

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEWART CLINTON MALLOY  
(CRD No. 1029931),

Respondent.

Disciplinary Proceeding  
No. 2016051299201

Hearing Officer–MJD

**DEFAULT DECISION**

December 12, 2018

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to attend an on-the-record interview during an investigation, in violation of FINRA Rules 8210 and 2010.**

*Appearances*

For the Complainant: Myles L. Orosco, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

**DECISION**

The Department of Enforcement opened an investigation into Respondent Stewart Clinton Malloy’s (“Respondent”) potential unsuitable and unauthorized trades in customer accounts. Pursuant to FINRA Rule 8210, Enforcement twice requested that Respondent appear at an on-the-record interview (“OTR”) to provide testimony. Respondent did not appear. For violating FINRA Rules 8210 and 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

Enforcement properly served Respondent with two Notices of Complaint and the Complaint. Respondent did not file an Answer to the Complaint. On November 15, 2018, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Myles L. Orosco (“Orosco Decl.”) and ten exhibits (CX-1 through CX-10). Respondent did not respond to the Default Motion.

Thus, I grant Enforcement’s Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rule 9215(f) and 9269(a). For the reasons set forth below, I find Respondent in default.

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

### **A. Background**

Respondent entered the industry in 1981 and first became associated with a FINRA member firm in 1982. He was registered with Morgan Stanley as a general securities representative from August 1996 to October 2, 2015, when the firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) to terminate his registration.<sup>1</sup> On September 12, 2016, Morgan Stanley filed an amended Form U5 reporting a customer complaint alleging that Respondent had recommended unsuitable investments.<sup>2</sup>

### **B. Jurisdiction**

Respondent was last registered with FINRA on October 2, 2015. Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (i) the Complaint was filed within two years of the effective date of the amended Form U5 that Morgan Stanley filed on September 12, 2016, and (ii) 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.<sup>3</sup>

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

This matter arose from the amendment to the Form U5 that Morgan Stanley filed on September 12, 2016, reporting allegations that Respondent had made unsuitable recommendations in the accounts of two customers who alleged they lost \$1 million as a result of his misconduct.<sup>4</sup> FINRA sought his testimony on the record. The investigation led to the filing of the Complaint in this matter.

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

Enforcement served Respondent 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 August 24, 2018, and the Complaint and Second Notice of Complaint on September 26, 2018.<sup>5</sup> In each case, Enforcement served Respondent by first-class certified mail addressed to his last known residential address recorded

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<sup>1</sup> Orosco Decl. ¶¶ 5-6; CX-1, at 1-2; CX-3.

<sup>2</sup> Orosco Decl. ¶ 8; CX-1, at 6-10.

<sup>3</sup> Orosco Decl. ¶¶ 9-10; CX-2, at 4.

<sup>4</sup> Orosco Decl. ¶ 4; CX-1, at 6-10.

<sup>5</sup> Orosco Decl. ¶¶ 12-13, 18; CX-5; CX-6.

in FINRA's Central Registration Depository ("CRD").<sup>6</sup> Thus, Respondent received valid constructive notice of this proceeding.<sup>7</sup>

Pursuant to Rule 9215, Respondent's Answer was due by October 15, 2018. Respondent did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Respondent is in default.

On October 19, 2018, I issued an Order instructing Enforcement to file a Default Motion. On November 15, 2018, Enforcement filed a Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,<sup>8</sup> and deem the allegations in the Complaint admitted.

### **E. The Charges and Applicable Rules**

The Complaint contains one cause of action. It alleges that Respondent violated FINRA Rules 8210 and 2010 by twice failing to attend an OTR to provide sworn testimony, in May and June 2018.

Rule 8210 requires persons subject to its jurisdiction to provide information to FINRA upon request. Rule 8210 is considered to be among FINRA's most important tools for investigating potential wrongdoing.<sup>9</sup> "FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."<sup>10</sup> Furthermore, "[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."<sup>11</sup>

Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to "provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation." Rule 8210(a)(2) authorizes FINRA to "inspect and copy the books, records, and accounts" of

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<sup>6</sup> Orosco Decl. ¶¶ 12, 16; CX-5; CX-6; CX-8; CX-9. Enforcement also emailed copies of the Complaint and the First and Second Notices of Complaint to an email address Respondent had provided. Orosco Decl. ¶¶ 14, 17; CX-7; CX-10. Enforcement is not aware of any other address for Respondent besides the one recorded in CRD. Orosco Decl. ¶¶ 11, 20.

<sup>7</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>8</sup> Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

<sup>9</sup> See *Dep't of Mkt. Regulation v. Sciascia*, No. CMS040069, 2006 NASD Discip. LEXIS 22, at \*11 (NAC Aug. 7, 2006) (analyzing NASD Procedural Rule 8210, the predecessor to FINRA Rule 8210).

<sup>10</sup> *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at \*12 (NAC Dec. 12, 2012).

<sup>11</sup> *Id.* at \*13 (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*21 (Jan. 30, 2009)).

persons subject to its jurisdiction “with respect to any matter involved in the investigation ... that is in such ... person’s possession, custody, or control.” Rule 8210(c) provides that: “No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.” It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.

### **1. Respondent Failed to Appear at May 2018 OTR**

On February 28, 2018, Enforcement sent Respondent a letter (“First Letter”), pursuant to Rule 8210, requesting that he appear for an OTR at FINRA’s offices in New York City on May 30, 2018. Enforcement mailed the request to Respondent at his last known residential address recorded in CRD.<sup>12</sup> Enforcement also sent the First Letter to an email address that Respondent had provided to FINRA staff. Respondent never responded to Enforcement’s request. Respondent did not appear for the OTR on May 30, 2018.<sup>13</sup>

### **2. Respondent Failed to Appear at June 2018 OTR**

On May 30, 2018, Enforcement sent Respondent a letter (“Second Letter”), pursuant to Rule 8210, requesting that he appear for an OTR at FINRA’s offices in New York City, on June 6, 2018. Enforcement mailed the Second Letter to the last known address of Respondent as recorded in CRD.<sup>14</sup> Respondent did not appear for the OTR on June 6, 2018.<sup>15</sup>

By failing to provide testimony at an OTR, as alleged in the Complaint, Respondent violated FINRA Rules 8210 and 2010.<sup>16</sup>

## **II. Sanctions**

FINRA’s Sanction Guidelines (“Guidelines”) recommend that if an individual does not respond in any manner to a request for information a bar in all capacities should be standard.<sup>17</sup> The Guidelines further provide that when an individual fails to respond the principal consideration in determining sanctions is the importance of the information requested as viewed from FINRA’s perspective.<sup>18</sup>

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<sup>12</sup> Orosco Decl. ¶¶ 26-28; Complaint (“Compl.”) ¶¶ 9-12.

<sup>13</sup> Orosco Decl. ¶ 32; Compl. ¶ 18.

<sup>14</sup> Orosco Decl. ¶ 33; Compl. ¶¶ 19-21.

<sup>15</sup> Orosco Decl. ¶ 34; Compl. ¶ 25.

<sup>16</sup> FINRA Rule 2010 requires a member to “observe high standards of commercial honor and just and equitable principles of trade.” It is well-established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at \*29-30; *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

<sup>17</sup> FINRA Sanction Guidelines at 33 (May 2018), [http://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

<sup>18</sup> *Id.*

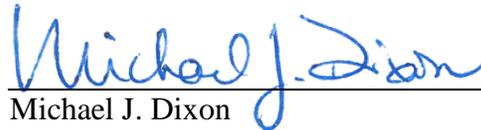
FINRA needed Respondent's testimony to perform its regulatory function to fully investigate potential misconduct. Enforcement was investigating serious allegations that Respondent had engaged in unsuitable recommendations and excessive trading in the accounts of customers who alleged that he caused them damages of \$1 million. Respondent's failure to provide sworn testimony prevented FINRA from fulfilling its regulatory responsibilities.<sup>19</sup> The evidence reveals no excuse for Respondent's failure to respond to FINRA's requests.

I find that there are no mitigating factors. Thus, the appropriate sanction is a bar in all capacities.

### **III. Order**

Respondent Stewart Clinton Malloy 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.

  
Michael J. Dixon  
Hearing Officer

Copies to: Stewart Clinton Malloy (via email, overnight courier, and first-class mail)  
Myles L. Orosco, Esq. (via email and first-class mail)  
Gina Petrocelli, Esq. (via email)  
Sara Raisner, Esq. (via email)  
Lara Thyagarajan, Esq. (via email)

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<sup>19</sup> *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at \*19-20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities).