violated FINRA Rules 8210 and 2010<sup>1</sup> by failing to timely respond fully to three requests for information and documents until after FINRA commenced suspension proceedings and suspended his registration. The Complaint averred that Boykin subsequently responded fully to the three outstanding information requests, although untimely, and FINRA reinstated Boykin’s registration. Cause two alleged that, after FINRA reinstated Boykin’s registration, Boykin again violated FINRA Rules 8210 and 2010 by failing to respond at all to three additional requests for documents.

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<sup>1</sup> FINRA’s Rules are available at [www.finra.org/rules](http://www.finra.org/rules).

Enforcement properly served Boykin with two Notices of the Complaint and the Complaint. Boykin never filed an Answer to the Complaint. On December 4, 2017, I issued an Order Governing Motion for Entry of Default Decision. On December 19, 2017, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the December 19, 2017 Declaration of Sarah B. Belter-Pylant, Esq. (“Belter-Pylant Decl.”) in support of the Default Motion and six exhibits.<sup>2</sup>

As stated in detail below, I find Boykin in default, grant Enforcement’s Default Motion, and deem the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).<sup>3</sup>

## **II. Findings of Fact and Conclusions of Law**

### **A. Boykin’s Background**

Boykin entered the securities industry in 1999.<sup>4</sup> Between April 2015 and April 2016, Boykin was registered with MSI as an investment company and variable contracts products representative.<sup>5</sup> On April 1, 2016, MSI filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting Boykin’s termination on March 22, 2016, for failing to follow firm policy regarding outside business activities.<sup>6</sup>

### **B. FINRA’s Jurisdiction**

FINRA has jurisdiction to proceed with this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because: (1) Enforcement filed the Complaint with OHO on October 16, 2017, which is within two years of MSI’s April 1, 2016 filing of a Form U5 to terminate Boykin’s association with the firm; and (2) the Complaint alleged that Boykin failed to respond to FINRA Rule 8210 requests for information while associated with member firm MSI and during the two-year period following his association with a FINRA member firm.<sup>7</sup>

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<sup>2</sup> Enforcement’s exhibits are referenced as CX-1 through CX-6.

<sup>3</sup> Pursuant to Rule 9269(c), a respondent may move to set aside a default upon a showing of good cause.

<sup>4</sup> Belter-Pylant Decl. ¶ 7; CX-1, at 2-3.

<sup>5</sup> Belter-Pylant Decl. ¶¶ 7, 8; CX-1, at 2-3.

<sup>6</sup> Belter-Pylant Decl. ¶ 8; CX-2, at 1.

<sup>7</sup> Belter-Pylant Decl. ¶ 9. Article V, Section 4(a)(i) of FINRA’s Corporate By-Laws states that a person whose association with a member firm has been terminated and is no longer associated with any member firm shall continue to be subject to the filing of a complaint based upon conduct that commenced prior to the termination or upon such person’s failure, while subject to FINRA jurisdiction, to provide information requested, but any such complaint shall be filed within two years after the effective date of termination of registration.

### **C. Origin of the Investigation**

After receipt of MSI's Form U5 for Boykin, Enforcement commenced an investigation into whether Boykin had failed to disclose outside business activities to MSI.<sup>8</sup>

### **D. Boykin's Default**

The Central Registration Depository ("CRD") indicates that Boykin's address since January 2001 has been located in Atlanta, Georgia (the "CRD Address").<sup>9</sup> During the course of the investigation that led to the filing of the Complaint, Enforcement identified six possible alternative mailing addresses for Boykin by reviewing the record from a FINRA Rule 9552 expedited suspension proceeding against Boykin, and through multiple LexisNexis searches.<sup>10</sup> Enforcement also identified four possible email addresses for Boykin.<sup>11</sup>

Enforcement served Boykin with a Notice of Complaint and Complaint by certified mail, return receipt requested, at the CRD Address and six possible alternative mailing addresses that it identified for Boykin.<sup>12</sup> Enforcement also sent copies of these documents to Boykin at the CRD Address and six possible alternative mailing addresses by first-class mail and to four email addresses identified for Boykin.<sup>13</sup>

The website maintained by the United States Postal Service ("USPS") indicated the Notice of Complaint and Complaint sent to the CRD Address by certified mail were "Delivered, Left with Individual" on October 20, 2017, and Enforcement subsequently received a return receipt card signed by someone other than Boykin.<sup>14</sup> The USPS did not return the first-class mailing to the CRD Address.<sup>15</sup> The USPS website indicated that some of the certified mailings to six possible alternative mailing addresses for Boykin were delivered and others were returned to Enforcement.<sup>16</sup> The USPS returned only one of the first-class mailings to Boykin's possible alternative mailing addresses.<sup>17</sup> Two of the four emails Enforcement sent were not returned as undeliverable.<sup>18</sup>

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<sup>8</sup> Complaint ("Compl.") ¶ 10.

<sup>9</sup> CX-2, at 1.

<sup>10</sup> Belter-Pylant Decl. ¶ 10.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; CX-3, at 1-2.

<sup>13</sup> Belter-Pylant Decl. ¶ 10; CX-3, at 1-2.

<sup>14</sup> Belter-Pylant Decl. ¶ 11; CX-4, at 1-3.

<sup>15</sup> Belter-Pylant Decl. ¶ 11.

<sup>16</sup> *Id.* ¶¶ 12-17; CX-4, at 5-24.

<sup>17</sup> Belter-Pylant Decl. ¶¶ 12-17; CX-4, at 20.

<sup>18</sup> Belter-Pylant Decl. ¶ 18; CX-4, at 25-28.

According to the First Notice of Complaint, Boykin's Answer was due on or before November 13, 2017.<sup>19</sup> Boykin did not file an Answer by that date or otherwise respond to the Complaint.<sup>20</sup>

Enforcement served Boykin with the Second Notice of Complaint and Complaint by certified mail, return receipt requested, at the CRD Address and six possible alternative mailing addresses.<sup>21</sup> Enforcement also sent copies of these documents to Boykin at the CRD Address and six possible alternative mailing addresses by first-class mail and four email addresses identified for Boykin.<sup>22</sup>

The USPS website indicated, as of November 17, 2017, the status of the Second Notice of Complaint and Complaint sent to the CRD Address by certified mail was "Delivery Attempt: Action Needed," and included a reminder to schedule redelivery.<sup>23</sup> The USPS did not deliver a return receipt card for the certified mailing or return the first-class mailing to the CRD Address.<sup>24</sup> The USPS website indicated that some of the certified mailings to six possible alternative mailing addresses for Boykin were delivered and others were returned to Enforcement.<sup>25</sup> The USPS did not return any of the first-class mailings to Boykin's possible alternative mailing addresses.<sup>26</sup> Two of the four emails Enforcement sent were not returned as undeliverable.<sup>27</sup>

According to the Second Notice of Complaint, Boykin's Answer was due on or before December 1, 2017.<sup>28</sup> Boykin did not file an Answer by that date or otherwise respond to the Complaint.<sup>29</sup> Enforcement represented that it had no knowledge of any other address for Boykin more recent than the CRD Address and six possible alternative mailing addresses.<sup>30</sup>

FINRA Rule 9134 provides for service of a complaint on a natural person by certified mail at the person's residential address as reflected in the CRD.<sup>31</sup> I find that Enforcement

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<sup>19</sup> Belter-Pylant Decl. ¶ 19; CX-3, at 2.

<sup>20</sup> Belter-Pylant Decl. ¶ 19.

<sup>21</sup> *Id.* ¶ 20; CX-5, at 1-9.

<sup>22</sup> Belter-Pylant Decl. ¶ 20; CX-5, at 2-3.

<sup>23</sup> Belter-Pylant Decl. ¶ 21; CX-6, at 1-2.

<sup>24</sup> Belter-Pylant Decl. ¶ 21.

<sup>25</sup> *Id.* ¶¶ 21-27; CX-6, at 1-17, 21-22.

<sup>26</sup> Belter-Pylant Decl. ¶¶ 21-27.

<sup>27</sup> *Id.* ¶ 28; CX-6, at 18-21.

<sup>28</sup> Belter-Pylant Decl. ¶ 29; CX-5, at 2.

<sup>29</sup> Belter-Pylant Decl. ¶ 29. The Second Notice of Complaint advised Boykin that his failure to submit an Answer to the Complaint by December 1, 2017, could result in a Hearing Officer's treating the allegations of the Complaint as admitted by Boykin and entering a default decision against him. CX-2, at 2.

<sup>30</sup> Belter-Pylant Decl. ¶ 30.

<sup>31</sup> FINRA Rule 9131 states that a complaint or other document initiating a proceeding shall be served pursuant to Rule 9134. Disciplinary complaints mailed to a registered representative's last known address as reflected in the

properly served Boykin with the Notice of Complaint, Second Notice of Complaint, and Complaint. I further find that Boykin failed to file an Answer to the Complaint. Pursuant to FINRA Rules 9215(f) and 9269(a), I find Boykin to be in default and deem admitted all allegations of the Complaint.

#### **E. FINRA Rule 8210**

FINRA Rule 8210(a) states that FINRA staff shall have the right to require a person subject to FINRA's jurisdiction<sup>32</sup> to provide information orally, in writing, or electronically with respect to any matter involved in an investigation, complaint, examination, or proceeding, and to obtain, inspect, and copy their books, records, and accounts. Rule 8210(c) states that no associated person shall fail to provide information or testimony pursuant to Rule 8210. Furthermore, a violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates FINRA Rule 2010.<sup>33</sup>

Notice of a request for information, documents, or testimony under Rule 8210 shall be deemed received if Enforcement mailed the notice to the recipient's last known residential address as reflected in the CRD.<sup>34</sup> "FINRA Rule 8210(d) deems a formerly registered person to have 'received' notice of mailing if FINRA sent it to the person's [CRD address]."<sup>35</sup> As a formerly registered person, Boykin was obligated to keep his CRD Address current,<sup>36</sup> and he had

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CRD are deemed to have been received and read by the registered person. *See Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at \*19-20 (NAC July 26, 2012); *Dep't of Enforcement v. Bond*, No. C10000210, 2002 NASD Discip. LEXIS 6, at \*8 n.3 (NAC Apr. 4, 2002) ("Service by mailing to a party's most recent CRD address constitutes constructive notice. Proof of actual notice is not required."). Rule 9134(b)(1) states that, if Enforcement has actual knowledge that a respondent's CRD Address is out of date, duplicate copies of the Complaint and Notices of Complaint should be served on the respondent's last-known residential address. Here, the record does not indicate that Enforcement had actual notice that Boykin's CRD Address was out of date. Belter-Pylant Decl. ¶ 30. Enforcement nonetheless investigated other options for providing Boykin with notice of this proceeding and served duplicate copies of the Complaint on Boykin at six possible alternative mailing addresses and four possible email addresses. *Id.* ¶ 10.

<sup>32</sup> Pursuant to Article V, Section 5 of FINRA's By-Laws, a person whose association with a member firm has been terminated shall continue to be subject to FINRA's jurisdiction for two years after the effective date of termination.

<sup>33</sup> *See Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at \*9-14 (Sept. 10, 2010) (finding violation of FINRA Rules 8210 and 2010 (formerly 2110) for failing to respond to several requests for information); *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*15-30 (Jan. 30, 2009) (finding violation of FINRA Rules 8210 and 2010 (formerly 2110) for failing to respond completely and timely to a request for information).

<sup>34</sup> *See* FINRA rule 8210(d). Rule 8210(d) states that, if FINRA staff has actual knowledge that the CRD Address is out of date or inaccurate, then a copy of the Rule 8210 request shall be transmitted to the CRD Address and any other more current address known to FINRA staff.

<sup>35</sup> *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at \*12-13 (Mar. 24, 2017) (citing Rule 8210(d)).

<sup>36</sup> *Ellis*, 2017 SEC LEXIS 970, at \*13 ("And as a formerly registered person, Ellis was obligated to keep his CRD address current.").

“an unequivocal obligation to cooperate fully and promptly with FINRA’s information . . . requests.”<sup>37</sup>

**F. Cause One – Failure to Provide Timely Responses to FINRA Requests for Information and Documents**

Cause one of the Complaint alleged that, between April 2016 and November 2016, Boykin failed to respond timely to three requests for information and documents FINRA issued pursuant to FINRA Rule 8210. Cause one alleged that Boykin responded only after FINRA commenced an expedited proceeding against Boykin pursuant to FINRA Rule 9552.<sup>38</sup> Cause one of the Complaint alleged that Boykin violated FINRA Rules 8210 and 2010.<sup>39</sup>

During the course of Enforcement’s investigation into whether Boykin failed to disclose outside business activities, Enforcement issued three requests for information and documents to Boykin. On April 12, 2016, Enforcement sent Boykin a Rule 8210 request for documents and information regarding his outside business activities.<sup>40</sup> Enforcement sent the request by certified and first-class mail to the CRD Address.<sup>41</sup> The USPS did not return either mailing to Enforcement, and the USPS website indicated with respect to the certified mailing, “Notice Left (No Authorized Recipient Available)” as of April 16, 2016.<sup>42</sup> Boykin failed to respond to the April 12, 2016 request by the April 26, 2016 due date.<sup>43</sup>

On May 17, 2016, Enforcement sent Boykin a second Rule 8210 request for the same documents and information by certified and first-class mail to the CRD Address.<sup>44</sup> The USPS delivered the return receipt card to Enforcement indicating that the certified mailing was delivered, but the signature was not legible.<sup>45</sup> The USPS did not return the first-class mailing.<sup>46</sup> Boykin failed to respond to the May 17, 2016 request by the May 31, 2016 due date.<sup>47</sup>

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<sup>37</sup> *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at \*16 (July 27, 2015) (finding violations of FINRA Rules 8210 and 2010 for respondent’s failure to timely respond to requests for information and to appear for on-the-record testimony).

<sup>38</sup> Under Rule 9552(a), if an associated person fails to provide information requested pursuant to Rule 8210, FINRA may provide written notice specifying the nature of the failure and stating that failure to take corrective action within 21 days of service of the notice will result in suspension of the associated person. Under Rule 9552(h), a person suspended under Rule 9552 who fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be barred.

<sup>39</sup> See Compl. ¶¶ 5-38.

<sup>40</sup> *Id.* ¶ 11. (Boykin’s response was due April 26, 2016.).

<sup>41</sup> *Id.* ¶ 12.

<sup>42</sup> *Id.* ¶ 13.

<sup>43</sup> *Id.* ¶ 14.

<sup>44</sup> *Id.* ¶¶ 15-16. (Boykin’s response was due May 31, 2016.).

<sup>45</sup> *Id.* ¶ 17.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* ¶ 18.

On June 13, 2016, Boykin emailed Enforcement a partial but incomplete response to the May 17, 2016 Rule 8210 request.<sup>48</sup> Boykin’s email was not sufficiently responsive because it did not fully answer the questions posed by the April 12, 2016, and May 17, 2016 requests or provide all requested documentation.<sup>49</sup>

On July 14, 2016, Enforcement sent Boykin a third Rule 8210 request for documents and information missing from his partial response.<sup>50</sup> Enforcement sent the request by certified and first-class mail to the CRD Address.<sup>51</sup> The USPS returned the certified mailing to Enforcement marked “Return to Sender, Unclaimed, Unable to Forward.”<sup>52</sup> The USPS did not return the first-class mailing.<sup>53</sup> Boykin failed to respond to the July 14, 2016 request by the July 26, 2016 due date.<sup>54</sup>

On August 1, 2016, Enforcement emailed the July 14, 2016 Rule 8210 request to Boykin at the email address that Boykin used to provide his June 13, 2016 partial response and extended the July 26, 2016 deadline for response to August 9, 2016.<sup>55</sup> Enforcement did not receive an indication that the August 1, 2016 email was undeliverable.<sup>56</sup> Boykin failed to respond to the August 1, 2016 Rule 8210 request by the August 9, 2016 due date.<sup>57</sup>

On August 9, 2016, FINRA issued a Rule 9552 Notice of Suspension Letter (the “Notice Letter”) for Boykin’s failure to timely and fully respond to Enforcement’s Rule 8210 requests.<sup>58</sup> FINRA sent the Notice Letter to Boykin at his CRD Address by certified and first-class mail and by email.<sup>59</sup> FINRA also sent a copy of the Notice Letter by certified and first-class mail to Boykin at one possible alternative mailing address.<sup>60</sup> The Notice Letter advised Boykin that he would be suspended from associating with any FINRA member in any capacity as of September 2, 2016, pursuant to FINRA Rule 9552, for failing to respond fully to the April 12, 2016, May 17, 2016, and July 14, 2016 requests for information and documents.<sup>61</sup> The USPS returned the

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<sup>48</sup> *Id.* ¶ 19.

<sup>49</sup> *Id.* (Specifically, Boykin failed to state in his email response whether MSI approved a specific outside business activity involving a bank identified by FINRA staff, address whether MSI customers were solicited to invest in the outside business activity, and state whether he received compensation from any outside sources other than the identified outside business while employed with MSI.).

<sup>50</sup> *Id.* ¶ 20. (Boykin’s response was due July 26, 2016.).

<sup>51</sup> *Id.* ¶ 21.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* ¶ 22.

<sup>55</sup> *Id.* ¶ 23.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* ¶ 24.

<sup>58</sup> *Id.* ¶¶ 25, 26.

<sup>59</sup> *Id.* ¶ 26.

<sup>60</sup> *Id.* (FINRA staff obtained the possible alternative mailing address through an August 9, 2016 LexisNexis search.).

<sup>61</sup> *Id.* ¶ 27. (FINRA attached copies of the Rule 8210 letters to the Suspension Notice.).

certified mailing to the CRD Address marked “Return to Sender, Unclaimed, Unable to Forward.”<sup>62</sup> The USPS did not return the first-class mailing to the CRD Address.<sup>63</sup> The USPS delivered an unsigned delivery receipt for the certified mailing to Boykin at a possible alternative mailing address, and its website reported the certified mailing was “Delivered, Left with Individual.”<sup>64</sup> The USPS did not return the first-class mailing to the possible alternative mailing address.<sup>65</sup> FINRA staff did not receive an indication that the Notice Letter emailed to Boykin was undeliverable.<sup>66</sup>

On September 2, 2016, FINRA sent Boykin a Rule 9552 Suspension Letter (the “Suspension Letter”) informing Boykin that he was suspended from associating with any FINRA member in any capacity as of September 2, 2016, and would be barred from associating with any FINRA member as of November 14, 2016, if he did not request termination of the suspension pursuant to the terms outlined in FINRA Rule 9552.<sup>67</sup> FINRA sent the Suspension Letter to Boykin at the CRD Address and two possible alternative mailing addresses<sup>68</sup> by certified and first-class mail, and emailed a copy to Boykin.<sup>69</sup>

The first-class mailings of the Suspension Letters were not returned to FINRA.<sup>70</sup> The USPS returned the certified mailings to the CRD Address and one alternative mailing address marked “Return to Sender, Unclaimed, Unable to Forward.”<sup>71</sup> The USPS website reported the certified mailing to the other alternative mailing address was “Delivered, Left with Individual,” but FINRA never received a return receipt card.<sup>72</sup> FINRA did not receive an indication that the Suspension Letter emailed to Boykin was undeliverable.<sup>73</sup>

On October 28, 2016, Boykin responded to the Suspension Letter by email from a previously unknown second email address.<sup>74</sup> Boykin’s eleventh-hour response was insufficient in that it failed to fully respond to all questions contained in Enforcement’s April 12, 2016, and May 17, 2016 Rule 8210 requests.<sup>75</sup> On November 15, 2016, Enforcement sent an email to

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<sup>62</sup> *Id.* ¶ 28.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* ¶¶ 29, 30.

<sup>68</sup> *Id.* ¶ 29. (FINRA staff identified additional alternative mailing addresses through another LexisNexis search.).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* ¶ 31.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* ¶ 32. (FINRA staff was unaware of the second email address at the time of all previous mailings.).

<sup>75</sup> *Id.* (Specifically, Boykin’s email failed to address whether any MSI customers were solicited to invest in the outside business activity or purchase any products associated with the outside business activity. Boykin also failed to



Boykin at the email address he used for his October 28, 2016 email advising him that his October 28, 2016 response was insufficient, explaining the information that remained missing from the response, and extending the deadline for response to November 18, 2016.<sup>76</sup> On November 16, 2016, Boykin provided a substantive response in two emails from the second email address.<sup>77</sup> In light of Boykin's response, on November 22, 2016, FINRA terminated Boykin's suspension and the Rule 9552 proceedings against him.<sup>78</sup>

I find that Enforcement properly served Boykin with three Rule 8210 requests for information and documents dated April 12, 2016, May 17, 2016, and July 14, 2016, and Boykin failed to respond fully to the requests until November 16, 2016, seven months after Enforcement's initial request. The information and documents that Enforcement sought were material to, and Boykin's delay in responding substantially impeded, Enforcement's investigation of Boykin's undisclosed outside business activities. Boykin responded fully to Enforcement's requests only after FINRA commenced Rule 9552 expedited suspension proceedings against him.

FINRA Rule 8210 imposes an unequivocal duty on associated persons to respond to FINRA requests for information, and "delay and neglect" on the part of associated persons undermines FINRA's ability to conduct investigations and protect the public interest.<sup>79</sup> Accordingly, I find that Boykin violated FINRA Rules 8210 and 2010 by failing to timely respond to April 12, 2016, May 17, 2016, and July 14, 2016 Rule 8210 requests.<sup>80</sup>

#### **G. Cause Two – Failure to Respond to FINRA Requests for Documents**

Cause two of the Complaint alleged that Boykin failed to respond to March 28, 2017, April 24, 2017, and June 29, 2017 requests for documents FINRA issued pursuant to FINRA Rule 8210. Cause two alleged that, by virtue of the foregoing, Boykin violated FINRA Rules 8210 and 2010.<sup>81</sup>

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state whether he received compensation from any outside sources other than the identified outside business while associated with MSI.).

<sup>76</sup> *Id.* ¶ 33.

<sup>77</sup> *Id.* ¶ 34.

<sup>78</sup> *Id.* ¶ 35.

<sup>79</sup> *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at \*46-47 (NAC July 18, 2014) ("FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain from an associated person information regarding matters that are involved in FINRA's investigation."), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

<sup>80</sup> *See Evansen*, 2015 SEC LEXIS 3080, at \*16-17 (finding that respondent's failure to timely respond to information requests until after commencement of expedited suspension proceedings and six months after the initial request violated FINRA Rules 8210 and 2010); *Dep't of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at \*22 (NAC Feb. 25, 2014) (holding that providing testimony six months after it was first required was not full and prompt compliance with FINRA Rule 8210).

<sup>81</sup> *See Compl.* ¶¶ 39-55.

Following FINRA’s termination of Rule 9552 expedited suspension proceedings against Boykin, Enforcement renewed its investigation of Boykin’s failure to disclose outside business activities.<sup>82</sup> Enforcement determined that it needed additional documents and information from Boykin in order to complete its investigation.<sup>83</sup>

On March 28, 2017, Enforcement sent a Rule 8210 request for documents to Boykin at the CRD Address by certified and first-class mail and by email to the email address that Boykin had most recently used.<sup>84</sup> The USPS returned the certified mailing marked “Return to Sender, Not Deliverable as Addressed, Unable to Forward.”<sup>85</sup> The USPS did not return the first-class mailing.<sup>86</sup> Enforcement did not receive an indication that the March 28, 2017 request emailed to Boykin was undeliverable.<sup>87</sup>

On April 14, 2017, Boykin acknowledged receipt of the March 28, 2017 Rule 8210 request by emailing Enforcement from the email address to which Enforcement sent the request and stating:

I have order (sic) the bank documents you requested, and I have not received them to date. I hope to have them in early next week. I will forward via email and real mail once received.<sup>88</sup>

In a response email, Enforcement directed Boykin to provide a “reasonable and specific date by which [Boykin could] commit to provide the information” if his email was intended to be a request for an extension of time beyond the April 14, 2017 due date.<sup>89</sup> Boykin did not reply to Enforcement’s email or respond substantively to the March 28, 2017 Rule 8210 request.<sup>90</sup>

On April 24, 2017, Enforcement sent a second Rule 8210 request for the same documents to Boykin at the CRD Address by certified and first-class mail and by email.<sup>91</sup> The USPS

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<sup>82</sup> *Id.* ¶ 40.

<sup>83</sup> *Id.* ¶ 41 n.2.

<sup>84</sup> *Id.* ¶¶ 41-42. (In the March 28, 2017 Rule 8210 Request, Enforcement directed Boykin to produce the following: (1) copies of all bank account statements for all personal or business bank accounts maintained or controlled by Boykin for the period January 1, 2015, through March 31, 2016; and (2) copies of all personal and business federal and state tax returns with all attachments, including Forms 1099 and K-1, and income-related schedules filed by Boykin for 2015. Boykin’s response was due April 14, 2017.).

<sup>85</sup> *Id.* ¶ 43.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* ¶ 44.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* ¶¶ 45-46. (Boykin’s response was due May 8, 2017.).

returned the certified mailing marked “Unclaimed.”<sup>92</sup> The USPS did not return the first-class mailing.<sup>93</sup> Enforcement did not receive an indication that the April 24, 2017 request emailed to Boykin was undeliverable.<sup>94</sup> Boykin failed to respond to the April 24, 2017 Rule 8210 request by the May 8, 2017 due date.<sup>95</sup>

On June 29, 2017, Enforcement sent a third Rule 8210 request for the same documents to Boykin at the CRD Address by certified and first-class mail.<sup>96</sup> Enforcement also sent the June 29, 2017 Rule 8210 request by certified and first-class mail to six possible alternative mailing addresses.<sup>97</sup> Additionally, Enforcement sent the June 29, 2017 Rule 8210 request by email to the first and second email addresses that Boykin had used to communicate with Enforcement and two additional email addresses.<sup>98</sup>

The USPS website indicated, for the certified mailing to the CRD Address, “Notice Left (No Authorized Recipient Available),” as of July 1, 2017.<sup>99</sup> The certified mailings to six possible alternative mailing addresses were either delivered or a notice was left.<sup>100</sup> The USPS did not return any of the first-class mailings.<sup>101</sup> The June 29, 2017 Rule 8210 request emailed to Boykin at two email addresses resulted in failed delivery messages and two did not.<sup>102</sup> Boykin failed to respond to the June 29, 2017 Rule 8210 request by the July 14, 2017 due date.<sup>103</sup>

As of Enforcement’s filing of the Complaint, Boykin had not provided any of the documents Enforcement requested in the March 28, 2017, April 24, 2017, and June 29, 2017 Rule 8210 requests, notwithstanding his April 14, 2017 email acknowledging receipt of the March 28, 2017 request.<sup>104</sup> Accordingly, I find that Boykin violated FINRA Rules 8210 and 2010

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<sup>92</sup> *Id.* ¶ 47.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* ¶ 48.

<sup>96</sup> *Id.* ¶¶ 49-50.

<sup>97</sup> *Id.* ¶ 50. (Enforcement identified the additional possible alternative mailing addresses for Boykin by reviewing FINRA’s Rule 9552 expedited proceeding file and conducting additional LexisNexis searches. Boykin’s April 14, 2017 email to Enforcement, however, acknowledged receipt of Enforcement’s March 28, 2017 Rule 8210 request, which Enforcement had mailed solely to the CRD Address.).

<sup>98</sup> *Id.* ¶ 49. (Enforcement identified two additional email addresses by reviewing FINRA’s Rule 9552 expedited proceeding file and conducting LexisNexis searches. Boykin’s response was due on or before July 14, 2017.).

<sup>99</sup> *Id.* ¶ 51.

<sup>100</sup> *Id.* (The USPS reported for two of the addresses that the business was closed.).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* ¶ 52.

<sup>104</sup> *Id.* ¶ 53.

by failing to respond to Enforcement's March 28, 2017, April 24, 2017, and June 29, 2017 Rule 8210 requests.<sup>105</sup>

### III. Sanctions

#### A. FINRA's Sanction Guidelines

FINRA's Sanction Guidelines ("Guidelines") include Principal Considerations that are applicable to all sanction determinations.<sup>106</sup> In this case, several of the Principal Considerations apply to violations under both causes of action.

First, I find it aggravating that Boykin engaged in numerous acts and a pattern of misconduct.<sup>107</sup> In 2016, Boykin failed to respond or respond fully to three requests for information and documents, and later provided a complete response only after FINRA commenced Rule 9552 expedited proceedings to suspend him. Again in 2017, he failed to respond to three requests for documents. Although Boykin claimed to have been gathering responsive materials, he never produced them to FINRA. I find that Boykin exhibited a pattern of failing to respond to Rule 8210 requests, which is aggravating.

I also find it aggravating that Boykin attempted to delay FINRA's investigation and conceal information from FINRA.<sup>108</sup> Boykin hindered Enforcement's investigation into his outside business activities by failing to provide documents in response to Enforcement's 2017 requests and, in the case of the 2016 information requests, delaying his responses for nearly seven months and answering only after FINRA commenced Rule 9552 expedited suspension proceedings. Finally, I find it aggravating that Boykin's misconduct was intentional.<sup>109</sup> It is also aggravating that he failed to respond to Enforcement's 2017 Rule 8210 requests notwithstanding FINRA's indication in 2016 that he would be suspended and possibly barred for failing to respond.<sup>110</sup> Boykin engaged in misconduct in 2017 (by failing to respond to three Rule 8210 requests for documents) notwithstanding the clear warning provided by FINRA's 2016 commencement of a Rule 9552 expedited proceeding. All of these factors are aggravating as to both causes of action.

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<sup>105</sup> See *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at \*23-24 (holding that an associated person has an obligation to produce documents requested in a Rule 8210 request and, if he cannot, he must explain why he cannot, his efforts to obtain the documents, and when he will be able to produce the documents); *Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at \*18 (Nov. 8, 2007) ("[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot").

<sup>106</sup> See FINRA Sanction Guidelines at 7-8 (2017) (Principal Considerations in Determining Sanctions), [http://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

<sup>107</sup> *Id.* at 7 (Principal Consideration No. 8); Belter-Pylant Decl. ¶ 33(d).

<sup>108</sup> Guidelines at 8 (Principal Consideration No. 12); Belter-Pylant Decl. ¶ 33(e).

<sup>109</sup> Guidelines at 8 (Principal Consideration No. 13).

<sup>110</sup> *Id.* at 8 (Principal Consideration No. 14).

## **B. Cause One – Failure to Timely Respond**

The Guidelines for the failure to timely respond to Rule 8210 requests recommend consideration of the importance of the information requested as viewed from FINRA’s perspective.<sup>111</sup> I find this factor to be aggravating. Enforcement commenced an investigation in response to MSI’s disclosures in Boykin’s Form U5. Enforcement needed the information requested in the 2016 Rule 8210 requests to conduct its investigation. Boykin’s untimely responses impeded and substantially delayed FINRA’s investigation, and seven months passed before Boykin fully complied.<sup>112</sup> I also find aggravating the number of requests made and the degree of regulatory pressure required to obtain a response from Boykin.<sup>113</sup> Boykin ignored Enforcement’s first request, responded only partially to its second request, and ignored the third request. He responded fully only after FINRA commenced Rule 9552 expedited proceedings to suspend and ultimately bar him.<sup>114</sup> It is aggravating that significant regulatory pressure was needed in order to force a response, albeit untimely, from Boykin. Finally, I find aggravating the amount of time Boykin delayed Enforcement’s investigation before he provided a complete response.<sup>115</sup> Enforcement’s investigation was hindered, if not halted, by Boykin’s more than seven-month delay in responding.<sup>116</sup>

For failing to timely respond, the Guidelines recommend a fine of \$2,500 to \$37,000 and a suspension of up to two years.<sup>117</sup> Given the level of aggravating factors and dearth of mitigating factors, I find it appropriate to fine Boykin \$37,000 and suspend him for two years for failing to timely respond to Rule 8210 requests under cause one. In light of the bar that I impose under cause two, however, I decline to impose these sanctions under cause one.

## **C. Cause Two – Failure to Respond**

The Guidelines recommend a bar in all capacities for a failure to respond in any manner.<sup>118</sup> I see no reason to deviate from the recommended sanction in this case in light of the numerous aggravating and no mitigating factors discussed above. By failing to produce the requested documents in 2017, Boykin significantly impeded Enforcement’s already delayed investigation and deprived Enforcement of the ability to determine conclusively whether and to what extent Boykin violated FINRA’s rules by failing to disclose outside business activities.<sup>119</sup> During 2017, Enforcement devoted regulatory resources to requesting information from Boykin

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<sup>111</sup> *Id.* at 33 (Failure to Respond in a Timely Manner Consideration No. 1).

<sup>112</sup> Compl. ¶¶ 36, 37; Belter-Pylant Decl. ¶ 33(a).

<sup>113</sup> Guidelines at 33 (Failure to Respond in a Timely Manner Consideration No. 2).

<sup>114</sup> Belter-Pylant Decl. ¶ 33(b).

<sup>115</sup> Guidelines at 33 (Failure to Respond in a Timely Manner Consideration No. 3).

<sup>116</sup> Compl. ¶¶ 36, 37; Belter-Pylant Decl. ¶ 33(c).

<sup>117</sup> Guidelines at 33.

<sup>118</sup> *Id.*

<sup>119</sup> Compl. ¶¶ 36, 37; Belter-Pylant Decl. ¶ 33(a), (e).

that he never produced. Boykin's actions delayed and ultimately halted FINRA's investigation, wasted FINRA's resources, and demonstrated Boykin's inability or unwillingness to comply with FINRA's rules.

FINRA does not possess subpoena power and must therefore rely on Rule 8210 to conduct investigations of its members and carry out its regulatory mandate.<sup>120</sup> As such, Boykin's failure to comply with FINRA's Rule 8210 requests, as alleged in cause two, and his previous failure to respond timely, as alleged in cause one, are serious violations that warrant significant sanctions because his actions impeded FINRA's investigation of potential misconduct.<sup>121</sup>

For all of these reasons, I bar Boykin from associating with any member firm in any capacity for failing to respond to three Rule 8210 requests for documents.

#### **IV. Order**

Respondent Jasper E. Boykin, Jr. failed to respond timely in 2016 to three FINRA Rule 8210 requests for information and documents, and failed to respond in 2017 to three additional FINRA Rule 8210 requests for documents. Accordingly, I find that Boykin violated FINRA Rules 8210 and 2010.

For failing to respond, I bar Boykin from associating with any member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Carla Carloni  
Hearing Officer

Copies: Jasper E. Boykin, Jr. (*via overnight courier and first-class mail*)  
Sarah B. Belter-Pylant, Esq. (*via electronic and first-class mail*)  
David B. Klafter, Esq. (*via electronic mail*)  
Jeffrey Pariser, Esq. (*via electronic mail*)

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<sup>120</sup> See *John Joseph Plunkett*, Exchange Act Release No. 73124, 2014 SEC LEXIS 3396, at \*17 (Sept. 16, 2014) (“Because FINRA does not have subpoena power, it ‘must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.’”) (quoting *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at \*43 (Apr. 17, 2014)).

<sup>121</sup> *Id.*