

There may come a time if you are a FINRA member firm or associated person when the self-regulatory-organization comes a knockin' and asks you some questions. In addition to that chit chat, FINRA may also ask that you provide documents. A tad less politely, FINRA may tell you to stand aside and make way as its Staff enters your premises to inspect your records and make copies of various materials. What gives FINRA the right to demand answers to its questions and to barge into your professional and personal lives? Generally, it all starts with FINRA Rule 8210 and may end with FINRA Rule 9552.

## **FINRA Rule 8210: Provision of Information and Testimony and Inspection and Copying of Books**

### **a) Authority of Adjudicator and FINRA Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to:

(1) require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control.

**Bill Singer's Comment:** FINRA likes to reference its Rule 8210 conduct as somewhat friendly "requests;" in reality, however, the self-regulatory-organization is makes "demands," as supported by FINRA adjudicators and staff having "the right to . . . require" you to "provide information . . . and to testify . . ." in my book, the *right to require* is the language of demand. FINRA Rule 8210(2) gives the regulator the right to knock on your door, walk in, and "inspect and copy" books and records and accounts that are not only in the member's or associated person's "possession" but, more expansively under that entity's/individual's "custody or control." It's what gives

FINRA the right to respond to your explanation that "it ain't here and I don't have it," with the further demand of "then go get it or have it sent to us."

In addition to exercising its jurisdiction over its enfranchised member firms, FINRA Rule 8210 covers a "person associated with a member." That's an odd rendering of a phrase and there is no definition provided of such a person in Rule 8210 itself. What then is an "associated person"? That answer is found in **FINRA Rule 1011: Definitions**, which states in pertinent part:

### **(b) "Associated Person"**

The term "Associated Person" means: (1) a natural person registered under NASD Rules; or (2) a sole proprietor, or any partner, officer, director, branch manager of the Applicant, or any person occupying a similar status or performing similar functions; (3) any company, government or political subdivision or agency or instrumentality of a government controlled by or controlling the Applicant; (4) any employee of the Applicant, except any person whose functions are solely clerical or ministerial; (5) any person directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration under the FINRA By-Laws or NASD Rules; (6) any person engaged in investment banking or securities business controlled directly or indirectly by the Applicant whether such person is registered or exempt from registration under the FINRA By-Laws or NASD Rules; or (7) any person who will be or is anticipated to be a person described in (1) through (6) above.

A critical aspect of the above definition of an "associated person" is: *(1) a natural person registered under NASD Rules.* NASD Rules? NASD?? As we head into 2019, you'd sort of expect that FINRA's definition of an *associated person* would not be defined via NASD Rules. . ." After all, FINRA's archives contain a July 30, 2007, press release: "[NASD and NYSE Member Regulation Combine to Form the Financial Industry Regulatory Authority - FINRA](http://www.finra.org/newsroom/2007/nasd-and-nyse-member-regulation-combine-form-financial-industry-regulatory-authority)" <http://www.finra.org/newsroom/2007/nasd-and-nyse-member-regulation-combine-form-financial-industry-regulatory-authority> , which states in pertinent part that:

The Financial Industry Regulatory Authority (FINRA) today announced that it has commenced operations as the largest non-governmental regulatory

organization for securities brokers and dealers doing business in the United States. FINRA was created through the consolidation of NASD and the member regulation, enforcement and arbitration operations of the New York Stock Exchange. The consolidation, which was announced on Nov. 28, 2006 and approved by the Securities and Exchange Commission on July 26, 2007, became effective today, July 30, 2007.

Note that the effective date for FINRA's commencement of operations was 2007 -- which is more than a decade ago . . . or nearly 12 years ago as of the publication of this article. Perhaps some clever and feisty individual who receives a FINRA Rule 8210 demand will argue that he or she is not subject to the rule's jurisdiction because said *natural person was not registered under NASD Rules*. Yeah, I know, FINRA is a "successor" to NASD and there are still NASD rules on FINRA's books, and, sure, only an idiot would attempt to raise that objection. Still -- the Los Angeles Dodgers ain't the Brooklyn Dodgers, and the Washington Senators ain't the Montreal Expos, and the Baltimore Ravens ain't the Baltimore Colts . . . so there! More to the point, How do the powers-that-be at FINRA justify the fact that NASD and NYSE consolidated in 2006, that said consolidation was approved by the SEC in 2007, but here we are, effectively 2019, and FINRA, the byproduct of NASD's and NYSE's consolidation, is still exercising jurisdiction pursuant to NASD rules? Maybe someone might want to expand that basis for FINRA's jurisdiction to include the short-lived Securities Industry Regulatory Authority ("SIRA")?

On a somewhat more serious note, FINRA staff tends to over-state or misstate the actual scope of their authority under FINRA Rule 8210, which they often assert covers *any* demand for information that they make. That is NOT the jurisdictional foundation of Rule 8210. If you read it, and, trust me, I have been reading it for far too many years, FINRA staff may demand the production of information but there is a limit, and that is enunciated in Rule 8210(a)(1):

with respect to any matter involved in the investigation, complaint, examination, or proceeding . . .

FINRA's 8210 demands are limited to any "matter" *involved* in the "investigation, complaint, examination, or proceeding." Notwithstanding the expansive nature of that "any matter" jurisdiction, it is not the unlimited authority that staff asserts is its prerogative. When associated men and women first encounter FINRA via a Rule 8210 demand for the production of information or an OTR appearance, that initial encounter typically occurs during the early stages of a FINRA investigation, which

normally occurs before a formal complaint has been filed or a proceeding initiated -- and examinations are usually used for member firms in contrast to the industry's natural persons. Consequently, a typical Rule 8210 demand letter is normally served on a natural person pursuant to an investigation -- which means that jurisdiction is likely only "with respect to any matter involved in the investigation." All of which sets the stage for fireworks when a smart-ass industry lawyer asks to be informed as to the subject of the FINRA investigation involving his client, and FINRA staff asserts that such information is confidential or being developed or is of a generic nature such as a "customer complaint."

*Is it reasonable to predicate jurisdiction upon "any matter involved in the investigation" but refuse to provide a substantive, written statement detailing the nature of said investigation?*

Before you're too quick to answer, remember that investigations precede the drafting of a Complaint. Also, consider that at the Securities and Exchange Commission, when persons are requested to supply information voluntarily or directed to supply information pursuant to the federal regulator's subpoena, the SEC's policy is that in response to a [written request, a Formal Order of Investigation \("FOI"\) will be shown to an individual during his or her testimony](#). <https://www.sec.gov/files/sec1662.pdf> See what happens if you make a similar request to FINRA concerning one of its investigations.

*We're not the SEC. Formal Order? We don't got no Formal Order. Badges? We ain't got no badges. We don't need no badges. I don't have to show you any stinkin' badges!!*

*And now, let's get back to our dissection of FINRA Rule 8210:*

## **(b) Other SROs and Regulators**

(1) FINRA staff may enter into an agreement with a domestic federal agency, or subdivision thereof, or foreign regulator to share any information in FINRA's possession for any regulatory purpose set forth in such agreement, provided that the agreement must require the other regulator, in accordance with the terms of the agreement, to treat any shared information confidentially and to assert such confidentiality and other applicable privileges in response to any requests for such information from third parties.

Any such agreement with a foreign regulator must also meet the following conditions:

(A) the other regulator party to the agreement must have jurisdiction over common regulatory matters; and

(B) the agreement must require the other regulator to reciprocate and share with FINRA information of regulatory interest or concern to FINRA.

(2) FINRA staff may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which FINRA has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

**Bill Singer's Comment:** You can hear the gasps emanating from all those clever folks who operate offshore in the Caribbean, or in some Eastern European outpost, or somewhere in Asia. Of course, if that "local" regulator doesn't want to deal with a non-governmental "self" regulator, FINRA may not find the sharing of information reciprocal or fruitful. Then there's that bothersome concern about sharing confidential customer financial information with a foreign regulatory whose country is a hotbed for hackers and other online renegades; or, you know, some place where journalists commit suicide by cutting off their limbs with a chainsaw and then placing the parts in various duffel bags.

### **(c) Requirement to Comply**

No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

**Bill Singer's Comment:** Like I keep telling you, it's not optional or debatable: You are required to comply with the provisions of FINRA Rule 8210. Why it was necessary to add 8210(c) escapes me because 8210(a)(1) pretty much requires compliance, but, hey, I don't write these rules, I just grouse about 'em.

### **(d) Notice**

A notice under this Rule shall be deemed received by the member or currently or formerly registered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. With respect to a person who is currently associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the member as reflected in the Central Registration Depository. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person upon personal service, as set forth in Rule 9134(a)(1).

**Bill Singer's Comment:** FINRA Rule 9134: Methods of, Procedures for Service provides in pertinent part for the following method of service:

### **(1) Personal Service**

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

Why do you need to keep your address-of-record current even after you've left the biz? Consider this further FINRA Rule 9134 provision:

### **(b) Procedures**

#### **(1) Service on Natural Persons**

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository 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 the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served

at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

Note that Rule 9134(b) states that a former associated person may be served at at the individual's residential address as reflected on CRD -- so, if you don't keep that address up-to-date, FINRA only has to serve you at the last-known-address denoted in CRD. If FINRA knows that said CRD address is "out of date," then the regulator will serve you at your last known residential and last known business address.

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

- (1) the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository; and
- (2) any other more current address of the member or the person known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice.

**Bill Singer's Comment:** This provision is very fair. If your CRD records says your home or work address is 123 Maple Street but Staff knows that you're actually at 456

Elm Street, then a copy of any notices must be sent to your last-known Maple Street address AND to you lovely Elm Street locale.

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person knows that the member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the member or person, and any notice served upon counsel shall be deemed received by the member or person.

**Bill Singer's Comment:** Among the reasons to quickly retain a lawyer when FINRA first contacts you is that notices "shall be served upon counsel . . ." and "deemed received by the member or person." It may make your life easier. On the other hand, don't be too quick to inform FINRA that you have hired a lawyer (especially when you haven't actually signed a Retainer and paid the initial fees) because the self regulator may send communications to that lawyer and you will be deemed to have received same.

### **(e) Electronic Interface**

In carrying out its responsibilities under this Rule, FINRA may, as appropriate, establish programs for the submission of information to FINRA on a regular basis through a direct or indirect electronic interface between FINRA and members.

**Bill Singer's Comment:** And when that interface crashes or freezes, and the deadline is fast approaching and you just can't transmit -- then what? Yeah, good luck finding a reference to that pain-in-the-ass problem in Rule 8210.

### **(f) Inspection and Copying**

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in a FINRA investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, FINRA staff may for good cause deny such request.



**Bill Singer's Comment:** Did you notice that a witness "may" inspect -- weigh that word "may" carefully because it's different from stating that a witness has the right to inspect. It often comes as a big surprise to folks who testified at an OTR that they are not entitled to a free copy of the transcript of their testimony. Read the Rule carefully: You only have the right to "inspect" your own testimonial transcript -- not someone else's and inspection is distinguished from your ability to obtain a copy and remove same from FINRA's premises. In order to procure a **copy** of your testimony, you have to make a payment -- but, not so fast. Rule 8210(f) does not entitle you to purchase a copy of your own transcript. More accurately, you have the right to submit a "written request" to FINRA Staff asking for the privilege of paying for a copy of your transcript, but if Staff can conjure up a "good cause to deny such request," you're outta luck. Bet you didn't see that comin'.

### **(g) Encryption of Information Provided in Electronic Form**

(1) Any member or person who, in response to a request pursuant to this Rule, provides the requested information on a portable media device must ensure that such information is encrypted.

(2) For purposes of this Rule, a "portable media device" is a storage device for electronic information, including but not limited to a flash drive, CD-ROM, DVD, portable hard drive, laptop computer, disc, diskette, or any other portable device for storing and transporting electronic information.

(3) For purposes of this Rule, "encrypted" means the transformation of data into a form in which meaning cannot be assigned without the use of a confidential process or key. To ensure that encrypted information is secure, a member or person providing encrypted information to FINRA staff pursuant to this Rule shall (a) use an encryption method that meets industry standards for strong encryption, and (b) provide the confidential process or key regarding the encryption to FINRA staff in a communication separate from the encrypted information itself.

### **\*\*\* Supplementary Material \*\*\***

**.01 Books and Records Relating to Investigations.** This rule requires FINRA members, associated persons and persons subject to FINRA's jurisdiction to provide FINRA staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such

member or person," paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its associated persons make or keep relating to its operation as a broker-dealer or relating to the person's association with the member. This includes but is not limited to records relating to a FINRA investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules, and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a member or associated person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the member. The rule requires, however, that a FINRA member, associated person, or person subject to FINRA's jurisdiction must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the FINRA member, associated person or person subject to FINRA's jurisdiction controls or has a right to demand them.

**Bill Singer's Comment:** Make sure that you have read and re-read *Rule 8210 Supplementary Material .01*. FINRA frequently hears the responses: "Those are private records" or "I don't have the document." Be prepared for a lack of sympathy from the regulator. Your so-called "private" personal or business dealings and the records of same could fall under the rubric of "records relating to a FINRA investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules, and the federal securities laws." Further, even if the requested materials are not in your personal possession or control, the *Supplementary Materials* asserts that you have to make such materials available if they are "in the possession of another person or entity, such as a professional service provider, and you control or have the right to demand said materials."

### *What Happens If You Say "No," Or Fail To Respond to FINRA?*

Just as FINRA has a Rule 8210 informing you as to why you must cooperate with their investigations, the self regulator also has a rule setting forth the consequences of non-compliance:

### **FINRA Rule 9552. Failure to Provide Information or Keep Information Current**

### **(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to FINRA's Jurisdiction if Corrective Action is Not Taken**

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

**Bill Singer's Comment:** Note that Rule 9552 applies to member firms, associated persons, registered persons, and others subject to FINRA's jurisdiction. The Rule comes into play if there is a failure to "provide any information, report, material, data, or testimony" or there is a failure to maintain a membership application (or its supporting documentation). If there is a "failure" deemed by FINRA, then its Staff "may provide" notice admonishing that "the failure to take corrective action with 21 days after service" will result in a suspension. A couple of takeaways here. One, I'm not exactly sure what the Rule means when it says that the Staff "may provide" the written notice set forth. How the hell do you have a "Rule" when it's premised upon "may?" Assuming that Staff doesn't feel like sending the written notice, what would trigger the 21-day warning of suspension? Further, notwithstanding routine threats by Staff to suspend a firm or individual for alleged non-responsive answers or productions to various demands, in fact, Rule 9552(a) seems to require FINRA to first fire a 21-day warning flare before imposing a suspension for non-corrective action.

### **(b) Service of Notice of Suspension**

Except as provided below, FINRA staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA

pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

### **(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the FINRA action. The notice shall state when the FINRA action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the FINRA action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**Bill Singer's Comment:** Sure, you can disagree with FINRA's right to ask you something and you can challenge the Staff's contention that you didn't cooperate (when you believe that you did). Notwithstanding your anger, note that the Staff is technically obligated to inform you as to what you "must do to avoid" a threatened suspension. Sometimes it's best to await that written recitation so that there is no further dispute as to what you are being asked to provide. Further, if you truly are angered by the Staff's demands, you have the right to demand a hearing rather than merely cave in to the Staff's threats. The advantage of opting for such a hearing is that you appear before a purportedly impartial Hearing Officer and may obtain an order either telling the Staff to shove it or to modify per your complaints – and, of course, the worst that happens in some sense is that the Hearing Officer affirms the Staff's demands and you have to produce.

Why opt for a Hearing? One of the main reasons is to send a message to the Staff that you are not going to simply roll over and play dead when they stomp their feet concerning what you deem unreasonable demands or unnecessary (because you've produced the same responses twice already and now they're asking you to do it a third time). As to a tactical reason, it's a way of letting Staff know that you are prepared to be reasonable up to a point, and, thereafter, will dig in your heels. It may not help you with the current investigation but sometimes serves to better moderate and modulate Staff conduct in upcoming encounters. Ultimately the vacuum in FINRA's rulebook to provide for an impartial arbiter for various Rule 8210 disputes creates the absurd circumstance where member firms and their associated person are left with little recourse other than the exercise of civil (regulatory) disobedience and expose themselves to the risks of a contest hearing in order to obtain a fair-hearing by an impartial party.

#### **(d) Effective Date of Suspension**

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

#### **(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the

notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the FINRA action.

### **(f) Request for Termination of the Suspension**

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**Bill Singer's Comment:** This is sort of a Mulligan. If you've lost your battle and were suspended but ultimately complied with the requests in dispute, you can petition for termination of the suspension to the extent that you are in "full compliance with the notice or decision" that invoked the suspension. It's not partial compliance; it's full compliance. Of course by this time, you've likely angered some of FINRA Staff by not playing nice and they're going to be real sticklers when it comes to what they think constitutes "full" compliance. Notice that the individual granting the relief is not an impartial Hearing Officer but the head of the department that complained about your failure to comply. Just another glaring example of the lack of fundamental fairness in FINRA's rulebook.

### **(g) Settlement Procedure**

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final FINRA action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**Bill Singer's Comment:** If Staff will not agree to your proposed terms of a settlement, it becomes known as a "contested" settlement. Are you out of luck with such a contested settlement -- say you are offering \$5,000 and a 30-day suspension but Staff want \$20,000 and a six-month suspension? No -- you can submit a contested

offer of settlement via the FINRA proceeding initiated by Staff. If you and Staff couldn't agree on an AWC settlement before the Complaint was filed, and you all find yourselves at the hearing and having respective doubts about the case, both parties can still work out an uncontested offer of settlement at that point and the Hearing Officer will deem it FINRA's final action.

## **(h) Defaults**

A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.

**Bill Singer's Comment:** Read Rule 9552(h) carefully. If you defaulted in response to a FINRA demand for information and were suspended, you have three months to contact the regulator and ask that the suspension be lifted -- if you don't, the suspension converts into an *automatic* Bar.