

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	Disciplinary Proceeding
v.	:	No. C02990034
	:	
I.C. RIDEAU, LYONS & CO., INC.	:	
(BD #17974),	:	
Los Angeles, CA	:	
	:	Hearing Officer - DMF
	:	
LAMAR A. LYONS, SR.	:	
(CRD #1788438)	:	
Marina Del Rey, CA	:	
	:	<b>HEARING PANEL DECISION</b>
	:	
JOYCE A. GREEN	:	
(CRD #1880829)	:	
Pasadena, CA	:	
	:	February 8, 2000
and	:	
Altadena, CA	:	
	:	
Respondents.	:	

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*Digest*

The Department of Enforcement filed a Complaint alleging that respondents I.C. Rideau, Lyons & Co., Inc. (Rideau), an NASD member firm, Lamar A. Lyons, Sr., Chief Executive Officer of Rideau, and Joyce A. Green, Rideau's Financial and Operations Principal (FINOP), violated NASD Rules 8210 and 2110 by failing to provide information requested by NASD Regulation, Inc. staff. All three respondents filed Answers and requested a hearing. Prior to the scheduled hearing, however, Enforcement filed a motion for summary disposition, pursuant to

NASD Rule 9264. Respondents Rideau and Lyons filed an opposition to the motion, but Green did not file any response.

The Hearing Panel determined that there was no genuine issue as to any material fact, and that Enforcement was entitled to summary disposition as a matter of law. Therefore, the Hearing Panel held that respondents violated Rules 8210 and 2110 by failing to respond in a complete and timely manner to NASDR staff requests for information. As sanctions, the Hearing Panel ordered that Rideau, Lyons and Green be fined \$20,000, jointly and severally, and that Green be suspended from associating with any member firm in any capacity for 30 days.

#### *Appearances*

Sylvia M. Scott, Esq., Regional Counsel, Los Angeles, CA (Rory C. Flynn, Washington, DC, Of Counsel) for the Department of Enforcement.

Vivian H. Gray, Esq., Los Angeles, CA for respondents I.C. Rideau, Lyons & Co., Inc. and Lamar A. Lyons, Sr.

Joyce A. Green, pro se.<sup>1</sup>

### **DECISION**

#### **Procedural History**

The Department of Enforcement filed the Complaint in this matter on June 1, 1999, alleging in two Causes of Complaint that respondents I.C. Rideau, Lyons & Co., Inc. (Rideau), Lamar A. Lyons, Sr., and Joyce A. Green violated NASD Rules 8210 and 2110 by failing to respond to requests for information from NASD Regulation, Inc. staff. The first Cause charged that respondents failed to provide complete and timely responses to requests seeking certain

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<sup>1</sup> Green filed her Answer pro se, but Gray later appeared on behalf of all three respondents, until Gray withdrew her appearance on Green's behalf by motion dated September 28, 1999. The Hearing Officer granted Gray's motion to withdraw on September 29, 1999.

information in connection with NASDR's review of Rideau's Financial and Operational Combined Uniform Single (FOCUS) Report for the quarter ending March 31, 1998. The second Cause charged that respondents failed to provide complete and timely responses to requests seeking information concerning Rideau's September 30, 1998 FOCUS Report. All three respondents answered the Complaint and requested a hearing.

Prior to the scheduled hearing, Enforcement filed a motion for summary disposition, pursuant to Rule 9264. In support of the motion, Enforcement offered the declarations of NASDR examiners Catherine M. Ellis (Ellis Decl.) and Joseph R. Smith (Smith Decl.), and 20 Complainant's Exhibits (CX 1-20). Rideau and Lyons filed an opposition to the motion, supported by declarations of respondent Lyons (Lyons Decl.) and Rideau's Chief Financial Officer, Winston Brooks (Brooks Decl.), and 10 Respondents' Exhibits (RX 1-10). Green did not file any response to Enforcement's motion. After considering Enforcement's motion and supporting materials and respondents' opposition and supporting materials, for reasons set forth in detail below, the Hearing Panel granted the motion.

#### Facts

Rideau has been a member of the NASD since July 1987. Lyons has been associated with Rideau since May 1992 as its Municipal Securities Principal and Chief Executive Officer. Green has been associated with Rideau as its Financial and Operations Principal ("FINOP") since May 1992. (CX 1.) The charges in the Complaint relate to requests for information concerning Rideau's March 31, 1998 and September 30, 1998 FOCUS Reports.

1. The March 1998 Focus Report

Green, on behalf of Rideau, submitted a FOCUS Report for Rideau for the period ending March 31, 1998, which listed as Rideau's only "Allowable Assets" cash in the amount of \$121,900, and "Receivables from brokers or dealers ... Other" in the amount of \$56,120. (CX 2.) In order to determine whether the Report was accurate in this regard, NASDR staff examiner Catherine A. Ellis sent a letter on April 15, 1998, pursuant to Rule 8210, addressed to Lyons and Green at Rideau. (CX 3.) Ellis asked Green and Lyons to send her "financials for the month of March, 1998. Specifically, ... a balance sheet, income statement, net capital computation, and support for all allowable assets (bank statements and reconciliations, securities statements, etc.) [as well as] support for any accounts receivable that are being treated as an allowable asset."

Ellis' April 15 letter set a deadline of April 24 for a response, but Green requested an extension. In response, Ellis sent an April 28 letter to Lyons and Green at Rideau reiterating her request, but extending the deadline for responding until May 1. (CX 4.) On May 1, Ellis received a response from Green that included various documents to support the cash asset, but nothing to support the March receivables. (CX 5.) On June 23, Ellis called Green seeking support for the March receivables, but Green was out, so she spoke to Lyons. (Ellis Decl. ¶30.) Lyons asked for clarification of her request, and Ellis faxed him copies of her April letters. (CX 6.) "Lyons assured [Ellis] that he would personally undertake to determine why the requested documents had not been produced by Green." (Ellis Decl. ¶30.)

By August 4, Ellis had still not received any support for the receivables claimed in the March FOCUS Report, so she called Green. Once again, Green was not available, and she spoke to Lyons. She reiterated her request for support for the March receivables. "Lyons told [her] that

he would relay [their] conversation to Green and that the matter would be taken care of.” (Ellis Decl. ¶31.) Ellis called Rideau again on August 5 and spoke to Green. Green assured Ellis she would receive the support for the March receivables on August 6. Ellis did not receive anything from Green on August 6, so she called Lyons and told him Green had not produced the required support for the receivables. Lyons told Ellis he would remind Green to provide the support. Lyons also repeated an earlier statement that he was having “problems” with Green and was trying to hire a new FINOP, and told Ellis to keep him informed of the information she needed from Rideau. (Ellis Decl. ¶32.)

Ellis did not receive any information by August 7. Therefore, she sent another letter to Green at Rideau, pursuant to Rule 8210, reiterating her request for “supporting documentation for the firm’s accounts receivable for March 1998 ....” (Ellis Decl. ¶¶33-34; CX 7.)<sup>2</sup> When she did not receive a response to the August 7 letter, Ellis sent another letter to Green at Rideau on August 17, pursuant to Rule 8210, again stating her request for documentation to support the March receivables. The August 17 letter required a response by August 21. (Ellis Decl. ¶35; CX 8.)

At last, on August 21, Ellis received a fax from Green with a cover letter and two attached pages. In the cover letter, Green apologized for not getting the information to Ellis “as originally promised,” but said “[t]here have been a number of circumstances occurring which have precluded my availability in the office.” With regard to support for the March receivables, Green stated rather cryptically: “On Monday August 17, 1998, a copy of the wire for the \$45,000 was sent. I am resending the wire along with information on an additional financing which

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<sup>2</sup> Ellis’ August 7 letter mistakenly stated that Rideau’s response was due on April 14, rather than on August 14.

covers the accounts receivable.” (Ellis Decl. ¶36; CX 9.) The first page accompanying Green’s letter was a copy of a letter from Goldman, Sachs & Co. to Rideau referring to a certain bond issue. According to Goldman Sachs, all the described bonds had been disposed of, and Goldman Sachs was enclosing with the letter a check in the amount \$5,422.78 “in full and final settlement of your interest in this account ...” The second page accompanying Green’s letter was a “final pricing wire” to Rideau concerning another bond issue. The wire did not, on its face, state that Rideau would receive any specific amount as a result of its participation in the bond issue. Green’s letter did not attempt to explain the wire, or why she believed it supported the receivables.<sup>3</sup> (Id.)

On September 17, 1998, Ellis sent another letter (mistakenly dated August 17) to Lyons and Green at Rideau. In this letter, Ellis reviewed the events that had occurred, explained that “[w]e are unable to determine how [the “final pricing wire” enclosed with Green’s August 21 letter] relates to your [March] receivable,” and requested “a copy of the supporting documentation [for the March receivables] such as a copy of the check that you received for the receivable, or the statement or invoice showing the amount of the receivable and the payee. Neither the pricing wire nor the letter which we received from you identify a receivable in the amount of \$56,120.” The letter also requested a description of the circumstances that had precluded Green’s availability in the office. The letter stated that the recipients should “furnish the above documents to the District Office by ... September 25, 1998.” (Ellis Decl. ¶37; CX 10.)

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<sup>3</sup> In his declaration, Lyons states that the “final pricing wire” contains information that “allows the syndicate participants including [Rideau], who was named at the top of the wire, to estimate the amount of [its] commission. This amount, however, is only an approximation since the senior manager of the deal would first pay out all expenses in the order of priority indicated in the wire.” (Lyons Decl. ¶14.) None of that was evident from the face of the wire or the information in Green’s letter.

There was no response by September 25. On September 28, however, Ellis' supervisor sent Ellis an e-mail stating that she had spoken to Lyons, who told her that he would be replacing Green as Rideau's FINOP and that he would "get the information to you on or before Wednesday, September 30, 1998 the General Ledger [sic] will be sent to you or [another examiner]." (Ellis Decl. ¶39; CX 11.) Ellis did not receive any additional support for the March receivables by September 30. (Id.) Ellis, her supervisor and another examiner held a telephone conference with Lyons on October 13, 1998, during which, according to Ellis' notes, they "told him he still needed to resolve outstanding issues with the staff's routine examination done in April 1998 (membership agreement and other issues) and told him the requested documentation still had not been received and was needed." (CX 17, p. 3.) As described below, Ellis did not receive all of the support for the March receivables until April 1999.

## 2. The September 1998 Focus Report

Green also submitted a FOCUS Report for Rideau for the quarter ending September 30, 1998, which listed as Rideau's "Allowable Assets" \$77,150 in cash and "Other assets" of \$51,514. (CX 12.) In connection with her review of this Report, Ellis sent a letter dated November 4, 1998 to Lyons at Rideau, pursuant to Rule 8210, requesting "a balance sheet, income statement, net capital computation, and support for all allowable assets (bank statements and reconciliations, securities statements, etc.)." Ellis stated she "would also need support for any accounts receivable that are being treated as an allowable asset." The November 4 letter required a response by November 17. (CX 13.)

Between November 9 and 11, Lyons and Ellis exchanged several voice-mail messages regarding Ellis' request, but they did not speak directly to each other. On the morning of

November 9, Lyons left a message for Ellis saying that “he didn’t understand what [Ellis] was asking for.” The same morning, Ellis “[l]eft [a] detailed message on [Rideau’s] voice-mail restating the request specifically stating what [she] needed.” That afternoon, Ellis received another message from Lyons saying “he still didn’t understand even after listening to [her] return message earlier that morning. [Ellis] called him back and left another voice-mail restating everything from the earlier phone call ....” On November 10, however, Ellis “[g]ot another message from Lyons.” In response, she “left a third VERY clear message going through each item that [she] requested.” On November 11, Ellis “[l]eft another message for Lyons on [Rideau’s] voice mail clarifying what specific documents [she] needed.” (CX 17, p. 4.) Ellis admitted, however, that in leaving all these messages for Lyons, “as virtually all of the requested documents [were] standard business and accounting records (i.e. balance sheet, income statement, net capital computation, etc.), [she] could do little more than reiterate what was in the request letter.” (Ellis Decl. ¶44.)

Ellis did not receive a response to her November 4 letter, so she sent Lyons another letter, dated November 19, 1998, reiterating her request. The November 19 letter required a response by November 25. (Ellis Decl. ¶45; CX 14.) When she received no response to the November 19 letter, she sent a third letter on November 27 reiterating the request. The November 27 letter required a response by December 4. (Ellis Decl. ¶46; CX 15.)

Ellis did not receive any response to her letters until December 17, 1998, when she received a faxed letter from Lyons. In the letter, Lyons stated he had received both Ellis’ November 19 letter and her November 27 letter on December 7. He referred to past conversations with NASDR staff, in which he had “shared with [them] that adjustments were



being made. The adjustments are taking more time than originally anticipated.” Lyons also stated that Rideau had decided to “out source its bookkeeping and accounting. The entity/person responsible for generating the general ledge[r] and doing the bookkeeping was not available, impacted by the flu.” Lyons said Rideau had received a trial balance and income statement on December 7, which was “being reviewed by the FINOP” and that “the check register had to be reconciled.” Lyons said he had called Ellis “to review the ‘scope’ of the support documentation” and that based on the responses he had received, he was “left ... with the impression ... that [Ellis thought] I knew or should have know[n] what was the scope of the detail requested. It is clear my sincere intentions were not understood by your office.” Lyons did not, however, include with his letter any documentation or information to support the “Other assets” claimed in the September FOCUS Report. (CX 16.)

### 3. Support for the Receivables and Other Assets

Eventually, the NASDR staff obtained documentation concerning the March “receivables” and the September “Other assets.” As it turned out, both of these amounts referred to the same funds, which Rideau expected to collect as a result of its participation in the bond offering referred to in the “final pricing wire” that accompanied Green’s August 21 letter. Lyons included some supporting documents with a letter to counsel for Enforcement dated February 11, 1999; sent additional documents to Enforcement counsel on February 12; and, in a letter to Enforcement counsel dated February 16 provided some explanation of the underlying transaction and Rideau’s basis for believing it was owed a receivable. (CX 19.)

The NASDR staff did not receive complete documentation for the claimed assets, however, until after another examiner requested information in March 1999 to support a \$46,000

receivable claimed as an “Allowable Asset” in Rideau’s FOCUS Report for the period ending January 1999. In response to that request, Lyons provided a more complete explanation of Rideau’s calculation of the amount it expected to receive as a result of its participation in the bond issue in question, and, ultimately, a copy of an April 1999 check to Rideau from the lead underwriter of the bond issue. In addition, the NASDR staff received information about the bond issue directly from the lead underwriter. (CX 20-21.) All of this information showed that Rideau had overstated the value of the receivables in its March 1998 FOCUS Report and the value of the “Other assets” in its September 1998 FOCUS Report, but, after corrections to the Reports, Rideau did not fall below its minimum net capital. (Ellis Decl. ¶¶42, 47.)

#### 4. Events from the Perspective of Lyons and Rideau

As explained above, Green did not respond to Enforcement’s motion for summary disposition. Rideau and Lyons, however, did respond. They did not deny receiving the various Rule 8210 requests sent by the examiner, but they did offer an explanation for their delay in responding.

Rideau’s primary business is municipal and fixed income securities. Lyons and Green are both part-owners of Rideau. Lyons is Chief Executive Officer and Municipal Securities Principal for Rideau. Lyons has no professional background in financial operations, bookkeeping, accounting or fiscal operations. Green as Rideau’s FINOP reports directly to the Finance Committee of Rideau’s Board of Directors, which is chaired by Rideau’s Chief Financial Officer. (Lyons Decl. ¶¶1-5.)

With regard to the March receivables, Lyons received the request for information from Ellis in April 1998 and, noting that it called for documents relating to the March FOCUS report,

gave it to Green for a response. Initially, Lyons believed Green had sent the requested information to Ellis in May, but in June he received a call from Ellis asking why the requested documents had not been provided. After the call Lyons told Green to provide responsive documents to Ellis, and Green assured him she would do so. (Lyons Decl. ¶¶6-10.)

Also during June, NASDR examiner Joseph R. Smith conducted an examination at Rideau. During the examination, Smith requested support for receivables listed as assets in Rideau's April 1998 FOCUS Report, which, it turned out, were the same receivables listed in the March FOCUS Report. Lyons gave Smith the "final pricing wire" that Green subsequently sent to Ellis, and orally explained why Rideau believed the information in that wire could be interpreted to indicate an approximate amount that Rideau expected to receive from its participation in the bond issue. According to Lyons, initially Smith did not accept the final pricing wire and his explanation as adequate support for the April receivables, but Smith's supervisor "interceded and explained to Smith ... the uniqueness and details of a municipal securities transaction." At that point, Lyons assumed that the information and explanations he provided to Smith and his supervisor satisfied them as to the April receivables, and also provided a satisfactory response to Ellis' requests for information regarding the March receivables. (Lyons Decl. ¶19.) Lyons' assumptions in this regard, however, were unjustified in light of the Exit Conference Summary Form he signed on June 24, 1998, at the conclusion of Smith's examination. Under the heading "Open Items," the Form stated: "The firm is reminded to supply the following: ... Backup Accounts Receivable ...." (Smith Decl. Exhibit B.)

Furthermore, Lyons admits he received additional calls from Ellis on August 4 and 6, 1998, complaining she had still not received adequate support for the March receivable. Lyons

told Ellis he “would remind Green to respond to the requests.” He says when he spoke to Green, however, she reminded him about the information and explanation that had been provided to Smith, and told him she would send an explanatory letter to Ellis. (Lyons Decl. ¶21.) As explained above, Green faxed Ellis a letter and copies of two documents, including the “final pricing wire,” on August 21 with no explanation of the significance of the documents, or why Rideau believed they supported the March receivables. Lyons received a copy of Green’s letter two weeks after Green sent it, and was “unclear” as to the meaning of Green’s reference in her letter to “the wire for the \$45,000.00.” He says around that time Green’s presence in the office was infrequent because of “family problems.” (Id. at ¶23.)

Lyons also received Ellis’ September 17 letter in which she stated she was “unable to determine how [the ‘final pricing wire’] relates to your [March] receivable,” and requested additional supporting documentation. By that time, “[b]ecause of Green’s frequent absences or part-time days, [Lyons had begun] to take affirmative steps to have Green’s duties handled by an additional FINOP,” William Carson, who had come on board in August 1998. Green, however, remained Rideau’s “primary FINOP.” (Id. at ¶¶24-25.) Lyons passed along Ellis’ requests to Carson and Winston Brooks, Rideau’s Chief Financial Officer, and “attempted to have them recreate the information Ellis initially requested.” (Id. at ¶26-27.) Lyons does not, however, claim that he contacted Ellis to explain what he was doing or to seek an extension of time to respond. Instead, even though he knew Rideau had not responded to Ellis’ September 17 letter, he argues that Rideau should be excused because, he says, during the October 13 telephone call with Smith, Ellis and their supervisor, Ellis did not mention her outstanding request for additional support for the March receivables. (Lyons Decl. ¶31.)

Lyons also admits he received Ellis' November 4 request for documents supporting the September FOCUS Report. (Id. at ¶28.) Lyons discussed the request with Brooks, who noted that, instead of listing "receivables," the September FOCUS Report listed "Other assets." According to Lyons, Brooks told him that the receivables shown in the March Report should not have been carried in the September Report. Lyons says that, for some reason, this led him to conclude he could not produce the documents Ellis was seeking. (Id. at ¶¶29-30.) Again, however, Lyons does not claim that he explained these problems to Ellis, or sought an extension of time to respond to her request.

Beginning in December, Lyons spoke to Enforcement counsel about Ellis' outstanding requests. As noted above, he began sending Enforcement counsel responsive information in February 1999. (Id. at ¶¶31-32.) Lyons does not contend that any of this information was unavailable to Rideau when Ellis sent her requests. In March 1999, Lyons received requests for information from another NASDR examiner, Lori Gilchrist, seeking support for receivables claimed on Rideau's January 1999 FOCUS Report, which related to the same transactions underlying the March receivables and the September "Other assets." Lyons found Gilchrist's letter "crystal clear," and responded by sending Gilchrist "the same Final Pricing Wire that was given to Smith in June, 1998 and again to Ellis in August, 1998 with an oral explanation of its significance." Lyons argues that "Smith and Ellis rejected [the final pricing wire], while Gilchrist appears to have accepted it and acknowledged it." (Id. at ¶¶33-35.)

### Discussion

The undisputed facts establish that the respondents failed to respond to requests for information sent pursuant to Rule 8210 in a complete and timely manner. They thereby violated

Rules 8210 and 2110. The only issue is what sanctions should be imposed on respondents for these violations.

Rule 8210(a)(1) provides that, in connection with an investigation or examination, the Association staff may require a member or a person associated with a member to provide information and may inspect and copy the books and records of the member or associated person with respect to any matter involved in the investigation or examination. This provides a means for the Association to carry out its regulatory functions in the absence of subpoena power, and is a “key element in the NASD's effort to police its members.” In re Richard J. Rouse, 51 S.E.C. 581 (1993). Any failure to provide information fully and promptly undermines the NASD’s ability to carry out its regulatory mandate. See In re Brian L. Gibbons, Exch. Act Rel. No. 37170, 1996 SEC LEXIS 1291, at \*7 (1996), aff’d, 112 F.3d 516 (9th Cir. 1997) (table). A violation of Rule 8210 is also a violation of Rule 2110. Id. at \*9.

There is no dispute that Examiner Ellis began requesting information from Rideau to support the March receivables, pursuant to Rule 8210, in April 1998. She directed her requests specifically to Lyons, as Rideau’s CEO, and to Green, as Rideau’s FINOP, and, as a result, they both had a duty to ensure that Rideau responded in a complete and timely manner. See Department of Enforcement v. Fitzpatrick, No. C10970176 (NAC June 14, 1999), citing Rouse, 51 S.E.C. at 585 (“The duty to respond is in no way dependent upon one’s status or title within in [sic] a firm but falls upon any associated person to whom a request is directed.”). In spite of Ellis’ repeated requests, until August 1998 neither Lyons nor Green gave her any information to support the March receivables. In August, Green sent Ellis copies of a “final pricing wire,” but did not explain how that document supported the claimed receivables, and respondents did not respond to Ellis’ September 17 request for additional support for the March receivables. The

respondents also failed to provide any information in response to Ellis' repeated requests for information to support the September "Other assets" until February 1999, months after a response was due.

Respondents argue, first, that Ellis' initial requests for information were too vague, in contrast to Gilchrist's request in March 1999. Ellis' April 15 letter asked for "financials" including "support for any receivables that are being treated as an allowable asset." (CX 3.) This clearly gave respondents notice of the need to provide some support for the receivables, yet initially, they provided no support at all. Respondents cannot blame their failure in that regard on Ellis. Similarly, Ellis' communications after Green sent her the "final pricing wire" clearly stated that she needed an explanation of how that document supported the March receivables. The only specific greater clarity in Gilchrist's letter cited by Lyons was her statement that if the receivables cited in Rideau's January 1999 FOCUS Report were the same receivables that Rideau had claimed in 1998, based on the information they had, the NASDR staff believed the receivables were "due to a municipal underwriting." (Lyons Decl. ¶35.) Lyons seems to think this was significant, but, in fact, it is clear that what both Ellis and Gilchrist were seeking was support for Rideau's claim that it had a basis for believing it would receive the specific amounts claimed in its FOCUS Reports as a result of this underwriting. It appears that they did not obtain satisfactory support for those amounts until they obtained not just the "final pricing wire," but also back-up documentation and a clear explanation of how those documents supported the specific receivable amounts claimed by Rideau.

Next, Lyons argues that he reasonably relied on Green, as Rideau's FINOP, to respond to Ellis' request, and that she assured him she had done so. When Lyons continued to receive repeated requests from Ellis for the information, however, he was on notice that Green had failed

to give Ellis a satisfactory response to her requests. Similarly, Lyons contends that the “final pricing wire” that Green sent to Ellis on August 21, along with his prior oral explanation to Smith of the significance of the wire, should have satisfied her. Ellis made it clear in her September 17 letter to Lyons and Green, however, that she was “unable to determine how [the final pricing wire] relates to your receivable.” (CX 10.) Even if Lyons believed his oral explanation to Smith was adequate, when he received the September 17 letter he was put on notice that it did not meet Ellis’ needs, and he was obliged to respond directly to Ellis’ requests.

Lyons also argues that in November 1998, when he received Ellis’ requests for support for the “Other assets” claimed in Rideau’s September FOCUS Report, he promptly consulted with Rideau’s Chief Financial Officer and outside accountant, determined that, because the FOCUS Report was in error, he could not provide the support that Ellis was seeking, and put the CFO and outside accountant to work correcting Rideau’s financial statements. In addition to these internal steps, however, Lyons was required to respond to Ellis’ requests, either by providing responsive information, or by explaining that Rideau could not do so and requesting an extension of time to respond. In light of Ellis’ request, silence was not an option.

The requirements imposed upon members and associated persons who receive a Rule 8210 request are quite clear. As the SEC explained in Rouse, “at the very least, [respondents] should have contacted [NASDR] staff to explain why [they] believed [the] deadlines could not be met.” The SEC emphasized that “[a]ny problems or concerns that a member firm or its associated persons might have in responding to an information request in a timely or complete manner should be raised, discussed and resolved with the NASD in the cooperative spirit and prompt manner contemplated by the rules.” And as the SEC has explained, once respondents knew that the NASD was seeking information from them, they “had a responsibility to determine



what information was being sought and to provide that information directly to the NASD.” In re Ashton Noshir Gowadia, Exch. Act Rel. No. 40410, 1998 SEC LEXIS 1887, at \*8 (Sept. 8, 1998). The undisputed facts set forth above establish that respondents did not take these steps, and thus they did not fulfill their obligations under the Rules. Therefore, the Hearing Panel finds that they violated Rules 8210 and 2110.

### Sanctions

The Hearing Panel finds that the applicable Sanction Guidelines are the provisions that address failure to respond to requests for information in a timely manner. Those provisions recommend that a Hearing Panel impose a fine of \$2,500 to \$25,000 and “consider suspending [the] responsible individual(s) in any or all capacities and/or suspending [the] firm with respect to any or all activities or functions for a period of up to 30 business days.” NASD Sanction Guidelines, p. 31 (1998 ed.). In this case, Enforcement requests that Rideau be fined \$30,000; that Lyons be fined \$30,000, suspended in all principal capacities for two years, and suspended in all other capacities for six months; and that Green be fined \$15,000, suspended in all principal capacities for one year, and suspended in all other capacities for three months.

Respondents’ violations were serious and frustrating to NASDR staff who were trying to review Rideau’s FOCUS Reports. Accordingly, substantial sanctions are appropriate. The Hearing Panel has concluded, however, that under the circumstances presented, the sanctions sought by Enforcement would be punitive, rather than remedial.

Rideau is a small firm. The NASDR staff’s analysis showed that Rideau had total revenue of \$18,120 for the first quarter of 1998; total revenue of \$36,720 for the second quarter of 1998; and total revenue of \$16,920 for the third quarter of 1998. During this period, the firm had total after-tax income of just over \$5,000. (CX 12, p. 13.) As of September 30, 1998,

Rideau's FOCUS Report claimed net capital of \$122,434, which, according to Ellis, included an asset that had been over-valued by more than \$12,000. (CX 12, p. 4; Ellis Decl. ¶47.)

Furthermore, the firm's business is primarily municipal and fixed income securities, and Lyons is the firm's only Municipal Securities Principal. Therefore, the sanctions sought by Enforcement would impose a great hardship on the firm, if they did not put it out of business altogether.

The facts in this case suggest ineptitude and miscommunication on the part of the respondents, rather than obdurate refusal to cooperate or a deliberate attempt to impede the NASDR's investigations. Respondents were not concealing information. Rideau apparently did have receivables and "Other assets" as claimed in the March and September FOCUS Reports (although it turned out their value was less than Rideau claimed in the Reports). Respondents, however, failed to provide supporting documentation and explanations to NASDR staff in spite of repeated requests. This appears to have been due largely to the respondents' inability to communicate with NASDR staff in a clear, effective and timely manner. Ellis' numerous letters repeating identically phrased requests; both Smith's and Lyons' versions of communications during Smith's examination of Rideau; the exchange of repeated telephone messages between Lyons and Ellis in November 1998, without the two ever speaking directly to each other; and Lyons' December 17 letter all suggest mounting frustration on both sides resulting from a breakdown in communications. The Hearing Panel finds that respondents bear the primary responsibility for this breakdown, because the requests for information were reasonably clear and, if respondents did not understand precisely what information the NASDR staff needed, it was up to respondents to work with the staff until they obtained whatever clarification they needed. Taking all these facts into consideration, the Hearing Panel concludes that this case calls for sanctions that are strong and meaningful, but not Draconian.

The Hearing Panel finds that, although the NASDR Staff sought information as to both Rideau's March 1998 FOCUS Report and its September 1998 FOCUS Report, respondents failure to provide the requested information in a timely manner reflected a single systematic problem, and therefore a single sanction is appropriate. Considering the length of time and number of requests needed to obtain the information, the Hearing Panel also concludes that a fine at the upper range of the Sanction Guidelines' recommendations is appropriate. The Hearing Panel has determined, however, that the fine should be imposed on the respondents jointly and severally, because the violation appears to reflect an overall failure of the firm and the individual respondents to address Ellis' requests. The Hearing Panel also notes that, because both Lyons and Green are part owners of Rideau, neither one can avoid feeling some impact from the fine, even if it is paid by Rideau. Therefore, the Hearing Panel will order that respondents be fined \$20,000, jointly and severally, for their violations of Rules 8210 and 2110.

In light of the very substantial fine, the Hearing Panel does not believe suspensions of Lyons and Green of the magnitude requested by Enforcement are required to accomplish the Association's remedial goals. As a practical matter, suspending Lyons would impose an even greater monetary penalty on Rideau, because Lyons is the firm's only Municipal Securities Principal. On the other hand, Green is not the firm's only FINOP and the Hearing Panel finds that her failures to respond adequately to Ellis' requests for support for the March receivables precipitated this entire disciplinary matter, which justifies an additional penalty for her. Therefore, the Hearing Panel will order that Green be suspended in all capacities for 30 days.

#### Conclusion

The Hearing Panel finds that respondents I.C. Rideau, Lyons & Company, Inc., Lamar A. Lyons, Sr., and Joyce A. Green violated Rules 8210 and 2110 by failing to respond to requests

for information in a timely manner. As sanctions, respondents are fined \$20,000, jointly and severally, and Green is suspended in all capacities for a period of 30 days. These sanctions shall take effect on a date set by the NASD, but not sooner than 30 days after this Decision becomes the final disciplinary action of the NASD.<sup>4</sup>

**HEARING PANEL**

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By: David M. FitzGerald  
Deputy Chief Hearing Officer

Dated: Washington, DC  
February 8, 2000

Copies to:

I.C. Rideau, Lyons & Co., Inc. (via overnight delivery and first class mail)  
Lamar A Lyons, Sr. (via overnight delivery and first class mail)  
Joyce A. Green (via overnight delivery and first class mail)  
Vivian Gray, Esq. (via overnight delivery and first class mail)  
Sylvia M. Scott, Esq. (electronically and via first class mail)  
Rory C. Flynn, Esq. (electronically and via first class mail)

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<sup>4</sup> The Hearing Panel considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.