

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CRISTOBAL L. GARCIA  
(CRD No. 5467244),

Respondent.

Disciplinary Proceeding  
No. 2008016441101

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

November 5, 2009

**Respondent is barred from associating with any member firm in any capacity for falsifying customer account documents, in violation of Conduct Rule 2110, and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.**

**Appearances**

Marshall Gandy, Senior Regional Counsel, Dallas, TX, for the Department of Enforcement.

No appearance by or on behalf of Cristobal L. Garcia.

**DECISION**

**I. Introduction**

On July 10, 2009, the Department of Enforcement ("Enforcement") filed the attached Complaint against Cristobal L. Garcia ("Garcia" or the "Respondent"). The Complaint contains two related charges. First, the Complaint charges that Garcia falsified new account documents to enroll 12 customers in an on-line bill payment program without their knowledge or consent, in violation of NASD Conduct Rule 2110. Second, the Complaint charges that Garcia failed to respond to requests for information FINRA staff issued pursuant to Procedural Rule 8210 in the course of its investigation into his falsification of the enrollment documents, in violation of

Procedural Rule 8210 and FINRA Conduct Rule 2010.<sup>1</sup> NASD Conduct Rule 2110 and FINRA Rule 2010 are identical in substance. Each provides, that a member shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4(a) of the FINRA By-Laws.<sup>2</sup> Garcia was registered with FINRA as an Investment Company and Variable Contracts Products Representative at the time he falsified the customers' account records, and FINRA issued the Rule 8210 requests and filed the Complaint in this proceeding within two years of the date his FINRA registration terminated. In addition, Garcia received constructive notice of this proceeding. On July 9, 2009, Enforcement served the Notice of Complaint on Garcia by first-class certified mail, return receipt requested, sent to his residential address in the Central Registration Depository ("CRD").<sup>3</sup> The certified mailing was returned to Enforcement by the U.S. Postal Service marked, "Unclaimed – Return to Sender." On August 10, 2009, Enforcement served the Second Notice of Complaint on Garcia by first-class certified mail, return receipt requested, sent to the same address.<sup>4</sup> The U.S. Postal Service website reflects that the certified mailing was returned because it was unclaimed although Enforcement states that it did not receive the returned mailing.

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<sup>1</sup> 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. See Regulatory Notice 08-57 (Oct. 2008). In that process, NASD Conduct Rule 2110 was renumbered as FINRA Conduct Rule 2010. This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondents' alleged misconduct. For the first cause of action, the applicable conduct rule is NASD Conduct Rule 2110 because the alleged misconduct occurred before December 15, 2008. For the second cause of action, the applicable conduct rule is FINRA Conduct Rule 2010. In addition, because the Complaint was filed after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> Article V, Sec. 4(a), FINRA By-Laws, available at [www.finra.org/rules](http://www.finra.org/rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

<sup>3</sup> Gandy Decl. ¶ 21.

<sup>4</sup> *Id.* ¶ 23.

Garcia did not answer or otherwise respond to the Complaint. Accordingly, on October 1, 2009, Enforcement filed a Motion for Entry of a Default Decision with the Office of Hearing Officers. The motion is supported by the Declaration of Marshall Gandy, Esq., and three exhibits. The Respondent did not reply to the motion. The Hearing Officer therefore granted Enforcement's motion.

Based on the facts alleged in the Complaint, which are deemed admitted pursuant to Rules 9215(f) and 9269(a), Garcia is barred from associating with any member firm in any capacity for failing to respond to the Rule 8210 requests for information and for falsifying customers' documents.

## **II. Findings of Fact and Conclusions of Law**

### **A. Background and Origin of Disciplinary Proceeding**

Garcia entered the securities industry on December 17, 2007, as an associated person with Chase Investment Services Corp. ("Chase"), and he registered as an Investment Company and Variable Contracts Products Representative with FINRA on February 14, 2008.<sup>5</sup> Garcia also was employed by Chase affiliate, JP Morgan Chase Bank NA ("Chase Bank"), as a personal banker in its Garland, Texas branch office.

On December 1, 2008, the branch manager in Chase Bank's Garland, Texas branch notified Chase Bank's Global Security and Investigations Unit ("Global Security Unit") that he had uncovered two on-line bill payments of \$25 each from a customer account to Garcia's credit card. The Global Security Unit then initiated an investigation and discovered that Garcia had made an additional 22 payments from eleven other customer accounts through Chase Bank's on-line bill payment program between July 31 and December 2, 2008. On December 4, 2008, Garcia

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<sup>5</sup> Ex. CX-1, at 3.

signed a written statement in which he admitted that he had falsified account opening documents to enroll 12 customers in Chase Bank's on-line bill payment program. Garcia further admitted that to activate the accounts he deposited \$50 of his own money in each account and then immediately withdrew the money in two on-line transfers of \$25 each to his personal credit card account.<sup>6</sup> Garcia stated that he opened the bill-payment programs to receive credit from Chase Bank for enrolling the 12 customers.

Chase discharged Garcia on December 5, 2008, and filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on December 23, 2008.<sup>7</sup> Garcia has not been registered with FINRA since his registration terminated effective December 23, 2008. FINRA began its investigation of Garcia following receipt of the Form U5, which disclosed that Chase Bank had terminated his employment because he had improperly enrolled 12 bank customers in the on-line bill payment feature.<sup>8</sup>

#### **B. Falsification of Documents**

The First Cause of Action alleges that Garcia completed and submitted false documents to enroll 12 customers in Chase Bank's on-line bill payment program. None of the customers had authorized Garcia to add that feature to his or her Chase bank account. Garcia had enrolled the customers so that he could receive employee credit for the accounts from Chase Bank.

Garcia's falsification was unethical and contrary to NASD Conduct Rule 2110.<sup>9</sup> Conduct Rule 2110 requires that member firms observe high standards of commercial honor and just and equitable principles of trade. The scope of the rule is broad — the rule's ethical and legal

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<sup>6</sup> Gandy Decl. ¶¶ 9-10.

<sup>7</sup> Ex. CX-1, at 5-6.

<sup>8</sup> *Id.*

<sup>9</sup> *Dep't of Enforcement v. Vines*, No. 2006005565401, 2009 FINRA Discip. LEXIS 16, at \*9 (N.A.C. Aug. 25, 2009) (holding that respondent violated NASD Rule 2110 by approving the falsification of IRA adoption agreements).

obligations are not limited to the sale of securities, but encompass a wide variety of unethical business-related conduct.<sup>10</sup> Accordingly, the Hearing Officer finds that Garcia violated Conduct Rule 2110, as alleged in the First Cause of Action.

**C. Failure to Respond to Requests for Information**

The Second Cause of Action alleges that Garcia failed to respond in any manner to two requests for information regarding his falsification of customer account documents at Chase Bank. FINRA staff sent the first request on January 21, 2009, to Garcia at his CRD address by certified and first-class mail. The receipt for the certified mailing bears the signature of “Rita Garcia.”<sup>11</sup> FINRA staff sent the second request to Garcia on March 2, 2009, by the same means and to the same address. The certified mailing was returned because the U.S. Postal Service was unable to deliver it.<sup>12</sup> Garcia did not respond in any manner to either of the requests for information.

The Hearing Officer finds that the allegations in the Second Cause of Action are sufficient to establish that Garcia violated Procedural Rule 8210 and FINRA Conduct Rule 2010 by failing to respond in any manner to FINRA’s information requests.

**III. Sanctions**

**A. Falsification of Customer Documents**

For forgery and falsification of records, FINRA’s Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a

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<sup>10</sup> *Dep’t of Enforcement v. Vines*, 2009 FINRA Discip. LEXIS 16, at \*9.

<sup>11</sup> Gandy Decl. ¶ 13.

<sup>12</sup> *Id.* ¶ 15.

bar.<sup>13</sup> The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the nature of the falsified document and whether respondent had a good faith, but mistaken, belief of express or implied authority.<sup>14</sup>

Applying the applicable Guidelines, the Hearing Officer finds that Respondent's violation was egregious. Garcia admitted to Chase Bank's internal investigation unit that he intentionally submitted false account documentation so that he would be credited with enrolling 12 customers in Chase Bank's on-line bill payment program. The fact that Garcia used his own money to activate the bill payment feature demonstrates that Garcia lacked a belief that the customers wanted this feature added to their accounts. Garcia falsified the documents for his benefit alone. The Hearing Officer also took into consideration the number of accounts involved, the duration of his wrongful conduct, and the important nature of the documents he falsified. Based on these aggravating factors, and the lack of any mitigating factors, the Hearing Officer concludes that the appropriate sanction for this violation is a bar. Garcia has shown by his conduct that he would pose a substantial risk to the investing public if he were allowed to associate with a member firm in the future.

#### **B. Failure to Respond to Requests for Information**

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.<sup>15</sup> Here, the Respondent failed to respond in any manner to two written requests FINRA staff issued in connection with its investigation into his falsification of account documents at Chase Bank. There are no mitigating

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<sup>13</sup> FINRA Sanction Guidelines 39 (2007), *available at* [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

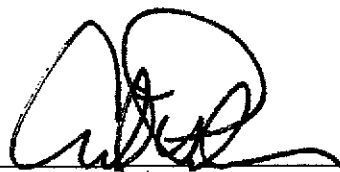
<sup>14</sup> *Id.*

<sup>15</sup> FINRA Sanction Guidelines 35.

factors. Accordingly, the Hearing Officer concludes that the appropriate sanction for this violation is a bar.

#### **IV. Order**

Cristobal L. Garcia is barred from associating with any member firm in any capacity for falsifying customer documents, in violation of NASD Conduct Rule 2110, and for failing to respond in any manner to FINRA's requests for information, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010. The bars shall become effective immediately if this *Default Decision* becomes the final disciplinary action of FINRA.

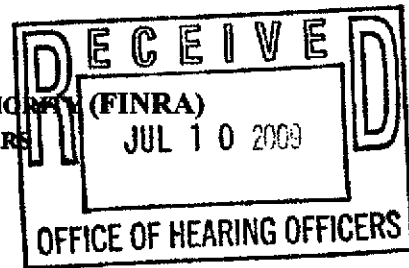
A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', is written over a horizontal line.

Andrew H. Perkins  
Hearing Officer

**Copies to:**

Cristobal L. Garcia (by FedEx, next day delivery, and first-class mail)  
Marshall Gandy, Esq. (by electronic and first-class mail)  
Mark P. Dauer, Esq. (by electronic mail)  
David R. Sonnenberg, Esq. (by electronic mail)

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



DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

CRISTOBAL L. GARCIA  
CRD No. 5467244

RESPONDENT

DISCIPLINARY PROCEEDING  
No. 2008016441101

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

This case involves a registered representative who falsified account opening documents by enrolling twelve bank customers in a bank on-line bill payment program without their knowledge or consent and then accessing and activating those customers' accounts for personal gain. The representative also failed to respond to FINRA requests for information.

**JURISDICTION**

1. Respondent Cristobal L. Garcia entered the securities industry in December 17, 2007, when he became associated with Chase Investment Services Corp. Garcia, who currently holds Series 7 and 63 licenses, became registered with FINRA on December 20, 2007, when Chase Investment Services Corp. submitted a Form U4 filing on his behalf. On December 5, 2008, Chase Investment Services Corp. terminated Garcia's association with the firm and filed a Form U5 on his behalf.

2. FINRA retains jurisdiction to file this Complaint against Garcia pursuant to Article V, Section 4 of the FINRA By-Laws, which provides that FINRA shall retain jurisdiction over a formerly associated person for two years after the effective date of termination of registration. Based on his termination date from Chase Investment Services Corp., FINRA retains jurisdiction over Garcia until December 4, 2010.

**FIRST CAUSE OF ACTION  
FALSIFICATION OF DOCUMENTS  
VIOLATION OF NASD Conduct Rule 2110**

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. Cristobal L. Garcia was employed by JPMorgan Chase Bank, N.A. as a Personal Banker at a Garland, Texas branch. In addition to his duties at the retail bank, Garcia was a registered representative Chase Investment Services Corp.
5. On December 1, 2008, Chase Bank branch management in Garland, Texas notified Chase Bank's Global Security and Investigations Unit ("GS&I") of the results of a branch investigation involving Garcia.
6. While reviewing a customer account opened by Garcia, a bank branch manager discovered two on-line bill payments in the amount of \$25 each to a Chase credit card belonging to Garcia. Further investigation revealed the payments were made through the bank's on-line bill payment system.
7. GS&I further investigated Garcia's credit card payment history and discovered that between July 31, 2008 and December 2, 2008, an additional 22 payments had been debited from an additional eleven bank customers' accounts through the use

of Chase Bank's on-line bill payment program. All 24 payments in the amount of \$25 were to Garcia's Chase credit card account.

8. As part of the investigation, December 4, 2008, GS&I conducted an interview with Garcia; during which, he prepared and signed a written statement admitting that he falsified account opening documents to enroll twelve bank customers in an on-line bill payment program without their knowledge or consent. Garcia further confessed that to receive employee credit for enrolling each of the twelve customers in the program, he accessed and activated the on-line bill payment feature by depositing \$50 of his own money into each of the customers' accounts, and then immediately initiating two \$25 payments from each customer's account to his personal Chase credit card.
9. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Cristobal L. Garcia.

**SECOND CAUSE OF ACTION  
FAILURE TO RESPOND**

**VIOLATION OF FINRA CONDUCT RULE 2010 AND FINRA PROCEDURAL RULE 8210**

10. The Department realleges and incorporates by reference paragraphs 1-9 above.
11. By a letter dated January 21, 2009, FINRA staff requested, pursuant to FINRA Procedural Rule 8210, that Garcia provide written information to FINRA regarding his falsification of account opening documents while employed as a registered representative Chase Investment Services Corp. The January 21, 2009 letter was sent, via certified and regular mail, to Garcia at his CRD address of record: [REDACTED]. The letter sent by regular

mail was not returned and the certified letter was returned marked as undeliverable and unable to forward.

12. Pursuant to the request for information, Garcia was required to respond on or before February 20, 2009. Garcia did not respond to the staff's January 21, 2009 request to provide information.
13. After Garcia failed to respond to the staff's first request, by a letter dated March 2, 2009, FINRA staff made a second request, again pursuant to FINRA Procedural Rule 8210, that Garcia provide information to FINRA regarding his falsification of account opening documents while employed as a registered representative Chase Investment Services Corp. The March 2, 2009 letter was sent, via certified and regular mail, to Garcia at his CRD address of record: [REDACTED]  
[REDACTED]. The letter sent by regular mail was not returned and the certified letter was returned marked as undeliverable and unable to forward.
14. Pursuant to the second request for information, Garcia was required to respond on or before March 16, 2009. Garcia did not respond to the staff's March 2, 2009 request to provide information.
15. FINRA staff has no knowledge of a residential address for Garcia that is more current than the address to which the letters set forth above were sent and has no knowledge of a current business address for Garcia.
16. To the date of this Complaint, Garcia has not provided FINRA staff any of the information or documents it requested pursuant to FINRA Procedural Rule 8210.

17. Such acts, practices, and conduct constitute separate and distinct violations of FINRA Conduct Rule 2010 and FINRA Procedural Rule 8210 by Cristobal L. Garcia.

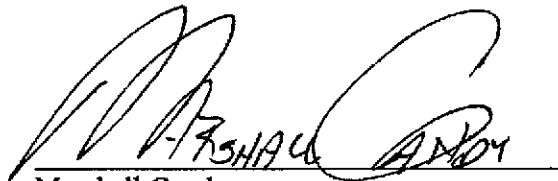
**RELIEF REQUESTED**

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 the Respondent bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: July 9, 2009



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