

Stradley Ronon Stevens & Young, LLP  
Suite 2600  
2005 Market Street  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York, N.Y.  
Malvern, Pa.  
Cherry Hill, N.J.  
Wilmington, Del.  
Harrisburg, Pa.



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## DANGER: Object to FINRA Rule 8210 Requests at Your Own Peril

by John J. Murphy III and Joshua R. Dutill

The Securities and Exchange Commission recently issued a decision that illustrates the hazards of challenging FINRA's expansive powers to request information and documents under Rule 8210. *In the Matter of Gregory Evan Goldstein*, Release No. 71970, the SEC confirmed FINRA's right under Rule 8210 to seek information or documents "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." Further, the SEC found that an associated person or member may not "second guess" FINRA's requests or "take it upon himself to determine whether information is material to a FINRA investigation." Finally, the SEC affirmed that FINRA is not required to "explain its reasons for making the information request or justify its relevance." Of course one can still suggest to FINRA that documents are not in a registered clients' custody or control, but if the dialogue is shut down by FINRA, a member firm or associated person is left with an unenviable decision: either respond without question or challenge the requests by refusing to answer and appealing FINRA's imposition of a penalty.

In January 2013, the SEC approved FINRA's amendment of Rule 8210, which clarified the broad scope of books, records and accounts covered by the rule. (See, e.g., FINRA Regulatory Notice 13-06 p. 2.) The *Goldstein* decision, even though based on the pre-amendment version of Rule 8210, demonstrates FINRA's extensive powers under Rule 8210. In *Goldstein*, FINRA sought information and documents about Wall Street at Home, a non-FINRA company of which Goldstein, an associated person at Marquis, a FINRA member firm, was a majority owner. Goldstein contended that FINRA's requests went beyond the scope of Rule 8210, and he refused to comply with the requests. Based on Goldstein's refusal, FINRA ordered a three-month suspension and held that unless Goldstein complied with the requests during his suspension, he would be barred from associating with any member firm in any capacity. Goldstein continued to refuse to comply with the requests, and FINRA barred him from association with any FINRA member firm.

On appeal, the SEC determined Goldstein had violated the requirements of Rule 8210 and affirmed FINRA's imposition of a bar from association. The SEC determined that although FINRA's requests related to an outside business activity, they related to "any matter involved in the investigation" because FINRA had reason to question whether Goldstein's activity at Wall Street at Home involved the possible illegal activity of Marquis. Goldstein asserted he was under no obligation under Rule 8210 to produce documents belonging to Wall Street at Home, a third-party, nonmember firm. The SEC specifically found that because Rule 8210 has no additional limitations on its scope other than that the requests be related to "any matter involved in the investigation," FINRA's requests were proper. The SEC noted that the only recourse against possible overreaching by FINRA is for the person to whom the request is directed to refuse to comply and to appeal any consequent disciplinary action to the Commission.

## A Word to the Wise

The SEC’s decision in *Goldstein* is consistent with earlier holdings that associated persons and members “may not refuse such requests on the grounds of relevance or otherwise set conditions on their compliance ...” See, e.g., *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325 (Jan. 30, 2009). The decision reaffirms that an associated person or member who objects to providing information under Rule 8210 on the theory that the request is overbroad does so at considerable peril. As noted by the SEC, the only alternative is for the associated person or member to refuse to respond to the request, incur what could be significant penalties by FINRA, and then seek review of those penalties by the SEC. However, given the SEC’s decision in *Goldstein*, it is highly questionable whether this procedure offers any meaningful prospect of relief to an associated person or



John J. Murphy      Joshua R. Dutil

If you have questions about this article or if you would like more information, please contact John J. Murphy at 215.564.8019 or by e-mail at [jmurphy@stradley.com](mailto:jmurphy@stradley.com), or Joshua R. Dutil at 484.323.1352 or [jdutil@stradley.com](mailto:jdutil@stradley.com).

member who objects to Rule 8210 requests for information. A firm or associated person responding to requests under Rule 8210 must either fully comply or be prepared for the difficult task of convincing the SEC that the requests are outside the broad scope of Rule 8210. ■

## Securities Litigation & Enforcement Practice Group

Christine M. Debevec .....	215.564.8156 .....	<a href="mailto:cdebevec@stradley.com">cdebevec@stradley.com</a>
Gregory D. DiMeglio, <i>Chair, Securities Enforcement</i> .....	202.419.8401 .....	<a href="mailto:gdimiglio@stradley.com">gdimiglio@stradley.com</a>
Joshua R. Dutil.....	484.323.1352 .....	<a href="mailto:jdutil@stradley.com">jdutil@stradley.com</a>
Keith R. Dutil .....	610.640.5809 .....	<a href="mailto:kdutil@stradley.com">kdutil@stradley.com</a>
Ruth S. Epstein .....	202.292.4522 .....	<a href="mailto:repstein@stradley.com">repstein@stradley.com</a>
Daniel T. Fitch.....	215.564.8063 .....	<a href="mailto:dfitch@stradley.com">dfitch@stradley.com</a>
David C. Franceski Jr .....	215.564.8062 .....	<a href="mailto:dfranceski@stradley.com">dfranceski@stradley.com</a>
Antranig Garibian .....	215.564.8080 .....	<a href="mailto:agaribian@stradley.com">agaribian@stradley.com</a>
Leslie Miller Greenspan .....	215.564.8022 .....	<a href="mailto:lgreenspan@stradley.com">lgreenspan@stradley.com</a>
Jeffrey D. Grossman .....	215.564.8061 .....	<a href="mailto:jgrossman@stradley.com">jgrossman@stradley.com</a>
Thomas L. Hanley.....	202.292.4525 .....	<a href="mailto:thanley@stradley.com">thanley@stradley.com</a>
C. Clark Hodgson, III .....	215.564.8574 .....	<a href="mailto:clark.hodgson@stradley.com">clark.hodgson@stradley.com</a>
Samantha Kats.....	484.323.1354 .....	<a href="mailto:skats@stradley.com">skats@stradley.com</a>
Joseph T. Kelleher.....	610.651.2274 .....	<a href="mailto:jkelleher@stradley.com">jkelleher@stradley.com</a>
Lisa M. King .....	215.564.8733 .....	<a href="mailto:lking@stradley.com">lking@stradley.com</a>
Patrick R. Kingsley .....	215.564.8029 .....	<a href="mailto:pkingsley@stradley.com">pkingsley@stradley.com</a>
Zachary T. Knepper.....	202.419.8414 .....	<a href="mailto:zknepper@stradley.com">zknepper@stradley.com</a>
Jana M. Landon.....	215.564.8049 .....	<a href="mailto:jlandon@stradley.com">jlandon@stradley.com</a>
Jeffrey A. Lutsky.....	215.564.8087 .....	<a href="mailto:jlutsky@stradley.com">jlutsky@stradley.com</a>
William E. Mahoney Jr., <i>Co-chair, Securities Litigation</i> .....	215.564.8059 .....	<a href="mailto:wmahoney@stradley.com">wmahoney@stradley.com</a>
William T. Mandia .....	215.564.8083 .....	<a href="mailto:wmandia@stradley.com">wmandia@stradley.com</a>
Francis X. Manning .....	856.321.2403 .....	<a href="mailto:fmanning@stradley.com">fmanning@stradley.com</a>
Francis S. Monterosso .....	215.564.8152 .....	<a href="mailto:fmonterosso@stradley.com">fmonterosso@stradley.com</a>
John J. Murphy III .....	215.564.8019 .....	<a href="mailto:jmurphy@stradley.com">jmurphy@stradley.com</a>
Michael D. O’Mara.....	215.564.8121 .....	<a href="mailto:momara@stradley.com">momara@stradley.com</a>
Michelle Orloski .....	484.323.6421 .....	<a href="mailto:morloski@stradley.com">morloski@stradley.com</a>
Marissa Parker.....	215.564.8091 .....	<a href="mailto:mparker@stradley.com">mparker@stradley.com</a>
Julia M. Rafferty .....	215.564.8095 .....	<a href="mailto:jrafferty@stradley.com">jrafferty@stradley.com</a>
Lee A. Rosengard .....	215.564.8032 .....	<a href="mailto:lrosengard@stradley.com">lrosengard@stradley.com</a>
Alex L. Rubenstein .....	215.564.8053 .....	<a href="mailto:arubenstein@stradley.com">arubenstein@stradley.com</a>
Adam C. Sasso .....	215.564.8792 .....	<a href="mailto:asasso@stradley.com">asasso@stradley.com</a>
Paula D. Shaffner, <i>Co-chair, Securities Litigation</i> .....	215.564.8761 .....	<a href="mailto:pshaffner@stradley.com">pshaffner@stradley.com</a>
David Somers .....	215.564.8704 .....	<a href="mailto:dsomers@stradley.com">dsomers@stradley.com</a>
Amy E. Sparrow .....	484.323.1353 .....	<a href="mailto:asparrow@stradley.com">asparrow@stradley.com</a>
Lawrence P. Stadulis .....	202.419.8407 .....	<a href="mailto:lstadulis@stradley.com">lstadulis@stradley.com</a>
Rachel Tausend .....	202.419.8405 .....	<a href="mailto:rtausend@stradley.com">rtausend@stradley.com</a>