

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES JAY ROBINSON, JR.
(CRD No. 1579422),

Respondent.

Disciplinary Proceeding
No. 2006006624301

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

October 10, 2008

The Respondent is barred from associating with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. In light of the bar, no additional sanctions were imposed for the Respondent's private securities transactions, in violation of NASD Conduct Rules 3040 and 2110.

Appearances

Kevin G. Kulling, Senior Regional Counsel, Chicago, IL (Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") initiated this disciplinary proceeding following an investigation to determine if Respondent James Jay Robinson, Jr. ("Robinson") had participated in private securities while he was associated with 1st Global Capital Corp. ("1st Global"), a FINRA member firm. The Complaint alleges that Robinson participated in not fewer than 40 private securities transactions involving 36 customers without giving 1st

Global written notice of his intention to engage in such activities and without receiving prior written approval of his activities from 1st Global, in violation of NASD Conduct Rules 3040 and 2110.¹ The Complaint further alleges that Robinson failed to respond to FINRA staff's written requests for information about his participation in those private securities transactions, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Robinson did not answer or otherwise respond to the Complaint. Consequently, on August 28, 2008, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Kevin Kulling ("Kulling Decl.") and five exhibits. Robinson did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served Robinson with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD Address"). Enforcement mailed the First Notice of Complaint by first-class certified mail on April 24, 2008. Robinson did not answer the Complaint.

Enforcement served the Second Notice of Complaint on Robinson by first-class certified mail on June 9, 2008. FINRA staff received a receipt for the mailing signed by "June Robinson" on June 10, 2008.² To date, Robinson has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are at www.finra.org/Rules.

² Ex. 4.

Robinson defaulted by failing to answer the Complaint.³ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

B. Jurisdiction

Robinson entered the securities industry and became registered as an Investment Company and Variable Contracts Products Representative in 1986.⁴ Robinson joined 1st Global in November 2003. He was registered as a General Securities Representative and an Investment Company and Variable Contracts Products Representative through 1st Global from November 7, 2003, until October 6, 2006.

On October 6, 2006, 1st Global filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Robinson's behalf, which reflects that he was terminated for failing to provide written notice of his private securities transactions.

Robinson has not been registered with FINRA since October 6, 2006. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of *this proceeding*, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with

³ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁴ Ex. 2.

failing to respond to FINRA's requests for information made during the two-year period following his registration termination.⁵

C. Private Securities Transactions

Conduct Rule 3040 requires an associated person to provide his employer with written notice of private securities transactions before the transactions take place.⁶ The Securities and Exchange Commission has held that the written notice must describe in detail the proposed transactions and the associated person's proposed role in the transactions, and state whether the associated person has received or may receive selling compensation in connection with the transactions.⁷ The purpose of Conduct Rule 3040 is to ensure that FINRA members can adequately supervise the suitability and due diligence responsibilities of their registered persons.⁸ The Rule also serves to "protect employers against investor claims arising from an associated person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of the transactions."⁹

Conduct Rule 3040 defines a "private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities [that] are not registered with the Commission." Under Conduct Rule 3040, "selling compensation" is defined as "any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions;

⁵ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

⁶ See NASD Conduct Rule 3040(b).

⁷ *Anthony H. Barkate*, Exchange Act Release No. 49,542, 2004 SEC LEXIS 806, at *2 (Apr. 8, 2004), *aff'd*, 125 Fed. Appx. 892 (9th Cir. 2005).

⁸ See *Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39 (N.A.C. Dec. 13, 2001).

⁹ *Id.* at *8-9.

finder's fees; securities ...; rights of participation in profits ... as a general partner or otherwise; or expense reimbursements."

The first two causes of action allege that Robinson violated NASD Conduct Rules 3040 and 2110 by failing to provide written notice to 1st Global before he participated in private securities transactions with 36 public customers. The first cause of action alleges that Robinson participated in a private offering of TAG Entertainment ("TAG") stock between 2003 and 2005. Robinson introduced and assisted 22 customers in their purchase of TAG stock. In total, those customers invested \$227,444 in TAG. The second cause of action alleges that during the same period Robinson participated in a private offering of MotoCross Kids LP ("MotoCross Kids"), an affiliate of TAG. Robinson introduced and assisted 14 customers in their purchase of MotoCross Kids stock. In total, those 14 customers invested \$237,500 in MotoCross Kids.

The allegations in the first two causes of action are sufficient to establish, for purposes of this default decision, that Robinson violated NASD Conduct Rules 3040 and 2110. Moreover, Robinson admitted in a letter and an e-mail that he referred customers of 1st Global and other members of the public to TAG and MotoCross Kids and that he distributed offering documents for both private placements. Accordingly, the Hearing Officer found that Robinson violated Conduct Rules 3040 and 2110, as alleged in the Complaint.

D. Failure to Respond to Information Requests

The third cause of action alleges that Robinson failed to respond to three written requests that he provide information regarding his private securities transactions at 1st Global. FINRA staff sent each request to the Respondent at his CRD Addresses pursuant to Procedural Rule 8210. The requests were dated October 17, 2006, November 20, 2006, and February 7, 2007. FINRA staff sent each request to Robinson at his CRD Address by first-

class certified mail in accordance with Procedural 8210. Robinson signed the receipt for the first mailing, and "June Robinson" signed the receipts for the other mailings. Robinson did not respond to any of the requests.

The Hearing Officer finds that the allegations in the third cause of action are sufficient to establish that Robinson violated Procedural Rule 8210 and NASD Conduct Rule 2110.

III. Sanctions

A. Private Securities Transactions

The FINRA Sanction Guidelines ("Guidelines") for selling away (private securities transactions) provide that an adjudicator's first step in determining sanctions is to assess the quantitative extent of the transactions.¹⁰ The Guidelines provide for a fine between \$5,000 and \$50,000 and the imposition of a suspension of three to six months when the dollar amount of the sales is between \$100,000 and \$500,000. The Guidelines also state that "[t]he presence of one or more mitigating or aggravating factors may either raise or lower the sanctions."¹¹ Thus, the Guidelines direct the Hearing Officer to consider 13 additional principal considerations and the general considerations applicable to all violations in determining the appropriate sanction.

In this case, the Hearing Officer found a number of aggravating factors, and none that were mitigating. Robinson participated in a significant number of transactions over a lengthy period, and he knew his activity was prohibited by 1st Global's written policies. In addition,

¹⁰ FINRA Sanction Guidelines 15 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

¹¹ *Id.*

many of the customers were 1st Global customers. And there is no evidence that Robinson gave 1st Global verbal notice of his activities.

The Hearing Officer concluded that the foregoing aggravating factors warrant sanctions at the high end of those recommended for the involved dollar volume of sales. Accordingly, the Hearing Officer concluded that the appropriate remedial sanctions are a \$10,000 fine and a six-month suspension in all capacities.¹²

B. Failure to Respond to Requests for Information

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹³ Here, Robinson failed to respond in any manner to three written requests that he provide information in connection with the staff's investigation of his private securities transactions at 1st Global. There are no mitigating factors that would justify a lesser sanction than a bar. Accordingly, the Hearing Officer will bar Robinson from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

James Jay Robinson, Jr. is barred from association with any member firm in any capacity for his failure to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The bar will become effective immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding. In light of the

¹² Cf. *Dep't of Enforcement v. Goritz*, No. C10000037, 2002 NASD Discip. LEXIS 7 (N.A.C. Apr. 26, 2002) (imposing a \$10,000 fine and a six-month suspension for private securities transactions with six customers valued at \$425,000).

¹³ Sanction Guidelines at 35.

bar, the Hearing Officer will not impose additional sanctions for Robinson's private securities transactions.

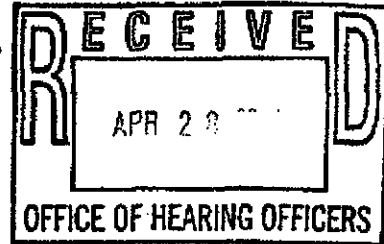

Andrew H. Perkins
Hearing Officer

Copies to:

James Jay Robinson, Jr. (by FedEx, next-day delivery, and first-class mail)
Kevin G. Kulling, Esq. (by first-class and electronic mail)
David Sonnenberg, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS



Department of Enforcement,

Complainant,

V.

James Jay Robinson
(CRD No. 1579422),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006006624301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between 2003 and 2005, Respondent James Jay Robinson participated in at least 40 private securities transactions involving approximately 36 customers by assisting in the sale of securities for two entities without giving written notice of his intention to engage in such activities to the Member and without receiving prior written approval from the Member. Furthermore, Robinson failed to respond to FINRA requests for information pursuant to Rule 8210.

RESPONDENT

2. James Jay Robinson entered the securities industry in 1986 as an investment company and variable contracts products representative of a member of FINRA. In 1988, he became registered as a general securities representative. In 2003, he became registered in a

similar capacity with First Global Capital Corp., a member of FINRA, where he remained until October 2006. Robinson therefore is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION
Private Securities Transactions
NASD Conduct Rules 3040 and 2110

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.

4. Between 2003 and 2005, Robinson engaged in private securities transactions by participating in the sale of stock of TAG Entertainment, an entity that funded and produced movies and entertainment programs.

5. Robinson introduced the TAG Entertainment private placement to at least 22 customers who invested approximately \$227,444, provided sample movies to individuals, distributed Private Placement Memorandums to interested individuals, referred interested individuals to TAG, helped interested individuals complete paperwork in order to invest, interacted with the company which served as TAG's custodian (Sterling Trust) and had on-line access to view Sterling Trust accounts on which he had provided assistance. A list of customers and investments is attached hereto as Exhibit A.

6. Robinson failed to give written notice of his intention to participate in the private placement to, and failed to obtain written approval from, the Member prior to engaging in such activities.

7. The above acts, practices and conduct described above constitute a violation of NASD Conduct Rules 3040 and 2110.

SECOND CAUSE OF ACTION
Private Securities Transactions
NASD Conduct Rules 3040 and 2110

8. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
9. Between 2003 and 2005, Robinson engaged in private securities transactions by participating in the sale of limited partnership interests in MotoCross Kids LP, an affiliate of TAG Entertainment that also financed and produced movies and entertainment programs.
10. Robinson introduced the MotoCross Kids limited partnership to at least 14 customers who invested approximately \$237,500, provided sample movies to individuals, distributed Private Placement Memorandums to interested individuals, referred interested individuals to MotoCross Kids, helped interested individuals complete paperwork in order to invest, interacted with the company which served as MotoCross Kids' custodian (Sterling Trust) and had on-line access to view Sterling Trust accounts on which had provided assistance. A list of customers and investments is attached hereto as Exhibit B.
11. Robinson failed to give written notice of his intention to participate in the securities transactions to, and failed to obtain written approval from, the Member prior to engaging in such activities.
12. The above acts, practices and conduct described above constitute a violation of NASD Conduct Rules 3040 and 2110.

THIRD CAUSE OF ACTION

Failure to Respond

To Requests for Information

NASD Rule 2110 and 8210

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.

14. On or about October 17, 2006, FINRA Staff sent to Robinson a request that he provide information and documents to the Staff related to the information that he participated in the sale of securities while failing to notify the Member in writing of his activities, pursuant to Rule 8210. The request was sent to Robinson's last known address as recorded in the Central Registration Depository (CRD). The requests were sent by first class mail and by certified mail, return receipt requested.

15. The certified mail receipt was returned to FINRA staff signed by "James Robinson." The first class mailing was not returned.

16. On or about November 20, 2006, FINRA staff sent a second request for information pursuant to Rule 8210 to Robinson's CRD Address.

17. The certified mail receipt was returned to FINRA staff signed by "June Robinson." The regular mailing was not returned.

18. On or about February 7, 2007, FINRA staff sent a third request for information pursuant to Rule 8210 to Robinson's CRD Address.

19. The certified mailing receipt was returned signed by "June Robinson."

20. The first class mailing was not returned.

21. Robinson did not respond to Staff's request for information and the deadline for responding has passed.

22. The above acts practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210.

RELIEF REQUESTED

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, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 24, 2008


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Exhibit A**TAG Entertainment Investors**

<u>Customer</u>	<u>Investment</u>	<u>Investment Amount</u>
CB	TAG Stock	\$16,000
CB	TAG Stock	\$3,000
MB	TAG Stock	\$3,500
TB	TAG Stock	\$3,000
SB	TAG Stock	\$10,000
BD	TAG Stock	UNK
BD	TAG Stock	UNK
BD	TAG Stock	UNK
LF	TAG Stock	\$9,000
CF	TAG Stock	\$7,000
PK	TAG Stock	\$21,000
WL	TAG Stock	\$26,000
RP	TAG Stock	\$9,000
DS	TAG Stock	\$5,000
DS	TAG Stock	\$3,500
BS	TAG Stock	\$3,500
JS	TAG Stock	\$20,000
JS	TAG Stock	\$7,500
JS	TAG Stock	\$18,000
JS	TAG Stock	\$9,000
MS	TAG Stock	\$6,000
VS	TAG Stock	\$5,000
VSV	TAG Stock	\$5,000

DV	TAG Stock	\$3,500
MV	TAG Stock	\$3,500
MV	TAG Stock	\$2,444
JW	TAG Stock	\$13,000
MW	TAG Stock	\$13,000
JZ	TAG Stock	\$20,000
TOTAL		\$227,444

Exhibit B**MotoCross Kids Investors**

<u>Customer</u>	<u>Investment</u>	<u>Investment Amount</u>
KC	Motocross Kids LP	\$12,500
KC	Motocross Kids LP	\$37,500
MC	Motocross Kids LP	\$18,750
TP	Motocross Kids LP	\$6,250
AP	Motocross Kids LP	\$12,500
GS	Motocross Kids LP	\$6,250
RS	Motocross Kids LP	\$12,500
CS	Motocross Kids LP	\$25,000
BS	Motocross Kids LP	\$6,250
RS	Motocross Kids LP	\$6,250
DW	Motocross Kids LP	\$25,000
JW	Motocross Kids LP	\$25,000
JW	Motocross Kids LP	\$12,500
BW	Motocross Kids LP	\$6,250
MV	Motocross Kids LP	\$25,000
 TOTAL		 \$237,500
 TAG AND MOTOCROSS TOTAL		 \$464,944