

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT FLANAGAN  
(CRD No. 5755699),

Respondent.

Disciplinary Proceeding  
No. 2016050447102

Hearing Officer–KBW

**DEFAULT DECISION**

June 8, 2018

**Respondent failed to respond to two FINRA Rule 8210 requests for documents and information until he was served with a Notice of Suspension. Respondent also completely failed to respond to three subsequent FINRA Rule 8210 requests for documents and information and a subsequent FINRA Rule 8210 request for testimony. For this misconduct, Respondent is barred from associating with any member firm in any capacity. Respondent also willfully failed to disclose an unsatisfied judgment on his Form U4 and falsely attested that his Form U4 was accurate; however, in light of the bar imposed for his other misconduct, no sanctions are imposed for this misconduct.**

*Appearances*

For the Complainant: Richard Chin, Esq., and Tiffany Buxton, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

**DECISION**

**I. Introduction**

Respondent Robert Flanagan was associated with FINRA member firm Pruco Securities, LLC from February 2010 to January 2016. FINRA's Department of Enforcement brought this disciplinary proceeding against Respondent in December 2017. The Complaint charges Respondent with (1) willfully failing to disclose an unsatisfied judgment on his Uniform Application for Securities Industry Registration or Transfer (Form U4) within 30 days of learning of the judgment, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010; (2) falsely attesting to Pruco that his Form U4 was accurate, in

violation of FINRA Rule 2010; (3) failing to respond to two Rule 8210 requests for documents and information until after FINRA commenced suspension proceedings, in violation of FINRA Rules 8210 and 2010; and (4) completely failing to respond to three subsequent Rule 8210 requests for documents and information and a subsequent Rule 8210 request for testimony, in violation of FINRA Rules 8210 and 2010.

Respondent did not file an answer or other response to the Complaint. Accordingly, Enforcement filed a motion for entry of default decision and imposition of sanctions (“Default Motion”), together with counsel’s declaration (“Decl.”) in support of the motion and supporting exhibits. Respondent did not file a response to the Default Motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement’s Default Motion.

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

### **A. Respondent’s Background**

Respondent was registered with FINRA as an Investment Company and Variable Contracts Products Representative from February 2010 to January 2016, and as a Uniform Securities Agent from March 2010 to January 2016. Pruco reported in a Uniform Termination Notice for Securities Industry Registration (Form U5) dated January 29, 2016, that Respondent’s employment was terminated because he failed to meet minimum production requirements.<sup>1</sup> In a Form U5 dated June 17, 2016 (“Amended Form U5”), Pruco reported that it had received a written complaint from a customer alleging that Respondent did not fully disclose all the facts regarding certain surrender charges.<sup>2</sup>

Respondent has not been associated with a FINRA member firm since Pruco terminated his employment.<sup>3</sup>

### **B. FINRA’s Jurisdiction**

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with (1) misconduct committed while he was associated with a FINRA member firm and (2) failing to timely respond to requests for documents and information and later completely failing to respond to multiple requests for documents and information and a request for testimony during the two-year period after the termination of his registration.

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<sup>1</sup> Complaint (“Compl.”) ¶¶ 7-9; Complainant’s Exhibit (“CX”)-1; CX-2.

<sup>2</sup> CX-3, at 1, 6.

<sup>3</sup> Compl. ¶ 10; Decl. ¶ 9; CX-1.

### **C. Origin of the Proceeding**

In 2016, FINRA opened an investigation into Respondent's potential failure to report a civil judgment on his Form U4 and potential sales practice violations. The investigation arose from FINRA's review of the Amended Form U5.<sup>4</sup>

### **D. Respondent's Default**

Enforcement filed the Complaint against Respondent on December 20, 2017.<sup>5</sup> Enforcement sent the Complaint and the Notice of Complaint by certified mail, return receipt requested, and first-class mail to Respondent's last known residential address as reflected in the Central Registration Depository ("CRD Address") and to a similar, alternative address that Enforcement identified by a LEXIS/NEXIS search ("Alternative Address") as well as by email to Respondent's personal email address ("Email Address").<sup>6</sup> When Respondent did not timely respond to the Complaint, Enforcement sent the Second Notice of Complaint and Complaint by certified mail, return receipt requested, and first-class mail to Respondent's CRD Address and Alternative Address and by email to Respondent's Email Address.<sup>7</sup> Thus, Enforcement served the Complaint on Respondent in accordance with FINRA rules.

Respondent did not file an answer or other response to the Complaint. Accordingly, I find that Respondent defaulted and deem the allegations in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).<sup>8</sup>

### **E. Respondent Violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by Failing to Amend His Form U4 to Reflect an Unsatisfied Judgment**

#### **1. Facts**

On June 1, 2015, a civil judgment in the amount of \$212,875.38 was entered against Respondent ("Civil Judgment").<sup>9</sup> The Civil Judgment was personally served on Respondent on or about June 2, 2015.<sup>10</sup> Respondent was aware of the Civil Judgment no later than July 15,

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<sup>4</sup> Decl. ¶ 9.

<sup>5</sup> Decl. ¶ 20.

<sup>6</sup> Decl. ¶¶ 19-20; CX-1; CX-4.

<sup>7</sup> Decl. ¶¶ 19, 24; CX-1; CX-6.

<sup>8</sup> Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>9</sup> Compl. ¶ 19.

<sup>10</sup> Compl. ¶ 20.

2015.<sup>11</sup> On or about September 15, 2015, Respondent paid \$30,617.80 towards the Civil Judgment. Respondent satisfied the Civil Judgment in full on or before October 1, 2015.<sup>12</sup>

Registered representatives like Flanagan must complete and file with FINRA a Form U4 to become registered through a FINRA member firm. The form “is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm.”<sup>13</sup> Form U4 “ultimately serves as a means of protecting the investing public.”<sup>14</sup>

Question 14M of Form U4 asks, “Do you have any unsatisfied judgments or liens against you?” For affirmative responses, a Disclosure Reporting Page (“DRP”) included in the form asks for specific information about any judgment or lien, including the amount and filing date of the judgment or lien.<sup>15</sup> Respondent has not amended his Form U4 to disclose the Civil Judgment or its satisfaction.<sup>16</sup>

## 2. Discussion

Article V of FINRA’s By-Laws protects the investing public by requiring associated persons to update information on the Form U4.<sup>17</sup> Specifically, Article V, Section 2(c) of FINRA’s By-Laws requires that “every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within 30 days of learning of the facts and circumstances giving rise to the amendment.”<sup>18</sup> As the Securities and Exchange Commission has stated, “The duty to maintain an accurate Form U4 lies primarily with an associated person who is in the best position to provide information about the questions presented in the form.”<sup>19</sup>

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<sup>11</sup> Compl. ¶ 22.

<sup>12</sup> Compl. ¶ 22.

<sup>13</sup> *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*23-24 (Apr. 18, 2013) (citing *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*26 (Nov. 9, 2012)) (“Members of the public can also access the information reported in the form, via BrokerCheck, and can use that information when deciding to whom they want to entrust their money.”); *id.* at \*24 n.42 (citing FINRA’s website, which describes BrokerCheck as “a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.”).

<sup>14</sup> *Id.* at \*24.

<sup>15</sup> Compl. ¶ 16.

<sup>16</sup> Compl. ¶ 23.

<sup>17</sup> *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at \*35 (May 8, 2015).

<sup>18</sup> *See also Amundsen*, 2013 SEC LEXIS 1148, at \*25.

<sup>19</sup> *N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at \*28.

FINRA Rule 1122 states that “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

A registered representative’s failure to update a Form U4 when required violates the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members (and their associated persons) under FINRA Rule 2010.<sup>20</sup>

### **3. Conclusion**

Respondent was obligated to amend his Form U4 to reflect the Civil Judgment within 30 days of learning of the judgment. By failing to do so, Respondent violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

#### **F. Respondent Is Subject to Statutory Disqualification as a Result of His Willful Failure to Amend His Form U4 to Report the Civil Judgment**

##### **1. Discussion**

A person is subject to statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) if the person:

*willfully* made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any *material* fact, or has omitted to state . . . any *material* fact which is required to be stated therein.<sup>21</sup>

##### **a. Respondent’s Failure to Amend His Form U4 Was Willful**

If Respondent “voluntarily committed the acts that constituted the violation, then he acted willfully.”<sup>22</sup> Respondent voluntarily did not update his Form U4 to reflect the Civil Judgment within 30 days of learning of the judgment. I therefore find that Respondent willfully failed to timely disclose the Civil Judgment on his Form U4.

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<sup>20</sup> *Dep’t of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at \*52 (NAC Dec. 17, 2015).

<sup>21</sup> 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

<sup>22</sup> *Dep’t of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at \*19 (NAC Mar. 16, 2017) (quoting *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*15 (Mar. 15, 2016)), *aff’d*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *appeal docketed*, No. 17-15283 (11th Cir. Nov. 28, 2017).

## **b. The Omitted Information Was Material**

In the present context, “a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available.”<sup>23</sup> “[B]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material.”<sup>24</sup> Here, the omitted information regarding the Civil Judgment would have alerted Pruco and regulators that Respondent was subject to substantial economic pressures and could cause customers to question his judgment in providing financial advice.<sup>25</sup> I therefore find that the omitted information was material.

## **2. Conclusion**

Respondent is subject to statutory disqualification because his failure to timely update his Form U4 was willful and the omitted information was material.<sup>26</sup>

## **G. Respondent Violated FINRA Rule 2010 by Making False Statements to Pruco**

### **1. Facts**

On July 15, 2015, Respondent attested in writing to Pruco that his Form U4 was accurate even though Respondent’s Form U4 contained the answer, “No,” for Question 14M and he was aware that the Civil Judgment had been entered against him on June 1, 2015.<sup>27</sup>

### **2. Discussion**

As noted above, FINRA Rule 2010 requires FINRA member firms and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” It is a violation of FINRA Rule 2010 for an associated person to provide false material

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<sup>23</sup> *McCune*, 2016 SEC LEXIS 1026, at \*21-22.

<sup>24</sup> *Dep’t of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at \*12 (NAC July 27, 2015), *aff’d*, 2016 SEC LEXIS 1026, *aff’d*, 672 F. App’x 865 (10th Cir. 2016).

<sup>25</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*30-31 (Disclosure of respondent’s “tax liens would have ‘alerted his firm to the outside financial pressures he was facing,’ ‘allowed customers to assess whether the . . . liens had a bearing on his ability to provide them with appropriate financial advice,’ and ‘provided his regulators with early notice about his financial difficulties and ability to manage his financial obligations.’”) (quoting *McCune*, 2016 SEC LEXIS 1026, at \*21-22).

<sup>26</sup> *Dep’t of Enforcement v. Ottimo*, No. 2009017440201, 2017 FINRA Discip. LEXIS 10 (NAC Mar. 15, 2017) (holding that an individual respondent was statutorily disqualified because he willfully failed to disclose material information on his Form U4), *appeal docketed*, SEC Admin. Proc. No. 3-17930 (Apr. 14, 2017).

<sup>27</sup> Compl. ¶¶ 28-29.

information to his firm.<sup>28</sup> A failure to truthfully disclose material information “calls into question the registered representative’s ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.”<sup>29</sup>

### **3. Conclusion**

By providing the false attestation to Pruco that his Form U4 was accurate, Respondent violated FINRA Rule 2010.

#### **H. Respondent Failed to Timely and Completely Respond to Requests for Documents and Information and a Subsequent Request for Testimony**

##### **1. Facts**

On July 27, 2016, FINRA sent a request for documents and information to Respondent pursuant to FINRA Rule 8210. FINRA sent the request to Respondent’s CRD Address by certified mail, return receipt requested, and first-class mail. Respondent did not produce documents and information in response to the request.<sup>30</sup>

On October 5, 2016, FINRA sent a second letter to Respondent requesting documents and information pursuant to Rule 8210. FINRA sent the letter to Respondent’s CRD Address by certified mail, return receipt requested, and first-class mail. The letter requested the same documents and information as the July 27 letter. Respondent again failed to provide documents and information in response to Enforcement’s request.<sup>31</sup>

On February 10, 2017, FINRA sent Respondent a Notice of Suspension, informing him that he would be suspended from association with any FINRA member on March 6, 2017, if he failed to respond to FINRA’s July 27 and October 5 requests.<sup>32</sup> FINRA sent the Notice of Suspension to Respondent’s CRD Address by certified mail, return receipt requested, and first-class mail.<sup>33</sup>

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<sup>28</sup> *Dep’t of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at \*19-20 (NAC Mar. 19, 2018) (respondent violated FINRA Rule 2010 by falsely indicating on firm questionnaire that he was not participating in any outside business activities requiring disclosure).

<sup>29</sup> *Mathieson*, 2018 FINRA Discip. LEXIS 9, at \*19 (quoting *Dep’t of Enforcement v. Mullins*, Nos. 20070094345 & 20070111775, 2011 FINRA Discip. LEXIS 61, at \*30 (NAC Feb. 24, 2011), *aff’d in relevant part*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012)).

<sup>30</sup> Compl. ¶¶ 34-36.

<sup>31</sup> Compl. ¶¶ 37-39.

<sup>32</sup> Compl. ¶ 40.

<sup>33</sup> Compl. ¶ 40.

On February 14, 2017, Respondent emailed a partial but incomplete response to FINRA’s July 27 and October 5 requests.<sup>34</sup> Two weeks later, FINRA advised Respondent by return email that his February 14 response was “insufficient to terminate his upcoming suspension and that he would be suspended from association with any FINRA member firm on March 6, 2017 if he did not provide all of the requested documents and information.”<sup>35</sup> On March 3, 2017, Respondent provided a complete response to FINRA’s July 27 and October 5 requests.<sup>36</sup>

Between May 15, 2017, and July 19, 2017, FINRA sent three additional requests for documents and information pursuant to Rule 8210 to Respondent. FINRA sent the additional requests by certified mail, return receipt requested, and first-class mail to Respondent’s CRD Address. Respondent did not provide the requested documents and information.<sup>37</sup>

On August 1, 2017, FINRA sent a request pursuant to Rule 8210 for Respondent to appear and provide on-the-record testimony on August 16, 2017, at FINRA’s offices. FINRA sent the August 1 request by certified mail, return receipt requested, and first-class mail to Respondent’s CRD Address. Respondent did not appear for his scheduled testimony.<sup>38</sup>

The information and documents sought by the Rule 8210 requests, which included documents relating to sales practice violations alleged by Respondent’s former customer, were critical to Enforcement’s investigation.<sup>39</sup>

## **2. Conclusion**

Respondent failed to timely comply with two Rule 8210 requests for documents and information. He also completely failed to comply with three subsequent Rule 8210 requests for documents and information and a subsequent Rule 8210 request for testimony. Thus, Respondent violated FINRA Rules 8210 and 2010.

## **III. Sanctions**

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA’s Sanction Guidelines (“Guidelines”).<sup>40</sup> The Guidelines

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<sup>34</sup> Compl. ¶ 41.

<sup>35</sup> Compl. ¶ 42.

<sup>36</sup> Compl. ¶ 43.

<sup>37</sup> Compl. ¶¶ 48-53.

<sup>38</sup> Compl. ¶¶ 54-56.

<sup>39</sup> Decl. ¶ 30.

<sup>40</sup> FINRA Sanction Guidelines (2018), <http://www.finra.org/industry/sanction-guidelines.pdf>.



provide that “[a]ggregation or ‘batching’ of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.”<sup>41</sup>

### **A. First and Second Causes of Action**

I impose one sanction for Respondent’s failure to amend his Form U4 to report the Civil Judgment, and for Respondent’s false attestation to Pruco that his Form U4 was accurate because the two violations are closely related<sup>42</sup> and stem from the same underlying conduct.<sup>43</sup>

For an individual’s failure to timely amend a Form U4, the Guidelines recommend a fine of \$2,500 to \$37,000. Where aggravating factors are present, the Guidelines call for consideration of a suspension of an individual, in any or all capacities, for a period of ten business days to six months. The Guidelines call for consideration of a longer suspension in any and all capacities (of up to two years) where aggravating factors predominate. For a respondent who intended to conceal information or mislead, the Guidelines call for consideration of a bar.<sup>44</sup> For failures to file amendments, the Guidelines suggest that adjudicators consider, among other things, the significance of the information at issue; the number, nature, and dollar value of the disclosable events at issue; whether the omission of information was done in an intentional effort to conceal information or in an attempt to mislead; the duration of the delinquency; and whether the judgment that was not timely disclosed has been satisfied.<sup>45</sup>

There are no Guidelines directly applicable to Respondent’s provision of a false attestation to Pruco, so I have considered the Guidelines for forgery, unauthorized use of signatures, or falsification of records; the Guidelines for recordkeeping violations;<sup>46</sup> and the Principal Considerations in Determining Sanctions.<sup>47</sup> Where a respondent falsifies a document without authorization or ratification, in the absence of other violations or customer harm, the Guidelines call for consideration of a suspension for a period of two months to two years. The Guidelines further provide that a bar is standard where a respondent falsifies a document without authorization, in furtherance of another violation, resulting in customer harm or accompanied by significant aggravating factors. In addition, the Guidelines recommend imposition of a fine of

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<sup>41</sup> Guidelines at 4 (General Principle Applicable to All Sanction Determinations No. 4).

<sup>42</sup> See *Dep’t of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at \*21 n.6 (NAC Oct. 5, 2017), *appeal docketed*, SEC Admin. Proc. No. 3-18262 (Oct. 27, 2017).

<sup>43</sup> See *Dep’t of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at \*27 n.10 (NAC May 21, 2018).

<sup>44</sup> Guidelines at 71.

<sup>45</sup> Guidelines at 71.

<sup>46</sup> *Riemer*, 2017 FINRA Discip. LEXIS 38, at \*22 (applying Guidelines for recordkeeping violations and falsification of records in assessing sanctions for false statement to respondent’s employer).

<sup>47</sup> *Holeman*, 2018 FINRA Discip. LEXIS 12, at \*27-28 (considering Guidelines for late filings of amendments to Form U4 and the Principal Considerations in Determining Sanctions in assessing sanctions for failure to file a timely Form U4 and for providing false compliance certification to employer).

\$5,000 to \$146,000 where a respondent falsifies a document without authorization, in the absence of other violations or customer harm.<sup>48</sup> The Guidelines identify one principal consideration specific to falsification of records that is relevant to this matter—the nature of the document(s) falsified.<sup>49</sup>

For recordkeeping violations, the Guidelines recommend consideration of a suspension, in any or all capacities, for a respondent for a period of ten business days to six months and the imposition of a fine of \$1,000 to \$15,000. Where aggravating factors predominate, the Guidelines call for consideration of a longer suspension (of up to two years) or a bar and a fine of \$10,000 to \$146,000. Where significant aggravating factors predominate, the Guidelines call for consideration of a higher fine.<sup>50</sup> The Guidelines recommend that adjudicators consider, among other things, the nature and materiality of inaccurate or missing information; the nature of the firm records at issue; whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as a result of negligence; and whether the violations allowed other misconduct to occur and escape detection.<sup>51</sup>

I considered several factors in determining the appropriate remedial sanction. The Civil Judgment was for \$212,875.38 and remained unsatisfied for more than seven months. Additionally, Respondent never amended his Form U4 to reflect the Civil Judgment. Yet, Respondent certified to Pruco that his Form U4 was accurate. Attestations are an important tool by which firms supervise registered representatives, and Respondent had no reason to believe that he was authorized to submit a false attestation to Pruco. The false attestation concealed from Pruco that Respondent had failed to timely update his Form U4 to reflect the Civil Judgment. Respondent knew of the Civil Judgment when he falsely attested to Pruco that his Form U4 was accurate.

I concluded that the appropriate sanction for Respondent's failure to update his Form U4 and his provision of a false attestation to Pruco is a fine of \$5,000 and a suspension of six months in all capacities. In light of the bar that I impose under the third and fourth causes, however, I declined to impose these sanctions under the first and second causes.

## **B. Third and Fourth Causes of Action**

I impose one sanction for Respondent's failure to timely respond to the two requests for information and documents, and for Respondent's complete failure to respond to three requests

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<sup>48</sup> Guidelines at 37.

<sup>49</sup> Guidelines at 37 (Principal Consideration in Determining Sanctions No. 1).

<sup>50</sup> Guidelines at 29.

<sup>51</sup> Guidelines at 29.

for information and documents and a request for testimony because the failures are similar in nature.<sup>52</sup>

Because Respondent did not provide documents and information in response to the July 27 and October 5 requests until Enforcement had sent him a Notice of Suspension, I apply the Guidelines for a complete failure to respond to Rule 8210 requests.<sup>53</sup> For a respondent who completely fails to respond in any manner to Rule 8210 requests, the Guidelines recommend a bar in all capacities. The Guidelines also recommend that in assessing this sanction adjudicators consider the importance of the information requested as viewed from FINRA's perspective.<sup>54</sup>

In determining the appropriate remedial sanction, I considered several factors. Enforcement viewed as critical to its investigation the documents and information sought by the Rule 8210 requests. Respondent ignored FINRA's first two requests for documents and information until after FINRA commenced Rule 9552 expedited proceedings to suspend him. In addition, FINRA had to exert significant regulatory pressure by issuing the Notice of Suspension to force Respondent to provide those responses. Even then, Respondent responded only partially to the July 27 and October 5 requests until FINRA advised him that his partial response was insufficient to terminate his upcoming suspension. Respondent's partial response to the two Rule 8210 requests for documents and information was 188 days late and his second response was 205 days late.<sup>55</sup> Respondent then ignored three Rule 8210 requests for documents and information and a Rule 8210 request for testimony. Respondent has not provided any valid explanation for his violations.

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>56</sup> As such, Respondent's failure to comply with FINRA's Rule 8210 requests, as alleged in the fourth cause, and his previous failure to respond timely, as alleged in the third cause, are serious violations that warrant significant sanctions. Respondent's conduct demonstrates an "indifference to his Rule 8210 responsibilities and unwillingness to abide by basic prerequisites to association with any FINRA member firm."<sup>57</sup> Thus, I concluded that the appropriate remedial sanction is to bar Respondent from associating with any FINRA member firm in any capacity.

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<sup>52</sup> *Dep't of Enforcement v. Xagoraris*, Nos. 20080127674 & 20080133768, 2014 FINRA Discip. LEXIS 34, at \*27 (NAC Aug. 1, 2014) (holding unitary sanction appropriate because violations are similar in nature).

<sup>53</sup> *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at \*48-49 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

<sup>54</sup> Guidelines at 33.

<sup>55</sup> Compl. ¶¶ 41, 43.

<sup>56</sup> See *John Joseph Plunkett*, Exchange Act Release No. 73124, 2014 SEC LEXIS 3396, at \*17 (Sept. 16, 2014).

<sup>57</sup> *Evansen*, 2015 SEC LEXIS 3080, at \*57.

#### IV. Order

Respondent Robert Flanagan failed to respond to two FINRA Rule 8210 requests for documents and information until he was served with a Notice of Suspension. He then failed to respond to three subsequent FINRA Rule 8210 requests for documents and information and a subsequent FINRA Rule 8210 request for testimony. Accordingly, I find that Respondent violated FINRA Rules 8210 and 2010. For these violations, Respondent is barred from associating with any member firm in any capacity. Respondent also willfully failed to disclose an unsatisfied judgment on his Form U4 in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1120 and 2010, and falsely attested that his Form U4 was accurate; however, in light of the bar imposed for the other violations, no sanctions are imposed for these violations.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Kenneth B. Winer  
Kenneth B. Winer  
Hearing Officer

Copies to:

Robert Flanagan (via email, overnight courier, and first-class mail)  
Richard Chin, Esq. (via email and first-class mail)  
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Jeffrey D. Pariser, Esq. (via email)