

No appearance by or on behalf of Jo Ann Marie Head.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on February 23, 2011. The nine-cause Complaint charges Respondent Jo Ann Marie Head (“Respondent”) with: (1) conveying false and exaggerated account values to two customers, in violation of NASD Rule 2110 and FINRA Rule 2010; (2) borrowing from a customer, in violation of NASD Rules 2370 and 2110; (3) settling and/or offering to settle a customer complaint away from her firm, in violation of FINRA Rule 2010; (4) sending an unapproved and materially false letter to a bank, in violation of NASD Rule 2110; (5) exercising discretion without written authorization in two customer accounts, in violation of NASD Rules 2510(b) and 2110 and FINRA Rule 2010; (6) mischaracterizing solicited trades as unsolicited, causing her firm to have inaccurate books and records, in violation of NASD Rules 3110 and 2110; (7) providing false information to FINRA, in violation of FINRA Rules 8210 and 2010; (8) using unapproved email and text messaging accounts to communicate with customers, in violation of NASD Rule 2110 and FINRA Rule 2010; and (9) failing to appear for testimony, in violation of FINRA Rules 8210 and 2010.¹

Respondent did not answer the Complaint. Accordingly, on May 13, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”), together with the declaration of Joel T. Kornfeld, Esq. (“Decl.”) and 5 exhibits.² For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement’s Default Motion.

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. *See*, Regulatory Notice 08-57. In the rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010. The findings in this Default Decision refer to the rules that were in effect at the time of the violations.

² Enforcement’s exhibits are labeled CX-1 through CX-5.

II. Procedural History

On February 23, 2011, Enforcement served the Complaint and the First Notice of Complaint on Respondent by sending them to her most recent address recorded in the Central Registration Depository ("CRD"). CX-2; Decl. ¶ 5. The mailing was sent by first class and certified mail. Decl. ¶ 5. The certified mailing was returned as unclaimed. Decl. ¶ 6; CX-3. The first class mailing was not returned. *Id.* Respondent did not answer or otherwise respond to the Complaint. Decl. ¶ 7.

On March 24, 2011, Enforcement served the Complaint and the Second Notice of Complaint on Respondent in the same manner. Decl. ¶ 8; CX-4. The certified mailing was returned as unclaimed. Decl. ¶ 9; CX-5. The first class mailing was not returned. *Id.* Respondent did not answer or otherwise respond to the Complaint. Decl. ¶ 10.

Based on Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with Morgan Stanley Smith Barney (and its predecessors) as a General Securities Representative from January 1998 through April December 2009. CX-1.

Although Respondent is not currently registered with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after FINRA terminated Respondent's registration, and (2) the Complaint charges her with misconduct that occurred while she was associated with a FINRA registered firm, and with failing to respond to

Enforcement's requests for information made during the two-year period following the termination of her FINRA registration.³

B. First Cause of Action – Conveying False and Exaggerated Account Values (NASD Rule 2110 and FINRA Rule 2010)

The first cause of action alleges that from at least February 2005 through July 2009, Respondent told customers DC and KY that the total asset value of their accounts was materially higher than it actually was. During that same period, Respondent provided them with documents that falsified and overstated the value of their accounts. Complaint ¶¶ 10, 14-15, 18, 20-21, 33-36, 39-41, 44-46, 66. For example, in February 2008, Respondent told CD that his account was valued at \$264,293, when the actual value was \$149,709. *Id.* at 10. In December 2008, Respondent told CD that his account had lost about \$50,000, when the account had actually lost more than \$200,000. *Id.* at 18. In June 2009, Respondent assured KY that her accounts were worth \$2.4 million, when her accounts were worth about one sixth of that amount (as of June 30, 2009, KY's accounts were worth \$412,000). *Id.* at 44.

The allegations of the Complaint are sufficient to establish that Respondent violated NASD Rule 2110 and FINRA Rule 2010 by conveying false and exaggerated account values to customers.

C. Second Cause of Action – Borrowing from a Customer (NASD Rules 2370 and 2110)

The second cause of action alleges that Respondent borrowed \$20,000 from customer KY in December 2005. Since then, Respondent has repaid only \$1,000 to the customer.

³ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

During the relevant period, Conduct Rule 2370 provided, in pertinent part:

- (a) No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless: (1) the member has written procedures allowing borrowing and lending of money between such registered persons and customers of the member....⁴

However, the Firm's written procedures prohibited representatives from borrowing from customers without branch manager or other supervisor approval and the written approval of the Firm's Compliance Department. Complaint ¶ 66. Nonetheless, Respondent did not request or obtain permission from her Firm to borrow money from the Firm's customer. Complaint ¶ 67.

The allegations in the Complaint are sufficient to establish that Respondent violated NASD Rule 2370 by borrowing from a customer. Moreover, it is well established that any conduct that violates an NASD Conduct Rule is a violation of Conduct Rule 2110.⁵

D. Third Cause of Action – Settling Away (FINRA Rule 2010)

The third cause of action alleges that Respondent settled and/or offered to settle a customer complaint without the knowledge or authorization of the Firm. Complaint ¶¶ 25-29, 67. Specifically, in January 2009, following CD's complaint to the Firm, Respondent offered to compensate CD for losses in CD's account. As part of the proposed arrangement, Respondent gave CD a draft promissory note along with jewelry and military medals that would serve as collateral until Respondent paid CD the losses to his account, which he estimated at \$494,986. *Id.* Respondent used unauthorized text messages to communicate the offer, and stated that the settlement could not go through her firm. *Id.* Shortly after CD's meeting with Respondent, CD met with the Firm's branch manager and returned the collateral. *Id.*

⁴ Rule 2370 contains other conditions under which borrowing from customers is permissible; however, they are not relevant here because the Firm's written procedures prohibited all borrowing from customers without written approval from the firm's compliance department.

⁵ *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (citations omitted).

Settling a customer complaint or loss without the knowledge or authorization of a representative's firm is a serious offense and a violation of FINRA Rule 2010. *DOE v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *9. (NAC Mar. 7, 2008). It does not matter whether settlement is achieved. "[T]o discharge their supervisory obligations adequately, member firms must be aware of all business-related contact and communications between their registered representatives and customers, particularly with respect to customer complaints." *DBCC v. DiAngelo*, No. C10960003, 1996 NASD Discip. LEXIS 34, at *506 (NBCC Oct. 16, 1996).

The allegations of the Complaint are sufficient to establish that Respondent violated Rule 2010 by attempting to settle a customer complaint without her Firm's knowledge or authorization.

E. Fourth Cause of Action – Sending an Unapproved and Materially False Letter to a Bank (NASD Conduct Rule 2110)

The fourth cause of action alleges that Respondent sent an unapproved and materially false letter to a bank. Specifically, in June 2006, Respondent prepared, signed, and mailed a letter to a bank stating that customer KY's assets totaled "over \$4 million" in order to assist the customer in obtaining a mortgage loan. Complaint ¶¶ 39-40, 73; Decl ¶¶ 17-18. The letter was materially false because the customer had assets worth only about \$1.6 million. *Id.* Further, although the Firm's procedures required that outgoing correspondence be reviewed and approved before mailing, Respondent neither sought nor obtained approval for the letter. *Id.*

The allegations in the Complaint are sufficient to establish that Respondent violated Rule 2010 by sending an unapproved and materially false letter to a bank.

F. Fifth Cause of Action – Exercising Discretion without Written Authorization (NASD Rules 2510(b) and 2110 and FINRA Rule 2010)

The fifth cause of action alleges that Respondent exercised discretion in customer accounts without written authorization. Specifically, Respondent neither sought nor obtained authorization from either CD or the Firm to exercise discretion in CD's account. Complaint ¶¶ 18, 77; Decl ¶¶ 19-20. Nonetheless, between June 2008 and October 2008, Respondent executed 99 trades in CD's account without discussing any of those transactions with CD. *Id.*

Similarly, Respondent neither sought nor obtained authorization from KY or her Firm to exercise discretion in KY's family trust accounts. Complaint ¶¶ 41-43, 78; Decl ¶¶ 19-20. Nonetheless, between June 2007 and December 2008, Respondent executed at least 99 trades in one KY family trust account, and between October 2007 and November 2008, Respondent executed 149 trades in another family trust account, without discussing any of those transactions with KY. *Id.*

The allegations in the Complaint are sufficient to establish that Respondent violated NASD Rules 2510(b) and 2110 and FINRA Rule 2010 by exercising discretion without written authorization.

G. Sixth Cause of Action – Causing the Firm's Records to be Inaccurate (NASD Rules 3110 and 2110)

The sixth cause of action alleges that between June 2008 and October 2008, Respondent mischaracterized at least 31 solicited trades as unsolicited in CD's account, causing the Firm's books and records to be inaccurate. Complaint ¶ 81; Decl ¶¶ 21-22. Similarly, between June 2007 and December 2008, Respondent mischaracterized at least 58 solicited trades in KY's account as unsolicited; and between October 2007 and November 2008, Respondent mischaracterized 60 solicited trades in KY's account as unsolicited, causing the Firm's books and records to be inaccurate. *Id.*

SEC Rule 17a-3(a) requires every broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 to make and keep current certain books and records relating to its business, including “[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities.” In turn, NASD Rule 3110 requires every FINRA member to make and preserve the books and records required under SEC Rule 17a-3. NASD Rule 0115 makes all NASD rules, including Rule 3110, applicable to both FINRA members and persons associated with FINRA members. The Commission has found that entering inaccurate information in a firm’s books and records violates NASD Rule 2110’s requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and NASD Rule 3110’s requirement to keep accurate books and records. *Fox & Co. Inv., Inc.*, Exchange Act Rel. No 52697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005).

The allegations in the Complaint are sufficient to establish that Respondent violated NASD Rules 3110 and 2110 by mischaracterizing customer trades as unsolicited, causing the Firm’s records to be inaccurate.

H. Seventh Cause of Action – Providing False Information to FINRA (FINRA Rules 8210 and 2010)

The seventh cause of action alleges that Respondent submitted false and evasive information to FINRA in response to a written request for information made pursuant to Rule 8210. Complaint ¶¶ 47-53, 85; Decl. ¶¶ 23-24. Specifically, Respondent falsely denied: (1) using her personal email address to communicate with clients; (2) sending text messages to customers; and (3) offering to settle a customer complaint away from her firm. *Id.*

Rule 8210 is a key element in FINRA’s efforts to police its members. *Richard J. Rouse*, 51 SEC 581, 584. (1993). It 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 Commission has noted that “[i]t is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation. *DOE v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (NAC Dec. 18, 2006).

The allegations in the Complaint are sufficient to establish that Respondent violated NASD Rules 8210 and 2010 by providing false information to FINRA.

I. Eighth Cause of Action – Unapproved Use of Outside Email and Text Messaging Accounts (NASD Rule 2110 and FINRA Rule 2010)

The eighth cause of action alleges that Respondent repeatedly sent emails and text messages to CD and KY from her personal email accounts. Complaint ¶¶ 8, 16, 18, 22, 24 – 27, 51, 88-89; Decl ¶¶ 25-26. By doing so, Respondent violated the Firm’s policies forbidding the use of personal email accounts and mandating that business related electronic communications with customers occur within the Firm’s network. *Id.* Respondent also prevented the Firm from reviewing her email and text messages, and delayed the discovery of Respondent’s misconduct in CD’s and KY’s accounts. Complaint ¶¶ 47-53, 85; Decl ¶¶ 23-24.

The allegations in the Complaint are sufficient to establish that Respondent violated NASD Rule 2110 and FINRA Rule 2010 by sending emails and text messages to customers from her personal account.

J. Ninth Cause of Action – Failure to Appear for Testimony (FINRA Rules 8210 and 2110)

The Complaint alleges that Respondent failed to appear for testimony. Specifically, on December 20, 2010, Staff sent Respondent a Rule 8210 request to appear for testimony in connection with its investigation of Respondent’s misconduct involving CD’s and KY’s accounts. Complaint ¶ 92; Decl. ¶ 28. Staff sent the request by first class and certified mail to

her CRD address. *Id.* The certified mailing was returned as unclaimed. Decl. ¶ 29. The first class mailing was not returned. *Id.* Respondent did not appear for testimony or otherwise respond. Decl. ¶ 30.

On January 25, 2011, in the same manner, Staff sent Respondent a second Rule 8210 request for testimony. Decl. ¶ 31. The certified mailing was returned as unclaimed. Decl. ¶ 32. The first class mailing was not returned. *Id.* Again, Respondent did not appear for testimony or otherwise respond. Decl. ¶ 33.

FINRA Rule 8210 requires persons associated with a member to “provide information orally [or] in writing ... with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding.” Respondent’s failure to respond to the staff’s requests “demonstrates a prima facie violation of [FINRA] Rule 8210.” *DOE v. Houston*, No. 2006005318801, 2010 FINRA Discip. LEXIS 38, at *17 (NAC Dec. 22, 2010). A violation of Rule 8210 is also a violation of Rule 2010. *Id.* at *20 n.13

The allegations of the Complaint are sufficient to establish that Respondent violated FINRA Rules 8210 and 2010 by failing to respond to Staff’s requests for testimony.

IV. Sanctions

The sanctions to be imposed for each of the violations shall be discussed in turn. Those warranting a bar are treated first.

A. Conveying False and Exaggerated Account Values (First Cause of Action)

The Sanction Guidelines (“Guidelines”) do not precisely capture Respondent’s false statements to customers regarding the value of their accounts. However, the Guidelines for falsification of records and material misrepresentations are instructive. *Guidelines* at 37, 90 (2011). The Guideline for falsification of records recommends a fine between \$5,000 and

\$100,000 and a suspension of up to two years where mitigation exists, or, in egregious cases, a bar. *Id.* at 37. The Guideline for intentional misrepresentations recommends a fine between \$10,000 and \$100,000 and a suspension of up to two years, or in egregious cases, a bar. *Id.* at 90.

Here, for more than four years, Respondent repeatedly provided to customers, both orally and in writing, false and exaggerated information about the value of their accounts. This is egregious misconduct that warrants a bar.

B. Providing False Information to FINRA and Failing to Appear for Testimony (Seventh and Ninth Causes of Action)

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory responsibilities without subpoena power. *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000). When an individual fails to provide information or provides false information, FINRA's ability to perform its regulatory functions is subverted. *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998). For these reasons, the Guidelines recommend a bar when a respondent provides untruthful information or fails to respond in any manner to a request for testimony or information issued pursuant to Rule 8210. *Guidelines* at 33. Here, Respondent falsely denied using her personal email address and text messaging to communicate with customers, and denied attempting to settle a customer complaint. She also failed to respond to two requests for testimony. There is no evidence of any mitigating facts that would justify a sanction of less than a bar. Accordingly, a bar is the appropriate sanction for these violations.

C. Settling Away (Third Cause of Action)

For settling customer complaints away from the firm, the Guidelines recommend a fine of \$2,500 to \$50,000 and consideration of a suspension for up to two years, or, in egregious cases, a bar. *Id.* at 34. The Principal Considerations are (1) whether there was verbal notice to, and acquiescence by, the firm, or whether respondent deceived the firm; and (2) whether the misconduct delayed or obviated the filing of required Forms U4 or U5 or NASD Rule 3070 filings.

Here, Respondent's misconduct was egregious. Having lied to a customer for six months about the value of his account, and learning that the customer had complained, Respondent attempted to settle the complaint with the customer without the Firm's knowledge. Respondent used unauthorized text messages to communicate the offer, and stated that the settlement could not go through her firm. The Hearing Officer finds this conduct egregious and imposes a bar for this violation.

D. Sending an Unapproved and Materially False Letter to a Bank (Fourth Cause of Action)

Although there is no directly applicable Guideline for sending an unapproved and materially false letter to a bank, the Guideline for falsification of documents is instructive. As noted above, that Guideline recommends a fine of \$5,000 to \$100,000 and a suspension of up to two years or, in egregious cases, a bar. *Id.* at 37. Here, Respondent acted to induce a financial institution to make a mortgage loan based upon false information that a customer had over \$4 million in assets when the customer actually had less than half that amount. This misconduct is egregious and warrants a bar.

E. Borrowing from a Customer (Second Cause of Action)

The Sanction Guidelines do not provide specific sanctions for violations of Rule 2370. According to the General Principles Applicable to All Sanction Determinations ("General Principles"), adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards.

An NASD Notice to Members provides guidance on Rule 2370's importance: "Loans between registered persons and their customers are of legitimate interest to NASD and member firms because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers." *NASD Notice to Members* 03-62 (Oct. 2003).

In addition, adjudicators are directed to consider whether the respondent attempted to conceal his misconduct, and whether he accepted responsibility for and acknowledged his misconduct to his employer or a regulator prior to detection and intervention by the employer or regulator. *Guidelines* at 2, 10.

Here, Respondent's violation of Rule 2370 is aggravated because she borrowed from a customer even though the Firm's procedures prohibited the loan, and she concealed this activity from the Firm. Moreover, she has repaid only a fraction (\$1,000) of the \$20,000 that she borrowed.

There are no mitigating factors. The Hearing Officer finds that a suspension of at least a year and a substantial fine would be warranted, but given the bars for the other violations, no suspension is imposed. However, the Hearing Officer orders Respondent to pay restitution for this violation (including interest).

F. Exercising Discretion without Written Authorization (Fifth Cause of Action)

For the exercise of discretion without written authorization, the Guidelines recommend a fine of between \$2,500 and \$10,000 and, in egregious cases, a suspension in any or all capacities for 10 to 30 days. *Guidelines* at 87. Principal considerations include whether the customer's grant of discretion was express or implied and whether the firm's policies and/or procedures prohibited discretionary trading and/or whether the firm prohibited the respondent from exercising discretion in customer accounts. *Id.*

Here, there was no express grant of discretion; Respondent neither sought nor obtained authorization from either of the customers or her Firm to exercise discretion. Moreover, the discretionary trading occurred over an extended period (at least 17 months) and involved two customers, multiple accounts and about 350 trades.

Respondent's misconduct was egregious and would merit a fine and suspension in the upper range of the recommended sanctions. However, in light of the bars for other violations, no additional sanction is imposed for this violation.

G. Causing the Firm's Records to be Inaccurate (Sixth Cause of Action)

For record-keeping violations, the Guidelines recommend a fine of between \$1,000 and \$10,000 and a suspension of up to 30 business days, or in egregious cases a fine of between \$10,000 and \$100,000 and a suspension of up to two years, or a bar. *Id.* at 29.

Here, Respondent mischaracterized as unsolicited at least 31 trades in CD's account and at least 118 trades in KY's accounts. This misconduct would warrant a suspension of a year or more, as well as a substantial fine. However, in light of the bars for the other misconduct, no additional sanction is imposed for this violation.

H. Unapproved Use of Outside Email and Text Messaging Accounts (Eighth Cause of Action)

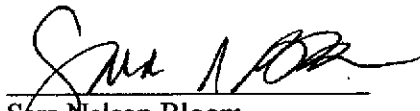
The Guidelines do not specifically address the unauthorized use of personal email and text messaging accounts. However, FINRA has previously applied the Guidelines pertaining to record-keeping violations for failing to submit email correspondence for review. *See DOE v. Zaragoza*, No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *31 (NAC, Aug. 20, 2008).

Respondent's Firm prohibited the use of personal email accounts, text messaging, and instant messaging systems to communicate with clients. By emailing and texting through her personal email accounts, Respondent orchestrated her scheme to settle away, prevented her Firm from carrying out its responsibility to review her correspondence, and delayed the discovery of her misconduct. She compounded the violation when she lied to FINRA Staff about the use of her personal email accounts. Respondent's misconduct is egregious and would merit a lengthy suspension. However, in light of the bars for other violations, no additional sanction is imposed for this violation.

V. Order

Respondent is barred from associating with any FINRA registered firm for: (1) conveying false and exaggerated account values to two customers, in violation of NASD Rule 2110 and FINRA Rule 2010; (2) offering to settle a customer complaint away from her firm, in violation of FINRA Rule 2010; (3) providing false information to FINRA, in violation of FINRA Rules 8210 and 2010; (4) failing to appear for testimony, in violation of FINRA Rules 8210 and 2010; and (5) sending an unapproved and materially false letter to a bank, in violation of NASD Rule 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA. In light of the bars, no additional sanctions are imposed for: (1) exercising discretion

without written authorization in two customer accounts, in violation of NASD Rules 2510(b) and 2110 and FINRA Rule 2010; (2) mischaracterizing solicited trades as unsolicited causing her firm to have inaccurate books and records, in violation of NASD Rules 3110 and 2110; and (3) using unapproved email and text messaging accounts to communicate with customers, in violation of NASD Rule 2110 and FINRA Rule 2010. In addition, Respondent is ordered to pay restitution to a customer from whom she borrowed money, in violation of NASD Rules 2370 and 2110. Specifically, Respondent is ordered to pay restitution to KY in the principal amount of \$19,000, representing the amount of the loan that has not been repaid, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from December 9, 2005, until paid.⁶ In light of the bars imposed for the other violations, no suspension or fine is imposed for this violation.


Sara Nelson Bloom
Hearing Officer

Copies to: Jo Ann Marie Head (*via courier and first-class mail*)
Joel T. Kornfeld, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁶ 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. The customer KY is identified in the addendum to this decision, which is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JO ANN MARIE HEAD
(CRD No. 3009195),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009017530101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent and former Morgan Stanley Smith Barney (the Firm) representative, Jo Ann Marie Head engaged in an extensive course of misconduct from at least early 2005 through mid-2009. Thereafter, Head provided false written information to the staff and failed to appear for on-the-record testimony.

2. Head repeatedly told customers C.D. and K.Y. that their accounts were worth more than their true values; created and provided them with documents that overstated the accounts' true values; emailed and text messaged them from personal and unapproved accounts; exercised discretion without written authorization; and borrowed \$20,000.00 from K.Y. and then failed to repay her.

3. Head also misrepresented the value of K.Y.'s accounts to a financial institution. In June 2006, without her Firm's knowledge or approval, Head wrote a letter to a bank stating that the value of K.Y.'s Firm accounts was \$4 million to enable K.Y. to receive a mortgage loan. In fact K.Y.'s accounts were worth less than half the amount stated.

4. Finally, Head mischaracterized multiple trades as "unsolicited" when, in fact, she did not speak with either C.D. or K.Y. prior to executing trades in their accounts. When C.D. realized the extent of the losses and complained, Head attempted to induce him to withdraw his complaint by settling away from the Firm.

5. This Complaint alleges that Head (i) conveyed false and exaggerated account values in violation of NASD Conduct Rule 2110 and FINRA Rule 2010; (ii) borrowed from a customer in violation of NASD Conduct Rules 2370 and 2110; (iii) settled away from her Firm in violation of FINRA Rule 2010; (iv) sent an unapproved letter to a bank that contained materially false information in violation of NASD Conduct Rule 2110; (v) exercised discretion without written authorization in violation of NASD Conduct Rules 2510(b) and 2110 and FINRA Rule 2010; (vi) caused her Firm's books and records to be inaccurate by mischaracterizing trades as "unsolicited" in violation of NASD Conduct Rules 3110 and 2110; (vii) provided false information to FINRA staff in violation of FINRA Rules 8210 and 2010; (viii) sent emails and text messages from unapproved personal accounts in violation of NASD Conduct Rule 2110 and FINRA Rule 2010; and (ix) failed to appear for on-the-record testimony in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

6. From January 5, 1998 through December 21, 2009, Head was associated with Morgan Stanley Smith Barney and its predecessor and related entities Morgan Stanley DW Inc.

and Morgan Stanley & Co. Inc. Head was registered with FINRA as a General Securities Representative from March 11, 1998 through her December 2009 termination.

7. Although Head has not been associated with a member firm since December 21, 2009, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years after the date upon which she ceased to be associated with a FINRA member and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which she ceased to be associated with a FINRA member.

FACTUAL BACKGROUND

A. Customer C.D.

8. In early 2007, Customer C.D. met with Head to discuss opening accounts with the Firm. C.D. told her that he wanted low risk investments because his income was commission based and fluctuated. Head told C.D. that she was able to purchase bonds at large discounts off the market price and typically obtained returns of 22 percent per year. She provided him with her Firm business card, crossed out her Firm email address (Jo.Head@morganstanley.com) and wrote her personal Hotmail address on the card, [REDACTED]. She also confirmed that she would purchase low risk stocks and bonds on C.D.'s behalf. Shortly thereafter in April 2007, C.D. opened three accounts: (i) the C.D. Roth IRA, Account No. [REDACTED] ("Roth IRA"); (ii) the C.D. IRA, Account No. [REDACTED] ("Standard IRA"); and (iii) the C.D. and K.D. (C.D.'s wife) Joint Account, Account No. [REDACTED] ("Joint Account").

9. C.D. met with Head in June, August, and October 2007 to discuss his accounts. On each occasion, Head assured him that his bonds had incurred significant gains.

1. The February 2008 Meeting.

10. On February 6, 2008, Head met with and presented C.D. with a document entitled Account Information System Output ("AISO") which consisted of a four page printout identifying the holdings in C.D.'s accounts. Head handwrote "264,293.00" on the bottom of the first page, which she explained was the total dollar amount of C.D.'s accounts. In fact, C.D.'s accounts were worth only about \$149,709; his Joint Account was worth about \$103,206.00; the Roth IRA was worth about \$12,341.00; and his Standard IRA was worth about \$34,162.00.

2. The June and July 2008 Meetings

11. In early June 2008, C.D. told Head about an anticipated deposit from the proceeds of the sale of his home and explained that he anticipated using these funds to purchase a new home in the near future. Head answered affirmatively when C.D. inquired whether the proceeds could be invested in a 30 day certificate of deposit.

12. On June 18, 2008, C.D. deposited \$516,442.16 into his Joint Account. Five days later, rather than investing in a certificate of deposit, Head used the proceeds to purchase 55 different securities in C.D.'s Joint Account including equities, municipal and corporate bonds, and a foreign (Ecuadorian) bond.

13. In July 2008, when C.D. questioned Head about the transactions, she told him that she had purchased bonds which would provide him with a "defensive" position.

3. The September 2008 Meetings

14. On September 3, 2008, C.D. met with Head to review his portfolio. Head told him that he had bonds worth \$185,000 in his Joint Account, handed him an AISO for his Joint Account and handwrote "185K Bonds" on the first page. In fact, on September 3, 2008, C.D. had bonds worth about \$170,734.00.

15. At a meeting with Head about two weeks later, on September 19, 2008, C.D. brought his August 31, 2008 statement and asked Head to explain how she calculated the bond values. Head told C.D. that he owned bonds worth \$187,000 greater than what was reflected on his account statements, wrote "187K" on the first page of the statement, told him that his accounts' true value was \$827,000.00, and wrote "827K" on the first page of the statement. In fact, the true value of C.D.'s accounts was \$688,551.31.

4. The December 2008 Meeting

16. In early November 2008, C.D. emailed Head, at her Hotmail address, and informed her that he wanted to wire about \$400,000.00 to an escrow account to purchase a home. Later that month, on Friday, November 21, 2008, C.D. emailed Head, at her Hotmail address, because he was confused about the discrepancy between his account statement and what Head had been telling him about the value of his accounts. C.D. stated, "What I wanted to understand is that we deposited \$513,000 from the sale of our home in June and we had deposited about \$125,000 over the previous 12 months. This would mean we have about \$638,000 NOT counting our retirement [accounts] but that is a lot different than the \$499,500. IF I said, 'he[y] Joe [sic], can you cash me out' not including our retirement, what would we get a check for? I just want to make sure that once we get our down payment check on 12/1, I wanted to make sure what our 'rainy day' fund is."

17. That day, Head emailed C.D. telling him that she would provide him with the account values on the following Monday. But on Monday, November 24, 2008, Head never provided the promised account value.

18. On December 10, 2008, after an exchange of emails and text messages, Head met C.D. and told him that he had lost about \$50,000.00. In fact, C.D. had lost more than quadruple

that amount. Head had been trading frequently in C.D.'s Joint Account; from June 2008 through October 2008, she executed 99 trades. But she never discussed the trades – and losses – with him. On June 30, 2008, the total asset value of C.D.'s Joint Account was \$649,387.78. By October 31, 2008, it had diminished in value to \$465,336. One month later, on November 30, 2008, it was worth only \$422,401.85.

19. In mid-December 2008, after he had received his November 2008 statement, C.D. emailed Head and requested a meeting to ascertain his true account balance and to learn what had transpired in his account. By email, Head agreed to meet the following Monday.

20. At their Monday, December 22, 2008 meeting, Head told C.D. that his concerns were unfounded because he was not considering his bonds' values. She told C.D. that his Firm accounts (the Joint Account, Roth IRA and Standard IRA) were worth \$424, 465.00. She presented him with an AISO and handwrote the following on the first page:

*260,108 AAA
18,322 Roth
146,025 IRA STD
424,465.00*

Head also told him that he had \$186,000.00 in bonds in his accounts and wrote "186,000 Bonds" on the AISO. And she promised to produce a full accounting the next day.

21. The numbers and amounts that Head conveyed were wholly fictitious. On December 22, 2008, the value of C.D.'s accounts was about \$103,365.00, consisting of \$74,108 in his Joint Account; \$8,332 in his Roth IRA; and \$21,025 in his Standard IRA.

22. Head failed to produce an accounting on December 23, 2008. In a text message, she told C.D. that "I do however understand 2day what u were getting at yesterday and I think I can run a report. In any case, ill [sic] make sure you end up happy." In a further text exchange,

Head agreed to forward the report to C.D. by Monday January 5, 2009. But that Monday, no report was forthcoming.

5. C.D. Complains to the Firm

23. On January 12, 2009, C.D. met with a Firm Assistant Branch Manager, expressed his concerns about the June 2008 transactions and showed him the August 2008 statement on which Head wrote "187k" (the purported additional value of bonds not reflected on the statement and "827K" (the purported value of C.D.'s accounts). The Assistant Branch Manager asked C.D. to return for a follow-up meeting on January 14, 2009. In the meantime, he contacted Head and asked her to explain how she communicated with C.D. about his account value and to produce documentation establishing that trades on June 16 and June 23, 2008 in C.D.'s Joint Account were unsolicited. On those days, Head had executed 63 trades in the Joint Account and had designated 21 trades (four on June 16, 2008 and 17 on June 23, 2008) as "unsolicited." Head told the Assistant Branch Manager that she would gather the requested information, but she never did.

24. Instead, on January 13, 2009, she sent C.D. the following text message:

[I] understand you've met with [the Assistant Branch Manager] and according to him; accused me of many heinous crimes. (Which I DO NOT believe you said but he does not like me and would love for me to be gone) however; I am shocked and surprised that you would make any kind of complaint or accusation behind my back so I'm confused. This is my career on the line so I feel like I have to fight for my life (so to speak) did I not give you my word as a friend I would make sure we were on the same page and that you and your family were happy? Even if that meant cashing you out and giving you to someone else? I ask you to please have a conversation with ME before you proceed . . .

6. Head Attempts to Settle Away

25. On January 15, 2009, Head apologized to C.D. for "losing control" over his accounts and offered to wire an amount to C.D.'s designated bank account. In return, she asked for the bonds in C.D.'s account. She told C.D. that an attorney would draft a settlement document but that the settlement could not go through her firm.

26. At 5:27 a.m. on January 16, 2009, Head sent C.D. a text that stated, "I've been up all night drafting a contract from me to u; you'll have time 2 review and make changes; as I've said ill [sic] do what you need . . ." In an ensuing series of texts, C.D. agreed to meet Head at a restaurant across the street from the Firm's Santa Ana office. Head responded, "Ok; as I give you the cash for your portfolio you'll order out the certificates and send them to a 3rd party . . . I have 2 cover both our behinds (wink)."

27. C.D. and Head met at the restaurant at 7:00 a.m. on January 21, 2009. There, she presented him with a handwritten promissory note, with a blank for the total amount promised. Two days earlier, Head had explained that she couldn't email a draft because he had not yet told her what amount he believed was owed. She texted, "Sorry after alls [sic] that's happened I can't email u anything; you haven't given me a dollar amount firstly and what we've discussed is a second violation." The draft promissory note read as follows:

January 16, 2009

Promissory Draft 1

I, Jo Head; acting separately and alone from [the Firm] Global Wealth Management Division am entering into a private transaction with [C.D.] to purchase his portfolio and compensate he [sic] and his family for his perception of financial loss and extreme emotional distress. I will compensate him the sum of \$_____ to be paid no later than July 2009. At such time he is paid in full he will relinquish his future assets account holdings to [Head's husband]. As a good faith gesture of collateral I am today surrendering to [C.D.] the following items

*Circa 1910 1) One amethyst [illegible] & pearl ring value 65K
(as of 2006)*

*Circa 1890 2) One 8 carat natural emerald ring value 50K (as
of 2006)*

3) My fathers [sic] military medals.

*The above items are family heirlooms given in good faith.
These items to be returned upon payment to [C.D.].*

*Also I am surrendering a strand of South Seas pearls value
30K as a gesture of my sincerest apology for pain I may
have caused [C.D.] and his family. This item not to be
returned. It's my hope [C.D.] will gift it to his wife [K.D.]
or he can sell it if he so desires.*

*In return for compensation [C.D.] will issue a verbal or
written hold harmless to [the Firm] GWM and to Jo Head.
In the event [the Firm] suspends my licenses and prevents
my employment in financial services [C.D.] is aware he
will be named as Cause in Client Suit; however if I'm able
to return to my field I will issue a formal hold harmless
letter to [C.D.].*

28. At that early morning meeting, Head gave jewelry and her father's purported Korean War medals to C.D. as "collateral" until she could pay him \$494,986.00 – the amount that C.D. claimed was owed and that Head agreed to pay. She then asked him to withdraw his complaint and tell the Branch Manager that everything was "ok."

29. Later that morning, Head told the Branch Manager that she had spoken with C.D. and everything was "fine." However, several hours later, C.D. met with the Branch Manager, gave him the jewelry and medals that he had received as "collateral," and asked him to return them to Head. Head never returned to the Branch Office and was ultimately terminated on December 21, 2009.

B. Customer K.Y.

30. Customer K.Y., a former producer and director for a large Hollywood motion picture and television studio, was introduced to Head in 1999. K.Y. told Head that she intended to retire within five years and wanted to use her financial assets to generate sufficient income to live on without diminishing her principal. She explained that she had significant health issues and was uncertain about how much longer she would be able to work. Head responded that she was the "No. 1 wealth manager at [the Firm]" and promised she could manage K.Y.'s accounts and earn a 20 percent annual return. In 2000, K.Y. transferred several accounts to the Firm. Head was the financial advisor responsible for those accounts.

31. In the ensuing years, K.Y. and Head became close friends. Head came to social gatherings at K.Y.'s home, they celebrated birthdays and holidays together, and Head always conveyed good news about K.Y.'s accounts.

32. By 2002, K.Y. had multiple Firm accounts, received multiple statements and rarely found the time to review them. Rather she relied on Head to orally keep her apprised of the status of her accounts. Head often told her that her account statements were incorrect and that she orally conveyed the true values.

1. The February 2005 Meeting

33. In February 2005, Head came to K.Y.'s home, told her that she had about \$2 million in her Firm accounts, and gave her an AISO, dated February 2, 2005, that listed each of K.Y.'s nine accounts. Head handwrote the purported value of each listed account.

34. Head overstated the value of at least three of K.Y.'s accounts. She stated that: the K.Y. IRA Standard, Account No. [REDACTED] was worth "\$162,350", when in fact its total asset value was approximately \$32,505.14; K.Y. Account No. [REDACTED] was worth \$461,000 when

its total asset value was approximately \$350,766.12; and the K.Y. Family Trust, Account No. [REDACTED] was worth \$914,808 when its total asset value was approximately \$744,096.43.

2. The November 2005 Meeting

35. In November 2005, Head came to K.Y.'s house and told her she had more than \$2.7 million in her Firm accounts. She gave K.Y. an AISO dated November 17, 2005, that listed K.Y.'s nine accounts, and then handwrote the purported value of each account.

36. Head overstated the value of at least three of K.Y.'s accounts. She stated that: the K.Y. IRA Standard, Account No. [REDACTED] was worth "\$92,823", when its total asset value was about \$ 33,141.00; the K.Y. Family Trust Account No. [REDACTED] was worth "\$988,924", when, in fact, its total asset value was about \$406,000.00; and the K.Y. Family Trust, Account No. [REDACTED] was worth "\$832,894" when in fact its total asset value was about \$679,930.00.

3. Head Borrows \$20,000.00 from K.Y.

37. In December 2005, Head asked K.Y. to loan her \$20,000.00. K.Y. agreed to lend the money to Head and, on December 9, 2005, gave her a cashier's check in the amount of \$20,000.00.

38. On January 10, 2007, 13 months after she borrowed the \$20,000.00, Head sent K.Y. a check for \$1,000.00. Head made no further payment.

4. The Fraudulent \$4 million Letter

39. In mid-2006, K.Y. decided to move to Cambria, California. Head had assured her that she had sufficient funds to purchase a home and sent two letters to the bank from which K.Y. was attempting to procure a mortgage loan. The second letter, dated June 22, 2006, read as follows:

This is a follow up to the letter I sent to you last week regarding our mutual client, [K.Y.]. I have known [K.Y.], both professionally and personally, for 10 years. [K.Y.] has 7 accounts with [the Firm], which include 2 IRA accounts, an annuity as well as stock, bonds, currency portfolios totaling over \$4 million. She has purchased and sold several properties over the past few years and I know her to be an astute businessperson with excellent credit. If you have [K.Y.] as a client, and are able to retain her, with good service, you would be very fortunate and you can be assured that she will make many referrals to you.
Sincerely,

*Jo A. Head
Financial Advisor
Retirement Planning Specialist*

K.Y.'s loan was approved shortly after Head sent the June 22, 2006 letter.

40. But the letter was materially false. K.Y.'s accounts were not worth "over 4 million." The combined value of K.Y.'s Firm accounts was about \$1.6 million. Although the Firm's procedures required that all outgoing correspondence be approved before mailing, the June 22, 2006 was neither reviewed nor approved.

5. K.Y.'s Accounts Diminish While Head Exercises Discretion

41. Between June 2006 and June 2009, Head orally assured K.Y. that her Firm accounts were doing well. In particular, in December 2007, Head assured K.Y. that she had purchased safe income producing bonds on her behalf and that her portfolio had not sustained any losses. Around Christmas 2008 and again in January 2009, Head orally assured K.Y. that she had not touched her account principal and that she need not worry about her Firm accounts. In actuality, K.Y.'s accounts had substantially diminished in value from about \$1.6 million on June 30, 2006 to \$367,565.10 on January 31, 2009.

42. During much of that period, Head was trading frequently in K.Y.'s accounts. Between June 2007 and December 2008, Head executed at least 99 trades in the K.Y. Family Trust Account No. [REDACTED]. And between October 2007 and November 2008, Head executed at least 149 trades in the K.Y. Family Trust, Account No. [REDACTED]. Although neither account was discretionary, Head never spoke to K.Y. before executing any of these trades.

43. Head also falsely characterized many of these trades as "unsolicited." Between June 2007 and December 2008, Head falsely characterized 58 of the 99 trades, in Account No. [REDACTED] as "unsolicited." And between October 2007 and November 2008, Head falsely characterized 60 of the 149 trades, in Account No. [REDACTED] as "unsolicited."

6. The June and July 2009 Meetings

44. On June 12, 2009, K.Y. brought several years of account statements to a lunch meeting with Head. Before the meeting, Head had promised K.Y. that she would prepare a summary of K.Y.'s accounts and their values. At the meeting, Head told K.Y. that she was unable to access K.Y.'s accounts but nonetheless assured her that her accounts were worth \$2.4 million. In fact, K.Y.'s accounts were worth about one sixth of that amount. As of June 30, 2009, the total asset value of K.Y.'s accounts was \$412,354.12

45. On July 31, 2009, K.Y. and Head met at a restaurant to discuss K.Y.'s accounts. There, Head told K.Y. that her accounts were worth \$1.5 million and gave her a handwritten paper on which she wrote "1,546,603.70" as well as the purported amounts in certain of K.Y.'s accounts and amounts in certain types of securities. The handwritten document appeared as follows:

<i>IRA Val</i>	<i>42,000</i>
<i>IRA 050292</i>	<i>\$181,238.55</i>
<i>59226 –formerly muni bonds now in 62491</i>	<i>\$511,361.70</i>
<i>50317 –formerly taxable bonds now in 62491</i>	<i>\$586,041.89</i>
<i>62491 stocks</i>	<i>\$169,732.49</i>
<i>mutual fund</i>	<i>1,030</i>
<i>unit trust</i>	<i>21,599.29</i>
<i>managed futures</i>	<i>33,599.78</i>
	<i>1,546,603.70</i>

46. In fact, on July 31, 2009, the total asset value of K.Y.'s accounts was only \$442,229.93 which included assets of \$16,696.70 in Account No. [REDACTED] and \$340,665.53 in Account No. [REDACTED]

C. Head Lies to the Staff

47. On July 29, 2009, FINRA staff sent Head a written request for information pursuant to FINRA Rule 8210, which sought information related to its investigation involving allegations that Head had engaged in unauthorized transactions and had misrepresented account values to multiple customers.

48. Question No. 14 asked:

Did you ever communicate with any of your clients using your personal e-mail account(s)? If yes, provide all e-mail addresses used and explain in detail why you used your

*personal e-mail address versus the e-mail address assigned
to you by your broker-dealer.*

Head responded "No" in a written response received on September 15, 2009.

49. Question No. 16 requested Head to:

*List all email addresses that you personally utilize to
communicate with clients;*

Head's response was to draw a dash symbol (" - ").

50. Question No. 17 requested Head to:

*List any other means that you use to communicate with clients including,
but not limited to: instant messaging, text, cell phone, email;*

Head's response was, "n/a."

51. In fact, between October 9, 2008 and December 16, 2008, Head used her personal email address [REDACTED] to exchange at least 13 business related emails with C.D. Similarly between April 7, 2009 and August 15, 2009, Head used her personal email address to exchange more than 30 business related emails with K.Y. Moreover, between October 9, 2008 and January 21, 2009, Head exchanged about 65 business related text messages in the form of Blackberry instant messages with C.D.

52. Question No. 23 asked:

*Did you, or have you ever, offered any customer incentives
(monetary or otherwise) in exchange for the suppression of
a complaint? If yes, please describe in as much detail as
possible*

- a. *The name of the customers(s);*

- b. *The financial incentive you offered;*
- c. *The alleged customer complaint;*
- d. *If the exchange took place;*
- e. *When the exchange took place:*

Head responded, "No" to Question No. 23.

53. In fact, Head attempted to settle C.D.'s complaint away from her Firm. She offered him a substantial amount of cash, gave him jewelry, and offered her father's military medals as "collateral" for a proposed monetary settlement."

D. Head Fails to Appear for On-the-Record Testimony

54. In connection with its investigation, on December 20, 2010, FINRA staff requested, pursuant to Rule 8210, that Head appear for on-the-record ("OTR") testimony at FINRA's Los Angeles office at 10:00 a.m. on January 25, 2011.

55. The request was sent by first class and certified mail to Head's CRD Residential Address, [REDACTED]. The letter sent by first class mail was not returned. The letter sent by certified mail was returned with the notation "Returned to Sender Unclaimed Unable to Forward."

56. Head did not contact the staff in response to the notice and then failed to appear on January 25, 2011.

57. When Head failed to appear for her OTR on Friday morning, January 25, 2011, the staff sent her another request ("Second Request"), that afternoon, directing her to appear for OTR testimony at FINRA's Los Angeles office at 10:00 a.m. on February 8, 2011.

58. The Second Request was sent by first class and certified mail to Head's CRD Residential Address. Among other things, it advised Head to notify the staff if she was not

available on February 8, 2011, so that another mutually convenient time could be scheduled.

The Second Request also advised that "failure to appear for a scheduled OTR, by itself, is grounds for disciplinary action, which may include a fine, suspension, and/or a bar from associating with a *FINRA member firm*."

59. The Second Request sent by first class mail was not returned. The Second Request sent by certified mail was returned with the notation "Returned to Sender Unclaimed Unable to Forward."

60. Head did not contact the staff in response to the January 25, 2011 notice and then failed to appear on February 8, 2011.

FIRST CAUSE OF ACTION
(Conveying False and Exaggerated Account Values)
(NASD Conduct Rule 2110 and FINRA Rule 2010)

61. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 60, above.

62. From at least February 2005 through July 2009, as described above in paragraphs 10, 14-15, 18, 20-21, 33-36, 39-41, and 44-46, Head orally told customers C.D. and K.Y. that the total asset value of their accounts was worth more than their true values. During that same period, Head provided them with documents which falsified and overstated the true values of their accounts.

63. By reason of the foregoing, Head violated NASD Conduct Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Borrowing From a Customer)
(NASD Conduct Rules 2370 and 2110)

64. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 63 above.

65. NASD Conduct Rule 2370 prohibits representatives from borrowing money from their customers unless the representative's firm has written procedures allowing such borrowing and the borrowing meets one of the five specific conditions set forth in Rule 2370(a)(2)(A) – (E).

66. Head's firm prohibited borrowing from any client (other than a family member) but allowed that under extremely rare and extenuating circumstances an exception might be granted. But the Firm required that any such exception be reviewed and approved by a Branch Manager or other supervisor *and* written approval be obtained from the Compliance Department before engaging in the activity.

67. Head neither sought nor obtained approval for the loan from K.Y. described above in paragraphs 37- 38. Moreover, her arrangement with K.Y. did not satisfy any of the conditions set forth in Rule 2370(a)(2)(A) – (E).

68. By reason of the foregoing, Head violated NASD Conduct Rules 2370 and 2110.

THIRD CAUSE OF ACTION
(Settling Away)
(FINRA Rule 2010)

69. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 68 above.

70. In January 2009, Head settled and/or attempted to settle Customer C.D.'s complaint without the knowledge or authorization of her Firm as more fully described in paragraphs 25 -29.

71. By reason of the foregoing, Head violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
(Sending an Unapproved and Materially False Letter to a Bank)
(NASD Conduct Rule 2110)

72. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 71 above.

73. As described above in paragraphs 39 – 40, Head prepared, signed and mailed a letter to a financial institution stating that a customer's assets totaled "over \$4 million" in order to assist the customer in obtaining a mortgage loan. The letter was materially false because the customer had assets worth only about \$1.6 million. Further, although the Firm's procedures required that outgoing correspondence be reviewed and approved before mailing, Head neither sought nor obtained approval for the letter.

74. By reason of the foregoing, Head violated NASD Conduct Rule 2110.

FIFTH CAUSE OF ACTION
(Exercising Discretion Without Written Authorization)
(NASD Conduct Rules 2510(b) and 2110 and FINRA Rule 2010)

75. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 74 above.

76. NASD Rule 2510(b) requires that a registered representative obtain written authorization from her customer, and written acceptance from her firm, prior to the exercise of discretionary power in a customer's account.

77. Head neither sought nor obtained authorization from either C.D. or the Firm to exercise discretion in C.D.'s accounts. Nonetheless, as describe above in paragraph 18, from June 2008 through October 2008, Head executed 99 trades in C.D.'s Account No. [REDACTED] without discussing any of those transactions with him.

78. Similarly, Head neither sought nor obtained authorization from K.Y. or her Firm to exercise discretion in K.Y.'s Family Trust Accounts, i.e., Account Nos. [REDACTED] and [REDACTED]. Nonetheless, as described in paragraphs 41- 43, between June 2007 and December 2008, Head executed at least 99 trades in Account No. [REDACTED] and from October 2007 through November 2008, executed 149 trades in Account No. [REDACTED] without discussing any of those transactions.

79. By reason of the foregoing, Head violated NASD Conduct Rules 2510(b) and 2110 and FINRA Rule 2010.

SIXTH CAUSE OF ACTION
(Causing the Firm's Records to be Inaccurate)
(NASD Conduct Rules 3110 and 2110)

80. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 79 above.

81. As described above in paragraph 18, Head solicited at least 99 trades in C.D.'s Account No. [REDACTED] from June 2008 through October 2008. On at least 31 occasions, Head mischaracterized solicited trades as "unsolicited" thereby causing the Firm's books and records to be inaccurate. Attached as Exhibit "A" is a schedule of the mischaracterized trades in C.D.'s Account No. [REDACTED]

82. As described above in paragraphs 42-43, Head solicited at least 99 trades K.Y.'s Account No. [REDACTED] and 149 trades in Account No. [REDACTED] Head mischaracterized 58 of the 99 trades in Account No. [REDACTED] and 60 of the 149 trades in Account No. [REDACTED] as "unsolicited" thereby causing the Firm's books and records to be inaccurate. Attached as Exhibits B and C are schedules of the mischaracterized trades in K.Y.'s Account Nos. [REDACTED] and [REDACTED]

83. By reason of the foregoing, Head violated NASD Conduct Rules 3110 and 2110.

SEVENTH CAUSE OF ACTION
(Providing False Information to FINRA)
(FINRA Rules 8210 and 2010)

84. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 83 above.

85. As described above in paragraphs 47 – 53, in September 2009, Head submitted false and evasive information to FINRA in response to a written request for information made pursuant to Rule 8210. In particular, Head falsely denied (i) using her personal email address to communicate with clients; (ii) text messaging; and (iii) settling away from her firm.

86. By reason of the foregoing, Head violated FINRA Rules 8210 and 2010.

EIGHTH CAUSE OF ACTION
(Unapproved Use of Outside Email and Text Messaging Accounts)
(NASD Conduct Rule 2110 and FINRA Rule 2010)

87. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 86 above.

88. While Head was registered with the Firm, the Firm had written supervisory procedures forbidding the use of personal email accounts and mandating that business related

electronic communications with customers go through the Firm's network. Firm policy for electronic communication, effective August 15, 2007, specified that:

All business-related communications must be sent through the Firm's network (from your Firm-issued computer or through remote computing capabilities) . . . You may not use a personal e-mail account, text messaging system, or instant messaging system or instant messaging, whether from a cellular phone, pager or other device, to communicate with clients or prospects regarding Firm related business." (emphasis in original)

The Firm policy for the use of cellular telephones, effective August 15, 2007, similarly stated:

As a general policy, cellular telephones should not be used as a routine or regular means of contacting clients. In limited circumstances when it is necessary to communicate with a client using a cellular telephone while out of the office, cellular telephone use is permissible. However, since all electronic communications must be made through the Firm's network, you may never use a cellular telephone to communicate with clients via a personal e-mail or text messaging account. (emphasis in original)

89. As described above in paragraphs 8, 16, 18, 22, 24 – 27, and 51, by repeatedly emailing C.D. and K.Y. from her personal Hotmail account and by repeatedly using her personal

Blackberry to send text messages to C.D., Head violated her Firm's policies and prevented it from reviewing her email and text messages and delayed discovery of the misconduct in C.D.'s and K.Y.'s accounts.

90. By reason of the foregoing, Head violated NASD Conduct Rule 2110 and FINRA Rule 2010.

NINTH CAUSE OF ACTION
(Failure to Appear For On-The-Record Testimony)
(FINRA Rules 8210 and 2010)

91. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 90 above.

92. On December 20, 2010, the staff requested, pursuant to FINRA Rule 8210, that Head appear for an OTR on January 25, 2011. After Head failed to appear on January 25, 2011, the staff requested, pursuant to Rule 8210 that she appear for an OTR on February 8, 2011. Head failed to appear on February 8, 2011. She never explained her failure to appear for and provide OTR testimony.

93. By failing to appear for testimony, Head violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

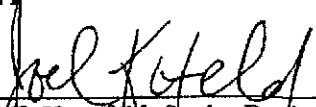
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 23, 2011


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