John J Plunkett

[redacted]


The Office of the Secretary

United States Securities and Exchange Commission

100 F Street, N.E.

Mail Stop 1090 – Room 10915

Washington D.C. 20549

Re: John Joseph Plunkett – Complaint # 2006005259801

3-14810r

January 16, 2014

Dear Commissioners:

I hereby file my application for review of the above referenced FINRA Complaint/Case Number decision of the National Adjudicatory Council ("NAC") dated December 17, 2013. This decision is in response to the Commission Remand dated June14,2013 to the NAC.

The basis for the appeal is that I am requesting the Commission to review the NAC decision in both causes of action due to the new information submitted by FINRA to the NAC, which was in response to the Remand from the Commission received by the NAC.

It should be noted that I did not receive the notice of decision via certified mail, but only via regular US Postal Service mail on December 21,2013.

Enclosed with this cover letter are the following documents:

1. My brief to the Commission
2. The NAC decision dated December 17, 2013.

John J Plunkett

John J. Plunkett

[redacted]

Office of General Counsel

FINRA

Attn: Colleen Durbin

1735 K Street, N.W.

Washington, D.C. 20006

Re: John Joseph Plunkett – Complaint # 2006005259801

Application for Review by Securities & Exchange Commission

January 16, 2014

Filed via Certified Mail

3-14810r

Dear Ms. Durbin:

Enclosed please find the following documents:

1. Cover letter to the Commission
2. My brief to the Commission
3. The NAC decision dated December 17, 2014

Sincerely,

John J Plunkett

John Joseph Plunkett

[redacted]



The Office of the Secretary

United States Securities and Exchange Commission

100 F Street, N.E.

Mail Stop 1090 – Room 10915

Washington, DC 20549 Filed via Overnight Mail

January 16, 2014

In the matter of Administrative Proceeding File No. 3-14810

Opinion of the Commission regarding

Conduct Inconsistent with Joint and Equitable Principles of Trade

Failure to Provide Required Information

Remand to the NAC and their decision on 12.17.2013

Re: Complaint No. 20060052598-01

It is noted that I am not able to afford counsel fees, and therefore I am responding directly without counsel.

It is also noted that I did not receive any notice of the Commission opinion via certified mail, but by regular US Postal Service mail on December 21, 2013.

This brief is in response to the Opinion of the Commission and the Remand to the National Adjudicatory Council (NAC), and the NAC decision and response to the Commission dated 12.17.2013. The new information contained in the NAC decision received from FINRA is the basis for my appeal.

I hereby agree with the Opinion of the Commission regarding a review of the "Second Cause of Action" based upon the totality of the circumstances.

I further submit that a review of the "First Cause of Action" is also warranted based upon the same consideration, that being the totality of circumstances. The Chairman of the Panel had stated that this was indeed a unique case and that no others like it existed without any previous cases to compare it to. It is my assertion that due to such following of the guidelines of extracting bits and pieces of previous cases which did not compare to the totality of the circumstances in my case, is unfair and unjust.

*Regarding the Second Cause of Action, Not Responding to an 8210 Request:*

I am stating as I did to the Panel at the Arbitration Hearing that I had always responded to 8210 requests from Staff. In fact at the hearing I asked William Kennedy, Finra Staff, if that was true and he responded that it was indeed so, which the Commission states as well. I also asked if there had been many 8210 requests and responses and again he stated yes. The response in question was unable to be responded to due to the fact that the firm had been locked out of the office by the landlord and the records needed to review could not be accessed. This was stated to Pat MacGeorge, Finra Staff, and William Kennedy, Finra Staff, was also aware of this. When the landlord allowed us to access the office to remove personal belongings we discovered that the files had been destroyed and thrashed by the demolition team tearing apart the office. This fact was also conveyed to these individuals.

Therefore I ask how I could be expected to access information that did not exist? The lack of a response was not an act of ignoring the request but was due to the above described circumstances and I believe that consideration should be given to me based upon my record of previous compliance with requests which the Commission pointed out to the NAC in the Remand, and the totality of the circumstances surrounding this particular request.

*Regarding the First Cause of Action, Conduct Inconsistent with Just and Equitable Principles of Trade:*

I assert that the Panel in its effort to force a square peg into a round hole, went along with Finra which attempted to present an argument based upon segments of previous cases and ignored

the totality of the circumstances. Additionally in the SEC review there are several inconsistencies or misstatements in footnotes which were made.

In this cause of action there are two overriding themes which keep being referred to. One is the loyalty due to the firm and the industry, and the other is the safety and protection of client information. Both will be addressed.

Footnote misstatements:

First - Issue of no proof of allegations – The forged documents were presented at the arbitration between Emerald and Lempert and entered into the record. These documents clearly demonstrated the forgeries, and the intent to transfer all of the overseas accounts with their massive losses onto the books of the US broker dealer.

Second - Statement that the Lempert attorney convinced the Law Firm in Latvia that Lempert USA was not involved in the European losses is incorrect – I personally engaged Alfred V. Greco, Esq., a former SEC attorney, to intercede on my behalf since the Orlovs were saying it is a misunderstanding and brushing it aside. The Latvian Law Firm was accusing me of being involved in the theft of their clients money. Together, Mr. Greco and me were able to convince the attorneys at the Latvian Law Firm of my innocence during numerous phone calls and letters. Eventually the Latvian Law Firm actually provided some of the forged documents which they had obtained from their clients via Lempert Europe which we submitted at the same Emerald vs Lempert arbitration.

Third - Statement that the record is vague regarding the SEC conducting an audit at Lempert at the time we left is totally incorrect – The SEC was on premises conducting what was explained to me as a routine review of a just completed Finra review of the firm. SEC Staff on site was Albert Poon. In fact his review of the files showed that the financial statement of the parent holding company was stale and we needed an updated certified financial statement. In routine review of the firm e-mails I discovered the e-mail from the Orlovs to George Milter telling him to simply change some numbers on the stale financial statement, date it as current and submit it to me as genuine to present to Mr. Poon as the parent current certified financial statement. This is a key fact which caused me to confront the Orlovs, who would not respond to me and Milter who did not come back to the office. Then Marlin Kruskov, their attorney sent an e-mail to Milter not to worry about me that I would be dismissed and the forged financial statement then presented Albert Poon, SEC staff.

Additionally the day that we left Lempert, at nine o'clock a.m., I personally called FINRA, Albert Poon, SEC Staff, and the clearing firm, Penson, to inform them of our actions and the reasons why we left. Mr. Poon gathered his files from Lempert and that same afternoon he and his supervisor met with me and Alfred V. Greco, Esq. at Mr. Greco's office. The meeting lasted

about an hour and Mr. Poon's supervisor stated that he was in agreement and that we did the correct thing. Mr. Greco took notes at this meeting and they are in his files. All of this was stated at the arbitration and is part of the record. How such a critical part of the record would be stated by the SEC as vague causes great concern since it is a vital part of the totality of the circumstances.

Fourth - Another very important piece of information which is omitted is that when Finra agreed to meet with me and Alfred V. Greco, Esq., John Hickey, Finra Staff, told the two of us that my fears, which I had conveyed to him on the phone, of Lempert changing the records were correct. Lempert had informed him that I was not the President for the past two years. Hickey said that he told Lempert that the CRD indicated differently even though Lempert said that they had the documents showing that I was not!

Fifth - The fact that the Lempert attorney at the arbitration, Alan Brodherson, told me and Corey Kupfer, Esq. on a joint conference call that Dan Druz who represented Emerald at the arbitration should be disbarred for the incompetent way he handled our case and he offered to testify against Druz. Although happy that he won he stated it was his duty to inform us of that.

Sixth - I believe that Finra treated us with extreme prejudice at the hearing between Emerald and Lempert due to the following occurrence. Lempert filed a Broker Dealer Withdrawal during the arbitration proceeding. Finra held it up and did not process it in a timely manner. My investigation indicated that a BDW is processed within the day or next at most. When we inquired why it was not processed Pat MacGeorge, Finra Staff, stated that she could not answer why. This is extreme prejudice against Emerald. It should have been processed and the arbitration dismissed. The BDW was signed, dated, and submitted to Finra which did not process it. Approximately 7 to 10 days later the panel rendered the decision against Emerald. It never should have occurred since Lempert had withdrawn its membership!

Seventh - The assertion that the move out of Lempert was to foster my own personal gain is preposterous. If we were not facing a criminal enterprise that made threats to our physical well being, as well as our careers, and that attempted on several occasions to illegally have the reps give the names and numbers of their clients to the Orlovs to contact for phony deals or to have the reps sell such deals to their clients we would have resigned in a normal orderly fashion. No one including me, Raymond Thomas, or the reps had signed or verbally agreed to any contract or covenant not to compete. As such we were all free to resign when we so desired.

Raymond Thomas, S-24, and I had worked together for a number of years. He joined Lempert at my suggestion. He in turn recruited all of the registered reps through friendships he had developed in the business. I could have left, and a couple of weeks later Raymond would have

left. Then the reps would have followed Raymond later, and transferred their clients, who indicated that they wanted to transfer their accounts, via ACATS over time which is the normal manner followed in the brokerage business. An orderly transition was not possible since the clients would have been decimated, the reps hit with many lawsuits, and all of their licenses ruined. Think about this...Why for God's sake would we all get up and leave Lempert without a place to go?! My personal gain! It was just the opposite, I was risking everything to protect the clients and the reps, while turning in the criminals to the regulators.

Back to the two central themes of:

1. loyalty to the firm and Just & Equitable Principles of Fair Trade
2. customers at risk and protection of the clients information

Number One –

a. Brian, Mitch, and me were not paid for many many months, but promises that it would be made up to us were made by the Orlovs. Of course as the amount owed grew it became more difficult to leave.
b. The three of us stated to the Orlovs and Milter that the three of us, myself, Brian Coventry, and Mitch Borcherding were preparing to leave the firm. This was re-stated several times.
c. The Orlovs and Milter solicited the registered reps to contact their clients to invest in a deal with a commission payout of 25%, yes twenty five percent, while I was out of the office! This was confirmed to me by Raymond Thomas, S-24 principal.
d. The Orlovs and Milter lied to the SEC and attempted to perpetrate a fraud on the SEC with phony financial statements.
e. The Orlovs continuously had Milter in my face confronting me on everything I said.
f. The Orlovs and Milter threaten me to just remain silent or things may happen to my family. They know where my children go to school they said.
g. The Orlovs prepare to dismiss me (due to SEC financial statement issue amongst others)

.....AND I AM SUPPOSED TO HAVE A LOYALTY OBLIGATION TO THEM?

I contended that they broke the "contract" between the firm and me by engaging in the criminal activities that had been uncovered, we had not been paid for our services, and we informed them we were leaving...and I contend that any and all Just and Equitable Principles of Fair Trade were honored by us by remaining there and informing them of our intention to

leave. I further contend that they totally thrashed all of the Just and Equitable Principles of Fair Trade making a mockery of the concept...and I am prosecuted for our actions?!

Number Two –

I agree with the Commission that the customers were at risk, the difference being that they were at risk remaining at Lempert. The Orlovs and Milter had also approached the reps to sell unlicensed and unregistered private placements overseas to their top clients. Of course when the reps informed me of this I prohibited it and had very nasty arguments with Milter about it.

When we left all of the documents and records were placed in the law offices of a major law firm several floors above ours. Brian Coventry knew one of the Senior Partners who authorized this. All of the customer information remained in this secure location under lock and key.

When we left each rep called each of his clients and explained why they had left Lempert. They gave each client the phone number to the Penson (our clearing firm) trading desk and the names of two individuals that would execute any trades that the clients wished to make. Ray Thomas, S-24, had arranged this at Penson.

Each rep asked the client to transfer with him to the new firm and stated that if the client wanted to transfer, each client needed to submit an ACAT form directly to me or Ray Thomas or to Penson. All ACATS were received and reviewed by either myself or Ray Thomas.

So the clients were protected via our actions:

a. Their funds were at Penson, and the criminal Orlovs and Milter could not access them.
b. Their personal information including social security numbers etc. was safe and secure at all times. (The Orlovs would have sold the client info to identity theft rings for sure.)
c. Their ability to access their accounts was provided for.
d. Their choice of remaining with Lempert or transferring to us was provided.
e. Their ACAT forms were reviewed and re-reviewed for compliance purposes.

Not one penny was lost by any client

Not one bit of private client information was ever unsecure

Not one client was ever exposed to risk of any sort due to our actions

I must comment on the Discipline History that FINRA, NAC, and the SEC refer to as being so detrimental in my case.

The two week suspension in any supervisory capacity and $7,500 fine was told to me by the Seaboard Compliance officer that if I did not accept I needed to fight it alone which I could not. I was also told that if I left they would mark my license derogatorily and I would not be able to work anywhere else. The facts here are overlooked by all. I was informed by Compliance that David Goldblatt, a S-24, in an office a couple of blocks away had been designated the Supervising 24 for our office as well. Either they lied to me or did not process the designation; but I had no reason to not believe them, and there was no access to CRD back then only at the main office Compliance in New Jersey for me to check on it. If you check my U-4 you will see that it is noted that there were no issues at the office other than this. I later discovered that the other Seaboard offices had major issues.

The suspension for not paying the arbitration award again does not look at the whole picture. The award was issued and we made arrangements to pay it (even though we believed it was unjust). We raised capital and paid off a chunk of it. Their attorney then released Emerald holding the remaining four of us to pay it. Coventry, Ince, and Rivard (the other three that were obligated to pay) never paid a penny. I was the only one who paid any money, essentially taking everything I earned and paying it to Alan Brodherson each month.

When the firm became out of capital compliance due to my inability to conduct hardly any income producing business because of the constant FINRA harassment, the overall market conditions, and virtually no income for the firm, I was preparing to move to much smaller space that the landlord had offered us. Additional capital to get the firm into capital compliance did not materialize, we could not open to do business, the landlord cancelled the deal on smaller space, and the firm remained shut down. With no income I could not pay monthly installments to Brodherson. I did not walk away from the obligation but I did everything I could to honor it.

In light of the above I believe that using the issue of disciplinary issues is incorrect in my case.

I had engaged David Gehn, Esq. of Gusrae, Kaplan Law Firm, when I received the Wells Notice not knowing how to handle it myself. David specialized in regulatory cases for over ten years and was highly recommended. He spoke with and had reached an agreement with Finra that by signing a statement of neither admitting nor denying guilt and paying a fine of between twenty five and fifty thousand dollars Finra would settle. Of course not having the money, I could not comply with the offer.

At some point after that an attorney scheduled an appointment with Mr. Gehn and me at Mr. Gehn's office. This meeting lasted for about one and a half hours. He was from another European law firm and was there to verify my not having any involvement with the criminal Orlovs. That was the term he used, and I have used through out this paper. He went on to inform us that Roman Orlov was arrested and was in jail in Vienna. He also told us that Interpol had an international arrest warrant outstanding for Eduard Orlov, who was believed to be hiding in the Russian neighborhood of Brighton Beach, Brooklyn NY. David Gehn took notes and they are in his file.

The third element of the criminal operation that I have been referring to, George Milter, was arrested in Florida by the Federal Bureau of Investigation for financial fraud. This is a matter of record which I accessed online. The FBI had been investigating him for several years covering the time I have described above, while he was at Lempert. Arrested with him was Cliff Boden, a very close friend of Mitch Borcherding, who was working on the Lempert fund that Mitch would not abandon and leave with us.

Conclusion

As I have alleged all along and have been proven by the incarcerations of the Orlovs and Milter they were running a criminal enterprise throughout the Ukraine, Latvia, and Europe.

They were very smart, cunning, and very convincing. Finra had approved them and we were all duped while they stole tens if not hundreds of millions of dollars from overseas investors. When they could no longer get more new investors to provide them with fresh money to keep feeding their criminal enterprise, they decided to transfer all of the client accounts with millions of dollars in losses to Lempert Brothers International USA, Inc., the US Broker Dealer, which they stated to their clients would make up for the losses and make them whole. As previously stated documents were obtained and submitted at the Emerald vs Lempert arbitration hearing attesting to this.

As I discovered more and more, (which happened very quickly), they needed me out of the way in order to proceed.

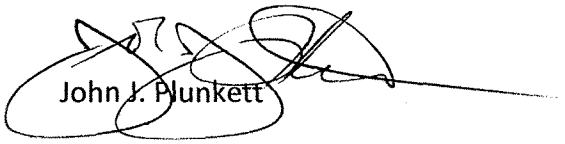
Then they would forge additional documents, change e-mails to cover themselves, implicate me and mark my license with lies, have Mitch accept all of the foreign account transfers, and then have all of the clients institute law suits against the US Broker Dealer. They then wash their hands of everything and walk away. None of this happened due to our actions saving the US taxpayers millions of dollars in litigations etc.

I sincerely hope that the Commission will review everything I have stated above and due to the Remand on the Second Issue, and the ensuing FINRA response and NAC agreement, also review the First Issue with the same concern along with the clarification I have tried to bring to light as well as the new information concerning the FBI arrest of Milter, and FINRA admitting that they indeed had overlapping requests.

I seek the following remedies from the Commission:

1. Elimination of all bars, suspensions, and monetary fines against me.
2. Overturn the arbitration verdict against me.
3. Overturn the arbitration verdict against Emerald Investments Inc.
4. Cancel any and all awards to be paid by me.
5. Clear all my records as well those of Emerald.
6. Return to me all money paid by me under the arbitration rulings either to Lempert or Alan Brodherson (their attorney).
7. Activate all of my licenses with all references to these matters expunged.
8. Institute a monetary payment to me from FINRA of $10,000,000.(ten million US Dollars) due to their actions against me which consumed all of my time not allowing me to conduct a profit making business of the broker dealer causing its demise. FINRA pursued a course of harassment against me and ignored all of the information and proof presented to them about the Orlov Ponzi scheme. The compensation is for my pain and suffering continuing over several years to me and my family; my reputation and good name being tarnished; my time, effort, and personal funds being spent in this effort; my lost income to date, and the impact on my future earnings.

Thank you for your time, effort, and consideration in this matter.



John J. Plunkett

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

| | |
|---|---|
| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>John Joseph Plunkett<br>Brooklyn, NY,<br><br>Respondent. | DECISION<br><br>Complaint No. 2006005259801<br><br>Dated: December 17, 2013 |

**On remand from the Securities and Exchange Commission for reconsideration of sanctions. Held, sanctions modified.**

**Appearances**

For the Complainant: Elisa Meth Kestin, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

**Decision**

This matter is before us on remand from the Securities and Exchange Commission. In a National Adjudicatory Council ("NAC") decision dated February 21, 2012, we found that John Joseph Plunkett ("Plunkett"), just prior to resigning from Lempert Brothers International USA, Inc. ("Lempert Brothers"), and in anticipation of being fired, directed others to remove the firm's books and records and erase the firm's electronic files and computer servers, in violation of NASD Rule 2110. For this misconduct, we barred Plunkett in all capacities.

In our decision, we further found that Plunkett failed to respond to two FINRA requests for information and documents until four months after the filing of a complaint initiating disciplinary proceedings against him, and then only partially responding, in violation of FINRA Rules 8210 and 2010. In assessing sanctions for this misconduct, we applied the presumption articulated in the FINRA Sanction Guidelines ("Guidelines") that a response to a FINRA Rule 8210 request subsequent to the filing of a disciplinary complaint constitutes a complete failure to

respond, and again barred Plunkett in all capacities.[1]

Plunkett appealed the NAC's decision to the Commission. In an opinion dated June 14, 2013, the Commission sustained the NAC's findings that Plunkett violated FINRA rules as described in the NAC's decision. For Plunkett's misconduct relating to the firm's books and records, the Commission affirmed the bar the NAC imposed. With respect to the sanctions that the NAC imposed concerning Plunkett's failure to respond to FINRA information requests, however, the Commission found that the NAC erred by failing to analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner. The Commission concluded that because Plunkett "meaningfully" responded to several earlier FINRA Rule 8210 requests during the same investigation, his failure to respond to two later FINRA Rule 8210 requests until after the filing of a complaint constituted conduct "closer to" a partial failure to respond. The Commission noted that Plunkett had previously "provided information about Lempert Brothers' accounts, staff, management structure, organizational structure, and contractual arrangements with a third party, and communications regarding the possible improprieties involving the Orlovs and the firm."[2] Some of this information related to the inquiries FINRA posed in its later Rule 8210 requests, and the Commission noted that FINRA failed to take the interrelatedness of the requests into account when it assessed sanctions. The Commission therefore set aside the bar imposed by the NAC and remanded this matter with instructions that the NAC analyze Plunkett's violation of FINRA Rule 8210 under the Guidelines for a partial but incomplete response. The Commission's remand was limited to the issue of sanctions for the Rule 8210 violation and did not include any other findings or sanctions.

After careful consideration, we have determined to modify the sanction that we imposed upon Plunkett for violating FINRA Rule 8210. We reduce the bar to a $20,000 fine and six-month suspension.

I. Facts

The following facts are pertinent to the Commission's decision to remand this matter to the NAC for further analysis under the Guidelines concerning Plunkett's violation of FINRA Rule 8210. The facts related to Plunkett's books and records violation are discussed in detail in the previously issued NAC decision as well as the Commission's opinion, and we refer to them only as relevant to this decision.

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[1] *FINRA Sanction Guidelines* 33 (2011) (Requests Made Pursuant to FINRA Rule 8210), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry /p011038.pdf [hereinafter *Guidelines*].

[2] *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55 (June 14, 2013).

A. FINRA's Initial Requests for Information to Plunkett

Between May and October 2006, FINRA requested information from Plunkett pursuant to FINRA Rule 8210 concerning Plunkett's separation from Lempert Brothers. FINRA issued these requests on March 31, May 23, July 20, August 18, and October 20, 2006. Specifically, the information sought and provided by Plunkett included, but was not limited to, a catalogue of the records and files that Plunkett removed from Lempert Brothers at the time of his resignation and an explanation as to why Plunkett removed said files, six months' worth of Lempert Brothers' e-mails, documents and information related to Lempert Brother's corporate structure, information related to Lempert Brothers' brokerage and banking accounts, information related to employees' and owners' roles and responsibilities, as well as Plunkett's written explanations for various letters and other correspondence that FINRA had attached to the requests. Plunkett responded to each of these requests, although typically not promptly, and answered all questions, except one concerning his tax returns. Through the testimony of its investigator at the hearing, FINRA acknowledged that with the exception of providing his tax returns, Plunkett fully responded to these requests.

B. Information Provided by Plunkett Pursuant to a Wells Notice

On May 8, 2009, Enforcement sent Plunkett and his attorney a Wells Notice, informing them that FINRA had made a preliminary determination to initiate formal disciplinary proceedings against Plunkett for his conduct involving Lempert Brothers' books and records. Plunkett responded to the Wells Notice on June 29, 2009. Plunkett again explained the circumstances surrounding his departure from Lempert Brothers and claimed that the firm and its owners intended to defraud its investors, and that he had purportedly taken the firm's records as a defensive measure. In his response, Plunkett referred to certain documents, which he did not attach, and individuals, that he did not identify by name, that Plunkett asserted corroborated his claims.

C. FINRA's Final Requests for Information and Documents

On July 15, 2009, in reply to Plunkett's June 29 Wells response, FINRA staff sent to Plunkett a FINRA Rule 8210 request for information and documents. FINRA asked Plunkett to provide copies of the documents and identify the individuals he referenced in his June 29 Wells response by July 27, 2009. On July 27, 2009, Plunkett requested an extension of time to respond to the request. He stated that he required additional time to search for the documents. FINRA staff granted Plunkett an extension until August 10, 2009. Plunkett, however, did not respond to the request by August 10, 2009. On August 11, 2009, Plunkett requested additional time to respond. He stated that he could not respond at that time because he was ill.

On August 20, 2009, FINRA staff sent Plunkett a second request for information and documents pursuant to FINRA Rule 8210. The second request enclosed a copy of the original request dated July 15, 2009, and required Plunkett to respond no later than September 3, 2009. which Plunkett failed to do.

On December 1, 2009, FINRA filed the complaint in this matter. On April 29, 2010, nine months after FINRA's July 15, 2009 request for information and documents, Plunkett responded. He did not provide any documents, but rather offered a number of excuses as to why he could not find them. Plunkett nevertheless addressed in his written narrative each of FINRA's requests and represented that the documents referred to in his Wells response were ones that he had either provided to FINRA earlier in its investigation or could not locate or were otherwise unavailable. He also provided the names of the people to whom he had referred to in his Wells response, and indicated that, earlier in the investigation, he had identified some of the people whose names the staff sought.

II. Discussion

We have considered the complete record in this case, the parties' briefs filed on remand,[3] and their respective sanction recommendations.[4] Consistent with the Commission's instructions that we analyze Plunkett's violation of FINRA Rule 8210 as a partial response under the Guidelines, we modify our prior sanction for Plunkett's FINRA Rule 8210 misconduct and reduce the bar to a six-month suspension. We also impose a fine of $20,000.[5]

In reaching this conclusion, we take note of the Commission's statement that some of Plunkett's earlier responses to FINRA "related to the inquiries FINRA posed in the Rule 8210 requests it sent after receiving Plunkett's Wells submission." *Plunkett*, 2013 SEC LEXIS 1699, at *55. Indeed, upon further consideration, we find that there was extensive overlap between the earlier and later requests for information. As the Commission notes, "[t]he March 31, 2006 request focused on the investor allegation concerning fraud by the Orlovs; later requests focused on the removal and erasure of Lempert Brother's records." *Id.*, at *13 n.13.

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[3] Upon remand from the Commission, the NAC requested that the parties submit briefs addressing the appropriate sanctions for Plunkett's violation of FINRA 8210. In his brief, Plunkett focused primarily on the NAC's findings and sanctions for his misconduct relating to the firm's books and records violation. Because the Commission affirmed the NAC's findings and the sanction it imposed with respect to that misconduct, Plunkett's arguments in this respect are beyond the scope of the Commission's remand.

[4] Enforcement argues that the appropriate sanctions for Plunkett's violation of Rule 8210 are a six-month suspension and a $20,000 fine. Plunkett's brief only requests generally that the sanctions be reduced from a bar.

[5] For a partial but incomplete response, the Guidelines also recommend a fine of $10,000 to $50,000. *Guidelines*, at 33.

We are guided also by the three principal considerations that are articulated within the Guidelines for FINRA Rule 8210 violations that involve a partial but incomplete response.[6] These considerations include: 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 explained valid reasons for the deficiencies in the response.[7]

As to the first of these considerations, the information sought via these requests was essential to Enforcement's investigation into Plunkett's possible misconduct and also to support the claims made by Plunkett in his June 29 response to FINRA's Wells Notice. Because Plunkett did not initially provide the documents or identifying information in his Wells response, FINRA could not ascertain whether Plunkett was referring to documents he had already produced or to other documents FINRA had not yet seen. Plunkett also claimed in that same letter that certain people possessed information relevant to the alleged fraud by Lempert Brother's owners and removal of the documents. Because Plunkett did not identify those people by name, Plunkett hindered FINRA's investigative efforts.

Plunkett did ultimately respond to FINRA's July 15, 2009 request. He represented in his April 2010 response that the documents referred to in his June 29 Wells response were ones that he either had already provided to FINRA or did not have. He also provided the names of the individuals referenced in his June 29 Wells response. Thus, while the information sought was important as viewed from FINRA's perspective, Plunkett's answers, albeit late, were responsive to FINRA's requests.

Turning to the second principal consideration, Enforcement had to exert a great deal of regulatory pressure to elicit a response from Plunkett. FINRA staff attempted to accommodate Plunkett, granting him an extension in addition to sending him a second request, extending his time to respond yet further. Ultimately FINRA had to exert the highest level of regulatory pressure available — a complaint— to compel a response. In addition, a great deal of time elapsed between the initial requests and when Plunkett actually responded—over nine months. It was not until Plunkett submitted his delinquent responses that FINRA learned that much of the information provided by Plunkett was duplicative of his 2006 responses and thus already in FINRA's possession. However, Plunkett's extended delays and the amount of effort exerted by FINRA to compel his response is an aggravating factor.

Finally, we consider whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[8] *See Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC

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6 *Guidelines*, at 33.

7 *Id.*

8 *Id.*

LEXIS 13, at *13 (Jan. 5, 2007) ("We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability."). Plunkett has offered no valid explanation for his delay in responding to FINRA's requests or his failure to produce certain documents. Plunkett maintains that he had been locked out of his office by his landlord, thereby blocking his access to the documents, and that much of the requested information was eventually destroyed by the landlord upon Plunkett's eviction. The record, however, reflects that Plunkett received FINRA's requests for those documents before the lockout or eviction occurred. Thus, Plunkett fails to provide satisfactory justification for the delay and deficiencies in his responses.

While Plunkett's responses to FINRA's requests for information were dilatory and his deficient document production without excuse, we acknowledge that he ultimately provided information that complied with the requests. Furthermore, it is Enforcement's position that we give Plunkett credit for eventually complying with the 8210 requests, and that he should not be barred for this violation. Based on the directives from the Commission on remand, we believe that a sanction above the recommended minimum, but not a bar, is an appropriately remedial sanction. For these reasons, we fine Plunkett $20,000 and suspend him for six months in all capacities for his partial failure to respond to FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010.

## III. Conclusion

Plunkett responded partially to FINRA's requests for information and documents, in violation of FINRA Rules 8210 and 2010. For this misconduct, we fine Plunkett $20,000 and suspend him for six months in all capacities. In light of the bar that the Commission upheld for Plunkett's misconduct relating to Lempert Brothers' books and records, however, we decline to impose the fine and suspension. We have considered and reject without discussion all other arguments of the parties.

On behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith,
Senior Vice President and Corporate Secretary