

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HECTOR J. GALLARDO
(CRD No. 4617763),

Respondent.

Disciplinary Proceeding
No. 20070108690

Hearing Officer – MC

DEFAULT DECISION

May 28, 2009

Respondent is barred from associating with any FINRA member firm in any capacity for (i) engaging in outside business activities without seeking approval from his employer firm, in violation of Conduct Rules 2110 and 3030, (ii) providing customers with fictitious documents, in violation of Conduct Rule 2110, and (iii) failing to respond to requests for information made by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210. In addition, Respondent is ordered to pay restitution to three customers, in the total amount of \$984,774, with interest.

Appearances:

Hugh C. Patton, Senior Regional Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent Hector J. Gallardo.

DECISION

I. Introduction

On November 24, 2008, the Department of Enforcement (“Enforcement”) filed the attached Complaint in this disciplinary proceeding. The First Cause of Action alleges that Respondent Hector J. Gallardo (“Respondent”) engaged in private securities transactions, without notifying or obtaining approval from his employer, FINRA member

firm Orion Trading, LLC ("Orion"), in violation of Conduct Rules 2110 and 3040.¹ The Second Cause of Action alleges, in the alternative, that Respondent engaged in outside business activities, without notifying or seeking approval from Orion, in violation of Conduct Rules 2110 and 3030. The Third Cause of Action alleges that Respondent provided customers with fictitious documents purporting to be monthly account statements, in violation of Conduct Rule 2110. Finally, the Fourth Cause of Action alleges that Respondent failed to respond to requests for information issued to him by FINRA staff ("Staff"), in violation of Conduct Rule 2110 and Procedural Rule 8210.

Enforcement served Respondent with the Complaint, Notice of Complaint and Second Notice of Complaint at his last known residential address recorded in FINRA's Central Registration Depository (the "CRD address") and three other addresses the Staff had reason to believe might include his current residential address. Nonetheless, Respondent did not file an Answer.

Consequently, on March 3, 2009, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions ("Default Motion"), supported by the Declaration of Hugh C. Patton, Senior Regional Counsel in FINRA's New York City District Office, and 54 exhibits.² Respondent did not file a response to the Default Motion.

For the reasons set forth below, the *Default Motion* is granted.

¹ On December 15, 2008, the first phase of the new consolidated FINRA Rules, resulting from the consolidation of NASD with the member regulation and enforcement functions of NYSE Regulation, went into effect. See Regulatory Notice 08-57 (Oct. 2008). This Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits are referred to as "CX-___" with the appropriate exhibit and page numbers; and the Declaration of Hugh C. Patton is referred to as "Decl." with citation to specific paragraphs therein.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered with a FINRA member firm as a General Securities Representative on January 2, 2003.³ During the time relevant to this disciplinary proceeding, Respondent was registered successively with two FINRA member firms. Respondent was registered as a General Securities Representative with FINRA member firm Great Eastern Securities, Inc. ("Great Eastern") from August 24, 2004, to January 12, 2007. Respondent was last registered as a General Securities Representative with Orion from January 11, 2007, until his registration was terminated on October 5, 2007. Respondent is not currently registered with a FINRA member firm.⁴

The Complaint charges Respondent with misconduct from January 11, 2007, to October 5, 2007, when he was registered with and employed by Orion. The misconduct alleged in the Complaint occurred while Respondent was registered with a FINRA member firm. The Staff's investigation was conducted, and the Complaint was filed, less than two years following the termination of Respondent's last registration with a member firm, while Respondent continued to be subject to FINRA's jurisdiction. For these reasons, FINRA had jurisdiction to compel Respondent to respond to requests for information during its investigation, and subsequently to bring this disciplinary proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws.

³ CX-1, p. 5.

⁴ CX-1, pp. 3-4.

B. Respondent's Default

On November 21, 2008, Enforcement served a copy of the Complaint and Notice of Complaint on Respondent by certified and first-class mail at four different addresses: (i) Respondent's CRD address; (ii) Respondent's CRD address with the addition of an apartment number that the Staff believed was Respondent's apartment ("Apartment address"); (iii) an address in Jackson Heights, NY, obtained by the Staff from a New York State driver's license issued to Respondent in 2006 ("Jackson Heights address");⁵ and (iv) an address in Bridgeport, CT ("Bridgeport address") of which the Staff had learned. The certified and first-class mailings to the CRD address were returned to Enforcement.⁶ The certified mailing to the Apartment address was returned, but the first-class mailing was not.⁷ The mailings to the Jackson Heights and Bridgeport addresses were all returned to Enforcement, stamped "Return to Sender" or with similar markings.⁸

On January 5, 2009, Enforcement served a copy of the Complaint and Second Notice of Complaint on Respondent by certified and first-class mail to the same four addresses. All were returned to Enforcement with markings on their envelopes indicating an inability to forward, "Forwarding Time Expired," or that Respondent had moved.⁹

Enforcement complied with the requirements of Rule 9134 by mailing the Complaint and Notices of Complaint to Respondent's CRD address and the other addresses the Staff believed could be more current residential addresses. Enforcement

⁵ Decl. ¶ 14.

⁶ CX-3-5; Decl. ¶ 12.

⁷ CX-6-7; Decl. ¶ 13.

⁸ CX-8-11.

⁹ Decl. ¶¶ 17-22.

has, therefore, provided Respondent with constructive notice of this proceeding.

Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

C. Violations

1. Second Cause of the Complaint: Respondent Engaged in Unauthorized Outside Business Activities Without Informing His Firm

a. Introduction

FINRA initiated its investigation of Respondent as a result of a Form U5 filed by Orion in connection with its discharge of Respondent on September 25, 2007.¹⁰ The Form U5 alleged that Respondent had abandoned customers and engaged in outside business activities of which Orion was unaware.¹¹ The Staff learned that Respondent had engaged in business activities involving an entity known as Ventel Enterprises Corp. ("Ventel"). To obtain more information about Ventel and the type of business it conducted, the Staff issued requests for information to Respondent, pursuant to Procedural Rule 8210, which Respondent failed to furnish. With limited information, the Staff concluded that Ventel was either part of a Ponzi scheme or some other fraudulent enterprise.¹²

The First Cause of the Complaint charges Respondent with engaging in private securities transactions without informing Orion. The Second Cause of the Complaint charges Respondent with engaging in unauthorized outside business activities without informing Orion. The Second Cause is charged as an alternative to the First Cause

¹⁰ CX-35.

¹¹ CX-1.

¹² Decl. ¶ 51.

because Respondent's failure to respond to the Staff's requests for information prevented the Staff from obtaining documentation required to learn about the nature of Ventel. Because the Staff was able to learn so little about Ventel, it is difficult to ascertain from the record whether the investments made by Respondent's customers through Ventel constituted private securities transactions, as alleged in the First Cause of Action. The record does, however, provide a sufficient basis for holding Respondent liable for engaging in unauthorized outside business activities without informing Orion, in violation of Conduct Rules 2110 and 3030, as alleged in the Second Cause of Action. It is unnecessary, therefore, to determine whether Respondent also engaged in private securities transactions.

b. Customer DV

DV, a resident of Mexico, became Respondent's customer when Respondent was registered through Great Eastern. Respondent persuaded DV to trade through Ventel, leading DV to believe Ventel Enterprises had some connection with Great Eastern that would result in greater returns, although DV did not understand all of the details Respondent presented to him.¹³ Even though Respondent sent DV documents appearing to be standard account statements issued by a broker-dealer,¹⁴ the Staff was unable to find any evidence that Ventel was a legitimate, functioning entity. The only publicly available information about Ventel Enterprises describes it as a domestic business

¹³ Decl. ¶¶ 25-26

¹⁴ Decl. ¶ 32.

corporation formed in 2004, with its business address in the apartment building at Respondent's CRD address.¹⁵

DV wired a total of \$188,000 from his bank account in Mexico to a bank account at Washington Mutual Bank bearing the name "Ventel Enterprise" while Respondent was still registered with Great Eastern.¹⁶

After Respondent became registered with Orion in January 2007, he corresponded with DV using an e-mail address with venteltrading.com as the domain name and asked DV to communicate with him using that address. Respondent sent DV an account summary indicating his account was valued at \$246,063. In May 2007, DV asked Respondent to send him \$80,000 from the account. Shortly thereafter, DV received two wire transfers from an account in the name of Ventel,¹⁷ leaving DV with the impression that Ventel, and Respondent, were legitimate.

c. Customers JM and WB

JM and WB were residents of Bolivia. They had individual accounts and one shared account at Orion prior to Respondent's registration with the firm.¹⁸ In March 2007, Respondent contacted JM and WB and persuaded them to transfer their accounts to him. Respondent also persuaded them to invest in Ventel, guaranteeing them a 15 percent return.¹⁹ Relying on what they were told by Respondent, JM and WB believed

¹⁵ Decl. ¶ 27; CX-23.

¹⁶ Decl. ¶ 29.

¹⁷ Decl. ¶¶ 33 – 35.

¹⁸ Decl. ¶ 37.

¹⁹ Decl. ¶ 39.

Ventel was a trading investment company.²⁰ Their impression was reinforced when they received new account documentation with the name "Ventel Trading Corp." on the documents, showing the address of the Orion branch office where Respondent worked.²¹

Between March and August 2007, at Respondent's direction, JM and WB wired \$1,154,000 to a bank account in the name of Ventel Enterprises.²² Respondent sent them e-mail messages confirming most of the transfers, using the same e-mail address that he had used with customer DV.²³ Respondent sent JM and WB a document styled a "Private Equity Prospectus" for "Ventel Enterprises Corp., Capital Partners Fund" signed on behalf of Ventel, with a signature that appears to be Respondent's.²⁴ JM and WB wired funds to Ventel in exchange for promised investment returns. JM and WB received funds back from Ventel totaling \$277,226 which they assumed were profits from their investments.²⁵

The President and CEO of Orion, who was also Respondent's direct supervisor, informed the Staff that Respondent never notified Orion of his association or activity with Ventel and never sought approval from anyone at Orion in relation to Ventel.²⁶ Orion provided Enforcement with a statement signed by Respondent on March 12, 2007, stating that he had read and agreed to Orion's written supervisory procedures, one of

²⁰ Decl. ¶ 40.

²¹ Decl. ¶ 41.

²² Decl. ¶ 42.

²³ Decl. ¶ 48; CX-33.

²⁴ Decl. ¶¶ 46-47; CX-34.

²⁵ Decl. ¶¶ 44-48.

²⁶ Decl. ¶ 49.

which prohibits employees from engaging in any transaction not sponsored or authorized by Orion.²⁷

On the basis of these allegations, as alleged in the Second Cause of the Complaint, Respondent violated Conduct Rules 2110 and 3030.

2. Third Cause of Complaint: Respondent Provided Customers with Fictitious Documents

Respondent sent customer DV documents that purport to be monthly account statements for April 2006 and May 2006.²⁸ These were the only two months for which DV received statements. The account statements contain facial inconsistencies emblematic of their falsity. For example:

- There are discrepancies in the names and addresses of the account holders as they appear on the first and second pages of the April 2006 statements (e.g., [REDACTED] on the first page is [REDACTED] on the second; [REDACTED] on the first page is [REDACTED] on the second; and the zip codes are different).
- Page two of the April 2006 statement lists buys and sells for the month of April – but the trade date for one transaction is September 27, 2006 – five months *after* April 2006, the date of the statement.
- At the bottom of each page is the notation, “ACCOUNTS CARRIED BY VENTEL TRADING INC;” but that entity is not a registered broker-dealer.
- The first page of the April 2006 statement shows Exxon Mobil Corp. listed under “account value/securities” but gives no number of shares or other information, just the closing price at month’s end. The May 2006 statement lists only NYSE Euronext, Inc. under “account value/securities” and gives no number of shares or other information, showing only the closing price at month’s end.
- Page one of the May 2006 statement has an “income summary” with the total income to date shown as negative \$82,651; this amount does not equal the sum of the figures above it, as it should.

²⁷ Decl. ¶ 50.

²⁸ CX-25.

On March 3, 2007, customer JM received new account documentation with the name Ventel Trading Corp., at the same address as Orion. There is no Ventel Trading Corp. at that location; Orion is the only entity at that address.

On the basis of these allegations, Respondent violated Conduct Rule 2110, as alleged in the Third Cause of the Complaint.

3. Fourth Cause of Complaint: Respondent Failed to Respond to Requests for Information

Orion discharged Respondent on September 25, 2007. The firm filed a Form U5 stating that Respondent had abandoned his office and customers, used unapproved and unauthorized e-mail, and was involved in outside activities of which the firm had been unaware.²⁹

Beginning on February 26, 2008, the Staff began to send what became a series of letters to Respondent, pursuant to Procedural Rule 8210, requesting information about the allegations in the Form U5 filed by Orion. The Staff ultimately sent four sets of the request letters to Respondent.

The first set of two letters was sent on February 26, 2008, by first-class and certified mail, to the Apartment address and to the Jackson Heights address. Both letters sent to the Apartment address were returned; the certified letter's receipt card, however, was returned to Staff bearing the signature of "Dorissa Figueroa." The Staff contacted the apartment building and spoke with Ms. Figueroa, who was employed at the front

²⁹ CX-1, p. 3.

desk. She informed the Staff that nobody with Respondent's name resided at the apartment building.³⁰

The first-class letter sent to the Jackson Heights address was not returned. The certified letter sent to the Jackson Heights address was returned, marked unclaimed, and bearing the Bridgeport address as Respondent's forwarding address.³¹ There was no response to the letters.

The Staff sent a second set of request letters on March 25, 2008, by first-class and certified mail, to the same addresses, with similar results. In addition, the Staff sent the second request letter to the Bridgeport address. The first-class letter sent there was not returned, but the certified letter was returned stamped "unclaimed." Respondent did not reply to any of the letters.³²

On August 15, 2008, the Staff mailed a third round of letters. This time, the letters were mailed to four addresses: Respondent's CRD address, Respondent's Apartment address, the Jackson Heights address, and the Bridgeport address. The first-class letter sent to the CRD address was returned marked "return to sender, attempted – not known, unable to forward." None of the other three first-class letters was returned. All four certified letters were returned. Return receipt cards were returned for the two letters sent to the CRD address and the Apartment address marked "return to sender, attempted – not known, unable to forward," and both were signed by an Ashley McCormack. The certified letter sent to the Jackson Heights address was returned

³⁰ Decl. ¶¶ 61, 62; CX-38.

³¹ Decl. ¶ 63; CX-39.

³² Decl. ¶¶ 65-69.

marked with the Bridgeport forwarding address. The certified letter sent to the Bridgeport address was returned marked "unclaimed." The letters elicited no reply from Respondent.³³

On September 9, 2008, the Staff sent a fourth round of letters, by first-class and certified mail, to the same four addresses, with effectively the same results, and the Staff received no response to the letters.³⁴

Based on the allegations contained in the Fourth Cause of the Complaint, Respondent failed to respond to FINRA staff requests for information pursuant to Rule 8210 and, in so doing, violated Conduct Rule 2110 and Procedural Rule 8210.

D. Sanctions

1. Outside Business Activity

The Guidelines recommend a fine of \$2,500 to \$50,000 for engaging in outside business activity. In an egregious case, with a substantial volume of activity or significant injury to customers, the Guidelines recommend a lengthier suspension or a bar.³⁵ For this violation, the Guidelines focus on: (i) whether the outside activity involved customers of the firm; (ii) whether the marketing and sale of the product could have created the impression that the member firm had approved it; (iii) whether the activity resulted in injury to customers of the firm; (iv) the dollar value of the sales; and (v) whether the respondent misled the firm or concealed his activity. All of these aggravating factors are present in this case.

³³ Decl. ¶¶ 71-74.

³⁴ *Id.*

³⁵ *FINRA Sanction Guidelines*, p. 14 (2007).

Here, while Respondent was registered with Great Eastern, customer DV wired a total of \$188,000 to a bank account in Ventel's name after Respondent led DV to believe Ventel was connected in some fashion to Great Eastern.³⁶ DV became an Orion customer when Respondent moved from Great Eastern to Orion and DV transferred his account to Orion to remain with Respondent.³⁷ In April 2007, while Respondent was registered with Orion, he sent what appeared to be an account summary to DV falsely representing that DV's original investment of \$188,000 had grown to a total of \$246,063.³⁸ In June 2007, Respondent sent DV, at his request, \$80,000 DV needed to purchase real estate.³⁹ This left DV, when Respondent abruptly abandoned his customers, with a significant loss of \$108,000, the remainder of his original investment.

Customers JM and WB were Orion customers before Respondent became employed by the firm. Respondent solicited them to transfer their Orion accounts to him, and he was the one who recommended they invest in Ventel Enterprises. Respondent solicited the investments while he was registered with Orion, and the new account documentation showed the address for Ventel to be the same as the Orion office at which Respondent worked. These facts contributed to the clear impression that Respondent was working as an agent of Orion and that the firm approved the solicitations. Respondent lulled JM and WB into believing the investments were sound and profitable by sending them periodic payments of what appeared to be profits totaling \$277,226.⁴⁰ Nonetheless,

³⁶ Decl. ¶¶ 25-29.

³⁷ Decl. ¶ 30.

³⁸ Decl. ¶¶ 32-33.

³⁹ Decl. ¶ 34.

⁴⁰ Decl. ¶ 44.

JM and WB suffered significant harm in the amount of the remainder of their investments – their investments totaled \$1,154,000,⁴¹ leaving a loss of \$876,774 – that vanished with Respondent. Finally, Respondent materially misled Orion by never letting the firm know about this activity.

In this case, Enforcement's conclusion that Respondent's solicitations to his customers to invest in Ventel constituted "a Ponzi scheme or some other fraudulent scheme" is, in the absence of any evidence to the contrary, reasonable. A bar, therefore, is the appropriate sanction for Respondent's violations of Conduct Rules 2110 and 3030 by engaging in outside business activity without the approval or knowledge of his firm, as alleged in the Second Cause of the Complaint.

2. Fictitious Documents

The Guidelines for issuing false documents recommend a fine from \$5,000 to \$100,000 and a suspension in any or all capacities of up to two years if mitigation is present, or a bar in egregious cases.⁴² The Principal Consideration relevant to this case is the nature of the documents. Here, Respondent created the false new account documentation and account statements to defraud firm customers. There are no mitigating facts. Accordingly, a bar is the appropriate sanction for Respondent's violation of Conduct Rule 2110 by creating and sending customers fictitious documents, as alleged in the Third Cause of the Complaint.

⁴¹ Decl. ¶ 42.

⁴² *Id.* at 39.

3. Failures to Respond

The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.⁴³ If there are mitigating factors, the Sanction Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

Here, the Staff made numerous efforts to obtain information from Respondent pursuant to Rule 8210 to investigate the serious allegations contained in Orion's Form U5. Respondent failed to respond in any fashion to the request letters, multiple copies of which were sent to his several addresses. The record is devoid of any mitigating circumstances.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information."⁴⁴ Concerning sanctions for violating Rule 8210, "[t]he Guidelines treat a failure to respond ... as egregious."⁴⁵ A bar, therefore, is the appropriate sanction for Respondent's violations of Conduct Rule 2110 and Procedural Rule 8210 by failing to respond in any manner to multiple requests for information issued to him in this case, as alleged in the Fourth Cause of the Complaint.

⁴³ *Id.* at 35.

⁴⁴ *Dep't of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

⁴⁵ *Id.* at *41.

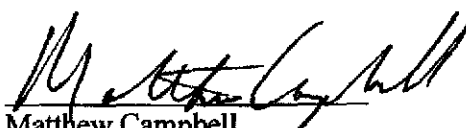
III. Order

Respondent Hector J. Gallardo is barred from association with any FINRA firm in all capacities for: (i) engaging in outside business activities without the knowledge or approval of his firm, in violation of Conduct Rules 2110 and 3030; (ii) providing customers with fictitious documents, in violation of Conduct Rule 2110; and (iii) failing to respond to requests for information from FINRA Staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.

In addition, Respondent is ordered to pay restitution (i) to customer DV in the amount of \$108,000, plus interest, from July 1, 2007, until paid, and (ii) to customers JM and WB in the amount of \$876,774, plus interest, from August 23, 2007, until paid. Interest shall be paid at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(b)(2).⁴⁶

The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.


Matthew Campbell
Hearing Officer

⁴⁶ The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Because customer DV made several investments between April and November 2006, and received two payments of \$40,000 each from Respondent, the last payment occurring on July 1, 2007, on which date DV's final loss was \$108,000, interest on his loss should accrue from this date. Because customers JM and WB made periodic incremental investments from March 9, 2007, to August 1, 2007, and received periodic payments from Respondent that they believed were "profits," the last one on August 23, 2007, on which date their final loss was \$876,774, interest on their losses should accrue from that date. Customers DV, JM and WB are identified in the Addendum to this Decision. The Addendum is served only on the parties.

Copies to:

Hector J. Gallardo *(via FedEx and first-class mail)*

Hugh C. Patton, Esq. *(via electronic and first-class mail)*

Mark P. Dauer, Esq. *(via electronic mail)*

David R. Sonnenberg, Esq. *(via electronic mail)*

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**HECTOR J. GALLARDO
(CRD No. 4617763),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2007 010 8690**

Hearing Officer _____

COMPLAINT

The Department of Enforcement alleges:

Summary

1. From approximately January 11, 2007 until approximately October 5, 2007, while he was registered through Orion Trading, LLC (BD No. 43932), Respondent Gallardo engaged in private securities transactions or, in the alternative, outside business activity. Gallardo convinced three of his customers to invest with something called "Ventel Enterprises" in addition to their investments in their brokerage accounts at his member firm. The customers did not fully understand what Ventel Enterprises was, but believed it to be some kind of trading vehicle through which Gallardo could generate greater returns for them. The customers invested a total of approximately \$1,342,000 with Ventel Enterprises, and received back payments totaling approximately \$357,226. Gallardo provided them with fictitious Ventel Enterprises new account documentation and account statements. Gallardo never notified or sought approval from anyone at Orion

Trading regarding these activities. Finally, when FINRA Staff sent Gallardo multiple requests for information concerning, *inter alia*, Ventel Enterprises, made pursuant to and in accordance with NASD Procedural Rule 8210, Gallardo never responded.

2. Accordingly, Gallardo violated NASD Procedural Rule 8210 and Conduct Rules 2110 and 3040 or, in the alternative, 3030.

Respondent

3. Respondent Gallardo first became registered with FINRA (f/k/a NASD) as a General Securities Representative (GSR) on or about January 2, 2003 through a member firm.
4. Gallardo was registered as a GSR through Great Eastern Securities, Inc. (BD No. 2061) from on or about August 24, 2004 until on or about January 12, 2007.
5. Gallardo was registered as a GSR through Orion Trading from on or about January 11, 2007 until on or about October 5, 2007.
6. Gallardo has been registered through a total of four member firms.
7. Gallardo is not currently registered with a member firm, but remains subject to FINRA's jurisdiction pursuant to and in accordance with FINRA Bylaws, Article V, Section 4.

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

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.

Customer DV

9. DV, who resides in Toluca, Mexico, first became a client of Gallardo's in or about March 2006, when Gallardo was associated with Great Eastern.
10. At or near the beginning of their relationship, Gallardo suggested to DV that he invest with something called Ventel Enterprises in addition to investing with Great Eastern. DV believed that Ventel Enterprises was some kind of investment vehicle connected to Great Eastern through which Gallardo could generate greater returns for him, although DV did not fully understand the details.
11. Upon information or belief, neither "Ventel Trading" nor "Ventel Enterprises" has ever been a registered broker-dealer, investment advisor or investment company.
12. Ventel Enterprises, Corp. is a New York "domestic business corporation" formed on or about November 30, 2004, with the same address as Gallardo's residential address in CRD, [REDACTED] and with Sofia Gallardo listed as the person who will accept service of process.
13. Between April and November 2006, DV wired a total of \$188,000 from his bank account in Mexico to a bank account held at Washington Mutual under the name "Ventel Enterprise."

14. Gallardo continued his activities involving Ventel Enterprises after Gallardo became associated with Orion Trading in January 2007 (although DV did not send any funds to Ventel Enterprises while Gallardo was registered through Orion Trading). Specifically, Gallardo continued emailing DV periodic summaries of what purported to be his Ventel Enterprises "account." The "account summaries" list purchases, sales and positions held for various securities.
15. In April 2007, Gallardo sent DV an account summary indicating that his Ventel Enterprises account was worth a total of \$246,063.
16. In or about May 2007, DV informed Gallardo that he needed \$80,000 to purchase some property. Accordingly, DV received two wire transfers for \$40,000 each from an account at Chase in the name of "Ventel Enterprises" (the "Chase Account") on or about June 22, 2007 and July 1, 2007. This is the same account at Chase into which customers JM and WB transferred funds during approximately the same time period (see below, ¶23).
17. After Gallardo became associated with Orion Trading in January 2007, he began communicating with DV using an email address with "venteltrading.com" as the domain name. In an email dated January 3, 2007, Gallardo asked DV to use the venteltrading.com email address and discontinue using Gallardo's previous Great Eastern email address.
18. DV's investments with Ventel Enterprises constituted investment contracts.

Customers JM and WB

19. JM and WB are residents of Bolivia. They were customers of Orion Trading, with one joint account and two individual accounts, prior to Gallardo becoming associated with Orion Trading.
20. Gallardo contacted JM and WB in or about March 2007 and convinced them to transfer their Orion Trading accounts to him to manage. Gallardo also convinced JM and WB to invest in Ventel Enterprises in addition to their accounts at Orion Trading, claiming he could guarantee them a 15 percent return on the portion of their assets they invested through Ventel Enterprises.
21. JM and WB understood Ventel Enterprises to be a trading investment company of some kind.
22. On or about March 3, 2007, JM received new account documentation with the name Ventel Trading Corp. at the top and the same address as the address of the branch office of Orion Trading where Gallardo worked.
23. Between March and August 2007, JM and WB were directed by Gallardo to wire funds to a bank account in the name of Ventel Enterprises, held at Chase. This is the Chase Account from which funds were returned to DV, as noted above, ¶16.
24. JM and WB wired funds into the Chase Account as follows:

March 9, 2007	\$100,000
March 28, 2007	\$120,000
April 30, 2007	\$135,000
May 22, 2007	\$ 50,000
May 31, 2007	\$176,000
May 31, 2007	\$100,000
July 3, 2007	\$173,000

July 6, 2007	\$200,000
<u>August 1, 2007</u>	<u>\$100,000</u>
TOTAL	\$1,154,000

25. JM and WB received funds back from Ventel Enterprises, which they believed to be profits from their investments, as follows:

April 9, 2007	\$ 9,000
May 9, 2007	\$33,000
June 6, 2007	\$42,000
July 11, 2007	\$53,226
July 23, 2007	\$100,000
<u>August 23, 2007</u>	<u>\$40,000</u>
TOTAL	\$277,226

26. After JM and WB asked Gallardo for documentation regarding their investments, he provided them with a document entitled "Ventel Enterprises Corp, Capital Partners Fund, Contract for interested parties, Ventel & [REDACTED] The document is styled as a "Private Equity Prospectus," with broad, generic investment parameters. On the first page it states, "Ventel Enterprises, Corp. (the "Trust") is a private complex offering professionally managed investment portfolios." The document is signed by JM and WB. Upon information and belief, the document is signed by Gallardo on behalf of Ventel Enterprises Corp.
27. Gallardo communicated with JM and WB using the same venteltrading.com email address that he used with DV.
28. JM's and WB's investments with Ventel Enterprises constituted investment contracts.

Orion Trading

29. Gallardo never notified or sought approval from anyone at Orion Trading regarding his Ventel-related activities or any outside activity.
30. Gallardo signed a statement on March 12, 2007 indicating that he had read and agreed to Orion Trading's written supervisory procedures (WSPs). Those WSPs prohibit "engaging in private securities transactions (meaning any transaction not sponsored or authorized by Orion Trading)."
31. By reason of the foregoing and in each and every instance, Gallardo violated NASD Conduct Rules 3040 and 2110.

**SECOND CAUSE OF ACTION
(Alternative to the First Cause of Action)
(Outside Business Activity)
NASD Conduct Rules 3030 and 2110**

32. The Department realleges and incorporates by reference paragraphs 1 through 31, above.
33. As an alternative to the First Cause of Action, to the extent that Gallardo's Ventel-related activities are not found to be subject to the requirements of NASD Conduct Rule 3040, those activities constitute outside business activities subject to the reporting requirements of NASD Conduct Rule 3030.
34. Upon information and belief, Gallardo was employed by Ventel Enterprises and/or Ventel Trading as an officer, or someone with the power to act on behalf of the entity or entities, or received compensation from Ventel Enterprises and/or Ventel Trading, while he was associated with Orion Trading.

35. Gallardo never notified or sought approval from anyone at Orion Trading regarding his Ventel-related activities.
36. By reason of the foregoing, Gallardo violated NASD Conduct Rules 3030 and 2110.

**THIRD CAUSE OF ACTION
(Provision of Fictitious Documents)
NASD Conduct Rule 2110**

37. The Department realleges and incorporates by reference paragraphs 1 through 36, above.
38. While registered through Great Eastern, Gallardo provided DV with documents that purport to be monthly account statements for April and May 2006 from "Ventel Enterprises." The statements list Gallardo as the Financial Advisor and give the account number as [REDACTED]. The statements indicate that the account is "carried by Ventel Trading Inc."
39. Upon information and belief, these statements are fictitious.
40. On March 3, 2007, JM received new account documentation with the name Ventel Trading Corp. at the top and the same address as the address of the branch office of Orion Trading where Gallardo worked.
41. Upon information and belief, this documentation is fictitious.
42. By reason of the foregoing, Gallardo violated NASD Conduct Rule 2110.

**FOURTH CAUSE OF ACTION
(Failure to Respond to Requests for Information)
NASD Procedural Rule 8210 and Conduct Rule 2110**

43. The Department realleges and incorporates by reference paragraphs 1 through 42, above.
44. Gallardo was discharged from Orion Trading on or about September 25, 2007. The Uniform Termination Notice for Securities Industry Registration (Form U-5) filed by Orion Trading claims that Gallardo “abandoned the office and his customers,” “used unauthorized email even after instructed that this was against company policy,” and “was allegedly involved in outside activities that the firm was not aware of.”

First “Round” of Rule 8210 Requests

45. On or about February 26, 2008, FINRA Staff sent a letter to Gallardo pursuant to NASD Procedural Rule 8210. The letter requested information about the allegations in the Form U-5 filed by Orion Trading on Gallardo’s behalf, as well as information about Ventel Enterprises and Ventel Trading, entities to which the Staff had reason to believe Gallardo was connected.
46. The Rule 8210 request letter was sent by regular and certified mail to Gallardo’s last known address as listed in FINRA’s Central Registration Depository (CRD), [REDACTED] although the Staff added what it believed to be Gallardo’s apartment number: [REDACTED]
47. On or about February 26, 2008, the Staff also sent the Rule 8210 request letter by regular and certified mail to another address of which it was aware: [REDACTED]

[REDACTED] The letter sent by certified mail was returned unclaimed, but with a sticker indicating a forwarding address of [REDACTED]

48. Gallardo's response to the Rule 8210 request letter was due by March 6, 2008. Gallardo did not respond.
49. On or about March 25, 2008, the Staff sent a second request letter to Gallardo pursuant to NASD Procedural Rule 8210, requesting the same information as in the first request. The second request letter was sent to the same two addresses as the first request, and to [REDACTED] all by regular and certified mail.
50. Gallardo's response to the second Rule 8210 request letter was due by April 4, 2008. Gallardo did not respond.

51. The following chart lists the first “round” of Rule 8210 requests, whether the envelope was returned to the Staff, and, if so, how it was marked:

	Letter dated February 25, 2008 (mailed February 26, 2008) Due date March 6, 2008.		Letter dated March 25, 2008 (mailed same day) Due date April 4, 2008	
	Regular Mail	Certified Mail	Regular Mail	Certified Mail
CRD address plus likely apartment number: [REDACTED]	Envelope returned, marked “return to sender, insufficient address, unable to forward”	Envelope returned, marked “Return to sender, moved – left no address”	Envelope returned, marked “return to sender, attempted – not known, unable to forward”	Envelope returned, marked “return to sender”
Second address: [REDACTED]	Envelope not returned to the Staff	Envelope returned, with a sticker indicating a forwarding address of [REDACTED] [REDACTED] and marked “forwarded,” and “unclaimed”	Envelope not returned to Staff	Envelope returned, marked “unclaimed, notify sender of new address: [REDACTED]
Forwarding address: [REDACTED]	Not sent	Not sent	Envelope not returned to Staff	Envelope returned, marked “unclaimed”

52. Because none of the February 25, 2008 or March 25, 2008 letters contained the exact CRD address (i.e., without an apartment number), the Staff determined to send a second round of Rule 8210 requests.

Second "Round" of Rule 8210 Requests

53. On or about August 15, 2008, the Staff resent the initial request letter to Gallardo pursuant to and in accordance with NASD Procedural Rule 8210 (the "New First Request Letter"). The New First Request Letter was sent by regular and certified mail to Gallardo's *exact* last known address as listed in CRD, [REDACTED] [REDACTED] without any added apartment number. The Staff also sent the New First Request Letter by regular and certified mail to the same three addresses to which it had send the March 25th second request letter.
54. Gallardo's response to the New First Request Letter was due by September 2, 2008. Gallardo did not respond.
55. On or about September 9, 2008, the Staff sent a new second request letter to Gallardo pursuant to and in accordance with NASD Procedural Rule 8210, requesting the same information as in the New First Request Letter (the "New Second Request Letter"). The Staff sent the New Second Request Letter to the same four addresses to which it had sent the New First Request Letter, all by regular and certified mail.
56. Gallardo's response to the New Second Request Letter was due by September 19, 2008.
57. Gallardo received constructive notice of the New First Request Letter and the New Second Request Letter.

58. The following chart lists the second "round" of Rule 8210 requests, whether the envelope was returned to the Staff, and, if so, how it was marked:

	Letter dated August 15, 2008 (mailed same day) Due date September 2, 2008.		Letter dated September 9, 2008 (mailed same day) Due date September 19, 2008	
	Regular Mail	Certified Mail	Regular Mail	Certified Mail
CRD address exactly: [REDACTED]	Envelope returned, marked "return to sender, attempted – not known, unable to forward"	Envelope returned, marked "return to sender, attempted – not known, unable to forward"	Envelope returned, marked "return to sender, attempted – not known, unable to forward"	Envelope returned, marked "return to sender"
CRD address plus likely apartment number: [REDACTED]	Envelope not returned to Staff	Envelope returned, marked "return to sender, attempted – not known, unable to forward"	Envelope returned, marked "return to sender, attempted – not known, unable to forward"	Envelope returned, marked "return to sender, unclaimed"
Second address: [REDACTED]	Envelope not returned to Staff	Envelope returned, with a sticker indicating a forwarding address of [REDACTED] [REDACTED] and marked "unclaimed"	Envelope not returned to Staff	Envelope returned, with a sticker indicating a forwarding address of [REDACTED] [REDACTED] marked unclaimed
Third address: [REDACTED]	Envelope not returned to Staff	Envelope returned, marked "unclaimed"	Envelope not returned to Staff	Envelope returned, marked "unclaimed"

59. Gallardo never responded to any of the above Rule 8210 Request letters.

60. By reason of the foregoing, Gallardo violated NASD Procedural Rule 8210 and Conduct Rule 2110.

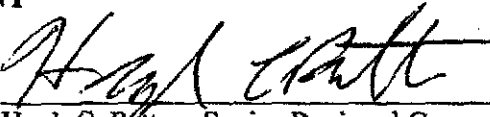
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) 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; 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 21, 2008


Hugh C. Patton, Senior Regional Counsel
Jon S. Batterman, Deputy Regional Chief Counsel
FINRA Department of Enforcement
One Liberty Plaza
165 Broadway
New York, NY 10006
Tel: 212-858-3998, Fax: 212-858-4770
Email: hugh.patton@finra.org

Of Counsel

David M. Jaffe, Regional Chief Counsel
FINRA Department of Enforcement
One Liberty Plaza
165 Broadway
New York, NY 10006
Tel: 212-858-4762, Fax: 212-858-4770