

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Richard G. Cody (CRD No. 2794558),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016048538901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Richard G. Cody was suspended from associating with any FINRA member firm in all capacities for one year, specifically, from January 7, 2013 through January 6, 2014, following findings that he made quantitatively and qualitatively unsuitable recommendations, sent misleading account summaries, and failed to update his Uniform Application for Securities Industry Registration ("Form U4"). In 2016, upon receiving information that Cody engaged in securities business while suspended, FINRA opened an investigation into Cody's activities during the year of his suspension. During the course of FINRA's investigation, Cody repeatedly provided false and misleading information to FINRA concerning his activities during the year of his suspension, in violation of FINRA Rules 8210 and 2010.

2. Moreover, Cody failed to provide documents and information in response to requests for information issued pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.
3. Lastly, Cody failed to appear for on-the-record testimony, which was requested pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Cody first registered with a FINRA member firm in March 1997 as a General Securities Representative. Cody became registered as an Operations Professional in December 2011.
5. FINRA filed a Uniform Disciplinary Action Report Form ("Form U6") on December 13, 2012, which disclosed that pursuant to a decision that was final as of December 7, 2012, Cody was suspended from associating with any FINRA member in any capacity for one year, specifically, from January 7, 2013 through January 6, 2014; Cody also was fined \$27,500, and assessed hearing and appeal costs.

According to the Form U6, the suspension resulted from findings that Cody violated: (1) "NASD Rules 2110 and 2310 by recommending quantitatively and qualitatively unsuitable transactions in customer accounts;" (2) "NASD Rule 2110 by sending customers misleading and unapproved account summaries;" and (3) "NASD Rule 2110 by failing to update his Form U4 in a timely manner to disclose settlements to customers."

6. From on or about March 19, 2014 to on or about August 5, 2016, Cody was registered with FINRA through Concorde Investment Services, LLC (CRD No. 151604) (“Concorde”). On August 5, 2016, Concorde filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”), disclosing that it terminated Cody on July 29, 2016, and providing the following termination explanation: “Representative was discharged due to internal investigation into potential securities business activity while under regulatory suspension from registered activities.” (Concorde later amended the termination explanation to read: “Representative was discharged due to internal review into potential securities business activity during a period of suspension from securities activities prior to his association with Concorde.”)
7. From on or about August 18, 2016 to on or about September 12, 2016, Cody was registered with FINRA through IFS Securities (CRD No. 40375) (“IFS”). On September 12, 2016, IFS filed a Form U5, which provided the following termination explanation: “forgery, selling away.” (IFS later amended the termination explanation to read: “forgery, attempting to sell away.”)
8. Although Cody is no longer registered or associated with a FINRA member, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because: (1) the Complaint was filed within two years after the effective date of termination of Cody’s registration with IFS, namely, September 12, 2016; and (2) the Complaint charges him: (i) with misconduct committed while he was registered or associated with a FINRA member; and (ii) with providing false and misleading information in response to a FINRA request for information and during on-the-record testimony, with failing to provide

documents and information in response to FINRA requests for information, and with failing to appear for on-the-record testimony, during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

RELEVANT PARTY

9. JT entered the securities industry in 2001. JT was registered with FINRA through Concorde from on or about January 15, 2013 to on or about August 5, 2016. On August 5, 2016, Concorde filed a Form U5, which provided the following termination explanation: "Failure to follow firm policy." At all times relevant to the Complaint, JT was Cody's wife. Pursuant to a Letter of Acceptance, Waiver and Consent ("AWC") approved by FINRA in February 2017, JT consented to findings that she permitted Cody (identified in the AWC as "RC") to engage in securities business while suspended, in violation of FINRA Rule 2010. JT consented to a bar from associating with any FINRA member firm in any capacity.

FACTS

FINRA's Investigation Of Cody's Activities During His Year-Long Suspension

10. In 2016, a former customer of Cody contacted FINRA. The customer informed FINRA staff, among other things, that she recently had learned that Cody had been suspended for most of 2013, but that Cody had continued to serve as her broker during that year. The customer forwarded to FINRA staff emails that were written between the customer and Cody's personal email account (the "Personal Email Account") in 2013, while Cody was suspended. The customer also forwarded to FINRA staff an email that was written by the customer in 2013 to a business email account that Cody used prior to (and following) his suspension (the "Business Email

Account”). The forwarded emails discussed, among other things, investment strategy and potential trades in one or more of the customer’s accounts.

11. Based on the foregoing, FINRA opened an investigation to determine if Cody, in fact, continued to act in a manner requiring registration in 2013, in violation of the terms of his suspension.
12. During the investigation, FINRA staff reviewed emails associated with the Personal Email Account and the Business Email Account, as well as those associated with JT’s business email account, during the period that Cody was suspended. FINRA staff also spoke with a number of Cody’s and JT’s former customers. Based, in part, on those sources, FINRA staff learned that Cody, with JT’s assistance, repeatedly violated the terms of his suspension by, among other things, communicating with customers, making securities recommendations to them, and placing trades on their behalf. Specifically, FINRA staff’s investigation revealed the following:
 - a. In preparation for Cody’s suspension, JT became registered with Concorde in January 2013. Although JT first entered the securities industry in 2001, she had not recently, if ever, worked as a registered representative with customers of her own.
 - b. JT took over Cody’s book of business upon becoming registered with Concorde. Indeed, all or nearly all of JT’s customers had been Cody’s customers at his prior firm.

- c. For the most part, Cody did not tell his customers that he had been suspended. To the contrary, Cody told many of his customers in early 2013 that JT had joined his office and would be working with him. Many of Cody's customers believed that Cody continued to be their broker throughout the time he was suspended, and that JT was his assistant. JT was the broker of record for the customers during the year of Cody's suspension.
- d. During his suspension, Cody continued to communicate, and often initiated communications, with customers about market conditions, account performance, and investment strategies, among other things.
- e. During his suspension, Cody also accessed customers' account information with Concorde, including their account balances and monthly statements, and relayed that information to customers upon request.
- f. Cody also met in person with customers while suspended. During those meetings, Cody discussed, among other things, account performance and investment strategies.
- g. Cody also made securities recommendations to customers while suspended.
- h. During his suspension, Cody entered trades for customers, and directed JT to enter trades for customers.

13. As detailed below, FINRA staff sent Cody several requests for documents and information pursuant to FINRA Rule 8210 in an attempt to obtain information relevant to its investigation. In addition, FINRA staff twice took Cody's on-the-record testimony. In response to one of these requests and during his on-the-record testimony, Cody repeatedly provided false and misleading information to FINRA staff.

Cody Provided False And Misleading Information To FINRA About His Activities During His Suspension

14. Cody provided the following false and misleading information to FINRA concerning whether he conducted any securities business during his year-long suspension:

- a. On February 9, 2016, FINRA staff sent Cody a request pursuant to FINRA Rule 8210, requiring Cody to respond to questions in writing (the "February 9 Request"). The February 9 Request asked: "During your suspension from January 7, 2013 through January 6, 2014, had you conducted any securities business? If so, please provide all details." Cody responded to this Rule 8210 request on February 12, 2016 (the "February 12 Response"). In his response, Cody stated: "No, I did not conduct securities business during my suspension from January 7, 2013 through January 6, 2014." In fact, Cody routinely and repeatedly conducted securities business during the time he was suspended.

b. On October 27, 2016, FINRA sent Cody a request pursuant to FINRA Rule 8210, requiring Cody to appear for on-the-record testimony. Cody provided sworn testimony to FINRA staff on November 15, 2016 (the “November 15 OTR”). During the November 15 OTR, with respect to the above-quoted answer in his February 12 Response (namely, “No, I did not conduct securities business during my suspension from January 7, 2013 through January 6, 2014”), the following exchange occurred between FINRA staff and Cody:

FINRA staff: Was that truthful?

Cody: From my point of view, yes.

FINRA staff: What does that mean?

Cody: Obviously, we’re here. You have a different point of view.

FINRA staff: ... From your point of view, that answer is truthful?

Cody: Yes.

FINRA staff: You did not meet with clients about their -- and discuss with them their securities investments with Concord[e] during the yearlong suspension?

Cody: I did not meet with any clients and I did not solicit any contact with any clients. ...

In fact, Cody routinely and repeatedly conducted securities business during the time he was suspended. Cody contacted customers while suspended to discuss, among other things, their securities investments. In addition, Cody recommended securities transactions to customers while suspended.

15. Cody provided the following false and misleading information to FINRA concerning whether he held himself out as a registered broker while suspended:

- a. During the November 15 OTR, FINRA staff asked Cody: “Were you allowed to hold yourself out to the world, to your former customers, as a currently-registered broker?” Cody answered: “I have no idea. I didn’t. Not that I can remember.” Cody later added: “It never came up. I didn’t have to do that. I didn’t do that.” In fact, Cody held himself out, to customers and others, as a registered broker while suspended.

16. Cody provided the following false and misleading information to FINRA concerning whether he had any role with the branch office of Concorde from which JT worked during the period of his suspension:

- a. During the November 15 OTR, FINRA staff asked Cody: “[D]uring that year, did you have any role with that branch office of Concord[e], other than paying the bills ... that you described?” Cody answered: “No.” In fact, Cody effectively acted as a registered representative of Concorde during his year-long suspension.

17. Cody provided the following false and misleading information to FINRA concerning his use of any email accounts, other than those approved by Concorde, to conduct securities business:

- a. The February 9 Request asked: “Have you ever used any email account, other than Concorde Investment Services, LLC’s approved email accounts, to conduct any securities business from January 1, 2013 through December 31,

2015?” In his February 12 Response, Cody stated: “I did not use an e-mail account other than an approved e-mail address.” In fact, Cody used the Personal Email Account, while suspended and at other times, to conduct securities business; Concorde never approved Cody’s use of the Personal Email Account for business purposes.

- b. During the November 15 OTR, after FINRA staff showed Cody the above-quoted answer in his February 12 Response (namely, “I did not use an e-mail account other than an approved e-mail address”), FINRA staff asked Cody: “Was that truthful?” Cody responded: “Yes.” In fact, Cody used the Personal Email Account, while suspended and at other times, to conduct securities business.
- c. The February 9 Request asked: “If you have used other email addresses [other than Concorde’s approved email accounts], please provide copies of all emails sent and received to any securities customers from January 1, 2013 through December 31, 2015.” In his February 12 Response, Cody stated: “No e-mails were sent or received regarding securities business [using an email account other than an approved email address].” In fact, Cody used the Personal Email Account, while suspended and at other times, to conduct securities business.

d. During the November 15 OTR, after showing Cody the above-quoted answer in his February 12 Response (namely, “No e-mails were sent or received regarding securities business [using an email account other than an approved email address]”), FINRA staff asked Cody: “Was that a truthful response?” Cody answered: “Yes. Because the approved e-mails ... were the two e-mails I gave you, which was [the Business Email Account] and [the Personal Email Account].” In fact, as stated, Concorde never approved the Personal Email Account, which Cody used, while suspended and at other times, to conduct securities business.

18. Cody provided the following false and misleading information to FINRA concerning his initiation of contact with customers while suspended:

a. In addition to the testimony quoted above in paragraph 14(b), during the November 15 OTR, the following exchange occurred between FINRA staff and Cody:

FINRA staff: Were you -- you said in your answer that you were not allowed to solicit business from existing clients during the year of your suspension; is that right?

Cody: My understanding was -- my interpretation [was] I could not call a client to say buy IBM.

FINRA staff: Did you, in fact, do that at all during your year of suspension?

Cody: No.

FINRA staff: You testified in your original answer that your understanding of one of the things you could not do while suspended was initiate contact with customers about their accounts; is that right?

Cody: Yes.

FINRA staff: Did you, in fact, do that?

Cody: No.

In fact, Cody repeatedly initiated contact with customers while suspended to, among other things, discuss their accounts and make securities recommendations.

19. Cody provided the following false and misleading information to FINRA concerning his accessing and transmitting account information to customers while suspended:

- a. During the November 15 OTR, FINRA staff asked Cody: "For example, let's say any customers' monthly account statements, were you looking at them?" Cody answered: "No." FINRA staff then asked Cody: "Were you looking at trade confirmations?" Cody answered: "No." In fact, Cody accessed, and upon request transmitted, customers' account information with Concorde while suspended.

20. Cody provided the following false and misleading information to FINRA concerning his making securities recommendations to customers while suspended:

- a. In addition to the testimony quoted above in paragraph 18(a), during the November 15 OTR, following a question posed to Cody about whether he was allowed to make securities recommendations to customers while suspended, Cody stated: "I did not tell anybody that I could remember, go ahead and buy ABC company and sell XYZ company. And that's that." In fact, Cody repeatedly made securities recommendations to customers while suspended.

21. Cody provided the following false and misleading information to FINRA concerning his entering of trades for customers, and his directing JT to enter trades for customers, while suspended:

- a. During the November 15 OTR, FINRA staff asked Cody: "Did you, in fact, enter trades during the year of your suspension?" Cody answered: "No." In fact, Cody repeatedly entered trades for customers while suspended.
- b. During the November 15 OTR, FINRA staff asked Cody: "Could you direct [JT or the assistant] ... to execute trades in those customers' accounts?" Cody answered: "No." FINRA staff then asked Cody: "Did you, in fact, do that?" Cody responded: "No." In fact, Cody repeatedly directed JT to enter trades for customers while suspended.

Cody Provided False And Misleading Information To FINRA About Specific Customers

22. Cody provided the following false and misleading information to FINRA concerning customer KB:

a. During the November 15 OTR, the following exchange occurred between FINRA staff and Cody:

FINRA staff: Do you recall speaking with [KB] on January 31, 2013?

Cody: No.

FINRA staff: Do you recall forwarding her account statements to her on that date?

Cody: No. I wouldn't have done that. ...

FINRA staff: By the terms of your suspension, would you have been allowed to speak with [KB] and send Concord[e] account statements to her?

Cody: Again, I didn't send the statements. I wouldn't have been able to send the statements. ...

FINRA staff: [KB's email dated January 31, 2013 states:] 'Hi, Rich, It was nice speaking with you by phone today. Thanks so much again for getting back to me so quickly and for forwarding the statements.' Is it your testimony today under oath that that means you were not the person who forwarded the statements?

Cody: Yes. That's absolutely the case, under oath.

In fact, Cody spoke with customer KB by phone on or about January 31, 2013, and upon her request, sent account statements to her.

23. Cody again provided sworn testimony to FINRA staff on November 28, 2016 (the “November 28 OTR”). During the November 28 OTR, Cody provided the following false and misleading information to FINRA concerning customer CF:

- a. During the November 28 OTR, the following exchange occurred between FINRA staff and Cody:

FINRA staff: [CF’s email dated April 18, 2013] reads, ‘Hi Rich, I wonder if we could have another meeting in the next few weeks to review my finances and do some planning? Would you have some time during or after the week of May 7? I hope all is well with you. Thanks very much, [CF].’ Do you see that?

Cody: Yes.

FINRA staff: Did you meet with her in or around April or May 2013 to review her finances and do some planning?

Cody: No.

In fact, Cody met with customer CF during his suspension, on or around May 6, 2013, and discussed, among other things, her account performance and investment strategies.

- b. During the November 28 OTR, in connection with an email written by customer CF dated May 8, 2013, which stated, in relevant part, “Hi, Rich, I got your message, and appreciate your taking care of the things we talked about so promptly,” FINRA staff asked Cody: “Did you personally make any trades in [CF’s] accounts following May 6, 2013?” Cody answered: “No.” FINRA staff then asked Cody: “Did you direct [JT or the assistant] to make any trades in [CF’s] account following May 6, 2013?” Cody replied: “No.”

In fact, Cody placed, or directed JT to place, a number of trades in various accounts associated with CF, following a meeting between Cody and customer CF that occurred on or around May 6, 2013.

24. Cody provided the following false and misleading information to FINRA concerning customer RF:

- a. During the November 28 OTR, FINRA staff asked Cody: “Did you continue to act as [RF’s] financial advisor during your yearlong suspension?” Cody answered: “No.” In fact, Cody acted in all respects as customer RF’s broker during the year of his suspension.
- b. During the November 28 OTR, FINRA staff asked Cody: “Did you either make trades yourself in [RF’s] accounts or direct [JT or the assistant] to do so during the year of your suspension?” Cody answered: “No.” In fact, Cody placed, or directed JT to place, a number of trades in customer RF’s accounts while suspended.
- c. During the November 28 OTR, the following exchange occurred between FINRA staff and Cody, in connection with an email written by customer RF, dated February 12, 2013, which stated, in pertinent part, “Rich ... I received a [confirmation] statement last night showing the sale of 100 shares of [Baidu] at about \$98 per share”:

FINRA staff: Were you involved in -- did you execute a trade in [RF’s] account for the sale of 100 shares of Baidu?

Cody: No.

FINRA staff: ... Did you direct [the assistant or JT] to sell 100 shares of Baidu in [RF's] account?

Cody: No.

In fact, Cody sold, or directed JT to sell, 100 shares of Baidu in customer RF's account on or around February 5, 2013.

- d. During the November 28 OTR, FINRA staff asked Cody: "Do you know if shares of Baidu were, in fact, sold [out] of [RF's] account at any point in 2013?" Cody answered: "I don't know." FINRA staff then asked Cody: "Did you have any role in any such sale?" Cody replied: "No." In fact, as stated, Cody sold, or directed JT to sell, shares of Baidu in customer RF's account on or around February 5, 2013, as well as on another date during his suspension.
- e. During the November 28 OTR, in connection with an email from Cody's Business Email Account to customer RF, dated July 11, 2013, in which Cody discussed selling BlackBerry stock out of customer RF's account and replacing it with Genworth Financial stock, FINRA staff asked Cody: "Were you monitoring BlackBerry stock during your suspension?" Cody replied: "No." FINRA staff then asked Cody: "Were you monitoring Genworth Financial stock during your suspension?" Cody answered: "No. Not that I remember." In fact, Cody sent a news article about BlackBerry to customer RF, and stated, in sum and substance, that if customer RF were inclined to sell his BlackBerry stock at that time, that he recommended it be replaced with Genworth Financial stock.

f. During the November 28 OTR, in connection with an email string between customer RF and Cody's Business Email Account, dated July 11, 2013, in which customer RF asked, "Can you make that change today," and Cody replied, "Will do," FINRA staff asked Cody: "Did you personally make that change for [RF] on or around July 11, 2013?" Cody answered: "No." FINRA staff then asked Cody: "Did you direct [the assistant or JT] or anyone to make that trade for or in [RF's] account?" Cody answered: "No." In fact, on July 11, 2013, Cody executed, or directed JT to execute, the sale of BlackBerry shares and the purchase of Genworth Financial shares in customer RF's account.

25. Cody provided the following false and misleading information to FINRA concerning customer CB:

a. During the November 28 OTR, in connection with an email from customer CB to Cody's Business Email Account, dated October 8, 2013, in which customer CB stated, in relevant part, "Rich, I'm not sure if I was clear when we visited, but I do wish to have the \$25,000 investment I sent you recently either in a separate account, or somehow identifiable wherever it is located," FINRA staff asked Cody: "Did you have any involvement in that \$25,000 investment during your suspension year?" Cody responded: "No." FINRA staff then asked Cody: "Did you tell [the assistant or JT] or anyone about what kind of account should be opened or how that money was to be invested?" Cody answered: "No." In fact, Cody met with customer CB on or about September 19, 2013, at which time customer CB discussed with Cody how

she wanted the \$25,000 check that she sent to the Concorde branch office in August 2013 to be invested.

26. Cody provided the following false and misleading information to FINRA concerning customers NS and DL:

- a. During the November 28 OTR, in connection with an email from customer NS to Cody's Business Email Account, dated March 24, 2013, which stated, in relevant part, "Go ahead and invest \$2000 as you suggested in MFCFX from [DL's] Roth IRA" and "Please buy me 11 shares of GOOG in my Roth IRA," to which Cody replied on March 25, 2013, in pertinent part, "I will take care of the ... trades," FINRA staff asked Cody: "Did you have any role in executing trades in either [NS'] or [DL's] account on or around March 25, 2013?" Cody answered: "No." Later, FINRA staff again asked Cody: "Did you take care of those trades?" Cody replied: "No." In fact, Cody executed, or directed JT to execute, the purchase of \$2,177 of Marsico Flexible Capital Fund (MFCFX) in DL's Roth IRA on March 26, 2013, and the purchase of 11 shares of Google (GOOG) in NS' Roth IRA on March 25, 2013.
- b. During the November 28 OTR, in connection with an email string between customer NS and Cody, dated March 25, 2013, in which Cody stated, in relevant part, "That being said the Goldman bond still looks to be the best" as an investment in "[e]ach of [customer NS' and DL's] individual accounts," the following exchange occurred between FINRA staff and Cody:

FINRA staff: But she's asking you which accounts will it go in. And you're responding, 'Each of the individual accounts.' Do you see that?

Cody: Yes.

FINRA staff: It looks like you are involved in those trades. Do you see that?

Cody: No, I don't see that. ...

FINRA staff: I truly don't understand your testimony. Either you were involved in the execution of these trades or you weren't.

Cody: I wasn't.

In fact, Cody purchased, or directed JT to purchase, a Goldman Sachs bond in customer NS' individual account, and a Goldman Sachs bond in customer DL's individual account, on March 25, 2013.

Cody Provided False And Misleading Information To FINRA About PA

27. FINRA staff learned that, in 2016, Cody participated in three customers' investments in a private company, PA. In total, the three customers, through Cody, invested approximately \$595,000 in PA. None of Cody's customers received any return on their investments in PA. To the contrary, their funds apparently were lost in a "scam" perpetrated against PA.

28. Cody provided the following false and misleading information to FINRA concerning the investments made by Cody's customers in PA.

- a. During the November 28 OTR, after having testified that the only investments made by his customers outside their brokerage accounts were in a natural gas partnership and in a particular REIT, FINRA staff asked Cody: "Aside from the ... natural gas partnership and the REIT that you mentioned, were there any other investments held outside of Concorde?" Cody answered: "No." In fact, in 2016, while Cody was registered with Concorde, Cody caused a total of approximately \$595,000 to be wired from the accounts of approximately three of his customers to PA.
- b. During the November 28 OTR, FINRA staff asked Cody: "So those -- the REITs and the natural gas, which is just a small amount for everybody, [were] the only private securities that you recall purchasing for your customers over that period of time?" Cody replied: "Correct." In fact, as alleged above, Cody caused a total of approximately \$595,000 to be wired from the accounts of approximately three of his customers to PA in 2016.
- c. During the November 28 OTR, FINRA staff asked Cody: "Have you done any other business with [PA] ...?" Cody answered: "No." In fact, as alleged above, Cody caused a total of approximately \$595,000 to be wired from the accounts of approximately three of his customers to PA in 2016.

Cody Failed to Respond Fully to Requests for Documents and Information

The Rule 8210 Request Dated October 31, 2016

29. By letter dated October 31, 2016, FINRA staff sent Cody a request pursuant to FINRA Rule 8210, requiring Cody to respond to questions in writing and to provide FINRA staff with certain documents (the “October 31 Request”), including, but not limited to, cell phone records, bank statements, credit card statements, tax returns, and loan documents. The October 31 Request set a deadline of November 9, 2016. The October 31 Request was sent to Cody at his Central Registration Depository (“CRD”) address, via first class mail and Federal Express.
30. Cody provided a partial response to the October 31 Request, by email from the Personal Email Account to FINRA staff dated November 9, 2016, in which he answered the questions posed in the October 31 Request, but did not produce any responsive documents. Cody stated that he was in the process of obtaining the requested cell phone records and bank statements. Cody indicated that his tax returns were attached to the email, but FINRA staff was unable to open the attachments.
31. During the November 15 OTR, FINRA staff informed Cody that it was unable to open the attachments to his email that he indicated were the requested tax returns. FINRA staff asked Cody to send copies of the tax returns along with the other records that he represented would be forthcoming. Cody stated that he would do so.

32. In addition, Cody brought certain bank statements to the November 15 OTR. FINRA staff subsequently reviewed the bank statements and determined that numerous pages were missing from the statements. FINRA staff also determined that Cody failed to provide any statements for some of the months requested.
33. By December 1, 2016, FINRA staff had not received any additional documents in response to the October 31 Request. As a result, FINRA staff sent a second request for the outstanding documents and information, also pursuant to FINRA Rule 8210, on December 1, 2016; the letter inventoried the information and documents already provided by Cody, and specified what documents and information remained outstanding. The December 1 letter set a deadline of December 15, 2016 for the outstanding documents and information. The December 1 letter was sent to Cody's attorney, who appeared on his behalf at the November 15 OTR and the November 28 OTR, via first class mail, Federal Express, and email.
34. By December 29, 2016, FINRA staff still had not received any additional documents in response to the October 31 Request. Accordingly, by letter dated December 29, 2016, FINRA staff sent a third request for the outstanding documents and information, also pursuant to FINRA Rule 8210. That letter enclosed FINRA staff's earlier Rule 8210 requests, and again specified what documents and information remained outstanding. The December 29 letter set a deadline of January 6, 2017 for the outstanding documents and information. The December 29 letter was sent to Cody's attorney via first class mail, first class certified mail, and email. The December 29 letter was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.

35. By two separate emails dated February 1, 2017, Cody emailed FINRA staff from the Personal Email Account, attaching various credit card statements, albeit not for the full time period set forth in the October 31 Request.
36. Cody never produced the requested cell phone records, tax returns, and loan documents and, as described above, failed to produce complete records for the requested credit card and bank statements.

The Rule 8210 Request Dated December 6, 2016

37. By letter dated December 6, 2016, FINRA staff sent Cody a request pursuant to FINRA Rule 8210, requiring Cody to provide FINRA staff with certain documents related to topics raised during his two days of testimony (the “December 6 Request”), including his IRS Account Transcript for tax year 2012 (or to request one if he did not have one), documents pertaining to a then-pending arbitration against Cody, bank statements from the year of his suspension (among other years), as well as credit card statements from the year of his suspension (among other years). The December 6 Request set a deadline of December 16, 2016. The December 6 Request was sent to Cody’s attorney via first class mail and email.
38. By December 20, 2016, FINRA staff had not received any response to the December 6 Request. Accordingly, by letter dated December 20, 2016, FINRA staff sent a second request for the above-listed documents, also pursuant to FINRA Rule 8210. The December 20 letter set a deadline of December 28, 2016 for the outstanding documents. The December 20 letter was sent to Cody’s attorney via first class mail and email. The December 20 letter was also sent to Cody directly via first

class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.

39. On December 23, 2016, Cody emailed FINRA staff from the Personal Email Account. With respect to the request for his IRS Account Transcript, Cody stated: “[A]ttached is the [request form] I sent to the IRS. The bank and credit card statements going back to 2013 have been requested. I believe you already have in your possession all of the information I have pertaining to the [arbitration].”
40. The form that Cody attached to his December 23 email was blank. In addition, notwithstanding Cody’s email implying otherwise, Cody had not provided (and did not later provide) FINRA staff with any documents pertaining to the arbitration.
41. By December 29, 2016, FINRA staff had not received any additional documents in response to the December 6 Request. Accordingly, by letter dated December 29, 2016, FINRA staff sent a third request for the outstanding documents, also pursuant to FINRA Rule 8210. That letter enclosed FINRA staff’s earlier Rule 8210 requests, and indicated that the entire December 6 Request remained outstanding. The December 29 letter set a deadline of January 6, 2017 for the outstanding documents. The December 29 letter was sent to Cody’s attorney via first class mail, first class certified mail, and email. The December 29 letter was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.
42. Cody never produced the requested IRS Account Transcript, documents pertaining to the specified arbitration, and bank and credit card statements from the year of his suspension and beyond.

The Rule 8210 Request Dated January 5, 2017

43. By letter dated January 5, 2017, FINRA staff sent Cody a request pursuant to FINRA Rule 8210, requiring Cody to provide FINRA staff with certain documents related to PA, including correspondence with any individuals associated with PA. The January 5 Request set a deadline of January 13, 2017. The January 5 Request was sent to Cody's attorney via first class mail, first class certified mail, and email. The January 5 Request was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.
44. By January 17, 2017, FINRA staff had not received any response to the January 5 Request. Accordingly, by letter dated January 17, 2017, FINRA staff sent a second request for the above-listed documents, also pursuant to FINRA Rule 8210. The January 17 letter set a deadline of January 24, 2017 for the outstanding documents. The January 17 letter was sent to Cody's attorney via first class mail, first class certified mail, and email. The January 17 letter was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.
45. On January 19, 2017, Cody emailed FINRA staff from the Personal Email Account. He stated, in pertinent part: "I do not have any written correspondence or emails regarding [the principal of PA] or [PA]."

46. Later on January 19, FINRA staff replied to Cody's email, and stated, in relevant part: "In addition to asking for any and all correspondence between you and any individuals associated with [PA] (including, but not limited to, [the principal of PA]), the Rule 8210 request asked for 'any and all documents (in any form, including, but not limited to, hard copy documents, emails, and documents stored electronically) concerning [PA].' You are reminded to please provide us with any and all such documents."
47. Cody did not reply to FINRA staff's email of January 19, and never produced any documents in response to the January 5 Request.

Cody Failed To Appear For On-The-Record Testimony

The Request For On-The-Record Testimony To Occur On January 17, 2017

48. FINRA staff sent Cody a letter dated January 5, 2017, pursuant to Rule 8210, requesting an additional day of on-the-record testimony. The letter requested that Cody appear at FINRA's office in Woodbridge, New Jersey on January 17, 2017. The letter was sent to Cody's attorney via first class mail, first class certified mail, and email. The letter was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.
49. Subsequently on January 5, 2017, Cody emailed FINRA staff from the Personal Email Account. He stated: "I no longer reside in New Jersey and cannot be at your office on January 17th."

50. FINRA staff replied to Cody's email later on January 5, and asked Cody to supply his new mailing address and phone number. FINRA staff also stated: "We may be able to accommodate you via video conferencing; however, we would need to know where you are residing prior to making any determination."
51. Cody replied to FINRA staff's email later on January 5, and stated: "I do not have a permanent address yet. I am staying with friends at the moment in Florida. I do not have a home phone number yet."
52. FINRA staff replied to Cody's email later on January 5, and stated: "In light of your recent move to Florida, we are willing to accommodate you by scheduling your OTR to take place in FINRA's Boca Raton office ... As a result, and pursuant to FINRA Rule 8210, you should appear at our office located at [address supplied], on Tuesday, January 17, 2017 at 11:00 a.m."
53. Cody replied to FINRA staff's email later on January 5, and stated: "I moved to Jacksonville. Boca is more than 4 hours away. I cannot go to that office on the 17th in spite of rule 8210."
54. On January 6, 2017, FINRA staff replied to Cody's email and, in sum and substance, reminded him of his obligation to testify pursuant to Rule 8210. FINRA staff also told Cody: "We are willing to allow you to testify via videoconference from any FINRA office in the country; the closest office to Jacksonville is Boca Raton, but if you prefer Atlanta or some other office, please let us know."

55. Cody replied to FINRA staff's email later on January 6, and stated: "I can not [sic] be there or any other office on Jan 17th."

56. FINRA staff replied to Cody's email later on January 6, and stated, in pertinent part:

"If you believe you have a legitimate reason why you are unavailable to testify on Tuesday, January 17, 2017, then you need to provide that reason to us, along with proposed alternate dates for your testimony, either that week (i.e., the week of January 16) or the following week (i.e., the week of January 23). Otherwise, your testimony is set for Tuesday, January 17, 2017 at 11:00 in FINRA's Boca Raton office, and we will expect you to be present, as you are required, pursuant to Rule 8210."

57. Cody did not reply to FINRA staff's last email to explain why he believed he was unavailable to testify on the selected date, or to propose an alternate date or location for his testimony.

58. Cody did not appear for his on-the-record testimony on January 17, 2017.

The Request For On-The-Record Testimony To Occur On January 23, 2017

59. FINRA staff sent Cody a letter dated January 17, 2017, pursuant to Rule 8210, again requesting an additional day of on-the-record testimony. The letter requested that Cody appear at FINRA's office in Boca Raton on January 23, 2017. The letter was sent to Cody's attorney via first class mail, first class certified mail, and email. The letter was also sent to Cody directly via first class mail and first class certified mail to his CRD address, as well as via email to the Personal Email Account.

60. On January 19, 2017, Cody emailed FINRA staff from the Personal Email Account. He stated, in relevant part that he would not attend the OTR scheduled in Boca Raton, and that he would attend only if FINRA scheduled an OTR in Jacksonville, Florida or, he offered, “we can do it the next time I’m in NJ which is undetermined at this point.”
61. FINRA staff replied to Cody’s email later on January 19, and stated, in pertinent part: “Please be advised that while we are willing to allow you to propose alternate dates, we must hold your OTR within the next couple weeks (i.e., during the week of January 23 or the week of January 30); we are not able to defer it to an ‘undetermined’ point in time.” FINRA staff then asked Cody to identify any dates during those specified weeks when he would be available to testify. FINRA staff also again invited Cody to choose the FINRA office from which he would like to testify. FINRA staff then stated: “Otherwise, we will expect you to appear for your on-the-record testimony pursuant to FINRA Rule 8210 on January 23, 2017 at 11:00 a.m. in FINRA’s Boca Raton office.” FINRA staff closed by again asking Cody to supply his new mailing address in Jacksonville, along with any new phone numbers where he may be reached.
62. Cody did not reply to FINRA staff’s last email to propose any dates or to select the location for his testimony.
63. Cody did not appear for his on-the-record testimony on January 23, 2017.

FIRST CAUSE OF ACTION
Providing False and Misleading Information to FINRA
(FINRA Rules 8210 and 2010)

64. The Department realleges and incorporates by reference paragraphs 1 through 63 above.
65. FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to “provide information orally [or] in writing . . . with respect to any matter involved in the investigation” FINRA Rule 8210(c) requires those persons to provide information when requested by FINRA.
66. Providing false or misleading information to FINRA constitutes conduct inconsistent with just and equitable principles of trade, in violation of FINRA Rule 2010, as well as FINRA Rule 8210.
67. By providing false and misleading information to FINRA in his February 12 Response, as well as during the November 15 OTR and the November 28 OTR, as set forth above, Cody violated FINRA Rules 8210 and 2010.
68. Cody’s false and misleading statements to FINRA in his February 12 Response, during the November 15 OTR, and during the November 28 OTR each constitute separate and distinct violations of FINRA Rules 8210 and 2010.

SECOND CAUSE OF ACTION

**Failure to Provide Documents and Information
(FINRA Rules 8210 and 2010)**

69. The Department realleges and incorporates by reference paragraphs 1 through 68 above.
70. The information and documents requested by FINRA pursuant to the October 31 Request, the December 6 Request, and the January 5 Request were material to FINRA's investigation of Cody.
71. By failing to respond fully to the October 31 Request, the December 6 Request, and the January 5 Request, as well as to their follow-up letters, all of which were issued pursuant to FINRA Rule 8210, Cody violated FINRA Rules 8210 and 2010.
72. Cody's failures to respond fully to the October 31 Request (along with the follow-up letters dated December 1, 2016 and December 29, 2016), the December 6 Request (along with the follow-up letters dated December 20, 2016 and December 29, 2016), and the January 5 Request (along with the follow-up letter dated January 17, 2017), each constitute separate and distinct violations of FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION
Failure to Provide Testimony
(FINRA Rules 8210 and 2010)

73. The Department realleges and incorporates by reference paragraphs 1 through 72 above.
74. The on-the-record testimony requested for January 17, 2017 and January 23, 2017 was material to FINRA's investigation of Cody, and was necessary for FINRA to fulfill its regulatory mandate to fully investigate potential rule violations.
75. By failing to appear for testimony on January 17, 2017 and January 23, 2017, as requested pursuant to FINRA Rule 8210, Cody violated FINRA Rules 8210 and 2010.
76. Cody's failures to appear for testimony on January 17, 2017 and January 23, 2017 each constitute separate and distinct violations of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 11, 2017



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