

WHAT TO DO IF YOU RECEIVE A FINRA 8210 LETTER - OCT. 2017

Legal Risk Management Tip October 2017

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Introduction

FINRA Rule 8210 allows FINRA staff and adjudicators the ability to inspect and copy certain books, records and accounts of their member firms and those associated with such member firms. Generally, Rule 8210 is used as a means through which FINRA obtains information for examining, investigating or proceeding against a member firm and its associated persons.

Rule 8210 has broad reach, as it permits the regulator to obtain any such information to evaluate whether a member firm and/or its associated members are observing high standards of commercial honor and just and equitable principles of trade.¹

This month's Legal Risk Management Tip highlights what it means to get an 8210 letter, how to respond, and considerations for you to discuss with counsel.

1. What it Means to Get an 8210 Letter

When you receive an 8210 letter, you will need to schedule time with your Chief Compliance Officer to discuss the scope of what FINRA is seeking. The letter itself is an informal request to seek certain books, records and information from the recipient of the 8210 letter.

Typically, this type of request is sent when an event takes place, such as a tip, referral, complaint, examination or termination of registration (Form U-5) that puts you on FINRA's radar. FINRA does not have subpoena power, so the only method for them to obtain documentation is a letter issued under FINRA Rule 8210.

You may need to provide financial records, trading records, opening account documents, emails, or any other documentation that FINRA rules have required the member firm to maintain.

Typically, FINRA will include a response date in the letter, which then serves as due date for document and information production. You may request a reasonable extension (which generally will not exceed 30 days) if more time is needed to produce the documents, such as the case with voluminous requests. Generally, such extensions will be granted unless the request is unreasonable or FINRA believes there will be customer harm if too much time passes.

2. How to Respond to an 8210 Letter

It is not in your best interest to provide documents in a disorganized, haphazard heap. Rather, take time to provide an organized, well-thought out and deliberate response to FINRA.

Explanations should be very clear and responsive to FINRA's questions. These questions, called interrogatories, allow you to create a narrative to explain what happened, if appropriate. Your documents will need to be identified clearly as to which interrogatory they correspond to, with exhibits corresponding to and supplementing the response.

If there is any sensitive information, you will be required to send it either via overnight mail or via an encrypted file through email.

There is no option for ignoring an initial 8210 letter. Under the rule, "*No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounting pursuant to this Rule.*" Practically speaking, this means failing to respond will generate a second, or even third letter, which each subsequent letter becoming more and more threatening.

Continued failure to respond may result in you being permanently barred from the industry.

With that in mind, carefully review all documentation supporting your response to be sure that it is accurate. It is prudent to always seek guidance from outside counsel to avoid inadvertent submissions of unclear or incomplete responses. If there is potentially incriminating information, be upfront with your attorney and discuss the best method to convey requested information.

3. Considerations for You to Discuss with Counsel

Set enough time aside *prior to* the response due date to speak with your outside counsel regarding the FINRA 8210 letter. Ask for counsel to opine about what facts and circumstances could have led to the 8210 letter, what mitigation steps, if any, should be taken, and what to expect going forward.

Sometimes the reasons behind the 8210 are straight forward. You left your position and the member firm commenced an internal review related to your activities; information provided on your Form U-4 was incomplete; perhaps a lien was imposed; or an aggravated customer reached out to them regarding a transaction.

While an 8210 letter should not be taken lightly, unless the 8210 letter specifically states that you are under investigation, you do not have to amend your Form U-4. If a Form U-4 disclosure is necessary, inform your compliance department as soon as possible. Counsel can assist liaising with the member firm, as needed.

If you find yourself in an investigation, many times FINRA will request an On the Record (OTR) Interview, which is in effect a deposition. You will be under oath, and your attorney should be present (although this is not a requirement).

An OTR interview takes place when the enforcement division determines that there may be a violation of FINRA rules or industry regulations. The OTR could take just a few hours, but dependent upon the matter, could also last up to several days. The length typically depends on the seriousness and complexity of the accusations.

Conclusion

The receipt of an 8210 letter is often a daunting experience. Numerous requests for information may require hundreds of staff hours to gather requested documents and information. If you find yourself in an investigation, often times this will last anywhere from a few months to several years to wrap-up prior to resolution.

The need to seek counsel in these situations is essential. If FINRA determines that a violation of FINRA rules occurred, they could take you to an enforcement hearing or attempt to enter into an Acceptance, Waiver, and Consent ("AWC"). Dependent upon the terms of the AWC, the member firm and if applicable, associated person, could be severely impacted. Thus, be judicious in your efforts to find an experienced lawyer to walk you through all options.

For more information on these and other considerations relating to FINRA enforcement issues, please contact us at info@jackolg.com, or (619) 298-2880.

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¹ See FINRA Rule 2010 available at

http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3883