

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

REGINALD GEORGE
(CRD No. 5304658),

Respondent.

Disciplinary Proceeding
No. 2009019875002

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

November 25, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) converting \$34,025 in funds from a customer's account, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010; (ii) engaging in unauthorized securities transactions in a customer's account, in violation of FINRA Conduct Rule 2010; and (iii) fabricating Letters of Authorization to make fund transfers out of the customer's account, in violation of FINRA Conduct Rule 2010. In light of the bar, no further sanctions are imposed for: (iv) sending unauthorized communications to a customer from Respondent's personal e-mail account, in violation of FINRA Conduct Rule 2010; and (v) failing to respond timely to requests for information and documents, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Additionally, Respondent is ordered to pay restitution, plus interest, to the affected customer.

Appearances

For the Department of Enforcement, Complainant: Andrew T. Beirne, Esq.

For Reginald George, Respondent: no appearance.

DECISION

Reginald George was previously registered with FINRA and associated as a General Securities Representative at McGinn, Smith & Co., Inc. ("McGinn" or "the Firm"), formerly a

FINRA registered firm. FINRA staff began an investigation of George as a result of a Uniform Termination Notice for Securities Registration ("Form U5") filed by McGinn on his behalf. The Form U5 disclosed that George had been discharged as a result of a customer complaint alleging fraud. Additionally, the Firm noted on the Form U5 that its ongoing internal investigation revealed that George had engaged in the use of an unauthorized e-mail address, that he had failed to follow procedures, had tampered with documents, and had engaged in misrepresentation.

Based on the staff's investigation, the Department of Enforcement filed a Complaint charging George with: (1) converting \$34,025 of customer KM's funds from his Firm account via 19 wire transfers and three electronic checks drawn on KM's account, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010 (First Cause of Action); (2) engaging in 11 unauthorized securities transactions in KM's account, in violation of FINRA Conduct Rule 2010 (Second Cause of Action); (3) fabricating Letters of Authorization ("LOAs") purportedly from KM to explain funds transfers out of KM's account, in violation of FINRA Conduct Rule 2010 (Third Cause of Action); (4) engaging in unauthorized customer communications with KM on firm-related or investment-related business from George's personal e-mail account, in violation of FINRA Conduct Rule 2010 (Fourth Cause of Action); and (5) failing to respond timely to seven Rule 8210 requests for information and documents, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 (Fifth Cause of Action).

George did not answer the Complaint. Accordingly, Enforcement filed a motion for entry of a default decision. The motion is supported by the Declaration of Andrew T. Beirne¹ and 21 exhibits.² For the reasons discussed below, the Hearing Officer grants Enforcement's motion and

¹ Hereafter referred to as "Decl."

² Hereafter referred to as "CX-__."

bars George from associating with any FINRA member firm in any capacity and orders him to pay restitution, with interest, to customer KM, whose funds he converted.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws³ because: (1) the Complaint was filed within two years after George's last registration with FINRA terminated,⁴ and (2) the Complaint charges him with misconduct that occurred while he was registered with a with a FINRA registered firm.

II. Enforcement's Motion for Entry of Default Decision is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on May 23, 2013. That same day, Enforcement served George with a copy of the Notice of Complaint and Complaint by certified mail, return receipt requested, at his residential address as reflected in the Central Registration Depository ("CRD Address") and to two slightly different addresses in Franklin, Pennsylvania, that FINRA staff learned, through research, may have been George's then-current residential address ("Franklin Addresses").⁵ George did not answer the Complaint by June 20, 2013, the deadline set in the Notice of Complaint.⁶

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").

⁴ FINRA terminated George's last registration effective May 2, 2013. CX-1, at 2. The Complaint was filed on May 23, 2013.

⁵ Decl. ¶¶ 14–16. Enforcement does not have actual knowledge that the CRD Address is out of date. *Id.* ¶ 15.

⁶ *Id.* ¶ 23. The return receipt card for the mailing sent to the CRD Address was returned to Enforcement by the United States Postal Service ("USPS") with the signature, "Ahmed." *Id.* ¶ 18; CX-10. The envelopes for the mailings sent to Franklin Addresses were returned to Enforcement by the USPS marked, "Not Deliverable as Addressed – Unable to Forward." Decl. ¶ 19; CX-11; CX-12.

Accordingly, on June 21, 2013, Enforcement served George with a copy of the Second Notice of Complaint and Complaint by certified mail, return receipt requested, to the CRD Address and the Franklin Addresses.⁷ The Second Notice of Complaint required George to file an answer with the Office of Hearing Officers on or before July 8, 2013.⁸ To date, George has not filed an answer to the Complaint.⁹ On September 23, 2013, Enforcement filed a motion for entry of a default decision. George did not respond to the motion.

The Hearing Officer concludes that George received valid constructive service of this proceeding in accordance with the provisions of FINRA Conduct Rules 9134(a)(2) and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.

III. Findings of Fact

The Hearing Officer treats the allegations in the attached Complaint as admitted pursuant to FINRA Conduct Rules 9215(f) and 9269(a).

A. Reginald George

George was registered as a General Securities Representative with seven FINRA member firms from May 2007 until May 2013.¹⁰ From July 2008 until September 2009 he was registered

⁷ Decl. ¶ 24; CX-15.

⁸ Decl. ¶ 31; CX-15.

⁹ *Id.* ¶¶ 31–32. The return receipt card for the mailing sent to the CRD Address was returned to Enforcement by the USPS with the signature, "Arup Chowdhury." *Id.* ¶ 26; CX-17. The envelopes for the mailings sent to the Franklin Addresses were returned to Enforcement by the USPS marked, "Not Deliverable as Addressed – Unable to Forward." Decl. ¶ 27; CX-18; CX-19.

¹⁰ CX-1, at 2, 7.

at McGinn.¹¹ Thereafter, he was registered at two other member firms.¹² George has not been registered or associated with a FINRA member firm since his last registration terminated, effective May 2, 2013.¹³

B. George Converted Customer Funds to His Personal Use

Through wire transfers and electronic checks, George converted a total of \$34,025 in funds from KM's account at McGinn. George engaged in most or all of this conduct while KM was on active military duty and deployed in Iraq.¹⁴ In or about November 2008, George prepared new account forms for KM's account at McGinn, signed KM's signature, and submitted the forms to the Firm.¹⁵ George was listed as the account representative on the account.¹⁶ During the period April 17, 2009, through September 9, 2009, George caused 19 wire transfers totaling \$29,025.00 to be made from KM's account (collectively, the "Wire Transfers")¹⁷ to RH.¹⁸ At the time of the Wire Transfers, RH was George's brother-in-law.¹⁹ After receiving the Wire Transfers, RH, at George's direction, sent those funds to George,²⁰ who then used the funds for

¹¹ *Id.*, at 4.

¹² *Id.*, at 2-3.

¹³ Compl. ¶ 6; CX-1, at 2.

¹⁴ KM was on active military duty and deployed in Iraq beginning in August 2008. He was released from active duty deployment on or about September 4, 2009, around which time he returned to the United States. Decl. ¶¶ 39, 41.

¹⁵ Compl. ¶ 12. KM permitted George to sign the new account forms on his behalf, but the signatures were not accompanied by any indication that George signed them or that he had KM's permission to do so. Decl. ¶ 35.

¹⁶ Compl. ¶ 14.

¹⁷ *Id.* ¶ 19.

¹⁸ *Id.* ¶ 20.

¹⁹ *Id.* ¶ 21.

²⁰ *Id.* ¶ 25.

his own purposes.²¹ KM did not authorize or consent to any of the Wire Transfers,²² George did not own the funds from the Wire Transfers, and was not entitled to possess those funds.²³

Additionally, between April 6, 2009, and June 23, 2009, George caused three electronic checks totaling \$5,000.00 to be drawn on KM's account (collectively, the "Checks").²⁴ The Checks were made payable, and were paid, to George's residential landlord, LG.²⁵ George used the funds from the Checks for his own purposes, including paying his residential rent.²⁶ KM did not authorize or consent to any of the Checks,²⁷ George did not own the funds from the Checks, and was not entitled to possess those funds.²⁸

C. George Fabricated Letters of Authorization to Facilitate His Conversion of Customer Funds

To facilitate his conversion of funds from KM's account, from April 1, 2009, through July 4, 2009, George fabricated and then submitted to McGinn at least 11 LOAs to which he had signed KM's name ("Signed LOAs").²⁹ Additionally, George fabricated and then submitted to McGinn at least three LOAs in the form of e-mails that he altered so that the LOAs appeared to be from KM ("E-Mail LOAs").³⁰

²¹ *Id.* ¶ 26.

²² *Id.* ¶ 22.

²³ *Id.* ¶ 24.

²⁴ *Id.* ¶ 27.

²⁵ *Id.* ¶¶ 28–29.

²⁶ *Id.* ¶ 33.

²⁷ *Id.* ¶ 30.

²⁸ *Id.* ¶ 32.

²⁹ *Id.* ¶ 41.

³⁰ *Id.* ¶ 42.

On or about June 24, 2009, after McGinn asked George to explain the third-party payments made from KM's account, George fabricated and then submitted to McGinn a letter to which he signed KM's name, explaining why KM was purportedly transferring funds out of his account to RH. The letter described, among other things, KM's supposed business relationship with RH ("June 24 Letter").³¹ These explanations and descriptions in the June 24 Letter were false.³² Moreover, KM did not have advance knowledge of, authorize, or consent to, the Signed LOAs, the E-Mail LOAs, or the June 24 Letter.³³ Nor did KM authorize or consent to George signing any of the Signed LOAs or the June 24 Letter.³⁴

D. George Executed Unauthorized Securities Sales in a Customer's Account

During the period April 6, 2009, through September 9, 2009, George executed 11 securities sales, totaling \$20,887.11 in proceeds, from KM's account.³⁵ KM did not authorize or consent to any of these 11 transactions.³⁶ These 11 securities sales provided, in part, the funds in KM's account that George converted.³⁷

E. George Engaged in the Unauthorized Use of Personal E-Mail

While George was associated with McGinn, the Firm's policies required it to keep copies of communications, including e-mail, relating to its business.³⁸ The policies also required that

³¹ *Id.* ¶ 43.

³² *Id.* ¶ 44.

³³ *Id.* ¶¶ 45, 47.

³⁴ *Id.* ¶ 46.

³⁵ *Id.* ¶ 36.

³⁶ *Id.* ¶ 37.

³⁷ Decl. ¶ 61.

³⁸ Compl. ¶ 51.

before “sending e-mail to any client in relation to any firm or investment related business, the sender must give a draft copy of the transmission” to certain identified Firm personnel “for approval.”³⁹ The Firm’s policies further provided that e-mails “that pertain to the solicitation or execution of securities transactions must be endorsed” by certain identified Firm personnel.⁴⁰ Finally, the policies required that the Firm retain for review copies of e-mails.⁴¹

While associated with McGinn, George had an e-mail address that had been assigned to him by the Firm to use in connection with conducting his securities business through the Firm.⁴² During this time, he also maintained with AOL a personal e-mail account (i.e., an account with an address that was not assigned to him for business use by the Firm).⁴³ From at least February 18, 2009, through September 9, 2009, while George was the representative on KM’s account, George sent KM at least 77 separate communications from his personal e-mail account that concerned Firm or investment-related business (the “77 Personal-Account E-Mails”).⁴⁴ All of the 77 Personal-Account E-Mails were communications that McGinn was required to retain in conformance with applicable recordkeeping requirements.⁴⁵ Also, all of the 77 Personal-Account E-Mails “pertain[ed] to the solicitation or execution of securities transactions” or related “to any firm or investment related business.”⁴⁶

³⁹ *Id.* ¶ 52.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* ¶ 53.

⁴³ *Id.* ¶ 54.

⁴⁴ *Id.* ¶ 56.

⁴⁵ *Id.* ¶ 57.

⁴⁶ *Id.* ¶ 58.

At no time did George notify McGinn that he was using his personal e-mail account to communicate with customers or for any other business-related purpose.⁴⁷ Nor did George at any time provide or otherwise make available to McGinn for its review or retention a copy of any of the 77 Personal-Account E-Mails.⁴⁸

F. George Failed to Respond Timely to FINRA Staff Requests for Information and Documents

Between October 14, 2010, and October 27, 2010, in connection with the examination of the matters alleged in the Complaint, FINRA staff sent George seven requests for information and documents pursuant to FINRA Procedural Rule 8210 (collectively, the “Seven Rule 8210 Requests”).⁴⁹ The requests were sent to his CRD Address and his then-current FINRA member firm business address as reflected in CRD (“Business Address”).⁵⁰

On October 27, after receiving the Seven Rule 8210 Requests, George requested and received from the staff an extension of time to respond until November 19, 2010.⁵¹ On November 18, 2010, George sought and received from the staff another extension to respond until November 29, 2010.⁵² George did not respond to any of the Seven Rule 8210 Requests by November 29, 2010, and did not request another extension of his deadline to respond.⁵³

⁴⁷ *Id.* ¶ 55.

⁴⁸ *Id.* ¶ 59.

⁴⁹ *Id.* ¶ 64.

⁵⁰ *Id.*

⁵¹ *Id.* ¶ 65.

⁵² *Id.* ¶ 66.

⁵³ *Id.* ¶ 67.

On December 2, 2010, the staff again sent to George, separately, the Seven Rule 8210 Requests.⁵⁴ Each request was sent by first-class and certified mail, return receipt requested, to both his CRD Address and Business Address.⁵⁵ The deadline to respond to the Seven Rule 8210 Requests was December 10, 2010.⁵⁶ George neither responded by that deadline nor requested an extension of time to respond.⁵⁷

On March 11, 2011, the staff again sent to George, separately, all Seven Rule 8210 Requests.⁵⁸ And, again, each request was sent by first-class mail and certified mail, return receipt requested, to both his CRD Address and Business Address.⁵⁹ George's deadline to respond was March 28, 2011.⁶⁰ Before that deadline, however, on March 18, 2011, George sought, and received, from the staff an extension to respond to April 25, 2011.⁶¹ He did not respond by that date nor did he seek another extension.⁶²

On May 17, 2011, Enforcement served upon George a Notice of Suspension pursuant to FINRA Conduct Rule 9552, for failure to provide information and documents requested of him

⁵⁴ *Id.* ¶ 68

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* ¶ 70.

⁵⁸ *Id.* ¶ 71.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* ¶ 72.

⁶² *Id.* ¶ 73.

under FINRA Procedural Rule 8210.⁶³ The Notice included a suspension date of June 10, 2011.⁶⁴ On June 9, 2011, one day before the suspension was to take effect, George informed Enforcement that he intended to respond to the Seven Rule 8210 Requests.⁶⁵ And on June 14, 2011, George responded to the requests.⁶⁶

IV. Conclusions of Law

A. George Violated NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010 by Converting Customer Funds to His Personal Use (First Cause of Action)

FINRA's Sanction Guidelines ("Guidelines") define conversion as "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."⁶⁷ NASD Conduct Rule 2330(a) prohibits any person associated with a member from making "improper use of a customer's securities or funds." It is well-established that conversion of a customer's property constitutes the "improper use of a customer's securities or funds" prohibited by NASD Conduct Rule 2330(a).⁶⁸ Such conduct also violates FINRA Conduct Rule 2010, which requires that persons associated with member firms "observe high standards of commercial honor and just and equitable principles of trade."⁶⁹ By

⁶³ Decl. ¶ 96.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; Compl. ¶ 74.

⁶⁷ *FINRA Sanction Guidelines* 36, n.2 (2011), www.finra.org/Industry/Enforcement/Sanctionguidelines. See, also, *Joel Eugene Shaw*, Exchange Act Rel. No. 34509; 1994 SEC LEXIS 2493 (1994) (registered representative converted customer funds by depositing them into his personal bank account and using the money to pay personal expenses); *Joseph H. O'Brien II*, Exchange Act Rel. No. 34105, 1994 SEC LEXIS 1629 (1994) (president of broker-dealer converted customer funds by withdrawing them from a customer's account without authorization and failing to repay them).

⁶⁸ See *Dep't of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *21-23 (NAC Feb. 24, 2011), *aff'd in part*, *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

⁶⁹ See *Mullins*, 2012 SEC LEXIS 464, at *33.

using at least \$34,025 of KM's funds for his own purposes, including rent and other expenses, intentionally and without KM's authorization, George engaged in conversion. Accordingly, the Hearing Officer concludes that George violated NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010.

B. George Violated FINRA Conduct Rule 2010 by Executing Unauthorized Securities Sales in a Customer's Account (Second Cause of Action)

Engaging in unauthorized trading in a customer's account is "a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade."⁷⁰ Accordingly, it is well-established that unauthorized trading in a customer's account violates NASD Conduct Rule 2110⁷¹ and, therefore, FINRA Conduct Rule 2010. By virtue of his having executed 11 securities sales in KM's account without KM's knowledge, consent, or authorization, George violated FINRA Conduct Rule 2010.

C. George Violated FINRA Conduct Rule 2010 by Fabricating Letters of Authorization to Facilitate His Conversion of Customer Funds (Third Cause of Action)

Forging or falsifying documents "is inconsistent with the high standards of commercial honor and just and equitable principles of trade required by [NASD Conduct] Rule 2110,"⁷² the

⁷⁰ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008).

⁷¹ See, e.g., *Dep't of Enforcement v. Haq*, No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, at *15 (NAC Apr. 6, 2009); *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13-14 (NAC Mar. 27, 2002); *Robert L. Gardner*, Exchange Act Rel. No. 35899, 1995 SEC LEXIS 1532, at *1 n.1 (1995), *aff'd*, 89 F.3d 845, 1886 U.S. App. LEXIS 34894 (1996).

⁷² *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003); *Dep't of Enforcement v. Evans*, 2009 FINRA Discip. LEXIS 10, *11 (OHO Apr. 21, 2009). See also, *Dep't of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 19, *7 (OHO Jan. 11, 2013) ("It is well settled that falsification of documents and the failure to follow firm procedures, particularly those designed to protect customers, are not consistent with the high standards of commercial honor and just and equitable principles of trade required by FINRA Rule 2010.") (citing *Dep't of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (NAC Apr. 23, 2010)).

predecessor of FINRA Conduct Rule 2010.⁷³ To further his conversion of KM's funds, George fabricated and submitted to McGinn (1) LOAs, including the Signed LOAs and the E-Mail LOAs; and (2) the June 24 Letter. This conduct violated FINRA Conduct Rule 2010.

D. George Violated FINRA Conduct Rule 2010 by Engaging in the Unauthorized Use of Personal E-Mail (Fourth Cause of Action).

NASD Conduct Rule 3010(d) sets forth several provisions for the supervision and retention of incoming and outgoing correspondence by a registered representative. Specifically, Rule 3010(d)(2) requires a firm to "develop written procedures. . .for the review of incoming and outgoing . . .electronic correspondence with the public relating to its investment banking or securities business." Additionally, Rule 3010(d)(3) requires a firm to "retain correspondence of registered representatives relating to its investment banking or securities business in accordance with Rule 3110." Finally, NASD Conduct Rule 3110(a) required⁷⁴ members to make and preserve records, including correspondence, in conformity with all applicable laws, rules and regulations including Securities Exchange Act Rules 17a-3 and 17a-4.⁷⁵

Here, George sent to KM the 77 Personal-Account E-mails. Those e-mails concerned KM's account, investment-related issues, or securities transactions. George did not send a copy of those e-mails—either before or after he sent them to KM—to his supervisor or anyone else at the Firm so that they could be reviewed and retained. He circumvented the Firm's procedures

⁷³ On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110. *See* FINRA Regulatory Notice 08-57 (Oct. 2008).

⁷⁴ On December 5, 2011, NASD Conduct Rule 3110(a) was superseded by FINRA Conduct Rule 4511. *See* Regulatory Notice 11-19 (Apr. 2011).

⁷⁵ Exchange Act Rule 17a-4(b)(4) requires member firms to maintain and preserve, for a period of not less than three years (the first two years in an easily accessible place), among other things, copies of all communications sent that relate to the firm's business, including all communications subject to rules of an SRO regarding communications with the public.

and, in turn, prevented the Firm from complying with its recordkeeping and supervisory obligations. This conduct violated FINRA Conduct Rule 2010.⁷⁶

E. George Violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 by Failing to Respond Timely to FINRA Staff Requests for Information and Documents (Fifth Cause of Action)

FINRA Procedural Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to that Rule, FINRA may require an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation. The Rule is crucial to FINRA’s ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.⁷⁷ Further, a failure to cooperate in an investigation frustrates FINRA’s ability to detect misconduct and protect investors and markets.⁷⁸ It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁷⁹

⁷⁶ See *Skiba*, 2010 FINRA Discip. LEXIS 6, *13–14 (respondent violated just and equitable principles of trade by structuring variable annuity transactions so they would not appear to be replacements, thereby circumventing the firm’s variable annuity procedures and preventing firm’s supervisory review systems from flagging the transactions).

⁷⁷ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted). See also *Morton Bruce Erenstein*, 316 Fed. App’x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) (“[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.”).

⁷⁸ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

⁷⁹ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

Beginning in October 2010, FINRA staff issued the Seven Rule 8210 Requests for information and documents to George. The Seven Rule 8210 Requests were sent to George three times before he responded to them in June 2011.⁸⁰ Notwithstanding that he sought and received three extensions from the staff,⁸¹ George missed the response deadlines three times before finally responding and providing the information and documents.⁸² He had actual knowledge of the requests sent in October, as he requested two extensions in connection with them. He also had actual notice of at least the third request because after receiving it, he sought an extension of time to respond. In any event, he had constructive knowledge of all the requests as they were sent to both his CRD Address and his Business Addresses.⁸³ Based on the foregoing, the Hearing Officer concludes that George violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 by responding untimely to the Seven Rule 8210 Requests.

V. Sanctions

A. George is Barred for Conversion of Funds From a Customer's Account, in Violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010, and for Fabricating Letters of Authorization, in Violation of FINRA Conduct Rule 2010, and Ordered to Pay Restitution, Plus Interest, to Customer KM

George converted a total of \$34,025 in funds from KM's account at McGinn. The Guidelines recommend a bar for conversion, regardless of the amount converted.⁸⁴ The record does not reflect any mitigating circumstances. To the contrary, the record reflects a significant aggravating circumstance: George took advantage of KM's active military deployment in Iraq to

⁸⁰ The staff first sent the Seven Rule 8210 Requests to George between October 14 and October 27, 2010. The requests were sent a second time on December 2, 2010, and a third time on March 11, 2011.

⁸¹ George sought extensions on October 27, 2010; November 18, 2010; and March 18, 2011.

⁸² George missed response deadlines on November 29, 2010; December 10, 2010; and April 25, 2011.

⁸³ See Rule 8210(d). Under this provision, sending the request to either address is sufficient.

⁸⁴ *Guidelines*, at 36.

commit most, if not all, of the conversion of funds. Accordingly, George will be barred from associating with any FINRA member firm in any capacity for conversion of KM's funds, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010.

George facilitated his conversion of funds through fabricated LOAs he submitted to his Firm. For forgery or falsification of documents, the Guidelines provide for a fine of \$5,000 to \$100,000 and, in cases where mitigating factors exist, the adjudicator should consider suspending the respondent in any or all capacities for up to two years. In egregious cases, a bar should be considered.⁸⁵ The Guidelines include two Principal Considerations: (1) the nature of the documents forged or falsified; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.⁸⁶ George's conduct was egregious because, among other things, his fabrications were intended to facilitate his conversion of KM's funds. Additionally, because KM did not authorize any of the LOAs, George did not have a good-faith or mistaken belief that he was authorized to withdraw the funds. Consequently, George will be barred from associating with any FINRA member firm in any capacity for fabricating LOAs that he used to improperly transfer funds out of the customer's account, in violation of FINRA Conduct Rule 2010. Because this violation and the conversion of funds violation arose from a common course of conduct, the Hearing Officer will impose a unitary sanction for these two violations.⁸⁷

⁸⁵ *Id.*, at 37.

⁸⁶ *Id.*

⁸⁷ See *Guidelines*, at 4; *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *25 (NAC May 13, 2011), *aff'd*, *Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012). See *Dep't of Enforcement v. Fox & Co. Inv., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NAC Feb. 24, 2005) ("where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve NASD's remedial goals"), *aff'd*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *36 (Oct. 28, 2005). See, also, *Dep't of Enforcement v. Zaragoza*, No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *29 (NAC Aug. 20, 2008) ("We uphold the Hearing Panel's decision to aggregate these interrelated violations for purposes of assessing sanctions.").

Additionally, if an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct, the Guidelines encourage ordering restitution "to restore the status quo ante where a victim otherwise would unjustly suffer loss."⁸⁸ In this case, KM will continue to unjustly suffer a loss as a result of George's wrongful conduct unless restitution is ordered.⁸⁹ For these reasons, an order of restitution is appropriate. Therefore, George will be ordered to pay restitution to KM in the amount of \$34,025, plus interest.⁹⁰

B. George is Barred for Engaging in Unauthorized Securities Transactions in a Customer's Account, in Violation of FINRA Conduct Rule 2010.

George engaged in 11 unauthorized sale transactions in KM's account. For unauthorized transactions, the Guidelines recommend a fine of \$5,000 to \$75,000, disgorgement,⁹¹ and consideration of a suspension of ten business days to one year.⁹² In egregious cases, a longer suspension or a bar may be considered.⁹³ The Guidelines for unauthorized transactions contain

⁸⁸ *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

⁸⁹ Enforcement represents that it is not aware of any restitution that George made to KM of the converted funds. Decl. ¶¶ 52, 59.

⁹⁰ Enforcement states in its motion that George has asserted certain defenses to the conversion, unauthorized transactions, and fabricated LOA charges: (1) KM consented to George's withdrawals from his account and the transactions within that account that funded those withdrawals; (2) KM owed him more money than he took from the account; and (3) KM approved the indirect payments to him through RH and LG and the LOAs that supported them. Mot. 22. Enforcement claims that these defenses, apparently asserted during the investigation that led to this disciplinary proceeding, "are not plausible and are strenuously denied by KM." *Id.* In any event, there is no evidence in the record of this disciplinary action supporting these defenses, and, moreover, the allegations in the Complaint are deemed admitted by virtue of George's default.

⁹¹ The record is silent as to the amount of commissions, if any, that George received from the unauthorized sale transactions.

⁹² *Guidelines*, at 98 & n.3.

⁹³ *Id.*, at 98.

two principal considerations: whether the respondent misunderstood his authority or the terms of the customer's orders, and whether the unauthorized trading was egregious.⁹⁴ There is no evidence in the record reflecting any misunderstanding by George concerning his authority to execute the trades.⁹⁵

In assessing whether the unauthorized trading was egregious, the Guidelines list several categories of egregious unauthorized trading:

1) quantitatively egregious unauthorized trading [based on the number of trades executed]; 2) unauthorized trading accompanied by aggravating factors, such as, [for example,] efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct. . . ; and 3) qualitatively egregious unauthorized trading. Two factors are relevant to a determination as to whether unauthorized trading is qualitatively egregious: 1) the strength of the evidence, and 2) the respondent's motives; i.e. whether the respondent acted in bad faith or as a result of a reasonable misunderstanding.⁹⁶

The conduct here was egregious. First, 11 transactions are in the range that the NAC has found quantitatively egregious.⁹⁷ Second, George's unauthorized trading was accompanied by aggravating factors: he executed the unauthorized transactions in bad faith to generate, in part, the funds that he converted from KM's account. And, as noted above in connection with the conversion, he took advantage of KM's overseas military deployment to execute the unauthorized trades. Based on these circumstances, George will be barred for his unauthorized trading in violation of FINRA Conduct Rule 2010.

⁹⁴ *Id.*

⁹⁵ See footnote 90, above.

⁹⁶ *Guidelines*, at 98 & n.2.

⁹⁷ See, e.g., *Dep't of Enforcement v. Bond*, No. C10000210, 2002 NASD Discip. LEXIS 6, at *12 (NAC Apr. 4, 2002) (finding quantitatively egregious conduct for 12 unauthorized trades); *Dist. Bus. Conduct Comm. v. Levy*, No. C07960085, 1998 NASD Discip. LEXIS 22, at *11 (NAC Mar. 6, 1998) (finding quantitatively egregious conduct for 16 unauthorized trades).

C. In Light of the Bars, No Additional Sanctions Are Imposed For George's Use of the Personal E-Mail Account, in Violation of FINRA Rule 2010, and for His Untimely Responses in Violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

The Guidelines do not specifically address violations involving the use of a personal e-mail account for business related communications without approval, or the failure to preserve business-related e-mails. The Guidelines for recordkeeping, aimed at addressing recordkeeping violations by firms, recommend a fine of \$1,000 to \$10,000 and, in egregious cases, a fine of \$10,000 to \$100,000. Additionally, the Guidelines recommend a suspension for the "responsible party in any or all capacities for up to 30 business days" and up to two years or a bar in egregious cases. The principal consideration listed is the nature and materiality of the inaccurate or missing information.⁹⁸ Enforcement recommends that a fine of \$5,000 and a two-month suspension in all capacities be imposed. In light of the bars imposed above, however, and because this misconduct does not warrant a bar, the Hearing Officer has concluded that no additional sanctions should be imposed for this violation.

For untimely responses to Rule 8210 requests, the Guidelines recommend a fine of \$2,500 to \$25,000 and a suspension in any or all capacities for up to two years.⁹⁹ The Guidelines cite three principal considerations: The "[i]mportance of the information requested as viewed from FINRA's perspective." The "[n]umber of requests made and the degree of regulatory pressure required to obtain a response." And, the "[l]ength of time to respond."¹⁰⁰ Enforcement represents in its motion that the information it sought from George "about the allegations against

⁹⁸ *Guidelines*, at 29.

⁹⁹ *Id.*, at 33.

¹⁰⁰ *Id.*

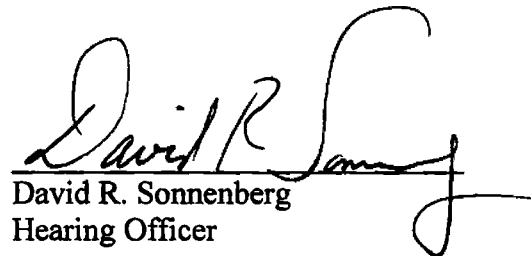
him was very important and needed to conduct the examination.”¹⁰¹ Additionally, the staff sent George the Seven Rule 8210 Requests three times, over eight months, before he responded. Moreover, he only responded after the staff issued a Notice of Suspension to him under Rule 9552. Enforcement requests that George be fined \$5,000 and suspended in all capacities for six months for his failure to respond timely to the Seven Rule 8210 Requests. In light of the above bars, however, and because this violation does not warrant a bar, no additional sanctions are imposed for this violation.

VI. Order

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) converting \$34,025 in funds from a customer’s account, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rule 2010; (ii) engaging in unauthorized securities transactions in a customer’s account, in violation of FINRA Conduct Rule 2010; and (iii) fabricating Letters of Authorization purportedly from a customer to explain fund transfers out of the customer’s account, in violation of FINRA Conduct Rule 2010. In light of the bars, no further sanctions are imposed for George’s (iv) sending unauthorized communications to a customer from Respondent’s personal e-mail account, in violation of FINRA Conduct Rule 2010; and (v) failing to respond timely to requests for information and documents, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

¹⁰¹ Mot. 27.

Additionally, George is ordered to pay restitution to customer KM in the amount of \$34,025, plus interest, from September 9, 2009,¹⁰² until paid in full. Interest shall accrue at the rate set in 26 U.S.C. § 6621(a)(2).¹⁰³ If this decision becomes FINRA's final disciplinary action, the bars will take effect immediately and the restitution shall be due in full on January 22, 2014.¹⁰⁴


David R. Sonnenberg
Hearing Officer

Copies to: Reginald George (via first-class mail, electronic mail and overnight courier)
Andrew T. Beirne, Esq. (via first-class and electronic mail)
Lara C. Thyagarajan, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

¹⁰² The date on or about which George engaged in the last conversion of funds from KM's account. *See* Compl. ¶19(s).

¹⁰³ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

¹⁰⁴ In the event that customer KM cannot be located, unpaid restitution (with interest) should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the respective state of KM's last known address. Satisfactory proof of payment of the restitution (with interest), or of reasonable and documented efforts undertaken to effect restitution (with interest), shall be provided to the staff of FINRA's Department of Enforcement no later than 90 days after the date when this decision becomes final. The customer is identified here by initials. In an addendum to this decision, which is served only on the parties, the customer is identified by name.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

REGINALD GEORGE (CRD No. 5304658),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009019875002

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about November 2008 through in or about September 2009, while registered with FINRA member firm McGinn Smith & Co. Inc. (BD No. 8453) ("McGinn" or the "Firm"), Respondent Reginald George ("George") was the representative on customer KM's McGinn account number MNY-00XXXXX (the "Account").
2. From on or about April 6, 2009 through on or about September 9, 2009 (the "Relevant Period"), George converted for his own purposes \$34,025.00 from KM's Account by causing 19 wire transfers to be made out of the Account and three electronic checks to be drawn on the Account. To facilitate his conversion of funds from KM's Account, George executed 11 unauthorized sales of securities from the Account and George prepared, fabricated, and provided to McGinn at least 11 Letters

- of Authorization ("LOAs") bearing KM's purported signature but signed by George, one letter purporting to explain the reasons for the funds transferred out of KM's Account, and another three e-mail LOAs purportedly from KM that George altered.
3. In addition, during the period that George was the representative on KM's Account, George sent no fewer than 77 separate e-mails to KM about Firm- and investment-related business through George's personal e-mail account without McGinn's knowledge or approval, without providing copies of such communications to the Firm, and in violation of the Firm's written policies.
 4. In connection with its examination in this matter and beginning on October 14, 2010, FINRA's Member Regulation Staff (the "Staff") sent George seven separate requests for information and documents pursuant to FINRA Rule 8210. Despite requesting and being granted several extensions to respond, George failed to respond timely to these requests and he did not respond to them until June 14, 2011.
 5. This Complaint charges George with conversion, unauthorized securities transactions, fabrication of LOAs, unauthorized customer communications on Firm- or investment-related business from a personal e-mail account, and failure to respond timely to Rule 8210 requests, in violation of NASD Conduct Rule 2330(a) and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

6. From on or about July 28, 2008 through on or about September 22, 2009, George was registered with FINRA through an association with McGinn as a General Securities Representative ("GSR"). Thereafter, from on or about September 30, 2009

through on or about March 14, 2013 and from on or about April 4, 2013 through on or about May 2, 2013, George was registered through two other FINRA-member firms as a GSR. Although Respondent is no longer registered or associated with a FINRA member, 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 effective date of termination of Respondent's registration with a FINRA-member firm, namely, May 2, 2013; and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

BACKGROUND

7. George and KM met in 2007 when they were both registered representatives associated with the same FINRA-member firm.
8. After they met, George and KM became friends and they socialized outside of work.
9. Before and during 2008 and through 2009, KM directly or indirectly owned residential properties in New York City, which were rented to tenants. In the first half of 2008, George occasionally helped KM with projects and other work related to the maintenance or management of KM's residential properties.
10. Before and during 2008, KM was a member of the New Jersey National Guard. KM was also, in the first half of 2008, still a registered representative associated with a FINRA-member firm.
11. KM was on active-duty orders in connection with his National Guard membership from June 20, 2008 through September 4, 2009. KM took a leave of absence from his

FINRA-member firm to attend a military school, in or about May and June 2008, and he received additional military training in or about July and August 2008. On or about August 29, 2008, KM arrived in Iraq.

12. In or about November 2008, George prepared new account forms for KM's Account at McGinn, signed KM's signature, and submitted the forms to the Firm.
13. Among other things, KM's new account forms incorrectly stated that KM was employed by the United States Army and stationed in Jersey City, New Jersey. The McGinn new account forms also failed to disclose KM's association with a FINRA-member firm from which he was on a leave of absence during his active-duty deployment.
14. In or about November 2008, KM opened his Account at McGinn and George was listed as the representative on the Account.
15. During the time that KM was on active-duty deployment, KM and George communicated, including by e-mail, concerning certain securities transactions in KM's Account.
16. During the time that KM was on active-duty deployment, George helped KM, from time to time, with the maintenance or management of KM's residential properties and with KM's personal business. During that time, George and KM occasionally communicated, including by e-mail, concerning KM's residential properties or KM's personal business, among other topics.
17. Orders releasing KM from his active-duty deployment became effective on or about September 4, 2009, around which time he returned to the United States.

FIRST CAUSE OF ACTION
(Conversion (NASD Conduct Rule 2330(a) and FINRA Rule 2010))

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

Wire Transfers from KM's Account

19. During the Relevant Period, George caused the following 19 wire transfers, totaling \$29,025.00, to be made from KM's Account (collectively, the "Wire Transfers"):

- a. On or about April 17, 2009, a wire transfer of \$612.00;
- b. On or about April 20, 2009, a wire transfer of \$1,012.00;
- c. On or about May 4, 2009, a wire transfer of \$1,000.00;
- d. On or about May 7, 2009, a wire transfer of \$750.00;
- e. On or about May 18, 2009, a wire transfer of \$1,200.00;
- f. On or about May 21, 2009, a wire transfer of \$1,200.00;
- g. On or about May 26, 2009, a wire transfer of \$1,400.00;
- h. On or about May 29, 2009, a wire transfer of \$1,400.00;
- i. On or about June 2, 2009, a wire transfer of \$1,300.00;
- j. On or about June 8, 2009, a wire transfer of \$1,000.00;
- k. On or about June 26, 2009, a wire transfer of \$2,100.00;
- l. On or about July 9, 2009, a wire transfer of \$1,800.00;
- m. On or about July 23, 2009, a wire transfer of \$2,000.00;

- n. On or about July 30, 2009, a wire transfer of \$1,300.00;
 - o. On or about August 5, 2009, a wire transfer of \$1,300.00;
 - p. On or about August 14, 2009, a wire transfer of \$3,300.00;
 - q. On or about August 20, 2009, a wire transfer of \$1,900.00;
 - r. On or about August 28, 2009, a wire transfer of \$2,690.00; and
 - s. On or about September 9, 2009, a wire transfer of \$1,761.00.
20. All 19 of the Wire Transfers were made to RH at the Georgia Central Credit Union, in Duluth, Georgia, account number 710130085XXXX.
21. At the time George caused the Wire Transfers to be made to RH, RH was George's brother-in-law and a resident of the State of Georgia.
22. KM did not authorize or consent to any of the Wire Transfers.
23. KM first learned about the Wire Transfers after he returned to the United States in or about September 2009.
24. George did not own the \$29,025.00 in funds from the Wire Transfers and George was not entitled to possess those funds.
25. After receiving the \$29,025.00 in funds from the Wire Transfers, RH, at George's direction sent those funds to George.
26. George used the \$29,025.00 in funds from the Wire Transfers for his own purposes.

Checks Drawn on KM's Account

27. During the Relevant Period, George caused the following three electronic checks, totaling \$5,000.00, to be drawn on KM's Account (collectively, the "Checks"):
- a. On or about April 6, 2009, a check for \$1,800.00;
 - b. On or about May 4, 2009, a check for \$2,000.00; and
 - c. On or about June 23, 2009, a check for \$1,200.00.
28. All three of the Checks were made payable and paid to LG at an address in Valley Stream, New York.
29. At the time George caused these three Checks to be made payable and paid to LG, LG was George's residential landlord.
30. KM did not authorize or consent to any of the Checks.
31. KM first learned about the Checks after he returned to the United States in or about September 2009.
32. George did not own the \$5,000.00 in funds from the Checks and George was not entitled to possess those funds.
33. George used the \$5,000.00 in funds from the Checks for his own purposes, including paying for George's residential rent.
34. By reason of the foregoing, George violated NASD Conduct Rule 2330(a) and FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Unauthorized Transactions (FINRA Rule 2010))

35. The Department realleges and incorporates by reference Paragraphs 1 through 34 above.

36. During the Relevant Period, George executed the following 11 securities sales, totaling \$20,887.11 in proceeds, from KM's Account (the "Securities Transactions"):

- a. On or about April 6, 2009, the sale of 265 shares of Bank of America Corp. ("BAC"), resulting in proceeds of \$1,801.48;
- b. On or about June 26, 2009, the sale of 180 shares of BAC, resulting in proceeds of \$2,110.82;
- c. On or about July 9, 2009, the sale of 182 shares of BAC, resulting in proceeds of \$1,441.66;
- d. On or about July 23, 2009, the sale of 260 shares of BAC, resulting in proceeds of \$3,235.41;
- e. On or about July 30, 2009, the sale of 110 shares of BAC, resulting in proceeds of \$1,380.86;
- f. On or about August 5, 2009, the sale of 100 shares of BAC, resulting in proceeds of \$1,381.46;
- g. On or about August 14, 2009, the sale of 50 shares of AeroVironment, Inc. ("AVAV"), resulting in proceeds of \$1,431.96;

- h. On or about August 14, 2009, the sale of 125 shares of BAC, resulting in proceeds of \$1,899.27;
- i. On or about August 20, 2009, the sale of 110 shares of BAC, resulting in proceeds of \$1,772.744;
- j. On or about August 28, 2009, the sale of 153 shares of BAC, resulting in proceeds of \$2,654.55; and
- k. On or about September 9, 2009, the sale of 65 shares of AVAV, resulting in proceeds of \$1,776.90.

37. KM did not authorize or consent to any of these 11 Securities Transactions.

38. KM first learned about the Securities Transactions after he returned to the United States in or about September 2009.

39. By reason of the foregoing, George violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
(Fabricated Customer LOAs (FINRA Rule 2010))

40. The Department realleges and incorporates by reference Paragraphs 1 through 39 above.

41. During the Relevant Period, to facilitate his conversion of funds from KM's Account, George prepared, fabricated, and submitted to McGinn at least 11 LOAs, to which he signed KM's purported signature (the "Signed LOAs"):

- a. On or about April 1, 2009, an LOA purporting to authorize a check for \$1,800.00 to LG;

- b. On or about April 15, 2009, an LOA purporting to authorize a wire transfer of \$612.00 to RH;
- c. On or about April 30, 2009, an LOA purporting to authorize a check for \$2,000.00 to LG and a wire transfer of \$1,000.00 to RH;
- d. On or about May 6, 2009, an LOA purporting to authorize a wire transfer of \$750.00 to RH;
- e. On or about May 15, 2009, an LOA purporting to authorize a wire transfer of \$1,200.00 to RH;
- f. On or about May 21, 2009, an LOA purporting to authorize a wire transfer of \$1,200.00 to RH;
- g. On or about May 22, 2009, an LOA purporting to authorize a wire transfer of \$1,400.00 to RH;
- h. On or about May 29, 2009, an LOA purporting to authorize a wire transfer of \$1,400.00 to RH;
- i. On or about June 1, 2009, an LOA purporting to authorize a wire transfer of \$1,300.00 to RH;
- j. On or about June 24, 2009, an LOA purporting to authorize a wire transfer of \$2,100.00 to RH; and
- k. On or about July 4, 2009, an LOA purporting to authorize a wire transfer of \$1,800.00 to RH.

42. During the Relevant Period, to facilitate his conversion of funds from KM's Account, George prepared, fabricated, and submitted to McGinn at least three LOAs in the form of e-mails that George altered so that the LOAs appeared to be from KM (the "E-Mail LOAs"):
- a. On or about July 9, 2009, George drafted and inserted in what was represented to be a July 9, 2009, e-mail from KM to George purporting to authorize a wire transfer of \$1,800.00 to RH;
 - b. On or about July 20, 2009, George drafted and inserted in what was represented to be a July 17, 2009, e-mail from KM to George purporting to authorize a wire transfer of \$2,000.00 to RH and a check for an unspecified amount to LG; and
 - c. On or about September 9, 2009, George altered an e-mail of that date from KM to him by drafting and inserting language purporting to authorize a wire transfer of \$1,300.00 to RH.
43. On or about June 24, 2009, after McGinn asked George for an explanation of third-party payments out of KM's Account, George prepared, fabricated, and submitted to McGinn a letter, to which he signed KM's purported signature, explaining why KM was purportedly transferring funds out of his Account to RH and describing, among other things, KM's supposed business relationship with RH (the "June 24 Letter").
44. Statements in the June 24 Letter that purported to explain the wire transfers to RH and described KM's supposed business relationship with RH, among other things, were not true.

45. KM did not authorize or consent to any of the Signed LOAs, the E-Mail LOAs, or the June 24 Letter.
46. KM did not authorize or consent to George's signing KM's purported signature on any of the Signed LOAs or the June 24 Letter.
47. KM had no knowledge of any of the Signed LOAs, the E-Mail LOAs, or the June 24 Letter before George prepared and submitted them to McGinn.
48. KM first learned about the Signed LOAs, the E-Mail LOAs, and the June 24 Letter after he returned to the United States in or about September 2009.
49. By reason of the foregoing, George violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
(Unauthorized Use of Personal E-Mail (FINRA Rule 2010))

50. The Department realleges and incorporates by reference Paragraphs 1 through 49 above.
51. During the time that George was associated with McGinn, the Firm's policies stated that "the firm is required to keep copies of communications relating to the firm's business" and that this communications retention policy "includes email."
52. During the time that George was associated with McGinn, the Firm's policies additionally required, among other things, that: "[p]rior to sending e-mail to any client in relation to any firm or investment related business, the sender must give a draft copy of the transmission" to certain identified Firm personnel "for approval"; that e-mails "that pertain to the solicitation or execution of securities transactions

must be endorsed” by certain identified Firm personnel; and that copies of e-mails must be retained for review by the Firm.

53. At all times during his association with McGinn that are relevant to the allegations in this Complaint, George had an e-mail address that had been assigned to him by the Firm to use in connection with conducting his securities business through the Firm.

54. At all times relevant to the allegations in this Complaint, George maintained a personal e-mail account (i.e., an account with an address that was not assigned to him for business use by the Firm) with AOL.

55. George did not at any time notify McGinn that he was using his personal e-mail account to communicate with customers or for any other business-related purpose.

56. From at least February 18, 2009 through September 9, 2009, while George was the representative on KM’s Account, George sent to KM at least 77 separate communications from his personal e-mail account that concerned Firm- or investment-related business (the “77 Personal-Account E-Mails”):

- a. Between February 18, 2009 and February 27, 2009, at least 14 e-mails from George’s personal e-mail account that concerned, among other things, transactions involving BAC securities.
- b. Between March 4, 2009 and March 16, 2009, at least seven e-mails from George’s personal e-mail account that concerned, among other things, transactions involving BAC securities.

- c. Between April 6, 2009 and April 17, 2009, at least 17 e-mails from George's personal e-mail account that concerned, among other things, transactions involving BAC securities and other securities in KM's Account.
 - d. Between April 20, 2009 and April 30, 2009, at least 25 e-mails from George's personal e-mail account that concerned, among other things, transactions involving BAC securities.
 - e. Between May 2, 2009 and May 7, 2009, at least eight e-mails from George's personal e-mail account that concerned, among other things, transactions involving BAC securities.
 - f. Between May 28, 2009 and August 6, 2009, at least six e-mails from George's personal e-mail account that concerned, among other things, transactions involving BAC, AVAV, and Acusphere Inc. securities.
57. All of the 77 Personal-Account E-Mails were communications that McGinn was required to retain in conformance with applicable recordkeeping requirements.
58. All of the 77 Personal-Account E-Mails "pertain[ed] to the solicitation or execution of securities transactions" or related "to any firm or investment related business."
59. George did not at any time provide or otherwise make available to McGinn for the Firm's review or retention within its records a copy of any of the 77 Personal-Account E-Mails.
60. By failing to provide McGinn with copies of the 77 Personal-Account E-Mails, George circumvented review and approval by the Firm of his communications with

KM and he caused the Firm to fail to retain copies of the 77 Personal-Account E-Mails in conformance with applicable recordkeeping requirements.

61. George also did not retain or preserve copies of the 77 Personal-Account E-Mails within his own records or files. By failing to retain or preserve copies of the 77 Personal-Account E-Mails, George could not produce them to the Staff in connection with the underlying examination.

62. By reason of the foregoing, George violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION
(Failure To Respond Timely (FINRA Rules 8210 and 2010))

63. The Department realleges and incorporates by reference Paragraphs 1 through 62 above.

64. As part of its examination of this matter, the Staff sent to George the following seven separate requests for information and documents pursuant to FINRA Rule 8210 (collectively, the "Seven Rule 8210 Requests"), each via First-Class U.S. Mail and Certified Mail, Return-Receipt Requested, at both his then-current Central Registration Depository ("CRD") residential address (the "CRD Address") and at his then-current FINRA-member firm business address (the "Business Address"), with copies of all Seven Rule 8210 Requests to the Chief Compliance Officer ("CCO") of George's then-current FINRA-member firm:

- a. On October 14, 2010, a letter requiring a response by October 29, 2010;
- b. On October 15, 2010, a letter requiring a response by November 1, 2010;
- c. On October 18, 2010, a letter requiring a response by November 2, 2010;

- d. On October 19, 2010, a letter requiring a response by November 2, 2010;
 - e. On October 21, 2010, a letter requiring a response by November 4, 2010;
 - f. On October 24, 2010, a letter requiring a response by November 8, 2010; and
 - g. On October 27, 2010, a letter requiring a response by November 11, 2010.
65. On October 27, 2010, George requested from the Staff an extension to respond to the Seven Rule 8210 Requests. The Staff granted George an extension to respond to November 19, 2010.
66. On November 18, 2010, George requested from the Staff another extension to respond to the Seven Rule 8210 Requests. The Staff granted George an extension to respond to November 29, 2010.
67. George did not respond to any of the Seven Rule 8210 Requests on or before November 29, 2010 and he did not by that date request from the Staff another extension of his deadline to respond.
68. On December 2, 2010, the Staff sent to George, separately, all Seven Rule 8210 Requests, each via First-Class U.S. Mail and Certified Mail, Return-Receipt Requested, at both the CRD Address and the Business Address, with copies of all Seven Rule 8210 Requests to the CCO of George's then-current FINRA-member firm. George's deadline to respond was December 10, 2010.
69. On or about December 3, 2010, the Seven Rule 8210 Requests sent to George at the Business Address via Certified Mail, Return-Receipt Requested, were delivered. The Return-Receipt cards for all Seven Rule 8210 Requests sent to George at the Business Address were returned, signed, to the Staff. The envelopes for six of the Seven

Rule 8210 Requests sent to George at the CRD Address were returned to the Staff by the U.S. Postal Service, unopened and stamped "Returned to Sender" and "Unclaimed." To date, none of the Seven Rule 8210 Requests sent to George at the CRD Address, none of the Seven Rule 8210 Requests sent to George at the Business Address, and none of the Seven Rule 8210 Requests copied to the CCO of George's then-current FINRA-member firm on December 2, 2010 via First-Class U.S. Mail has been returned to the Staff.

70. George did not respond to any of the Seven Rule 8210 Requests on or before December 10, 2010 and he did not by that date request from the Staff an extension of his deadline to respond.

71. On March 11, 2011, the Staff again sent to George, separately, all Seven Rule 8210 Requests, each via First-Class U.S. Mail and Certified Mail, Return-Receipt Requested, at both the CRD Address and the Business Address, with copies of all Seven Rule 8210 Requests to the CCO of George's then-current FINRA-member firm. George's deadline to respond was March 28, 2011.

72. On March 18, 2011, George requested from the Staff an extension to respond to the Seven Rule 8210 Requests. The Staff granted George an extension to respond to April 25, 2011.

73. George did not respond to any of the Seven Rule 8210 Requests on or before April 25, 2011 and he did not by that date request from the Staff another extension of his deadline to respond.

74. On June 14, 2011, George responded to all Seven Rule 8210 Requests.

75. By reason of the foregoing, George violated FINRA Rules 8210 and 2010.

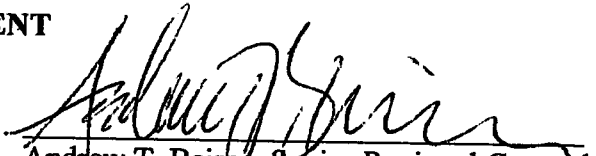
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including monetary sanctions and that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that 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: May 23, 2013


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