

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY ALLEN BALDWIN
(CRD No. 1856003),

Respondent.

Disciplinary Proceeding
No. 2009019632401

Hearing Officer – MAD

DEFAULT DECISION

November 7, 2011

Respondent is barred from associating with any member firm in any capacity for: (1) engaging in private securities transactions without providing his employer with prior written notice, in violation of NASD Conduct Rules 3040 and 2110; (2) improperly using customer securities and funds, in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010; and (3) failing to respond to FINRA requests for information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Respondent is also ordered to pay restitution to the customer for improperly using his securities and funds.

Appearances

Karrin J. Feemster, Senior Regional Counsel, Los Angeles, CA, and Mark P. Dauer, Esq., Deputy Chief Litigation Counsel, New Orleans, LA, for the Department of Enforcement.

No appearance by or on behalf of Gregory Allen Baldwin.

DECISION

I. Introduction

On June 28, 2011, the Department of Enforcement (“Enforcement”) filed the attached Complaint in this disciplinary proceeding against Respondent Gregory Allen Baldwin (“Baldwin”). The Complaint charges that Baldwin: (1) engaged in private securities transactions without providing his employer, FINRA member firm Golden Beneficial Securities (“GBS”), with written notice of his activities, in violation of NASD Conduct Rules 3040 and 2110; (2)

improperly used his customer's securities and funds, in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010; and (3) failed to respond to FINRA requests for information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.¹

Baldwin did not answer or otherwise respond to the Complaint. Consequently, on September 16, 2011, Enforcement filed a Motion for Entry of Default and Default Decision ("Default Motion"), supported by the Declaration of Karrin J. Feemster, Esq. ("Feemster Decl.") and seven exhibits. Respondent did not file a response to the Default Motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Baldwin was first employed in the securities industry in July 1988.³ Between June 2004 and July 2008, Baldwin was registered with FINRA as a General Securities Representative through GBS.⁴ From August 2008 through June 2009, Baldwin was associated with member firm Grant Bettingen, Inc., now known as Newport Coast Securities, Inc. ("NCS"), as a General Securities Representative.⁵ On July 1, 2009, NCS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), noting that Baldwin voluntarily terminated his association with NCS as of June 30, 2009.⁶

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidate rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

³ CX-1, at 4.

⁴ *Id.*

⁵ Feemster Decl. ¶ 6; CX-1.

⁶ Feemster Decl. ¶ 6; CX-2.

Although Baldwin has not been registered with a member firm since June 30, 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 following the termination of his last registration with a FINRA member, and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm and with failing to respond to FINRA requests for information and testimony during the two-year period following his voluntary termination of FINRA registration.⁷

B. Respondent's Default

On June 28, 2011, Enforcement served Baldwin with the Notice of Complaint and Complaint by first-class and certified mail, return receipt requested, addressed to his residential address recorded in the Central Registration Depository (the "CRD Address").⁸ Enforcement also sent the Notice of Complaint and Complaint to Baldwin's personal email address.⁹ The U.S. Postal Service ("USPS") returned the certified mailing, marked "Not Deliverable as Addressed-Unable to Forward-Return to Sender."¹⁰ The first-class mailing was not returned by the USPS.¹¹

On July 27, 2011, Enforcement served the Second Notice of Complaint and Complaint on Baldwin in the same manner.¹² Again, the USPS returned the certified mailing as undeliverable.¹³

⁷ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁸ Feemster Decl. ¶ 10; CX-3.

⁹ Feemster Decl. ¶ 10; CX-3, at 17.

¹⁰ Feemster Decl. ¶ 10; CX-4, at 2.

¹¹ Feemster Decl. ¶ 10.

¹² Feemster Decl. ¶ 12; CX-5.

¹³ Feemster Decl. ¶ 12; CX-6.

The USPS also returned the first-class mailing, noting that the time for forwarding had expired.¹⁴ To date, Baldwin has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

The Hearing Officer finds that Enforcement properly served Baldwin by mailing the Complaint and the First and Second Notices of Complaint in accordance with Procedural Rule 9134(b)(1), thereby giving him constructive notice of this disciplinary proceeding. Baldwin defaulted by failing to answer the Complaint.¹⁵ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Default Motion.

C. Origin of the Underlying Investigation

During FINRA's 2009 routine cycle exam of NCS, FINRA staff selected Baldwin, along with several other registered representatives, to review his outside business activities.¹⁶ Upon review of information relating to Mountain Capital, LLC ("Mountain Capital"), Baldwin's registered investment adviser firm, the staff learned that, while Baldwin was associated with GBS, he raised almost \$3 million from investors through the sale of limited partnership interests in Mountain Capital Partners Resource Fund, LP ("Fund"), a limited partnership he controlled.¹⁷ The staff also learned that he did not provide written notice to, or obtain written approval from,

¹⁴ Feemster Decl. ¶ 12; CX-6. The forwarding address shown on the first-class mailing provided an address for "Carol Baldwin," but none for Respondent Baldwin. The FINRA staff conducted a public records search in September 2011 through LexisNexis, which associated Respondent's name to his listed CRD address until August 2011. Feemster Decl. ¶ 12.

¹⁵ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁶ Feemster Decl. ¶ 8.

¹⁷ *Id.*

GBS.¹⁸ Additionally, the investigation revealed that Baldwin made improper use of a customer's securities in May 2009, while he was associated with NCS.¹⁹

Baldwin initially cooperated with FINRA staff, but he ceased doing so once their investigation expanded into the disposition of the customer's securities and funds as well as the funds raised through the sale of the limited partnership interests.²⁰ FINRA's investigation led to the filing of this Complaint.

D. Private Securities Transactions (Selling Away)

The First Cause of Action alleges that Baldwin engaged in private securities transactions without providing GBS with written notice of his activities, in violation of NASD Conduct Rules 3040 and 2110. Baldwin formed the Fund in September 2004.²¹ Baldwin's adviser firm, Mountain Capital, was the Fund's general partner.²² Baldwin sold limited partnership interests in the Fund to 18 investors, soliciting each of the investors.²³ The Private Placement Memorandum for the Fund and the subscription agreements reflected that Baldwin raised \$2,940,000, from July 2005 through November 2007, through 22 private securities transactions.²⁴

As a result of the Fund investments, Baldwin received selling compensation.²⁵ Baldwin and Mountain Capital were reimbursed for various expenses, and Baldwin received management fees in his capacity as general partner of the limited partnership.²⁶ Between March 2007 and June

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Feemster Decl. ¶ 16.

²² *Id.*

²³ Feemster Decl. ¶¶ 18, 21.

²⁴ *Id.* ¶¶ 16, 18.

²⁵ Feemster Decl. ¶ 21.

²⁶ *Id.*

2009, the Fund completed 19 wire transfers to Baldwin's personal bank account totaling \$156,925.53.²⁷ Baldwin also received three wire transfers, totaling \$6,100, to another account in his name.²⁸ Further, on March 30 and April 22, 2009, the Fund wired \$35,000 and \$40,000, respectively, to Baldwin's personal investment account at NCS.²⁹ Lastly, money from the Fund's bank account was used to pay Baldwin's personal credit card expenditures of \$48,231.32.³⁰

GBS did not give oral or written permission to Baldwin to engage in any business activity relating to the Fund.³¹ In fact, Baldwin signed annual attestations, dated April 4, 2006, May 2, 2007, and April 2, 2008, acknowledging the requirement to notify the firm prior to engaging in any private securities transaction away from the firm and provide "details of the offering or placement," yet he failed to do so.³²

The purpose of Conduct Rule 3040 is to ensure that FINRA members can adequately supervise the suitability and due diligence responsibilities of their registered persons.³³ The Rule also serves to "protect employers against investor claims arising from an associated person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of their associated person's transactions."³⁴

Conduct Rule 3040 requires an associated person to provide his employer with written notice of private securities transactions before the transactions take place.³⁵ The Rule defines a

²⁷ *Id.*

²⁸ *Id.* ¶ 22.

²⁹ *Id.* ¶ 23.

³⁰ *Id.*

³¹ *Id.* ¶ 20.

³² *Id.*

³³ See *Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39 (N.A.C. Dec. 13, 2001).

³⁴ *Id.* at *8-9.

³⁵ Conduct Rule 3040(b).

“private securities transaction” as “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including, though not limited to, new offerings of securities [that] are not registered with the [Securities and Exchange] Commission.”³⁶ Further, the Commission has held that the written notice must describe in detail the proposed transactions and the associated person’s proposed role in the transactions, and state whether the associated person has received or may receive selling compensation in connection with the transactions.³⁷ Under Rule 3040, “selling compensation” is defined as “any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions; finder’s fees; securities ...; rights of participation in profits ... as a general partner or otherwise; or expense reimbursements.” If the transaction is for compensation, the associated person may not engage in the transaction unless the employer gives its prior approval in writing.³⁸

Here, the Fund transactions were securities in the form of investment contracts.³⁹ It is well established that limited partnership interests are “investment contracts.”⁴⁰ The sale of the limited partnership interests was outside of Baldwin’s scope of employment. Baldwin’s participation is clear; he created the private offering and solicited investors. He also received

³⁶ Conduct Rule 3040(e)(1).

³⁷ *Anthony H. Barkate*, Exchange Act Release No. 49542, 2004 SEC LEXIS 806, at *2 (Apr. 8, 2004), *aff’d*, 125 F. App’x. 892 (9th Cir. 2005).

³⁸ *Alvin W. Gebhart, Jr.* Exchange Act Release No. 53136, 2006 SEC LEXIS 93, at *55, *57 (Jan. 18, 2006).

³⁹ See Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934; *see also SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) (stating that an investment contract is defined as: (1) an investment of money; (2) in a common enterprise; (3) with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others).

⁴⁰ See *SEC v. Merch. Capital, LLC*, 483 F.3d 747 (11th Cir. 2007) (noting limited partnership interests are routinely treated as investment contracts); *Williamson v. Tucker*, 645 F.2d 404, 423 (5th Cir. 1981) (stating limited partnership interests have long been held to be investment contracts); *SEC v. Murphy*, 626 F.2d 633 (9th Cir. 1980).

selling compensation in the form of management fees and expense reimbursements. Baldwin never notified or received approval from GBS prior to engaging in these transactions.

The Hearing Officer finds that the allegations in the First Cause of Action are sufficient to establish that, between July 2005 and November 2007, Baldwin violated Conduct Rules 3040 and 2110 by failing to provide GBS with written notice of his private securities transactions.

E. Improper Use of Customer Securities and Funds

The Second Cause of the Complaint alleges that Baldwin misused Customer JH's securities and funds. JH was Baldwin's customer at NCS.⁴¹ In April 2009, JH instructed Baldwin to liquidate all 333,000 shares of his Beyond Commerce ("BYOC") stock and send him a check for the proceeds of the sale, which Baldwin agreed to do.⁴² Contrary to JH's specific instructions, on May 13, 2009, Baldwin caused JH's 333,000 shares of BYOC stock to be transferred into his Fund account at NCS, without JH's knowledge or authorization.⁴³ Baldwin subsequently informed JH that he received \$366,000 for the liquidation of his BYOC securities.⁴⁴ When JH requested the sale proceeds, Baldwin informed JH that his monies had been invested in the Fund; therefore, Baldwin could not disperse the funds because they were commingled with other investors' monies.⁴⁵ Baldwin sent JH \$50,000 after JH expressed his dissatisfaction with the sale and his need for immediate funds.⁴⁶ When Baldwin caused the sale of the BYOC shares from his

⁴¹ Feemster Decl. ¶ 26.

⁴² *Id.*

⁴³ *Id.* ¶ 28.

⁴⁴ *Id.* ¶ 29.

⁴⁵ *Id.*

⁴⁶ *Id.*

Fund account, he retained the proceeds, which totaled \$323,656.29, and failed to remit any additional monies to Customer JH.⁴⁷

The Hearing Officer finds that Baldwin improperly used customer funds in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010.

F. Failure to Respond to FINRA Requests for Information and testimony

The Third Cause of Action alleges that Baldwin failed to respond to FINRA requests for information and testimony. Pursuant to Procedural Rule 8210, FINRA staff sent Baldwin two requests for information and documents, and three requests to appear for testimony. Baldwin failed to provide information and documents and to appear for testimony.

1. Requests for Information

On March 4, 2010, the staff sent Baldwin a Rule 8210 request letter to his CRD address by first-class and certified mail.⁴⁸ FINRA's request sought financial documentation for Baldwin and the Fund, as well as account and contact information for all investors in the Fund.⁴⁹ Baldwin's response was due on March 18, 2010.⁵⁰ Baldwin signed the certified mail receipt on March 8, 2010.⁵¹ On March 17, 2010, Baldwin emailed the staff, stating that he had been ill, was in the process of moving, and would provide the information requested as "expeditiously as possible."⁵² On March 19, 2010, FINRA staff left a voicemail message for Baldwin.⁵³ Additionally, on the same day, the staff emailed Baldwin requesting a response date for the Rule

⁴⁷ *Id.* ¶¶ 29, 31.

⁴⁸ *Id.* ¶ 35.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* ¶ 36.

⁵² *Id.*

⁵³ *Id.*

8210 request and new contact information (address and telephone number), which he referenced in his March 17 email.⁵⁴ On March 19, 2010, Baldwin emailed the staff and stated that he would provide his contact information as soon as he had it, but he did not state when he would respond to the staff's Rule 8210 request.⁵⁵

On March 25, 2010, the staff sent a second Rule 8210 request to Baldwin's CRD address by first-class and certified mail.⁵⁶ The response was due on April 8, 2010.⁵⁷ The USPS returned the certified mailing marked unclaimed.⁵⁸ The first-class mailing was not returned.⁵⁹ On May 8, 2010, the staff called Baldwin and left a voicemail message, which was not returned.⁶⁰ On May 10, 2010, the staff emailed Baldwin regarding his outstanding response to the staff's March 4 and March 25 Rule 8210 requests.⁶¹

2. Requests for Testimony

On September 10, 2010, the staff sent Baldwin a Rule 8210 request for him to appear and provide testimony on September 24, 2010.⁶² The letter was sent to his CRD address by first-class and certified mail, as well as by electronic mail.⁶³

On September 24, 2010, the staff sent second Rule 8210 request for testimony to Baldwin's CRD address by first-class and certified mail, as well as by electronic mail, requesting

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 38.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* ¶ 39.

⁶¹ *Id.* On June 4, 2010, the staff received an email from "Facebook" for a friend request by Baldwin. However, Baldwin did not respond to the second request. *Id.*

⁶² *Id.* ¶ 40.

⁶³ *Id.*

his appearance on October 13, 2010.⁶⁴ On October 11, 2010, the staff received an email from Baldwin, requesting a postponement because he had been out of town, was in the process of moving, and had been ill.⁶⁵ On October 12, 2010, the staff emailed Baldwin, requesting that Baldwin call the FINRA staff immediately to discuss the scheduled testimony as well as the Rule 8210 requests for documents and information that had been outstanding for approximately seven months.⁶⁶ Baldwin did not respond to this email.⁶⁷ On October 15, 2010, the staff again emailed Baldwin requesting that he contact the staff, but he did not reply.⁶⁸ Additionally, the staff called the number Baldwin had previously provided, but it was disconnected.⁶⁹

On October 20, 2010, the staff sent a third Rule 8210 request for testimony to Baldwin's CRD address by first-class, certified, and electronic mail, requesting his appearance on November 4, 2010.⁷⁰ The USPS returned the certified letter marked unclaimed.⁷¹ The first-class letter was not returned.⁷² On November 10, 2010, Baldwin emailed the staff stating that he had been ill and asked if his testimony could be taken in North Carolina.⁷³ The FINRA staff attempted to contact Baldwin, but the telephone number Baldwin had provided in his earlier

⁶⁴ *Id.* ¶ 41

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* ¶ 42.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

email had been disconnected.⁷⁴ On November 11, 2010, the staff emailed Baldwin requesting his current contact information, but Baldwin did not reply.⁷⁵

Baldwin failed to respond to the above-mentioned Rule 8210 requests for information, documents, or testimony.⁷⁶ The Hearing Officer finds that, by failing to respond to the request letters, Baldwin violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

III. Sanctions

A. Private Securities Transactions (Selling Away)

The FINRA Sanction Guidelines (“Guidelines”) relating to private securities transactions violations recommend a fine ranging from \$5,000 to \$50,000, and a suspension of up to a year, and, in cases involving sales of over \$1,000,000, a 12-month suspension or bar.⁷⁷ The Guidelines also state that “[t]he presence of one or more mitigating or aggravating factors may either raise or lower the above-described sanctions.”⁷⁸ Thus, the Guidelines direct the Hearing Officer to consider 13 additional principal considerations and the general considerations applicable to all violations in determining the appropriate sanction. These factors include: (1) the dollar volume of sales; (2) the number of customers; (3) the length of time over which the selling away activity occurred; (4) whether the respondent had a beneficial interest in the issuer; (5) whether the respondent attempted to create the impression that his or her member firm sanctioned the activity; and (6) whether the respondent misled or otherwise concealed the selling away activity from the firm.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* ¶¶ 37, 39, 40, 41, 42.

⁷⁷ *FINRA Sanction Guidelines* 14 (2011), www.finra.org/sanctionguidelines.

⁷⁸ *Sanction Guidelines* at 14.

In this case, the Hearing Officer found several aggravating factors and no mitigating factors. Here, Baldwin raised \$2,940,000 through his private securities transactions. His misconduct continued for over two years and involved 18 investors. Because Baldwin ceased cooperating with FINRA, the extent of the investors' losses is unclear; however, Enforcement reported that it received several statements from investors, indicating that they have lost their entire investment.⁷⁹ Baldwin clearly had a beneficial interest in the issuer; therefore, he was in a position to profit from the investments. Additionally, Baldwin misled GBS by certifying in 2006, 2007, and 2008, that he would not engage in private securities transactions without obtaining prior written approval.

After careful consideration of these factors, the Hearing Officer concludes that a bar is the appropriate sanction for violating NASD Conduct Rules 3040 and 2110.

B. Improper Use of Customer Securities Funds

The Guidelines recommend a fine ranging from \$2,500 to \$50,000, and consideration of a bar for improper use of customer securities and funds.⁸⁰ In addition, the Guidelines provide that restitution may be ordered "when an identifiable person, member firm or other party has suffered a quantifiable loss as a result of a respondent's misconduct."⁸¹ Here, Baldwin deposited the securities into an account he controlled and commenced liquidating the shares, only returning \$50,000 to Customer JH, causing JH a significant loss which has not been repaid. The total proceeds realized were \$323,656.29. Since JH only received \$50,000 from the sale proceeds, his loss amounts to \$273,656.29.

⁷⁹ Enforcement Default Mot. at 11.

⁸⁰ If mitigating circumstances are present, such as when the misuse may be attributable from a respondent's misunderstanding of the customer's intended use of the funds, the Sanction Guidelines recommend a suspension of six months to two years, or until the respondent pays restitution. *Sanction Guidelines* at 36. No such mitigating circumstances are present in this case.

⁸¹ *Sanction Guidelines* at 4 (General Principles Applicable to All Sanction Determinations No. 5).

Baldwin's conduct reveals that he would pose a substantial risk to the investing public if allowed to associate with a member firm in the future. Accordingly, the Hearing Officer concludes that the appropriate sanction for this violation is a bar. The Hearing Officer also orders Baldwin to pay Customer JH restitution in the amount of \$273,656.29 plus interest.

C. Failure to Respond to FINRA Requests for Information and Testimony

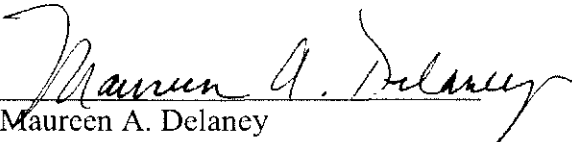
The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.⁸² Here, Baldwin failed to respond, in any manner, to FINRA staff's two written requests for information and three requests for testimony, issued in connection with their investigation. There are no mitigating factors. Accordingly, the Hearing Officer concludes that the appropriate sanction for this violation is a bar.

IV. Order

Gregory Allen Baldwin is barred from associating with any member firm in any capacity for: (1) engaging in private securities transactions without providing his employer with prior written notice, in violation of NASD Conduct Rules 3040 and 2110; (2) improperly using customer securities and funds, in violation of NASD Conduct Rules 2330 and FINRA Conduct Rule 2010; and (3) failing to respond to FINRA requests for information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, as alleged in the Complaint. Baldwin is also ordered to pay Customer JH's restitution in the amount of \$273,656.29, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code

⁸² *Id.* at 33.

from the date of the transaction until paid.⁸³ The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to:

Gregory A. Baldwin (*via overnight courier and first-class mail*)
Karrin J. Feemster, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁸³ 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. Customer JH is identified in the Addendum to this decision, which is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

RECEIVED

JUN 29 2011

**FINRA OFFICE OF
HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Gregory Allen Baldwin
(CRD No. 1856003),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009019632401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From July 2005 through November 2007, Respondent Gregory Allen Baldwin raised \$2,940,000 from investors through the sale of securities in the form of limited partnership interests, without providing prior written notice to, or obtaining written approval from, his employer member firm. As a result, Baldwin violated NASD Conduct Rules 3040 and 2110. Further, Baldwin made improper use of a customer's securities by transferring shares of stock held by the customer to an account Baldwin controlled. He subsequently made improper use of the customer's funds when he sold the stock and retained control of the proceeds instead of returning the funds from the sale to the customer. As a result, Baldwin violated NASD Conduct Rule 2330 and FINRA Rule 2010. Finally, as part of the staff's investigation, Baldwin failed to

provide documents and information and failed to appear for on-the-record testimony in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. From June 2004 to July 2008, Baldwin was associated with Golden Beneficial Securities (GBS), a member of FINRA, as a general securities representative.
3. At all relevant times, Baldwin was the sole owner of Mountain Capital LLC, a North Carolina registered investment adviser (Mountain Capital RIA).
4. From August 2008 to June 30, 2009, Baldwin was associated with FINRA member Grant Bettingen, Inc., now known as Newport Coast Securities, Inc. (NCS).
5. Baldwin has not been associated with a member firm since his voluntary termination of his association with NCS on June 30, 2009.
6. Although Respondent has not been associated with a FINRA member firm since June 30, 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 member; and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information and to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION

(Private Securities Transactions -- NASD Conduct Rules 3040 and 2110)

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.

8. Baldwin formed Mountain Capital Fund, LP (Mountain Capital Fund or the Fund) on September 30, 2004. Baldwin's adviser firm, Mountain Capital RIA, was Mountain Capital Fund's general partner. Baldwin filed a Form D for Mountain Capital Fund on September 1, 2005.
9. Mountain Capital Fund was a Regulation D Rule 506 offering for \$100,000,000. The Fund's overall investment objective was to achieve above average levels of return associated with high levels of income from the appreciation in the value of equity securities and income and royalty trusts. The private placement memorandum (PPM) for the Fund disclosed that the Fund may invest in investments that it believed would enhance the returns of the Fund. There were no restrictions on the Fund's investments. The PPM provided for management fees, among others, for the general partner and included provisions relating to Mountain Capital Fund's responsibility to pay for operating expenses and offering cost reimbursements to the general partner.
10. From July 2005 to November 2007, Baldwin raised approximately \$2,940,000 from his sale of limited partnership interests in the Fund to about 18 investors in 22 transactions, as detailed below:

Date	Investor Name	\$ Amount of Subscription
7/18/2005	MS	\$200,000.00
10/24/2005	PP	\$150,000.00
1/11/2006	MF	\$100,000.00
1/24/2006	NR, LLP	\$125,000.00
1/27/2006	GC	\$200,000.00
3/1/2006	BT	\$100,000.00
4/01/2006	RG	\$100,000.00
4/01/2006	GLT	\$50,000.00
4/07/2006	DA	\$100,000.00
4/19/2006	JC	\$100,000.00
4/24/2006	RC	\$100,000.00

Date	Investor Name	\$ Amount of Subscription
5/9/2006	CAS	\$115,000.00
5/11/2006	MN	\$100,000.00
6/1/2006	EG	\$100,000.00
6/6/2006	FI	\$500,000.00
12/15/2006	FI	\$200,000.00
1/15/2007	FI	\$50,000.00
2/17/2007	FI	\$50,000.00
3/08/2007	CB	\$100,000.00
4/02/2007	DT and LT	\$100,000.00
6/13/2007	FI	\$200,000.00
11/14/2007	WILP	\$100,000.00
	Total	\$2,940,000.00

11. Baldwin engaged in the 22 private securities transactions itemized above while at GBS.
12. Baldwin did not provide any notice to GBS of his participation in the private securities transactions, nor did GBS approve his participation in these transactions. In annual attestations that Baldwin completed dated April 4, 2006, May 2, 2007 and April 2, 2008, he acknowledged the requirement that he notify the firm prior to engaging in any private securities transaction away from the firm.
13. Baldwin received selling compensation, as that term is defined in NASD Conduct Rule 3040, as a result of the investments in Mountain Capital Fund described above. Baldwin and/or Mountain Capital RIA were reimbursed for various expenses and Baldwin received fees in his capacity as general partner of the limited partnership. Baldwin solicited these investments pursuant to a private placement memorandum that provided for the payment of management fees to the general partner in the amount of 1/4 of 2% per annum of each limited partner's capital account balance, calculated and paid quarterly in advance. For the period between March 2007 and

June 2009, there were wire transfers from Mountain Capital Fund, LP's bank account to Baldwin's personal account at Evergreen Bank totaling \$156,925.53 as follows:

Date	Amount	Beneficiary and Wire Transfer Payment Details/Reference
3/14/2007	13,089.44	Bnf: Gregory A Baldwin/Management Fees and Organizational Expenses
9/17/2007	1,000.00	Bnf: Gregory A Baldwin/Mountain Capital Infusion
11/14/2007	8,750.00	Bnf: Gregory A Baldwin/Finders fee for Opulink Investment
2/1/2008	12,000.00	Bnf: Gregory Baldwin/Partial General Partner withdrawal
3/26/2008	8,000.00	Bnf: Gregory Baldwin/(No description provided)
5/29/2008	3,000.00	Bnf: Gregory A Baldwin/Compensation for General Partner from Mcpnrf, Lp
6/5/2008	5,000.00	Bnf: Gregory A Baldwin/Gen Partner Compensation
6/19/2008	8,000.00	Bnf: Gregory A Baldwin/Payment to General Partner
7/14/2008	2,000.00	Bnf: Gregory A Baldwin/Managers Fees
7/24/2008	3,350.00	Bnf: Gregory A Baldwin/General Partner Fees
7/30/2008	10,000.00	Bnf: Gregory A Baldwin/General Partner Fees
8/20/2008	9,000.00	Bnf: Gregory Baldwin/Managers Fees
9/4/2008	5,000.00	Bnf: Gregory A Baldwin/Manager Fees
9/26/2008	18,336.09	Bnf: Gregory A Baldwin/Accrued Oper/Admin Expense
10/31/2008	13,000.00	Bnf: Gregory Baldwin/Payable to General Partner
1/9/2009	4,400.00	Bnf: Gregory Baldwin/Payable to General Partner
3/5/2009	10,000.00	Bnf: Gregory Baldwin/General Partner Fee
3/23/2009	3,000.00	Bnf: Gregory Baldwin/Fees to General Partner
6/15/2009	20,000.00	Bnf: Gregory A Baldwin/General Partner Compensation
Total	156,925.53	

14. In addition, there were three wire transfers totaling \$6,100 to another account in Baldwin's name as follows:

Date	Amount	Beneficiary/Wire Transfer Payment Details/Reference
8/19/2008	2,000.00	Bnf: Greg & Carol Baldwin/Manager Fees
10/9/2008	1,100.00	Bnf: Baldwin, Gregory A (No Description included)
7/10/2009	3,000.00	Bnf: Gregory and Carol Baldwin/Payable to General Partner
Total	6,100.00	

15. Moreover, there were wire transfers on March 30, 2009 and April 22, 2009 in the amounts of \$35,000 and \$40,000, respectively, from the Mountain Capital Fund's bank account to Baldwin's personal investment account at NCS. In addition, money

from the Fund's bank account was used to pay Baldwin's personal credit card expenditures of \$48,231.32.

16. The foregoing acts, practices and conduct constitute violations of NASD Conduct Rules 3040 and 2110 by Baldwin.

SECOND CAUSE OF ACTION
(Improper Use of Customer's Securities and Funds -- NASD Conduct
Rule 2330 and FINRA Rule 2010)

17. The Department realleges and incorporates by reference paragraphs 1 through 16 above.
18. NCS customer JH as of April 2009, owned 333,000 shares of BYOC stock. JH was Baldwin's customer. In or about April 2009, JH instructed Baldwin to liquidate all of his BYOC shares and to send him a check for the proceeds of the sale. Baldwin agreed to liquidate the shares and to send JH a check for the sale proceeds.
19. A few weeks after contacting Baldwin, JH followed up with him as he had not heard from him or received a check for the sale of the BYOC shares. Baldwin told JH that he was not yet able to liquidate the securities as the firm was giving him a hard time.
20. Instead of following JH's instructions and liquidating the shares, Baldwin transferred the shares to an account he controlled. On or about May 13, 2009, Baldwin caused JH's 333,000 shares of BYOC stock to be transferred into Baldwin's Mountain Capital Fund account at NCS, without JH's knowledge or authorization. By transferring the shares to his own possession and control instead of selling them, Baldwin made improper use thereof.

21. Baldwin informed NCS that JH was already an investor in the Fund and wanted to add his BYOC securities to his already existing "investment...." NCS approved the transfer of the securities to the Fund's account.
22. Baldwin subsequently informed JH that he had liquidated the securities, receiving \$366,000 for the sale. When JH requested the sale proceeds, Baldwin told him he had invested JH's monies in Mountain Capital Fund and that he could not disburse funds at that time because the funds were commingled with other investors' monies.
23. After JH expressed his dissatisfaction and need for funds, Baldwin sent him \$50,000. Other than these funds, JH never received the proceeds of the sale of his securities. When Baldwin caused the sale of BYOC shares from the Mountain Capital Fund account that he controlled, Baldwin retained the proceeds in that account and failed to remit any further portion thereof to customer JH. By retaining funds that should have been remitted to JH, Baldwin made improper use of JH's funds.
24. The foregoing acts, practices and conduct constitute violations of NASD Conduct Rule 2330 and FINRA Rule 2010 by Baldwin.

THIRD CAUSE OF ACTION
(Failure to Respond to Requests for Information and Documents and to Appear for
Testimony -- FINRA Rules 8210 and 2010)

25. The Department realleges and incorporates by reference paragraphs 1 through 24 above.
26. FINRA staff sent Baldwin initial 8210 requests for information to which he provided some responses and documents. However, during the investigation, the staff expanded the investigation to, among other things, determine the use of proceeds from the offering. As a result, the staff issued two Rule 8210 requests to Baldwin to

provide information and documents, and three requests to appear for on-the-record testimony. Baldwin failed to provide information and documents and to appear for testimony.

First Request for Information and Documents

27. On March 4, 2010, the staff sent Baldwin a Rule 8210 request to his CRD address of record via first class and certified mail requesting documents and information. The requested documents included bank and brokerage accounts statements for Baldwin and the Fund for the review period, including accounts identified in the bank statements, credit card statements, a schedule and contact information for all investors in the Fund, and investor account information and records reflecting investor activity and the status of the investors' interests. The response was due on March 18, 2010.
28. Baldwin signed the certified mail receipt on or about March 8, 2010. On March 17, 2010, Baldwin emailed the staff that he had been ill, was in the process of moving and would provide the information requested as "expeditiously as possible." On March 19, 2010, the staff called Baldwin at the number he provided and left a voice mail message. Further, on March 19, 2010, the staff emailed Baldwin requesting a date the response would be provided as well as the new address and telephone number referenced in Baldwin's March 17, 2010 email. On March 19, 2010, Baldwin emailed the staff and stated that he would provide his contact information as soon as he had it. He did not state when he would respond to the staff's 8210 request.
29. Baldwin failed to respond to the first Rule 8210 request.

Second Request for Information and Documents

30. On March 25, 2010, the staff sent Baldwin a second Rule 8210 request to his CRD address via first class and certified mail, enclosing a copy of the March 4, 2010 letter. The response was due on April 8, 2010. The certified letter was returned to the staff on April 28, 2010, marked "Return to Sender-Unclaimed-Unable to Forward." The letter sent by first class mail was not returned.
31. On or about May 8, 2010, the staff called Baldwin and left a voicemail message which was not returned. On May 10, 2010, the staff emailed Baldwin regarding his outstanding response to the staff's March 4, 2010 and March 25, 2010 Rule 8210 requests. Although on June 4, 2010, the staff received an email from "Facebook" for a friend request by Baldwin, he did not respond to the second request letter.

Request for On-the-Record Testimony (OTR)

First Request for an OTR

32. In furtherance of the staff's investigation, on September 10, 2010, the staff sent Baldwin its first Rule 8210 request for him to appear and provide testimony on September 24, 2010. The letter was sent to his CRD address via first class and certified mail, as well as to his email address. The certified mailing was returned to the staff on October 4, 2010, marked "Return to Sender-Unclaimed-Unable to Forward." The letter sent via first class mail was not returned. Baldwin did not appear for the OTR.

Second Request for an OTR

33. On September 24, 2010, the staff sent Baldwin a second Rule 8210 request to his CRD address via first class and certified mail as well as to his email address

requesting his appearance for his OTR on October 13, 2010. The certified letter was returned to the staff on November 5, 2010, marked "Other-Unclaimed." The letter sent by first class mail was not returned. On October 11, 2010, the staff received an email from Baldwin requesting a postponement on the grounds that, among other things, he had been out of town, was in the process of moving and had been ill. On October 12, 2010, the staff emailed Baldwin requesting that Baldwin call the staff immediately to discuss the scheduled OTR as well as the Rule 8210 requests for documents and information that had been outstanding for approximately seven months. Baldwin did not respond to this email, nor did he appear for his OTR on October 13, 2010. On October 15, 2010, the staff again emailed Baldwin requesting that he contact the staff, but he did not reply. On October 15, the staff called the number Baldwin had previously provided and that was included in his email and reached a voice recording stating that the telephone number had been disconnected.

Third Request for an OTR

34. On October 20, 2010, the staff sent Baldwin a third Rule 8210 request to his CRD address via first class and certified mail as well as to his email address requesting his appearance for an OTR on November 4, 2010. The certified letter was returned to the staff on November 16, 2010, marked "Return to Sender-Unclaimed-Unable to Forward." The letter sent by first class mail was not returned. On November 10, 2010, Baldwin emailed the staff stating that he had been ill with the flu and asked if it was possible to have the OTR in North Carolina. The staff attempted to reach him yet again using the telephone number reflected on the email, but the number had been disconnected. On November 11, 2010, the staff emailed Baldwin requesting that he

provide a current address and telephone number. Baldwin did not contact the staff nor did he appear for his OTR.

35. Baldwin's failure to provide the requested information, documents, and testimony has impeded the staff's investigation and effectively prevented the staff from determining the extent of Baldwin's misconduct and whether Baldwin violated additional securities laws, rules and/or regulations.

36. The foregoing acts, practices and conduct constitute violations of FINRA Rules 8210 and 2010 by Baldwin.

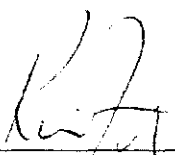
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, 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 to customer JH; 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: June 28, 2011



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