BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

Gregory Evan Goldstein

For Review of Action

Taken by

FINRA

File No. 3-15183

FINRA'S BRIEF IN OPPOSITION TO MOTION TO STAY

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January 29, 2013

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

Gregory Evan Goldstein

For Review of

FINRA Disciplinary Action

File No. 3-15183

FINRA'S BRIEF IN OPPOSITION TO MOTION TO STAY

Gregory Evan Goldstein has moved to stay the sanctions imposed in a January 4, 2013 FINRA Hearing Panel Decision issued in an expedited proceeding. The Hearing Panel found that Goldstein, an officer of FINRA firm Marquis Financial Services, Inc., refused to answer FINRA's questions during an on-the-record interview and failed to provide documents and other information that FINRA subsequently requested in writing pursuant to FINRA Rule 8210.[1]

FINRA's Department of Enforcement is investigating Goldstein and other Marquis Financial employees regarding suspicious trading in penny stocks at Marquis Financial in 2008 and 2009. During Enforcement's investigation, it learned that Goldstein was operating a

[1] The Hearing Panel issued its decision pursuant to FINRA Rules 9552 and 9559, which govern expedited proceedings for failing to respond to Rule 8210 requests for information. FINRA's National Adjudicatory Council did not call for review the Hearing Panel's decision; thus, the Hearing Panel's decision is the final action of FINRA in this proceeding. *See* FINRA Rule 9559(o). References to the Hearing Panel's January 4, 2013 Decision will be cited as "Decision." A copy of the Decision is attached hereto as Appendix A.

consulting business outside of Marquis Financial. In Goldstein's outside business, he was paid by clients to evaluate the viability of companies. Goldstein explained that his work in the securities industry had equipped him to perform this work. Goldstein's consulting business is named Wall Street At Home.com, Inc.

Enforcement's investigation has now broadened to include several possible rule violations that can occur when an associated person runs a side business that relates to issuers of securities. These include front-running customers' orders, market manipulation, and fraud that results from a failure to disclose an associated person's business relationship with an issuer to customers who are purchasing shares of that issuer. In an attempt to investigate further, Enforcement asked Goldstein to name entities that Wall Street At Home provides business services to, and to describe what products or services Wall Street At Home provides. Enforcement also asked Goldstein to produce monthly brokerage and bank statements for Wall Street At Home, among other information requests. Goldstein refused to provide any answers to Enforcement's questions or produce any documents.

FINRA's investigation has been unable to address critical questions, such as:

- Has Goldstein used a Wall Street At Home brokerage account to trade ahead of customer orders placed through Marquis Financial?
- Has Goldstein been compensated with stock from issuers in return for his promotion of the stock to potential customers, including Marquis Financial customers?

Goldstein has essentially placed a roadblock in the path of Enforcement's investigation. Goldstein's refusal to provide information and documents to Enforcement violates FINRA Rule 8210. As the Hearing Panel below found, FINRA is properly asserting jurisdiction over

Goldstein, the president of a FINRA firm, and is seeking to investigate his outside business activities. The Commission should deny the stay request and Goldstein should face the choice of being suspended from associating with a FINRA firm or complying fully with Enforcement's information requests.

I. FACTUAL AND PROCEDURAL HISTORY

A. Goldstein Failed and Refused to Respond to Requests for Information and to Testify on the Record

1. Goldstein Is an Associated Person, Officer and Control Person of Marquis Financial

Goldstein joined Marquis Financial, a FINRA firm, in June 2001 and currently is registered through Marquis Financial in multiple capacities. Decision at 4-6. Goldstein is president of Marquis Financial. *Id.* In 2001, holding company Steven Gregory Securities or "SGS" purchased Marquis Financial.[2] *Id.* Goldstein and SGS are each a control person of Marquis Financial.[3] *Id.*

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[2] Throughout the proceeding, Goldstein referred to himself as the owner Marquis Financial. Decision at 6. SGS, however, owns 95% of Marquis Financial. Decision at 3. Wall Street At Home owns 100% of SGS. *Id.* The Central Registration Depository (CRD®) identifies only Goldstein as Wall Street At Home's owner. Decision at 7. Goldstein testified on the record that he owns 80% and the only voting shares of Wall Street At Home and that Marquis Financial conducted a private placement in which it sold approximately 20% of Wall Street At Home's shares to approximately 30 of Marquis Financial's customers and other investors. Decision at 7-8. The private placement memorandum for the offering of Wall Street At Home described SGS and Marquis Financial as wholly owned subsidiaries of Wall Street At Home and stated that together they operated a full-service retail brokerage business through Marquis Financial. *Id.* Marquis Financial raised approximately $1 million in the private offering of Wall Street At Home. *Id.* Wall Street At Home has no employees, and Enforcement contended that Wall Street At Home operates out of Marquis Financial's location. *Id.* Wall Street At Home's only source of revenue is generated from Goldstein's consulting services. *Id.* Goldstein has admitted that he alone has access to and controls Wall Street At Home's money. Decision at 8-9.

[3] Marquis Financial employs one secretary and two other registered individuals (in addition to Goldstein). *Id.*

In 2010, FINRA Enforcement commenced an investigation of Marquis Financial, Goldstein, and other firm employees concerning suspicious trading of penny stocks in 2008 and 2009. Decision at 10. The scope of Enforcement's investigation included employees' outside business activities, selling away, buying away, spinning, front running, market manipulation, fraud, potential conflicts of interest between Marquis Financial and its customers, and possible violations of anti-money laundering rules. Decision at 10-11. Enforcement discovered that, although Goldstein had conducted outside business activity through Wall Street At Home since approximately 2005, he had not reported it to Marquis Financial. Decision at 11; Stip. at ¶30-38.[4] Goldstein first reported his outside business activities to Marquis Financial in August 2011. Stip. at ¶31.

2. FINRA Attempted to Investigate Goldstein's Outside Business Activities at Wall Street At Home

On January 9, 2012, FINRA Enforcement conducted an on-the-record interview of Goldstein during which it asked Goldstein about his outside business activities at Wall Street At Home. Decision at 12. During the interview, an Enforcement attorney asked Goldstein questions related to his work at Wall Street At Home, and he refused to answer.[5] *Id*; *see also* Ex. D to Stay Req., Exhibit B.[6] Goldstein refused to identify any customer for whom he provides

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[4] Before the Hearing Panel, the parties entered into a Joint Stipulation of Facts ("Stip."), a copy of which is attached hereto as Appendix B.

[5] Goldstein stated only that he did consulting work on behalf of Wall Street At Home, conducting "due diligence" to see whether companies were "viable," and he stated that his work in the securities industry equipped him to do such consulting. Decision at 12-13. He also stated that Wall Street At Home's customers paid fees to Wall Street At Home and that he used those funds as necessary. *Id.* Goldstein refused to provide any additional information or produce requested documents. *Id.*

[6] Goldstein attached to his Stay Request as Exhibit B a copy of the request for hearing that he filed before FINRA. Appended to that document, and therefore also appended to his Stay

[Footnote continued on next page]

services through Wall Street At Home, specify the industry or area in which he provides services, or identify the minority shareholders of Wall Street At Home. Decision at 13. He also refused to provide Wall Street At Home's brokerage accounts, contending that such information is "private business." *Id.*

3. Goldstein Refuses Rule 8210 Requests

After Goldstein's refusal during his on-the-record interview to answer questions related to his activities at Wall Street At Home, Enforcement propounded a written Rule 8210 request for information related to Goldstein's activities at Wall Street At Home.[7] Decision at 15-16.

Goldstein's counsel communicated by letter dated February 16, 2012, that Goldstein refused to respond. Decision at 16; Ex. C to Stay Req., Exhibit B.

B. Notice of Suspension and Subsequent Proceedings

Faced with Goldstein's abject refusals to comply with his obligations under FINRA Rule 8210, Enforcement warned Goldstein on March 13, 2012 ("Notice of Suspension") that his refusal to provide information violated Rule 8210.[8] Decision at 1-2; Ex. A to Stay Req., Exhibit B. The Notice of Suspension further provided that Goldstein would be suspended, effective April 6, 2012, if he did not comply with FINRA's requests for information. *Id.*

[cont'd]

Request, are Exhibits A through L. These documents will be identified as "Ex. __ to Stay Req., Exhibit B."

[7] FINRA's February 3, 2012 letter requested information similar to that which Goldstein refused to provide on the record.

[8] FINRA Rule 9552 provides that, if a member or associated person fails to provide any information requested under FINRA's rules, FINRA staff may provide written notice specifying the nature of the failure and stating that a failure to take corrective action within 21 days after service of the notice will result in a suspension. *See* FINRA Rule 9552(a).

Goldstein provided no responses and requested a hearing, pursuant to FINRA Rule 9552(e).[9] Decision at 2. On January 4, 2013, the Hearing Panel issued the Decision. The Hearing Panel found that FINRA has jurisdiction over Goldstein as a registered person and officer of a FINRA firm and that, as such, FINRA properly sought to investigate Goldstein's outside business activities conducted through Wall Street At Home. Decision at 4-12. The Hearing Panel found that the documents and information sought were within Goldstein's possession and control given that Goldstein is a control person of Wall Street At Home and its president and majority shareholder. Decision at 3, 6-9. Furthermore, the Hearing Panel found that FINRA's information requests were targeted to its investigation of potential fraud and possible wrongdoing related to Marquis Financial's customers. Decision at 12-19, 25-26. The Hearing Panel held that Goldstein conducts a consulting business and indirectly owns Marquis Financial through Wall Street At Home, admitted that his consulting work is closely related to his securities work, and refused to provide any information related to Wall Street At Home. *Id.* The Hearing Panel held that Goldstein failed to comply with Rule 8210. The Hearing Panel considered and rejected Goldstein's jurisdiction objection as a baseless and concocted theory. Decision at 27.

On January 18, 2013, Goldstein filed a notice of appeal and request to stay FINRA's sanctions.[10]

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[9] Because the critical facts regarding Goldstein's failure to respond were not in dispute, the parties agreed to resolution of the matter on the basis of stipulated facts and legal briefs rather than proceeding to an evidentiary hearing. Decision at 2.

[10] FINRA Rule 9559(s) provides that the filing of an application for review shall not stay the effectiveness of final FINRA action, unless otherwise ordered by the Commission. FINRA has agreed to extend the time within which Goldstein has to comply and not to begin a suspension of Goldstein until February 15, 2013 or—if the stay request is still pending—until

[Footnote continued on next page]

II. ARGUMENT

Goldstein fails to demonstrate that the Commission should stay FINRA's sanctions pending resolution of this appeal. Goldstein concedes that he failed to respond to FINRA's requests for testimony and information and he offers no valid reason to excuse his violation. Goldstein's purported justification for his failures – that FINRA lacks authority to obtain information related to Wall Street At Home – is meritless. The evidence persuasively establishes that Goldstein is subject to FINRA jurisdiction as a registered person and officer of a member firm. It further demonstrates that Goldstein admittedly engages in outside business activities through Wall Street At Home, an entity that he controls and owns.

Goldstein offers no credible argument to support his request. He fails to show: a likelihood of success on the merits, that he will suffer irreparable injury, or that granting the stay will serve the public interest. Indeed, the public interest strongly favors allowing FINRA to investigate Goldstein's suspicious activities without further delays. The Commission should deny Goldstein's request.[11]

A. Goldstein Bears the Burden to Prove That the Commission Should Issue a Stay

The Commission considers requests for a stay in light of four criteria: (1) whether the applicant has shown a strong likelihood that he will prevail on the merits; (2) whether the

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[cont'd]

after the Commission has ruled on the stay request. *See* FINRA's January 23, 2013 letter to the Secretary of the Commission regarding the commencement of Goldstein's suspension, a copy of which is attached as Appendix C.

[11] FINRA requests that the Commission reject Goldstein's request to stay the Hearing Panel's sanctions in all respects, including the Hearing Panel's order that the suspension automatically convert to a bar if Goldstein has not fully complied with FINRA's Rule 8210 request within three months after the suspension begins.

applicant has shown that, without a stay, he will suffer irreparable harm; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *See John Montelbano*, Exchange Act Rel. No. 45107, 2001 SEC LEXIS 2490, at *12 n.17 (Nov. 27, 2001) (*citing Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985)); *William Timpinaro*, Exchange Act Rel. No. 29927, 1991 SEC LEXIS 2544, at *5-6 & n.12 (Nov. 12, 1991) (citing *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)), *aff'd*, 2 F.3d 453 (D.C. Cir. 1993). "[T]he imposition of a stay is an extraordinary and drastic remedy," and the moving party has the burden of establishing that a stay is appropriate. *See Timpinaro*, 1991 SEC LEXIS 2544, at *6. Goldstein has not met the burden.

B. Goldstein Has Shown No Likelihood of Success on the Merits

1. FINRA Properly Exercised Jurisdiction Over Goldstein, and He Refused to Provide Information He Possesses Regarding His Outside Business Activities

Goldstein is an associated person and officer of a member firm, and he has been involved in outside business activities through Wall Street At Home since 2005. Stip. at ¶1, 2, 30. Goldstein refuses nonetheless to provide FINRA with any information related to his outside business activities through Wall Street At Home, an entity he owns and controls. Stip. at ¶42-47.

FINRA Rule 8210 authorizes FINRA staff, for the purposes of an investigation, to require associated persons to provide information or testimony and to permit the inspection and copying of books, records or accounts. "Rule 8210 provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations." *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *11 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

Goldstein conducts outside business through Wall Street At Home. Stip. at ¶30. FINRA requires associated persons to disclose outside business activities under FINRA Rule 3270[12] precisely for the purpose demonstrated here -- to enable both member firms and FINRA to oversee and, if necessary, investigate associated persons' activities away from member firms. *See Morton Bruce Erenstein*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS 2596, at *6 (Nov. 8, 2007) (stating that Rule 3030 was adopted to enable appropriate oversight of associated persons' outside business activities), *aff'd*, 316 Red. Appx. 865 (11th Cir. 2008). FINRA's efforts to investigate Goldstein's activities through Wall Street At Home are squarely within FINRA's regulatory mandate. Goldstein's assertion that he can shield his activities at Wall Street At Home from FINRA is a recipe for disaster. "[A]ssociated persons 'may not ignore [FINRA] inquiries; nor take it upon themselves to determine whether information is material to an . . . investigation of their conduct.'" *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (citations omitted). Rather, associated persons have an obligation to respond fully to FINRA's inquiries of their business activities, including those that, like Goldstein's, are conducted away from member firms yet relate to their securities work. *Id.*

Goldstein attempts to underplay his connection to Wall Street At Home. It is not, however, some unrelated third party, as Goldstein argues. Stay Req. at 1. Rather, Goldstein actively conducts outside business through that entity. Goldstein is the only person who provides services or generates revenue through Wall Street At Home. Decision at 17-18.

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[12] Formerly, NASD Rule 3030. Effective December 15, 2010, FINRA Rule 3270 superseded NASD Rule 3030. *See* Exchange Act Rel. No. 62762, 2010 SEC LEXIS 2768 (Aug. 23, 2010).

Goldstein's consulting services provided through Wall Street At Home are related to his securities work. Decision at 18. He is the majority owner, only voting shareholder, control person, and only officer of Wall Street At Home. Decision at 17-18. He alone has access to and control of Wall Street At Home's funds. *Id.* Because Wall Street At Home owns 100% of holding company SGS, which owns Marquis Financial, Wall Street At Home is directly connected to Marquis Financial. It is not an independent or unrelated third party.[13]

Goldstein offers other arguments that also fail. First, Goldstein argues that, in *Jay Alan Ochanpaugh*, Exchange Act Rel. No. 54363, 2006 SEC LEXIS 1926 (Aug. 25, 2006), the Commission questioned FINRA's "overreaching" in relation to Rule 8210.[14] Stay Req. at 2-3. Goldstein misapplies *Ochanpaugh*. In *Ochanpaugh*, the Commission set aside FINRA's action purely on factual grounds because FINRA had failed to show that the checks that it sought to obtain from Ochanpaugh were in fact in his possession and control. *Ochanpaugh*, 2006 SEC LEXIS 1926, at *23. The Commission did not rule that documents related to an associated person's outside business activities, such as those at issue in this case, are outside of FINRA's reach. Indeed, the Commission restated in *Ochanpaugh* that "Rule 8210 is an essential cornerstone of [FINRA's] ability to police the securities markets and should be rigorously

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[13] Indeed, the business and financial affairs that Goldstein operates through Wall Street At Home have a direct relationship to Marquis Financial's customers because they purchased minority interests in Wall Street At Home through Marquis Financial. Decision at 18.

[14] Goldstein confuses facts related to FINRA's recent revision of Rule 8210. Stay Req. at 3. FINRA filed SR-FINRA-2009-060 to amend Rule 8210, in part, to clarify that FINRA staff may inspect and copy information in the associated person's possession, custody or control. Goldstein mistakenly states that FINRA failed to respond to comments and the proposed rule change has not been approved. Stay Req. at 3, Exhibit B. FINRA responded to all comments and, on December 7, 2012, the Commission approved FINRA's proposed changes to Rule 8210. *See* Exchange Act Rel. No. 68386 (Dec. 7, 2012), 77 Fed. Reg. 74253 (Dec. 13, 2012); FINRA response to comments, dated Dec. 22, 2009, *available at http://www/sec.gov/ comments/sr-finra-2009-060/finra2009060.shtml.*

enforced."[15] *Id* at *19. *Ochanpaugh* does not authorize Goldstein to refuse to provide documents and information to FINRA.

Next Goldstein argues unpersuasively that he is justified in refusing to respond because FINRA's efforts here amount to nothing more than a "fishing expedition" and FINRA has not demonstrated the materiality of the information that it seeks. Stay Req. at 5, Exhibit B at 7, 13. FINRA has no requirement to explain its information requests or demonstrate their materiality before an associate person is obligated to respond. *Erenstein*, 2007 SEC LEXIS 2596, at *13. FINRA investigators often commence investigations before they have a clear picture as to the nature and breadth of the potential misconduct. Goldstein's stonewalling has prevented FINRA from evaluating his business activities away from Marquis Financial. As the Commission has held, FINRA should not be required to explain the materiality of its requests or justify the relevance of its investigations before receiving cooperation from associated persons. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *21, 26 (holding that associated persons may not ignore inquiries or take it upon themselves to determine if information requested is material). Goldstein should have responded fully and promptly to FINRA inquiries.

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[15] The Commission has rejected similar misreading of *Ochanpaugh*. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *26 (holding that refusal of president of a broker-dealer to turn over documents within his control relating to the third-party source of firm funds violated Rule 8210); *Morton Bruce Erenstein*, 2007 SEC LEXIS 2596, at *18 (rejecting reliance on *Ochanpaugh* because tax returns requested were within associated person's possession).

Goldstein suggests that FINRA should be held to an admission that it is without jurisdiction to obtain third-party documents. Stay Req. at 7. Goldstein's argument is baseless. The Regulatory Notice to which Goldstein cites, Notice 10-61 (Ex. F of Stay Req., Exhibit B), discusses Commission approval of FINRA Rule 4160, which precludes member firms, when notified by FINRA, from continuing to maintain assets at financial institutions that refuse promptly to provide FINRA with written verification of assets maintained by the member at the institution. It is wholly inapplicable to the issues in this case.

Goldstein also argues that the application of FINRA Rules 8210 and 9552 to him violates procedural and substantive due process requirements under the U.S. Constitution. Stay Req., Exhibit B at 14-19. As the Commission has repeatedly held, however, "[i]t is well established that the requirements of constitutional due process do not apply to FINRA because FINRA is not a state actor." *Asensio & Company, Inc.*, Exchange Act Rel. No. 68505, 2012 SEC LEXIS 3954, at *62 (Dec. 20, 2012) (citing, inter alia, *D.L. Cromwell Invs., Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 162 (2d Cir. 2002)). Instead, FINRA is required to "provide a fair procedure for the disciplining of members and persons associated with members" under Exchange Act Sections 15A(b)(8) and 15A(h)(1).[16] *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *34 (Oct. 20, 2011). Goldstein received the procedural steps identified in the Exchange Act: Enforcement notified Goldstein of his violations, and the Hearing Officer considered his defenses and kept a record.

Goldstein's vagueness challenge to the language of Rule 8210 also must fail. Stay Req., Exhibit B at 16-19. Goldstein ignores that Rule 8210 expressly states that its scope applies to "an investigation . . . authorized by the FINRA By-Laws or rules." In turn, FINRA's By-Laws

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[16] Goldstein also complains that "[t]he real problem" concerning the fairness of the proceeding "is that [he] needs to be suspended and/or barred . . . before he can appeal to the SEC." Stay Req., Exhibit B at 15. In *Howard Berger*, however, the Commission rejected the argument that, to meet the Exchange Act requirement of fundamental fairness, FINRA must provide a respondent with an opportunity to challenge FINRA's jurisdiction prior to responding to a Rule 8210 request. *Berger*, Exchange Act Rel. No. 55706, 2007 SEC LEXIS 895, at *29 (May 4, 2007), *aff'd*, 347 Fed. Appx. 692 (2d Cir. 2009), *cert denied*, 130 S.Ct. 2380 (2010). Rather, "subjecting oneself to [FINRA's] disciplinary process and relying on [FINRA's] procedures is the appropriate route to challenge [FINRA] jurisdiction." *Id.* at *31. Furthermore, the fact that a sanction may remain in effect during the pendency of an SEC appeal where an applicant is unable to obtain a stay does not demonstrate unfairness, given that applicants will have had the opportunity to advocate their interests before *two* adjudicatory bodies—the FINRA Hearing Panel and the SEC (in reviewing a stay motion)—and given "the importance of [FINRA's] need for timely information." *Berger*, 2007 SEC LEXIS 895, at *32.

authorize FINRA to impose sanctions for, among other things, violation by an associated person of FINRA rules or the federal securities laws. FINRA By-Laws, Art. XIII, Sec. 1. Thus, FINRA's rules provide fair notice that requests that are part of an investigation into whether an associated person has engaged in any violations—such as FINRA's requests directed to Goldstein—are authorized.[17] As applied here, FINRA's rules gave Goldstein "fair warning of prohibited conduct." *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

Goldstein is required to respond to FINRA's requests, and his repeated failures to do so violate FINRA Rules and jeopardize FINRA's ability to investigate possible misconduct. *See Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *aff'd*, 436 Fed. Appx. 31 (2d Cir. Sept. 1, 2011) (finding that associated person's failure to respond "subverts [FINRA's] ability to execute its regulatory responsibilities").

2. The Sanctions Imposed by the Hearing Panel Are Appropriate and Are Neither Excessive Nor Oppressive

Goldstein also is unlikely to overturn the sanctions imposed by the Hearing Panel. FINRA Rule 9559(n) provides that in proceedings such as these, the Hearing Panel may approve, modify, or withdraw any and all sanctions, requirements, or restrictions imposed by the original suspension notice, or may impose any other fitting sanction. The Hearing Panel suspended Goldstein for three months and ordered that if Goldstein does not fully comply with the requests

[17] As the Hearing Panel held, FINRA's requests for information did not "seek[ ] information of an unrelated third party but, rather, information of an associated person, Goldstein." Decision at 17. For example, Goldstein refused to answer questions about *his* Wall Street at Home customers, the services *he* provided, and the compensation *his* services generated. Hearing Panel Decision at 13, 15-16. *Cf. Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *17 (FINRA NAC Dec. 12, 2012) (rejecting argument that FINRA lacked jurisdiction to request information about respondent's involvement with an outside issuer or his marketing of the issuer's securities to customers of his broker dealer).

for information within three months, the suspension will automatically convert to a bar and $50,000 fine. Decision at 28.

Thus, Goldstein has three months after the start of the suspension to respond to FINRA's requests, and FINRA's subsequent bar of Goldstein is conditional and avoidance of the bar is completely within his control: if he complies fully with FINRA's Rule 8210 requests within three months, then the bar will not take effect. Decision at 28. To date, Goldstein has chosen not to take this path and his continued refusal will result in a fine and bar, which is an appropriate sanction for a failure to respond. *See PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *9 (Apr. 11, 2008) (noting that failure to cooperate with FINRA's information requests is properly remedied by a bar) (quotation omitted). Goldstein is not likely to have the sanctions overturned on appeal.

* * * *

Goldstein has not demonstrated a possibility, let alone a likelihood, that he will prevail on the merits of his appeal to the Commission. The Commission should reject his stay request.

C. Denial of the Stay Will Not Impose Irreparable Injury on Goldstein and Will Not Injure Other Parties

Goldstein will not suffer irreparable injury, and no other party will suffer substantial harm, if the Commission denies the stay request. "Mere injuries, however substantial, in terms of money, time, and energy . . . are not enough[]" to demonstrate irreparable harm. *See Timpinaro*, 1991 SEC LEXIS 2544, at *8. Goldstein has offered no evidence or argument to support a finding that he would be irreparably injured if the Commission denies the stay request. In his stay request, Goldstein states only that a denial of his stay request will mean that he cannot continue to work. Stay Req. at 5. The Commission has rejected loss of employment as proof of irreparable harm. *See Nicholas S. Savva*, Administrative Proc. No. 3-15017, at 6 (Oct. 31, 2012)

(finding no irreparable harm from loss of employment); *Hans N. Beerbaum*, Administrative Proc. No. 3-12316, at 3 (Aug. 25, 2006) (finding no irreparable harm from Beerbaum's exclusion from the industry, which would force him to close his broker-dealer); *Robert J. Prager*, Administrative Proc. No. 3-11627, at 4 (Sept. 14, 2004) (finding no irreparable harm from loss of employment for family's sole support). Moreover, Goldstein could avoid the suspension—and avoid any asserted harm—by complying with FINRA's requests. *See Justin William Keener*, Administrative Proc. No. 3-14988, at 6 (Sept. 20, 2012) (finding no irreparable harm where applicant can end suspension by providing requested information).[18]

Nor has Goldstein demonstrated that denial of his stay request will substantially harm another entity. Goldstein argues that only FINRA would be harmed by the curtailing of its investigation of potential misconduct at Marquis Financial. Stay Req. at 5. Goldstein thus has not demonstrated that denial of his stay request will result in irreparable injury to him or substantial harm to another, and the Commission accordingly should deny his stay request. *See Associated Sec. Corp. v. SEC*, 283 F.2d 773, 775 (10th Cir. 1960) (stating that the "necessity of protection to the public far outweighs any personal detriment").

D. Denial of the Stay Will Serve the Public Interest

The Commission should further the public interest by allowing the sanctions to remain in place pending its review of this appeal. By failing to respond to FINRA's requests for information, Goldstein has demonstrated a flagrant disregard for complying with a fundamental FINRA rule. Goldstein has thwarted FINRA's attempts to obtain basic information concerning

[18] The four Commission Orders Denying Stay cited in this paragraph are attached as Appendix D.

his outside business activities through an entity that he owns and controls, activities which he admits are related to his securities business at Marquis Financial.

Goldstein argues that the public interest is "to ensure that Rule 8210 has limits." Stay Req. at 6. Goldstein confuses his private interest with the public interest. The public interest favors FINRA's ability to investigate the activities of the president of a FINRA firm. FINRA maintains a robust examination program to monitor associated persons' compliance with federal securities laws and FINRA's rules. Some of FINRA's rules, including Rule 3270 (outside business), apply to associated persons' activities with non-members. These types of investigations can uncover conduct that harms investors and may uncover misconduct that an associated person is attempting to hide from his member firm. Thus, robust enforcement of Rule 8210, FINRA's sole means of conducting investigations, is imperative and in the public interest.[19] The public's confidence in the integrity of FINRA firms will be maintained by allowing FINRA's suspension of Goldstein to begin. "[C]ompliance with Rule 8210 [is] essential to enable [FINRA] to execute its self-regulatory functions." *PAZ Sec.*, 2008 SEC LEXIS 820, at *12.

The necessity of protecting the public interest, particularly in regard to ensuring that FINRA is able to obtain the information necessary to investigate its members, far outweighs any harm to Goldstein.

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[19] Goldstein also argues unsuccessfully that FINRA's information requests implicate potential privacy and confidentiality issues. Stay Req., Exhibit B at 13. "FINRA investigations are non-public and confidential." FINRA Regulatory Notice 09-17, 2009 FINRA LEXIS 45, at *4 (Mar. 2009). Furthermore, in the event that FINRA's investigation proceeds to a disciplinary proceeding, Goldstein may request a protective order to ensure the confidentiality of particular documents. *See* FINRA Rule 9146(k) (Motion for Protective Order).

III. OBJECTION TO INCORPORATION OF PRIOR PLEADINGS INTO STAY REQUEST

Commission Rules of Practice 154 and 401 together provide that parties seeking and opposing stays may attach to their requests pertinent portions of the record. FINRA does not object to Goldstein's attachment of exhibits to his stay request. Goldstein also, however, attaches as Exhibit B to his stay request the request for hearing that he filed before FINRA. Goldstein appears to incorporate the legal arguments set forth in Exhibit B into his request for stay. *See* Stay Req. at 2-5 and n.1. Commission Rule 154 states that no motion and supporting brief shall exceed 7,000 words and that any supporting brief that exceeds 15 pages must be accompanied by a certificate of word-count compliance. Goldstein's motion for stay is six pages and Exhibit B contains 19 pages, for a total of 25 pages. He has not filed a certificate of word-count compliance, and the stay request and Exhibit B together appear to exceed the 15-page limit established in Rule 154. FINRA therefore opposes and requests that the Commission strike pages 10 through 20 of Exhibit B, as they exceed the 15-page limit for motions.

IV. CONCLUSION

The Commission should stay sanctions only in extraordinary circumstances, and such circumstances are not present here. The Hearing Panel correctly determined that the undisputed evidence showed that Goldstein was subject to FINRA's jurisdiction and failed to respond to FINRA's information requests regarding his outside business activities. The Hearing Panel also correctly concluded that suspending Goldstein until he fully complied with such requests was appropriate. Given the important function that Rule 8210 serves in FINRA investigations, the Hearing Panel's imposition of a suspension and conversion to a bar and fine for Goldstein's

failures to comply with a rule essential to FINRA's core mission is fully warranted in this case. Accordingly, the Commission should deny Goldstein's stay request.

Respectfully submitted,

Michael Garawski
Associate General Counsel

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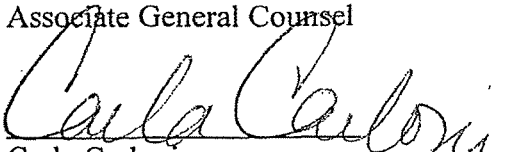
Associate Vice President and
Associate General Counsel



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Dated: January 29, 2013

CERTIFICATE OF COMPLIANCE

I, Carla Carloni, certify that this brief complies with the length limitation set forth in SEC Rule of Practice 154. I have relied on the word count feature of Microsoft Word in verifying that this brief contains approximately 5,401 words.

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APPENDIX A

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. GREGORY E. GOLDSTEIN (CRD No. 2412387), Respondent.	Expedited Proceeding No. FPI120005 STAR No. 20110302101 Hearing Officer – LOM **HEARING PANEL DECISION** January 4, 2013

Respondent was served with a Notice of Suspension pursuant to FINRA Rule 9552 after he refused to answer questions during an on-the-record interview and refused to provide documents and information subsequently requested pursuant to FINRA Rule 8210. Respondent is found to have violated Rule 8210, and is ordered to comply fully with all outstanding FINRA Rule 8210 requests for information within 21 days of the date of this decision. If Respondent fails to comply within that time period, then pursuant to FINRA Rules 9552(a) and (d) he will be automatically suspended from association with any member firm in any capacity. Pursuant to FINRA Rules 9552(f) and (h), if the suspension is not terminated on the ground of full compliance within three months, Respondent will be automatically barred. If barred, then pursuant to FINRA Rules 9559(n) and 8310(a) he also will be fined $50,000.

Appearances

Peter Schlossman, Senior Counsel, Jonathan I. Golomb, Senior Special Counsel, Rockville, Maryland, represent the Department of Enforcement.

Martin P. Unger, Ian J. Frimet, Burkhart Wexler & Hirschberg, LLP, Garden City, New York, represent Respondent.

I. INTRODUCTION

Respondent, Gregory Evan Goldstein ("Respondent" or "Goldstein"), requested a hearing pursuant to FINRA Rules 9552 and 9559 after the Department of Enforcement ("Enforcement") of the Financial Industry Regulatory Authority ("FINRA") served him with a Notice of

Suspension for failure to provide information and documents in connection with FINRA Rule 8210. Pursuant to Rule 9552(d), the suspension was automatically stayed.[1]

Respondent refused to answer questions during an on-the-record interview ("OTR") and refused to provide certain documents and information that Enforcement subsequently requested pursuant to FINRA Rule 8210. The inquiries Respondent refused to answer generally concern Respondent's outside business activities conducted through an entity called Wall Street at Home.com, Inc. ("Wall Street at Home"). Respondent takes the position that he need not answer Enforcement's inquiries pursuant to Rule 8210 to the extent they concern Wall Street at Home, because, he asserts, Wall Street at Home is an independent, unregulated third-party entity outside FINRA's jurisdiction. On that basis, Respondent contends that he has not violated FINRA Rule 8210.

Because the critical facts are not in dispute, and the jurisdictional issue that is at the heart of Respondent's defense is a legal issue, the parties agreed to a resolution of the matter on the basis of stipulated facts and legal briefs, rather than an evidentiary hearing.[2] A Hearing Panel composed of the Hearing Officer and two current members of the District 10 Committee

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[1] FINRA is responsible for regulatory oversight of securities firms and associated persons who do business with the public. It was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange. FINRA is developing a new "Consolidated Rulebook" of FINRA Rules in which some NASD Rules have been replaced by new FINRA Rules. Other NASD Rules continue to be in effect. The first phase of the new consolidated Rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, FINRA's procedural Rules apply. The conduct Rules that apply are those that existed at the time of the conduct at issue. FINRA and NASD Rules are available at www.finra.org/Rules ("FINRA Manual On-Line"). References here to FINRA include references to NASD.

[2] FINRA Rule 9552 and Rule 9559 provide for an expedited procedure because, generally, such cases are not complex. *See* Notice To Members 04-36 (expedited actions generally involve "straightforward issues" such as whether the respondent paid an arbitration award or fee or provided information requested by the staff). In this case, however, as discussed below, Respondent challenges the jurisdictional scope and fairness of FINRA Rule 8210 in a "test" case. The usual deadlines have been extended to allow for full briefing and consideration of the issues. Respondent has not objected.

reviewed the joint stipulations, and the opening, response, and reply briefs.[3] The Hearing Panel concluded that neither oral argument nor evidentiary testimony was necessary. This is the Hearing Panel's decision.

Wall Street at Home is an indirect owner of a FINRA member firm, because it owns 100% of a holding company called Steven Gregory Securities ("SGS" or "Holding Company") that in turn owns 95% of a FINRA member firm called Marquis Financial Services, Inc. ("Marquis"). Respondent is the president and sole voting stockholder of Wall Street at Home, as well as the president of both Marquis and the Holding Company. Respondent also is the sole generator of revenue for Wall Street at Home (through largely unspecified business consulting that may be related to Respondent's securities business), and the sole person with access and control of Wall Street at Home's funds. He is identified as the sole control person of Wall Street at Home in documents filed with FINRA. He owns at least 80% of Wall Street at Home, while 30 or so other shareholders (whom Respondent refuses to identify) own a minority interest.

As more fully discussed below, the information sought by the staff pursuant to FINRA Rule 8210 is information that belongs to Goldstein, that is within his possession, custody and control, and that concerns his own business activities. That those activities are conducted through Wall Street at Home does not insulate Goldstein from responding to FINRA's inquiries. Furthermore, Goldstein's business activities through Wall Street at Home appear closely related to his conduct of a securities business through FINRA member firm Marquis. They are not

[3] The Parties' filings are: (i) Notice of Filing of Stipulations ("Jt. Stip."); (ii) Request for Hearing Pursuant to FINRA Rules 9552 and 9559 ("Resp. Opening"), with Exhibits A through L ("Resp. Ex. A" *et seq.*); (iii) Enforcement's Response to Respondent's Request for a Hearing Pursuant to FINRA Rules 9552 and 9559 ("Enf."), with Exhibits 1 through 22 ("Enf. Ex. 1" *et seq.*); and (iv) Respondent's Reply Brief ("Resp. Reply"). The Hearing Panel has relied upon only those Exhibits that Goldstein could not dispute, *e.g.*, excerpts from Goldstein's OTR, offered by Enforcement (Enf. Ex. 2 and Enf. Ex. 10) and Goldstein (Resp. Ex. A); Goldstein's Form U4, offered by Enforcement (Enf. Ex. 15); Marquis's CRD, offered by Enforcement (Enf. Ex. 4); correspondence outlining the questions FINRA staff asked Goldstein pursuant to Rule 8210, offered by Goldstein (Resp. Ex. A) and Enforcement (Enf. Ex. 21).

unrelated business activities. Goldstein is required to provide the information pursuant to FINRA Rule 8210.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINRA Has Jurisdiction Over Goldstein And Marquis

Respondent, Gregory Evan Goldstein, entered the securities industry in 1995 and currently is registered through FINRA member firm Marquis, where he is the president.[4] FINRA has jurisdiction over Goldstein pursuant to Article V of FINRA's By-Laws because he is within the definition of an associated person in Article I of the By-Laws. Indeed, he is an associated person for three independent reasons: (i) Respondent is an officer of Marquis; (ii) Respondent is engaged in the securities business and is indirectly a control person of Marquis; and (iii) Respondent is registered as an associated person of Marquis. Pursuant to FINRA's By-Laws, when Goldstein applied for registration he agreed on his Form U4 to abide by the securities laws and the rules, orders, and disciplinary decisions of the organization.[5] FINRA similarly has jurisdiction over Marquis as a member firm pursuant to Article IV of the By-Laws.[6]

B. FINRA Also Has Jurisdiction Over The Holding Company For Purposes Of FINRA Rule 8210

In 1999 FINRA (through its predecessor, NASD) amended its By-Laws specifically to give "the staff the authority to require the provision of information and testimony under NASD

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[4] Jt. Stip. ¶¶ 1-2; Enf. Ex. 4 (Marquis CRD as of 4/16/2012).

[5] FINRA By-Laws, Article I (Definitions), rr (a natural person who is registered with a FINRA member firm, and, regardless of registration, any natural person who serves as an officer of such a firm or any natural person engaged in the securities business who directly or indirectly controls the firm, are all persons associated with the member firm). FINRA By-Laws, Article V, Section 2(a)(1) (every person who applies for registration agrees to abide by the securities laws and FINRA Rules, orders and sanctions). FINRA By-Laws, Article V, Section 4 (FINRA retains jurisdiction over any associated person for purposes of investigation, disciplinary action, and obtaining information pursuant to FINRA Rule 8210 for two years after the person is no longer associated). Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5); Enf. Ex. 15 (Goldstein's Form U4).

[6] FINRA By-Laws, Article I (Definitions), ee (member firm is any broker-dealer admitted to membership). FINRA By-Laws, Article IV, Section 1 (a member firm agrees to comply with FINRA Rules). FINRA By-Laws, Article IV, Section 6 (FINRA retains jurisdiction for two years after a firm ceases to be a member).

Rule 8210 from any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they 'control' the member firm or are actively engaged in its securities or investment banking business." The amendments accomplished this purpose by including in the definition of the term associated person, for purposes of Rule 8210, any person listed on Schedule A of the firm's Form BD. Any person who owns 5% or more of the voting shares of a FINRA member firm is required to be listed on Schedule A.[7] Accordingly, since the Holding Company owns 95% of Marquis and is listed on the Form BD for Marquis as a direct owner of the brokerage firm, the Holding Company is subject to the obligation to provide information pursuant to Rule 8210.[8]

C. Goldstein Owns, Controls, And Conducts Business Through Each Entity, Including Marquis, SGS, And Wall Street At Home

Marquis. Goldstein started working at Marquis in June 2001,[9] around the time that the Holding Company, SGS, signed an agreement to purchase Marquis.[10] At the time of the

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[7] Schedule A of Form BD; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of "Person Associated with a Member," Fed. Reg. Vol. 64, No. 175, 64 FR 49261 (Sept. 10, 1999); Notice To Members 99-95, 1999 SEC LEXIS 2258 (Oct. 19, 1999).

[8] Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5). *See Dep't of Enforcement v. Keener*, Expedited Pro. No. FPI110005, No. 2001029820501 (OHO July 20, 2012) (unregistered person listed on BD Schedule A as direct owner of brokerage firm was subject to Rule 8210). *See also In the Matter of Justin William Keener ("Keener")*, SEC Admin. Pro. No. 3-14988, Order Denying Stay, Slip Op. at 4-5 (SEC Sept. 20, 2012) (stating it is likely that FINRA had jurisdiction for purposes of Rule 8210 over unregistered person identified as owner of more than 5% of member firm on Schedule A of Form BD).

Direct owners of 5% or more are reported on Schedule A. Indirect owners of 25% or more are reported on Schedule B. The Form BD Instructions indicate that each successive 25% indirect owner shall be disclosed until a person or public reporting company is reached. Changes in ownership or reporting are made by filing and revising as necessary a Schedule C. Form BD Instructions; Notice To Members 92-61, 1992 NASD LEXIS 20 (Nov. 1992). As a 100% owner of the Holding Company, Wall Street at Home is an indirect owner of Marquis. In turn, as an 80% owner of Wall Street at Home, Goldstein is also an indirect owner of Marquis. *See* Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5).

[9] Jt. Stip. ¶ 31.

[10] Jt. Stip. ¶¶ 3-4.

purchase, Goldstein had a partner, Steven Cohen, but Cohen sold his interest to Goldstein in June or July 2006.[11]

Marquis identifies Goldstein in its CRD as its president and as a control person. SGS, the Holding Company, is the only other control person.[12] Goldstein testified that Marquis employs one secretary and two other people in addition to himself, Art Kingsley Okun, the Chief Compliance Officer for Marquis, and Peter Salvato, an account representative.[13] Goldstein supervises Okun and tracks who the customers are.[14] The two of them work side by side in California, while Salvato works out of his house in Florida.[15]

Goldstein exercises control over Marquis and considers himself in charge of the firm. Goldstein testified at his OTR that he determined whether the brokerage firm had sufficient cash to afford to give him a bonus.[16] It was Goldstein's sole decision to hire Okun as Chief Compliance Officer.[17] In his OTR, Goldstein described himself as the only owner of Marquis, but when he was corrected by his attorney he acknowledged that SGS and Wall Street at Home are owners of Marquis.[18]

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[11] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 24); Jt. Stip ¶¶ 7-8. SGS, Steven Gregory Securities, was an amalgam of the first names of the two partners. They had intended to change the name of Marquis to the holding company name but ended by leaving the name of the broker-dealer as Marquis. Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 25).

[12] Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

[13] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 18, 22-23). Goldstein testified that his wife is also registered through the firm but is on leave. *Id.* at 18.

[14] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 20-21).

[15] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 20-22).

[16] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 23-24).

[17] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 31-32).

[18] Enf. Ex. 2 (Goldsterin Jan. 9, 2012 OTR, pp. 24-25).

SGS. The Holding Company currently holds 95% of Marquis and is a direct owner of the FINRA member firm listed on Schedule A of the Marquis Form BD. The Holding Company has no other purpose than owning Marquis and has never engaged in any other business beyond owning Marquis.[19] The Holding Company has never had any employees.[20] Goldstein is the president and sole officer of the Holding Company.[21] Goldstein has described SGS as "[j]ust an empty holding company."[22]

Wall Street at Home. Wall Street at Home owns 100% of the Holding Company and is identified in the Marquis CRD as the owner and control person of the Holding Company. Wall Street at Home is an indirect owner of Marquis.[23]

Goldstein is the owner and control person of Wall Street at Home, according to Marquis's CRD.[24] The CRD identifies no other owners of Wall Street at Home.[25] In his OTR, Goldstein testified that there are other part owners of Wall Street at Home,[26] but Goldstein owns at least 80% of Wall Street at Home.[27] The minority shareholders bought shares in Wall Street at Home in private placements.[28] Marquis acted as the placement agent for Wall Street at Home in a July 2003 private placement offering.[29] The plan was for Wall Street at Home to operate a

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[19] Jt. Stip. ¶¶ 4-5.

[20] Jt. Stip. ¶ 9.

[21] Jt. Stip. ¶ 9.

[22] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 25).

[23] Jt. Stip. ¶ 6; Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

[24] Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

[25] *Id.*

[26] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

[27] *Id.*; Resp. Reply pp. 4, 6.

[28] Jt. Stip ¶ 7.

[29] Jt. Stip. ¶¶ 15-16.

retail securities brokerage business through Marquis.[30] The Private Placement Memorandum for the offering of Wall Street at Home described SGS and Marquis both as wholly owned subsidiaries of Wall Street at Home, and stated that they together operated a full service, retail securities brokerage business through Marquis.[31] Marquis raised about $1,000,000 in the July 2003 private offering of Wall Street at Home through the sale of units to approximately 20-30 investors, including Marquis's customers.[32]

Goldstein has conducted outside business activities through Wall Street at Home from at least 2005 through the present.[33] Wall Street at Home has never had any employees, and has never had any income except for revenues generated by Goldstein in connection with consulting services he provides clients through Wall Street at Home. As a business consultant for Wall Street at Home, Goldstein reviews corporate structures and performs corporate due diligence and other types of work for clients.[34] He testified that his career in the securities industry prepared him for doing such work.[35]

Goldstein testified that he does not receive compensation directly from customers of Wall Street at Home for the consulting work he performs. Rather, customers pay Wall Street at Home. Then Goldstein uses the funds as he sees fit. With respect to fees paid to Wall Street at Home, he said, "I collect the money, and I use it when it is necessary."[36]

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[30] Jt. Stip. ¶ 17. Goldstein once described the purpose of Wall Street at Home as "an entity that owns the broker/dealer [Marquis]." Enf. Ex. 10 (Goldstein Oct. 23, 2007 investigative testimony p. 34).

[31] Enf. Ex. 7 (July 7, 2003 PPM for Wall Street at Home offering p. 1).

[32] Jt. Stip. ¶ 20. Marquis has been the subject of disciplinary action for its conduct in connection with two private placement offerings in 2003 through 2005. Enf. Ex. 4 (Marquis CRD as of 04/16/2012, pp. 11-13).

[33] Jt. Stip. ¶ 30. Goldstein's stipulation and January 9, 2012 OTR both establish that Goldstein engaged in some kind of consulting business through Wall Street at Home.

[34] Jt. Stip. ¶¶ 10-13.

[35] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

[36] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 257).

In sum, Goldstein is the only voting shareholder of Wall Street at Home,[37] the only officer of Wall Street at Home,[38] the only person generating revenues for Wall Street at Home, and the only person with access to Wall Street at Home's funds. Goldstein uses those funds to pay Wall Street at Home bills and expenses, such as travel expenses. Goldstein also takes distributions of funds from Wall Street at Home for services he performs on behalf of Wall Street at Home.[39]

D. FINRA Rule 8210 Requires A Person Who Is Subject To FINRA's Jurisdiction To Provide Information Or Testimony Upon Request And Is A Critical Investigatory Tool

FINRA Rule 8210(a)(1) provides in relevant part that FINRA staff "shall have the right" to require a member, associated person, or other person subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically" or to testify under oath or affirmation "with respect to any matter involved in the investigation, examination, complaint, or proceeding." Rule 8210(a)(2) provides that FINRA staff shall have the right to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation." The Rule applies to anyone subject to FINRA's jurisdiction, including members and associated persons but also those indirect owners of members who are specifically required to comply with Rule 8210.

FINRA Rule 8210(c) requires compliance with any Rule 8210 request. Rule 8210(c) prohibits any member or person from failing to provide information or testimony or access to books, records, or accounts pursuant to a Rule 8210 inquiry. This provision contains no exceptions. The Securities and Exchange Commission ("SEC") describes the Rule as

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[37] Jt. Stip. ¶ 10.

[38] *Id.*

[39] Jt. Stip. ¶ 14.

"'unequivocal' with respect to an associated person's obligation to cooperate with NASD [and its successor, FINRA's] information requests."[40]

Rule 8210 enables FINRA to conduct meaningful examinations and investigations in order to detect misconduct and protect the public interest. FINRA relies heavily on Rule 8210, and the SEC has "repeatedly stressed the importance of cooperation in NASD investigations ... [and] emphasized that the failure to provide information undermines NASD's ability to carry out its self-regulatory functions."[41] Indeed, Rule 8210 is widely accepted as FINRA's most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members.[42] A failure to provide information requested pursuant to Rule 8210 is regarded as "a serious violation because it subverts NASD's [and FINRA's] ability to execute its regulatory responsibilities."[43] FINRA is therefore entitled to the "full and prompt cooperation" of all persons subject to its jurisdiction when investigative requests are made by members of its staff.[44]

E. Enforcement Requested Information From Goldstein, A Person Subject To FINRA's Jurisdiction, Pursuant To Rule 8210

Enforcement began investigating Marquis and its employees, including Goldstein, in 2010 after receiving a referral from FINRA Member Regulation concerning suspicious trading in penny stock at the firm in 2008 and 2009 by insiders of the issuer. FINRA staff is investigating for outside business activities, selling away, buying away, spinning, front-running, market

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[40] *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

[41] *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (internal citations omitted).

[42] *See John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *57 n.67 (Nov. 12, 2010), *appeal docketed*, No. 10-15918 (11th Cir. Dec. 23, 2010).

[43] *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *20-21 (Sept. 10, 2010) ("Without subpoena power, NASD must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.").

[44] *Michael David Borth*, Exchange Act Rel. No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

manipulation, violation of AML rules, fraud, and other potential conflicts between Marquis and Goldstein and the customers of Marquis.[45]

It became apparent that Goldstein had previously failed to report (and affirmatively denied having) outside business activities in connection with Wall Street at Home, contrary to FINRA requirements and Marquis's own written procedures. In August 2011, Goldstein finally reported his outside business activities through Wall Street at Home.[46] It also became apparent that during the 2010-2011 period Goldstein had in addition failed to disclose (and affirmatively denied having) an outside brokerage account away from Marquis. In fact, Goldstein held an outside brokerage account at UBS Financial Services, Inc. ("UBS") during some or all of 2008 through 2011. The UBS account mainly contained two penny stocks in which Marquis was

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[45] Enf. Ex. 1 (Declaration of FINRA Case Manager Sean Fitzpatrick) ¶¶ 6-7.

[46] FINRA Rule 3270 provides that no registered person may be an employee or officer of another entity or be compensated by another person or entity for business activity outside the scope of the registered person's relationship with the FINRA member firm without providing prior written notice to the member in whatever form the member specifies. Supplementary material to Rule 3270 in the FINRA Manual On-Line explains that the member must evaluate the activity to determine whether it is properly characterized as outside business activity or outside securities activity, in which case it will be subject to separate requirements. A member is required to keep a record of its compliance with these obligations in connection with each such written notice it receives.

Marquis had written procedures requiring any registered representative who received compensation for outside business activities to provide notice and a description of the outside "affiliation." Jt. Stip. ¶ 32. The brokerage firm's rules required the compliance officer to inquire about outside activities both upon employment and annually thereafter. The firm's rules also required the compliance officer to take action as necessary, including amending the registered individual's Form U4. Enf. Ex. 16 p. 5-9 (Marquis Written Supervisory Procedures, Outside Business Activities).

Prior to August 2011, Goldstein's Form U4 did not reflect his outside business activities at Wall Street at Home. Jt. Stip. ¶ 31. Furthermore, prior to August 2011, Goldstein affirmatively denied engaging in any outside business activities away from Marquis. On March 3, 2010, Goldstein signed his Marquis Annual Written Attestation in which he stated that he was not currently engaged in any outside business activity. Jt. Stip. ¶ 34. On May 28, 2010, Goldstein e-mailed a FINRA examiner to confirm a statement he had made earlier that day "that I do not have any outside business activities." Jt. Stip. ¶ 35. On March 29, 2011, Goldstein stated in his Marquis Annual Written Attestation that he was not engaged in any outside business activity. Jt. Stip. ¶ 36.

Goldstein explained in his 2012 OTR that he did not think he needed to report his outside business activities since he was the owner of Marquis, and it was only after FINRA staff told him he was required to make the disclosure that he updated his Form U4. He said, "For my outside business activity as Wall Street at Home. I just figured I was the owner, you know, the firm – president of the firm. And I knew what I was doing. So I didn't think I had to do it, but FINRA said I did. So I have since updated it the second they told me to do that." Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 255).

executing trades.[47] Many of Marquis's customers had most of their portfolios in one or two penny stocks.[48] Wall Street at Home also held an outside brokerage account,[49] which, as noted below, the staff inquired about, but Goldstein refused to provide any information.

The staff took Goldstein's testimony pursuant to FINRA Rule 8210 on January 9, 2012. In that OTR the staff asked Goldstein questions about his activities in connection with Wall Street at Home. Goldstein refused to answer certain of these questions.[50] Afterward, the staff sent Goldstein a written request for information and documents pursuant to Rule 8210. Those inquiries related to Goldstein's activities at Wall Street at Home.[51] Through counsel, Goldstein declined to provide responsive information or documents, asserting that the requests exceed FINRA's authority.[52]

F. Goldstein Refused To Provide Information Relating To His Business Activities Through Wall Street At Home

(1) Goldstein's Refusal To Answer Questions At His 2012 OTR

When Goldstein testified in the investigation pursuant to FINRA Rule 8210, the staff asked questions relating to his business activities through Wall Street at Home. Goldstein testified that he did consulting work on behalf of Wall Street at Home, conducting "due

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[47] Goldstein stated in his 2010 and 2011 Marquis Annual Written Attestations that he did not hold (and had not held) an outside brokerage account. Goldstein failed to disclose his UBS account despite having acknowledged in his January 2010 Marquis Annual Investment Executive Compliance Agreement that he was obligated to report any outside brokerage accounts he held. At the end of January 2010, the assets in Goldstein's UBS account were valued at $146,736.31, but their value declined, and by March 30, 2012, the assets were valued close to $7,000. The vast majority of the holdings in the account consisted of two penny stocks in which Marquis was executing trades during 2009 and 2010. Jt. Stip. ¶¶ 37-41. Goldstein disclosed his UBS account eventually as a result of a FINRA audit. Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 266-67).

[48] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 181, 183).

[49] Jt. Stip. ¶ 43.

[50] Enf. Ex. 1 (Declaration of FINRA Case Manager Sean Fitzpatrick) ¶¶ 8-9.

[51] Resp. Ex. B (Enforcement letter to Respondent's counsel dated February 3, 2012).

[52] Resp. Ex. C (Counsel's letter dated February 16, 2012, to Sean Fitzpatrick).

diligence" to see whether companies were "viable."[53] He said that his work in the securities industry had equipped him to do such consulting.[54] He also testified that the customers paid a fee to Wall Street at Home and that he would later use those funds as necessary.[55] Among other things, Goldstein used these funds for travel expenses,[56] which he would incur when he would "travel with companies to do due diligence."[57] Goldstein testified that there were other owners of Wall Street at Home in addition to himself but said that they "would be very small minority owners."[58]

Goldstein declined, however, to identify any customer for whom he did such consulting work or even to specify an industry in which he had provided such consulting.[59] He also declined to identify any of the other shareholders in Wall Street at Home.[60] Goldstein further declined to say whether Wall Street at Home had any investment accounts.[61] Goldstein declared, "I think that, you know, just the way you are asking questions about it is private business and so on. Taken just – it is difficult for me to answer questions about Wall Street because it is just not something I'm comfortable answering questions about."[62]

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[53] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 255-56).

[54] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

[55] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 257).

[56] Jt. Stip. ¶ 14.

[57] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

[58] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

[59] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 26-28, 256-57 ("Q: And what types of companies do you advise? Are they in different types of industries? A: Different kind of industries. Q: What industries. A: Various. Q: Tell us the industries. A: It could be anything. Real estate, Internet, products.")).

[60] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

[61] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 267-69); Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 273).

[62] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 267).

Goldstein's attorney directed him not to provide information with respect to Wall Street at Home.[63] The attorney argued that questions regarding Wall Street at Home were outside FINRA's authority.[64] At one point the attorney declared, "I have said I think it is outside of your authority. And he is not going to answer.... Show us why we are wrong, and we will consider giving you a response.... I don't think you are authorized. But if you can show me that you have the authority to delve into Wall Street at Home, [the witness] will consider answering the questions."[65]

Goldstein's responses to the staff's questions support Enforcement's assertion in its briefing that "Goldstein has frequently demonstrated a lack of candor and been evasive and uncooperative."[66] It is undisputed that Goldstein failed to report his outside business activities and his own outside brokerage account until they came to light due to FINRA's regulatory efforts. In answer to questions, Goldstein repeatedly responded that he did not know or could not remember information, even when that statement was not credible. When Goldstein was asked, for example, whether he or Wall Street at Home ever had any outside brokerage accounts, he responded, "I'm not sure. I can't recall."[67] When Goldstein was asked to identify the customers for Wall Street at Home consulting services, he responded, "Various companies."

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[63] Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, pp. 27-28); Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 27-28, 268-69).

[64] *Id.*

[65] Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 273).

[66] Enf. p. 12.

[67] Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 267).

When asked to give the names of *any* of the top customers, Goldstein said, "No."[68] Goldstein's lawyer explained that he believed it was "private business" that was "just beyond [FINRA's] authority."[69]

(2) **Goldstein's Refusal To Provide Responses To Written Requests For Information**

After Goldstein refused to answer questions at his January 9, 2012 OTR, Enforcement staff reviewed the objections raised by Goldstein and his attorney and then sent the attorney a letter dated February 3, 2012, disputing the claimed basis for refusing to answer. The staff also enclosed written requests for information pursuant to Rule 8210 that were numbered 35 through 42 (following the numbering in an earlier request).[70] As paraphrased and summarized, those requests asked Goldstein to:

35. Identify the owners of Wall Street at Home from June 1, 2008, through December 31, 2011 (the "relevant period");
36. Identify the customers to whom Goldstein provided services as Wall Street at Home for the relevant period;
37. Describe the business services provided to the customers identified in response to item 36;
38. Provide information and documents showing the compensation received by Wall Street at Home and/or Goldstein in connection with the services he provided through Wall Street at Home to the previously identified customers;

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[68] Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 27).

Enforcement also pointed out that Goldstein was evasive in earlier OTR in 2007. Enf. pp. 12-13; Enf. Ex. 10 (compilation of Goldstein Oct. 23, 2007 OTR). For example, in the October 2007 OTR, Goldstein was asked about the private placement offering for Wall Street at Home, which Marquis offered and sold. He testified that Marquis customers invested in Wall Street at Home, but that he did not know how many or whether anyone other than Marquis customers invested in Wall Street at Home. He further testified that about 30 investors purchased an interest in Wall Street at Home, but he was "not sure" whether there was any list or other record of investors or whether investors had ever received any dividends (compilation of Goldstein Oct. 23, 2007 OTR, pp. 37-38). Goldstein variously answered "I don't know," "I am not sure," and "I couldn't be certain" throughout his 2007 OTR (compilation of Goldstein Oct. 23, 2007 OTR). Although this conduct does not bear on the question of whether Goldstein violated Rule 8210 in his 2012 OTR, it does bear on the sanctions, as discussed below.

[69] Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 27).

[70] Resp. Ex. B (Enforcement letter to Respondent's counsel dated February 3, 2012); Jt. Stip. ¶ 46.

39. Identify every person who initiated, reviewed, and/or authorized any financial transaction for Wall Street at Home – including distributions to owners – during the relevant period;
40. Identify bank and brokerage accounts in which Wall Street at Home had a beneficial ownership interest during the relevant period;
41. Provide monthly statements for each account identified in response to item 40; and
42. Provide federal and state tax income tax returns for Wall Street at Home for the tax years 2008, 2009, and 2010.

On February 16, 2012, by letter signed by counsel, Goldstein refused to respond to the staff's written requests.[71] That letter asserted that FINRA does not have authority to require a member or associated person "to produce documents belonging to a third party, particularly those unrelated to the member and/or associated person[']s securities activities (as here)."[72]

G. Goldstein Argues That FINRA Lacks Jurisdiction Over Wall Street At Home

Respondent's opening brief summarizes the main basis for his refusal to answer questions at his OTR and his refusal to provide information pursuant to the subsequent written inquiries. According to Respondent: "FINRA Rule 8210 does not extend to a non-member, indirect owner, of a FINRA member broker/dealer, nor does it extend to the provision of information and/or production of documents of such third-party even if an officer of the third-party non-member is also an associated person."[73] The premise of the defense is that FINRA's staff is seeking information and documents belonging to a non-member, non-associated third party, rather than information belonging to and held by a regulated person about matters intertwined with his

[71] Resp. Ex. C (Counsel's letter dated February 16, 2012, to Sean Fitzpatrick); Jt. Stip. ¶ 47.

[72] *Id.*

[73] Resp. Reply p. 1.

securities business.[74] In his reply brief, Respondent criticizes Enforcement for allegedly ignoring "the major issue in this proceeding – the scope of Rule 8210."[75] Respondent also criticizes FINRA for allegedly failing to better define the limits of Rule 8210.[76] Generally, Goldstein portrays this as a kind of test case for establishing the outer boundaries of Rule 8210.

H. FINRA Has Jurisdiction To Seek Information Regarding Goldstein's Own Business Activities, Even If Those Activities Are Conducted Through Wall Street At Home

Whatever the limits of FINRA Rule 8210, this case is not even close to those limits. Without a doubt, FINRA has jurisdiction here.

FINRA's staff is not seeking information of an unrelated third party but, rather, information *of an associated person*, Respondent Gregory Goldstein. The information concerns Goldstein's own business activities – Goldstein is the only person who works under the Wall Street at Home name and is the only person generating revenues for that entity. Goldstein owns the information – he is by far the majority owner of Wall Street at Home and, indeed, the only voting shareholder. Goldstein possesses and controls the information – he is identified in Marquis's CRD as the control person of Wall Street at Home, he is the only officer of the company, and he is the only person who has access and control of Wall Street at Home funds and accounts.

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[74] Respondent's opening brief attempts to raise a number of issues regarding the scope of FINRA's jurisdiction pursuant to Rule 8210. Resp. Opening pp. 2-3 (setting forth eleven issues Respondent believes should be decided). For example, Respondent asks "[W]hat are the limits of FINRA Rule 8210; and do the documents and information requested at bar fall within such limits?" *Id.* (Issue 3). Respondent also asks whether Rule 8210 is unconscionably vague. *Id.* (Issue 5). Many of these issues are based on the faulty premise, discussed below, that the information sought is not Goldstein's information but, rather, some independent third party's information. Other issues simply lack any grounding in fact or law or do not come into play given the facts of this case. To the extent any of these issues merits even a modicum of attention, they are addressed below.

[75] Resp. Opening p. 1.

[76] *Id.*

Furthermore, the entity Wall Street at Home is not entirely independent from the firm through which Goldstein conducts a regulated securities business. Wall Street at Home is an indirect owner and control person of FINRA member firm Marquis. Although not listed on Schedule A of Marquis's Form BD, Wall Street at Home is practically a direct owner of Marquis, because it owns 100% of a shell company that owns 95% of Marquis. In fact, Wall Street at Home was created to own and operate FINRA member firm Marquis, and it is under common control with Marquis and its Holding Company – Goldstein's control.

The businesses Goldstein owns and controls are also intertwined in other ways. Marquis conducted the private placement in which minority shareholders invested in Wall Street at Home, and Marquis customers are minority shareholders of Wall Street at Home. Goldstein's business and financial affairs operated through Wall Street at Home have a direct relationship to his customers in his securities business.

Finally, the information sought from Goldstein regarding his business through Wall Street at Home concerns activities closely related to his securities business through Marquis. Goldstein testified that it was his experience in the securities industry that made it possible for him to provide the consulting services he performs under the name Wall Street at Home. Even

the name of the entity signifies a close connection to the securities business.[77]

I. None Of Respondent's Arguments To The Contrary Has Merit

(1) *Ochanpaugh* Is Entirely Different From This Case

Respondent mainly relies on the SEC's decision in *Ochanpaugh* to justify his refusal to provide the information requested pursuant to FINRA Rule 8210.[78] That reliance is misplaced. The case at hand is nothing like *Ochanpaugh*.

In *Ochanpaugh* a registered representative failed to comply with a Rule 8210 request for copies of three checks drawn on the account of a church with which he was affiliated. The staff of FINRA's predecessor (NASD) sought the checks as part of an investigation into whether Ochanpaugh had received compensation in connection with a discontinued bill-payment program that the church had operated for a short time. The church would not release the three checks in

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[77] Enforcement argues that jurisdiction exists because Goldstein, Wall Street at Home, and SGS are alter egos. Enf. pp. 17-19. According to Enforcement the basic rule is that an entity and individual are alter egos if there is: (i) such a unity of interest that the separation of corporation and individual no longer exists; and (ii) it would be inequitable to give effect to the corporate form. Enforcement maintains that a host of considerations are relevant to the analysis, including whether there has been disregard of the legal formalities and a failure to maintain arm's length relationships among related entities.

The alter ego theory is used most often to pierce the corporate veil and hold individual owners liable for violations of law or tortious acts of a corporate entity. Different jurisdictions employ different standards for applying the alter ego theory, but generally the standard for holding that a corporation is the alter ego of a shareholder and ignoring the corporate form is a high one. It is not merely common ownership and control. *See In re Jay Alan Ochanpaugh*, Exchange Act Rel. No. 54363, 2006 SEC LEXIS 1926, at *14-15 and n.17 (Aug. 25, 2006). Numerous courts have held that the corporate veil will only be pierced on an alter ego theory in unusual circumstances that call for looking beyond the corporate structure. *See, e.g., SEC v. Woolf*, 835 F. Supp. 2d 111 (E.D. Va. Dec. 13, 2011) (SEC claims based on alter ego theory dismissed) (citing cases); *Valdez v. Capital Management Services LP*, 2010 U.S. Dist. LEXIS 121483 (S.D. Tex. Nov. 16, 2010) (100% commonality of ownership and identity of directors and officers still insufficient for alter ego theory); *In re Western States Wholesale Natural Gas Antitrust Litigation*, 2009 U.S. Dist. LEXIS 13818 (D. Nev. Feb. 23, 2009) (no personal jurisdiction based on alter ego theory where no evidence parent company failed to maintain corporate formalities).

The Hearing Panel's conclusion that FINRA has jurisdiction to request information from Goldstein regarding his business activities through Wall Street at Home does *not* turn on whether Wall Street at Home is the alter ego of Goldstein or any of the other entities over which FINRA has jurisdiction, or vice versa. Such a high standard is not required for Rule 8210 to apply and no court or administrative body has held that it is. FINRA does not have to show that Goldstein disregarded any corporate formalities in operating Wall Street at Home in order to require Goldstein to provide the information requested from him pursuant to Rule 8210.

[78] *Ochanpaugh*, 2006 SEC LEXIS 1926. Resp. Opening pp. 6-9, and Resp. Ex. E. Respondent says that *Ochanpaugh* is the only SEC decision on point. Resp. Opening p. 8.

issue out of concern for its members' privacy, although it did provide information about the purpose of the checks to address regulatory concerns. The church explained that the checks were written to members in financial need. The church elders authorized the registered representative to provide other requested information, including a description of the church and its activities and other financial information and bank records. The evidence showed that the registered representative could not by himself produce the requested checks. He needed authorization by other church leaders. The SEC concluded that NASD had not established that the registered representative had possession and control of the checks drawn on the church's account, and therefore the SEC held that the finding of a violation of Rule 8210 should be set aside.

In contrast, Goldstein is the only person who has access to and control of the funds, books, records, and accounts of Wall Street at Home. He needs no authorization from someone else to produce the requested information. Nor does the production of the requested information raise any confidentiality or privacy concerns. Goldstein has presented no evidence that identifying the customers and shareholders of Wall Street at Home or providing financial information for the company would invade the rights of any person relating to confidentiality or privacy.

In further contrast, the Rule 8210 inquiries here concern business conduct of an associated person acting through a company that has indirect ownership through a shell corporation of a FINRA member firm. Those business activities appear closely related to the regulated securities business of the associated person and the member firm, since they involve due diligence and analysis of the viability of companies and consulting activities that Goldstein says he is competent to perform because of his experience in the securities industry. The

information sought in *Ochanpaugh* was information that independent persons (elders of the church) informed NASD staff related to non-business, charitable payments.[79]

In sum, in *Ochanpaugh* the information sought did not belong to the regulated person from whom it was sought and was not in his custody or control. Moreover, the information related to the church's charitable work, not the registered representative's business activities. Here the information belongs to Goldstein, is in his custody and control, and relates to his business activities, including his securities business with Marquis.[80]

(2) **Respondent's Other Arguments Are Also Unsound**

As noted above, FINRA Rule 8210 requires compliance, without exception. FINRA's staff does not have to justify requests made pursuant to Rule 8210; and FINRA members and their associated persons "cannot take it upon themselves to determine whether information requested is material to an NASD investigation of their conduct."[81] Accordingly, Respondent's complaint that FINRA's staff "provided no basis for its request" for the information and has not

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[79] *Id.* In *Ochanpaugh*, the SEC did not determine that possession and control would suffice to establish FINRA's jurisdiction, because it was unnecessary to reach the question. The record failed to establish actual possession and control. For a different reason, the Hearing Panel here also does not determine whether possession and control would be enough without more to establish jurisdiction for purposes of Rule 8210. In this case, as discussed above, the record not only establishes possession and control but also much more.

Respondent raises the fact that FINRA proposed, but never adopted, a rule change adding possession, custody or control to Rule 8210 as a basis for obtaining information. Resp. Opening pp. 10-12. The proposed amendment is irrelevant to this case because Goldstein's possession and control of the information sought is only one of the factors supporting jurisdiction here.

[80] Moreover, the level of cooperation in *Ochanpaugh* was much different than in this case. The registered representative in *Ochanpaugh* and the church provided substantial amounts of information and only withheld three checks, while Goldstein here has refused to provide any information regarding his consulting services and customers or the compensation he has received for those services through Wall Street at Home. Nor has he identified any of the minority shareholders of Wall Street at Home. The Hearing Panel finds that Goldstein's lack of cooperation does not demonstrate a potentially legitimate, narrow challenge to FINRA's jurisdiction but rather an attempt to evade regulatory supervision and accountability.

[81] *Dep't of Enforcement v. Harvest Capital Investments, LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *34 (NAC Oct. 6, 2008) (citation omitted).

"in any way explained how that information or those documents are material to its investigation or examination" of Marquis and Goldstein[82] is not relevant.

Respondent also argues that FINRA's staff is seeking private and confidential information of third parties to which FINRA is not entitled. He refers to the names of the owners of Wall Street at Home and its clients, as well as the identification of the brokerage and bank accounts of Wall Street at Home.[83] Respondent has cited no authority for withholding such information and no basis for considering it private or confidential.

Respondent argues that Rule 8210 is unconscionably vague, unfair, and should not be enforced until it is fixed. Much of this attack is focused on the language in the Rule that requires compliance if the information sought concerns "any matter involved" in the investigation. Respondent also raises alleged procedural unfairness in the appellate process for disciplinary proceedings.[84] The Hearing Panel's purpose in this case is to determine whether Goldstein violated the Rule, and the Hearing Panel can accomplish its purpose without addressing any of Goldstein's general substantive and procedural attacks on the Rule. There is nothing unfair about the application of Rule 8210 to Goldstein in the facts and circumstances of this case.

III. SANCTIONS

Enforcement asks that the Hearing Panel order Goldstein to comply fully and completely with all outstanding requests for information and documents, as described in the Rule 9552 Notice of Suspension within two weeks of the Hearing Panel's written decision, suspend Goldstein for 30 days in all capacities, and fine him $20,000. If Goldstein does not comply with

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[82] Resp. Opening p. 7.

[83] Resp. Opening pp. 12-13.

[84] Resp. Opening pp. 14-19.

that order, Enforcement urges the Panel to bar Goldstein from the industry for failing to comply with FINRA Rule 8210 pursuant to FINRA Rules 9559(n)(1) and 8310(a).[85]

Proceedings under Rule 9552 are primarily focused on obtaining compliance with information requests (and on keeping reported information current). Even if a member or associated person has not provided information that it should have pursuant to Rule 8210, Rule 9552(a) essentially creates a 21-day window in which to take corrective action before the violator will be suspended. Rule 9552(a) authorizes the issuance of a Notice of Suspension but stays the suspension itself for a period of 21 days. Under Rules 9552(a) and (d), the suspension only becomes effective if the violator does not take steps to comply within the 21-day period. Under Rule 9552(f), even after a suspension has been imposed, it may be terminated if corrective action is taken and full compliance is obtained. Under Rule 9552(h), however, if compliance is not obtained within three months of the suspension, then a bar is automatic. When viewed together, these provisions place an emphasis on securing compliance in order to assist FINRA to perform its investigatory and enforcement functions.

Rule 9559(n), however, does allow the Hearing Panel to approve, modify, or withdraw any sanctions or requirements imposed by a Notice of Suspension and to impose any other fitting sanctions pursuant to Rule 8310(a). Rule 8310(a) authorizes various sanctions against any member or associated person who violates the law or FINRA's Rules or who refuses to comply with an order or decision issued under FINRA's Rules. The authorized sanctions include fines, suspensions, and bars.

The Hearing Panel believes that any sanction here should be focused on securing compliance with the Rule 8210 inquiries in order to facilitate Enforcement's investigation. A

[85] Enf. pp. 2-3.

fine and suspension imposed in advance, as Enforcement requests, regardless of whether Respondent might fully comply with the Hearing Panel's order to provide the information within two weeks, would to some extent discourage compliance by making full compliance seem futile. Therefore, the Hearing Panel believes sanctions should be imposed here only after Respondent has an opportunity to comply but fails to do so.

If Respondent fails to comply after being directed to do so by the Hearing Panel's decision, however, the most severe sanctions would be warranted. Such defiance of the Rules and this decision would be a serious violation.

The FINRA Sanction Guidelines ("Sanction Guidelines") state that a bar should be the standard sanction where an individual does not respond in any manner to a request for information pursuant to Rule 8210, and that a fine may be imposed of $25,000 to $50,000.[86] Even where an individual provides a partial but incomplete response, a bar is standard unless the person can demonstrate that he or she substantially complied with the information requests. In addition, a fine may be imposed of $10,000 to $50,000. The burden is on the respondent to show substantial compliance.[87]

Among the principal considerations in determining sanctions for this type of violation is the importance of the information requested but not provided, as viewed from FINRA's perspective. Another principal consideration is the degree of regulatory pressure required to obtain the information.[88]

In every case, a principal consideration in determining the appropriate sanction for an individual is whether the person engaged in an intentional act (as opposed to a reckless or

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[86] FINRA Sanction Guidelines (2011) p. 33, available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

[87] Sanction Guidelines p. 33.

[88] Sanction Guidelines p. 33.

negligent act).[89] In particular, a principal consideration is whether the respondent concealed information from FINRA or attempted to deceive or mislead in testimony.[90]

As explained in the General Principles applicable to all FINRA sanctions, the overall purpose of the FINRA disciplinary process and FINRA sanctions is to deter the respondent and others from engaging in misconduct, improve business conduct in the securities industry, and protect investors. Any sanction should be significant enough to achieve these goals.[91]

As applied in this case, if Respondent fails to comply fully with the Rule 8210 inquiries, these Principles and considerations support the imposition of a bar and a $50,000 fine.

First, a bar is standard unless substantial compliance is demonstrated. Goldstein has not come close to substantial compliance. His refusal to provide information regarding Wall Street at Home in fact may be regarded more reasonably as a complete refusal to provide information regarding his customers, consulting services, and compensation for those services, along with information regarding the other shareholders of Wall Street at Home and any trading in the penny stocks in which Marquis customers and Goldstein were heavily invested.

Second, the information Goldstein is withholding is critical to an investigation of potential fraud and conflicts with Marquis's customers. Unknown Marquis customers purchased minority interests in Wall Street at Home. Without the requested information, it is impossible to know whether they have been accorded their rights as shareholders and whether they have received dividends or any return on their investment. It is also impossible to know whether Goldstein generated revenues from consulting sufficient to support his travel expenses and any distributions made to him by Wall Street at Home or whether he used funds invested by the other

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[89] Sanction Guidelines p. 7.

[90] Sanction Guidelines p. 7.

[91] Sanction Guidelines p. 2.

shareholders for his travel and payments to himself. Unknown Marquis customers also have invested in penny stocks that Goldstein held in his previously undisclosed personal account and that he may hold through undisclosed Wall Street at Home accounts. Without the requested information it is impossible to conduct a reasonable investigation of potential market manipulation, front-running, and fraud, among other issues.

Third, FINRA has exerted substantial pressure in an attempt to obtain the information in issue. The staff took Goldstein's testimony in an OTR interview, sent written inquiries, and eventually issued a Notice of Suspension. FINRA has expended still further resources in addressing Goldstein's jurisdictional challenge to the Rule 8210 requests. It is apparent from these facts that Goldstein's misconduct has hampered and delayed the staff's investigation.

Fourth, public policy requires the maximum sanctions. Respondent and others must be deterred from flouting their obligation to cooperate in FINRA's investigations and examinations. FINRA simply cannot perform its oversight function effectively if persons subject to its jurisdiction refuse to provide information when requested to do so pursuant to Rule 8210. As the SEC said in its decision in *PAZ Securities*, later upheld on appeal, "A complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."[92]

Public policy considerations are especially important here because Respondent's challenge to FINRA's jurisdiction in this case is on its face without merit. If Respondent's

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[92] *In re PAZ Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *pet. for review denied sub nom. PAZ Securities v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

theory were correct, and Wall Street at Home were too far removed from FINRA's jurisdiction to require Goldstein to provide information about his business activities conducted through Wall Street at Home, then regulated persons could insulate themselves from oversight simply by placing a corporate shell like SGS between them and the FINRA member through which they conduct a securities business. Such a conclusion would eviscerate FINRA's ability to perform its regulatory mission. In light of the lack of doubt here regarding jurisdiction, the sanctions must be stringent to discourage Respondent and others from concocting baseless theories for refusing to comply with Rule 8210 inquiries.[93]

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[93] Goldstein has displayed a pattern of evading regulatory disclosures and inquiries. It is undisputed that he failed for years to report his outside business activities through Wall Street at Home or to disclose his outside investment account. His 2007 OTR, like his 2012 OTR, evidences an overall lack of regard for regulatory inquiries. In both OTRs, his uncertainties and lack of memory regarding basic facts of his outside business activities are not credible. They appear to be evasive maneuvers rather than true failures of memory. Furthermore, the earlier testimony is contradicted by evidence later uncovered by FINRA staff and by Goldstein's later testimony regarding Wall Street At Home. See, for example, the following excerpt from the 2007 OTR (Enf. Ex. 10 (Goldstein Oct. 23, 2007 investigative testimony pp. 34-38)) in which Goldstein denied that he was engaged in outside business activities through Wall Street at Home. He eventually admitted in his 2012 OTR, however, that he had engaged in business consulting through Wall Street at Home and had made distributions from that company to himself, without disclosing the activity until FINRA staff told him that he had to do so:

> Q: Have you participated in any outside business activities since you have been employed at Marquis Financial Services?
>
> A: I am not sure.
>
> ....
>
> Q: Okay. Is Wall Street At Home.Com an outside business of yours?
>
> A: There is – I don't do any work for them at all. It is just an entity.
>
> ....
>
> Q: Do you know if Wall Street At Home.Com was ever listed as an outside business activity on your CRD report?
>
> A: I could not be certain.
>
> Q: Did you ever receive compensation from Wall Street At Home.Com?
>
> A: I am not sure.
>
> Q: Did you ever receive any funds at all from Wall Street At Home.Com?
>
> A: That I couldn't be specific about.
>
> ....
>
> Q: And Mr. Goldstein, what is Wall Street At Hom.Com's business purpose?

IV. ORDER

Respondent, Gregory Evan Goldstein, is **ORDERED** to comply fully with all outstanding Rule 8210 requests for information and documents, as described in the Rule 9552 Notice of Suspension, within 21 days of the issuance of the Panel's written decision. If Respondent fails to do so, the Notice of Suspension will become effective. Pursuant to the Rules, if the suspension is not terminated within three months for full compliance, then Respondent will be barred from associating with any member firm in any capacity and fined $50,000.

Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies to: Gregory Evan Goldstein (via overnight courier and first-class mail)
Martin P. Unger, Esq. (via electronic and first-class mail)
Ian J. Frimet, Esq. (via electronic and first-class mail)
Jonathan J. Golomb, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

Q: And Mr. Goldstein, what is Wall Street At Hom.Com's business purpose?

A: It is an entity that owns the broker/dealer.

Q: The broker/dealer being Marquis Financial Services?

A: Yes.

Adjudicators can consider matters outside a rule violation when determining appropriate sanctions. *Dennis S. Kaminski*, Exchange Act Rel. No. 65347, 2011 SEC LEXIS 3225, at *38 (Sept. 16, 2011).

Any argument by Respondent that he reasonably relied on advice of counsel, which in certain circumstances might be a mitigating factor under the Sanction Guidelines (Sanction Guidelines at 6, Principal Consideration 7), is rejected. Respondent's conduct at the OTR manifested a reluctance to answer questions with any degree of meaningful information, not reliance on advice of counsel. Furthermore, as set forth above, under the circumstances of this case the assertion that FINRA has no jurisdiction lacked any merit. Any reliance on such a theory was not reasonable.

The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.

APPENDIX B

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Gregory Goldstein (CRD No. 2412387), Respondent.	DISCIPLINARY PROCEEDING No. 20110302101 HEARING OFFICER: LOM

NOTICE OF FILING OF STIPULATIONS

The parties have consulted and agree to the stipulations attached as Exhibit A.

Respectfully submitted,

April 30, 2012

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Exhibit A

Stipulations

1. Gregory Goldstein, CRD No. 2412387, entered the securities industry in 1995.
2. Goldstein is Marquis Financial Services, Inc.'s President. Marquis is a FINRA member firm.
3. Steven Gregory Securities signed an agreement to purchase Marquis in June 2001. Steven Gregory Securities finalized the purchase in or around spring 2002.
4. Steven Gregory Securities is a holding company and the direct owner of Marquis. Steven Gregory Securities currently owns about 95% or more of Marquis.
5. At this time, Steven Gregory Securities has no other purpose than owning Marquis. Steven Gregory Securities has never engaged in any other business beyond owning Marquis.
6. Wall Street at Home.Com, Inc. owns Steven Gregory Securities and is therefore an indirect owner of Marquis.
7. Gregory Goldstein and Steven Cohen were the majority stock holders of Wall Street at Home. There were other minority shareholders of Wall Street at Home after shares of the company were sold in private placements.
8. When Cohen left Marquis in the summer of 2006, Goldstein purchased Cohen's ownership interest in Wall Street at Home.
9. Goldstein is the president and sole officer of Steven Gregory Securities. There have never been any employees of Steven Gregory Securities.
10. Goldstein is currently the sole voting stockholder and president of Wall Street at Home. Goldstein is the only officer and is a former chairman of Wall Street at Home. Wall Street at Home has never had any employees.
11. Goldstein performs consulting work for Wall Street at Home from time to time and whenever work is available. Wall Street at Home never had income other than from consulting services.
12. As a business consultant for Wall Street at Home, Goldstein, among other things, reviews corporate structures, performs corporate due diligence, and performs other work in connection with whatever the particular assignment requires.
13. The companies that Goldstein advises as a Wall Street at Home consultant pay a fee to Wall Street at Home for services provided by Goldstein.
14. Goldstein is the only person with access to Wall Street at Home's funds which he uses to pay Wall Street at Home bills and expenses, such as traveling expenses for the company. From time to time, Goldstein takes distributions of funds from Wall Street at Home for services he performs on behalf of Wall Street at Home.
15. Wall Street at Home provided the private placement memo, subscription agreement, and other offering documents to Marquis for purposes of Marquis acting as the placement agent for the July 2003 offering.

16. Marquis was the placement agent for Wall Street at Home's private offering dated July 7, 2003.
17. As of July 2003, Wall Street at Home's business plan was to "operate a full service, retail securities brokerage business through our subsidiary, Marquis Financial Services . . ."
18. Marquis, as of 2006, was a wholly-owned subsidiary of Steven Gregory Securities, which was a wholly-owned subsidiary of Wall Street at Home.
19. In the July 2003 private offering memo for Wall Street at Home, Goldstein is listed as the President, Chief Executive Officer and Director and Steven Cohen is listed as the Vice President, Secretary, Treasurer, and Director.
20. Marquis raised about $1,000,000 in the July 2003 private offering of Wall Street at Home through the sale of units to about 20-30 investors, including Marquis customers.
21. The private placement memo for Wall Street at Home specified that the customers were to be accredited.
22. Marquis was the placement agent for The Neighborhood Filmworks' $1.5 million private offering.
23. About 20-40 investors purchased units in The Neighborhood Filmworks offering, including Marquis customers.
24. The private placement memo for The Neighborhood Filmworks specified that the customers were to be accredited.
25. Marquis was to earn 10% of the gross proceeds of the offering, a "non-accountable expense" of 3% of the proceeds, and 50 Class B Units.
26. Marquis raised at least $1 million for The Neighborhood Filmworks as the placement agent.
27. A business entity called Headliners Entertainment Group, Inc., compensated Wall Street at Home for introducing potential investors to Headliners.
28. In 2004, Headliners paid Wall Street at Home 3,000,000 shares of Headliners as compensation for introducing investors who purchased shares from Headliners in June 2004. The shares paid to Wall Street at Home were valued at $.08 per share, the market value of the shares on the date they were issued.
29. On April 20, 2009, Marquis agreed to a censure and a $13,500 fine for violating NASD Rules 3010(b) and 2110 for not having adequate written supervisory procedures relating to the Firm's conduct of private placements. Additionally, Marquis violated SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110 for failing to maintain all subscription agreements submitted by customers investing in the private placements or any confirmations of the investments.
30. Goldstein was involved in outside business activities for Wall Street at Home between at least 2005 and the present.

31. The first time that Goldstein amended his Form U4 to reflect his outside business activities at Wall Street at Home, after starting at Marquis in June 2001, was August 2011.

32. Marquis' written procedures require "[a]ny RR employed by, or receiving compensation from, any individual or entity as a result of any business activity outside the scope of his/her relationship with this firm" to "provide prompt written notice to the Compliance Officer describing such affiliation."

33. Marquis' Compliance Officer was required, under the Firm's rules, to submit a questionnaire upon employment and annually thereafter to each registered individual asking for a description of outside activities.

34. On March 3, 2010, Goldstein signed his Marquis Annual Written Attestation in which he stated that he was not currently engaged in any outside business activity.

35. On May 28, 2010, Goldstein e-mailed a FINRA examiner to confirm a statement he had made earlier that day "that I do not have any outside business activities."

36. On March 29, 2011, in his Marquis Annual Written Attestation, Goldstein stated that he was not engaged in any outside business activity.

37. In his January 2010 Marquis Annual Investment Executive Compliance Agreement, Goldstein acknowledged that he was obligated to report any outside brokerage accounts he held.

38. In the 2010 and 2011 Marquis Annual Written Attestations Goldstein stated that he did not hold and had not held an outside brokerage account.

39. Goldstein held an outside brokerage account at UBS Financial Services, Inc. between at least parts, or all of 2008 through 2011. His account statements were mailed to his home address monthly.

40. On January 29, 2010, Goldstein's UBS account was valued at $146,736.31. On March 31, 2011, the account was worth $54,881.31. On March 30, 2012, the account value was $7,161.31. The securities in the account were held since fall 2008 and there were no purchases or sales in the account during that time.

41. The vast majority of the holdings in the account consisted of the two penny stocks in which Marquis was mainly executing trades during 2009 and 2010.

42. During Goldstein's sworn On-The-Record Testimony the following exchange was held concerning the customers of Wall Street at Home:

Mr. Schlossman: Who are the customers of the consulting aspect of Wall Street at Home?

The witness: Various companies.

Mr. Schlossman: Can you give us any of the names of the top customers?

The witness: No.

Mr. Schlossman: You can't because you don't remember?

Mr. Unger: I don't know that that is, you know, disclosable information?

. . . [discussion about issue of whether the information is disclosable] . . . .

Mr. Schlossman: Are you directing him not to respond to the question who the customers are?

Mr. Unger: Yes. . . . .

43. Wall Street at Home held an outside brokerage account.

44. During Goldstein's sworn On-The-Record Testimony the following exchange was held concerning the outside account:

Q: At what firms were the accounts held?

Mr. Unger (Goldstein counsel): That is what I'm not going to let him answer.

Mr. Schlossman (FINRA counsel): So you are directing Mr. Goldstein not to answer the question of what firms Wall Street at Home held investment accounts?

Mr. Unger: Right, because I believe that it is beyond FINRA's authority to get information regarding that business.

45. Staff sent Goldstein, through counsel, a Rule 8210 request on February 3, 2012, seeking additional information about Wall Street at Home.

46. The 8210 Request asked for the following information (wording is verbatim and numbering from request):

35. Identify all the owners of Wall Street at Home.Com, Inc. during the period June 1, 2008 through December 31, 2011 (the "relevant period");
36. Identify every person and entity (including companies, partnerships, etc.), by name, last known address and telephone number, for whom Wall Street or Mr. Goldstein acting as, or on behalf of Wall Street, provided any business services or activities during the relevant period;
37. Provide a detailed description of each product, service, or business activity provided by Wall Street to, or on behalf of, each business or person identified in your response to Item #36 and the dates during which the product, service, or activity was provided;
38. Provide copies of all documents, including but not limited to contracts, service agreements, and payment terms, relating to each business or person and Wall Street, identified in your response to Item #36. If there are no such documents, provide a summary of the compensation that Wall Street or Mr. Goldstein received for the product, service or activity provided;
39. Identify every person by name and title, who initiated, reviewed, and/or authorized any financial transaction for Wall Street, including but not limited to collection of accounts receivable, payment of expenses, investments of company assets, and distributions of company assets to owners during the relevant period;
40. Identify all bank and brokerage accounts (including institution name, address, account title, and account number), for each account in which Wall Street had a beneficial ownership interest during the relevant period;

41. Provide complete monthly statements for each account identified in your response to Item #40.
42. Provide copies of all federal and state income tax returns filed by, or on behalf of, Wall Street at Home for the tax years 2008, 2009, and 2010. Provide copies of all supporting Tax Forms, documents and financial statements, including but not limited to Form 1099s, year-end Balance Sheets, and annual Income Statements. If the financial statements have been audited, please identify the name, address and telephone number of the auditor.

47. Goldstein, through his counsel, responded to FINRA February 3, 2012 Rule 8210 Request, in part, that: ". . . because the information and document requests are beyond FINRA's authority under Rule 8210, on behalf of our clients, we decline to provide the information and to produce the documents requested in items 35 through 42 contained in your letter."

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Gregory Goldstein (CRD No. 2412387), Respondent.	DISCIPLINARY PROCEEDING No. 20110302101 HEARING OFFICER: LOM

I hereby certify that on April 30, 2012, I caused a copy of the foregoing **NOTICE OF PROPOSED SCHEDULING ORDER and NOTICE OF STIPULATIONS to be sent by e-mail and first class certified mail to:**

Martin P. Unger, Esq.
Burkhart Wexler & Hirschberg, LLP
585 Stewart Avenue – Suite 750
Garden City, NY 11530

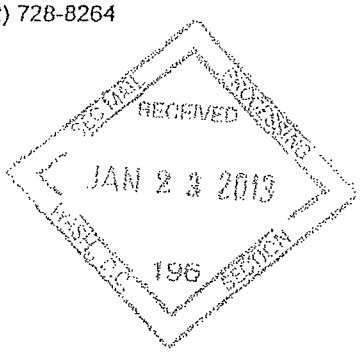
Peter Schlossman
Senior Counsel
FINRA Enforcement
1801 K Street, N.W., 8th Floor
Washington, D.C. 20006
(202) 974-2720

APPENDIX C

FINRA
Financial Industry Regulatory Authority

Carla Carloni
Associate Vice President
and Associate General Counsel

Direct: (202) 728-8019
Fax: (202) 728-8264



January 23, 2013

VIA MESSENGER

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: **Gregory Evan Goldstein; SEC Administrative Proceeding No. 3-15183; Appeal of FINRA Expedited Proceeding No. FPI120005 (January 4, 2013 Hearing Panel Decision)**

Dear Ms. Murphy:

I have enclosed a copy of FINRA's January 23, 2013 letter to Mr. Goldstein's counsel, Martin P. Unger, regarding the referenced proceeding. As indicated in the letter, FINRA is moving back the date for compliance with outstanding FINRA Rule 8210 requests to give the Commission time to rule on Mr. Goldstein's pending motion to stay and afford Mr. Goldstein the opportunity to have a ruling on his motion before a suspension begins. FINRA has agreed to extend the time within which Mr. Goldstein has to comply and not to begin a suspension of Mr. Goldstein until February 15, 2013 or—if the motion for stay is still pending—until after the Commission has ruled on the motion.

FINRA will file its response to Mr. Goldstein's stay request on or before Tuesday, January 29, 2013. Please contact me if you have any questions.

Very truly yours,

Carla Carloni

Carla Carloni

cc: Martin P. Unger, Esq. (via email, facsimile, and first-class mail)
Ian Frimet, Esq. (via email, facsimile, and first-class mail)

FINRA
Financial Industry Regulatory Authority

Alan Lawhead
Vice President and
Director - Appellate Group

Direct: (202) 728-8853
Fax: (202) 728-8264

January 23, 2013

VIA EMAIL/FIRST-CLASS MAIL

Martin P. Unger, Esq.
Burkhart Wexler & Hirschberg LLP
585 Stewart Avenue
Suite 750
Garden City, New York 11530
e-mail: munger@bwh-law.com

Re: *Gregory Evan Goldstein*, SEC Appeal

Dear Mr. Unger:

This will confirm that FINRA extends the time within which Mr. Goldstein has to comply fully with all outstanding FINRA Rule 8210 requests until February 15, 2013. FINRA will not begin a suspension of Mr. Goldstein until February 15 or—if the Motion for Stay is still pending—until after the Commission has ruled on your Motion for Stay. FINRA is moving back the date for compliance to give the Commission time to rule on the pending motion and afford Mr. Goldstein the opportunity to have a ruling on his motion before a suspension begins.

Sincerely,

Alan Lawhead

cc: Ian J. Frimet, Esq.
Lucinda O. McConathy, Office of Hearing Officers
Jonathan J. Golomb, Esq.
Mario DiTapani, CRD/Public Disclosure

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15017

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
October 31, 2012

In the Matter of the Application of NICHOLAS S. SAVVA and HUNTER SCOTT FINANCIAL, LLC c/o Michael Schwartzberg, Esq. Winget, Spadafora & Schwartzberg, LLP 45 Broadway, 19th Floor New York, NY 10006 For Review of Action Taken by FINRA	ORDER DENYING STAY

Hunter Scott Financial, LLC, a FINRA member firm, and Nicholas S. Savva, formerly associated with Hunter Scott, appeal from a FINRA decision denying Hunter Scott's application for Savva to continue to associate with the firm as a general securities representative. Applicants move to stay the effectiveness of FINRA's decision, which FINRA opposes. For the reasons stated below, the motion is denied.

I.

In July 2002, Congress passed the Sarbanes-Oxley Act, which amended the definition of "statutory disqualification" in the Securities Exchange Act of 1934.[1] Among other changes, the Sarbanes-Oxley Act expanded the definition of statutorily disqualifying events to include when an individual is "subject to any final order of a State securities commission (or any agency or officer performing like functions)" that either (i) "[b]ars such person from association with an entity regulated by such commission . . . or from engaging in the business of securities . . .

[1] 15 U.S.C. § 78c(a)(39).

activities" or (ii) "[c]onstitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct."[2]

On August 3, 2004, Savva consented to the entry of an order against him by Vermont's Department of Banking, Insurance, Securities, and Health Care Administration. The order censured Savva, ordered that he permanently cease and desist from violating Vermont law, fined him $25,000, and prohibited Savva from seeking registration in Vermont as a broker-dealer or investment adviser representative without prior written consent from the state. The factual basis underlying the consent order, which Savva neither admitted nor denied, was that between August 2002 and November 2003 Savva engaged in unauthorized transactions in customer accounts, made unsuitable recommendations to customers, and used "boiler room" or high-pressure sales tactics.

In June 2009, FINRA notified Hunter Scott that Savva, who had been associated with Hunter Scott since January 2004, was subject to statutory disqualification as a registered representative because of the Vermont order. Although disputing that the Vermont order constituted a disqualifying event, Hunter Scott filed a Membership Continuance Application seeking approval of Savva to continue to associate with the firm notwithstanding his disqualification.

The issue was set for a hearing before a subcommittee of FINRA's Statutory Disqualification Committee. Following a hearing on November 17, 2011, and briefing by the parties, the subcommittee submitted its written recommendation to the Statutory Disqualification Committee, which subsequently presented a written recommendation to FINRA's National Adjudicatory Council.[3] On August 10, 2012, the NAC issued a decision denying the request for Savva's continued association with Hunter Scott. The NAC found that Savva is statutorily disqualified because of the Vermont order and that FINRA did not unfairly and retroactively apply the definition of statutory disqualification to Savva. The NAC further found that Savva's continued association with Hunter Scott was not in the public interest and would create an unreasonable risk of harm to investors and the market given the serious nature of the statutorily disqualifying event, numerous customer complaints and regulatory actions, and the inadequacy of the firm's supervisory plan.

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2 *Id.* §§ 78c(a)(39)(F), 78o(b)(4)(H).

3 *See* FINRA Rule 9524(a)(10).

On September 10, 2012, applicants filed an application for review with the Commission and on October 9, 2012, filed a motion to stay the NAC decision pending the Commission's review.[4]

II.

The Commission generally considers the following factors in determining whether to grant a stay:

> (1) whether there is a strong likelihood that the Applicants will succeed on the merits of their appeal; (2) whether the Applicants will suffer irreparable injury without a stay; (3) whether there will be substantial harm to the public if the stay were granted; and (4) whether the stay will serve the public interest.[5]

The moving party has the burden of establishing that a stay is warranted.[6]

A. Applicants argue that they have a strong likelihood of succeeding on the merits of their appeal because FINRA made both procedural and substantive errors in reaching its decision. Specifically, applicants contend that FINRA failed to give them proper notice of the basis for Savva's disqualification because FINRA's Department of Member Regulation initially argued that the Vermont order was disqualifying based on it being a final order barring Savva and not for the reason ultimately adopted by the NAC—that the Vermont order was based on laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. Applicants further argue that FINRA imposed the statutory disqualification retroactively because FINRA procedural rules related to the statutory disqualification definition in the Sarbanes-Oxley Act were not put in place until 2009—years after Savva's conduct resulting in the Vermont order. Applicants also argue that, because it was entered by consent, the Vermont order does not qualify as a "final order" for the purpose of statutory disqualification. Applicants also fault FINRA for allowing a transcript of prior sworn testimony by Savva to be introduced into evidence after the hearing.

On the substance of Hunter Scott's Membership Continuance Application, applicants argue that the firm has demonstrated that it can properly supervise Savva, and that in reaching the opposite conclusion, FIRNA relied on stale events. Applicants contend that FINRA failed to

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4 "The filing of an application for review by the SEC shall not stay the effectiveness of final FINRA action unless the SEC otherwise orders." FINRA Rule 9559(s).

5 *John Montelbano*, Exchange Act Release No. 45107, 2001 WL 1511604, at *3 (Nov. 27, 2001).

6 *E.g., Millenia Hope, Inc.*, Exchange Act Release No. 42739, 2000 WL 511439, at *1 (May 1, 2000).

give proper consideration to a revised supervision plan submitted in advance of the final ruling, and they argue that Savva has not had a single customer complaint in the last four years.

Applicants submit that without a stay Savva "will effectively be barred from the securities industry" and that the "loss of his securities business clientele represents irreparable harm."[7] Additionally, applicants contend that "Hunter Scott will be irreparably harmed as it will be denied the services of one of its most experienced and profitable registered representatives" and will likely "lose customers to other securities firms."[8]

Applicants argue Savva's lack of recent customer complaints demonstrates "that his continued association with the firm will not create substantial harm to the public," and, in fact, a "stay will serve the public interest, as Mr. Savva will be permitted to return to his role as the registered representative for his long-standing customers at Hunter Scott."[9] In support of their stay application, applicants have submitted several largely identical affidavits from Savva's customers stating their desire to retain Savva as their broker notwithstanding their knowledge of the Vermont order and Savva's history of customer complaints.

FINRA opposes applicants' motion by arguing that they have not shown a strong likelihood of succeed on the merits. FINRA argues that applicants' procedural arguments fail to demonstrate that they are likely to succeed on appeal. First, FINRA opposes applicants' contention that they were not given proper notice of the basis for Savva's statutory disqualification, arguing that from the beginning applicants knew that the Vermont order was the basis for the disqualification. Moreover, FINRA argues, the issue whether the Vermont order was one barring Savva or one based on fraudulent, manipulative, or deceptive conduct was raised by FINRA more than four months before the hearing and applicants were given ample opportunity to brief and argue the issue before FINRA reached its decision. Second, FINRA argues that it did not apply the statutory disqualification retroactively because the Sarbanes-Oxley Act—which created the applicable statutory disqualification—became effective before the conduct resulting in the Vermont order, and its entry. Moreover, FINRA's rules and by-laws amended in 2007 and 2009 concerned only procedural matters and, therefore, were not impermissibly retroactive. Third, FINRA argues that there was nothing improper in the NAC admitting the prior testimony transcript into evidence "for the purpose of considering Savva's differing explanations of the events surrounding the Vermont Order," particularly because applicants were given an opportunity to address the admission of the transcript.[10] Fourth, FINRA argues that applicants' contention that the Vermont order is not a "final order" because it is a

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[7] Applicant's Mot. for Stay at 13.

[8] *Id.*

[9] *Id.* at 14.

[10] Br. of FINRA in Opp. to Mot. for Stay at 19.

consent order should be rejected because it was raised for the first time on appeal and because it "defies logic."[11] The Vermont order, FIRNA contends, is final because it "resolved and concluded all matters concerning that particular misconduct in Vermont."[12]

FINRA further contends that it properly denied applicants' application on the merits. FINRA argues that it considered all the evidence presented and denied the application based on a finding that "Savva's continued association with Hunter Scott was not consistent with the public interest and the protection of investors."[13] FINRA argues that it properly considered the nature and seriousness of the disqualifying event as well as Savva's history in the industry—which includes three customer complaints and a FINRA Cautionary Action "in the past five years alone."[14] In addition, FINRA argues that it properly considered and rejected Hunter Scott's proposed plan of supervision—including the revised plan, which substituted the firm's compliance officer as Savva's proposed supervisor. FINRA submits that it properly concluded that Hunter Scott "did not demonstrate that it could properly supervise Savva, regardless of who serves as Savva's primary supervisor."[15]

FINRA further argues that "[t]he fact that Savva or [Hunter Scott] may suffer some financial detriment if the NAC's action is not stayed does not rise to the level of irreparable injury."[16] Finally, FINRA contends that "[i]n balancing the potential injury to applicant against the possibility of harm to the public, the necessity of protecting the public far outweighs any potential injury to applicants."[17]

B. Final resolution must await the Commission's determination on the merits of applicants' appeal. However, based on the briefs the parties have filed so far, there does not appear to be a strong likelihood that applicants will succeed on appeal. Applicants appear to have been given sufficient notice of and opportunity to address the basis of Savva's disqualification. And applicants' argument that FINRA retroactively applied the statutory disqualification does not appear likely to succeed because the statutory basis for the Savva's disqualification was in place before the conduct resulting in the Vermont order, even if FINRA's procedural rules related to statutory disqualification were not fully in place until after the Vermont order. Furthermore, applicants' argument that the Vermont order is not a final order because it was entered by consent

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11 *Id.* at 21.

12 *Id.*

13 *Id.* at 14.

14 *Id.* at 15

15 *Id.* at 16 (internal quotation marks omitted).

16 *Id.* at 22.

17 *Id.*

does not appear likely to succeed. As FINRA points out, the Vermont order brought to conclusion particular allegations about Savva's misconduct, and applicants have failed to come forward with persuasive reasons why such an order should be excluded from the definition of a final order. Applicants also have not shown a strong likelihood that FINRA's admission of the transcript of Savva's prior testimony provides a basis for applicants to prevail on appeal. In addition, applicants have not shown a strong likelihood of success on their argument that FINRA failed properly to consider all the evidence in rejecting the application for Savva's continued association with Hunter Scott.

Nor have applicants established that, absent a stay, they will suffer irreparable harm. As the Commission has repeatedly stated, "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay."[18] FINRA correctly states that "[t]he alleged harm to applicants is indistinguishable from the harm to every person who is subject to a statutory disqualification and faced with loss of employment and every member firm that employs a highly profitable person subject to statutory disqualification."[19] Also weighing against a finding of irreparable harm is the fact that applicants did not file their motion for stay until two months after FINRA issued its decision and one month after filing their application for review.

Moreover, it appears that any harm to applicants is outweighed by the potential harm to the investing public from Savva's continued participation in the industry. FINRA has shown a history of misconduct by Savva with respect to his sales practices. Although applicants have submitted substantially identical affidavits of some of Savva's customers to support the showing that a stay would be in the public interest, in assessing the public interest "we look beyond the interests of particular investors . . . to the protection of investors generally."[20]

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[18] *See Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004); *see also William Timpinaro*, Exchange Act Release No. 29927, 1991 WL 288326, at *3 (Nov. 12, 1991) ("'Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.'" (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958))).

[19] Br. of FINRA in Opp. to Mot. for Stay at 22.

[20] *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *4 (Feb. 4, 2008); *see also Christopher A. Lowry*, Investment Advisers Act Release No. 2052, 55 SEC 1133, 2002 WL 1997959, at *6 (Aug 30, 2002) (stating that the public interest extends beyond the interests of a particular group of investors to the interest of the public-at-large), *aff'd*, 340 F.3d 501 (8th Cir. 2003).

Accordingly, IT IS ORDERED that, pending Commission review of their appeal, the motion by Nicholas S. Savva and Hunter Scott Financial, LLC to stay the effect of FINRA's decision be denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12316

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
August 25, 2006

In the Matter of the Application of

HANS N. BEERBAUM and
BEERBAUM & BEERBAUM FINANCIAL AND
INSURANCE SERVICES, INC.
5881 Roblar Rd.
Petaluma, California 94952

For Review of Disciplinary Action Taken by

NASD

ORDER DENYING REQUEST FOR RECONSIDERATION OF STAY DENIAL

On June 8, 2006, an order was issued, pursuant to delegated authority, denying the request for a stay of NASD disciplinary action filed by Hans N. Beerbaum, the owner and president of Beerbaum & Beerbaum Financial and Insurance Services, Inc. (the "Firm"), an NASD member. Beerbaum had asked the Commission to stay NASD's action barring him from association with any NASD member pending the Commission's consideration of Beerbaum and the Firm's appeal. 1/ Beerbaum now requests reconsideration of the June 8 order.

1/ Hans N. Beerbaum, Admin. Proc. File No. 3-12316 (June 8, 2006).

In addition to the bar imposed on Beerbaum, NASD also fined the Firm $15,000. The Firm did not seek a stay with respect to the fine imposed on it. Under NASD Procedural Rule 9370, the Firm is not required to pay the fine pending the outcome of the Commission's review.

Beerbaum's ownership of the Firm, in addition to his status as Firm president, renders him an "associated person of a member." 15 U.S.C. § 78c(a)(21). Subsequent to his initial stay request, on July 17, 2006, Beerbaum requested that the Commission grant "emergency injunctive relief" to stop what he claimed was an NASD effort to force him to sell his interest in the Firm. On July 19, 2006, NASD filed its response, stating, among other things, that it would "not require Beerbaum to sell his interest in the Firm or require the Firm to file a form BDW during the pendency of Beerbaum's and the Firm's appeal." On July 21, 2006, an order was issued granting a stay of Beerbaum's bar to the extent that it "prohibit[ed] his maintaining a proprietary interest in" the Firm pending appeal. Hans

(continued...)

on the public interest. 4/ As stated in the July 8 order, while any final determination must await the Commission's consideration of the merits of this proceeding, it does not appear that, at this stage, Beerbaum has demonstrated a strong likelihood that he will prevail on appeal. Although Beerbaum vaguely asserts that, with "more time to consider the appeal," he and the Firm will "prevail against the NASD," he provides no basis for his assertion.

Nor has Beerbaum demonstrated that he will suffer irreparable harm without a stay. Beerbaum asserts that Lee's departure will "force the firm to withdraw and file a BDW." Beerbaum also claims that, while he has "actively sought a buyer for the firm or a principal to take over from him," his efforts, thus far, have been unsuccessful. Assuming that Beerbaum's unsubstantiated claims of financial harm are true, the Commission has generally not granted stays on such a basis. 5/

Beerbaum represents that, if granted a stay, he would engage merely in "caretaking" responsibilities during the pendency of the appeal and that the Firm would initiate "[n]o new sales activity" during this period. Beerbaum's assurances, however, do not overcome the serious public interest concerns reflected in NASD's findings.

In determining to impose a bar on Beerbaum, NASD found that his "extensive responsibilities for the Firm while he was suspended as a principal to be a significant aggravating factor" that evidenced egregious misconduct. NASD found as another aggravating factor that Beerbaum and the Firm "ignored the [earlier NASD] decision that found [them] in violation of the same NASD rules at issue in the present case." NASD further found that Beerbaum and the Firm engaged in several activities identical to those that the earlier NASD decision found violative, and thus demonstrated intentional and knowing violations of NASD's rules. In addition, NASD found that Beerbaum's comments, "throughout the course of these proceedings," that the principal examination was "'a waste of everyone's time,' a 'farce,' and 'irrelevant' to the Firm's business" indicated his failure to "appreciate the importance of NASD's registration requirements, which, in turn, reflects on his ability to remain in the securities industry and supports barring him." NASD's findings raise serious questions about Beerbaum's

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4/ E.g., Stratton Oakmont, Inc., 52. S.E.C. 1150 (1996) (citing Cuomo v. Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985)).

5/ See Al Rizek, Securities Exchange Act Rel. No. 41972 (Oct. 1, 1999), 70 SEC Docket 2374, 2377 (denying stay of bar despite applicant's claim of irreparable injury resulting from his having "to close his securities firm which is the sole source of income:); Stratton Oakmont, Inc., 52 S.E.C. at 1152 (denying stay of NASD bar despite "substantial impact" of sanctions on applicants). It also should be noted that, as a result of these proceedings, which were instituted by NASD more than two years ago, Beerbaum and the Firm should have been able to anticipate the need to make alternative management arrangements. Indeed, their failure to make such arrangements in the past appears to have been a major cause of these proceedings.

appreciation for, and commitment to, regulatory requirements designed to protect the public. Thus, it appears that granting a stay would not serve the public interest. Based on a consideration of all the circumstances, therefore, it would not be appropriate to reconsider the earlier determination to deny Beerbaum a stay.

Accordingly, IT IS ORDERED that the request of Hans N. Beerbaum, for reconsideration of the Commission's June 8, 2006 order denying his request for a stay of his bar from association with any NASD member, pending Commission review, be, and it hereby is, denied.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Nancy M. Morris
Secretary

By: Jill M. Peterson
Assistant Secretary

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11627

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
September 14, 2004

In the Matter of the Application of ROBERT J. PRAGER Boca Raton, Florida For Review of Disciplinary Action Taken by NASD	ORDER DENYING STAY

Robert J. Prager, who during the relevant period was a trader at Saperston Financial, Inc., an NASD member firm, 1/ seeks an interim stay 2/ of an NASD order barring him from association with any NASD member. 3/ NASD found that Prager aided and abetted a manipulative scheme to raise artificially the volume and price of H&R Enterprises, Inc. stock. It described

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1/ Prager was a general securities principal and general securities representative at Saperston, and operated a Saperston branch office. His business at Saperston consisted of wholesale trading with other broker-dealers. NASD found that Prager made all of his office's trading decisions.

2/ Prager does not define what he means by an "interim" stay.

3/ Prager asks for expedited consideration of his request. However, Rule 410(d)(3) of the Commission's Rules of Practice provides that expedited consideration will be accorded (consistent with the Commission's other responsibilities) when a stay motion is filed within 10 days of the effective date of the complained of action. That was not the case here. NASD's decision was issued on August 16, 2004, and Prager's motion was not filed until September 1. Accordingly, Prager's request is denied.

the scheme as follows. The manipulation was orchestrated by Michael Mitton, a Canadian resident, and David Heredia, a stock promoter. At Heredia's request, Prager agreed to become a market maker for H&R stock. Mitton and Heredia directed Prager's H&R trading, as well as the H&R trading of two other firms, in a way that caused H&R stock to move in a circular pattern among the three firms at ever-increasing prices, artificially increasing the stock's price from $2.22 to $6.69 per share. Ultimately, Mitton, Heredia, and their associates sold their H&R stock at inflated levels while Saperston was left holding large amounts of the stock the price of which had fallen precipitously.

NASD found that Prager played a critical role in assisting the manipulative trading in H&R stock. It concluded that Prager either deliberately closed his eyes to the suspicious trading or was "severely" reckless in not recognizing that Heredia was engaging in manipulative activity. Citing the serious nature of Prager's misconduct and the lack of mitigating facts, NASD determined that a bar was necessary to protect the markets and the public interest.

In determining whether to grant a stay, the Commission considers (1) whether there is a strong likelihood that the applicant will succeed on the merits of the appeal; (2) whether the applicant will suffer irreparable injury without a stay; (3) whether there will be substantial harm to the public if the

stay were granted; and (4) whether the stay will serve the public interest. 4/ The applicant has the burden of demonstrating that a stay is warranted. 5/

Prager argues that there is a strong likelihood that he will prevail on appeal. He points to the fact that the NASD Hearing Panel dismissed charges that he was a participant in the manipulation or aided and abetted it. He asserts that he was the victim, not the perpetrator of the manipulative scheme, which resulted in large losses to himself, Saperston, and Saperston's clearing firm and caused Saperston to cease operations. Prager states that the National Adjudicatory Council ("NAC") finding that he aided and abetted that scheme represents "a novel and erroneous legal standard," i.e., that a failure to protect oneself from being victimized can convert the victim into the perpetrator.

In finding that Prager aided and abetted the manipulation, the NAC did not purport to apply a novel standard. While recognizing that Saperston and its clearing firm suffered substantial losses as a result of the manipulation, the NAC found that Prager shared the blame for those losses. It concluded that Prager was, at the least, guilty of "severe" recklessness in

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4/ See Cuomo v. Nuclear Regulatory Commission, 772 F.2d 972, 974 (D.C. Cir. 1988).

5/ Id. at 978.

effecting trades for Heredia despite numerous "red flags" that should have alerted Prager to the manipulative scheme.

While any final determination must await the Commission's consideration of the evidence in the record, it does not appear that, at this stage, Prager has demonstrated a strong likelihood that he will prevail on appeal. Nor has Prager shown that he will suffer irreparable injury if a stay is not granted. He asserts that he is the sole support of his family whose finances will be adversely affected. However, the fact that Prager may suffer financial detriment does not rise to the level of irreparable injury. 6/

Prager is currently registered as an equities trader at another NASD member firm. In light of the NAC's findings of misconduct, granting a stay could result in substantial harm to the public. Thus it does not appear that a stay would serve the public interest.

6/ See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

Accordingly, after consideration of the pertinent factors, IT IS ORDERED that the request of Robert J. Prager for an interim stay of the NASD's action against him be, and it hereby is, denied.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Jonathan G. Katz
Secretary

By: Margaret H. McFarland
Deputy Secretary

ADMINISTRATIVE PROCEEDING
FILE NO. 3-14988

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
September 20, 2012

In the Matter of the Application of

JUSTIN WILLIAM KEENER
c/o John Courtade, Esq.
Law Office of John Courtade
4408 Spicewood Springs Road
Austin, TX 78759

For Review of Disciplinary Action Taken by

FINRA

ORDER DENYING STAY

Justin William Keener, a limited partner in Gordon & Company, a FINRA member firm,[1] appeals from a FINRA disciplinary action. On July 20, 2012, in an expedited proceeding, FINRA found that Keener failed to respond to FINRA requests to appear and testify at an on-the-record interview and to produce documents and information made pursuant to FINRA Rule 8210.[2] FINRA suspended Keener from associating with a FINRA member firm in any capacity, with the suspension remaining in effect until Keener fully complies with FINRA's Rule 8210 requests. FINRA further found that, if Keener did not comply with its requests within three months after the date of the decision, Keener's suspension would automatically convert to a bar. FINRA also ordered Keener to pay administrative costs of $4,231.90. In connection with his appeal, Keener moved to stay the imposition of the sanctions, which FINRA opposes. For the reasons stated below, his motion is denied.

[1] According to an amendment to its Form BD filed by Gordon and dated September 27, 2011, Keener had a limited partnership interest in the firm of at least 10% but less than 25%. Gordon also listed Keener as a limited partner on the firm's Schedule A to the Form BD.

[2] FINRA Rule 8210(a)(1) requires members and persons associated with a member to "provide information orally [or] in writing . . . with respect to any matter involved in . . . [a FINRA] examination." Rule 8210(a)(2) further states that FINRA staff shall have the right to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in . . . [a FINRA] examination."

I.

In 2011, FINRA began investigating the receipt and liquidation of securities certificates by Firm W, another FINRA member.[3] During the relevant period, Keener's trading constituted the bulk of Firm W's activity. As part of that investigation, the staff served Keener with two Rule 8210 requests. The first, dated September 22, 2011, asked for his testimony; the second, dated September 28, 2011, asked Keener to produce financial documents and other information. Keener, through counsel, refused to substantively respond to either, arguing that FINRA had no jurisdiction over Keener.

On October 25, 2011, FINRA staff issued a Notice of Suspension to Keener pursuant to Rule 9552, informing Keener that he would be suspended from association with any FINRA member firm in any capacity unless he complied with the requests by November 18, 2011.[4] In response, Keener requested an expedited hearing on the matter pursuant to Rule 9552(e).[5] As part of those proceedings, Keener stipulated that he would not submit to FINRA's jurisdiction, would not appear at an OTR, and would not respond to Rule 8210 requests.

In its decision dated July 20, 2012, the hearing panel found that, because Keener owned more than five percent of Gordon and was listed on Schedule A of Gordon's Form BD, he was "clearly subject to FINRA's jurisdiction for purposes of Rule 8210."[6] The panel then found that Keener failed to respond to FINRA's requests made under Rule 8210 and, because of this failure, suspended Keener as described above.

Though FINRA's National Adjudicatory Council had the option to call the panel's decision for review within twenty-one days of its receipt,[7] it did not exercise that option. Accordingly, the panel's decision is the final action of FINRA in this proceeding.[8] On August

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[3] That investigation is ongoing.

[4] FINRA Rule 9552(a) states that if a member or associated person fails to provide the staff with requested testimony, documents, or information pursuant to FINRA rules, the self-regulatory organization may provide written notice specifying the nature of the failure and stating that a failure to take corrective action within twenty-one days after service of the notice will result in a suspension.

[5] FINRA Rule 9552(e) provides that a person served with a notice about a failure to provide information under Rule 9552(a) may file with the Office of Hearing Officers a written request for a hearing.

[6] Hearing Panel Decision at 9.

[7] FINRA Rule 9559(q)(1).

[8] *Id.*, Rule 9559(o)(5).

17, 2012, Keener filed an application for review with the Commission,[9] together with a motion to stay the imposition of sanctions.[10]

II.

The Commission generally considers the following factors in determining whether to grant a stay: (i) the likelihood that the moving party will eventually succeed on the merits of its appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest.[11] The moving party has the burden of establishing that a stay is warranted.[12]

A.

Keener argues that the factors we consider all weigh in favor of granting a stay. Keener contends that he has "at least shown a significant likelihood of prevailing."[13] In support, he argues that his

> appeal raises a number of novel questions about whether a limited partner having no control of the business and who has never registered with FINRA or otherwise submitted to its authority is properly within the definition of "associated person" under FINRA rules, whether he is within the ambit of any authority delegated to FINRA under the Securities Exchange Act of 1934, and, if so, whether granting this kind of power to a private trade association (as contrasted to the Commission) over an individual who has not submitted to it comports with due process.[14]

Although Keener concedes that "there isn't much authority" on these issues, he argues that his appeal "raises serious questions about statutory and regulatory interpretation which the

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[9] The hearing procedures for all expedited proceedings initiated under FINRA's Rule 9550 Series are set forth in FINRA Rule 9559. Although most of those provisions relate to the procedural requirements of the hearing and a panel's written decision, sub-section (s) notes that respondents have the right to appeal any decision issued after an expedited proceeding to the Commission, pursuant to Exchange Act § 19. *See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Citation to § 19 of the Secs. Exch. Act in NASD Rule 9559*, Securities Exchange Act Release No. 54562, 2006 WL 3858288, at *1 (Oct. 3, 2006).

[10] "The filing of an application for review by the SEC shall not stay the effectiveness of final FINRA action, unless the SEC otherwise orders." FINRA Rule 9559(s).

[11] *E.g., Intelispan, Inc.*, Exchange Act Release No. 42738, 54 SEC 629, 631, 2000 WL 511471, at *2 (May 1, 2000); *Stratton Oakmont, Inc.*, Exchange Act Release No. 38026, 52 SEC 1150, 1152, 1996 WL 707982, at *2 (December 6, 1996) (citing *Cuomo v. Nuclear Regulatory Comm'n*, 772 F.2d 972, 74 (D.C. Cir. 1985)).

[12] *E.g., Millenia Hope, Inc.*, Exchange Act Release No. 42739, 2000 WL 511439, at *1 (May 1, 2000).

[13] Appellant's Reply to FINRA Opp'n to Mot. to Stay Sanctions at 3.

[14] *Id.* at 2.

Commission has not previously considered and not just the application of run-of-the-mill principles to routine facts."[15]

Keener also speculates that, because a "suspension and then a bar would serve to stigmatize him and encourage broker-dealers to refuse to do business with him as a customer," the denial of his stay request "would irreparably damage Keener in his ordinary business of investing in public companies."[16] Keener adds (again without support) that "there is every reason to expect the FINRA staff to interfere with his business and threaten broker-dealers to induce them to close his accounts in the future, just as it did with Gordon & Co." and that "[d]enial of a stay will make this kind of due-process-free interference that much easier."[17]

Keener further argues that "denial of a stay pending resolution of the legal issues will not adversely affect the public or any others to the slightest degree since he is currently not involved in the business of any broker-dealer, never intended to be so involved by making a passive investment, and, after this experience, has a firm intention to stay as far away as he can from any such involvement."[18] He also asserts that "[t]here is no finding by FINRA that Keener engaged in any fraud or manipulation or any other conduct which, if not stopped immediately, would threaten the public."[19]

Keener also contends that the public interest will "be fully served by granting a stay" because, "[w]hile FINRA's interest in being able to investigate possible misconduct by its members and their associated persons is important, that interest will be fully vindicated by sanctioning Keener at the conclusion of this appeal should its legal position be upheld."[20] FINRA, Keener concludes, "loses nothing by waiting."[21]

FINRA opposes Keener's motion by arguing that he has not shown a strong likelihood he will succeed on the merits of his appeal. FINRA argues that Keener admits to not complying with FINRA's Rule 8210 requests. FINRA also argues that its By-Laws expressly provide FINRA with jurisdiction for purposes of Rule 8210 over "any person—including a natural person

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15 *Id.* at 2-3.

16 *Id.* at 3.

17 *Id.*

18 *Id.*

19 *Id.* at 3-4.

20 *Id.* at 4.

21 *Id.*

or corporate or other entity—who holds a five percent or greater interest in a member firm"[22] and "any other person listed in Schedule A of Form BD of a member."[23] FINRA thus contends that, because Keener owned more than five percent of Gordon and was listed on Schedule A of Gordon's Form BD, FINRA plainly had jurisdiction for purposes of its Rule 8210 requests.

FINRA further argues that Keener will not suffer irreparable harm without a stay because the suspension is the result of Keener's own failure to comply with FINRA's requests. According to FINRA, Keener can lift the suspension anytime before October 22, 2012 by fully complying with FINRA's requests. FINRA also asserts that Keener's statement that he is not currently involved in the securities industry demonstrates "that he will not suffer irreparable or, in fact, any harm."[24] FINRA further contends that denying Keener's stay request is in the public interest because "the necessity of protecting the public interest, particularly in regard to ensuring that FINRA, as a self-regulatory organization in the securities industry, is able to obtain information necessary to investigate its members, far outweighs any harm to Keener of denying his request."[25]

B.

Final resolution must await the Commission's determination on the merits of Keener's appeal. However, based on the briefs the parties have filed so far, there does not appear to be a strong likelihood that Keener will succeed on appeal. FINRA's By-Laws expressly provide FINRA with jurisdiction for purposes of Rule 8210 over any person who either (i) holds a five percent or greater interest in a member firm or (ii) is listed in Schedule A of Form BD of a member. Keener does not dispute that, as a factual matter, he satisfies each test. Instead, Keener questions whether FINRA's reliance on these bases for jurisdiction "comports with due process" given his assertion that he is "a limited partner having no control of the [member firm] and who has never registered with FINRA or otherwise submitted to its authority."[26] In making this due process claim, however, Keener does not cite any authority or provide other support. Keener has not met his burden of establishing a strong likelihood that he will succeed on the merits of his appeal.

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22 FINRA Notice to Members 99-95, 1999 WL 33176599, at *1 (Dec. 1, 1999) (explaining changes to FINRA By-Laws' definition of associated person).

23 FINRA By-Laws art. I, § 1(rr) (defining "person associated with a member" or "associated person of a member").

24 FINRA's Br. in Opp'n to Mot. to Stay at 12.

25 *Id.*

26 Appellant's Reply to FINRA Opp'n to Mot. to Stay Sanctions at 2.

Nor has Keener established that, absent a stay, he will suffer irreparable harm.[27] Keener could end the suspension—and asserted harm—anytime before October 22, 2012 by complying with FINRA's requests. Also weighing against a finding that Keener will suffer irreparable harm in the absence of a stay is Keener's claim that he is not currently associated with any broker-dealer. As Keener stated in his sworn declaration that he attached to his reply brief, "I do not currently have any association with any broker-dealer, even including passive investment. Given my experience in this case, I have a fixed and firm intention to avoid any such future associations."[28]

Moreover, the harm that Keener claims he will suffer is outweighed by the public interest of emphasizing the importance of associated persons' compliance with Rule 8210 requests for information. A failure to comply with an information request "is a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities."[29] As a result, a bar is the standard sanction imposed for a complete failure to respond to an information request—which will occur here if Keener does not comply with the requests within three months of the panel's decision—and reflects the Commission's judgment that, "'in the absence of mitigating factors, a complete failure to cooperate with [FINRA's] requests for information or testimony is so fundamentally incompatible with [FINRA's] self-regulatory function that the risk to the markets and investors posed by such misconduct is properly remedied by a bar.'"[30]

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27 *See Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004) (stating that "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay").

28 Appellant Decl. ¶ 8.

29 *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *6 (Sept. 10, 2010) (sustaining bar imposed by FINRA's predecessor, NASD, for failure to respond to an information request).

30 *Id.* (quoting *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *3 (Apr. 11, 2008)).

Accordingly, IT IS ORDERED that, pending Commission review of his appeal, Justin William Keener's motion to stay the sanctions FINRA imposed is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Carla Carloni
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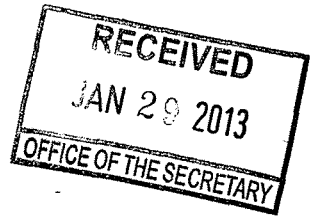

January 29, 2013

VIA MESSENGER

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: In the Matter of the Application of Gregory Evan Goldstein, Administrative Proceeding No. 3-15183

Dear Ms. Murphy:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to Motion to Stay in the above-captioned matter.

Please contact me at (202) 728-8019 if you have any questions.

Very truly yours,

Carla Carloni

Carla Carloni

cc: Martin P. Unger, Esq.
Ian Frimet, Esq.

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