

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANK OSWALDO NAULA
(CRD No. 1344900),

Respondent.

Disciplinary Proceeding
No. 2011027702801

Hearing Officer – LOM

DEFAULT DECISION

April 12, 2013

Respondent violated NASD Conduct Rules 2370 and 2110, along with FINRA Rule 2010, when he borrowed a total of \$245,000 from a customer without obtaining prior written approval from his firm. Respondent is barred from associating with any FINRA registered firm in any capacity for the improper borrowing (First Cause of Action).

Respondent separately violated FINRA Rules 8210 and 2010, by failing to appear for an on-the-record interview. Respondent is separately barred from associating with any FINRA registered firm in any capacity for this violation (Second Cause of Action).

Appearances

Vaishali Shetty, Jericho, New York, for the Department of Enforcement.

No appearance on behalf of Frank Oswaldo Naula.

I. Introduction

The Respondent, Frank Oswaldo Naula (“Respondent” or “Naula”) failed to answer a Complaint filed and served on him by the Department of Enforcement (“Enforcement”) for the

Financial Industry Regulatory Authority (“FINRA”).¹ As a consequence, Enforcement filed Department Of Enforcement’s Motion For Entry Of Default And Imposition Of Sanctions (“Default Motion”). The Default Motion is accompanied by a Declaration Of Vaishali Shetty In Support Of Motion For Entry Of Default And Request For Sanctions (“Shetty Declaration”), with 17 attached exhibits (CX-1 through CX-17).

The Default Motion details Enforcement’s efforts, twice, to serve Respondent with the Complaint at his current residential address as shown in the Central Registry Depository (“CRD”). The Shetty Declaration also reports that Respondent left a voicemail acknowledging receipt of the Complaint.

The Default Motion attaches the Complaint and, pursuant to FINRA Rule 9269, seeks to have its allegations deemed admitted. The Complaint alleges in the First Cause of Action that Naula borrowed a total of \$245,000 from an elderly customer in at least two dozen transactions between December 2006 and October 2009 without obtaining prior written approval from his firm. It charges that this conduct violated NASD Conduct Rules 2370 and 2010 and FINRA Rule 2010. The Complaint further alleges in the Second Cause of Action that Naula failed to appear for an on-the-record interview (“OTR”) after repeated requests and postponements, in violation of FINRA Rules 8210 and 2010.

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Respondent in default, grants Enforcement’s Default Motion,

¹ FINRA, which is responsible for regulatory oversight of securities firms that do business with the public and their associated persons, was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange (“NYSE”). FINRA is developing a new “Consolidated Rulebook” of FINRA Rules that includes NASD Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, FINRA’s procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. FINRA’s Rules and its By-Laws are available at www.finra.org.

and deems the allegations against Respondent admitted. On that basis, the Hearing Officer also issues this Decision barring Respondent from associating with any FINRA member firm in any capacity as a separate sanction for each Cause of Action.

II. Procedural History And Grant Of Default Motion

This matter arose from an investigation after the estate of one of Naula's customers, FD, brought an arbitration proceeding against him and his firm. Based on documents obtained in the investigation, Enforcement filed the Complaint, alleging that Naula had improperly borrowed money from FD without obtaining prior written authorization from his firm and, in addition, that he had failed to appear for an OTR pursuant to FINRA Rule 8210.²

On November 20, 2012, Enforcement served the Notice of Complaint and Complaint against Naula by certified mail, return receipt requested, and first-class mail to his current residential address, as shown in the Central Registration Depository ("CRD"). Neither mailing was returned to Enforcement, but the return-receipt was returned with an illegible signature showing receipt on November 21, 2012. The Notice of Complaint specified the date on which Naula was required to submit an Answer, but Naula failed to serve or file an Answer by the specified date.³

After the first due date passed, Enforcement served a Second Notice of Complaint, accompanied by the Complaint, on December 19, 2012, by certified mail, return receipt requested, and first-class mail to his CRD address. Neither package was returned to Enforcement, but the return-receipt was returned showing receipt on December 20, 2012. The return-receipt card was signed "Schwan." The Notice of Complaint specified the date on which

² Shetty Declaration ¶¶ 8-9.

³ Shetty Declaration ¶¶ 10-12; CX-3, CX-4.

Naula was required to submit an Answer, but Naula again failed to serve or file an Answer by the specified date.⁴

On January 7, 2013, the due date for an Answer in response to the Second Notice of Complaint, Naula left a voicemail message. In the voicemail message, Naula acknowledged receiving the Second Notice of Complaint. He also indicated that he had been involved in a bankruptcy proceeding in which the debt to the estate of FD was discharged. He said that his bankruptcy attorney would be sending a document regarding that matter. That same day, Naula's bankruptcy attorney sent, via facsimile, a copy of a Discharge of Debtor(s) Order of Final Decree for Naula, dated November 1, 2012 ("Discharge Order").⁵

The Enforcement attorney called the bankruptcy attorney and informed him that the Discharge Order did not affect Naula's deadline to respond to the Complaint. The Enforcement attorney asked that the bankruptcy attorney pass that information along to Naula.⁶

As of the date of the Default Motion, February 8, 2013, Naula had not submitted an Answer.⁷ As of the date of this decision, Naula still has not filed an Answer with the Office of Hearing Officers.

Service here was valid under FINRA Procedural Rule 9134 and acknowledged by Respondent. Pursuant to FINRA Rules 9215(f) and 9269(a) and based on Naula's failure to file an Answer, the Hearing Officer grants Enforcement's Default Motion, finds Naula in default, and deems the allegations in the attached Complaint admitted.

⁴ Shetty Declaration ¶¶ 13-15; CX-5, CX-6.

⁵ Shetty Declaration ¶ 16; CX-7.

⁶ Shetty Declaration ¶ 16.

⁷ *Id.* ¶ 17.

III. Findings Of Fact And Conclusions Of Law As To Underlying Violations

A. Naula's Background And Position

Naula first became registered with FINRA as a General Securities Representative on April 19, 1986. From July 1, 2003, through January 12, 2011, he was registered in that capacity through FINRA member firm Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm"). From February 7, 2011, through December 20, 2011, he was registered through another FINRA member firm. He is not currently associated with any member firm.⁸

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws. The Complaint was filed on November 20, 2012, which was within two years after the last date on which Naula was registered, and the Complaint charges him with misconduct that occurred between December 2006 and October 2009, while he was associated with a FINRA member firm, Wells Fargo.⁹

C. Rules Alleged To Have Been Violated

NASD Conduct Rule 2370. At the time of the alleged misconduct, NASD Conduct Rule 2370 was in effect and governed borrowing and lending relationships between customers and registered persons.¹⁰ NASD Conduct Rule 2370 allows a registered representative to borrow money from a customer only in specific limited circumstances and subject to oversight and approval by the representative's firm. Rule 2370(a)(1) specifies that the representative's member firm must have written procedures allowing the borrowing arrangement at issue. Rule

⁸ Shetty Declaration ¶¶ 5-7; CX-1, CX-3.

⁹ Shetty Declaration ¶ 7; CX-3. See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹⁰ NASD Rule 2370 has been superseded by FINRA Rule 3240, which is substantially the same. The NASD Rule is spoken of here in the present tense.

2370(a)(2) specifies that the borrowing arrangement must meet one of five conditions: (A) the customer is a member of the representative's immediate family; (B) the customer is an institution or person regularly engaged in the business of providing credit or financing; (C) the customer and representative are both registered persons of the same member firm; (D) the lending arrangement was based on a personal relationship outside of the broker/customer relationship; and (E) the lending arrangement was based on a business relationship outside of the broker/customer relationship.

Rule 2370(b) sets forth procedures for ensuring that the requisite conditions are met, which must be incorporated, as appropriate, in a firm's written procedures regarding borrowing arrangements. Rule 2370(b)(1) requires that member firms give their written prior approval for arrangements covered by subsections (C), (D), and (E), which involve representatives registered with the same firm, and personal or business relationships wholly separate from the broker/customer relationship. Rule 2370(b)(2) permits a member firm to implement written procedures that do not require member firm notice or approval for borrowing arrangement involving immediate family members. Implicitly, prior notice and approval are otherwise required. Rule 2370(b)(3) permits a member firm to eliminate any requirement for notice and approval of borrowing arrangements with a person or entity in the business of providing credit or financing if the terms of the arrangement are the same as they would be for similarly situated members of the public. Again, implicitly, prior notice and approval are otherwise required.

When the Securities and Exchange Commission ("SEC") approved the adoption of FINRA Rule 3240 to supersede NASD Rule 2370, the SEC explained the purpose of NASD Rule 2370. It said that the Rule "is to give FINRA member broker-dealers the opportunity to evaluate

the appropriateness of particular lending arrangements between their registered persons and customers ... and the potential for conflicts of interests.”¹¹

An NASD Notice to Members also provides guidance on the importance of Rule 2370: “Loans between registered persons and their customer are of legitimate interest to NASD and member firms because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers’ best interests, or by borrowing funds from, but not repaying, customers.”¹²

NASD Conduct Rule 2110 And FINRA Conduct Rule 2010. NASD Conduct Rule 2110 and FINRA Conduct Rule 2010 are the same¹³ and are discussed here together by reference to the NASD Rule. NASD Conduct Rule 2110 requires that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” It applies to all business-related conduct, and is a broad prohibition of unlawful, unfair or unethical activities.¹⁴ The Rule “serve[s] as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be

¹¹ SEC Rel. No. 34-61537, 2010 SEC LEXIS 452, at *3-4 (Feb. 18, 2010).

¹² NASD Notice to Members 03-62, 2003 NASD LEXIS 70, at *1-2 (Oct. 8, 2003).

¹³ See FINRA Notice to Members 08-57, 2008 FINRA LEXIS 50, at *32-33 (Oct. 2008).

¹⁴ *Dep’t of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, at *11 and nn.12 & 13 (OHO Oct. 4, 2011). See also *Dep’t of Enforcement v. Brokaw*, No. 2007007792902, 2012 FINRA Discip. LEXIS 53, at *45-46 (NAC Sept. 14, 2012); *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at *17-18 and n. 46 (OHO June 13, 2011) (“Rule 2110 is an ethical rule...FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”), *aff’d*, 2012 FINRA Discip. LEXIS 15 (NAC Dec. 12, 2012); *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”) (internal citations and quotations omitted); *Dep’t of Enforcement v. DiFrancesco*, No. 2007009848801, 2010 FINRA Discip. LEXIS 37, at *16 n.11 (NAC Dec. 17, 2010) (citing cases) (“There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when the activity does not involve a security.”) *aff’d*; Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012); *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (NAC June 2, 2000) (citing *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995), *aff’d*, 104 F.3d 285 (9th Cir. 1997)).

dealt with fairly and in accordance with the standards of the profession.”¹⁵ A violation of any FINRA rule, including FINRA Rule 8210, also violates the Rule requiring adherence to high standards of commercial honor.¹⁶

FINRA Rule 8210. FINRA Rule 8210 requires FINRA members and their associated persons “to provide information orally, in writing, or electronically” in connection with any investigation. Rule 8210 is crucial to FINRA's ability to oversee and regulate broker-dealers because FINRA does not have subpoena power.¹⁷ Instead, FINRA must depend on member firms and their associated persons to cooperate fully and promptly with requests for information pursuant to Rule 8210.¹⁸ A failure to respond promptly and completely to such information requests frustrates FINRA's ability to detect misconduct and protect investors and markets.¹⁹ It is well-established that a failure to appear for an OTR pursuant to FINRA Rule 8210 violates

¹⁵ *Dep't of Enforcement v. Hunt*, No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *9 (Dec. 18, 2012) (quoting *DiFrancesco*, 2012 SEC LEXIS 54, at *17) (citation omitted).

¹⁶ *See Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *11 n.9 (NAC Dec. 12, 2012) (finding that respondent's refusal to respond to request made pursuant to FINRA Rule 8210 violated FINRA Rule 2010); *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (NAC July 21, 2011) (same).

¹⁷ *See, e.g., Dep't of Enforcement v. Valentino*, No. FP1010004, 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 [FINR'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); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). *See also Morton Bruce Erenstein*, 316 Fed. Appx. 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.”); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

¹⁸ *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).

¹⁹ *See CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

both FINRA Rule 8210 and NASD Conduct Rule 2110, requiring adherence to just and equitable principles of trade.²⁰

D. Conduct And Violations Found

1. First Cause Of Action – Borrowing From Customer Without Obtaining Prior Written Approval

Between December 2006 and October 2009, while registered with Wells Fargo, Naula signed separate promissory notes representing at least 24 loans from his customer, FD. In total, he borrowed approximately \$245,000 from FD.²¹

Naula's Firm, Wells Fargo, had written procedures, as required by NASD Rule 2370. However, Naula failed to follow those procedures. The Firm prohibited a registered representative from borrowing money from a customer unless the customer was an immediate family member of the registered representative and the registered representative obtained prior written approval from the Firm. Customer FD was not a member of Naula's family, and Naula did not even attempt to obtain the approval of his Firm. His Firm knew nothing about the loans Naula obtained from his customer until the estate asserted its claims in arbitration.²²

Naula plainly committed the violations alleged in the First Cause of Action. He borrowed money from a customer without seeking or obtaining prior written approval from his firm, as he was required to do. His conduct violated NASD Rules 2370 and 2110 and FINRA Rule 2010.

²⁰ E.g., *Dep't of Enforcement v. Simbric*, No. 2011026168901, 2012 FINRA Discip. LEXIS 29, *11-13 (OHO Apr. 23, 2012); *Dep't of Enforcement v. Pascucci*, No. 2010025751301, 2012 FINRA Discip. LEXIS 34, at *11-14 (OHO Apr. 13, 2012).

²¹ Shetty Declaration ¶¶ 18-19, 22-23; CX-3 ¶¶ 5-8, CX-8, CX-9. The customer, FD, was in her early nineties. On December 15, 2009, she died. Her estate initiated an arbitration proceeding against Naula and his Firm in an attempt to recover the funds Naula received as loans. Shetty Declaration ¶¶ 9, 19-20; CX-3 ¶¶ 7-8, CX-9, CX-12.

²² Shetty Declaration ¶¶ 20-21; CX-12.

2. Second Cause Of Action – Failure To Appear For OTR

Enforcement scheduled and then postponed Naula's OTR at his request three times. The fourth time that Enforcement scheduled his OTR, Naula called the day before the interview and left a voicemail. In that voicemail he stated that he would not appear for the OTR. Enforcement staff attempted to contact him by telephone and left him a voicemail. Enforcement staff said in its voicemail that the OTR would proceed even if Naula did not appear, and asked Naula to call back. He did not call back. Nor did he appear at the scheduled OTR on February 16, 2012.²³

Naula plainly committed the violations alleged in Second Cause of Action. He did not appear for his OTR despite having notice and repeatedly obtaining a postponement. His refusal to cooperate violated FINRA Rules 8210 and 2010.

IV. Sanctions

A. First Cause Of Action

There are no Sanction Guidelines²⁴ specific to improper borrowing in violation of NASD Rule 2370 (or its successor, FINRA Rule 3240). Enforcement suggests that the Sanction Guideline for the FINRA Rule concerning outside business activities is an appropriate guidepost here. Cases involving outside business activities involve conduct that could be detrimental to customers, that might appear to bear the imprimatur of the registered representative's firm, and that might be appropriately supervised by the firm to prevent harm to customers. All of this is also true with respect to a registered representative's borrowing from customers. The Hearing Officer agrees that it is helpful to look at the Sanction Guidelines relating to outside business activities (FINRA Rules 2010 and 3270).

²³ Shetty Declaration at ¶¶ 24-27; CX-13 through CX-17.

²⁴ FINRA Sanction Guidelines (2011) ("Sanction Guidelines"), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

The Sanction Guidelines for violations of the Rules relating to outside business activities recommend fines of \$2,500 to \$50,000 and suspensions of up to thirty business days. However, the Sanction Guidelines recommend a longer suspension or a bar if the misconduct is egregious.²⁵

In evaluating whether this type of misconduct is egregious, various factors may be relevant: whether customers are involved; whether customers were injured and, if so, the nature and extent of their injury; the duration of the misconduct and the dollar volume involved; whether the FINRA member firm might be viewed as approving the activity; and whether there was an attempt to conceal the misconduct from the firm.²⁶ Many of these signs of an egregious violation exist here. A customer was injured, and injured to a significant degree – FD lost close to a quarter of a million dollars. The misconduct occurred over two years and was ongoing until two months before the customer died. Naula also arranged for the loans to be made in a way that concealed his misconduct from his Firm.

Enforcement characterizes Naula's improper borrowing as an egregious violation. In support of that characterization, Enforcement points to a number of aggravating factors. First, FD was elderly and retired and so it was easier to take advantage of her than of others. Second, this was not a single instance of misconduct. Rather, Naula borrowed money systematically, at least two dozen times, over the course of more than two years. The borrowing continued until only two months before FD's death, suggesting that the surreptitious loans would have continued but for that event. Third, Naula engaged in the misconduct even though he had reason to know it

²⁵ Sanction Guidelines at 13. As a general matter, in all cases where an identifiable party has been injured in a quantifiable amount proximately caused by the respondent's misconduct, restitution is also a recommended sanction. Sanction Guidelines at 4, General Principle 5. Here, however, Naula obtained a discharge in bankruptcy from the debt owed FD. FD's estate also obtained some unknown amount of recovery from Naula's Firm. In these circumstances, the Hearing Office is not ordering restitution.

²⁶ Sanction Guidelines at 6-7, Principal Considerations 8, 9, 10, 11, 13, 17, and 18; Sanction Guidelines at 13 (Principle Considerations in connection with outside business activities).

was wrong. He signed multiple attestations while registered with his Firm signifying that he had read and understood the Firm's policies regarding the borrowing of money from customers. Fourth, consciousness of wrongdoing is suggested by the manner in which the loans were accomplished. Rather than having FD directly transfer the funds from her securities account to Naula directly – which might have alerted the Firm to the transactions – Naula liquidated securities in the account, transmitted the proceeds to FD's bank account, and then had FD write checks on the bank account to Naula. Naula deliberately attempted to conceal the loans. Fifth, although Naula made de minimis payments on the loans between June 15, 2007, and October 23, 2009 (19 payments totaling \$24,750), he did not take meaningful steps to fully repay FD. In light of FD's advanced age, this suggests that Naula had little or no intention of actually repaying the loans or abiding by the promissory notes. Certainly it shows that he was not concerned with the customer's best interest.

The aggravating factors Enforcement cites are among the Principal Considerations to be included in any sanctions analysis: (i) whether there is a pattern of misconduct; (ii) whether the misconduct occurred over an extended period of time; and (iii) whether the misconduct was intentional, reckless, or negligent.²⁷ There are no mitigating factors.

The Hearing Officer agrees that Naula's misconduct in connection with the loans from his customer, FD, was egregious. For violating NASD Rules 2370 and 2110 and FINRA Rule 2010, a bar is warranted.²⁸

²⁷ Sanction Guidelines at 6-7, Principal Considerations 8-9, and 13.

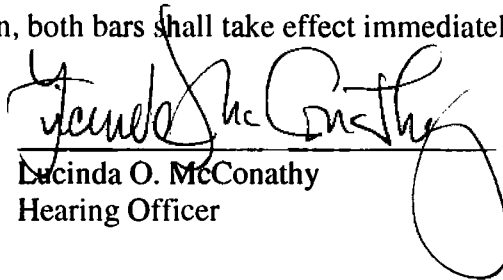
²⁸ *E.g.*, *Dep't of Enforcement v. Yarbrough*, No. 2010022751101, 2012 FINRA Discip. LEXIS 27, at *9-12 (OHO Jan. 20, 2012); *Dep't of Enforcement v. Hazard*, No. 2009018165601, 2012 FINRA Discip. LEXIS 39, at *9-11 (OHO Jan. 9, 2012).

B. Second Cause Of Action

Where an individual fails to respond in any manner to a request for information, documents, or testimony pursuant to FINRA Rule 8210, the Sanction Guidelines recommend a bar. The Sanction Guidelines describe this sanction as the "standard" sanction for such a failure to respond.²⁹ The Sanction Guidelines also suggest a fine ranging from \$25,000 to \$50,000.³⁰ Partial responses and untimely responses may lead to a lesser sanction, but in this case that analysis is unnecessary. Naula failed to appear at his OTR. He should be barred for his failure to appear at an OTR, in violation of FINRA Rules 8210 and 2010.³¹

V. Order

Respondent is barred from associating with any member firm in any capacity for violating NASD Rules 2370 and 2110 and FINRA Rule 2010, as alleged in the First Cause of Action. Respondent is separately barred from associating with any member firm in any capacity for violating FINRA Rules 8210 and 2010, as alleged in the Second Cause of Action. If this decision becomes FINRA's final disciplinary action, both bars shall take effect immediately.


Lucinda O. McConathy
Hearing Officer

Copies to:

Frank Oswaldo Naula (via overnight courier and first-class mail)
Vaishali Shetty, Esq. (via electronic and first-class mail)
David Jaffe, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
Susan Schroeder, Esq. (via electronic mail)

²⁹ Sanction Guidelines at 33.

³⁰ *Id.* As discussed in note 25, above, Naula recently emerged from bankruptcy. Neither a fine nor restitution will be ordered in light of the circumstances.

³¹ *E.g.*, *Yarbrough*, *supra*, 2012 FINRA Discip. LEXIS 27, at *12-13; *Hazard*, *supra*, 2012 FINRA Discip. LEXIS 39, at *11-13.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANK OSWALDO NAULA
(CRD No. 1344900),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011027702801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Frank Oswaldo Naula improperly borrowed approximately \$245,000 from a customer, FID, of his employer member firm, in violation of NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010. In addition, he violated FINRA Rules 8210 and 2010 when he failed to appear for an on-the-record ("OTR") interview requested by FINRA staff pursuant to FINRA Rule 8210.

RESPONDENT AND JURISDICTION

2. Naula first became registered with FINRA as a General Securities Representative ("GSR") on or about April 19, 1986 through a FINRA member firm. From July 1, 2003 through January 7, 2011, Naula was registered as a GSR through member firm

Wells Fargo Advisors LLC ("Wells Fargo").¹ From February 7, 2011 through December 20, 2011, Naula was registered as a GSR at another FINRA member firm. Since December 20, 2011, Naula has not been associated with any FINRA member firm.

3. Although Naula 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 Naula's registration with his last firm, namely, December 20, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Improper Borrowing from a Customer (NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010)

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3 above.
5. Between December 2006 and October 2009, while registered with FINRA through member firm Wells Fargo, Naula borrowed a total of approximately \$245,000 from FD through at least twenty-four separate loans. Naula entered into promissory notes with FD for each of the twenty-four loans.

¹ On or about December 31, 2008, Wells Fargo merged with Wachovia Corporation. All references to Wells Fargo in this Complaint encompass Wachovia.

6. During this period, FD maintained an account with, and was a customer of, Wells Fargo. Naula was FD's registered representative. In December 2006, FD was 92 years old.
7. Wells Fargo's written procedures prohibited registered representatives from borrowing money from customers unless the customer was an immediate family member of the registered representative and the registered representative had received prior written approval from the firm. Naula completed annual attestations for Wells Fargo acknowledging his awareness of, and compliance with, the firm's policies and procedures and the firm's code of ethics. Customer FD was not Naula's family member and Naula did not provide notice to, or receive permission from, Wells Fargo to borrow money from customer FD.
8. On or about December 15, 2009, FD passed away. Between June 15, 2007 and October 23, 2009, Naula made a total of nineteen payments to FD for a total of \$24,750.
9. NASD Conduct Rule 2370 only allows registered representatives to borrow money from a customer if, among other things, the member has written procedures allowing the borrowing of money between a registered person and a customer of the member firm. Naula failed to follow Wells Fargo's written procedures for borrowing from its customers.
10. By reason of the foregoing, Naula violated NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

**Failure to Appear for an On-The-Record Interview
(FINRA Rules 8210 and 2010)**

11. The Department re-alleges and incorporates by reference paragraphs 1 through 10 above.
12. On November 21, 2011, in connection with FINRA's investigation of the loans between Naula and FID, the staff sent Naula a letter requesting his appearance for an OTR at FINRA's Long Island office on November 30, 2011. The letter was sent via certified mail, return receipt requested and first-class mail to Naula's residential address as listed in the Central Registration Depository (CRD) ("CRD Address"). On November 30, 2011, Naula contacted the staff and requested that the OTR be postponed until January 2012 in order to allow him an opportunity to obtain legal representation. The staff granted Naula's request for a postponement of his OTR.
13. On November 30, 2011, the staff sent a letter to Naula at his CRD Address, pursuant to FINRA Rule 8210, via certified mail, return receipt requested and first-class mail, rescheduling the OTR to January 17, 2012. On January 10, 2012, Naula contacted the staff and requested an additional postponement of the OTR, again stating that he was seeking legal counsel. The staff granted Naula's second request for a postponement of his OTR.
14. On January 13, 2012, the staff sent a letter to Naula at his CRD Address, pursuant to FINRA Rule 8210, via certified mail, return receipt requested and first-class mail, requesting that Naula appear for the OTR on February 8, 2012. On February 6, 2012, Naula called the staff and requested another postponement of the OTR. The staff granted Naula's third request for a postponement of his OTR.
15. On February 8, 2012, the staff sent a letter to Naula at his CRD Address, pursuant to FINRA Rule 8210, via certified mail, return receipt requested and first-class mail,

requesting that Naula appear for the OTR on February 16, 2012. On February 15, 2012, Naula left a voicemail stating that he would not appear for the OTR. The staff attempted to contact Naula and left a voicemail, noting that the OTR would be proceeding and asking that Naula call back. Naula failed to appear at the OTR on February 16, 2012.

16. By reason of the foregoing, Naula violated FINRA Rules 8210 and 2010.

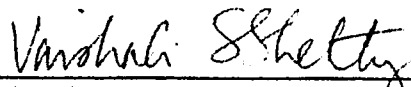
RELIEF REQUESTED

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 that Respondent be required to 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: November 20, 2012


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