SEC Release No. 105568: In the Matter of Jason Lynn DiPaola, Puts FINRA Process for Resolving Disputes Over Information Requests in the Spotlight

On May 28, the U.S. Securities and Exchange Commission issued its **opinion** reviewing FINRA disciplinary action against Jason Lynn DiPaola, a formerly associated person of Chardan Capital Markets LLC. The commission sustained FINRA's findings that DiPaola violated NASD Rule 3050(c) and FINRA Rule 2010 by failing to disclose an outside brokerage account in which he exercised discretionary authority, violated FINRA Rule 2010 by submitting false compliance questionnaires, and violated FINRA Rules 8210 and 2010 by failing to provide on-the-record testimony. The commission sustained the sanctions for the disclosure violations — a two-year suspension and a $25,000 fine — but set aside the sanctions for the Rule 8210 violation, finding the consecutive two-year suspension and a $15,000 fine to be excessive under the circumstances. Notably, FINRA had sought a bar.

The Underlying Conduct

DiPaola entered the securities industry in 1995 and served as senior vice president of institutional sales and trading at Chardan from 2013 to 2019. Beginning in 2013, he helped his mother open an ETrade account after she became dissatisfied with her full-service brokerage and thereafter used her username and password to access and trade in the account on her behalf. His mother was an inexperienced investor who traded approximately four times per year before opening the ETrade account, and she instructed DiPaola to trade in her account as he would in his own. Over a two-year period from March 2015 to March 2017, DiPaola placed or cancelled over 4,400 orders in his mother's account, ultimately acknowledging that he had personally entered approximately 95 percent of the trades.

Despite exercising this level of involvement, DiPaola failed to disclose his mother's account to Chardan or his associated person status to ETrade and did not list the account on Chardan's 2015 or 2016 annual compliance questionnaires. When ETrade discovered his access in August 2017 and required him to be added as a co-owner, DiPaola told Chardan his mother was adding him for "estate planning purposes" without revealing his years of active trading.

The Rule 8210 Dispute: A Case Study in the Blunt Instrument

The most consequential and intellectually interesting aspect of this proceeding is the dispute over FINRA's exercise of its authority under Rule 8210 — a dispute that traveled through all three levels of adjudication and produced strikingly different conclusions about the appropriate sanction.

The Factual Context

FINRA's Department of Enforcement took on-the-record testimony from DiPaola on three separate occasions in 2019 — once in April and twice in July — during which he was questioned extensively about his trading activity, his mother's account and his relationship with Advanced Medical Isotope Corporation ("AMIC"). Following these interviews, FINRA staff conducted additional analysis of over one million electronic communications from Chardan and identified what they described as concerns about potential insider trading and market manipulation related to AMIC stock.

Nearly two years later, on March 11, 2021, FINRA requested that DiPaola appear for a fourth round of testimony. His counsel expressed concerns that the session would be a "rehash" and indicated DiPaola was unavailable on the proposed date. Then, on March 26, 2021, FINRA simultaneously issued both a second Rule 8210 request for testimony on April 5, 2021, and a Wells Notice informing DiPaola that Enforcement had made a "preliminary determination" to recommend disciplinary action for manipulative trading, trading while in possession of material non-public information, failure to disclose accounts and submission of false forms.

DiPaola's counsel responded: "Are you serious? You served a Wells Notice, you cannot take another OTR after serving a Wells Notice. Does your supervisor know what you are doing?" Counsel sought withdrawal of the Wells Notice; FINRA refused. DiPaola did not appear for the April 5 or April 15 OTR sessions, and FINRA filed its complaint on May 3, 2021.

Three Levels of Review, Three Different Outcomes

Enforcement filed a complaint and sought to permanently bar DiPaola from the industry for failing to appear for his fourth OTR after receiving a Wells Notice. The Hearing Panel imposed only a 30-business-day suspension for the Rule 8210 violation. The panel acknowledged DiPaola's obligation to comply but treated his refusal as occurring at the end of a long investigation during which he had cooperated significantly, found "extensive overlap" between the 2019 testimony and the topics FINRA intended to cover in 2021, and characterized the *Wells* Notice as "an implicit concession" that Enforcement had gathered sufficient information to support the charges it was contemplating. The panel also expressed discomfort with the simultaneous issuance of the *Wells* Notice and the Rule 8210 request, noting that it "sent mixed messages to Respondent."

The NAC reversed the Hearing Panel's lenient approach and imposed a two-year suspension and $15,000 fine for the Rule 8210 violation, to run consecutively with the two-year suspension for the disclosure violations. The NAC rejected the Hearing Panel's treatment of the *Wells* Notice as mitigating, emphasized that Rule 8210's obligation is "unqualified and unequivocal," and concluded that DiPaola's refusal to testify "frustrated staff's ability to determine whether he had engaged in illegal trades."

The SEC sustained the Rule 8210 violation but set aside the NAC's sanctions, finding the consecutive two-year suspension and fine excessive. The commission found it "troubling" that FINRA sought additional testimony while simultaneously issuing a *Wells* Notice, noted that FINRA was responsible for the nearly two-year delay between the 2019 testimony and the 2021 request, and concluded that the delay "calls into question the importance to FINRA of the information it sought." The commission stated that seeking on-the-record testimony following such a delay and the issuance of a Wells Notice "raises concerns about the fairness of FINRA's investigative process" and "should be rare and occur only when FINRA has stated good reason for doing so."

Rule 8210 as FINRA's Principal Means of Investigation

Rule 8210 is described by FINRA, the NAC and the commission as "the principal means by which FINRA obtains information from its member firms and their associated persons" for purposes of investigation. It is "at the heart of the self-regulatory system for the securities industry." Unlike government agencies, FINRA lacks subpoena power enforceable by courts, cannot compel compliance through contempt proceedings and cannot obtain search warrants. Its jurisdiction is purely contractual — derived from the registration agreements of its members and their associated persons.

This jurisdictional limitation explains why the rule is so absolute in its terms. Rule 8210(c) provides that "[n]o . . . person shall fail to provide information or testimony . . . pursuant to this rule." The obligation is described as "unqualified and unequivocal." Associated persons may not "second guess" Rule 8210 requests, may not "take it upon themselves to determine whether information is material" to an investigation and may not impose conditions on their compliance. FINRA need not "explain its reasons for making the information request or justify the relevance of any particular request." And the standard sanction for a complete failure to comply is a bar — effectively a death sentence for a securities career.

The rationale for this severity is clear: because FINRA's regulatory authority depends entirely on cooperation by those it regulates, FINRA believes that any tolerance for non-compliance would unravel the entire self-regulatory framework. A failure to respond to a Rule 8210 request "impedes FINRA's ability to detect misconduct that threatens investors and markets." If associated persons could evaluate the legitimacy of individual requests and refuse those they deemed unnecessary, the investigative power would become illusory. Basically, because the world of potential sources of information is so small, FINRA claims essentially unlimited power to collect information from those sources.

How Rule 8210 Can Be Misused and Gamed

The *DiPaola* case illustrates several ways in which Rule 8210's absolute character can be exploited or can work unfair results.

First, Rule 8210 can be weaponized by imposing significant costs on respondents with no recourse to limit the expenses. FINRA maintains a constant, unchecked ability to demand more information, meaning a respondent that wishes to challenge charges must allow FINRA to impose costs on its defense indefinitely and without any limitation based on proportionality, or even an explanation by FINRA as to what it is investigating or why the information it seeks is useful, let alone necessary. Thus, every discussion with FINRA staff, including settlement communications, comes with it a potential implicit threat of additional burdensome requests if the respondent disagrees with FINRA's preliminary conclusions. To put it simply, sometimes it is cheaper to settle than it is to withstand the onslaught of information requests that might follow if the answer is "no." In this case, DiPaola had already testified for three full sessions in 2019. FINRA then waited nearly two years — a delay FINRA itself acknowledged was attributable to its own staff — before demanding more. The Commission found this delay "calls into question the importance to FINRA of the information it sought."

Second, Rule 8210 can be gamed by FINRA through timing. FINRA simultaneously issued a *Wells* Notice — which its own guidance describes as coming "[a]t the conclusion of the investigation" — and a demand for further testimony. This sent what the Hearing Panel aptly described as "mixed messages." On one hand, FINRA was telling DiPaola that it had concluded its investigation and reached a preliminary determination to charge him with serious federal securities violations including insider trading and market manipulation. On the other hand, it was demanding that he submit to further interrogation about those very topics — without any Fifth Amendment protections available in the FINRA forum. The practical effect was to place DiPaola in a position where anything he said could be used to strengthen the case against him, while refusal to speak would generate an independent violation carrying its own severe sanctions.

Third, the rule's absolute language creates a "gotcha" dynamic. Because respondents may not impose conditions, question relevance or even inquire into FINRA's reasons for a request, there is no mechanism for resolving legitimate disagreements short of outright refusal — which triggers the very sanctions the respondent fears. DiPaola's counsel took the position — not entirely unreasonably, given FINRA's own regulatory guidance — that a post-*Wells* OTR request absent a *Wells* Submission was improper. Every adjudicator ultimately disagreed with that legal conclusion, but even the SEC acknowledged that the situation "raises concerns about the fairness of FINRA's investigative process." The respondent's only option was to comply — the rule provides no forum in which to raise that objection before compliance is due.

Fourth, Rule 8210 goes only one direction. FINRA staff have no obligation to provide any discovery prior to filing a formal complaint, and then its disclosures are severely limited by various privileges.

No Disinterested Adjudicator for 8210 Disputes

The deeper systemic issue illuminated by *DiPaola* is the absence of any neutral mechanism for resolving disputes about Rule 8210 requests before a respondent must choose between compliance and refusal.

Consider the respondent's dilemma. If a respondent believes a Rule 8210 request is improper — whether because it is harassing, duplicative, issued for an improper purpose or violates FINRA's own procedures — the respondent has no forum in which to raise that challenge. There is no motion to quash, no protective order, no judicial officer to evaluate the request's legitimacy in advance. The respondent's only options are: (1) comply fully, regardless of the perceived impropriety, and attempt to raise the issue later as a defense or in mitigation; or (2) refuse and face a complaint and potential sanctions up to and including a permanent bar.

This is fundamentally different from how analogous disputes are resolved in most other legal contexts. When a government agency issues a subpoena, the recipient can move to quash it. When discovery disputes arise in litigation, parties can seek protective orders from the presiding judge. In these contexts, a disinterested third party evaluates whether the demand for information is legitimate before the consequences of non-compliance attach.

In the FINRA system, by contrast, the same organization that issues the demand also prosecutes the failure to comply and adjudicates the resulting disciplinary proceeding. While the SEC provides independent review, it does so only after the respondent has already been sanctioned and only after years of proceedings — in DiPaola's case, the conduct occurred in 2015–2017, the 8210 refusal was in 2021 and the SEC's opinion did not issue until May 2026, more than five years later.

The *DiPaola* case demonstrates exactly the kind of scenario in which this structural deficit could cause real harm. DiPaola had a colorable — if ultimately losing — argument that the simultaneous issuance of a *Wells* Notice and an OTR demand was procedurally improper. His counsel cited FINRA's own Regulatory Notice 09-17, which describes the *Wells* process as beginning "[a]t the conclusion of the investigation," and reasonably (if incorrectly) inferred that further testimony demands required some triggering event like a *Wells* Submission or the receipt of new information. The SEC itself found the practice "troubling" and stated it "should be rare." Yet DiPaola had no mechanism to obtain a ruling on this question before being forced to choose between compliance and a potential bar.

Had there been a neutral arbiter, the outcome could have been very different. Such an officer could have evaluated whether FINRA's simultaneous Wells Notice and OTR demand was proper, whether the nearly two-year delay undermined the claimed urgency, and whether the topics FINRA sought to explore were genuinely new or merely duplicative. The officer could have ordered compliance on a modified

schedule, narrowed the scope of the testimony or sustained the objection — all without requiring the respondent to gamble his career on an untested legal theory.

The Need for Reform or the Risk of Imposed Solutions

FINRA's current approach to Rule 8210 places enormous and unreviewable power in the hands of its enforcement staff, with no safety valve short of outright refusal and the risk of career-ending sanctions. The *DiPaola* case is not an outlier; it is the predictable consequence of a system that treats every demand as absolute and every objection as impermissible.

FINRA should consider developing a mechanism — perhaps modeled on the motion-to-quash procedures available in judicial proceedings — through which respondents can raise good-faith objections to Rule 8210 requests before a neutral adjudicator within FINRA. Such a mechanism could preserve FINRA's investigative authority while providing a pressure valve for the situations in which, as here, there is "at least some basis for reasonable disagreement" about the propriety of a particular demand. The standard for sustaining an objection could be set high — requiring a showing of clear impropriety, bad faith or harassment — so as not to become a tool for routine obstruction. But its mere existence would transform the binary choice between absolute compliance and career destruction into something more closely resembling the due process available in every other regulatory and judicial context.

If FINRA does not act, it is increasingly likely that the SEC or the federal courts will impose a solution — and the legal environment is already shifting in ways that make external intervention more probable. The SEC's opinion in *DiPaola* — with its pointed language about "fairness," its finding that the simultaneous *Wells* Notice and OTR demand was "troubling," and its decision to set aside FINRA's sanctions — is a warning shot. Moreover, FINRA faces an unprecedented wave of litigation directly challenging the constitutionality of its structure and processes. In *Jarkesy v. SEC*, 603 U.S. 109 (2024), the Supreme Court held that the Seventh Amendment entitles defendants to a jury trial when the SEC seeks civil penalties for securities fraud — a holding that calls into question whether any self-regulatory organization can impose punitive sanctions through internal adjudication without constitutional constraints. In *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), the court held that parties may challenge the constitutionality of an agency's structure in federal district court without first exhausting administrative remedies — opening the door for FINRA respondents to seek pre-enforcement judicial review of FINRA's processes rather than submitting to them and appealing after the fact. Building on these precedents, litigants have brought direct constitutional challenges to FINRA itself. In *Scottsdale Capital Advisors Corp. v. FINRA*, cases in the D.C. Circuit have tested whether FINRA exercises governmental authority subject to constitutional limitations, including due process and Appointments Clause constraints. In *Alpine Securities Corp. v. FINRA*, 982 F.3d 68 (2d Cir. 2020), the Second

Circuit addressed FINRA's quasi-governmental status, and subsequent litigation continues to probe whether FINRA's adjudicators must be appointed consistent with Article II. Multiple pending cases argue that if FINRA is a state actor — as its exercise of delegated regulatory power over an entire industry suggests — then its disciplinary proceedings must satisfy constitutional due process, including the right to a neutral adjudicator who is not part of the prosecuting organization.

These challenges reflect a broader judicial skepticism toward administrative adjudication that has accelerated in recent years, and they threaten to unravel the self-regulatory model if courts conclude that FINRA's processes lack the procedural safeguards that constitutional due process requires. Rule 8210 sits at the intersection of these concerns: it is an absolute command backed by career-ending sanctions, enforced through internal proceedings in which the same organization serves as investigator, prosecutor and judge, with no pre-compliance mechanism for raising objections before a neutral tribunal. A future case with more sympathetic facts — perhaps one involving a complete bar rather than a suspension, or one in which the respondent's legal theory is vindicated rather than merely colorable — could prompt the SEC to impose procedural requirements on FINRA's use of Rule 8210. Alternatively, a federal court, emboldened by *Jarkesy* and *Axon*, could conclude that the absence of any pre-compliance review mechanism renders Rule 8210's application fundamentally unfair in certain circumstances, or that FINRA's internal adjudication of 8210 disputes violates the due process rights of respondents who face what amounts to occupational death sentences.

Such externally imposed solutions are unlikely to be as well-tailored to FINRA's operational needs as reforms FINRA designs itself. A court might impose rigid procedural requirements that hamper legitimate investigations. The SEC might establish bright-line rules — such as prohibiting post-*Wells* OTR requests absent specified conditions — that reduce FINRA's flexibility. Either outcome would serve FINRA and the investing public less well than a thoughtful internal reform that balances investigative necessity against basic procedural fairness.

The *DiPaola* case thus stands as both a cautionary tale and an invitation. It demonstrates that Rule 8210, for all its necessity, operates as a blunt instrument that can produce unjust results when wielded without constraint. And it suggests that the current system's refusal to tolerate any form of pre-compliance adjudication is a structural weakness that, left unaddressed, will eventually be addressed by others less sympathetic to FINRA's regulatory mission.