

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 66014 / December 20, 2011

Admin. Proc. File No. 3-14175

In the Matter of the Application of

KENT M. HOUSTON  
2256 Plazuela Street  
Carlsbad, California 92009

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

**Violations of Conduct and Procedural Rules**

Engaging in Outside Business Activities Without Providing Written Notice to  
Member Firm

Failing to Appear for On-The-Record Interview

Conduct Inconsistent with Just and Equitable Principles of Trade

Former general securities representative of a member of registered securities association engaged in outside business activities without providing his member firm with written notice and failed to appear for an on-the-record interview with association staff. *Held*, association's findings of violations are *sustained*, sanction imposed is *vacated*, and proceedings are *remanded* for redetermination of sanction to be imposed.

## APPEARANCES:

*Kent M. Houston, pro se.*

*Marc Menchel, Michael Garawski, and Jennifer C. Brooks, for FINRA.*

Appeal filed: January 4, 2011

Last brief received: April 13, 2011

**I.**

Kent M. Houston, formerly a general securities representative with First Wall Street Corp. ("First Wall Street" or "the Firm"), a former NASD member firm, seeks review of disciplinary action taken by NASD.<sup>1</sup> NASD found that Houston violated NASD Rules 3030 and Rule 2110 by engaging in outside business activities without providing his member firm with written notice. NASD further found that Houston violated NASD Rules 8210 and 2110 by failing to appear for an on-the-record interview ("OTR") with NASD staff.<sup>2</sup> NASD barred Houston from associating with any NASD member firm in all capacities. We base our findings on an independent review of the record.

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<sup>1</sup> On July 26, 2007, the Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange ("NYSE"). *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (SR-NASD-2077-053). Because the disciplinary action here was instituted before that date, we continue to use the designation NASD.

<sup>2</sup> Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. 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 before December 15, 2008, the procedural rules that apply are those that existed on December 14, 2008. The substantive rules that apply are those that existed at the time of the conduct at issue. *John B. Busacca*, Exchange Act Rel. No. 63312 (Nov. 12, 2010), 99 SEC Docket 34481, 34482, n.2.

## II.

### A. Background

#### 1. Houston Appointed Trustee And Receives Compensation from Trust

In 1971, Walter L. Boyd and Veta M. Boyd, Houston's great uncle and aunt, established a trust under which they designated a national bank as trustee and directed the trustee to pay the trust's net income to the Boyds on a monthly basis. The trust provided that the trustee was entitled to compensation for its services. Walter Boyd died in 1986; on April 24, 2001, Veta Boyd appointed Houston to act as co-trustee with her. The amendment to the trust agreement effecting this change provided that Houston would serve as sole trustee if Veta Boyd was unwilling or unable to serve.

On April 26, 2001, Houston opened an account for the trust at First Wall Street (the "Boyd Trust Account"). The account application listed Veta Boyd and Houston as co-successor trustees and Houston as the account representative. As co-trustee, Houston was able to write checks on the Boyd Trust Account without Mrs. Boyd's signature. In June 2005, Houston became the trust's sole trustee after Mrs. Boyd's physicians determined that she was unable to manage her financial affairs. Mrs. Boyd died in June 2006.

From October 2001 through January 2006, Houston received more than \$400,000 from the trust. From October 2001 through 2002, Mrs. Boyd wrote checks for approximately \$99,000 payable to Houston. From 2003 until Mrs. Boyd died in June 2006, Houston signed all the checks drawn on the Boyd Trust Account. In 2003, Houston wrote five checks from the Boyd Trust Account payable to himself totaling \$41,600. In 2004, Houston wrote seven checks payable to himself or to Countrywide Bank (the holder of his home equity line of credit), totaling \$167,000. In 2005, Houston wrote three checks totaling \$119,000 to Countrywide. In January 2006, Houston wrote a final check to Countrywide in the amount of \$27,500.<sup>3</sup>

#### 2. Houston Fails to Provide Written Notice of His Trustee Activities to Firm

Although Houston was listed as co-successor trustee on the Boyd Trust Account application, he did not otherwise give First Wall Street written notice that he was acting as trustee for Mrs. Boyd's trust or that he was receiving compensation for this activity. In fact, over a period of several years, he repeatedly failed to disclose his activity with the trust when requested by the Firm to provide information on his outside business activities. Houston did not disclose his trustee activities on the Firm's "Independent Contractor Agreement" that he signed and dated December 31, 2002 (the "2002 Agreement"). The 2002 Agreement stated that Houston was to notify the Firm of any outside business activities in which he was engaged or intended to

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<sup>3</sup> In addition to these payments, Houston also received commissions for transactions in the Boyd Trust Account.

engage and expressly mentioned acting as a trustee as an example of an outside business activity. Appended to the 2002 Agreement was an "Outside Business Activity Notification Form" (the "Notification Form"). Houston initialed the Notification Form blank but otherwise left it blank. In 2003, Houston similarly failed to disclose his trustee activities to First Wall Street when he completed the Firm's Independent Contractor Agreement in December 2003, including the same outside business notification provisions and appended Notification Form as the 2002 Agreement, which Houston again left blank.

In December 2004, rather than appending a notification form, First Wall Street required submission of a separate "Outside Business Activities Statement" ("2004 Statement"). Houston acknowledged in the 2004 Statement that he understood the Firm's policies and procedures regarding the required disclosure to the Firm of all outside business activities and checked the box next to the statement, "I have NOT conducted any outside business activities during the past year."

On August 29, 2005, First Wall Street's compliance department issued a memorandum to its registered representatives and staff regarding potential conflicts of interest arising from the registered representatives' involvement in clients' personal matters. The memorandum instructed the recipients to contact the Firm's compliance department "immediately in writing if you are currently listed as a trustee, . . . or if you perform any duties that involve compensation of any kind that does not come through the [F]irm in the form of commissions and is not included on your [Uniform Application for Securities Industry Registration or Transfer ("Form U4")] as an approved outside business activity." Houston did not report on his Forms U4 dated July 29, 2005 and October 20, 2005 that he was engaged in an outside business activity, nor did he notify the Firm's compliance department in writing of his trusteeship.

The Firm's compliance department distributed a second memorandum in September 2005 that reminded its registered representatives that they were required to request written approval for, among other things, acting as a trustee.<sup>4</sup> Along with the memorandum, the compliance department attached a "Disclosure of Appointment" form that required registered representatives to disclose all trusteeship appointments regardless of whether they had received prior approval by the Firm. In October 2005, although he had already served as co-trustee of the Boyd Trust

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<sup>4</sup> In a memorandum issued shortly before the September 2005 memorandum, the Firm advised its registered representatives that "it is wise to obtain approval of outside business activities in conjunction with services offered at the earliest possible opportunity" in order to minimize the risk to the registered representative and to the firm that could arise from these outside business activities. The memorandum also reminded registered representatives that they are required to "[c]ontact the compliance department immediately in writing" if they are appointed to serve as a trustee of a client's account or if they "perform any duties that involve compensation of any kind that does not come through the firm in the form of commissions and is not included on [the registered representative's] form U4 as an approved outside business activity."

Account for more than four years, Houston completed the form and checked the box next to the statement, "I have NOT accepted any appointment as trustee, successor trustee, executor, or power of attorney over any client including my immediate family during the past year." The Firm's employee files have no record of any notification from Houston advising the Firm concerning his status or compensation for his services as trustee.

### **3. First Wall Street Investigates Houston's Trustee Activities**

In December 2005, during an NASD examination, First Wall Street's chief compliance officer, Katrina L. Dudley, discovered that Houston had check-writing authority on the Boyd Trust Account. The Firm then began an internal investigation of Houston's activities with the Boyd Trust Account. Dudley requested that Houston provide updated account information. In January 2006, Houston informed Dudley that he had become sole trustee of the Boyd trust. Dudley requested documentation from Houston, including the appropriate form for firm approval, and informed Houston that he could not engage in any transaction until First Wall Street approved the activity.

By February 2006, the Firm had a new chief compliance officer, Fred A. Princiotta, and on February 14, Houston informed Princiotta that Mrs. Boyd was unable to continue acting as trustee and asked whether there would be any problem if Houston were to be appointed trustee in her place. Houston failed to disclose to Princiotta that he had, in fact, already been appointed sole trustee eight months earlier. Not realizing that Houston was acting as trustee already, Princiotta told Houston that the Firm did not generally permit registered representatives to act as trustees other than for their immediate family because of the potential conflicts of interest and the need for heightened supervision.

Following his conversation with Houston, Princiotta reviewed the recent activity in the Boyd Trust Account and noticed multiple large withdrawals in amounts ranging up to \$49,000 and the absence of key documents relating to the trust. For example, although the file contained handwritten memos referencing amended trust documents, the only formal document in the file was the original 1971 trust agreement. The file contained no documentation indicating that Houston would be receiving compensation for his services as co-trustee. There was no written documentation of Houston's later appointment as sole trustee. Princiotta asked Houston to provide him with copies of all the trust amendments and asked Houston to explain the reason(s) for the large disbursements from the trust. Houston told Princiotta that he had check-writing authority for the Boyd Trust Account and that the disbursements were made to care for Ms. Boyd, although he could not recall the specific details surrounding these disbursements.

Princiotta simultaneously asked Houston to provide an accounting of the checks drawn on the Boyd Trust Account and the Firm's back office to provide copies of five checks drawn on the Account. Although Houston said that he would provide the accounting, he did not do so despite repeated requests from Princiotta. When Princiotta received copies of the five requested checks from the back office, he noticed that three of the five checks were payable to the same account number at Countrywide Bank. Countrywide Bank informed Princiotta that the account was held

in the name of "Kent Houston," and that Mrs. Boyd had no interest in the account. When Princiotta asked Houston to explain the circumstances of the five checks, Houston falsely answered that they had been deposited into Mrs. Boyd's account to pay down her home equity loan.

Princiotta asked Houston to provide him with copies of the Countrywide bank statements and information about the checks. On May 4, 2006, after Houston failed to provide an accounting of the disbursements, and copies of the trust amendments and bank statements, Princiotta informed Houston that the Firm had opened a formal investigation into "possible fraudulent activity" in the Boyd Trust Account and was freezing the Account until the investigation was completed to determine that there had been no violations of the securities laws. Princiotta advised Houston that, if the documents were not provided by May 8, 2006, Houston would be "immediately suspended" from acting as a registered representative for the Firm and his accounts, including the Boyd Trust Account, would be frozen pending review. The next day Houston provided the Firm with copies of the trust amendments, but none of the other requested documents or accounting information. On May 10, 2006, Princiotta emailed Houston a request for an accounting of the checks drawn on the Boyd Trust Account. Houston replied on May 12 that he would not provide the accounting without first receiving a waiver from Mrs. Boyd, and that, pursuant to her direction, he had started the process of transferring the Boyd Trust Account out of First Wall Street.

First Wall Street terminated Houston's employment on May 15, 2006 for his failure to cooperate with the Firm's investigation. On May 16, 2006, the Firm filed a Uniform Termination Notice for Securities Industry Registration on Form U5 stating that it had terminated Houston for "failure to abide by firm policy by failure to supply documents in an internal investigation." The Firm further explained that Houston's termination resulted from his failure to provide the Firm with updates to the trust documents in a timely fashion and his refusal to supply the Firm with an accounting of the checks he wrote and disbursements he made from the Boyd Trust Account.

After Mrs. Boyd's death in June 2006, Houston liquidated the securities in the Boyd Trust Account. On September 14, 2006, Houston issued checks totaling about \$576,000 to thirteen trust beneficiaries. Houston, as a beneficiary under the trust, received a check for \$5,000.

#### **4. NASD Investigates Houston and Requests Houston Appear for OTR**

After First Wall Street terminated Houston, NASD staff began an investigation into his possible misconduct at the Firm. In May and August, 2006, pursuant to NASD Rule 8210, NASD staff sent information requests to First Wall Street seeking information about the payments that Houston received from Veta Boyd's trust. First Wall Street responded to these requests.

NASD staff issued NASD Rule 8210 information requests to Houston in June and August, 2006, to gather more information about Veta Boyd's trust, including how the funds were used to either benefit Mrs. Boyd or comply with the covenants of her trust. Houston responded

to these requests. NASD sent a third request to Houston in September, 2006. Houston responded to this request, but because NASD did not consider his response to be complete, it sent follow-up letters in October and November repeating the request from September. Houston responded to each of these two follow-up letters, but never provided complete responses to the information sought in the September request.

On September 7, 2007, NASD staff sent Houston a letter requesting that he appear for on-the-record testimony ("OTR") at its Los Angeles office on September 27, 2007. NASD's letter informed Houston that he was obligated to appear on the date and at the time specified in the letter. Houston responded to NASD's letter on September 10, 2007, requesting that the staff provide him with certain information "and at that time [we] will be able to set [a] date for any future hearing."<sup>5</sup> NASD staff sent Houston a letter dated September 17, 2007, reminding him that he was required by Rule 8210 to testify at the scheduled September 27 OTR, that he could not impose conditions on his testimony, and that his failure to appear and testify at the OTR would be "grounds for formal disciplinary action that can result in a fine, a suspension, and/or a bar."<sup>6</sup> On September 21, 2007, Houston requested to postpone his OTR for thirty days while he sought legal counsel to represent him. NASD staff rescheduled the OTR for October 19, 2007. In its letter rescheduling the OTR, NASD staff again reminded Houston that, pursuant to Rule 8210, he was "obligate[d] . . . to appear on the date and at the time specified" in the letter.

On October 10, 2007, NASD staff received a phone call from attorney Thomas Fehn who told staff that he would be representing Houston and that he was not available to attend the OTR on October 19. NASD staff agreed to reschedule the OTR for November 27, 2007, and confirmed its understanding that Fehn was representing Houston, and the rescheduled November 27 date for the OTR, in a letter dated October 10, 2007, a copy of which was sent to Houston. NASD staff received a letter from Houston dated November 21, 2007, stating that he had "nothing further to add and will not be attending the (OTR) scheduled on the 27<sup>th</sup>." Houston did not appear for the OTR nor did he contact NASD staff afterwards to explain his failure to appear.

## **B. Procedural History**

NASD's Department of Enforcement filed a two-cause complaint against Houston on February 1, 2008. The first cause alleged that Houston violated NASD Rules 3030 and 2110 when he failed to provide First Wall Street with written notice of outside business activities

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<sup>5</sup> Houston requested, among other items, that NASD staff provide him with "the wording of the 2110 violation in question," "[s]entencing guidelines on violation 2110 & 3030," and "[r]ecent broker history of sentences handed down and accepted by accused on the above mentioned violations."

<sup>6</sup> In its letter, NASD staff directed Houston to the location of the text of Rule 2110 on NASD's website, NASD's Sanction Guidelines, synopses of settled disciplinary actions, and the text of Hearing Panel and National Adjudicatory Council decisions.

related to his acting as trustee for Mrs. Boyd's trust. The complaint also alleged that Houston violated NASD Rules 8210 and 2110 when he failed to appear for the OTR before NASD staff. In his answer, Houston "admit[ted] to being responsible for not providing my firm with written notice of this business activity" and to "to being responsible for signing an incorrect disclosure doc[ument]."

Houston waived his right to a hearing before the NASD Hearing Panel. In lieu of a hearing, the Hearing Panel considered the parties' written submissions, which included narrative statements about the case and documentary evidence. The Hearing Panel found Houston liable for the allegations as alleged in the complaint. For failing to provide First Wall Street with written notice of his outside business activities, the Hearing Panel fined Houston \$100,000 and suspended him for one year in all capacities. For his failure to appear for testimony, the Hearing Panel barred Houston.

The National Adjudicatory Council ("NAC") affirmed the Hearing Panel's findings of violation, as well as the bar. The NAC determined that, although the evidence established that Houston failed to meet his obligations under NASD Rules 3030 and 2110, the record did not support a fine exceeding the maximum \$50,000 recommended by the NASD Sanction Guidelines. The NAC found instead that it would be appropriate to suspend Houston for one year and fine him \$50,000 for his violation of NASD Rules 3030 and 2110, but chose not to impose these sanctions in light of the bar imposed upon Houston for his failure to provide testimony. This appeal followed.

### III.

A. Conduct Rule 3030, which governs any outside business activity of an associated person, prohibits a person associated with a member from being employed by, or from accepting compensation from, any other person as a result of any business activity outside the scope of the associated person's employment with the member, unless the associated person provides prompt written notice to the member. Conduct Rule 2110 requires adherence to high standards of commercial honor and just and equitable principles of trade. Conduct that violates other NASD rules is inconsistent with the requirements of Rule 2110 and therefore also violates this Rule.<sup>7</sup>

Houston does not dispute that he did not give First Wall Street written notice that he was acting as trustee for the Boyd Trust Account or that he was receiving compensation for this activity. In fact, the record is replete with his admissions that he did not give the Firm such written notice. Rather, he argues that the Firm "had all the trust documents on file. We discussed many times my responsibilities as a Trustee . . . [the Firm] . . . never questioned my transacting of business and check writing authority in the trust."

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<sup>7</sup> See, e.g., *Wanda P. Sears*, Exchange Act Rel. No. 58075, n. 28 (July 1, 2008), 93 SEC Docket 7395, \_\_\_\_\_.



The record indicates that the Firm did not, in fact, have many of the key documents relating to the trust on file until Princiotta asked Houston to provide them in 2006 in connection with the Firm's internal investigation of Houston. Houston provides no support for his contention that he "discussed" his trusteeship with anyone at the Firm, and in any event, Rule 3030 requires that written notice be provided and Houston admits he did not do so.

Houston asserts that his actions in connection with the trust were based on, and consistent with, advice from Mrs. Boyd's estate counsel. However, Houston is not charged here with malfeasance with respect to the trust, but rather with failure to disclose his activities in connection with the trust to the Firm. He does not suggest that Mrs. Boyd's counsel advised him not to disclose his actions to the Firm.

Accordingly, we find that Houston failed to provide written notice to the Firm of his outside business activities and thereby violated NASD Rules 3030 and 2110.

**B.** NASD Rule 8210 requires persons associated with a member firm to provide information with respect to any matter involved in an NASD investigation, complaint, examination, or proceeding. It is undisputed that Houston did not appear for the November 27, 2007 OTR, despite receiving notice of the OTR and being advised by NASD of the disciplinary consequences that could result if he failed to appear. Even after NASD accommodated him by rescheduling the OTR twice, including after consultation with attorney Fehn, Houston advised NASD that he would not appear for the OTR and, in fact, did not appear.

Houston denies that he retained counsel or that he authorized Fehn to seek an extension. Houston's November 21 letter to NASD (in which he refuses to appear at the scheduled November 27 OTR) evidences that Houston received his copy of NASD's October 10 letter to Fehn confirming the November 27 date. Yet Houston's letter does not object to Fehn's having rescheduled the OTR on Houston's behalf. More importantly, whether Houston hired Fehn is immaterial to whether Houston failed to provide the requested testimony.

We, therefore, find that Houston violated NASD Rules 8210 and 2110 by failing to appear for an OTR with NASD staff.

#### IV.

Pursuant to Exchange Act Section 19(e)(2), we will sustain NASD's sanction unless we find, having due regard for the public interest and the protection of investors, that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.<sup>8</sup> Exchange Act Section 15A requires that self-regulatory organizations ("SRO"), such as NASD, enforce compliance by its members and their associated persons with the Exchange Act, the

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<sup>8</sup> 15 U.S.C. § 78s(e)(2). Houston does not claim, and the record does not show, that NASD's action imposes an unnecessary or inappropriate burden on competition.

Exchange Act rules, and the SRO's rules.<sup>9</sup> While the Exchange Act imposes an obligation on NASD to enforce compliance by its members and associated persons, NASD does not have subpoena power to assist it in carrying out this duty. It must, instead, "rely upon Rule 8210 in connection with its obligation to police the activities of its members and associated persons."<sup>10</sup> Rule 8210 "provides a means, in the absence of subpoena power, for the NASD to obtain from its members information necessary to conduct investigations."<sup>11</sup> This rule is at the "heart of the self-regulatory system for the securities industry"<sup>12</sup> and is an "essential cornerstone of NASD's ability to police the securities markets and should be rigorously enforced."<sup>13</sup>

In reaching its decision to bar Houston, NASD looked to its Sanction Guidelines in effect in 2007. Those Guidelines provide that, absent mitigating circumstances, "a bar should be [the] standard" sanction when an individual fails to respond "in any manner" in violation of Rule 8210.<sup>14</sup> They provide that, if the violation is one in which "mitigation exists, or the person did not respond in a timely manner" to a request pursuant to Rule 8210, the maximum recommended sanction is a two-year suspension and a \$25,000 fine.<sup>15</sup>

NASD deemed Houston's failure to appear for the OTR as a failure to respond in any manner to a request for information issued pursuant to Rule 8210, and concluded that there were no mitigating factors. NASD determined that this complete failure to respond rendered Houston "presumptively unfit for employment in the securities industry because the self-regulatory system

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<sup>9</sup> 15 U.S.C. § 78o-3. The reason for this SRO mandate, as we recently noted, is "[b]ecause of limited Commission resources, Congress has given NASD and other securities industry self-regulatory organizations significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3157.

<sup>10</sup> *Howard Brett Berger*, Exchange Act Rel. No. 58950 (Nov. 14, 2008), 94 SEC Docket 11615, 11620 (quoting *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998)).

<sup>11</sup> *Id.* (quoting *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993)).

<sup>12</sup> *Id.*

<sup>13</sup> *Jay Alan Ochanpaugh*, Exchange Act Rel. No. 54363 (Aug. 25, 2006), 88 SEC Docket 2653, 2661.

<sup>14</sup> NASD Sanction Guidelines at 35 (2007 ed.).

<sup>15</sup> Sanction Guidelines at 35.

of securities regulation cannot function without compliance with Rule 8210 requests," citing our decision in *PAZ*.<sup>16</sup>

However, in addition to the OTR requests, NASD sent several Rule 8210 requests seeking written answers to questions and the production of documents. Houston responded, apparently to NASD's satisfaction, to the first two of these requests, and at least partially to the third request. Although Houston's failure to respond completely to the third request and its two follow-up letters was not charged by NASD, all of these requests for written information and documents were part of the same investigation by NASD aimed at uncovering whether there were improprieties in Houston's conduct with respect to the trust. Therefore, because Houston did respond in some manner to NASD's request, any sanction imposed, whether a bar or otherwise, should analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner.

We addressed a similar situation in *Rooney A. Sahai*.<sup>17</sup> There, we reviewed NASD's determination, on remand from the Commission, to impose a bar for Sahai's violation of Rule 8210.<sup>18</sup> NASD, in support of the bar, asserted that Sahai failed to respond "in any manner" to two letters requesting information. In rejecting this basis for NASD's bar, we noted that, although NASD was correct in its assertion of Sahai's failure to respond to two letter requests, Sahai had responded to five other requests for information to some extent. On the basis of the record before us in that proceeding, and based on the Sanction Guidelines, we determined to reduce the permanent bar to a two-year suspension.

We recognize that the Sanction Guidelines "do not provide fixed sanctions for particular violations" and "are not intended to be absolute."<sup>19</sup> We also note that NASD found that there were aggravating factors. In applying the Sanction Guidelines's two Principal Considerations regarding a Rule 8210 violation, i.e., (1) the nature of the information requested; and (2) whether the requested information was provided,<sup>20</sup> NASD found that Houston's testimony was important because NASD was attempting to investigate whether Houston was misappropriating funds from his great aunt's trust and the information requested was not provided because Houston never appeared for the OTR. NASD deemed these to be aggravating factors. However, its determination that the bar was warranted appears to have been based on its finding that Houston

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<sup>16</sup> *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656 (Apr. 11, 2008), 93 SEC Docket \_\_\_.

<sup>17</sup> Exchange Act Rel. No. 55046 (Jan. 5, 2007), 89 SEC Docket 2402, \_\_\_\_.

<sup>18</sup> The remand was necessitated by our determination that, on the record before us in the initial appeal, we could not assess "the appropriateness of the bar imposed on Sahai."

<sup>19</sup> Sanction Guidelines at 1.

<sup>20</sup> Sanction Guidelines at 35.

failed to appear at the OTR and was therefore presumptively unfit to remain in the securities industry.

A remand is appropriate here. NASD is the proper authority to determine the sanction for the Rule 8210 violation in the first instance, based on the correct application of its Sanction Guidelines to the full record. In this regard, we are mindful that "vigorous enforcement of Rule 8210 helps ensure the continued strength of the self-regulatory system -- and thereby enhances the integrity of the securities markets and protects investors -- by preventing members and their associated persons who demonstrate their unfitness by failing to respond in any manner to Rule 8210 requests from remaining in the securities industry."<sup>21</sup> We have observed that "attempts to delay and ultimately avoid [an appearance for testimony] are especially troubling given the importance of Rule 8210 . . . [in] enabl[ing] NASD to carry out its self-regulatory functions."<sup>22</sup> NASD should not have to bring disciplinary proceedings, as it was required to do here, in order to obtain compliance with its rules governing its investigations.<sup>23</sup> We note that the General Principles Applicable to All Sanction Determinations provide that

Adjudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices. Depending on the seriousness of the violations, Adjudicators should impose sanctions that are significant enough to ensure effective deterrence. When necessary to achieve this goal, Adjudicators should impose sanctions that exceed the range recommended in the applicable guideline.<sup>24</sup>

We also note that Houston made many arguments that NASD rejected based on its determination that Houston was presumptively unfit for employment in the securities industry, and that NASD's weighing of these arguments might differ absent this presumption.

Moreover, NASD determined not to impose the sanctions it deemed warranted for Houston's failure to disclose his outside business activities, the suspension and fine, because it was imposing a bar for the Rule 8210 violation. It may wish to reconsider this determination on remand.

We do not intend to suggest any view as to a particular outcome.

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<sup>21</sup> *Berger*, 94 SEC Docket at 11621.

<sup>22</sup> *Toni Valentino*, 57 S.E.C. 330, 339 (2004).

<sup>23</sup> *Id.*; *Robert A. Quiel*, 53 S.E.C. 165, 168 (1997).

<sup>24</sup> Sanction Guidelines at 2.

An appropriate order will issue.<sup>25</sup>

By the Commission (Commissioners WALTER, AGUILAR and PAREDES); Chairman SCHAPIRO and Commissioner GALLAGHER not participating.

Elizabeth M. Murphy  
Secretary

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<sup>25</sup> We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 66014 / December 20, 2011

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KENT M. HOUSTON  
2256 Plazuela Street  
Carlsbad, California 92009

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART AND REMANDING IN PART

On the basis of the Commission's opinion issued this day, it is

ORDERED that the findings of violations made by FINRA against Kent M. Houston be, and they hereby are, sustained; and it is further

ORDERED that the sanction imposed by FINRA on Kent M. Houston in this proceeding be, and it hereby is, vacated; and it is further

ORDERED that this proceeding be, and it hereby is, remanded to FINRA for further proceedings in accordance with that opinion.

By the Commission.

Elizabeth M. Murphy  
Secretary