

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALEX AMNER BORUKHOV
(CRD No. 4389429),

Respondent.

Disciplinary Proceeding
No. 2008012444301

Hearing Officer—Sara Nelson Bloom

DEFAULT DECISION

August 31, 2009

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REGISTRATION & DISCLOSURE

Respondent failed to timely disclose on his Form U4 that he had been charged with a felony and willfully failed to disclose on his Form U4 that he was a respondent in an arbitration claim involving allegations of unsuitable trading in a customer account, in violation of Rule 2110 and IM-1000-1. Respondent also failed to appear for testimony, in violation of Rules 8210 and 2110. Respondent is barred from associating with any member firm in any capacity for failing to appear for testimony. In light of the bar, no additional sanction is imposed for Respondent's failure to timely disclose his felony charge and his willful failure to disclose that he was a respondent in an arbitration claim, in violation of Rule 2110 and IM-1000-1. The charge that Respondent engaged in excessive and unsuitable trading in a customer's accounts in violation of Rules 2310 and 2110 and IM-2310 is dismissed.

Appearances

Vaishali S. Shetty, Esq., Jericho, NY, for the Department of Enforcement.

No appearance by or for Alex Amner Borukhov.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed the attached Complaint on April 14, 2009. The first cause of action alleges that Respondent Alex Amner Borukhov ("Respondent") violated Rules 2310 and 2110, and Registration Rule Interpretive Material ("IM") 2310 by engaging

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in excessive and unsuitable trading in a customer account. The second cause of action alleges that Respondent violated Rule 2110 and IM-1000-1 by failing to timely disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") that he had been charged with felony assault. The third cause of action alleges that Respondent again violated Rule 2110 and IM-1000-1 by willfully failing to disclose on his Form U4 that he was a respondent in a customer arbitration proceeding involving a charge that he had engaged in unsuitable trading in a customer account. The fourth cause of action alleges that Respondent violated Rules 8210 and 2110 by failing to appear for on-the-record testimony ("OTR").¹

Respondent did not answer or otherwise respond to the Complaint. Consequently, on July 8, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Vaishali S. Shetty ("Shetty Decl.") and 14 exhibits. Respondent did not respond to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered with a FINRA member in 2001. He was registered as a General Securities Representative with Aura Financial Services, Inc. ("Aura") from October 2007 through February 2008. Respondent was then registered with J.P. Turner & Company, LLC ("Turner") from March 13 through April 2, 2008. After that, he was registered with member firm First Midwest Securities, Inc. ("First Midwest") from May 6,

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. 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.

2008 through June 12, 2008, following his termination for failing to timely disclose that he was a respondent in a pending arbitration.² Respondent has not been associated with a member firm or registered with FINRA since that time.³

• Although Respondent is not currently registered with FINRA, FINRA has jurisdiction of this disciplinary proceeding, pursuant to Article V, § 4 of FINRA's By-Laws, 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 failing to respond to FINRA's requests for information made during the two-year period following the termination of his registration.⁴

B. Respondent's Default

On April 14, 2009, Enforcement sent the Complaint and Notice of Complaint to Respondent by first-class and certified mail (return receipt requested) to his residential address recorded in the Central Registration Depository ("CRD Address").⁵ The receipt for the certified mailing was returned marked, "return to sender, not deliverable as addressed – unable to forward." The first-class regular mailing was not returned.⁶ Respondent did not respond to the Notice of Complaint.

On May 13, 2009, Enforcement served Respondent with the Complaint and Second Notice of Complaint, by first-class and certified mail, to his CRD Address.⁷ The receipt for the certified mailing was returned, marked "return to sender, not deliverable as addressed –

² Complainant's Exhibit ("CX")-1.

³ *Id.*

⁴ Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁵ Shetty Decl. ¶ 12; CX-2.

⁶ Shetty Decl. ¶ 14; CX-3.

⁷ Shetty Decl. ¶ 16; CX-4.

unable to forward.” The first-class regular mailing was not returned.⁸ Respondent did not respond to the Second Notice of Complaint.

Respondent defaulted by failing to answer the Complaint.⁹ Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement’s motion for entry of a default decision.

C. Facts

1. Excessive and Unsuitable Trading

The first cause of action of the Complaint alleges that, from October 2007 through January 2008, Respondent violated Rules 2310 and 2110 and IM-2310 by engaging in excessive and unsuitable trading in customer RM’s accounts.

Rule 2310(a) requires that “[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.” Thus, “a representative may make only such recommendations...as would be consistent with the customer’s financial situation and needs.”¹⁰

Rule 2310 also can be violated if a representative’s recommendations are quantitatively unsuitable, i.e., the representative excessively trades the account.¹¹ “In either case, a representative may make only such recommendations—or effect such transactions in

⁸ Shetty Decl. ¶ 17; CX-5.

⁹ *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (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)).

¹⁰ *Dep’t of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (N.A.C. Dec. 3, 2001), *aff’d*, Exchange Act Release No. No. 47335 (Feb. 10, 2003).

¹¹ *Paul C. Kettler*, 51 S.E.C. 30, 32 (1992) (“Excessive trading represents an unsuitable frequency of trading and violates NASD suitability standards.”).

cases where the representative controls the account—as would be consistent with the customer’s financial situation and needs.”¹² “[E]xcessive trading occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer’s objectives and financial situation.”¹³ Although there is no single test for what constitutes excessive activity, factors such as turnover rate, the cost-to-equity ratio, and “in and out” trading, are measures that are commonly used.¹⁴

Here, based on the limited record regarding the trading activity and losses in RM’s accounts and the lack of specificity as to the basis of the Staff’s calculations, the Hearing Officer was unable to conclude that the level of trading in the accounts was excessive.¹⁵ For that reason and because the Hearing Officer has determined to bar Respondent for his failure to appear for on-the-record testimony in violation of Rules 8210 and 2110, as discussed below, she has determined to dismiss the first cause of action of the Complaint that charges that Respondent engaged in unsuitable and excessive trading in customer RM’s accounts, in

¹² *Dep’t of Enforcement v. O’Hare*, No. C9B030045, 2005 NASD Discip. LEXIS 39, at *12 (Apr. 21, 2005) (citation omitted).

¹³ *Id.* at *15.

¹⁴ *Dep’t of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *34 (July 30, 2009).

¹⁵ For example, the record indicates that Respondent made the majority, if not all, of the recommendations in the accounts. However, there is no indication that Enforcement excluded transactions that may not have been recommended and there is no indication that any adjustments that have been made to the cost to equity or turnover ratio calculations. Complaint ¶ 21; Shetty Decl. ¶ 30. The record also references only purchases, but not sales in the accounts, leaving the Hearing Officer to speculate that sales occurred based upon Staff’s conclusions as to cost to equity ratios and turnover rates, which exceeded the equity in the account. The record also indicates that certain positions were transferred from the customer’s individual account, but it is not clear whether these transfers were taken into account in the Staff’s calculations. Complaint ¶ 17; Shetty Decl. ¶ 26. The record also does not include ending balances in the customer accounts that might have clarified the Staff’s loss calculations. Further, while the record indicates that certain positions were liquidated at the inception of the account, it does not provide the detail necessary to determine whether these opening transactions were unreasonable or unsuitable, or whether they should have been excluded from the Staff’s calculations. Finally, although the record indicates that Respondent engaged in trading on margin, it is unclear whether margin charges were included in the cost component of Staff’s calculations. *See Medeck*, 2009 FINRA Discip. LEXIS at *42 (July 30, 2009)(discussing factors to be considered in determining whether excessive trading has occurred).

violation of Rules 2310 and 2110 and IM-2310, rather than seeking clarification from the Staff on these issues.

2. Failure to Timely Disclose Felony Charge on Form U4

The second cause of action of the Complaint alleges that Respondent violated Rule 2110 and IM-1000-1 by failing to timely disclose on his Form U4 that he had been charged with felony assault in a domestic dispute.

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on a Form U4. “[T]he candor and forthrightness of applicants is critical to the effectiveness of the screening process” because the Form U4 is used by FINRA and other self-regulatory organizations, state regulators, and broker-dealers to determine and monitor the fitness of securities professionals.¹⁶ A Form U4 that is inaccurate or incomplete so as to be misleading may be deemed to be conduct inconsistent with just and equitable principles of trade in violation of Rule 2110.¹⁷

Here, on December 6, 2007, Respondent was arrested and charged for felony assault in Nassau County, New York, for violating a November 2007 protection order. He was therefore required, by January 7, 2008, to amend his Form U4 to answer “yes” to Question 14A(1)(b), which asks “[h]ave you ever been charged with any felony?” However, Respondent failed to timely do so. He also did not do so when he completed initial Forms U4 upon joining two subsequent member firms on March 13 and May 6, 2008, respectively.

¹⁶ *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at **19-20 (Jan. 14, 2005), *aff'd*, 179 Fed. Appx. 702 (D.C. Cir. 2006).

¹⁷ See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *petition for rev. denied*, 105 F.3d 664 (9th Cir. 1996).

Based on the allegations in the Complaint, the Hearing Officer finds that Respondent violated Rule 2110 and IM-1000-1 by failing to timely disclose on his Form U4 that he had been charged with felony assault in a domestic dispute.¹⁸

3. Willful Failure to Disclose Arbitration on Form U4

The third cause of action of the Complaint alleges that Respondent again violated Rule 2110 and IM-1000-1 by failing to disclose in his Form U4 that he was a respondent in a customer arbitration proceeding involving a charge that he engaged in unsuitable trading in a customer account. Enforcement alleges that Respondent's failure to disclose was willful.

On January 17, 2008, customers RL and SL filed an arbitration claim with FINRA's Office of Dispute Resolution against Respondent, and others, which alleged that Respondent engaged in unsuitable trading and churning in their account, resulting in damages of at least \$114,000. FINRA's Office of Dispute Resolution mailed this arbitration claim to Respondent on January 25, 2008.

Respondent was required to amend his Form U4 to reflect the arbitration claim within 30 days after learning of it.¹⁹ The record does not show clearly when Respondent first received actual notice of the arbitration claim. However, the record is clear that he was aware of the claim when he filed his Motion for a More Definite Statement in that proceeding on March 12, 2008.

Respondent completed an initial Form U4 when he was hired at Turner on March 13, 2008, just one day after he filed his motion in the arbitration proceeding. He was therefore required to answer "yes" to Form U4 Question 14I(1), which asks "[h]ave you ever been

¹⁸ Enforcement did not allege that Respondent acted willfully with respect to his failure to disclose the felony charge on his Form U4. Therefore, the Hearing Officer did not find that he was subject to statutory disqualification, pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act").

¹⁹ *FINRA By-Laws, Article V, § 2.*

named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which (a) is still pending, or; (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or; (c) was settled for an amount of \$10,000 or more?" However, he did not provide a "yes" answer to this question. Nor did he provide a "yes" answer on four subsequent Form U4 amendments filed with Turner. In addition, Respondent provided the same false answer when he filed an initial Form U4 with First Midwest on May 6, 2008. Ultimately, First Midwest disclosed the arbitration claim on the Form U5 filed on June 12, 2008, in connection with Respondent's termination.

Based on the allegations in the Complaint, the Hearing Officer finds that Respondent violated Rule 2110 and IM-1000-1 by failing to disclose on his Form U4 that he was a respondent in a customer arbitration proceeding involving a charge that he engaged in unsuitable trading.

The Hearing Officer further finds that Respondent is subject to statutory disqualification because his failure to disclose the arbitration claim was willful. Section 3(a)(39)(F) of the Exchange Act of states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact ... which is required to be stated" in such application is "statutorily disqualified" from participating in the securities industry.²⁰ The uncontested allegations in the Complaint and the evidence submitted by Enforcement in support of the Motion for Entry of Default Decision are sufficient to establish that Respondent acted "willfully" in failing to disclose "material" information on his Form U4.

²⁰ See also Article III, § 4 of the FINRA By-Laws.

The timing of his initial failure to disclose the arbitration claim, occurring just one day after he filed a motion in that proceeding, supports the conclusion that Respondent deliberately elected not to report it on his Form U4. Moreover, his failure to make the disclosure in numerous subsequent Form U4 amendments and two initial Forms U4, only underscores that his failure was deliberate. This is sufficient to support the determination that he acted “willfully.” A finding of willfulness does not require that Respondent intended to violate Rule 2110.²¹

In addition, the evidence supports the finding that the omitted information was material for purposes of disclosure on Respondent’s Form U4. “Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material.”²² In this case, the Hearing Officer concludes that a reasonable employer, customer, or regulator would have viewed the arbitration claim alleging that Respondent engaged in unsuitable trading as material.²³ Respondent is therefore statutorily disqualified from participating in the securities industry.

4. Failure to Appear for Testimony

The fourth cause of action alleges that Respondent violated Rules 8210 and 2110 by failing to appear for an OTR. Specifically, on May 21, 2008, Respondent appeared and testified at FINRA’s offices at a scheduled OTR. The OTR was not completed on that day. Accordingly, by letter dated May 23, 2008, FINRA Staff requested that Respondent appear

²¹ *Dep’t of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *18 (N.A.C. Dec. 12, 2008).

²² *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (N.A.C. Apr. 27, 2004) (citing *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965)).

²³ See, e.g., *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at **34-35 (N.A.C. July 27, 2007), *aff’d*, *Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *petition for review denied*, *Toth v. SEC*, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

for a continuation of his OTR in FINRA's offices on June 6, 2008. In a letter dated June 5, 2008, Respondent's counsel informed FINRA Staff that Respondent would not be appearing for the OTR on June 6, 2008, but he proposed rescheduling it for a later date. In response, by letter dated June 11, 2008, FINRA Staff requested that Respondent appear for a continuation of his OTR in FINRA's offices on July 9, 2008.²⁴ On June 17, 2008, Respondent's counsel informed FINRA Staff that Respondent would not attend the OTR as scheduled. His counsel also stated that Respondent understood the ramifications of his failure to comply with a Rule 8210 request for testimony.²⁵ Respondent did not appear for testimony on July 9, 2008. To date, he has not provided the requested testimony.

The Hearing Officer finds that the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

III. Sanctions

A. Failure to Appear for Testimony

The FINRA Sanction Guidelines ("Guidelines") recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²⁶ Here, Respondent failed to appear for continued testimony in connection with the Staff's investigation, despite multiple requests by FINRA Staff. The fact that he responded to Enforcement's initial request is not sufficiently mitigating to warrant a sanction other than a bar. Nor are there other mitigating factors that would justify a less severe sanction.

²⁴ Shetty Decl. ¶¶ 44-47; CX-13-14.

²⁵ Shetty Decl. ¶¶ 39-43.

²⁶ FINRA Sanction Guidelines 35 (2007), *available at* www.finra.org/sanctionguidelines.

Accordingly, Respondent is barred from associating with any FINRA member in any capacity for violating Rule 8210 and Rule 2110.

B. Failure to Disclose Criminal Charge and Arbitration on Forms U4

For failing to timely amend a Form U4, the Guidelines recommend a fine of \$2,500 to \$25,000. For filing a false, misleading or inaccurate Form U4, or failing to file necessary amendments to a Form U4, the Guidelines recommend that an individual be fined from \$2,500 to \$50,000, and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.²⁷ Enforcement requests a combined one-year suspension and a \$10,000 fine for Respondent's failure to timely update his Form U4 and to disclose the felony charge and for his willful failure to disclose the arbitration claim.

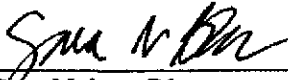
One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue. The Hearing Officer considered that both the felony charge and the suitability arbitration claim are significant events that an employer, customer, or regulator would want to know. Moreover, the Hearing Officer noted the number of times that Respondent filed false Forms U4 that failed to disclose his pending customer arbitration. The Hearing Officer concluded that Respondent's violations of Rule 2110 and IM-1000-1 merit significant sanctions in the range requested by Enforcement. However, in light of the bar for his failure to appear for an OTR, no additional sanctions will be imposed for these violations.

IV. Order

Respondent failed to timely disclose on Forms U4 that he had been charged with a felony, and willfully failed to disclose on Forms U4 that he was a respondent

²⁷ FINRA Sanction Guidelines 73-74.

in an arbitration claim involving allegations of unsuitable trading in a customer account, in violation of Rule 2110 and IM-1000-1. Respondent also failed to appear for testimony, in violation of Rules 8210 and 2110. Respondent is barred for failing to appear for testimony. In light of the bar, no additional sanction is imposed for Respondent's other violations. The charge that Respondent engaged in excessive and unsuitable trading in a customer's accounts in violation of Rules 2310 and 2110 and IM-2310 is dismissed. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Sara Nelson Bloom
Hearing Officer

Copies to: Alex Amner Borukhov (*via overnight and first-class mail*)
Vaishali S. Shetty, Esq. (*via first-class & electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**ALEX AMNER BORUKHOV
(CRD No. 4389429),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2008012444301**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about October 2007 through in or about January 2008, while registered with FINRA through a member firm, Borukhov engaged in a pattern of trading activity in two customer accounts of RM that was excessive in light of the customer's financial objective, financial situation, and needs. By reason of the foregoing, Borukhov violated NASD Conduct Rules 2310, 2110, and Interpretive Material ("IM")-2310-2.
2. On or about December 7, 2007, while registered with FINRA through the same member firm, Borukhov was charged with a felony in a domestic dispute. Borukhov failed to disclose the felony on his Uniform Application for Securities Industry Registration or Transfer (Form U4) until May 6, 2008. Borukhov had an obligation to amend and disclose the charge on his Form U4 within thirty days of it occurring.

By reason of the foregoing, Borukhov violated NASD Conduct Rule 2110 and IM-1000-1.

3. On or about January 17, 2008, while registered with FINRA through the same member firm, Borukhov was served with a statement of claim in which he was named as a respondent in an investment-related, consumer-initiated arbitration filed by a married couple. Borukhov had an obligation to amend his Form U4 within thirty days of his receipt of the statement of claim to disclose the arbitration. Borukhov, however, willfully failed to amend his Form U4 to disclose the arbitration. By reason of the foregoing, Borukhov violated NASD Conduct Rule 2110 and IM-1000-1.
4. After concluding the first day of Borukhov's on-the-record ("OTR") interview on May 21, 2008, FINRA staff scheduled a second day continuation of the OTR, pursuant to and in accordance with NASD Procedural Rule 8210. Borukhov, through his counsel, advised the staff that Borukhov would not appear for the OTR. By reason of the foregoing, Borukhov violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

5. Borukhov first became registered with FINRA as a General Securities Representative (GSR) on or about October 22, 2001 through a FINRA member firm.
6. Borukhov was registered as a GSR with Aura Financial Services, Inc. from on or about October 11, 2007 through February 14, 2008.
7. From on or about March 13, 2008 through on or about March 31, 2008, Borukhov was registered as a GSR with member firm, J.P. Turner & Company, LLC. From on

or about May 6, 2008 through on or about June 3, 2008, Borukhov was registered as a GSR with member firm, First Midwest Securities, Inc. ("First Midwest").

8. On June 12, 2008, First Midwest filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Borukhov.
9. Borukhov is not currently associated with a FINRA member firm. However, FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

EXCESSIVE TRADING AND UNSUITABILITY (NASD CONDUCT RULES 2310 AND 2110 AND IM-2310-2)

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. From October 2007 through January 2008, the trading activity in RM's accounts was unsuitable and excessive in size and frequency in view of his financial situation and needs.
12. In or around October 2007, Borukhov cold-called RM, soliciting him to open an account with Borukhov. RM opened two accounts, one an individual account ("Individual Account") and, the second, a trust account ("Trust Account").
13. At the time that he opened the accounts, RM was 78 years old and retired. His annual income consisted of social security payments and rent from four cell phone towers located on top of a vacant building that he owns. His income was \$42,091 in 2005 and \$89,331 in 2006. RM was interested in conservative growth.

14. RM transferred \$118,895.14 from a prior account into the Individual Account and transferred \$176,425.84 from a prior account into the Trust Account. Both accounts were traded on margin.
15. During the period from October 2007 through January 2008, Borukhov executed approximately 21 purchases in the Individual Account. There were total purchases of \$1,921,591.68 in the account with an average monthly equity of \$196,696.17.
16. During the period from October 2007 through January 2008, Borukhov executed approximately 9 purchases in the Trust Account. There were total purchases of \$698,960.99 in the account with an average monthly equity of \$127,712.67.
17. As a result of Borukhov's trading in the Individual Account, the account had losses of \$57,970.73. The commissions charged to the account totaled \$144,403.26, which included commissions of approximately \$65,171.98 charged to positions liquidated upon transfer to the Individual Account as well as positions that were later purchased by Borukhov and ultimately transferred out of RM's account.
18. As a result of Borukhov's trading in the Trust Account, the account had losses totalling \$72,260.61, of which approximately \$38,885.55 consisted of commissions charged to the account.
19. In the Individual Account, the activity resulted in a cost-to-equity ratio of approximately 77.15%, or 231.44% annualized. The commission-to-equity ratio was approximately 73.41%, or 220.24% annualized. In other words, the Individual Account would have had to achieve a 73.41% return during the approximately four

month period in order to break even based solely on commissions charged to the account. The turnover rate was approximately 9.77, annualized at 29.31.

20. In the Trust Account, the activity resulted in a cost-to-equity ratio of approximately 32.55%, or 97.64% annualized. The commission-to-equity ratio was approximately 30.45%, or 91.34% annualized. In other words, the Trust Account would have had to achieve a 30.45% return during the approximately four month period in order to break even based solely on commissions charged to the account. The turnover rate was approximately 5.48, annualized at 16.42.

21. Borukhov made the majority, if not all, of the recommendations for both accounts.

RM relied upon and routinely followed Borukhov's recommendations for the trades in his accounts.

22. The trading strategy employed by Borukhov was not appropriate for RM. The trading activity was excessive in size and frequency in view of RM's financial circumstances and investment objectives and, in fact, one of the accounts included IRA funds.

By reason of the foregoing, Borukhov violated NASD Conduct Rules 2310, 2110 and IM-2310-2.

**SECOND CAUSE OF ACTION
FAILURE TO TIMELY AMEND FORM U4
(NASD CONDUCT RULE 2110 AND IM-1000-1)**

23. The Department realleges and incorporates by reference paragraphs 1 through 22 above.

24. On December 6, 2007, Borukhov was arrested for assault in Nassau County in New York State in violation of an Order of Protection that had been placed against him in November 2007. He was charged with a Class E Felony on December 7, 2007.
25. Question 14A(1)(b) on the Form U4 asks respondents "[h]ave you ever been charged with any felony?"
26. Borukhov was required by Article V, Section 2 of the FINRA By-Laws to amend his Form U4 on or before January 7, 2008, to provide an affirmative answer to Question 14(A)(1)(b) and to disclose the felony charge.
27. Borukhov claimed that he was advised by his matrimonial counsel that he did not need to disclose the felony on his employment papers.
28. Borukhov failed to disclose the felony to the member firm he was registered with at the time ("Firm 1") prior to terminating from the firm on February 14, 2008. He also did not disclose the felony on his initial Form U4 submitted upon hire at the next firm he became registered with ("Firm 2") on March 13, 2008, nor did he disclose it on four subsequent amended Forms U4 filed with Firm 2. Borukhov first disclosed the felony charge on his initial Form U4 filed with a subsequent member firm he became registered with on May 6, 2008 ("Firm 3").

By reason of the foregoing, Borukhov violated NASD Conduct Rule 2110 and IM-1000-1.

**THIRD CAUSE OF ACTION
WILLFUL FAILURE TO AMEND FORM U4
(NASD CONDUCT RULE 2110 AND IM-1000-1)**

29. The Department realleges and incorporates by reference paragraphs 1 through 28 above.

30. On January 17, 2008, customers RL and SL filed a Statement of Claim with FINRA's Office of Dispute Resolution, initiating an arbitration against a number of respondents, including Borukhov. The Statement of Claim alleged that Borukhov engaged in unsuitable trading and churned RL and SL's account at a prior member firm where Borukhov was registered. Along with disgorgement of commissions and fees, the customers sought compensatory damages of at least \$114,000.
31. FINRA's Office of Dispute Resolution mailed the Statement of Claim to respondents of the arbitration, including Borukhov, accompanied by a letter, dated January 25, 2008. On March 12, 2008, Borukhov filed a Motion for a More Definite Statement in the arbitration proceeding, in which he included references to the Statement of Claim.
32. Question 14I(1) of the Form U4 asks "[h]ave you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which: (a) is still pending, or; (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or; (c) was settled for an amount of \$10,000 or more?"
33. Borukhov was required by Article V, Section 2 of the FINRA By-Laws to amend his Form U4 on or before February 24, 2008, to provide an affirmative answer to Question 14(I)(1) and to disclose the arbitration proceeding, which was a material fact.
34. Borukhov failed to disclose the arbitration to Firm 1 prior to terminating from the firm on February 14, 2008. He also did not disclose the arbitration on his initial Form U4 submitted upon hire at Firm 2 on March 13, 2008, nor did he disclose the

arbitration on four subsequent amended Forms U4 filed with Firm 2. Borukhov failed to disclose the arbitration charge on his initial Form U4 filed with Firm 3 on May 6, 2008 or a subsequent amended Form U4 submitted to Firm 3 on May 14, 2008.

35. Borukhov was on notice of the arbitration proceeding beginning on January 25, 2008.

Over the next six months, he willfully failed to disclose the arbitration, a material fact, to each of his three employer firms.

36. Borukhov has not disclosed the arbitration on his Form U4. On June 12, 2008, Firm 3 disclosed the arbitration proceeding on the Uniform Termination Notice for Securities Industry Registration (Form U5) it filed in connection with Borukhov's termination that firm.

By reason of the foregoing, Borukhov violated NASD Conduct Rule 2110 and IM-1000-1.

**FOURTH CAUSE OF ACTION
FAILURE TO APPEAR FOR ON-THE-RECORD
(NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110)**

37. The Department realleges and incorporates by reference paragraphs 1 through 36 above.

38. On May 21, 2008, Borukhov appeared and testified at FINRA's District 10 Long Island office at a scheduled on-the-record ("OTR") interview. The OTR was not completed on that day and a subsequent date to continue the OTR was agreed upon by Borukhov, through his attorney.

39. By letter, dated May 23, 2008, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Borukhov appear for an OTR at FINRA's Long Island District 10 Office on June 6, 2008.
40. In a letter, dated June 5, 2008, Borukhov's counsel informed FINRA staff that Borukhov would not be appearing before FINRA staff for his scheduled OTR on June 6, 2008. Counsel also proposed rescheduling the matter with FINRA staff for a later date.
41. By letter, dated June 11, 2008, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Borukhov appear for an OTR at FINRA's Long Island District 10 Office on July 9, 2008.
42. On June 17, 2008, counsel for Borukhov left a voicemail message on a FINRA staff member's telephone stating that Borukhov would not be showing up for the OTR and understood the ramifications of his failure to do so pursuant to NASD Procedural Rule 8210.
43. Borukhov did not appear as requested on July 9, 2008, and to date, has not provided the requested testimony.

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

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.

- B. order that Borukhov bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Borukhov's conduct, as alleged in the Third Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

Date: April 14, 2009

FINRA DEPARTMENT OF ENFORCEMENT



Vaishali S. Shetty, Senior Regional Counsel
David Jaffe, Regional Chief Counsel
Jon S. Batterman, Deputy Regional Chief Counsel
FINRA Department of Enforcement
Two Jericho Plaza, 2nd Floor
Jericho, New York 11753
(516) 949-4237; Fax No. (516) 949-4201
vaishali.shetty@finra.org