

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FERNANDO DE LA LAMA MERINO
(CRD No. 2257749),

Respondent.

Disciplinary Proceeding
No. 2015046020001

Hearing Officer–DW

DEFAULT DECISION

March 24, 2017

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to respond to document production requests, in violation of Rules 8210 and 2010.

Appearances

For the Complainant: Christina Stanland, Esq., Gino F. Ercolino, Esq., and Richard Chin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

FINRA’s Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Fernando de la Lama Merino (“De la Lama”) on October 24, 2016. The Complaint alleges that De la Lama violated FINRA Rules 8210 and 2010 by failing to produce requested documents during an investigation into his potential misconduct. To date, De la Lama has not answered.

On January 23, 2017, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions. The motion is accompanied by a memorandum of law, the Declaration

of Christina Stanland (“Stanland Decl.”), and 14 exhibits.¹ De la Lama has not responded to the motion.

For the reasons set forth below, I find De la Lama in default and grant Enforcement’s Motion.

II. Findings of Fact and Conclusions of Law

A. De la Lama’s Background

De la Lama has been associated with a number of FINRA-regulated broker-dealers since entering the securities industry in 1992. He was associated with EFG Capital International (“EFG Capital”) as a General Securities Representative beginning in 2003, through his resignation on May 25, 2016.²

B. Jurisdiction

FINRA has jurisdiction over De la Lama pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed its Complaint within two years after De la Lama’s FINRA registration was terminated, and De la Lama is charged with failure to comply with FINRA Rule 8210 while he was subject to FINRA’s jurisdiction.

C. De la Lama Defaulted by Failing to Answer the Complaint

Enforcement served De la Lama with copies of the Complaint and Notice of Complaint on October 24, 2016, and the Complaint and Second Notice of Complaint on November 28, 2016.³ Consistent with FINRA Rules 9131 and 9134, Enforcement served both notices by both first-class certified mail to De la Lama’s current address as reflected in the Central Registration Depository (“CRD address”). Enforcement also sent both notices to the two personal email addresses De la Lama provided during his OTR testimony.⁴ De la Lama therefore had constructive notice of this proceeding.⁵ Because he failed to answer or otherwise respond to the Complaint or Second Notice of Complaint, De la Lama is in default.

¹ Citations to Enforcement’s exhibits are noted as “CX-___.”

² Complaint (“Compl.”) ¶ 2; CX-1.

³ Stanland Decl. ¶¶ 27, 30.

⁴ *Id.*

⁵ *See, e.g., Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20 n.21 (NAC June 3, 2014), *aff’d*, 2015 SEC LEXIS 3080 (July 27, 2015).

D. Origin of the Investigation

On June 30, 2015, Enforcement opened an investigation into De la Lama's potential misconduct involving the sales of illiquid structured notes and bonds referred by a foreign individual while De la Lama was associated with EFG Capital International.⁶

E. De la Lama Failed to Provide Requested Documents Pursuant to the Staff's Rule 8210 Requests

FINRA Rule 8210 requires an associated person provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. "FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."⁷ Moreover, "[a]ssociated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material."⁸

As part of its inquiry, Enforcement requested that De la Lama appear for on-the-record testimony.⁹ One day after his May 24, 2016 testimony, De la Lama resigned from his firm.¹⁰ Seven days later, counsel representing the firm advised Enforcement that counsel would no longer represent De la Lama.¹¹ New counsel for De la Lama entered an appearance, and then withdrew.¹²

Before De la Lama's new counsel ended his representation, Enforcement served the attorney with a written request for De la Lama to produce documents pertinent to the investigation.¹³ Enforcement then granted the attorney additional time to comply with the request.¹⁴ On the extended date for compliance, counsel communicated to Enforcement his withdrawal from the case, and directed Enforcement to contact De la Lama directly.¹⁵

⁶ Stanland Decl. ¶ 8.

⁷ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

⁸ *Id.* at *13 (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009)).

⁹ Stanland Decl. ¶ 9.

¹⁰ Stanland Decl. ¶ 10.

¹¹ *Id.*

¹² Stanland Decl. ¶¶ 11, 14.

¹³ Stanland Decl. ¶ 12.

¹⁴ Stanland Decl. ¶ 13.

¹⁵ Stanland Decl. ¶ 14.

Enforcement thereafter sent two additional requests for the previously requested documents directly to De la Lama, who never produced the materials or otherwise responded.¹⁶ Enforcement sent the requests, dated July 15 and August 2, 2016, by first-class and certified mail to the address provided by De la Lama's counsel, which is also De la Lama's CRD address.¹⁷

By his total failure to produce his documents in response to Enforcement's multiple requests, De la Lama violated FINRA Rules 8210 and 2010.¹⁸

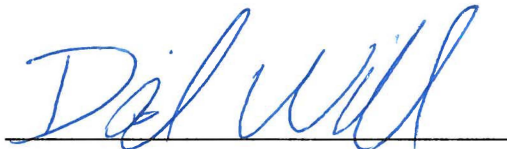
III. Sanctions

FINRA must rely upon Rule 8210 "to police the activities of its members and associated persons" because it lacks subpoena power.¹⁹ "[A member's] failure to respond to [FINRA's] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."²⁰ Because compliance with the Rule is necessary for FINRA to carry out its regulatory functions, FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.²¹

Here, De la Lama failed to respond in any manner to Enforcement's multiple requests for documents pertinent to its investigation. The conduct under investigation was serious. In light of De la Lama's total failure to respond, and in the absence of any apparent mitigating factors, the appropriate sanction is a bar in all capacities.

IV. Order

Fernando De la Lama Merino is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



David Williams
Hearing Officer

¹⁶ Stanland Decl. ¶¶ 15-23.

¹⁷ *Id.* Rule 8210(d) provides that a notice issued under Rule 8210 shall be deemed received if it is sent to the person's last known business address as reflected in CRD and the staff does not have actual knowledge that that address is out of date or inaccurate. Here, the staff had no such knowledge. Stanland Decl. ¶ 14.

¹⁸ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010. *See, e.g., CMG Inst. Trading*, 2009 SEC LEXIS 215, at *30 n.36.

¹⁹ *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998).

²⁰ *PAZ Sec.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

²¹ FINRA Sanction Guidelines at 33 (2016), <http://www.finra.org/industry/sanction-guidelines>.

Copies to:

Fernando De la Lama Merino (via first-class mail)
Christina Stanland, Esq. (via email and first-class mail)
Gino F. Ercolino, Esq. (via email)
Richard Chin, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)