

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 100662 / August 6, 2024

Admin. Proc. File No. 3-21246

In the Matter of the Application of  
  
WILFREDO FELIX  
  
for Review of Disciplinary Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DISCIPLINARY  
PROCEEDING

Principal of former FINRA member firm appeals from FINRA disciplinary action finding that he failed to comply with FINRA investigative requests. *Held*, FINRA’s findings of violations and imposition of sanctions are sustained.

APPEARANCES:

*Wilfredo Felix, pro se.*

*Alan Lawhead, Colleen Durbin, and Ashley Martin for FINRA.*

Appeal filed: November 17, 2022  
Last brief received: March 17, 2023

Wilfredo Felix—who was the sole owner, CEO, CFO, chief compliance officer, and financial and operations principal of former FINRA member firm Primex Prime Electronic Execution, Inc. (“Primex”)—seeks review of a FINRA disciplinary action.<sup>1</sup> FINRA found that Felix violated FINRA Rules 8210 and 2010 by failing to respond to FINRA’s investigative requests for Primex’s general ledger and annual audit. For this violation, FINRA barred Felix from association with any FINRA member firm. We sustain FINRA’s findings of violations and the sanction it imposed.

## I. Background

### A. Felix did not respond to FINRA’s Rule 8210 requests.

In early 2020, during a routine examination of Primex, FINRA requested that Primex produce its 2019 annual audit and general ledger. After Primex failed to do so, FINRA sent Felix Rule 8210 requests seeking the 2019 annual audit and general ledger.<sup>2</sup> FINRA sent the first two requests in July 2020 by first-class certified mail to Felix’s residential address listed in FINRA’s Central Registration Depository (“CRD”) and to an email address Felix used to correspond with FINRA in a prior disciplinary action.<sup>3</sup> Each of the certified mailings was returned to FINRA with the notation that it was “unclaimed” and could not be forwarded. The emails were not rejected as undeliverable.

After Felix did not respond to the requests, in August 2020, FINRA sent a third Rule 8210 request by first-class certified mail and first-class mail to Felix’s CRD residential address and by email. The third request informed Felix that he was in violation of Rule 8210 and, like the second request, warned Felix that he could be subject to a disciplinary proceeding if he failed to respond. USPS tracking information indicates that the certified mailing was “Delivered, Left with [an] Individual” and signed for by “Mr. Wilfredo F” on September 2, 2020. The first-class mailing was not returned to FINRA, and the email was not rejected as undeliverable. Felix did not respond to the third request.

### B. FINRA barred Felix for violating FINRA Rules 8210 and 2010.

On December 3, 2020, FINRA filed and served a complaint charging Felix with violating FINRA Rules 8210 and 2010 by failing to provide Primex’s 2019 annual audit and general

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<sup>1</sup> *Dep’t of Enf’t v. Felix*, Complaint No. 2020065128501, 2022 WL 14519583 (NAC Oct. 13, 2022).

<sup>2</sup> FINRA canceled Primex’s membership on May 27, 2020, for the unrelated reason of failure to pay outstanding fees.

<sup>3</sup> On May 26, 2021, in a prior disciplinary action, FINRA barred Felix for failing to comply with a Rule 8210 request for a personal tax document and assessed, but did not impose, other sanctions for Felix’s violations of FINRA Rules 2010 and 4511 by categorizing personal expenses as business expenses in the member firm’s general ledger and causing the member firm to maintain inaccurate books and records. *Dep’t of Enf’t v. Felix*, Complaint No. 2018058286901, 2021 WL 2288014 (NAC May 26, 2021). Felix’s appeal of that action is pending before the Commission.

ledger in response to FINRA's requests. As per FINRA's service rules, FINRA sent the complaint and a notice of complaint by first-class certified mail to Felix's residential address in CRD.<sup>4</sup> Service was complete upon mailing.<sup>5</sup> FINRA also emailed the complaint and notice of complaint to the email address at which it sent Felix the Rule 8210 requests.<sup>6</sup> The notice of complaint directed Felix to file an answer by December 31, 2020.<sup>7</sup>

After Felix failed to answer the complaint, FINRA sent a second and third copy of the complaint by first-class certified mail and express mail, respectively, to Felix's CRD address and by email, both warning Felix that if he failed to answer, the hearing officer could treat the complaint's allegations as admitted and enter a default decision against him. USPS tracking information does not reflect whether delivery of the second mailing was ever attempted, however, and the third mailing was returned because "the addressee was not known at the delivery address."

FINRA sent Felix the complaint a fourth and final time after searching public records through Lexis to verify Felix's address.<sup>8</sup> A Lexis report listed Felix's CRD residential address and a business address associated with Primex as current addresses for Felix through at least January 2021. On February 24, 2021, FINRA sent a copy of the complaint and a fourth notice by first-class mail to Felix's CRD residential address and by express mail to the Primex address. FINRA also emailed the documents to Felix. This fourth notice directed Felix to file an answer by March 15, 2021, and, like the second and third notices, warned that if Felix failed to answer, the hearing officer could treat the complaint's allegations as admitted and enter a default decision.<sup>9</sup> Felix did not respond to the complaint.

On April 27, 2021, a FINRA hearing officer granted FINRA Enforcement's motion for entry of a default decision, deemed the complaint's allegations to be true, found that Felix

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<sup>4</sup> FINRA Rules 9131(b), 9134(a)(2), & 9134(b)(1) (requiring that a complaint be served upon a natural person by USPS first-class certified mail or express mail at the person's residential address as reflected in CRD).

<sup>5</sup> FINRA Rule 9134(b)(3) ("Service by mail is complete upon mailing.").

<sup>6</sup> USPS tracking information indicated that notice of the mailing was left at Felix's CRD address, but the mailing was unclaimed. The email was not rejected as undeliverable.

<sup>7</sup> See FINRA Rule 9138(c) (adding three days to prescribed period for response when service is by first class or certified mail); FINRA Rule 9215(a) (requiring a respondent to file and serve an answer within 25 days after service of the complaint).

<sup>8</sup> See FINRA Rule 9134(b)(1) ("When a Party or other person responsible for serving [a natural] person has actual knowledge that the natural person's [CRD] address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in [CRD] of the entity with which the natural person is employed or affiliated.").

<sup>9</sup> The USPS did not return the first-class mailing to FINRA, but it did return the express mailing because, it noted, "the address was vacant or the business was no longer operating at the location and no further information was available." The email was not rejected as undeliverable.

violated FINRA Rule 8210, and barred him from associating with a FINRA member in any capacity.

Felix appealed to FINRA’s National Adjudicatory Council (“NAC”), which ordered FINRA Enforcement to supplement the record with independent evidence of the complaint’s allegations, then affirmed the hearing officer’s entry of default and the findings of violations and the sanction imposed. This appeal to the Commission followed.

## II. Analysis

Under Exchange Act Section 19(e)(1), we review a FINRA disciplinary action to determine (i) whether the applicant engaged in the conduct FINRA found; (ii) whether that conduct violated the provisions FINRA found the applicant to have violated; and (iii) whether those provisions are, and were applied in a manner, consistent with the purposes of the Exchange Act.<sup>10</sup> We base our findings on an independent review of the record, including FINRA Enforcement’s supplemental record submissions, and apply a preponderance of the evidence standard.<sup>11</sup>

### A. Felix violated FINRA Rules 8210 and 2010 by failing to comply with FINRA’s requests for Primex’s annual audit and general ledger.

FINRA Rule 8210 permits FINRA to inspect and copy a member’s books, records, and accounts; and it specifies that no member or person shall refuse to permit FINRA to inspect or copy such books, records, and accounts.<sup>12</sup> FINRA Rule 2010 further requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”<sup>13</sup> The violation of another FINRA rule, such as Rule 8210, constitutes a violation of FINRA Rule 2010.<sup>14</sup>

Here, the record shows that Felix violated these rules by not responding to FINRA’s three Rule 8210 requests for Primex’s 2019 annual audit and general ledger. In support of this conclusion, FINRA introduced a declaration of one of its attorneys of record attesting that “Felix failed to respond to the Rule 8210 requests.” Although Felix claims that he did respond, he provides no persuasive evidence of this. Felix points only to a FedEx shipping label addressed to FINRA, dated August 10, 2020. But Felix offers no evidence of what was in the package or that he actually used that label (or any label) to ship a package to FINRA on that date (or any other

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<sup>10</sup> 15 U.S.C. § 78s(e)(1).

<sup>11</sup> *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at \*1, 9 (May 27, 2011), *aff’d*, 693 F.3d 251 (1st Cir. 2012).

<sup>12</sup> FINRA Rule 8210(c).

<sup>13</sup> FINRA Rule 2010; *see also* FINRA Rule 140(a) (providing that FINRA’s rules “shall apply to all members and persons associated with a member” and that “[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules”).

<sup>14</sup> *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at \*8 n.29 (July 2, 2013), *pet. denied*, 751 F.3d 472 (7th Cir. 2014).

date).<sup>15</sup> We thus conclude that a preponderance of evidence shows that Felix did not respond to FINRA's requests and therefore violated FINRA Rules 8210 and 2010.<sup>16</sup>

We further find that Rule 8210 is consistent with the purposes of the Exchange Act because it "is essential to FINRA's ability to investigate possible misconduct by its members and associated persons."<sup>17</sup> Rule 2010 is also consistent with the purposes of the Exchange Act because it reflects the mandate of Exchange Act Section 15(A)(b)(6) that FINRA adopt rules to promote just and equitable principles of trade.<sup>18</sup> FINRA applied Rules 8210 and 2010 consistently with the Exchange Act's purposes because Felix's failure to produce Primex's annual audit and general ledger hampered FINRA's examination of Primex.

## **B. Felix's procedural contentions lack merit.**

Felix contends that the NAC erred in affirming the hearing officer's default decision because he was never served with the complaint. But Felix waived this argument by not raising it before the NAC.<sup>19</sup>

Felix also contends that the NAC violated FINRA rules by denying Felix's request for oral argument. FINRA rules provide that, where a party does not answer a complaint, the NAC

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<sup>15</sup> Although the label contains a tracking number, a search of that tracking number on FedEx's website displays the record for a package shipped to a different address on February 6, 2023. Rule of Practice 323, 17 C.F.R. § 201.323 (providing for the taking of official notice); *cf. Stephen Robert Williams*, Exchange Act Release No. 89238, 2020 WL 3820989, at \*3 & n.8 (July 7, 2020) (taking official notice of tracking information associated with USPS tracking number in the record).

<sup>16</sup> Felix argues in the alternative that he did not answer FINRA's requests because he never received them. We do not address this argument because Felix forfeited it by not raising it below. *See, e.g., Williams*, 2020 WL 3820989, at \*5 (declining to consider arguments applicant failed to raise before FINRA in the first instance). In any event, the third request was signed for by "Mr. Wilfredo F," and all three requests are "deemed received" under FINRA Rule 8210(d) because FINRA mailed them to Felix's last known residential address in CRD. *See* FINRA Rule 8210(d) ("A notice under this Rule shall be deemed received by the . . . currently or formerly registered person . . . by mailing . . . the notice to the . . . last known residential address of the person as reflected in [CRD].").

<sup>17</sup> *Michael Nicholas Romano*, Exchange Act Release No. 76011, 2015 WL 5693099, at \*5 (Sept. 29, 2015).

<sup>18</sup> *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 WL 4335036, at \*17 (Sept. 28, 2017); 15 U.S.C. § 78o-3(b)(6).

<sup>19</sup> *See supra* note 18 and accompanying text; *cf. Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at \*19 (Feb. 20, 2015) (noting that respondent "effectively waived service of the OIP by filing an answer"); *Democratic Republic of Congo v. FG Hemisphere Assocs., LLC*, 508 F.3d 1062, 1063 (D.C. Cir. 2007) (holding that defendant waived its objections to service of process by raising them only after participating in post-default litigation for 13 months).

may issue a decision without oral argument if the appealing party “fails to show good cause for the failure to participate.”<sup>20</sup> We agree with FINRA that Felix failed to show good cause for his failure to participate in the proceeding below, as he provided the NAC with no reason for his failure to update his CRD residential address or otherwise justified his failure to participate in the disciplinary proceeding. Thus, we find the NAC did not err in denying Felix’s request for oral argument.

Finally, Felix argues, without further explanation or support, that the NAC “did not consider all arguments for appeal” and that FINRA initiated this enforcement action to create an impression that Felix is a recidivist based on FINRA’s findings of violations in the prior disciplinary action. We reject these claims as insufficiently developed or supported.<sup>21</sup>

### III. Sanctions

Under Exchange Act Section 19(e)(2), we sustain FINRA’s sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.<sup>22</sup> We consider any aggravating or mitigating factors,<sup>23</sup> and whether the sanctions imposed are remedial or impermissibly punitive.<sup>24</sup> In imposing sanctions, FINRA relied on its Sanction Guidelines.<sup>25</sup> Although not binding on us, we use the Guidelines as a benchmark.<sup>26</sup>

In barring Felix, FINRA applied the guideline providing that “a bar is standard” when a respondent fails to respond to a FINRA Rule 8210 request “in any manner.” The guideline lists one principal consideration under these circumstances: the importance of the information requested, as viewed from FINRA’s perspective. This consideration supports FINRA’s determination to impose a bar because Primex’s annual audit and general ledger were critical to FINRA’s examination. The Commission has described the records maintained by broker-dealers as the “keystone of the surveillance of brokers and dealers by our staff and by the securities

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<sup>20</sup> FINRA Rule 9344(a) (providing that, where a party “fails to show good cause” for failing to participate in a disciplinary proceeding before a hearing officer, the NAC may consider a matter “on the basis of the record and other documents”).

<sup>21</sup> *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 WL 3216542, at \*25 n.158 (July 17, 2019) (declining to consider applicants’ “offhand assertions that are insufficiently developed” in their briefs).

<sup>22</sup> 15 U.S.C. § 78s(e)(2). The record does not show, nor does Felix claim, that FINRA’s sanctions impose an unnecessary or inappropriate burden on competition.

<sup>23</sup> *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).

<sup>24</sup> *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065-66 (D.C. Cir. 2007).

<sup>25</sup> FINRA Sanction Guidelines (2021).

<sup>26</sup> *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at \*11 & n.68 (June 14, 2013) (citing cases).

industry’s self-regulatory bodies.”<sup>27</sup> And in this instance, FINRA had a particular regulatory interest in determining if those documents showed any mis-recording of expenses, following FINRA’s findings that Felix miscategorized expenses on Primex’s general ledger and caused the firm to maintain inaccurate books and records in a prior disciplinary action.<sup>28</sup> We also agree with FINRA that it is aggravating that Felix failed to comply with three information requests, two of which warned that he could face sanctions for non-compliance.<sup>29</sup>

Felix does not contest the documents’ importance or identify any mitigating factors. Instead, he argues that a bar is “frivolous” because he had already been barred from associating with any FINRA member firm in any capacity in the prior disciplinary proceeding. But imposing a bar is not only consistent with FINRA’s guidelines, but also serves a remedial purpose. Specifically, if Felix were to seek permission to associate in the industry in the future, this additional bar would be relevant to any determination of permitting him to reassociate.<sup>30</sup> And the Commission has previously sustained FINRA disciplinary proceedings imposing more than one bar on applicants for misconduct associated with multiple causes of action, including in a single proceeding.<sup>31</sup>

A bar will also serve the remedial purpose of protecting the industry from an individual who has not complied with FINRA’s investigative requests in any manner.<sup>32</sup> Such non-cooperation is serious. Without subpoena power, FINRA must rely on Rule 8210 requests to obtain information for its investigations and fulfill its regulatory mandate to police its members

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<sup>27</sup> *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (May 6, 1977), *aff’d sub nom.*, 591 F.2d 588, 594 (10th Cir. 1979).

<sup>28</sup> *See supra* note 3.

<sup>29</sup> *See* Guidelines at 7-8 (Principal Consideration Nos. 8 & 14 directing adjudicators to consider whether the respondent “engaged in numerous acts,” or “engaged in the misconduct at issue notwithstanding prior warnings from FINRA . . . that the conduct violated FINRA rules”); *cf. Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at \*11 (Feb. 11, 2013) (finding that bar was not excessive or oppressive where applicant had “no excuse for failing to comply with FINRA’s requests, especially considering the numerous opportunities FINRA afforded him to do so before imposing a bar”).

<sup>30</sup> *See Trevor Michael Saliba*, Exchange Act Release No. 99940, 2024 WL 1603297, at \*9 n.42 (Apr. 11, 2024) (explaining that additional bars “will be relevant to any future determination” of whether the applicant should be permitted to associate in the securities industry).

<sup>31</sup> *See, e.g., id.; Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 WL 3228694, at \*15 & n.18 (Nov. 8, 2006) (upholding NASD’s imposition of two bars on respondent for separate misconduct), *pet. denied*, 304 F. App’x 88 (D.C. Cir. 2008).

<sup>32</sup> *See, e.g., Goldstein*, 2013 WL 503416, at \*5 (concluding that “individuals who violate Rule 8210 present too great a risk to the markets and investors to be permitted to remain in the securities industry” (internal quotation marks omitted)).

and associated persons.<sup>33</sup> Failures, like Felix's, to comply with Rule 8210 undermine FINRA's ability to carry out its regulatory responsibilities and hinder its ability to detect misconduct that threatens investors and markets.<sup>34</sup> We accordingly sustain FINRA's imposition of a bar.

An appropriate order will issue.<sup>35</sup>

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman  
Secretary

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<sup>33</sup> See, e.g., *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at \*6 (Jan. 30, 2009) (explaining that FINRA must rely on Rule 8210 to obtain information “to carry out its investigations and fulfill its regulatory mandate” and its “obligation to police the activities of its members and associated persons”).

<sup>34</sup> See, e.g., *Plunkett*, 2013 WL 2898033, at \*9 (“Failures to comply [with Rule 8210] are serious violations because they subvert FINRA's ability to carry out its regulatory responsibilities, threatening investors and the markets.”) (internal quotations and alterations omitted).

<sup>35</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  
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In the Matter of the Application of  
  
WILFREDO FELIX  
  
For Review of Disciplinary Action Taken by  
  
FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the disciplinary action taken by FINRA against Wilfredo Felix is sustained.

By the Commission.

Vanessa A. Countryman  
Secretary