

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ARTHUR KHOTINSKIY
(CRD No. 5551101),

Respondent.

Disciplinary Proceeding
No. 20090174728-01

Hearing Officer – MC

DEFAULT DECISION

August 9, 2010

Respondent engaged in improper bank transactions in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010. Respondent also failed to respond in any manner to requests for information issued pursuant to Procedural Rule 8210, in violation of Conduct Rule 2010 and Procedural Rule 8210. Consequently, Respondent is barred from associating in any capacity with any FINRA member firm.

Appearances

Hugh C. Patton, Senior Regional Counsel, and David M. Jaffe, Regional Chief Counsel, New York, NY, for the Department of Enforcement.

No appearance by or on behalf of Respondent Arthur Khotinskiy.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on March 26, 2010. The First Cause of Action charges Respondent Arthur Khotinskiy with violating NASD Conduct Rule 2110 and FINRA Conduct Rule 2010¹ by executing a number of improper bank

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). Khotinskiy's misconduct as alleged in the First Cause of Action extended from October 2008, when NASD

transactions while employed by a FINRA member firm. The Second Cause of Action alleges that Khotinskiy violated Conduct Rule 2010 and Procedural Rule 8210 by failing to respond to requests for information issued to him pursuant to Rule 8210.

Khotinskiy failed to file an Answer to the Complaint. Consequently, on June 22, 2010, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion") supported by the Declaration of Hugh C. Patton, Esq., and 11 exhibits.²

II. Findings of Fact and Conclusions of Law

A. Khotinskiy is Subject to FINRA's Jurisdiction

JPMorgan Chase Bank, N.A. ("Chase") hired Khotinskiy in June 2008.³ Khotinskiy became registered with FINRA through an association with Chase-affiliate and FINRA member firm Chase Investment Services Corp. ("CIS") on July 10, 2008.⁴ Chase discharged Khotinskiy on February 19, 2009,⁵ and his registration status through CIS was terminated on March 20, 2009.⁶ Since then, Khotinskiy has not been registered through any FINRA member firm. Because the Complaint charges misconduct occurring while Khotinskiy was registered with a FINRA member firm, and Enforcement filed the Complaint less than two years after Khotinskiy was last registered, FINRA retains jurisdiction over Khotinskiy for the purposes of this disciplinary proceeding.

Conduct Rule 2110 was in effect, to January 2009, after NASD Conduct Rule 2110 became FINRA Conduct Rule 2010. Thus, the First Cause of Action alleges that Khotinskiy violated both NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, which are identical. The rules are available at www.finra.org/rules.

² The exhibits attached to Enforcement's Default Motion will be referred to as "CX-_" with the appropriate exhibit number. References in this Default Decision to the Declaration will be referred to as "Decl." or "Patton Decl."

³ Decl. ¶ 5; CX-1.

⁴ Khotinskiy was registered as a Limited Representative – Investment Company and Variable Contracts Products (Series 6). Decl. ¶¶ 4, 6; CX-1.

⁵ CX-1, p. 2.

⁶ CX-1, p. 3.

B. Khotinskiy Defaulted

On March 26, 2010, Enforcement served the Complaint and First Notice of Complaint upon Khotinskiy at his most recent residential address recorded in the Central Registration Depository ("CRD address") by certified and first-class mail.⁷ The return receipt for the certified mailing was returned to Enforcement with the name "Raisa," last name illegible, written in the box for the signature of the recipient. The first-class mailing was not returned.⁸

Because Khotinskiy did not file an Answer or otherwise respond to the Complaint, on April 26, 2010, Enforcement served the Complaint and Second Notice of Complaint upon Khotinskiy, again at his CRD address by certified and first-class mail. Once more, the return receipt for the certified mailing was returned to Enforcement with the name "Raisa" appearing in the box for the signature of the recipient, and the first-class mailing was not returned.⁹

By serving the Complaint, First Notice of Complaint, and Second Notice of Complaint upon Khotinskiy at his CRD address by certified mail, Enforcement complied with the service requirements of Procedural Rule 9134.¹⁰ By failing to file an Answer, and not responding in any manner to the Complaint, Khotinskiy has defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons given below, the Default Motion is granted.¹¹

⁷ Decl. ¶¶ 9-10.

⁸ Decl. ¶ 10; CX-5.

⁹ Decl. ¶¶ 12-13; CX-7.

¹⁰ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (*citing Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹¹ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Patton Declaration and exhibits filed by Enforcement.

C. Khotinskiy Engaged in Improper Bank Transactions in Violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010

As a Chase employee, Khotinskiy was eligible to receive employee incentive benefits for registering customers for Chase's online bill-payment service if the customers subsequently used the service to make at least two \$25 payments.¹² Between October 2008 and January 2009, Khotinskiy solicited friends and acquaintances to allow him to open Chase checking accounts for them and to register them for the online bill-payment service.¹³ Khotinskiy made \$50 deposits of his own funds in each of 28 new customer checking accounts he opened for his friends and acquaintances. Khotinskiy then made two \$25 online bill payments from each new account payable to his own credit card accounts. Khotinskiy made these payments to qualify for the Chase incentive benefits, and at the same time to reimburse himself for the deposits he had made to open the accounts.¹⁴

These acts violated provisions of Chase's Code of Conduct applicable to Khotinskiy's conduct as a Chase employee. The Code of Conduct specifically prohibited him from lending money to customers and from participating in "personal financial transactions with ... customers..."¹⁵ When Chase interviewed Khotinskiy, he admitted opening and funding the customer accounts for his friends and acquaintances, then transferring the monies to himself, and said he did so in order to meet the Chase campaign goals for opening accounts with online bill-payment services for his branch.¹⁶

¹² Decl. ¶ 17.

¹³ Decl. ¶ 16.

¹⁴ Decl. ¶¶ 18-19.

¹⁵ Decl. ¶ 20.

¹⁶ CX-2; Exhibit A.

These facts, as alleged in the First Cause of Action of the Complaint and supported by the Patton Declaration and exhibits filed by Enforcement, are sufficient to establish, for the purposes of this Default Decision, that Khotinskiy violated NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.

D. Khotinskiy Failed to Respond to Requests for Information in Violation of Conduct Rule 2010 and Procedural Rule 8210

On March 20, 2009, CIS filed a Uniform Termination Notice of Securities Industry Registration ("Form U5") in connection with the termination of Khotinskiy's employment.¹⁷ Subsequently, on April 6, 2009, pursuant to Procedural Rule 8210, FINRA staff sent a letter by certified and first-class mail to Khotinskiy at his CRD address requesting that he provide information about the circumstances leading to his discharge.¹⁸ The first-class mailing was not returned but the receipt for the certified mailing was returned to Enforcement with the name "Samoil Khotinskiy" printed in the box for the signature of the recipient.¹⁹ Nonetheless, Khotinskiy did not respond to the request.

On June 2, 2009, FINRA staff sent a second letter to Khotinskiy at his CRD address, again by certified and first-class mail, requesting him to provide the same information pursuant to Procedural Rule 8210.²⁰ As before, the first-class mailing was not returned, but the receipt for the certified mailing was returned to Enforcement with the name "Samoil Khotinskiy" printed in

¹⁷ Decl. ¶ 22.

¹⁸ Decl. ¶ 23.

¹⁹ Decl. ¶¶ 25-26; CX-9.

²⁰ Decl. ¶ 28.

the box for the recipient's signature.²¹

Khotinskiy has not responded to the requests for information. These facts, as alleged in the Second Cause of Action of the Complaint and supported by the Patton Declaration and exhibits filed by Enforcement, are sufficient to establish, for the purposes of this Default Decision, that Khotinskiy violated FINRA Conduct Rule 2010 and Procedural Rule 8210.

III. Sanctions

FINRA Conduct Rule 2010, and its predecessor, require associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. A Rule 2010 violation is committed if a respondent's misconduct (i) occurs in the course of his business, and (ii) violates just and equitable principles of trade.²²

The Rule imposes ethical standards as well as legal obligations. The Rule may be violated when a member engages in unethical conduct that is not securities-related²³ but reflects on the person's ability "to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."²⁴

FINRA's Sanction Guidelines do not contain specific recommended sanctions for all forms of unethical conduct that violate Conduct Rule 2010. Enforcement argues the Guideline most relevant to Khotinskiy's misconduct is the one for falsifying records, which recommends a

²¹ Decl. ¶¶ 29-30; CX-11. In a telephone conversation on February 16, 2010, Khotinskiy informed Enforcement that the name on the receipts for the certified mailing of the letters was that of his mother, who resides at Khotinskiy's CRD address. Khotinskiy also confirmed that he had received one of the request letters.

²² *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, *18 (NAC June 2, 2000).

²³ *Id.* at *16 ("Conduct Rule 2110 is not limited to securities-related conduct; instead it covers all unethical business-related conduct.").

²⁴ *Id.* at *35 (quoting *James A. Goetz*, Exch. Act Rel. No. 39796, 1998 SEC LEXIS 499, *11 (Mar. 25, 1998)).

fine from \$5,000 to \$100,000, and a suspension of up to two years, or, in egregious cases, a bar.²⁵ Enforcement suggests that Khotinskiy's conduct in this case was egregious because of the large number of discrete acts Khotinskiy committed in the course of his misconduct. Enforcement therefore recommends a bar for Khotinskiy's violations of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.

In this case, Khotinskiy committed the misconduct in connection with his employment as a Chase personal bank representative. By attempting to deceive Chase in order to obtain incentives for himself related to a campaign to register customers for online banking services, Khotinskiy acted unethically. His actions were designed to deceive Chase, extended over several months, and included opening 28 individual customer accounts which he improperly funded with his money. He then made 56 separate payments from the customer accounts to his personal credit card accounts to mislead Chase into awarding him incentive benefits. In addition, he violated Chase's prohibitions against participating in personal financial transactions with customers. The pattern of Khotinskiy's misconduct, consisting of numerous wrongful acts over an extended period, evidence his inability to adhere to the stringent requirements imposed upon associated persons by FINRA rules and the laws governing the securities industry.

For these reasons, Enforcement's recommendation for the imposition of a bar is appropriate to serve the interests of deterring Khotinskiy and others from misconduct similar to that alleged in the First Cause of Action.

The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. If there are

²⁵ *FINRA Sanction Guidelines*, p. 39 (2007).

mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years, and a fine of \$10,000 to \$25,000.²⁶

As has often been observed, “Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA’s] examinations and investigations ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”²⁷ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”²⁸

There are no apparent mitigating factors present with regard to Khotinskiy’s failure to respond to FINRA’s requests for information in this case. A bar, therefore, is the appropriate sanction for Khotinskiy’s violations of Conduct Rule 2010 and Procedural Rule 8210 by failing to respond in any manner to requests for information issued to him in this case, as alleged in the Second Cause of Action.

IV. Order

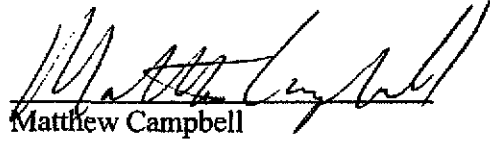
Respondent Arthur Khotinskiy is barred from associating in any capacity with any FINRA member firm for engaging in improper bank transactions, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, and for failing to respond in any manner to requests for information, in violation of Conduct Rule 2010 and Procedural Rule 8210.

²⁶ *FINRA Sanction Guidelines*, p. 35 (2007).

²⁷ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).

²⁸ *Id.* at *41.

If this Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Arthur Khotinskiy (via FedEx and first-class mail)
Hugh C. Patton, Esq. (via electronic and first-class mail)
David M. Jaffe, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**ARTHUR KHOTINSKIY,
(CRD No. 5551101),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20090174728-01**

Hearing Officer _____

COMPLAINT

The Department of Enforcement alleges:

Summary

1. In or about June 2008, Respondent Khotinskiy was hired by JPMorgan Chase Bank, N.A. ("Chase Bank") as a Personal Banker.
2. Shortly thereafter, Khotinskiy became registered with FINRA through Chase Investment Services Corp. (BD No. 25574) ("Chase Investment Services").
3. Between approximately October 2008 and January 2009 (the "Relevant Period"), Khotinskiy funded approximately 28 new customer checking accounts with his own money in order to open the accounts.
4. Khotinskiy then made two \$25 on-line bill payments from each of the approximately 28 new checking accounts to two credit card accounts in his name (approximately 56 payments in total) in order to: (a) obtain Chase Bank

employee incentive points for "Online Bill-Pay" registrations, and (b) reimburse himself for the initial deposits.

5. Khotinskiy failed to respond to requests for information sent by FINRA Staff pursuant to FINRA Procedural Rule 8210.
6. Accordingly, Khotinskiy violated NASD Conduct Rule 2110, FINRA Conduct Rule 2010, and FINRA Procedural Rule 8210.

Respondent

7. Khotinskiy was hired by Chase Bank as a Personal Banker in or about June 2008.
8. Khotinskiy first became registered with FINRA as a Limited Representative – Investment Company and Variable Contracts Products on or about July 10, 2008 through Chase Investment Services.
9. Khotinskiy was registered through Chase Investment Services until on or about March 20, 2009.
10. Khotinskiy is not currently registered with a member firm, but remains subject to FINRA's jurisdiction pursuant to and in accordance with FINRA Bylaws, Article V, Section 4.

**FIRST CAUSE OF ACTION
(Fictitious Bank Transactions)
NASD Conduct Rule 2110 and FINRA Conduct Rule 2010**

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.
12. During the Relevant Period, Khotinskiy contacted friends and acquaintances and told them he would provide the initial funding if they would open Chase Bank checking accounts and register for the Online Bill-Pay service.
13. Personal Bankers at Chase Bank received incentive points for Online Bill-Pay registrations after the service was used by a customer to make at least two \$25 payments.
14. During the Relevant Period, Khotinskiy funded approximately 28 new customer checking accounts with his own money in order to open the accounts.
15. Khotinskiy then made two \$25 on-line bill payments from each of the approximately 28 new checking accounts to two credit card accounts in his name (approximately 56 payments in total) in order to: (a) obtain Chase Bank employee incentive points for Online Bill-Pay registrations, and (b) reimburse himself for the initial deposits.
16. Khotinskiy's conduct violated Chase Bank's Code of Conduct Section 6.1., which states in pertinent part:

You may not borrow money (other than nominal amounts) from or lend money to other employees, customers or suppliers, or act as a guarantor, co-signer, or surety or in any other similar capacity for customers, suppliers, or other

employees. . . . In general, you may not participate in any other personal financial transactions with fellow employees, customers, or suppliers. . . .

17. By reason of the foregoing and in each and every instance, Khotinskiy violated NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.

**SECOND CAUSE OF ACTION
(Failure to Respond to Requests for Information)
FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010**

18. The Department realleges and incorporates by reference paragraphs 1 through 17, above.
19. Khotinskiy was discharged from Chase Investment Services on or about March 20, 2009. The Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Chase Investment Services on Khotinskiy's behalf on March 20, 2009 states:

Terminated by affiliate bank – non securities related.
Registered Rep admitted to processing transactions on a joint account, where he is the primary account holder, funding customers accounts upon opening and crediting his own account to get the deposit back.

20. On or about April 6, 2009, FINRA Staff sent a letter to Khotinskiy pursuant to FINRA Procedural Rule 8210 ("First Request"). The First Request sought information about the allegations in the Form U5 filed by Chase Investment Services on Khotinskiy's behalf.

21. The First Request was sent by first class and certified mail to Khotinskiy's residential address as listed in FINRA's Central Registration Depository: [REDACTED]
[REDACTED]
22. The First Request sent by first class mail was not returned to FINRA.
23. The Return Receipt card for the First Request sent by certified mail was signed for by SK.
24. Upon information and belief, SK is Khotinskiy's mother.
25. Khotinskiy's response to the First Request was due by March 6, 2009.
Khotinskiy has not responded to date.
26. On or about June 2, 2009, the Staff sent a second request letter to Khotinskiy pursuant to FINRA Procedural Rule 8210 ("Second Request"), requesting the same information as in the First Request. The Second Request was sent to the same address as the First Request, by regular and certified mail.
27. The Second Request sent by first class mail was not returned to FINRA.
28. The Return Receipt card for the Second Request sent by certified mail was signed for by SK.
29. Khotinskiy's response to the Second Request was due by June 16, 2009.
Khotinskiy has not responded to date.
30. Based on the foregoing, Khotinskiy violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

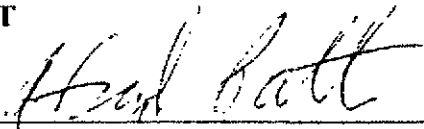
RELIEF REQUESTED

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 26, 2010



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