

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

PHILIP M. CAIN (CRD No. 2703720),

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2011027099701**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between September 2008 and March 2010, Philip Cain converted over \$1.3 million from seven of his customers through the use of false and misleading statements and documents. He induced the customers to invest their funds in what he described as structured notes, telling them to write checks for the investment in the name of an entity he created, the name of which was similar to the name of his employing firm. He deposited the checks into an account he controlled in the name of that entity, thereby converting the funds. In order to avoid detection, Cain fabricated and sent to the customers false account statements reflecting supposed ownership of the structured notes. By virtue of this conduct, Cain converted customer funds in violation of NASD Rules 2330 and 2110 and FINRA Rules 2150 and 2010, and engaged in fraud in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.

2. In addition, between April and June 2011, Cain refused to provide information in response to FINRA Rule 8210 requests, thereby violating that rule and FINRA Rule 2010.

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RESPONDENT

3. Philip M. Cain (CRD 2703720) is a 48 year old resident of Arizona. He joined the securities industry in January 1996. He was a registered representative with Commonwealth Financial Network from August 2006 until August 2010, when he was permitted to resign due to low production. Cain worked out of a three registered representative branch that was not an Office of Supervisory Jurisdiction. He joined H. Beck, Inc. as a registered representative in September 2010. He was terminated by that firm on March 9, 2011.

4. Cain was arrested on charges of fraud on February 25, 2011, for the same misconduct alleged in this Complaint. The criminal charges, which were amended in March 2011 to include mail fraud, wire fraud, and money laundering-related charges, are pending.

5. Although Cain has not been associated with a FINRA member firm since March 9, 2011, 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 is being 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.

FIRST CAUSE OF ACTION

Conversion of Customer Funds (NASD Rules 2330 and 2110; FINRA Rules 2150 and 2010)

6. Paragraphs 1-5 are repeated and realleged herein.

7. On June 9, 2008, Cain registered the business name "Commonwealth Financial Services" with the Arizona Secretary of State's Office. This name closely resembles that of his employer at the time, Commonwealth Financial Network.

8. The registered address for Commonwealth Financial Services was the same as the

address of the branch of Commonwealth Financial Network where Cain worked.

9. Instead of using his actual name, Philip M. Cain, on the state registration for Commonwealth Financial Services, Cain identified the owner of the entity as "Philip McCain."

10. Between June and September 2008, Cain established a bank account in the name of Commonwealth Financial Services.

11. Between September 2008 and March 2010, Cain induced seven of his customers to give him money by falsely promising to invest the funds in structured notes issued by Deutsche Bank, as set forth in the paragraphs 12-18.

12. Customer **E.M.** had an account with Cain at Commonwealth Financial Network. In or about September 2008, Cain recommended that she buy a structured note issued by Deutsche Bank, which he said could not be purchased directly through her Commonwealth Financial Network account. At his direction, E.M. withdrew \$133,000 from her Commonwealth Financial Network account on September 17 and 18, 2008, and gave Cain a check for \$130,000 on September 18, 2008, made out to Commonwealth Financial Services.

13. Customers **J.B. and J.B.** had three accounts with Cain at Commonwealth Financial Network, including an account titled "**B.** Family Trust". In March 2009, Cain recommended that they invest in Deutsche Bank structured notes, which he said could not be purchased directly through their Commonwealth Financial Network account. They withdrew \$400,000 from the B. Family Trust account on March 12, 2009, and gave Cain two \$200,000 checks, dated March 14 and 17, 2009, payable to Commonwealth Financial Services. In April 2010, they received a \$12,761.28 wire transfer from Commonwealth Financial Services, purportedly as an interest payment on the note.

14. Customers **I.B. and P.S.** had an account with Cain at Commonwealth Financial

Network entitled the **"B. and S." Family Trust**. In September 2008, Cain recommended that they invest in Deutsche Bank structured notes, which he said could not be purchased directly through their Commonwealth Financial Network account. At his direction, they withdrew \$75,000 from the B. and S. Family Trust Commonwealth Financial Network brokerage account on September 26, 2008, and gave him a check for that amount dated September 26, 2008, made out to Commonwealth Financial Services to purchase the note. In October 8, 2008, they withdrew an additional \$15,000 from their Continental Financial Network account, and wrote an additional check in that amount dated October 8, 2008, made out to Commonwealth Financial Services.

15. Customers **M.B. and J.M.B.** had an account with Cain at Commonwealth Financial Network. In August 2009, Cain recommended that they invest in a Deutsche Bank structured note, which he said could not be purchased directly through their Commonwealth Financial Network account. At his direction, they withdrew \$85,000 from their Commonwealth Financial Network brokerage account on August 18, 2009, and gave him a check for \$100,000 dated September 10, 2009, comprised of those and additional funds, made out to Commonwealth Financial Services to purchase the note.

16. Customer **J.C.** had two accounts with Cain at Commonwealth Financial Network. In November 2008, Cain recommended that he invest in a Deutsche Bank structured note, which Cain said could not be purchased directly through J.C.'s Commonwealth Financial Network account. At Cain's direction, J.C. withdrew \$100,000 from one of his Commonwealth Financial Network brokerage accounts on November 17 and 20, 2008, and gave him a check for \$100,000 dated November 27, 2008, made out to Commonwealth Financial Services to purchase the note. J.C. gave Cain another check payable to Commonwealth Financial Services, dated December 10,

2009, for an additional \$18,000 investment. In January 2010, Cain induced J.C. to invest more money in the notes. J.C. withdrew \$214,985 from his other Commonwealth Financial Network brokerage account on January 5, 2010, and wired that amount on the following day to Commonwealth Financial Services, Attn: Philip Cain, at the bank holding the Commonwealth Financial Services account.

17. Customer A.R. had an account with Cain at Commonwealth Financial Network. In May 2010, he recommended that she purchase a Deutsche Bank structured note, which he said could not be purchased directly through her Commonwealth Financial Network account. At Cain's direction, she withdrew \$99,985 from her Commonwealth Financial Network brokerage account on May 19, 2010, and gave him a check for \$100,000 dated May 24, 2010, made out to Commonwealth Financial Services to purchase the note.

18. Customer S.W. had an account with Cain at Commonwealth Financial Network. In October 2008, he recommended that she purchase a Deutsche Bank structured note, which he said could not be purchased directly through her Commonwealth Financial Network account. At Cain's direction, she withdrew \$90,000 and \$85,000 from her Commonwealth Financial Network brokerage account on October 1 and 14, 2008, respectively, and gave him two checks in those amounts, dated October 1 and October 3, 2008, made out to Commonwealth Financial Services to purchase the notes. In November 2009, she received payments of \$14,676.95 and \$12,587.88, purportedly as interest on the notes. The \$14,676.95 was paid by wire transfer from a bank account of Commonwealth Financial Services, and the other payment was made by cashier's check indicating Commonwealth Financial Services as the source of the funds.

19. Instead of using the \$1.3 million in funds provided by his customers to purchase structured notes, as described in paragraphs 6-18 above, Cain deposited the money into his

Commonwealth Financial Services account, thereby converting his customers' funds to his own use.

20. By converting his customers' funds to his own use, Cain made improper use customers' funds in violation of NASD Rule 2330 (for conduct before Dec. 14, 2009) and FINRA Rule 2150 (for later conduct), and engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110 (for conduct before Dec. 14, 2008) and FINRA Rule 2010 (for later conduct).

SECOND CAUSE OF ACTION

Fraud

(Sec. 10(b) of the Securities Exchange Act, Rule 10b-5 Thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rule 2010)

21. Paragraphs 1 through 20 are repeated and realleged herein.

22. In order to lull his customers into believing that they owned the structured notes, Cain generated false quarterly account statements from "Deutsche Bank" for each of the customers identified above.

23. These statements did not indicate which specific Deutsche Bank entity they were supposedly issued by, but created the appearance of being issued by Deutsche Bank Securities, Inc. They bore the address and telephone number of a Deutsche Bank Securities, Inc. office in California, and contained the notation "Deutsche Bank member NYSE, NASD, SIPC."

24. The false account statements reflected the purported ownership of the notes identified above for each customer, and reflected the supposed accrual of interest on those notes.

25. Cain sent the false account statements to the customers identified above on a quarterly basis. Some or all of the statements were sent through the U.S. Postal Service.

26. In reality, none of the customers had accounts at Deutsche Bank Securities, Inc., and Cain had fabricated the account statements. The account numbers on the statements were not actual Deutsche Bank Securities, Inc. account numbers.

27. Cain used the means and instrumentalities of interstate commerce (including but not limited to interstate banking facilities), and the mails, to perpetrate his scheme.

28. By falsely promising to invest his customers' money in structured notes, by creating false account statements, and by establishing a bank account designed to lull customers into believing that they were remitting money to Cain's employing firm, Cain, in connection with the purchase or sale of securities, employed devices, schemes, and artifices to defraud; made untrue statements of material fact; and engaged in acts, practices, or courses of conduct which operated as a fraud or deceit upon the customers identified above, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

29. In addition, by engaging in the conduct set forth in this Second Cause of Action, Cain induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices, in violation of NASD Rule 2120 (for conduct before Dec. 14, 2008) and FINRA Rule 2020 (for later conduct).

30. By violating the provisions set forth in paragraphs 28-29 above, Cain also engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110 (for conduct before Dec. 14, 2008) and FINRA Rule 2010 (for later conduct).

THIRD CAUSE OF ACTION

Failure to Provide Information (FINRA Rules 8210 and 2010)

31. Paragraphs 1 through 30 are repeated and realleged herein.

32. On April 8, 2011, the FINRA Central Review Group staff sent Cain a Rule 8210 request for information to his residential address as reflected in CRD by certified mail and first class mail, with a response due by April 22, 2011. The certified mailing was delivered on April 12, 2011. The first class mailing has not been returned, indicating that it too was delivered.

33. On April 28, 2011, Cain's counsel in the criminal proceedings against him sent a letter to the staff acknowledging receipt of the letter by Cain's wife, and advising the staff that, based on the pending criminal charges, Cain would not respond to the request for information.

34. On May 23, 2011, the Central Review Group staff sent Cain a second notice to his CRD address, by certified mail and first class mail, with a response due June 3, 2011. A notice for the certified mailing was left at his residence. The first class mailing has not been returned to the staff.

35. No further communication has been received from or on behalf of Cain. He has not provided the information requested by the April 8, 2011 or May 23, 2011 Rule 8210 requests.

36. By virtue of the foregoing, Cain violated FINRA Rule 8210, and also engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

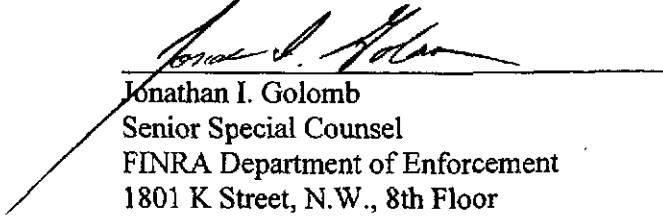
PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) of the FINRA Code of Procedure be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains, together with interest, and
- B. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330 of the FINRA Code of Procedure.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 1, 2011



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