

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES J.F. BUCHANAN
(CRD No. 2452897),

Respondent.

Disciplinary Proceeding
No. 2008013001701

Hearing Officer – MC

DEFAULT DECISION

November 23, 2009

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) misusing customer funds, in violation of Conduct Rules 2110 and 2330; (ii) misusing non-customer funds, in violation of Conduct Rule 2110; (iii) selling away from his member firm employer, in violation of Conduct Rules 2110 and 3040; and (iv) failing to respond in any manner to requests for information issued pursuant to Procedural Rule 8210, in violation of Conduct Rules 2110, 2010, and Procedural Rule 8210.

Appearances

Heather Hawker, Senior Regional Counsel, Denver, CO, for the
Department of Enforcement.

No appearance by or for James J.F. Buchanan.

DECISION

I. Introduction

On June 10, 2009, the Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed the attached Complaint in this disciplinary proceeding against Respondent James J.F. Buchanan ("Buchanan"). The Complaint contains six Causes of Action. The Complaint describes misuse of more than one million dollars belonging to over 20 investors.

The First and Second Causes of Action allege that Buchanan violated Conduct Rules 2110¹ and 2330 when he (i) misused funds he solicited from customers of his FINRA member firm employers, (ii) falsely represented that he would invest the funds for the benefit of the customers, and (iii) provided the customers with fictitious documents falsely confirming investments he had not made on their behalf. The Third Cause of Action alleges that Buchanan violated Conduct Rule 2110 when he solicited funds from investors who were not customers of his member firm employers, falsely represented he would invest the funds for their benefit, and failed to do so. The Fourth and Fifth Causes of Action allege that Buchanan violated Conduct Rules 2110 and 3040 when he engaged in private securities transactions by soliciting funds from investors who were not customers of his member firm employers without providing the required written notice to his firms. The Sixth Cause of Action alleges that Buchanan violated FINRA Conduct Rule 2010, NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to provide information requested by FINRA staff pursuant to Procedural Rule 8210.

On September 18, 2009, Enforcement filed a Motion for Default Decision (“Default Motion”) supported by the Declaration of Heather Hawker and five exhibits.²

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 Default Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Buchanan’s misconduct as alleged in the First through Fifth Causes of Action of the Complaint, and on the combination of NASD Conduct Rules and new FINRA Conduct Rules in effect at the time of Buchanan’s misconduct as alleged in the Sixth Cause of Action of the Complaint. The applicable rules are available at www.finra.org/rules.

² Enforcement’s exhibits will be referred to as “CX-” with the appropriate exhibit and page numbers. References in this Default Decision to the Declaration will be referred to as “Decl.” or “Hawker Declaration” with citation to specific paragraphs.

For the reasons set forth below, the Default Motion is granted.³

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Buchanan was associated with FINRA member firm Ameriprise Financial Services, Inc. ("Ameriprise"), from February 2, 1994, until he voluntarily left on January 23, 2006.⁴ He was registered at Ameriprise as a General Securities Representative from May 19, 2004, until January 25, 2006.⁵

From June 1, 2006, through March 21, 2008, the date he was discharged, Buchanan was associated with LPL Financial Corporation ("LPL"). Buchanan was registered as a General Securities Representative with LPL from June 1, 2006, to April 11, 2008, the date on which a Uniform Termination Notice for Securities Industry Registration ("Form U5") was filed.⁶ Buchanan has not been associated with a FINRA member firm since his termination from LPL.

Because his misconduct occurred while he was subject to FINRA's jurisdiction, and because the Complaint was filed within two years of his last registration with a member firm, Buchanan remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Hawker Declaration, and the exhibits filed by Enforcement.

⁴ CX-1. Ameriprise was the successor firm to former FINRA member firm American Express Financial Advisors Inc., where Buchanan had also been registered as a General Securities Representative.

⁵ CX-1.

⁶ CX-2.

B. Buchanan's Default

Enforcement served Buchanan with the Complaint and First Notice of Complaint by first-class and certified mail at his CRD address on June 5, 2009.⁷ On July 6, 2009, the certified mailing of the Complaint and First Notice of Complaint was returned to FINRA with a notification of a forwarding address in Dewey, AZ ("Forwarding Address"). The first-class mailing was not returned.⁸ Buchanan failed to respond to the Complaint.⁹

On July 9, 2009, Enforcement served Buchanan with the Complaint and Second Notice of Complaint at the Forwarding Address by express and first-class mail, and at the CRD address by certified and first-class mail.¹⁰ Both the certified mailing and the first-class mailing of the Complaint and Second Notice of Complaint served at Buchanan's CRD address were returned to FINRA with the notation "attempted not known." Neither the express nor the first-class mailing served on Buchanan at the Forwarding Address was returned to FINRA.¹¹

Enforcement complied with the requirements of Procedural Rule 9134 by mailing the Complaint and Notices of Complaint to Buchanan's CRD address. Buchanan defaulted by failing to file an Answer to the Complaint.¹² Accordingly, the allegations in

⁷ Decl., ¶ 9.

⁸ *Id.*, ¶ 11.

⁹ *Id.*, ¶ 10.

¹⁰ *Id.*, ¶ 12.

¹¹ *Id.*, ¶ 14.

¹² *Dep't of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (NAC 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)).

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

C. Violations

1. Background

In May 2008, a Maricopa County, AZ, grand jury indicted Buchanan for theft and fraud. FINRA staff initiated its investigation of Buchanan after Ameriprise and LPL made Form U5 filings disclosing Buchanan's alleged misconduct. FINRA staff learned that over 20 investors paid over one million dollars to Buchanan believing he was investing their funds through Ameriprise or LPL. Buchanan did not invest the funds on behalf of the investors. The investors believed, based on Buchanan's false representations, that they were investing in debentures, warrants, and investor certificates. Buchanan sent the investors confirmations and account statements that were fabricated. In fact, the companies that supposedly received investor funds informed investors that no investments were made on their behalf. Ameriprise and LPL did not authorize the solicitations and none of the investments Buchanan claimed to be making were effected through them.¹³

2. Buchanan Misused Customer Funds as Alleged in the First, Second, and Third Causes of Action of the Complaint

a. First Cause of Action: Buchanan Misused LPL Customer Funds

On or about November 3, 2006, while he was associated with LPL, Buchanan solicited LPL customer BS to purchase an "investor certificate." Customer BS agreed to Buchanan's recommendation and wired \$250,000 to Buchanan, which was deposited into

¹³ Decl., ¶¶ 17-19.

his Bank of America account.¹⁴ Based upon Buchanan's representations, customer BS believed the funds would be used to purchase an investor certificate through LPL. Buchanan provided customer BS with a document with the LPL logo, contact information, and identifying Buchanan as the financial advisor, that appeared to be an LPL confirmation of the purchase by customer BS of a six-month investor certificate, with an interest rate of seven percent, for \$250,000.¹⁵ The document, however, was false: it was not issued by or on behalf of LPL, and was not a record of a transaction effected through the firm. Customer BS's funds were not used to purchase an investor certificate or placed in any other investment as the customer intended and believed; consequently, Buchanan misused LPL customer funds in violation of NASD Conduct Rules 2110 and 2330.¹⁶

b. Second Cause of Action: Buchanan Misused Ameriprise Customer Funds

Beginning in August 2001, while he was associated with Ameriprise, Buchanan solicited a number of Ameriprise customers to purchase investor certificates. As a result of these solicitations, Ameriprise customers EO, RSR, WL and ML, and RW, turned over to Buchanan a total of more than \$583,000 to be used to invest on their behalf through Ameriprise. Buchanan sent the customers fraudulent written confirmations on documents displaying the Ameriprise logo and the firm's contact information that made it appear their funds were used to make the purchases Buchanan recommended. The confirmations were not issued by or on behalf of Ameriprise and Buchanan did not use the funds to

¹⁴ Decl., ¶ 22.

¹⁵ *Id.*, ¶ 23.

¹⁶ *Id.*, ¶ 24.

purchase investor certificates or to make any other investments through Ameriprise on behalf of the customers.¹⁷ Instead, Buchanan misused Ameriprise customer funds, in violation of NASD Conduct Rules 2110 and 2330.

c. Third Cause of Action: Buchanan Misused Non-Customer Funds

In 2006 and 2007, while associated with LPL, Buchanan solicited funds from non-customer investors WA and JA, the I Family Trust, FS, and RW. These investors gave Buchanan more than \$570,000 to purchase investor certificates through LPL. Buchanan provided these investors with documents he falsely represented were confirmations of their purchases. The documents displayed the firm name of LPL and contact information, identified Buchanan as the investors' financial advisor, and in most instances described 12-month investor certificates earning the investors interest at 8.5 percent. In reality, however, Buchanan did not use the funds to purchase investor certificates or to make any other investments through LPL on behalf of the investors.¹⁸

In addition, Buchanan solicited two other non-customer investors, the PSL Trust and the BHL Trust, to purchase warrants in an energy company, Clean Coal Technologies, Inc. ("CCTI") through LPL. Each trust gave Buchanan a cashier's check for \$60,000 to purchase CCTI warrants. Buchanan provided to each investor a document he represented to be a confirmation of the purchase of CCTI 12-month warrants. The confirmations were false; Buchanan purchased no CCTI warrants and made no investments on behalf of either trust with the funds.¹⁹

¹⁷ Decl., ¶¶ 26-32.

¹⁸ *Id.*, ¶¶ 34-38, 42, 43.

¹⁹ *Id.*, ¶¶ 19, 39-41.

By this conduct, Buchanan violated NASD Conduct Rule 2110 by misusing the funds of investors who were not firm customers.

3. Buchanan Engaged in “Selling Away” as Alleged in the Fourth and Fifth Causes of Action of the Complaint

The procedures in effect at both LPL and Ameriprise, consistent with the requirements of Conduct Rule 3040, generally prohibited representatives from “selling away” by engaging in private securities transactions, required representatives to sell only products that the firms sold or authorized them to sell, and required representatives to provide prior written notice if they wished to solicit investments in products that were not sold or authorized by the firms. In this case, while associated with LPL and Ameriprise, Buchanan solicited customers to purchase securities not offered through the firms in violation of the firms’ policies prohibiting him from selling unauthorized products, without providing the firms with prior written notice of the proposed transactions.

Because Buchanan did not make the purchases for which he solicited funds, the precise nature of the type of security he was offering to purchase is unknown. Buchanan’s engagement in these private securities solicitations nonetheless violated NASD Conduct Rules 2110 and 3040. This is because “[i]t is the representations made by the promoters, not their actual conduct, that determine whether an interest is an investment contract (or other security).”²⁰ For example, the anti-fraud provisions of the securities laws apply even when a broker “sells” nonexistent securities.²¹

²⁰ *Joseph F. Reese*, 1999 SEC LEXIS 917, *17 (May 6, 1999), citing *SEC v. Lauer*, 52 F.3d 667, 670 (7th Cir. 1995), and *SEC v. Gallard*, 1997 U.S. Dist. LEXIS 19677, *6-*8 (S.D.N.Y. 1997).

²¹ *First Nat’l Bank v. Estate of Russell*, 657 F.2d 668, 673 n. 16 (5th Cir. 1981), citing *Lincoln Nat’l Bank v. Herber*, 604 F.2d 1038, 1040 (7th Cir. 1979) and 1 A. Bromberg, *Securities Law*, at 316 (1977).

Regardless of what he did with investors' money, Buchanan's representations that he was purchasing investment certificates, debentures, warrants or interests in an energy company meant that he was engaging in private securities transactions within the scope of Conduct Rule 3040.

a. Fourth Cause of Action: Buchanan Engaged in Unauthorized Solicitations to Purchase Securities While Registered with Ameriprise

Between 2003 and 2005, while he was associated with Ameriprise, Buchanan solicited investors to purchase securities in the form of "debentures with conversion privileges." Buchanan gave the investors documents that he represented showed their ownership of debentures issued by an entity known as Consolidated Energy, Inc. ("CEI"), but in fact Buchanan purchased no CEI debentures for the investors. Ameriprise did not purchase, sell or authorize its representatives to purchase or sell CEI debentures. Thus, Buchanan's solicitations to investors to purchase CEI debentures were not authorized by Ameriprise. Buchanan did not, as he was required to do, provide written notice to Ameriprise to inform the firm of his intention to solicit investments in CEI debentures.²² By this conduct, Buchanan violated NASD Conduct Rules 2110 and 3040.

b. Fifth Cause of Action: Buchanan Engaged in Unauthorized Solicitations to Purchase Securities While Registered with LPL

From June 2006 through March 2008, while he was associated with LPL, Buchanan solicited the PSL Trust and the BLH Trust to purchase CCTI warrants as described above. Although he provided documentation to the trusts purporting to evidence their ownership of the securities, Buchanan did not purchase CCTI securities for

²² Decl., ¶¶ 45-46.

the trusts. LPL did not authorize its representatives to purchase or sell CCTI warrants. Buchanan's solicitations to the two trusts to purchase CCTI warrants were therefore unauthorized and Buchanan was required to provide LPL prior written notification of his intention to solicit the investments. Failing to do so, Buchanan violated NASD Conduct Rules 2110 and 3040.²³

4. Buchanan Failed to Respond to Requests for Information as Alleged in the Sixth Cause of Action of the Complaint

On September 26, 2008, FINRA staff sent Buchanan a written request, pursuant to Procedural Rule 8210, for information related to the investigation into allegations that Buchanan misused investor funds. The staff sent the request by first-class and certified mail to Buchanan's CRD address.²⁴ The first-class mailing was returned to the staff bearing the stamp "Return to Sender – Attempted not Known – Unable to Forward." The return receipt for the certified mailing, however, was returned to the staff with the signature "James Buchanan,"²⁵ indicating that Buchanan received actual notice of the September 26, 2008, request.

Because Buchanan failed to provide the requested information, on March 18, 2009, FINRA staff sent a second request for information pursuant to Procedural Rule 8210 to Buchanan's CRD address by first-class and certified mail. The staff also sent the request to an alternative address obtained during its review of documents related to the criminal proceeding being brought against Buchanan by Arizona authorities.²⁶ The first-

²³ Decl., ¶¶ 47-48.

²⁴ *Id.*, ¶¶ 50-51.

²⁵ *Id.*, ¶ 52.

²⁶ *Id.*, ¶¶ 53-54.

class mailing to Buchanan's CRD address was not returned. The receipts for the certified mailings, however, were returned with the signature "Lori Buchanan," reflecting delivery of the certified mailings at both the CRD address and the alternative address. The first-class mailing to the alternative address was not returned.²⁷

On March 31, 2009, a third request for information was sent pursuant to Procedural Rule 8210 to Buchanan by first-class and certified mail to both the CRD address and the alternative address. The return receipt for the certified mailing sent to the alternative address and the CRD address were returned to the staff with the signature "Lori A. Buchanan" in the space acknowledging delivery of the certified mailings.²⁸

Buchanan's failure to respond to the request sent to him pursuant to Procedural Rule 8210 on September 26, 2008, violated NASD Conduct Rule 2110 and Procedural Rule 8210. By failing to respond in any way to the requests sent to him on March 18 and March 31, 2009, Buchanan violated FINRA Conduct Rule 2010 and Procedural Rule 8210.

III. SANCTIONS

For misuse of customer funds, the Sanction Guidelines recommend a bar if there are no mitigating circumstances present.²⁹ There are none in this case. Accordingly, a bar from associating with any FINRA member firm in any capacity is the appropriate sanction for Buchanan's misuse of the funds of LPL and Ameriprise customers, in violation of NASD Conduct Rules 2110 and 3110, as alleged in the First and Second

²⁷ Decl., ¶ 55.

²⁸ *Id.*, ¶¶ 56-57.

²⁹ *FINRA Sanction Guidelines*, 38 (2007).

Causes of Action of the Complaint. Because the misconduct by Buchanan in misusing non-customer funds was essentially identical to his misconduct in misusing customer funds, a bar is also appropriate for his violations of NASD Conduct Rule 2110, as alleged in the Third Cause of Action of the Complaint.

For selling away by engaging in unauthorized private securities transactions, the Sanction Guidelines recommend a fine of \$5,000 to \$50,000 and, in egregious cases, consideration of imposition of a suspension or a bar in any or all capacities.³⁰ The circumstances in this case are egregious. By making unauthorized solicitations to investors to purchase securities, and failing to purchase them, Buchanan engaged in fraud. The appropriate sanction for such egregious misconduct, in violation of NASD Conduct Rules 2110 and 3040, is a bar.

The Sanction Guidelines recommend a bar as the standard sanction, in the absence of mitigation, for failing to respond in any manner to requests for information issued pursuant to Procedural Rule 8210.³¹ In this instance, there is no discernible mitigation. A bar is, therefore, the appropriate sanction for Buchanan's violations of NASD Conduct Rule 2110 and Procedural Rule 8210, and FINRA Conduct Rule 2010, as alleged in the Sixth Cause of Action of the Complaint.

IV. ORDER

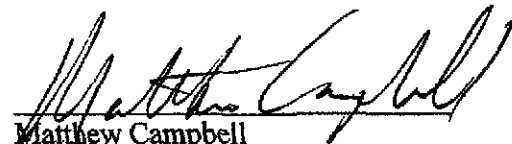
Respondent James J.F. Buchanan is barred from association with any FINRA member firm in all capacities for: (i) misusing customer funds, in violation of Conduct Rules 2110 and 2330; (ii) misusing non-customer funds, in violation of Conduct Rule 2110; (iii) selling away from his member employer firm, in violation of Conduct Rules

³⁰ *Sanction Guidelines, supra*, 16.

³¹ *Id.*, p. 35.

2110 and 3040; and (iv) failing to respond in any manner to requests for information issued pursuant to Procedural Rule 8210, in violation of Conduct Rules 2110, 2010 and Rule 8210.

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


Matthew Campbell
Hearing Officer

Copies to:

James J.F. Buchanan *(via FedEx and first-class mail)*
Heather Hawker, 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
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 20080130017
Complainant,	)	
	)	
	)	
	)	Hearing Officer:
v.	)	
	)	COMPLAINT
JAMES J.F. BUCHANAN,	)	
CRD No. 2452897,	)	
Respondent.	)	

The Department of Enforcement alleges:

SUMMARY

1. FINRA staff commenced an investigation of Respondent James J.F. Buchanan after receiving notification that Buchanan had been indicted in Arizona on multiple counts of felony theft stemming from his alleged mishandling of investment funds from 2001 through 2008. Over twenty investors claimed to have been victimized by Buchanan, and the investment funds that were allegedly mishandled exceed \$1 million. The investors thought that Buchanan invested their funds through Buchanan's employer firms in such products as debentures, warrants and investor certificates. The firms, however, confirmed that the funds were not invested through them. Confirmations and statements sent to the investors by Buchanan were fictitious. The Complaint sets forth multiple causes of action against Buchanan, including misuse of funds, selling away, and failure to respond to written Rule 8210 requests for information.

RESPONDENT AND JURISDICTION

2. Respondent Buchanan was associated with member firm Ameriprise Financial Services, Inc. (Ameriprise), from on or about February 2, 1994, through on or about January 23, 2006, where he was registered as a General Securities Representative. Buchanan was associated with American Express Financial Advisors, Inc., from on or about February 2, 1994, through on or about May 7, 2004, where he was registered as a General Securities Representative. American Express Financial Advisors is n/k/a Ameriprise.

3. Buchanan was associated with LPL Financial Corp. (LPL), from on or about June 1, 2006, through on or about March 21, 2008, where he was registered as a General Securities Representative.

4. Buchanan was terminated from LPL on March 21, 2008. With respect to his discharge, the firm's Form U5 filing provides: "The firm reviewed documents reflecting investments not held or offered by the firm. The firm reviewed documents reflecting payments by individuals to Mr. Buchanan directly. The firm also reviewed documents reflecting purported investment statements not authorized or approved by the firm."

5. Buchanan has not been associated with a FINRA member since his termination from LPL in March 2008.

6. Pursuant to Article V, § 4 of FINRA's By-Laws, FINRA has jurisdiction to issue this Complaint against Buchanan until March 20, 2010.

FIRST CAUSE OF ACTION
(Misuse of LPL Customer Funds –
NASD Conduct Rules 2330 and 2110)

7. The Department realleges and incorporates by reference paragraph numbers 1 - 6 above.

8. Both LPL and Ameriprise commenced investigations of Buchanan after being contacted and subpoenaed by the Maricopa County, Arizona Sheriff's Department in approximately March 2008. The investigations revealed that Buchanan had solicited and sold investments in the following coal/energy companies: CEI, CCTI, and HEI. Additionally, Buchanan solicited investments in what he characterized as "investor certificates."

9. These "investments" were not authorized or offered by the firms and the investment transactions were not effected through either LPL or Ameriprise.

10. Buchanan distributed to the investors documents that he represented to be transaction confirmations and account statements reflecting their purported purchases and account balances. Payments for the alleged investments were made directly to Buchanan, per Buchanan's instructions.

11. On or about November 3, 2006, Buchanan solicited LPL customer BS to purchase an "investor certificate." BS agreed to make the solicited investment and wired \$250,000.00 to "James J.F. Buchanan, CFP." The funds were deposited into Buchanan's personal bank account.

12. As a result of Buchanan's representations, BS believed that these funds would be applied to purchase an investor certificate through LPL.

13. Buchanan provided BS with a document purporting to be a confirmation indicating that BS had purchased a 6-month investor certificate with an interest rate of 7% for \$250,000.00. The purported confirmation bore the LPL logo and contact information, and identified Buchanan as the financial advisor.

14. The confirmation provided to BS was fictitious, in that it was not issued by or on behalf of LPL and did not represent a transaction effected through the firm.

15. BS's funds were not used to purchase an investor certificate or any other investment through LPL.

16. As more fully described above, BS gave Buchanan \$250,000.00 with the intention that the funds be invested through LPL in an investor certificate for his benefit. Buchanan, however, failed to invest the funds in an investor certificate (or in any investment) through LPL. By failing to invest BS's funds as BS intended, Buchanan made improper use of the customer's funds. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2330 and 2110 by Buchanan.

SECOND CAUSE OF ACTION
(Misuse of Ameriprise Customer Funds –
NASD Conduct Rules 2330 and 2110)

17. The Department realleges and incorporates by reference paragraph numbers 1 - 16 above.

18. During the period from approximately December 1, 2003, through approximately May 15, 2004, Buchanan solicited Ameriprise customer EO to purchase "investor certificates." EO agreed to make the solicited purchases and wrote two checks made payable to "James J.F. Buchanan – CFP." The first check was dated December 17,

2003 and was in the amount of \$60,000.00; the second, dated May 13, 2004, was in the amount of \$57,261.12. EO intended that the funds be used to purchase investor certificates through Ameriprise.

19. Buchanan provided EO with two documents that Buchanan represented to be confirmations of the purported investments described in paragraph 18 above. The first stated that, on December 15, 2003, EO purchased 62,133.83 units of a 12-month investor certificate with interest at 7%. The second provided that, on May 13, 2004, EO purchased 57,261.12 units of a 12-month investor certificate with interest at 7%. Both purported confirmations bore the American Express logo and the contact information for American Express Financial Advisors, and listed Buchanan as the financial advisor.

20. The confirmations issued to EO were fictitious, in that they were not issued by or on behalf of Ameriprise and did not represent transactions effected through the firm.

21. EO's funds were not used to purchase investor certificates or any other investment through Ameriprise.

22. In June 2004, Buchanan solicited Ameriprise customer RSR to purchase an "investor certificate." RSR agreed to make the solicited purchase and gave Buchanan \$250,000.00. RSR intended that the funds be used to purchase an investor certificate through Ameriprise.

23. Buchanan delivered to RSR a document Buchanan represented to be a confirmation of the purchase, on June 8, 2004, of 150,000.00 units of a 12-month investor certificate with interest at 10%. That document also represented that RSR made an additional purchase on June 10, 2004 of another 100,000.00 units of a 12-month

investor certificate with interest at 10%. The purported confirmation bore the American Express logo, contained contact information for American Express Financial Advisors, and listed Buchanan as the financial advisor.

24. The purported confirmation delivered to RSR was fictitious, in that it was not issued by or on behalf of Ameriprise and did not represent transactions effected through the firm.

25. RSR's funds were not used to purchase investor certificates or any other investment through Ameriprise.

26. On or about July 31, 2002, Buchanan solicited Ameriprise customers ML and WL to purchase an "investor certificate." ML and WL agreed to make the solicited purchase and wrote a \$150,000.00 check dated July 31, 2002 and made payable to James J.F. Buchanan – CFP. ML and WL intended that the \$150,000.00 be used to purchase an investor certificate through Ameriprise.

27. Buchanan delivered to ML and WL a document that Buchanan represented to be a confirmation that, on August 2, 2002, ML and WL had purchased 150,000.00 units of a 6-month investor certificate with interest at 7%. The confirmation bore the American Express logo, contained contact information for American Express Financial Advisors, and listed Buchanan as the financial advisor.

28. The purported confirmation delivered to ML and WL was fictitious, in that it was not issued by or on behalf of Ameriprise and did not represent a transaction effected through the firm.

29. The \$150,000.00 was not used to purchase an investor certificate or any other investment through Ameriprise.

30. During the period from August 2001 through May 2004, Buchanan solicited Ameriprise customer RW to purchase what Buchanan characterized as "investor certificates." RW agreed to make the solicited purchase(s) and gave Buchanan funds totaling at least \$56,000.00. RW intended that the funds be used to purchase investor certificates.

31. Buchanan provided RW with documents that Buchanan represented to be confirmations that RW's funds were being used to purchase 12-month investor certificates.

32. Between on or about September 1, 2004 and on or about February 11, 2005, RW wrote two additional checks payable to Buchanan, each for \$5,000.00. RW intended that the funds be invested in investor certificates.

33. Buchanan delivered to RW documents that Buchanan represented to be confirmations that on September 20, 2004 and again on February 11, 2005, RW purchased 5,000.00 units of a 12-month investor certificate with interest at 5%.

34. The purported confirmations delivered to RW, which contained the American Express Financial Advisors contact information and listed Buchanan as the financial advisor were fictitious, in that they were not issued by or on behalf of Ameriprise and did not represent transactions effected through the firm.

35. RW's funds were not used to purchase investor certificates or any other investment through Ameriprise.

36. As more fully described above, Ameriprise customers gave Buchanan in excess of \$583,000.00 with the intention that their respective funds be invested for their benefit in investor certificates and that these transactions would be effected through

Ameriprise. Buchanan, however, failed to invest the funds in investor certificates (or in any investment) through Ameriprise. By failing to invest the funds as the customers intended, Buchanan made improper use of their funds. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rules 2330 and 2110 by Buchanan.

THIRD CAUSE OF ACTION
(Misuse of Non-Customer Funds – NASD Conduct Rule 2110)

37. The Department realleges and incorporates by reference paragraph numbers 1 - 36 above.

38. During the period between approximately February 15, 2007, and May 10, 2007, Buchanan solicited WA and JA to purchase “investor certificates.” WA and JA agreed to make the solicited purchases. On or about February 21, 2007, WA and JA wrote a \$174,658.13 check made payable to James J.F. Buchanan, CFP. WA and JA provided these funds with the intention that Buchanan purchase an investor certificate. WA and JA wrote another check to Buchanan dated May 10, 2007 in the amount of \$107,248.99 that was also intended to fund the purchase of an investor certificate. WA and JA believed that these transactions were to be effected through LPL.

39. Buchanan delivered to WA and JA documents that Buchanan represented to be confirmations that on February 28, 2007, WA and JA purchased 174,658.13 units of a 12-month investor certificate with an interest rate of 8.5% and, on May 15, 2007, WA and JA purchased 107,320.49 units of a 12-month investor certificate with interest at 8.5%. Both purported confirmations were on Fiserv letterhead with LPL’s name and contact information and listed Buchanan as the financial advisor.

40. The purported confirmations issued to WA and JA were fictitious, in that they were not issued by or on behalf of LPL and did not represent transactions effected through the firm.

41. WA's and JA's funds were not used to purchase investor certificates or any other investment through LPL.

42. In or about April 2007, Buchanan solicited the IF Trust to purchase "investor certificates." The IF Trust agreed to make the solicited purchases, as more fully described below.

43. An authorized agent of the IF Trust wrote a \$20,400.00 check dated April 2, 2007 and made payable to James J.F. Buchanan, CFP with the intention that the funds would be applied to the purchase of an investor certificate through LPL.

44. Buchanan delivered to the IF Trust a document he represented to be a confirmation that, on April 2, 2007, the Trust purchased 20,400 units of an investor certificate with interest at 8.5%. The purported confirmation identifies Buchanan as the financial advisor and contains the LPL name and contact information. This purported investment is further reflected in a document dated June 13, 2007 that Buchanan sent to the Trust, representing it to be a statement of the Trust's account.

45. The IF Trust gave Buchanan an additional \$141,830.27 in April 2007, with the intention that the funds be used to purchase another investor certificate.

46. A document delivered to the Trust by Buchanan purports to confirm that, on April 10, 2007, the Trust purchased \$141,830.27 units of an investor certificate with interest at 8.5%. In addition, this purported investment is further reflected in a document, purported to be an account statement, that was prepared by Buchanan and delivered to

the IF trust in June 2007. This purported confirmation contains the LPL name and contact information, and identifies Buchanan as the financial advisor.

47. The purported confirmations and statements Buchanan issued to the Trust are fictitious, in that they were not issued by LPL or on LPL's behalf and do not represent transactions effected through the firm.

48. Monies given to Buchanan by the Trust were not used to purchase investor certificates or any other investment through LPL.

49. In or around November 2006, Buchanan solicited FS to purchase an "investor certificate." FS agreed to make the solicited purchase and wired \$1,350.00 to Buchanan with the intent that the funds would be applied to the purchase of an investor certificate through LPL.

50. Buchanan delivered to FS a document represented to be a confirmation that, on November 7, 2006, FS purchased 1,350.00 units of an investor certificate with interest at 8%. The purported confirmation lists the contact information for Buchanan & Associates.

51. The purported confirmation issued to FS was *fictitious*, in that it was not issued by or on behalf of LPL and did not represent a transaction effected through the firm.

52. FS's funds were not used to purchase an investor certificate or any other investment through LPL.

53. In or around September 2007, Buchanan solicited the PSL Trust to purchase CCTI warrants. The PSL Trust agreed to make the solicited purchase and gave Buchanan a \$60,000.00 cashiers check dated September 25, 2007 made payable to James

J.F. Buchanan. The PSL Trust intended that Buchanan purchase CCTI warrants through LPL with the funds.

54. Buchanan delivered to the PSL Trust a document he represented to be a confirmation that the Trust purchased 60,000 units of CCTI 12-month warrants. The purported confirmation sets forth the contact information for Buchanan & Associates.

55. The purported confirmation issued to the PSL Trust was fictitious, in that the PSL Trust had not purchased CCTI warrants or any other investment through LPL.

56. Monies given to Buchanan by the PSL Trust were not used to purchase CCTI warrants or any other investment through LPL.

57. In or around September 2007, Buchanan solicited the BHL Trust to purchase CCTI warrants. The BHL Trust agreed to make the solicited purchase and gave Buchanan a \$60,000.00 cashiers check dated September 25, 2007 made payable to James J.F. Buchanan to purchase CCTI warrants. The BHL Trust intended that Buchanan purchase CCTI warrants through LPL with the funds.

58. Buchanan delivered to the BHL Trust a document he represented to be a confirmation that the Trust purchased 60,000 units of CCTI 12-month warrants. The purported confirmation sets forth the contact information for Buchanan & Associates.

59. The purported confirmation issued to the BHL Trust was fictitious, in that the BHL Trust had not purchased CCTI warrants or any other investment through LPL.

60. Monies given to Buchanan by the BHL Trust were not used to purchase CCTI warrants or any other investment through LPL.

61. In or around June 2006, Buchanan solicited RW to purchase an "investor certificate." RW agreed to make the solicited purchase and gave Buchanan a \$5,000.00

check dated June 29, 2006 made payable to James J.F. Buchanan – CFP. RW intended that Buchanan purchase an investor certificate through LPL with the funds.

62. Buchanan gave RW a receipt reflecting the payment and referencing that the funds were to be deposited into account # [REDACTED].

63. Buchanan also delivered to RW documents he represented to be confirmations that purportedly evidenced that RW's funds had been invested in investor certificates. The account number referenced on the purported confirmations was for a nonexistent account at LPL.

64. The purported confirmations issued to RW were fictitious, in that it was not issued by or on behalf of LPL and did not represent transactions effected through the firm.

65. Monies given to Buchanan by RW were not used to purchase investor certificates or any other investment through LPL.

66. As more fully described above, investors, who were not firm customers, gave Buchanan in excess of \$570,000.00 with the intention that their funds be invested for their benefit in either investor certificates or CCTI warrants, and that these transactions would be effected through LPL. Buchanan, however, failed to invest the funds in investor certificates, CCTI warrants, or in any investment through LPL. By failing to invest the funds as the above-described investors intended and not establishing accounts at LPL for these investors as they intended, Buchanan made improper use of their funds. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rule 2110 by Buchanan.

FOURTH CAUSE OF ACTION
**(Selling Away While Registered with Ameriprise –
NASD Conduct Rules 3040 and 2110)**

67. The Department realleges and incorporates by reference paragraph numbers 1 - 66 above.

68. Between 2003 and 2005, while registered with Ameriprise, Buchanan solicited transactions involving the purchase of securities in the form of “debentures with conversion privileges.” Buchanan provided the investors with documents that he represented evidenced their ownership of debentures issued by an entity known as CEI. Notwithstanding this documentation, however, no CEI debentures were purchased in the investors’ names. The purported securities transactions are described below.

- a. DA and HA entered into what they understood to be a “Debenture Agreement with Conversion Privileges” with CEI in June 2005. The agreement represented that DA and HA had purchased a non-convertible debenture, an unregistered security, in the amount of \$233,859.00. All notices under the agreement were to be provided to Buchanan;
- b. In November 2004, HAH entered into what she understood to be a “Debenture Agreement with Conversion Privileges” with CEI. The agreement stated that HAH had invested \$111,120.95 in the purported convertible debenture, a restricted security;
- c. In February 2005, EO entered into what she understood to be a “Debenture Agreement with Conversion Privileges” with CEI. The agreement recited that EO had purchased a convertible debenture, a restricted security, in the amount of \$60,338.44. EO rolled the principal and interest (\$79,797.58) into another CEI Debenture Agreement with Conversion Privileges in February 10, 2007. That document provided that all notices under the agreement were to be provided to Buchanan.
- d. EO entered into another agreement that she understood to involve the purchase of a “Debenture with Conversion Privileges” with CEI in February 2005. The agreement recited that EO had purchased a

convertible debenture, a restricted security, in the amount of \$ 66,845.57. She then rolled the principal and interest (\$88,403.26) into another CEI Debenture Agreement with Conversion Privileges in February 2007. All notices under that agreement were to be provided to Buchanan.

69. Ameriprise's procedures prohibited representatives from participating in private securities transactions except under certain limited circumstances not applicable here. The firm's procedures further mandated that representatives sell only products that the company sold or authorized representatives to sell. The CEI debentures that Buchanan solicited individuals to purchase were neither sold nor authorized by Ameriprise. Buchanan's solicitations were outside the regular course and scope of his employment with Ameriprise.

70. By soliciting individuals to engage in transactions that he represented involved the purchase of securities and providing such individuals with documents that he claimed to evidence the occurrence of securities transactions, Buchanan participated in private securities transactions. Buchanan was therefore required to provide prior written notice to Ameriprise of his intention to solicit investments in CEI securities. Buchanan failed to provide the required prior written notice.

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

FIFTH CAUSE OF ACTION
(Selling Away While Registered with LPL- NASD Conduct Rules 3040 and 2110)

72. The Department realleges and incorporates by reference paragraph numbers 1 - 71 above.

73. While registered with LPL, Buchanan engaged in private securities transactions by soliciting the purported sale of CCTI securities. Specifically, Buchanan solicited the sale of CCTI warrants and provided documentation to the investors purporting to evidence their ownership of the securities. However, notwithstanding this documentation, no CCTI securities were purchased in the name of the Trusts.

74. As discussed in Complaint paragraphs 52-59, Buchanan caused the PSL and BHL Trusts to invest a total of \$120,000.00 in purported CCTI warrants.

75. LPL's procedures prohibited representatives from selling away. The CCTI securities that Buchanan solicited the two Trusts to purchase were neither sold nor authorized by LPL. Buchanan's solicitations were *outside the regular course and scope* of his employment with LPL.

76. By soliciting the two Trusts to engage in transactions that he represented involved the purchase of securities and providing such individuals with documents that he claimed to evidence the occurrence of securities transactions, Buchanan participated in private securities transactions. Buchanan was therefore required to provide prior written notice to LPL of his intention to solicit investments in CCTI. Buchanan failed to provide the required prior written notice.

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

SIXTH CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information –
NASD Rule 8210 and NASD Conduct Rule 2110/
FINRA Rule 8210 and Conduct Rule 2010)

78. The Department realleges and incorporates by reference paragraph numbers 1-77 above.

79. As referenced above, FINRA staff commenced an investigation of Buchanan after receiving notification that a grand jury indictment was issued against Buchanan in the Maricopa County, Arizona Superior Court charging him with fourteen counts of felony theft and one count of felony fraud. The alleged thefts occurred from approximately 2001 through 2008 and involved investment funds given to Buchanan while he was registered with Ameriprise and LPL. Staff received subsequent Form U5 and 3070 filings pertaining to Buchanan's handling of investment funds while associated with both Ameriprise and LPL. Those complaints were incorporated into staff's investigation.

80. To further its investigation, staff sought to obtain information regarding the above allegations from Buchanan by means of written Rule 8210 requests. In addition to seeking information concerning misuse/conversion of investment funds, staff also sought information regarding suitability, possible omissions/misrepresentations made by Buchanan, Buchanan's outside business and selling away activities, and the role of another registered representative with respect to the subject investment funds. As discussed in greater detail below, Buchanan failed to provide the requested information.

81. On September 26, 2008, staff sent, by first class and certified mail, a written Rule 8210 request to Buchanan at his residential CRD address, [REDACTED] (CRD Address). The information requested therein was to be provided to FINRA staff by October 10, 2008.

82. The September 26th Rule 8210 request contained a typographical error. Specifically, the street name was spelled [REDACTED] rather than [REDACTED]. Notwithstanding the misspelling, "James Buchanan" signed the delivery receipt for the

certified mailing on October 1, 2008. The first class mailing was returned to FINRA stamped "Return to Sender – Attempted not Known – Unable to Forward."

83. Even though Buchanan had actual notice of the September 26, 2008 Rule 8210 request, he failed to provide the requested information. Staff sent another Rule 8210 request for this information to Buchanan on March 18, 2009.

84. The March 18th Rule 8210 request was sent to Buchanan's CRD Address by first class mail and certified mail. It was also sent to an alternative address – [REDACTED] – that was identified in the Arizona criminal proceeding as being Buchanan's address (Alternative Address). Buchanan was to respond to the March 18th Rule 8210 request by March 30, 2009.

85. The first class mailing of the March 18th request to the CRD Address has not been returned to staff. Staff received a certified mail delivery receipt evidencing that "Lori A. Buchanan" accepted delivery of the March 18th certified mailing to the CRD Address.

86. To date, the first class mailing of the March 18th request to the Alternative Address has not been returned to staff. Staff received a certified mail delivery receipt evidencing that "Lori A. Buchanan" accepted delivery of the March 18th certified mailing to the Alternative Address.

87. Buchanan failed to provide the information requested in the March 18th Rule 8210 request.

88. Staff sent a third Rule 8210 request to Buchanan on March 31, 2009, requesting the same information identified in the prior requests. The March 31st request was sent to both Buchanan's CRD Address and the Alternative Address by first class

mail and certified mail. Buchanan was to respond to the March 31st request by April 10, 2009. No response was received.

89. The first class mailing to the CRD and Alternative Addresses have not been returned to staff. Staff received certified mail delivery receipts evidencing that "Lori A. Buchanan" accepted deliver of the March 31, 2009 certified mailings to both the CRD Address and the Alternative Address.

90. To date, Buchanan has failed to provide information that was requested, pursuant to Rule 8210, on September 26, 2008, March 18, 2009, and again on March 31, 2009. Buchanan's failure to provide the requested information impeded staff's investigation and effectively prevented staff from determining the extent of Buchanan's misconduct and whether Buchanan violated additional securities laws, rules and/or regulations.

91. Each of the three Rule 8210 requests was sent during the period that Buchanan was subject to FINRA's jurisdiction; therefore, he was required by Rule 8210 to provide the requested information.

92. Buchanan's failure to provide the information requested in the September 26, 2008 request constitutes a separate and distinct violation of NASD Rule 8210 and NASD Conduct Rule 2110. Buchanan's failure to provide the information requested in the March 18, 2009 and March 31, 2009 requests constitutes separate and distinct violations of FINRA Rule 8210 and FINRA Conduct Rule 2010.

RELIEF REQUESTED

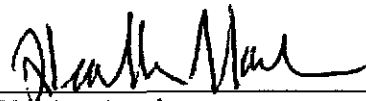
WHEREFORE, the Department respectfully requests that the Panel:

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

B. Order that Respondent Buchanan bear such costs of proceedings as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

Dated: June 5, 2009

FINRA DEPARTMENT OF
ENFORCEMENT



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