

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ATIQU U. KHAN  
(CRD No. 4727750),

Respondent.

Disciplinary Proceeding  
No. 2016052504602

Hearing Officer–JLC

**DEFAULT DECISION**

September 27, 2018

**Respondent violated FINRA Rules 8210 and 2010 by failing to respond timely to Rule 8210 requests for on-the-record testimony and failing to respond to Rule 8210 requests for documents. For this misconduct, Respondent is barred.**

**Appearances**

For the Complainant: Laura Leigh Blackston, Esq., Penelope Brobst Blackwell, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

**DECISION**

**I. Introduction**

On June 8, 2018, the Department of Enforcement filed a two-cause Complaint against Respondent Atiq U. Khan. Enforcement alleges in cause one that Khan violated FINRA Rules 8210 and 2010 by failing to respond timely to FINRA’s requests for on-the-record testimony (“OTR”). Khan did not comply with those requests until after FINRA suspended him pursuant to FINRA Rule 9552. Enforcement alleges in cause two that Khan violated FINRA Rules 8210 and 2010 by failing to respond to FINRA’s document requests. Khan did not file an Answer to the Complaint.

On August 27, 2018, Enforcement filed a motion for entry of a default decision and request for imposition of sanctions (the “Default Motion”). The Default Motion is accompanied

by a memorandum of law, the declaration of Laura Leigh Blackston and six supporting exhibits.<sup>1</sup> To date, Khan has not filed a response to the Default Motion.

For the reasons set forth below, I find Khan in default, grant Enforcement's Default Motion, and deem the allegations in the Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

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

### **A. Khan's Background**

Khan first became registered with FINRA in January 2004 as an Investment Company and Variable Contracts Products Representative ("IR") and an Investment Company and Variable Contracts Products Principal ("IP") through his association with a former FINRA member.<sup>2</sup> On January 6, 2012, he became associated with Transamerica Financial Advisors, Inc. ("Transamerica") as IR and IP.<sup>3</sup> On February 24, 2012, Khan became associated with Transamerica as a General Securities Representative.<sup>4</sup> On December 13, 2016, Transamerica filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting Khan's termination for soliciting firm customers to purchase general securities products in violation of firm procedures and "improperly insert[ing] himself as the beneficiary on a customer account."<sup>5</sup> Khan has not been associated with any FINRA member since Transamerica terminated his association.<sup>6</sup>

### **B. FINRA's Jurisdiction**

FINRA retains jurisdiction over Khan 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 failing to comply with requests for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

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

FINRA initiated its investigation after receiving Transamerica's Form U5 filing.<sup>7</sup> FINRA opened the investigation to determine whether Khan engaged in an undisclosed solicitation of

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<sup>1</sup> Enforcement's exhibits are referenced as "CX-\_\_."

<sup>2</sup> Complaint ("Compl.") ¶ 2; Declaration of Laura Leigh Blackston ("Decl.") ¶ 7; CX-1, at 5, 8.

<sup>3</sup> Compl. ¶ 2; Decl. ¶ 7; CX-1, at 4-5.

<sup>4</sup> Compl. ¶ 2; Decl. ¶ 7; CX-1, at 4-5.

<sup>5</sup> Compl. ¶ 3; Decl. ¶ 6; CX-1, at 4.

<sup>6</sup> Compl. ¶ 4.

<sup>7</sup> Compl. ¶ 11; Decl. ¶ 6.

general securities and whether he improperly inserted himself as the beneficiary of a customer's insurance policy.<sup>8</sup>

#### **D. Khan Defaulted by Failing to Answer the Complaint**

Enforcement served Khan with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on June 8, 2018, and the Complaint and Second Notice of Complaint on July 9, 2018.<sup>9</sup> In each case, Enforcement served Khan by certified U.S. mail, return receipt requested, at his last-known residential address recorded in FINRA's Central Registration Depository ("Khan's CRD Address") and a new address that Khan provided to FINRA staff during its investigation ("Khan's New Address").<sup>10</sup> Thus, Khan received valid constructive notice of this proceeding.<sup>11</sup>

Pursuant to Rule 9215, Khan's Answer was due by July 6, 2018. Khan did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Khan is in default.

On July 30, 2018, the previous Hearing Officer assigned to this proceeding issued an Order instructing Enforcement to file a default motion. On August 27, 2018, Enforcement filed the Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,<sup>12</sup> and deem the allegations in the Complaint admitted.

#### **E. Khan Failed to Respond Timely to On-The-Record Testimony Requests**

Enforcement alleges in cause one that Khan failed to respond timely to two Rule 8210 OTR requests. It was not until FINRA initiated an expedited proceeding, pursuant to FINRA Rule 9552, that Khan appeared for his OTR.

On August 21, 2017, FINRA sent Khan a letter pursuant to FINRA Rule 8210 requesting that he provide testimony on September 8, 2017.<sup>13</sup> The letter also directed Khan to return a pre-testimony questionnaire by September 1, 2017, and it provided a FINRA staff telephone number

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<sup>8</sup> Compl. ¶ 11; Decl. ¶ 6.

<sup>9</sup> Decl. ¶¶ 10, 15; CX-3, at 19; CX-5, at 22.

<sup>10</sup> Decl. ¶¶ 10, 15; CX-3, at 19; CX-4, at 1-11; CX-5, at 22; CX-6, at 1-10. Enforcement also provided copies of the First Notice of Complaint, Complaint, and Second Notice of Complaint to the Respondent by first-class mail and email to an email address Khan provided to FINRA staff. Decl. ¶¶ 10, 15; CX-4; CX-6. Neither the first-class mailing sent to Khan's CRD Address nor the emails were returned to Enforcement. Decl. ¶¶ 11-13, 16, 18. The first-class mailing sent to Khan's New Address was returned to Enforcement. Decl. ¶ 17.

<sup>11</sup> See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at \*20-21 n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

<sup>12</sup> Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

<sup>13</sup> Compl. ¶ 12.

for Khan to call if he had any questions.<sup>14</sup> Khan did not appear for his OTR, return the pre-testimony questionnaire, or contact FINRA staff prior to his OTR.<sup>15</sup>

On September 25, 2017, FINRA sent Khan another letter pursuant to FINRA Rule 8210 requesting that he provide testimony on October 11, 2017.<sup>16</sup> Khan again did not appear for his OTR or contact FINRA staff prior to his OTR.<sup>17</sup>

FINRA sent both Rule 8210 OTR requests by certified mail and first-class mail to Khan's CRD Address.<sup>18</sup> The certified mailings and first-class mailings were returned to FINRA.<sup>19</sup>

As a result of Khan's failures to appear for OTR, on November 2, 2017, FINRA sent Khan a notice ("Pre-Suspension Notice") informing him that he would be suspended, pursuant to FINRA Rule 9552, on November 27, 2017.<sup>20</sup>

On November 27, 2017, FINRA sent Khan a notice stating that he was suspended from associating with any FINRA member ("Suspension Notice") and warning him that he would be automatically barred on February 5, 2018, if he did not request termination of his suspension.<sup>21</sup>

FINRA sent the Pre-Suspension Notice and Suspension Notice by certified mail and first-class mail to Khan's CRD Address and to an email address Khan provided to FINRA staff ("Khan Email Address").<sup>22</sup> The certified mailing of the Pre-Suspension Notice was returned to FINRA.<sup>23</sup> The certified mailing of the Suspension Notice was delivered to Khan's CRD Address.<sup>24</sup> There is no evidence that the first-class mailings or FINRA's emails were returned.<sup>25</sup>

On January 5, 2018, Khan called FINRA in response to the Suspension Notice.<sup>26</sup> During that call, Khan confirmed that he received the Suspension Notice by mail, confirmed the email

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<sup>14</sup> Compl. ¶ 15.

<sup>15</sup> Compl. ¶¶ 16-17.

<sup>16</sup> Compl. ¶ 18.

<sup>17</sup> Compl. ¶¶ 22-23.

<sup>18</sup> Compl. ¶¶ 13, 19.

<sup>19</sup> Compl. ¶¶ 14, 20.

<sup>20</sup> Compl. ¶¶ 25-26.

<sup>21</sup> Compl. ¶¶ 29-30.

<sup>22</sup> Compl. ¶¶ 25, 29.

<sup>23</sup> Compl. ¶ 27.

<sup>24</sup> Compl. ¶ 31.

<sup>25</sup> Compl. ¶¶ 27, 31.

<sup>26</sup> Compl. ¶ 32.

address FINRA staff used was valid, and provided FINRA staff with a current mailing address (i.e., Khan's New Address).<sup>27</sup>

On January 25, 2018—five months after FINRA's initial OTR request—Khan appeared for testimony and fully responded to FINRA's questions.<sup>28</sup> In light of Khan's testimony, on January 30, 2018, FINRA terminated Khan's suspension and its Rule 9552 proceeding against him.<sup>29</sup>

Khan's untimely response impeded and substantially delayed FINRA's investigation concerning his alleged undisclosed solicitation of general securities transactions and alleged influence over a customer to name him as a beneficiary.<sup>30</sup> FINRA relied upon Khan to timely appear for testimony and fully respond to questions asked in the testimony due to FINRA's limited jurisdiction to obtain information through other sources.<sup>31</sup>

#### **F. Khan Failed to Respond to Two Rule 8210 Document Requests**

In furtherance of its investigation, on March 14, 2018, FINRA sent Khan a letter pursuant to FINRA Rule 8210 requesting that Khan provide copies of all monthly account statements for a bank account belonging to Khan's sister-in-law.<sup>32</sup> Khan was required to provide the documents to FINRA staff by March 28, 2018.<sup>33</sup> He did not provide the documents or otherwise respond to FINRA's request.<sup>34</sup>

Therefore, on April 3, 2018, FINRA staff sent Khan a second letter pursuant to FINRA Rule 8210 requesting that Khan provide the documents that were requested by FINRA's March 14, 2018 Rule 8210 letter by no later than April 17, 2018.<sup>35</sup> Khan did not respond to this request either.<sup>36</sup>

FINRA sent the Rule 8210 document requests by certified mail and first-class mail to Khan's CRD Address and Khan's New Address.<sup>37</sup> FINRA staff also sent the Rule 8210

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<sup>27</sup> Compl. ¶ 32.

<sup>28</sup> Compl. ¶ 33; Decl. ¶ 23(c).

<sup>29</sup> Compl. ¶ 34.

<sup>30</sup> Compl. ¶¶ 35-36.

<sup>31</sup> Compl. ¶ 35.

<sup>32</sup> Compl. ¶¶ 39, 42.

<sup>33</sup> Compl. ¶ 42.

<sup>34</sup> Compl. ¶ 45.

<sup>35</sup> Compl. ¶ 46.

<sup>36</sup> Compl. ¶ 49.

<sup>37</sup> Compl. ¶¶ 43, 47.

document requests to Khan’s Email Address.<sup>38</sup> The certified mailings of the requests were delivered to Khan’s CRD Address.<sup>39</sup> The certified mailings of the requests sent to Khan’s New Address were returned to FINRA.<sup>40</sup> There is no evidence that the first-class mailings of the requests or FINRA’s emails to Khan attaching these requests were returned.<sup>41</sup>

Because Khan claimed that he deposited the money he received from his customer’s life insurance policy into his sister-in-law’s bank account, the bank account records were material to FINRA’s investigation concerning whether Khan engaged in potentially unethical conduct by being named as the beneficiary on a customer’s life insurance policy.<sup>42</sup> Khan controlled his sister-in-law’s bank account.<sup>43</sup> He told FINRA during its investigation that he used his sister-in-law’s bank account as his own and that she provided him with an ATM card and her personal identification number for the account.<sup>44</sup> He also told FINRA that he used the account to make deposits and withdrawals and to wire funds.<sup>45</sup> Indeed, he told FINRA that he effected a wire transfer in his sister-in-law’s bank account to send the funds he inherited from his customer to his customer’s biological children.<sup>46</sup> As a result of Khan’s failure to respond to these two Rule 8210 document requests, FINRA could not complete its investigation.<sup>47</sup>

#### **G. Khan Violated FINRA Rules 8210 and 2010**

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. FINRA Rule 8210(a)(1) requires an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation. FINRA Rule 8210(a)(2) authorizes FINRA to “inspect and copy the books, records, and accounts” of persons subject to its jurisdiction “with respect to any matter involved in the investigation . . . that is in such . . . person’s possession, custody, or control.”

FINRA Rule 8210(c) is unequivocal—it requires compliance with a Rule 8210 request. It provides that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.” The Rule is unequivocal for a reason. It is crucial to FINRA’s ability to oversee

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<sup>38</sup> Compl. ¶¶ 43, 47.

<sup>39</sup> Compl. ¶¶ 44, 48.

<sup>40</sup> Compl. ¶¶ 44, 48.

<sup>41</sup> Compl. ¶¶ 44, 48.

<sup>42</sup> Compl. ¶ 51.

<sup>43</sup> Compl. ¶¶ 41, 52.

<sup>44</sup> Compl. ¶¶ 40-41.

<sup>45</sup> Compl. ¶ 52.

<sup>46</sup> Compl. ¶ 41.

<sup>47</sup> Compl. ¶ 52.

and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.<sup>48</sup> Rule 8210 “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations” and “is at the heart of the self-regulatory system for the securities industry.”<sup>49</sup>

Failing to respond in a timely manner to requests for information is also a violation of Rule 8210.<sup>50</sup> A failure to respond promptly and completely to information requests frustrates FINRA’s ability to detect misconduct and protect investors and markets.<sup>51</sup>

A violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.<sup>52</sup>

Here, Khan failed to respond timely to two Rule 8210 requests seeking his OTR. It was not until FINRA initiated a Rule 9552 proceeding and suspended Khan from associating with a FINRA member that he appeared for testimony. Khan’s failure to appear until five months after FINRA’s initial Rule 8210 OTR request and well after the deadlines set in both Rule 8210 OTR requests delayed FINRA’s investigation.

Khan also failed to respond to two Rule 8210 requests that sought important documents related to whether Khan improperly inserted himself as the beneficiary on a customer’s life insurance policy. The requested documents were within the scope of Rule 8210 because Khan controlled the documents. He admitted that he used his sister-in-law’s account as his own, had access to the account, and used the account to make deposits and withdrawals and wire funds.<sup>53</sup> He also admitted that he used the bank account to deposit the proceeds he inherited from his customer’s life insurance policy.<sup>54</sup> Khan has never claimed—let alone established—that he could

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<sup>48</sup> See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at \*12 (NAC May 21, 2003) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”), *aff’d*, 57 S.E.C. 330 (2004).

<sup>49</sup> *Dep’t of Enforcement v. Saliba*, No. 2013037522501, 2017 FINRA Discip. LEXIS 50, at \*69 (OHO Dec. 15, 2017) (quoting *Dep’t of Enforcement v. Texas E&P Partners, Inc.*, No. 2014040501801, 2016 FINRA Discip. LEXIS 59, at \*66-67 (OHO Dec. 13, 2016)).

<sup>50</sup> *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at \*24 (Nov. 8, 2007) (finding that respondent failed to respond timely to information requests, in violation of Rules 8210 and 2010).

<sup>51</sup> *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at \*13 (Apr. 11, 2008).

<sup>52</sup> See *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*30 n.36 (Jan. 30, 2009).

<sup>53</sup> Compl. ¶¶ 41, 52.

<sup>54</sup> Compl. ¶ 41.

not obtain or access the requested documents.<sup>55</sup> Khan's failure to respond to these requests impeded FINRA's ability to complete its investigation.

Accordingly, by failing to respond timely to two Rule 8210 OTR requests, and failing to respond to two Rule 8210 document requests, Khan violated FINRA Rules 8210 and 2010.

### **III. Sanctions**

#### **A. Cause One—Untimely Response**

For failing to respond to a Rule 8210 request in a timely manner, FINRA's Sanction Guidelines ("Guidelines") recommend a fine of \$2,500 to \$37,000 and suspending the individual in any or all capacities for up to two years.<sup>56</sup> However, the Guidelines provide that, if a respondent does not respond to a Rule 8210 request until after FINRA files a complaint, then adjudicators should "presum[e] that the failure constitutes a complete failure to respond."<sup>57</sup> When a respondent fails to respond to a Rule 8210 request, the principal consideration in determining sanctions is the importance of the information requested as viewed from FINRA's perspective.<sup>58</sup>

Khan provided testimony to FINRA only after FINRA initiated an expedited proceeding against him and he was suspended from associating with any FINRA member. The Securities and Exchange Commission has repeatedly held that FINRA should not have to initiate a disciplinary proceeding in order to obtain compliance with Rule 8210 requests.<sup>59</sup> Accordingly, I treat Khan's failure to respond timely as a complete failure.<sup>60</sup>

The record does not reveal any mitigating factors only aggravating factors—including, among others, the high degree of regulatory pressure it took to compel Khan's testimony (the initiation of an expedited proceeding), the length of time it took to compel Khan's testimony (over five months), and the importance of the information FINRA requested (information related to possible improper influence over a customer). Therefore, the appropriate sanction for this violation is a bar in all capacities.

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<sup>55</sup> See *Dep't of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at \*66-69 (NAC Dec. 17, 2015) (finding FINRA's 8210 requests for third party records to be within scope of Rule 8210 because they related to FINRA's investigation of respondents' outside business activity and respondents never claimed that the requested records were not within their possession and control).

<sup>56</sup> FINRA Sanction Guidelines at 33 (2018), <http://www.finra.org/industry/sanction-guidelines>.

<sup>57</sup> Guidelines at 33 n.1.

<sup>58</sup> Guidelines at 33.

<sup>59</sup> See e.g., *Evansen*, 2015 SEC LEXIS 3080, at \*59; *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190 (2006), *aff'd*, 210 F. App'x 125 (2d Cir. 2006).

<sup>60</sup> See *id.*



## **B. Cause Two—Failure to Respond**

While Khan did not respond at all to FINRA staff's subsequent two requests for documents, he did eventually provide OTR and fully responded to FINRA's OTR questions.<sup>61</sup> Because Khan provided some information in FINRA's investigation, I apply the Guidelines for a partial failure to respond.<sup>62</sup>

The Guidelines for a partial failure to respond provide that a bar is standard unless the person can demonstrate that the information substantially complied with all aspects of the request.<sup>63</sup> The Guidelines further note that an adjudicator should "consider suspending the individual in any or all capacities for up to two years" where mitigation exists.<sup>64</sup> The principal considerations in determining sanctions for a partial but incomplete response are (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.<sup>65</sup>

These three principal considerations weigh heavily in favor of a bar. First, from FINRA's perspective, the documents were important to determining whether Khan improperly influenced a customer to name him as a beneficiary on her life insurance policy. FINRA could not complete its investigation because Khan failed to provide these documents. Second, Khan completely ignored two Rule 8210 document requests from FINRA. He did so after FINRA exerted significant regulatory pressure to compel his testimony. His failure to respond timely to his Rule 8210 OTR requests and complete failure to respond to his Rule 8210 document requests demonstrates a "longstanding indifference to his Rule 8210 responsibilities and unwillingness to abide by basic prerequisites to association with any FINRA member firm."<sup>66</sup> Third, Khan has not provided any reason for his failure to respond to the Rule 8210 document requests. The record reveals no mitigating factors. Accordingly, Khan is barred for failing to respond to FINRA's Rule 8210 document requests.

The imposition of bars for Khan's Rule 8210 violations is remedial. Failing to respond completely and timely to FINRA's Rule 8210 requests delay and impede FINRA's ability to

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<sup>61</sup> See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at \*55-56 (June 14, 2013) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at \*25 & \*27 (Dec. 20, 2011)).

<sup>62</sup> *Id.* at \*55-57.

<sup>63</sup> Guidelines at 33.

<sup>64</sup> Guidelines at 33.

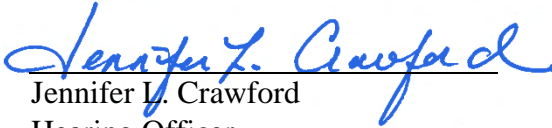
<sup>65</sup> Guidelines at 33.

<sup>66</sup> *Evansen*, 2015 SEC LEXIS 3080, at \*57.

detect misconduct that threatens investors.<sup>67</sup> A bar will protect investors by preventing Khan from impeding regulatory investigations, encouraging full and timely cooperation, and deterring others who might evade FINRA's Rule 8210 requests.<sup>68</sup>

#### IV. Order

Respondent Atiq U. Khan is barred from associating with any FINRA member in any capacity for failing to respond timely to Rule 8210 requests for on-the-record testimony, in violation of FINRA Rules 8210 and 2010. He is also barred from associating with any FINRA member in any capacity for failing to respond to Rule 8210 requests for documents, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.

  
Jennifer L. Crawford  
Hearing Officer

Copies to:

Atiq U. Khan (via email, overnight courier, and first-class mail)  
Laura Leigh Blackston, Esq. (via email and first-class mail)  
Penelope Brobst Blackwell, Esq. (via email)  
David B. Klafter, Esq. (via email)  
Jeffrey D. Pariser, Esq. (via email)

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<sup>67</sup> *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285, at \*45-46 (Apr. 1, 2016); *Evansen*, 2015 SEC LEXIS 3080, at \*63-64.

<sup>68</sup> *Evansen*, 2015 SEC LEXIS 3080, at \*63-64; *North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at \*49 (May 8, 2015) (affirming FINRA's imposition of a bar and expulsion for respondents' partial failure to respond to a Rule 8210 request).