

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS M. ARETZ
(CRD No. 1083897),

Respondent.

Disciplinary Proceeding
No. 20090177643

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 21, 2011

Respondent is barred from associating with any FINRA-registered firm in any capacity for: (1) engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and FINRA Conduct Rule 2010; (2) borrowing money from customers, in violation of NASD conduct Rules 2370 and 2110, and FINRA Conduct Rule 2010; and (3) failing to respond to requests for information, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010. In addition, Respondent is ordered to pay restitution to five customers.

Appearances

Donald C. Sullivan, Esq., and Richard Chin, Esq., for the Department of Enforcement.

No appearance by or on behalf of Thomas M. Aretz.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on January 31, 2011. The Complaint charges Thomas M. Aretz (“Respondent”) with: (1) engaging in unapproved outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and FINRA Conduct Rule 2010; (2) borrowing from customers, in violation of NASD Rules 2370 and 2110, and FINRA Conduct Rule 2010; and (3)

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failing to provide information and documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Respondent did not answer or otherwise respond to the Complaint. Accordingly, on April 25, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”) with the Office of Hearing Officers, together with the declaration of Donald C. Sullivan, Esq. (“Decl.”) and seven exhibits.² For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement’s Default Motion.

II. Procedural History

On January 31, 2011, Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”) by first-class certified mail, return receipt requested, and first-class mail.³ The certified mailing was returned to Enforcement because it was unclaimed.⁴

Respondent did not answer or otherwise respond to the Complaint.

On March 2, 2011, Enforcement served a Second Notice of Complaint and a copy of the Complaint on Respondent by mailing it to his CRD address by first-class certified mail, return receipt requested, and first-class mail.⁵ The certified mailing was returned to Enforcement because it was unclaimed.⁶

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-7.

³ Decl. ¶ 36.

⁴ *Id.* ¶ 37.

⁵ *Id.* ¶ 39.

⁶ *Id.* ¶ 40.

To date, Respondent has not answered or otherwise responded to the Complaint. Accordingly, the Hearing Officer held the Respondent in default and 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. Background

Respondent was associated with Kovack Securities, Inc. ("Kovack"), a FINRA-registered firm, from July 14, 2000, until April 14, 2009, during which period he was registered with FINRA as an Investment Company and Variable Contracts Products Representative.⁷

On April 14, 2009, Kovack filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on Respondent's behalf. The Form U5 reported that the firm had discharged Respondent following its investigation of a customer complaint that alleged that Respondent had borrowed money from the customer in violation of FINRA rules.⁸ FINRA staff commenced the investigation that led to this proceeding in or about March 2010 after it received the Form U5.⁹

B. Jurisdiction

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 him with misconduct that occurred while he was associated with a FINRA-registered firm, and with failing to respond to

⁷ CX-1, at 3; CX-2, at 1, 7.

⁸ CX-2, at 7.

⁹ Decl. ¶ 11.

Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.¹⁰

C. Outside Business Activity

The First Cause of Action alleges that Respondent violated NASD Conduct Rules 3030 and 2110 and Kovack's written procedures by engaging in an outside business activity without first having provided Kovack with written notice of the activity. Kovack's Written Supervisory Procedures Manual stated, in relevant part, "No Registered Representative shall be employed by, or accept compensation from, any other person as a result of any business activity without prior notification to [Kovack]."¹¹

In or around 2006, Respondent formed a company called "All Bright Colors." Respondent owned and operated All Bright Colors until at least April 2009.¹² Respondent used All Bright Colors to purchase land for the development of a campground for recreational vehicles.¹³ Although All Bright Colors was unrelated to the scope of Respondent's employment with Kovack, Respondent did not provide Kovack with notice of this outside business activity in the form Kovack required.¹⁴

The Hearing Officer finds that the facts alleged in the First Cause of Action are sufficient to establish that Respondent violated NASD Conduct Rules 3030 and 2110. NASD Rule 3030 prohibits any person associated with a member firm from being "employed by, or accept[ing] compensation from, any other person as a result of any business activity, other than a passive

¹⁰ 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").

¹¹ Compl. ¶ 7.

¹² *Id.* ¶ 8.

¹³ *Id.* ¶ 9.

¹⁴ *Id.* ¶¶ 10, 16.

investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.” The member firm determines the form of the requisite written notice. The rule was “intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives.”¹⁵ Member firms are to receive “prompt notification of *all outside business activities* of their associated persons so that the member’s objections, if any, to such activities [can] be raised at a meaningful time and so that appropriate supervision [can] be exercised.”¹⁶

D. Borrowing from Customers

The Second Cause of Action alleges that Respondent borrowed a total of approximately \$242,800 from five customers, which loans Respondent has not repaid.¹⁷ Specifically, the Complaint alleges that Respondent:

1. borrowed \$50,000 from customer CR—\$20,000 on December 13, 2006, and \$30,000 on January 10, 2007;¹⁸
2. borrowed a total of \$40,000 from customer BA—\$15,000 on November 30, 2007, and \$25,000 January 30, 2008, which loans were evidenced by a promissory note dated January 30, 2008;¹⁹
3. borrowed \$102,800 from customer RJ—\$100,000 in five transactions between December 18, 2007, and March 28, 2008, and \$2,800 on October 14, 2008;²⁰

¹⁵ NASD Notice to Members 88-86 (Nov. 1988).

¹⁶ *Id.* (emphasis added); see also *Department of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13 (N.A.C. Dec. 7, 2005) (explaining that NASD Rule 3030’s reach extends to all outside business activity, not just securities-related activity).

¹⁷ Compl. ¶¶ 20-21.

¹⁸ *Id.* ¶ 22. The Complaint further alleges that the loans were evidenced by a promissory note dated January 20, 2007, which was amended on January 20, 2008, and February 12, 2009, which notes increased the loan amount to \$56,000. Compl. ¶¶ 23-25.

¹⁹ Compl. ¶¶ 26-27.

4. borrowed \$28,107 from customer KR on October 17, 2007; which loan was evidenced by promissory notes dated October 17, 2007, February 5, 2008, and March 11, 2009;²¹ and
5. borrowed \$25,000 from Customer CM on April 30, 2007, which loan was evidenced by a promissory note.²²

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated NASD Rule 2370. 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....²³

However, Kovack's written procedures prohibited borrowing from customers without the express written consent of the firm's Chief Compliance Officer or a member of Kovack's senior management.²⁴ Nonetheless, Respondent did not request or obtain permission from Kovack to borrow money from the Firm's customers.²⁵ Moreover, it is well established that any conduct that violates an NASD Conduct Rule is a violation of Conduct Rule 2110 (now Rule 2010).²⁶

²⁰ *Id.* ¶ 28.

²¹ Compl. ¶¶ 29-32.

²² *Id.* ¶ 33.

²³ Rule 2370 contains other conditions under which borrowing from customers is permissible; however, they are not relevant here because Kovack's written procedures prohibited all borrowing from customers without written approval from the firm's compliance department or senior management.

²⁴ Compl. ¶ 36.

²⁵ *Id.* ¶ 37.

²⁶ *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (citations omitted).

E. Failure to Respond to Requests for Information and Documents

The Third Cause of Action alleges that Respondent failed to respond to two requests for information FINRA staff issued in conjunction with the staff's investigation into Respondent's outside business activity and borrowing from customers while he was associated with Kovack. Both requests were issued pursuant to Rule 8210, which requires member firms and persons subject to FINRA's jurisdiction to provide information requested by FINRA.

FINRA staff sent both requests to Respondent at his CRD address by certified and first-class mail. The first request was dated March 31, 2010, and the second was dated April 30, 2010.²⁷ Respondent did not respond to either request although Respondent signed the receipt for the second request.²⁸

The Hearing Officer finds that the foregoing facts establish that Respondent violated Rule 8210 by failing to respond to the requests for information. A violation of Rule 8210 is also a violation of Rule 2010.²⁹

IV. Sanctions

A. Outside Business Activity

The FINRA Sanction Guidelines ("Sanction Guidelines") for engaging in outside business activities involving aggravating conduct directs that the adjudicator consider a suspension of up to one year.³⁰ In egregious cases, the Sanction Guidelines provide for

²⁷ Compl. ¶¶ 40, 42.

²⁸ *Id.* ¶ 43; Decl. ¶ 33.

²⁹ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

³⁰ FINRA Sanction Guidelines 13 (2011), www.finra.org/sanctionguidelines

consideration of a longer suspension or a bar.³¹ The Hearing Officer finds that this is an egregious case and that a bar is the appropriate sanction.

First, the evidence supports the finding that Respondent concealed his misconduct. For example, Respondent completed and submitted audit questionnaires dated October 17, 2006, March 1, 2007, and March 10, 2008, that failed to disclose his involvement with All Bright Colors.³² He also did not disclose his outside business activity on his Uniform Applications for Securities Industry Registration or Transfer (Forms U4) dated November 27, 2006, August 7, 2007, June 6, 2008, and August 28, 2008.³³ Moreover, Respondent borrowed approximately \$242,800 from his customers, which he did not repay, to fund All Bright Colors' operations. On the other hand, there are no mitigating factors in the record.

B. Borrowing from Customers

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

³¹ *Id.*

³² Decl. ¶ 22(k).

³³ *Id.* ¶ 22(j).

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."³⁴

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.³⁵

Respondent's violation of Rule 2370 was aggravated because he borrowed money from five customers over a substantial period, he failed to repay the loans, and he failed to disclose the loans on several annual compliance questionnaires. In addition, the Hearing Officer finds Respondent's disciplinary history to be an aggravating factor. Respondent's CRD record reflects that he was previously sanctioned for borrowing money from a customer.³⁶

In light of the egregious nature of Respondent's misconduct and the lack of any mitigating factors, the Hearing Officer finds that a bar is the appropriate sanction for this violation. In addition, the Hearing Officer finds that Respondent should be ordered to pay restitution to his customers.

C. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond.³⁷ The Guidelines for failing to respond to requests for information list principal considerations for

³⁴ NASD Notice to Members 03-62 (Oct. 2003).

³⁵ Sanction Guidelines 2, 10.

³⁶ CX-1.

³⁷ Sanction Guidelines 33.

adjudicators to assess in determining appropriate sanctions. Adjudicators are instructed to consider the importance of the information requested as viewed from FINRA's perspective.³⁸

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given all of the facts and circumstances, including a lack of mitigating factors that would warrant a lesser sanction. The documents and information that the staff sought were important. The staff was investigating serious misconduct. A bar remedies the risk that Enforcement will not be able to obtain information necessary to the protection of investors and will serve to deter others from failing to provide Enforcement with information requested under Rule 8210 at the time such requests are made.

V. Order

Thomas Michael Aretz is barred from associating with any member firm in any capacity for: (1) engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and FINRA Conduct Rule 2010; (2) borrowing money from customers, in violation of NASD Rules 2370 and 2110, and FINRA Conduct Rule 2010; and (3) failing to respond to 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.

In addition, Respondent is ordered to pay restitution³⁹ as follows:

1. Respondent shall pay CR \$56,000, together with interest on the unpaid balance at the rate of 10% per year from January 20, 2008, until paid in full.⁴⁰

³⁸ *Id.*

³⁹ The customers are identified in the addendum to this decision, which is served only on the parties.

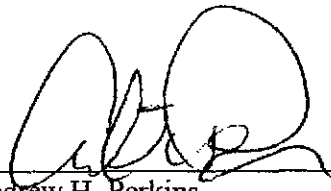
⁴⁰ Interest is calculated from the date of the promissory note that increased the loan amount to \$56,000 at the interest rate provided in the promissory note.

2. Respondent shall pay BA \$40,000, together with interest on the unpaid balance at the rate of 10% per year from January 30, 2008, until paid in full.⁴¹
3. Respondent shall pay RJ the principal amount of \$102,800, which is the total principal amount of the loans made by RJ to Respondent. In addition, Respondent shall pay RJ interest on each loan, until paid in full, calculated at the rate established under Section 6621(a)(2) of the Internal Revenue Code. Interest shall be calculated on the following principal loan amounts from the corresponding interest accrual dates as follows: (i) interest on the principal sum of \$25,000 from December 18, 2007; (ii) interest on the principal sum of \$10,000 from March 12, 2008; (iii) interest on the principal sum of \$10,000 from March 24, 2008; (iv) interest on the principal sum of \$15,000 from April 27, 2008; (v) interest on the principal sum of \$40,000 from April 29, 2008; and (vi) interest on the principal sum of \$2,800 from October 14, 2008.
4. Respondent shall pay KR \$28,107, together with interest on the unpaid balance at the rate of 10% per year from March 11, 2009, until paid in full.⁴²

⁴¹ Interest is calculated from the date of the promissory note that evidenced the earlier loans from BA at the interest rate provided in the promissory note.

⁴² Interest is calculated from the date of the "Amendment to Promissory Note dated October 17, 2007." The March 11, 2009 Amendment provided for interest at the rate of 10% on the total amount then due KR, including accrued interest on the earlier loan.

5. Respondent shall pay CM \$25,000, together with interest on the unpaid balance at the rate of 10% per year from April 30, 2007, until paid in full.⁴³



Andrew H. Perkins
Hearing Officer

Copies to:

Thomas M. Aretz (*via overnight courier and first-class mail*)
Donald C. Sullivan, Esq. (*via electronic and first-class mail*)
Richard Chin, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁴³ Interest is calculated from the date of the promissory note that evidenced the earlier loans from BA at the interest rate provided in the promissory note.

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**THOMAS M. ARETZ
(CRD No. 1083897),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20090177643**

COMPLAINT

The Department of Enforcement ("Department") alleges:

SUMMARY

1. Respondent Thomas M. Aretz ("Aretz" or "Respondent") established an outside business activity, without the permission of his FINRA-regulated broker-dealer employer, in violation of NASD Rules 3030 and 2110, as well as FINRA Rule 2010. In connection with this business, Aretz borrowed approximately \$242,800 from five of his customers at his FINRA-regulated broker-dealer employer, in violation of NASD Rules 2370 and 2110, as well as FINRA Rule 2010. Aretz has not repaid these loans. Aretz also failed to provide information and documents, as requested by staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT

2. Aretz first entered the securities industry in 1982, and worked continuously in the industry until 1994. In 1999, he returned to the industry and he passed the Series 6 exam.

Between July 2000 and April 2009, Aretz was qualified as an Investment Company Products/Variable Contracts Representative, and he worked in that capacity for Kovack Securities, Inc. ("Kovack" or "the Firm"), a FINRA-regulated broker-dealer. Kovack terminated Aretz's registration on April 13, 2009, after Kovack discovered that Aretz had borrowed funds from a Firm customer without obtaining prior written approval from Kovack.

3. Although Aretz has not been associated with a FINRA-regulated broker-dealer since April 13, 2009, he 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 he ceased to be associated with a FINRA regulated broker-dealer and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA-regulated broker-dealer and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA-regulated broker-dealer.

FIRST CAUSE OF ACTION

Engaging in an Unapproved Outside Business Activity (NASD Rules 3030 and 2110 and FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. Rule 3030 provides, in relevant part:

No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.

6. Rule 2110, which was in effect when Aretz began at the Firm and through December 14, 2008, provided that all associated persons must at all times “observe high standards of commercial honor and just and equitable principles of trade.”¹

7. Kovack’s Written Supervisory Procedures manual stated, in relevant part

No Registered Representative shall be employed by, or accept compensation from, any other person as a result of any business activity without prior notification to [Kovack]

All outside business activity must be reported to [Kovack] using the outside business activity notification form This form is to be used to update Form U-4 for all [registered representatives].

It is the [registered representative’s] responsibility to keep an accurate U-4 and promptly update his U-4 as required.

8. In or around 2006, Aretz formed a company called “All Bright Colors.” Aretz owned and operated All Bright Colors until at least April 2009.

9. Aretz used All Bright Colors to purchase land for the development of a campground to be used by the owners of recreational vehicles.

10. All Bright Colors was an outside business activity that Aretz engaged in outside the scope of his relationship with Kovack.

Loans to All Bright Colors

11. BA, RJ, and KR were three of Aretz’s customers who had brokerage accounts at Kovack.

12. Customer BA and Customer RJ made loans to Aretz in the form of checks payable to “All Bright Colors.” BA’s check payable to All Bright Colors, for \$25,000, was

¹ Rule 2110 was renumbered and superseded by Rule 2010, effective December 15, 2008, but the language of the Rule was unchanged.

deposited in January 2008. Further, two checks RJ made payable to All Bright Colors, which totaled \$35,000, were deposited in December 2007 and March 2008.

13. Aretz reported to these customers that he wanted these loans in order to purchase land for a recreational vehicle campground.

14. These checks were deposited into one of Aretz's bank accounts.

15. A check drawn in April 2009 by Aretz, which was returned for insufficient funds, was made payable to Customer KR. This check was drawn on the account where the BA and RJ checks were deposited. The face of the check identified the owner of the account as "TNT Enterprises of Destin, Inc., DBA [doing business as] All Bright Colors."

16. Aretz never made a written request or received permission from Kovack to engage in the outside business activity known as All Bright Colors.

17. As a result of the foregoing conduct, Aretz violated NASD Rules 3030 and 2110, and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Borrowing From Customers

(NASD Rules 2370 and 2110 and FINRA Rule 2010)

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.

19. NASD Rule 2370 provides, in part, that no registered person may borrow money from any customer of that person, unless the FINRA-regulated broker-dealer employer has written procedures permitting such borrowing. In addition, Rule 2370 provides that no registered person may borrow money from customers unless either: the

customer and the representative are immediate relatives; the customer is a financial institution; the customer and the representative are both employees of the same firm; the lending arrangement is based on a personal or business relationship outside of the broker-customer relationship.

Respondent Was the Firm's Assigned Registered Representative for Customers CR, BA,

RJ, KR, and CM

20. Customers CR, BA, RJ, KR, and CM were all individuals who were customers of Kovack for whom Aretz was the assigned registered representative.

21. Aretz borrowed a total of approximately \$242,800 from these customers, and has not repaid any of these loans.

Customer CR

22. Respondent borrowed \$50,000 from customer CR, in the following manner. On or about December 13, 2006, Aretz borrowed \$20,000 from CR, in a check drawn by CR and made payable to "Tom Aretz," and, on or about January 10, 2007, Aretz borrowed \$30,000 from CR, in a check drawn by CR and made payable to "Tom Aretz."

23. These loans, which totaled \$50,000, were also memorialized in a promissory note that Aretz and CR signed on or about January 20, 2007. The note stated:

[CR] has agreed to loan Thomas Aretz \$50,000 for a period of one year at the rate of 12% or higher if the Stock Market produces a higher return.

24. On or about January 20, 2008, CR and Aretz executed an amended promissory note regarding these loans. This amended note also added to the amount of the underlying loan the interest that had by then accrued, and the amended note stated:

[CR] has agreed to loan Tom Aretz \$56,000 for one year at an interest Rate [sic] of 12%. Repayment will be in Jan. 2009.

25. On or about February 12, 2009, CR and Aretz executed another amended promissory note regarding these loans, which was appended to the January 10, 2007 promissory note, and which stated:

[CR] and Thomas Aretz have agreed to extend this note and Thomas Aretz will start to pay interest [sic] at the rate of 10% or \$563.00 per month.

Customer BA

26. Aretz borrowed a total of \$40,000 from customer BA, in the following manner. On or about November 30, 2007, Aretz borrowed \$15,000 from customer BA, in a check drawn by BA and made payable to "Tom Aretz." On or about January 30, 2008, Aretz borrowed an additional \$25,000 from BA, in a check drawn by BA and made payable to "All Bright Colors Inc."

27. On or about January 30, 2008, Aretz and BA executed a promissory note memorializing these loans. The promissory note stated:

[BA] has agreed to loan \$40,000 to All Bright Colors Inc (Tom Aretz) for one year at the interest rate of 10%, to be repaid in Jan[uary] 2009.

Customer RJ

28. Aretz borrowed \$102,800 from customer RJ, in the following manner. In five separate checks, dated between December 18, 2007 and March 28, 2008, all drawn by RJ, and all made payable to "All Bright Colors," Aretz borrowed \$100,000. Three of these checks bore the notation "Tom Aretz Loan." On or about October 14, 2008, Aretz borrowed an additional \$2,800 from RJ, in a check drawn by RJ and made payable to "Tom Aretz."

Customer KR

29. On or about October 17, 2007, Aretz borrowed \$25,000 from customer KR, in a check drawn by KR, made payable to Bank of America, and bearing the notation "Cash for Loan for Tom Aretz."

30. On or about October 17, 2007, Aretz executed a promissory note memorializing this \$25,000 loan. Aretz's signature was notarized and the promissory note stated that Aretz would repay the loan, with 6% interest, on or before November 28, 2007.

31. On or about February 5, 2008, Aretz and KR executed an amended promissory note regarding this \$25,000 loan. Aretz's signature was notarized and the promissory note stated that Aretz would repay the \$25,000 loan, with interest at the rate of 10%, in January 2009.

32. On or about March 11, 2009, Aretz executed an amended promissory note regarding this \$25,000 loan. Aretz's signature was notarized and the note stated that, considering the interest and principal, Aretz would repay "the new amount" of \$28,107, plus 10% interest, on or before February 15, 2011.

Customer CM

33. On or about April 30, 2007, Aretz borrowed \$25,000 from CM, and memorialized the loan in a promissory note which stated that Aretz would borrow the money for six months and would pay at least 10% interest on the loan.

34. CM understood that the loan would be used by Aretz to purchase land.

Firm Policy

35. At the time of each of the aforementioned loans, Aretz was associated with Kovack in a registered capacity.

36. Kovack prohibited its registered representatives from borrowing funds from clients without the express written consent of the Firm's Chief Compliance Officer or his designee, or Kovack Senior Management.

37. Aretz did not request or obtain permission from Kovack to borrow money from customers of the Firm.

38. As a result of the foregoing conduct, Aretz violated NASD Rules 2370 and 2110, and FINRA Rule 2010.

THIRD CAUSE OF ACTION

**Failure to Respond to a Request for Information and Documents
FINRA Rule 8210 and FINRA Rule 2010**

39. The Department realleges and incorporates by reference paragraphs 1 through 38 above.

40. On or about March 31, 2010, FINRA staff sent a letter via certified mail and first class mail to Aretz's then most-current residential address, according to the Central Registration Depository ("CRD"). The CRD address for Kovack was at the time, and is currently, 113 Country Club Drive W, Destin, Florida 32541. The letter was sent pursuant to Rule 8210, and requested documents and information concerning: the circumstances that led to Aretz's termination from the Firm; whether Aretz had ever borrowed money from a customer; and whether Aretz had ever engaged in outside business activity. The requested information and documents were to be provided to the Department on or before April 21, 2010.

41. The letter sent by certified mail was returned to the Department on or about April 26, 2010, with the notation by the United States Postal Service "Return to Sender – Unclaimed – Unable to Forward." The letter sent by first class mail was not returned to Enforcement. Aretz did not provide the information and documents requested in the letter dated March 31, 2010.

42. On or about April 30, 2010, FINRA staff sent a second request for information and documents to Aretz, at his CRD address, via certified and first class mail, pursuant to FINRA Rule 8210. The April 30, 2010 letter also requested documents and information concerning: the circumstances that led to Aretz's termination from the Firm; whether Aretz had ever borrowed money from a customer; and whether Aretz had ever engaged in outside business activity. The April 30, 2010 letter enclosed a copy of the March 31, 2010 letter. The information and documents requested in the April 30, 2010 letter were to be provided to the Department on or before May 17, 2010.

43. The Return Receipt for the certified letter was returned to FINRA signed by "Tom Aretz." The letter sent by first class mail was not returned. Aretz did not provide the information and documents requested in the letter dated April 30, 2010.

44. By virtue of the foregoing, Aretz violated FINRA Rules 8210 and 2010.

PRAYER

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 proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA

DEPARTMENT OF ENFORCEMENT

Date: January 28, 2011



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