

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

TONY NATHAN COTA
(CRD No. 4147725)

Respondent.

Disciplinary Proceeding
No. 20060043565-01

Hearing Officer – AWH

DEFAULT DECISION

September 10, 2007

Formerly registered representative barred from association with any member firm in any capacity for (1) accepting a personal loan from a customer, in violation of NASD Conduct Rules 2370 and 2110; (2) misusing funds belonging to that customer, in violation of NASD Conduct Rules 2330 and 2110; and (3) failing to respond to Staff requests for information and testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent also ordered to pay restitution to the customer.

Appearances:

Mark A. Graves, Esq., for the Department of Enforcement.

No appearance by or for Tony Nathan Cota.

DECISION

Background

On April 12, 2007, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Tony Nathan Cota accepted a personal loan from a customer, misused funds belonging to that customer to make it appear that Cota was making a repayment on the loan, and failed to respond to FINRA Staff requests for written information and oral testimony, in violation of NASD Conduct Rules 2370, 2330,

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA). The Rules at issue continue to be designated as NASD Rules.

and 2110, and Procedural Rule 8210. Cota failed to answer the Complaint. He also failed to file an Answer to the Second Notice of Complaint and Complaint that Enforcement filed on May 11, 2007. As a result, on July 3, 2007, Enforcement filed a Motion for Entry of Default Decision. Cota did not respond to that Motion. Pursuant to NASD Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.

Findings of Fact²

The Respondent

Cota first entered the securities industry in February 2000. From June 28, 2000, to August 1, 2002, Cota was registered as a Limited Representative – Investment Company and Variable Contract Products through FINRA member firm Pension Planners Securities, Inc. (“PPS”). As pertinent to the Complaint, from June 2, 2003, until February 14, 2006, he was similarly registered through Capital Financial Services, Inc. (“CFS”). CFS terminated Cota for violating NASD Rule 2370 by securing a personal loan from a customer, a prohibited practice at the firm. On August 17, 2006, CFS filed an amended Form U5, disclosing a complaint from CR, a CFS customer, alleging that Cota had forged three withdrawals, which totaled \$9,615.39, from CR’s variable annuity account at CFS. Cota is not currently associated with any FINRA member firm.

The Loan Agreements

The February 2002 Loan

On February 18, 2002, prior to the implementation of NASD Conduct Rule 2370 which pertains to borrowing from or lending to customers,³ Cota entered into a written

² All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

personal loan agreement with his customer CR, a 53-year-old school teacher. The loan amount was \$67,039.36, to be repaid by 48 monthly payments of \$2,500, commencing on April 1, 2004.

On the first of every month, beginning on April 1, 2004, and continuing until October 1, 2005, Cota made 19 consecutive \$2,500 payments on the loan, totaling \$47,500. Cota made each payment by depositing \$2,500 into CR's checking account. After the October 1, 2005, payment, Cota failed to make any further payments on the loan. Before contacting Cota about his loan delinquencies, CR discovered that two electronic deposits of \$2,500 had been made into her checking account in December 2005, and another deposit of \$2,500 had been made in January 2006. CR believed that the deposits were made by Cota for loan payments due in November 2005, December 2005, and January 2006.

The April 2005 Loan

On April 21, 2005, Cota and CR executed a second written personal loan agreement. The loan was for \$24,000, with a term of 36 months at 12% per annum. Cota failed to make any payments on the loan. At the time the loan agreement was executed, CFS's Compliance and Procedures Manual prohibited CFS representatives from borrowing from or lending money to a customer.

On October 12, 2005, Cota answered a CFS 2005 Representative Questionnaire and signed it. Question 33 asked "Have you borrowed funds from clients?" Cota answered "No." Question 61 asked "Have you read the most current CFS Compliance and Procedures Manual (dated 5/03) in the last twelve months?" Cota answered "Yes."

Misuse of Customer Funds

³ Conduct Rule 2370 became effective on November 10, 2003.

On November 16, November 30, and December 6, 2005, Cota caused three withdrawals, each in the amount of \$3,205.13, from CR's Pacific Life variable annuity account at CFS, without CR's knowledge, authorization, or consent. Each withdrawal was taxable, and, as a result, each had \$705.13 in taxes withheld, netting \$2,500. Cota then caused each net withdrawal to be electronically transferred to CR's checking account, again without CR's knowledge, authorization, or consent. A total of \$9,615.39 was withdrawn from the variable annuity, and \$7,500 was transferred to CR's checking account. CR discovered the withdrawals when she received her December 2005 account statement.

Failure to Respond to Requests for Information and Testimony

On March 20, 2006, and again on April 6, 2006, pursuant to NASD Procedural Rule 8210, FINRA Staff sent Cota a request for information relating to the reasons for his discharge, noted on the Form U5 filed by CFS on his behalf. In each case, the letters were sent to Cota at his last known residential address listed in the Central Registration Depository ("CRD address"), via first class and certified mail. The letters sent by first class mail were not returned. The letters sent by certified mail were returned to the Staff, marked "Unclaimed." On April 6, 2006, the Staff attempted to contact Cota by telephone at a number found on an Internet site. However, the phone had been disconnected, and the Staff was unable to locate any other phone number for Cota. Cota did not respond to either written request for information.

On November 9, 2006, the Staff sent Cota a request that he appear at an OTR to provide sworn testimony on November 30, 2006. The request was sent by first class and certified mail to Cota's CRD address. The first class mailing was not returned. The

certified mailing receipt was returned, signed by a "Martha Tep." Cota did not appear for testimony on November 30, 2006.

Service of the Complaint

On April 12, 2007, Enforcement served the Complaint and Notice of Complaint on Cota via first class certified mail sent to his CRD address. On May 11, 2007, Enforcement served the Second Notice of Complaint and Complaint on Cota in the same manner. In both cases, the mailings were returned with the notation "Unclaimed." Cota failed to file an Answer to the Complaint.

Discussions and Conclusions

Jurisdiction

Article V, Section 4 of the FINRA By-Laws provides for a two-year period of retained jurisdiction over a formerly registered person after the effective date of the individual's termination of registration. During this period of retained jurisdiction, FINRA may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on April 12, 2007, within two years of the termination of Cota's registration. The Complaint is based upon conduct that occurred while he was registered, and his failures to respond to requests for information and testimony during the period of retained jurisdiction. Therefore, FINRA has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Cota by sending it via first class certified mail to his CRD address. Pursuant to NASD Procedural Rule 9134, the mailings establish that he had valid constructive notice of the Complaint. Because Cota failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Accepting a Personal Loan from a Customer

NASD Conduct Rule 2370, which became effective November 10, 2003, provides that a registered representative may not borrow money from a customer unless the representative's firm has written procedures allowing such borrowing, and the borrowing arrangement meets one of several conditions specified in the Rule. Here, CFS had no written procedures allowing its representatives to borrow from customers. In fact, its written procedures specifically prohibited such borrowing. Under the circumstances, by borrowing \$24,000 from customer CR on April 21, 2005, Cota clearly violated Conduct Rule 2370, and, consequently, Rule 2110.

Misuse of Customer Funds

NASD Conduct Rule 2330 prohibits a person associated with a member from making improper use of a customer's securities or funds. Without CR's knowledge, authorization, or consent, Cota used CR's annuity funds to feign three loan repayments deposited into CR's checking account. By so doing, Cota violated Conduct Rule 2330, and, consequently, Rule 2110.

Failure to Respond to FINRA Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁴ When an individual fails to respond to information requests, FINRA's ability to perform its regulatory responsibilities is subverted.⁵

Pursuant to Procedural Rule 8210, notice of a request for information is considered received if the request is mailed or otherwise transmitted to the person's last known CRD address. Enforcement mailed two requests for information and one for his testimony to Cota at his last known CRD address. Accordingly, Cota received constructive notice of the requests for information. His failures to respond in any way to those requests for information and testimony violated Procedural Rule 8210 and Conduct Rule 2110.

⁴ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA effectively to conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

⁵ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998). Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor." *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

Sanctions

Accepting a Personal Loan from a Customer

There is no specific FINRA Sanction Guideline for borrowing from a customer. However, there are a number of considerations in this case that militate in favor of severe sanctions for misconduct that reflects on Cota's lack of honesty, integrity, and candor.

First, Cota's conduct was specifically prohibited by CFS's policies and procedures. He acknowledged that he had read the firm's compliance manual, and, by default, he cannot assert that he was unaware of the firm's policies that prohibited his acceptance of a loan from a customer. As a result, his misconduct was intentional.

Second, Cota failed to repay the loan, thereby profiting from his misconduct and causing the customer to incur a loss. At the time of the loan, he had paid the customer only \$30,000 on the first loan, which was in the amount of \$67,039.36. Over the next seven months, Cota then applied \$17,500 of the second loan to repay part of the first loan. Accordingly, Cota failed to pay CR \$19,539.36 of the first loan, and the entire \$24,000 of the second loan.

Third, Cota lied about receiving the loans from CR on the CFS Questionnaire. Moreover, the fact that he obtained two loans from CR demonstrates a pattern of misconduct, and not just an isolated incident. Finally the misconduct occurred throughout the period he was registered with CFS.

Accordingly, Cota's misconduct was egregious. There are no mitigating circumstances that would justify a sanction less than a bar for his acceptance of a loan from a customer, in violation of NASD Conduct Rules 2370 and 2110. In addition, as requested by Enforcement, Cota will be ordered to pay restitution to CR in the amount of

(1) \$19,539.36, plus interest from October 1, 2005, the date of his last payment on the loan, until paid; and (2) \$24,000, plus interest from April 21, 2005, the date of the second loan, until paid. Interest shall be calculated in accordance with Section 6621 of the Internal Revenue Code, 25 U.S.C. § 6621(a)(2).

Misuse of Customer Funds

For improper use of funds, FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000, and consideration of a bar, unless mitigating factors exist.⁶ No such factors appear in this case. Cota had no possible misunderstanding of CR's intended use of her funds that were a portion of principal in an annuity. In fact, his actions in misappropriating those funds was more like conversion because he did not own the annuity, was not entitled to the funds that were contained therein, and did not have authority to use the funds to make it appear that he was making repayments on CR's loans. For conversion, a bar is the standard sanction.⁷ Accordingly, Cota will be barred for improper use of funds, in violation of NASD Conduct Rules 2330 and 2110.⁸

Failure to Respond to FINRA Requests for Information

For failing to respond in any way to requests for information made pursuant to Rule 8210, FINRA Sanction Guidelines provide that a bar is standard.⁹ There are no mitigating circumstances that would warrant a lesser sanction. Accordingly, Cota will be barred in all capacities for failing to respond to requests for information and sworn testimony, made pursuant to Procedural Rule 8210.

⁶ FINRA SANCTION GUIDELINES, at 38 (2007 ed.).

⁷ *Id.*

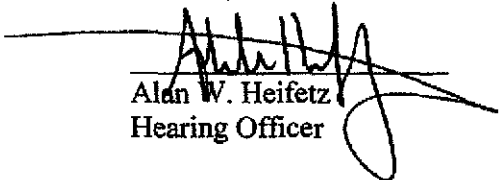
⁸ In light of the bar, no fine will be imposed. *Id.*

⁹ *Id.*, at 35.

Conclusion

Tony Nathan Cota is barred from association with any member firm in any capacity for (1) accepting a personal loan from a customer, in violation of NASD Conduct Rules 2370 and 2110; (2) misusing funds belonging to that customer, in violation of NASD Conduct Rules 2330 and 2110; and (3) failing to respond to Staff requests for information and testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. He is also ordered to make restitution to customer CR in the amount of \$19,539.36, plus interest from October 1, 2005, until paid; and \$24,000, plus interest from April 21, 2005, until paid. Interest shall be calculated in accordance with Section 6621 of the Internal Revenue Code, 25 U.S.C. § 6621(a)(2). The bars and the restitution orders shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

Tony Nathan Cota *(via first class mail & overnight courier)*
Mark A. Graves, Esq. *(via first class & electronic mail)*
Mark P. Dauer, Esq. *(via first class & electronic mail)*
Rory C. Flynn, Esq. *(via first class & electronic mail)*

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

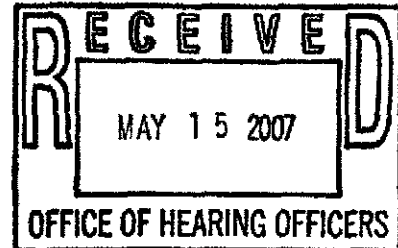
v.

**TONY NATHAN COTA
(CRD No. 4147725),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20060043565-01**

HEARING OFFICER -



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In February 2002, Respondent Tony Nathan Cota entered into a personal loan agreement with his customer, CR, borrowing \$67,039.36. He entered into a repayment schedule of monthly payments of \$2,500. CR was a 53 year old school teacher at the time of the February 2002 loan. In 2003, Cota became associated with Capital Financial Services, Inc. In November 2005, he became delinquent in these loan payments and failed to may any further payments. In April 2005, he entered into a second loan agreement with CR, borrowing \$24,000 from her. Cota failed to make any payments on the second loan. Cota's April 2005 loan from CR was a violation of NASD Conduct Rules 2110 and 2370.
2. Following Cota's taking the foregoing loans, on November 16 and 30, 2005 and on December 29, 2005, Cota caused three unauthorized withdrawals from CR's variable annuity account in the amounts of \$3,205.13 each. The net amount, after taxes, for each of these withdrawals was \$2,500. Each of these sums was then deposited, without

authorization, into CR's bank checking account. It is alleged that this conduct constitutes misuse of customer funds and unauthorized withdrawals and deposits, violations of NASD Conduct Rules 2330 and 2110.

3. NASD staff sent written requests for information and requested that Cota appear and provide information through on the record testimony, pursuant to Procedural Rule 8210, during its investigation of the foregoing conduct. Cota failed to respond to these requests. It is alleged that this conduct constitutes violations of Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT

4. On or about February 25, 2000, Respondent Tony Nathan Cota first became associated with a NASD member firm. On or about June 28, 2000, Cota registered with a NASD member firm as an Investment Company Products / Variable Contracts Representative (IR).
5. On or about June 2, 2003, Cota registered with NASD member firm Capital Financial Services, Inc. (CFS) as an IR.
6. Cota remained continuously registered as an IR with CFS until on or about February 14, 2006, when CFS filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) with NASD, notifying NASD that the firm had terminated Cota's registration because Cota "violated NASD Rule 2370 by securing a personal loan from a customer. This is a prohibited practice at our firm."
7. On or about August 17, 2006, CFS filed an amended Form U-5 with NASD, disclosing that CFS had received a complaint from CR, a CFS customer, alleging that Cota had forged three withdrawals, which totaled \$9,615.39, from CR's variable annuity account at CFS.

8. NASD retains jurisdiction over Cota through August 16, 2008, pursuant to Article V, Section 4 of its By-Laws.

LOAN ACTIVITY

February 2002 Loan

9. On February 18, 2002, prior to the implementation of NASD Conduct Rule 2370¹, Respondent Tony Nathan Cota entered into a personal loan agreement with one of his customers, CR. The written personal loan agreement was for a term of 48 months, in the total amount of \$67,039.36, with payments of \$2,500 commencing on April 1, 2004, and continuing on the 1st of every month thereafter until 48 monthly payments had been made. The personal loan agreement was signed by both Cota and CR.
10. At the time of the personal loan, CR was a 53 year old school teacher.
11. Beginning on April 1, 2004, and continuing until October 1, 2005, Cota made 19 consecutive loan payments of \$2,500 on the first of every month to CR, which totaled \$47,500. Cota would make the payments to CR by depositing the \$2,500 into her checking account. In November 2005 and December 2005, Cota became delinquent with his monthly \$2,500 payments to CR on the February 2002 personal loan agreement and failed to make any further payments.

April 2005 Loan

12. On April 21, 2005, Cota and CR entered into a second written personal loan agreement. This second loan was for \$24,000, with a term of 36 months at 12% per annum. Both Cota and CR signed the personal loan agreement. Cota failed to make any payments to CR on the April 2005 personal loan.

¹ The Rule became effective on November 10, 2003.

13. Before contacting Cota about the delinquencies, however, CR discovered that two \$2,500 electronic deposits had been made into her checking account in December 2005 and that an additional \$2,500 deposit had been made in January 2006. CR believed these three electronic deposits of \$2,500, each, were Cota's loan payments for November 2005, December 2005, and January 2006.

FIRST CAUSE OF ACTION

(Accepting a Personal Loan from a Customer)
NASD Conduct Rules 2370 and 2110

14. The Department realleges and incorporates by reference paragraphs 4 through 8 above.
15. Pursuant to NASD Conduct Rule 2370, which became effective on November 10, 2003, a registered representative is not permitted to borrow money from or lend money to any firm customer unless the firm has written procedures allowing the borrowing and lending of money between the representative and the customer.
16. CFS' Compliance and Procedures Manual, dated May 9, 2003, which was in effect on April 21, 2005, prohibited CFS representatives from borrowing or lending money to a customer.
17. On or about April 21, 2005, Cota entered into a personal loan agreement with CFS customer CR. The personal loan was for a term of 36 months, in the amount of \$24,000, at a rate of 12% per annum. The personal loan agreement was signed by both Cota and CR.
18. On or about October 12, 2005, Cota answered a seventy (70) question CFS 2005 Representative Questionnaire and signed it.
19. Question 33 of the Questionnaire asked "Have you borrowed funds from clients?" Cota answered "No."

20. Question 61 of the Questionnaire asked "Have you read the most current CFS Compliance and Procedures Manual (dated 5/03) in the last twelve months?" Cota answered "Yes."
21. As discussed above in Paragraph 16, CFS prohibited its representatives from borrowing or lending money to any of its customers.
22. Cota acknowledged, as discussed above in Paragraph 20, that he had read CFS' Compliance and Procedures Manual, which discussed the firm's prohibition of borrowing from or lending to customers, within the last 12 months. In addition, Cota concealed the personal loan from CR to him, by answering "No" to Question 33 of the CFS Questionnaire, as discussed in Paragraph 19, above.
23. Cota has not repaid CR any money from the April 21, 2005, personal loan.
24. The foregoing conduct constitutes a violation of NASD Conduct Rule 2370. Further, such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

(Misuse of Funds, Unauthorized Withdrawals, and Unauthorized Transfers and Deposits)
NASD Conduct Rules 2330 and 2110

25. The Department realleges and incorporates by reference paragraphs 4 through 8 above.
26. On or about November 16, November 30, and December 6, 2005, Cota caused three withdrawals in the amount of \$3,205.13, each, from CR's Pacific Life variable annuity account at CFS. The withdrawals were made without CR's knowledge, authorization, or consent. Each withdrawal was taxable. As a result, each \$3,205.13 withdrawal had \$705.13 in taxes withheld, netting \$2,500.

27. Cota then caused each net withdrawal of \$2,500 to be transferred and electronically deposited in CR's checking account. Each transfer and subsequent deposit was made without CR's knowledge, authorization, or consent.
28. In total, Cota caused \$9,615.39 to be withdrawn from the Pacific Life variable annuity account of CR at CFS without CR's knowledge, authorization, or consent.
29. In total, Cota caused \$7,500 to be transferred and deposited into CR's checking account without her knowledge, authorization, or consent.
30. The foregoing acts, practices and conduct constitute misuses of customer funds and separate and distinct violations of NASD Conduct Rules 2330 and 2110 by Cota. Further, by causing the unauthorized withdrawals to be made on November 16, 2005, November 30, 2005, and December 29, 2005, from CR's Pacific Life variable annuity account at CFS without her knowledge, authorization, or consent, and by causing the three unauthorized transfers and deposits to be made into CR's checking account without her knowledge, authorization, or consent, Cota violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

(Failure to Respond to NASD Staff's Requests for Information)
NASD Procedural Rule 8210 and Conduct Rule 2110

31. The Department realleges and incorporates by reference paragraphs 4 through 8, above.
32. In or about February 2006, NASD initiated an investigation concerning Cota's termination from CFS for obtaining a loan from CR, a CFS customer.
33. Cota's last known residential address, as reflected in the NASD Central Registration Depository, is [REDACTED] ("the CRD Address").

FIRST REQUEST FOR INFORMATION

34. On March 20, 2006, NASD staff sent a request for information letter to Cota, pursuant to NASD Procedural Rule 8210, which related to the subject matter of the NASD investigation. The request was sent by U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The first request letter required a response no later than April 3, 2006.
35. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Unclaimed."
36. No response to the staff's first request was received from Cota.

SECOND REQUEST FOR INFORMATION

37. On April 6, 2006, NASD staff sent a second request for information letter to Cota, pursuant to Rule 8210, which related to the subject matter of the NASD investigation. The request was sent by U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than April 20, 2006.
38. The U.S. Postal Service did not return the envelope sent to the CRD Address by first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address by certified mail, marked "Unclaimed."
39. No response to the staff's second request was received from Cota.

REQUEST FOR ON-THE-RECORD INTERVIEW

40. On November 9, 2006, NASD staff sent a letter to Cota at his CRD Address, pursuant to Rule 8210, requesting that he appear for an on-the-record (OTR) interview at 9:00 a.m.

on Thursday, November 30, 2006, at NASD's San Francisco, California, office. The purpose of the OTR interview was to have Cota provide information, under oath or affirmation administered by a court reporter, with respect staff's investigation of his termination from CFS, including the loans from CR.

41. The request was sent via U.S. Postal Service first class mail and certified mail, return receipt requested. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the certified return receipt sent to the CRD Address via certified mail, signed by a "Martha Tep," on or about November 20, 2006.
42. On November 30, 2006, Cota failed to appear at NASD's San Francisco office at the appointed time to provide the necessary information.
43. To date, NASD has not received any response to the foregoing requests for information.
44. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Cota.

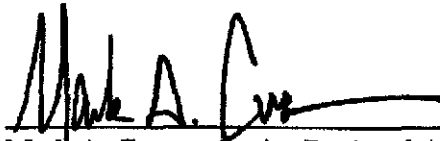
PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed; and
- B. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: April 11, 2007



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