

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

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

GEORGE ALEXANDER KARDARAS
(CRD No. 3184384)

and

BRIAN MATT BORAKOWSKI
(CRD No. 4093679),

Respondents.

Disciplinary Proceeding
No. 20110295247-01

Hearing Officer – RLP

DEFAULT DECISION

August 8, 2013

Respondents are barred from associating with any FINRA member in any capacity for each of the following violations: (i) engaging in securities 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; (ii) converting customer funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010; (iii) engaging in private securities transactions, in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010; and (iv) failing to provide requested information, in violation of FINRA Rules 8210 and 2010. For borrowing from a customer without obtaining firm approval, in violation of FINRA Rules 3240 and 2010, and for providing false information to his employer member firm about the borrowing, in violation of FINRA Rule 2010, Respondent Borakowski is suspended from associating with any FINRA member in any capacity for one year, but the suspensions will not be imposed in light of the bars imposed for his other violations.

Appearances

Lora W. Alexander, Esq., James J. Nixon, Esq., Rockville, MD, for the Department of Market Regulation.

No appearance by or for Respondents.

DECISION

I. Introduction

Respondents George Alexander Kardaras' and Brian Matt Borakowski's employer firms filed Uniform Termination Notices for Securities Industry Registration (Form U5) on September 28, 2011, and October 25, 2011, respectively, notifying FINRA of Respondents' terminations. According to the Form U5 concerning Kardaras, Kardaras was the subject of a customer complaint alleging misrepresentation and unsuitable investments. According to the Form U5 concerning Borakowski, Borakowski was the subject of a customer complaint alleging that the customer had not received repayment on a promissory note. As a result of the ensuing investigations, FINRA's Department of Market Regulation ("Market Regulation") initiated this proceeding on March 27, 2013.¹

In its complaint, Market Regulation pleads seven causes of action. The first cause of action charges that Respondents violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010. It alleges that Respondents solicited customers to purchase a company's promissory notes by representing that investor funds would be used to operate the company when, in fact, Respondents intended to use the funds for other purposes, including for their own personal expenses. The second cause charges that, because Respondents used customer funds in an unauthorized manner and for their own purposes, Respondents converted those funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010. The third cause of action charges that, because Respondents' sale of the promissory notes occurred outside the regular course and scope of Respondents' associations with their member firms and without prior

¹ Lora W. Alexander's Declaration in Support of Motion for Entry of Default Decision ("Alexander Decl."), ¶ 2-3; Complainant's Exhibit ("CX")-1, at 16; CX-2, at 20.

notice to their firms, Respondents violated NASD Rules 3040 and 2110, and FINRA Rule 2010. The fourth cause of action charges that Borakowski borrowed from a customer without notice to or prior approval from his firm, in violation of FINRA Rules 2010 and 3240. The fifth cause of action charges that Borakowski violated FINRA Rule 2010 by providing false information to his firm about his borrowing arrangement. The sixth and seventh causes of action charge that Borakowski and Kardaras, respectively, violated FINRA Rules 8210 and 2010 by failing to respond to information requests.

Respondents did not answer or otherwise respond to the complaint. Consequently, on June 24, 2013, Market Regulation filed a motion for entry of a default decision, together with the declaration of Lora W. Alexander and five exhibits. Respondents did not respond to the motion.²

II. Jurisdiction

Kardaras and Borakowski entered the securities industry in 1999 and at various points in their careers they were associated with the same broker-dealer. By February 2005, Kardaras was employed by, and registered with FINRA through, J.P. Turner & Company, LLC, where he remained until September 1, 2011. His registrations with FINRA, as a general securities representative (“GSR”) and a general securities principal (“GSP”), were terminated on September 28, 2011. Borakowski, too, worked for J.P. Turner, from 2003 to 2006. By 2007, he was employed by American Capital Partners, LLC, and from August 2009 until his employment and FINRA registrations (as a GSR and a GSP) were terminated on March 8, 2011, he was employed by, and registered with FINRA through, Berthel, Fisher & Company Financial

² Given that Respondents are in default as detailed below, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, as well as the Alexander Declaration and attached exhibits.

Services, Inc. Neither Respondent has been associated with any FINRA member firm since these terminations.³

Although neither respondent is currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the complaint (1) was filed within two years after the termination of Respondents' registrations through their last employer firms, and (2) charges Respondents with misconduct that occurred while they were associated with FINRA members and with failing to respond to information requests issued within two years after the termination of their registrations.⁴

III. Respondents' Defaults

On March 27, 2013, Market Regulation served each Respondent with a notice of complaint and complaint by overnight courier and certified mail addressed to their residential addresses as recorded in FINRA's Central Registration Depository ("CRD address"). In addition, Market Regulation served Kardaras with another copy of the complaint and notice of complaint at an alternate address. The mailings and courier shipments to both of Kardaras' addresses were returned as undeliverable. The mailing and courier shipment directed to Borakowski were successfully delivered. Neither Respondent answered the complaint.⁵

On April 29, 2013, Market Regulation served each Respondent with a second notice of complaint and complaint by certified mail and overnight courier addressed to Respondents' CRD addresses. In addition, Market Regulation served Kardaras with another copy at an alternate address. This time, the courier shipment to Kardaras' alternative address was successfully

³ Complaint ¶¶ 8, 9; Alexander Decl. ¶¶ 4-7; CX-1, at 2, 13; CX-2, at 2, 17.

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

⁵ Alexander Decl. ¶¶ 8-11, 16-19; CX-3; CX-5.

delivered, but the mailings and the other courier shipment to Kardaras were returned as undeliverable. Borakowski's courier shipment again was successfully delivered, but the certified mailing was returned unclaimed. Again, neither Respondent responded to the second notice, filed an answer with the Office of Hearing Officers, or otherwise responded to the complaint.⁶

Both Kardaras and Borakowski received constructive notice of this proceeding and, therefore, the Hearing Officer finds that they both have defaulted by failing to answer the complaint.⁷ Therefore, the Hearing Officer deems the allegations in the attached complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

IV. Findings of Fact and Conclusions of Law

A. Kardaras and Borakowski Engaged in Securities Fraud.

The complaint's first cause of action charges that Respondents engaged in securities fraud, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.⁸ The charge centers on allegations that, beginning in October 2007 and continuing through March 2011,⁹ Respondents defrauded investors who purchased promissory notes issued by Echo Canyon, LLC.

In October 2006, Borakowski organized Echo Canyon in Arizona as a limited liability company. Around one year later, both Borakowski and Kardaras began soliciting customers of

⁶ Alexander Decl. ¶¶ 12-15, 20-22; CX-4; CX-6.

⁷ See FINRA Rules 9134(a)(2) (a)(3), (b)(1), and (b)(3); *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (NAC July 26, 2012) (respondent had constructive notice of complaint mailed to his CRD address); see also Notice to Members 99-77, available at www.finra.org/Industry/Regulation/Notices/1999/P004087.

⁸ In 2007, NASD consolidated with the member regulation function of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). FINRA began formulating a consolidated rulebook and, as part of that process, in December 2008, NASD Rules 2120 and 2110 were superseded by FINRA Rules 2020 and 2010, respectively. This decision refers to the conduct rules that were in effect at the time of Respondents' misconduct. Accordingly, NASD Rules 2120 and 2110 apply to conduct before December 15, 2008, and FINRA Rules 2020 and 2010 apply to conduct on or after December 15, 2008. These rules are available at www.finra.org/Industry/Regulation/FINRARules.

⁹ Complaint ¶ 12.

their employer FINRA member firms to invest in the company.¹⁰ Although they solicited firm customers, the promissory note sales were outside the regular course and scope of Respondents' associations with their firms, and their firms did not participate in, and were not aware of, the sales.¹¹

Respondents told customers that their investments would be used to fund Echo Canyon's operations—purportedly, the purchase of automobiles at U.S. auctions and shipment of those automobiles to Russia for resale. Respondents represented that customers would receive payments from the sales to Russian buyers.¹²

Respondents' solicitations were successful and, over the next four years, they convinced at least 12 customers to invest more than \$665,000 in total in Echo Canyon promissory notes. The notes bore interest rates ranging from 14 to 56 percent per year and had quarterly, semi-annual, and annual maturity dates. The funds customers used to purchase their notes were deposited into an account for Echo Canyon that Borakowski controlled.¹³

Respondents never intended to use the customers' funds as represented. Although Respondents purchased and shipped two automobiles for Echo Canyon in or around late 2007 or early 2008, the Russian economy declined in 2008 and the company did not purchase or sell any more vehicles. Accordingly, although they were soliciting investments under the pretense that the monies would be used to fund the purchase and resale of automobiles, Respondents instead used 95 percent of the funds—approximately \$634,000—to pay personal expenses, to cover

¹⁰ Complaint ¶¶ 11-12.

¹¹ Complaint ¶ 49.

¹² Complaint ¶ 13.

¹³ Complaint ¶¶ 16, 18, 26, 31, 35, 47.

expenses related to their employer firms' branch office businesses, and to make payments to earlier investors in furtherance of what evolved into a Ponzi scheme.¹⁴

Customer DZ's investment was typical. Borakowski solicited DZ, a customer of his employer FINRA member firm, to invest in Echo Canyon in July 2009. Borakowski told DZ that his funds would be used to purchase vehicles at U.S. auto auctions for resale in Russia. DZ decided to invest \$20,000 in Echo Canyon and, on behalf of the company, Borakowski executed a promissory note payable to DZ, bearing an 18 percent annual interest rate.¹⁵

Respondents did not use any of DZ's funds to purchase automobiles for resale in Russia. Instead, Respondents used DZ's funds to pay for their personal expenses, for expenses related to their branch office businesses, and for payments to earlier investors. Respondents did not tell DZ that his funds would be used in this manner, and DZ did not authorize these uses. Ultimately, Respondents repaid only a portion of DZ's investment.¹⁶

RB, a customer of Kardaras' employer member firm, also invested in Echo Canyon after Respondents told him that his investment would be used to purchase automobiles at auctions in the U.S. and then ship them to Russia for resale. From October 2007 through June 2010, RB, on the advice of Kardaras, withdrew funds invested with Kardaras' employer member firm and invested them in Echo Canyon. Borakowski, on behalf of Echo Canyon, executed a promissory note payable to RB and bearing a 14 percent annual interest rate.¹⁷

RB invested a total of \$130,000 in Echo Canyon from October 2007 through June 2010. RB received payments totaling \$55,000 from his investment until mid-2010, when the payments

¹⁴ Complaint ¶¶ 1-3, 14-16.

¹⁵ Complaint ¶¶ 30-31.

¹⁶ Complaint ¶¶ 32-34.

¹⁷ Complaint ¶¶ 17-18.

stopped. In September 2010, RB met with Kardaras at the offices of Kardaras' employer to discuss RB's investment. During the meeting, Kardaras told RB that Borakowski's father had agreed to purchase all outstanding Echo Canyon promissory notes at the end of the first quarter 2011. Kardaras also stated that Borakowski's father would pay all of the interest and principal owed to Echo Canyon's investors. During a meeting with RB on March 31, 2011, however, Borakowski told RB that his father had changed his mind and would neither purchase the outstanding promissory notes nor pay the outstanding interest and principal owed to investors.¹⁸

Again, Respondents did not use all of RB's funds to purchase used cars in the U.S. for resale in Russia. Instead, Respondents used the funds for their personal expenses, for expenses related to their respective employer FINRA member firms' branch office businesses, and for making payments to other investors. Respondents did not tell RB that they would use his funds in this manner, nor did RB authorize these uses.¹⁹

In furtherance of their Ponzi scheme, Respondents falsely told 10 other customers (CG, LA, RH, MM, NW, TM, SS, KS, SF, and TF) that their investments (ranging from \$5,000 to \$100,000) would be used to pay for Echo Canyon's purchase and shipment of automobiles for resale when, in fact, Respondents intended to and did use the customers' funds for their own purposes, to pay personal and firm business expenses, and in many instances, to make payments to other investors as part of the Ponzi scheme. Respondents did not tell these investors that they would use their investments in this manner, and the investors did not authorize these uses.²⁰

Based on the foregoing, the Hearing Officer concludes that Respondents engaged in securities fraud, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

¹⁸ Complaint ¶¶ 19-21, 23.

¹⁹ Complaint ¶¶ 22, 24.

²⁰ Complaint ¶¶ 25-29, 35-36. Some, but not all, of these customers' investments were fully repaid. Complaint ¶ 35.

These antifraud provisions are “designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities.”²¹ A finding of a violation requires a showing that a person (i) acting with scienter (ii) misrepresented or omitted material facts (iii) in connection with the purchase or sale of any security.²² Scienter embraces the “intent to deceive, manipulate, or defraud”²³ and may be established by a showing of recklessness involving an “extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”²⁴ A fact is material if there is a substantial likelihood that a reasonable investor would have considered it important in making an investment decision.²⁵

The facts adequately establish that Respondents acted with scienter. They convinced firm customers to make investments to fund the purchase and resale of automobiles, all the while intending to use the investments for other purposes. This shows intent to deceive or defraud. The facts also demonstrate that Respondents misstated and omitted material facts. When a

²¹ *Dep't of Enforcement v. Donner Corp. Int'l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (NAC Mar. 9, 2006) (citations omitted), *vacated and remanded in part on other grounds*, *Donner Corp. Int'l*, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007).

²² *Id.*; see also *Dep't of Market Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *25 (NAC July 28, 2011) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996)). The notes were securities within the meaning of Exchange Act 3(a)(10), 15 U.S.C. § 78c(a)(10) because: they were not the type of notes specifically identified as a non-security; they were purportedly issued to raise capital for Echo Canyon; purchasers bought them seeking to earn a profit in the form of interest; a reasonable member of the investing public would perceive the notes as securities; and no other regulatory scheme reduced the risk associated with the investment. See *Reves v. Ernst & Young*, 494 U.S. 56, 65-67 (1990). Although the notes were not sold to a broad segment of the public, this “is not dispositive. Instead it must be weighed against the purchasing individual’s need for the protection of the securities laws.” *McNabb v. SEC*, 298 F.3d 1126, 1132 (9th Cir. 2002). Here, the individual purchasers would stand to benefit from the application of the securities laws.

²³ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

²⁴ E.g., *The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977))).

²⁵ *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

person represents that he will invest a customer's funds while intending instead to convert the funds to his personal use—as Respondents did here—he has plainly misstated and omitted material facts.²⁶ Finally, Respondents made their misstatements and omitted material facts “in connection with” the purchase of a security.²⁷

FINRA Rule 2020, like its predecessor, NASD Rule 2120, is FINRA's antifraud rule and, as pertinent here, its elements and those of its predecessor are the same as those required to establish a violation of Section 10(b) and Rule 10b-5.²⁸ Therefore, based on the foregoing, the Hearing Officer concludes that Respondents willfully²⁹ violated FINRA Rule 2020 and NASD Rule 2120 and, further, that their conduct ran afoul of the high ethical standards required by FINRA Rule 2010 and its predecessor, NASD Rule 2110.³⁰

B. Kardaras and Borakowski Converted Investor Funds.

As set forth above, Respondents convinced customers to purchase Echo Canyon promissory notes by falsely representing that their investments would be used to purchase and resell automobiles. Contrary to that representation, Respondents used the invested funds for their own purposes—to pay personal expenses and perpetuate their Ponzi scheme, among other

²⁶ Cf. e.g., *Dep't of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *19 (OHO Feb. 23, 2012).

²⁷ A violation of Section 10(b) also must involve the use of “any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” an element satisfied here given that Respondents solicited investors using the telephone. Alexander Decl. ¶ 25.

²⁸ E.g., *Burch*, 2011 FINRA Discip. LEXIS 16, at *23-25 & n.18; *Market Regulation Comm. v. Shaughnessy*, No. CMS950087, 1997 NASD Discip. LEXIS 46, at *24 (NBCC June 5, 1997), *aff'd*, *Kevin Eric Shaughnessy*, 53 S.E.C. 692 (1998).

²⁹ In this context, willfulness means intentionally committing the act constituting the violation. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). The finding that Respondents acted with scienter necessarily leads to the conclusion that they acted willfully.

³⁰ This holds true both because fraud is a serious breach of Rule 2010's ethical standards and because a violation of other rules constitutes a violation of Rule 2010. See *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 54 S.E.C. 175, 185 (1999). Although Rule 2010 applies by its terms only to members, Rule 0140(a) provides that persons associated with a member “have the same duties and obligations as a member under the Rules.”

things. They did this without informing the customers and without the customers' authorizations.

FINRA's Sanction 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."³¹ It is well established that conversion constitutes the "improper use of a customer's securities or funds" prohibited by NASD Rule 2330(a) and its successor, FINRA Rule 2150.³² It also is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.³³ Based on the foregoing, the Hearing Officer concludes that Respondents violated NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010, by converting customers' funds.

C. Kardaras and Borakowski Engaged in Private Securities Transactions.

NASD Rule 3040 provides that: "No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule." The Rule goes on to require that:

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction; provided however that, in the case of a series of related transactions in which no selling compensation has been or will be received, an associated person may provide a single written notice.

³¹ FINRA Sanction Guidelines 36, n.2 (2011), available at www.finra.org/Industry/Enforcement/Sanctionguidelines.

³² 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).

As part of the process of producing the consolidated rulebook, as described *supra* n.8, on December 14, 2009, FINRA Rule 2150 superseded NASD Conduct Rule 2330. Accordingly, NASD Rule 2330 applies to Respondent's conduct before December 14, 2009, and FINRA Rule 2150 applies to conduct on or after December 14, 2009.

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

The Rule defines “private securities transaction” to mean any securities transaction outside the regular course or scope of an associated person’s employment with a member. As set forth above, the Echo Canyon promissory notes were securities, Respondents engaged in transactions in those securities within the meaning of the Rule,³⁴ and those transactions were outside the regular course and scope of Respondents’ employment with their firms. As further stated, Respondents’ employer member firms did not participate in, nor were they aware of, the sales. Respondents were thus obliged under Rule 3040 to provide their firm with prior written notice of the sales, but they failed to do so. Under the circumstances, the Hearing Officer finds that Respondents violated NASD Rules 3040 and 2110 and FINRA Rule 2010.³⁵

D. Borakowski Entered into an Impermissible Borrowing Arrangement with a Customer.

In October 2010, Borakowski talked with TT, a customer of Borakowski’s employer member firm, telling him that he needed money because he had borrowed funds from another customer. According to Borakowski, that customer wanted to be repaid immediately and had threatened to contact Borakowski’s employer about the loan.³⁶ Consequently, on October 22, 2010, TT lent Borakowski \$11,500 to repay the other customer.³⁷ Two days earlier, Borakowski and TT had executed a promissory note evidencing the loan. The promissory note provided for Borakowski to repay a total of \$12,500.³⁸

³⁴ Rule 3040 applies to both purchases and sales of securities. *See Jay Frederick Keeton*, 50 S.E.C. 1128, 1129 (1992) (finding that “Keeton’s sales activities . . . as well as his own purchases of partnership interests” violated FINRA’s rules prohibiting private securities transactions).

³⁵ *See Dep’t of Enforcement v. Friedman*, No. 200500083580, 2010 FINRA Discip. LEXIS 10, at *19-24 (NAC July 26, 2010), *aff’d Harry Friedman*, Exchange Act Rel. No. 64486, 2011 SEC LEXIS 1699 (May 13, 2011). A violation of Rule 3040 is also a violation of NASD Rule 2110 (and, therefore, a violation of FINRA Rule 2010). *Id.* at n.20.

³⁶ Complaint ¶ 54.

³⁷ Complaint ¶ 53.

³⁸ Complaint ¶ 55.

On December 23, 2010, Borakowski sent TT a check drawn on the Echo Canyon bank account in the amount of \$500. Borakowski did not repay the \$12,000 balance he owed.³⁹

Borakowski's employer prohibited its registered representatives ("RRs") from borrowing from or lending to their customers. According to the firm's written supervisory procedures:

Any proposed loan with the RR's customer (other than a loan with a family member or financial institution) requires the PRIOR review and approval by the Compliance Department. RRs requesting exceptions must provide a written statement explaining the reason and details of the request and submit it to the Compliance Department for approval prior to effecting the loan arrangement.

Borakowski did not seek or obtain prior firm approval for the loan.

FINRA Rule 3240 prohibits persons associated with FINRA members from borrowing funds from their customers unless two requisites are met. First, their firm must have "written procedures allowing the borrowing . . . of money between such registered persons and customers of the member," and second, the borrowing arrangement must fall within one or more of five enumerated categories.⁴⁰ If these requisites are met, associated persons must, in addition, comply with notification and approval requirements set out in the Rule.

Borakowski's employer firm prohibited its associated persons from borrowing money from customers, other than family members or financial institutions, without prior written request and firm approval. When, without firm approval, Borakowski entered into the loan

³⁹ Complaint ¶ 56.

⁴⁰ See NASD Notice to Members 03-62, at 662 (Oct. 2003) and NASD Notice to Members 04-14, at 189 (Mar. 2004) (addressing predecessor Rule 2370).

arrangement with TT, who was neither a family member nor a financial institution,⁴¹ Borakowski ran afoul of Rule 3240's first requisite and therefore violated FINRA Rules 3240 and 2010.⁴²

E. Borakowski Provided False Information to a Member Firm.

On March 28, 2010, Borakowski completed a branch audit questionnaire issued by his employer FINRA member firm. In response to the question, "Have you borrowed or loaned money or securities from or to any customer, excluding immediate family members," Borakowski falsely answered "no."⁴³ This conduct violated Rule 2010 by calling into question Borakowski's ability to comply with regulatory requirements fundamental to the proper functioning of the securities industry.⁴⁴

F. Respondents Failed to Provide Information Requested by FINRA.

On October 20, 2011, FINRA staff sent Kardaras a letter requesting information pursuant to Rule 8210 in conjunction with the investigation of this matter. The request was sent to Kardaras' CRD address via certified mail, first-class mail, and overnight courier. Although Kardaras signed the certified mail receipt, which was returned to FINRA staff on October 31, 2011, he did not respond to the information request.⁴⁵

On November 10, 2011, FINRA staff sent Kardaras a follow-up letter requesting the information. The letter was sent to Kardaras' CRD address by, among other means, certified mail, and Kardaras again signed the receipt, which was returned to staff on November 21, 2011.

⁴¹ Complaint ¶ 54.

⁴² As the SEC has noted, disciplinary actions for improper borrowing "are in addition to the general powers that [FINRA] has" under just and equitable principles of trade "to . . . [discipline] a registered person who has entered into an unethical lending arrangement with a customer." 68 Fed. Reg. at 52807. Consequently, when, contrary to a firm's written procedures, a registered representative fails to seek and obtain the firm's prior approval of a loan from a customer, he violates FINRA Rule 2010. *E.g., Mullins*, 2011 FINRA Discip. LEXIS 61, at *41.

⁴³ Complaint ¶¶ 60-61.

⁴⁴ *Mullins*, 2011 FINRA Discip. LEXIS 61, at *30 (citations omitted).

⁴⁵ Complaint ¶ 70.

Again, Kardaras did not respond to the request.⁴⁶ The staff was prevented from pursuing certain material areas of its investigation into Kardaras' conduct as a result of his failure to respond to information requests.

Around one month later, on December 23, 2011, FINRA staff sent Borakowski a Rule 8210 request for information relating to this matter. The request was sent to Borakowski's CRD address via certified mail, first-class mail, and overnight courier. His response was due on January 6, 2012. Although Borakowski signed the overnight courier's delivery confirmation on December 27, 2011, he did not respond to the request by the due date.⁴⁷

On January 18, 2012, FINRA staff sent Borakowski another Rule 8210 request letter by, among other means, overnight courier. Again, although the courier delivered the letter on January 19, 2012, Borakowski did not respond to the request.⁴⁸ As a result of Borakowski's repeated failure to respond to the Rule 8210 requests, staff was prevented from pursuing certain material areas of its investigation into Borakowski's conduct.

FINRA Rule 8210(c) sets forth an unequivocal requirement that registered persons comply with FINRA information requests, providing that "[n]o member or person shall fail to provide information" requested pursuant to the Rule. The foregoing facts establish that Kardaras and Borakowski failed to respond in any manner to requests for information. Accordingly, the Hearing Officer finds that Respondents violated Rule 8210. Their violations of Rule 8210 are also violations of Rule 2010.⁴⁹

⁴⁶ Complaint ¶ 71.

⁴⁷ Complaint ¶ 65.

⁴⁸ Complaint ¶ 66.

⁴⁹ See *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *13-14 & n.14 (Apr. 1, 2005) (holding that efforts to impede NASD (now FINRA) investigations violate high standards of commercial honor and just and equitable principles of trade), *aff'd*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

V. Sanctions

A. Securities Fraud

The Sanction Guideline for misrepresentations or material omissions of fact recommends a bar in egregious cases.⁵⁰ Respondents' violations were egregious. Over the course of several years, Respondents engaged in a Ponzi scheme in which they fraudulently solicited more than \$665,000 from customers and converted approximately \$634,000, representing 95 percent of the invested funds. They used the funds for their personal expenses, expenses related to their branch office businesses, and payments to early investors to perpetuate the scheme. Accordingly, and in the absence of any mitigating circumstances, Respondents will be barred from associating with any FINRA member firm in any capacity for engaging in securities fraud, in violation of Exchange Action Section 10(b), Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.

B. Conversion

Respondents took customer funds and used them for their own, unauthorized purposes. As stated, this amounts to conversion. Such conduct is patently antithetical to the high standards of conduct FINRA seeks to promote⁵¹ and, therefore, the Sanction Guidelines recommend a bar, regardless of the amount converted.⁵² In the absence of any mitigating circumstances, Respondents will therefore be barred from associating with any FINRA member firm in any capacity for conversion of customers' funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010.

⁵⁰ Sanction Guidelines 88; see *Burch*, 2011 FINRA Discip. LEXIS 16, at *44.

⁵¹ See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (NAC May 23, 2001).

⁵² Sanction Guidelines 36.

C. Private Securities Transactions

“Rule 3040 serves not only to protect investors, but also to permit securities firms, which may be subject to liability in connection with transactions in which their representatives become involved, to supervise such transactions.”⁵³ To “protect investors as well as itself,” the member must therefore “be apprised of any associated person’s outside involvement in securities transactions.”⁵⁴ Here, had Respondents informed their firms that they proposed to engage in private securities transactions, significant customer harm may have been prevented.

The Sanction Guideline for private securities transactions provides for a fine of \$5,000 to \$50,000, and a suspension of 6 to 12 months in cases where the dollar amount of the sales is, as here, between \$500,000 to \$1,000,000. Of the 13 principal considerations in determining the sanction for this violation, at least six significantly aggravate the severity of Respondents’ violations. Those aggravating factors include: the high dollar volume of sales (Consideration 1); the nearly four-year period in which the selling away took place (Consideration 3); Borakowski’s affiliation with Echo Canyon (Consideration 5); the injury to customers, many of whom were not repaid by Respondents (Consideration 7); the fact that Respondents sold away to customers of their firms (Consideration 8); and the fact that Respondents did not inform their firms about the sales (Consideration 13).⁵⁵ In the absence of any mitigating factors, the Hearing Officer concludes that Respondents should be barred from associating with any FINRA member in any capacity for engaging in private securities transactions, in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010.

⁵³ *Mark H. Love*, Exchange Act Rel. No. 49248, 2004 SEC LEXIS 318, at *9 (Feb. 13, 2004).

⁵⁴ *Keeton*, 50 S.E.C. at 1130.

⁵⁵ Sanction Guidelines 14-15.

D. Impermissible Borrowing

FINRA Rule 3240 responds to the potential for conflicts of interest and consequent misconduct inherent in most borrowing arrangements involving registered persons and their customers. Indeed, before the Rule's predecessor was adopted, numerous disciplinary actions had involved registered persons who had taken unfair advantage of customers, at times inducing customers to lend money in disregard of their best interests, and at times borrowing funds they never repaid.⁵⁶ As a consequence, FINRA Rule 3240 is written to enable firms to (i) categorically proscribe some or all customer-broker loans, and (ii) monitor and control loans not necessarily proscribed.⁵⁷ Here, Borakowski entered into a loan arrangement his employer proscribed.

The Sanction Guidelines do not contain a specific guideline applicable to an impermissible borrowing arrangement. Consulting the principal considerations applicable to all sanction determinations, the Hearing Officer finds the presence of aggravating factors, including that the misconduct raised the very real danger of customer harm and that the misconduct was done intentionally.⁵⁸ In the absence of mitigation, the Hearing Officer concludes that a one-year suspension in all capacities adequately remedies this violation of FINRA Rules 3240 and 2010. Given that Borakowski will be barred for his other violations, however, the suspension will not be imposed.

E. Providing False Information to Firm

The Guideline governing falsification of records can be applied to Borakowski's misrepresentations to the firm on firm records. That Guideline recommends fines in the range of

⁵⁶ See NASD Notice to Members 03-62, at 661-62 (Oct. 2003) and NASD Notice to Members 04-14, at 189 (Mar. 2004) (addressing predecessor Rule 2370).

⁵⁷ 68 Fed. Reg. 52806, 52807 (Sept. 5, 2003).

⁵⁸ Sanction Guidelines 7 (Principal Considerations 11, 13).

\$5,000 to \$100,000, and directs adjudicators to consider bars in egregious cases.⁵⁹ Borakowski acted intentionally, and his conduct raised the potential for harm to his firm. Under the circumstances, the Hearing Officer determines that a one-year suspension in all capacities is warranted for this violation of FINRA Rule 2010. Given that Borakowski will be barred for his other misconduct, however, the suspension will not be imposed.

F. Failure to Provide Information

A violation of Rule 8210 is serious because the rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”⁶⁰ The rule thus “is at the heart of the self-regulatory system for the securities industry” and, when members delay their responses or neglect entirely their responsibilities under the rule, they “undermine the ability of [FINRA] to . . . protect the public interest.”⁶¹ For these reasons, the Sanction Guidelines recommend a bar when an individual does not respond in any manner to requests for information or testimony.⁶²

Respondents failed to respond in any manner to requests for information. There is no evidence of any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer concludes that Respondents should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

VI. Order

Kardaras and Borakowski are barred from associating with any FINRA member in any capacity for each of the following violations: (1) making material misstatements and omitting

⁵⁹ Sanction Guidelines 37.

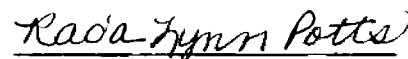
⁶⁰ *Richard J. Rouse*, 51 S.E.C. 581, 584, 1993 SEC LEXIS 1831, at *7 (1993).

⁶¹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009).

⁶² Sanction Guidelines 33.

material facts in connection with the purchase of a security, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010; (2) converting customer funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2010 and 2150; (3) engaging in private securities transactions without informing their FINRA employer member firms, in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010; and (4) failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this decision becomes FINRA's final disciplinary action.

For entering into an impermissible borrowing arrangement with a client, in violation of FINRA Rules 3240 and 2010, Borakowski is suspended for one year, but the suspension will not be imposed in light of the bars imposed for his other misconduct. For providing false information to his firm, Borakowski is also suspended for one year, but the suspension will not be imposed in light of the bars imposed for his other misconduct.⁶³


Rada Lynn Potts
Hearing Officer

Copies to:

George A. Kardaras (*via overnight courier and first-class mail*)
Brian M. Borakowski (*via overnight courier and first-class mail*)
Lora W. Alexander, Esq. (*via email and first-class mail*)
James J. Nixon, Esq. (*via email*)
David E. Rosenstein, Esq. (*via email*)
Robert A. Marchman, Esq. (*via email*)

⁶³ Market Regulation does not request restitution to the customers who purchased Echo Canyon promissory notes because the Arizona Corporation Commission already has ordered both Respondents to pay restitution. Market Regulation also does not request restitution to the customer from whom Borakowski borrowed money because his firm settled with the customer, fully resolving the matter.

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

Department of Market Regulation,

Complainant,

v.

George Alexander Kardaras (CRD 3184384),

and

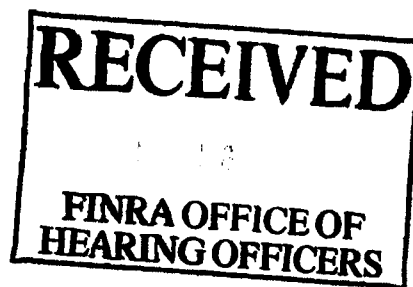
Brian Matt Borakowski (CRD 4093679)

Respondents.

Disciplinary Proceeding
No. 2011029524701

Hearing Officer:

COMPLAINT



The Department of Market Regulation alleges:

Summary

1. Beginning in 2007 and continuing through March 2011, George Alexander Kardaras ("Kardaras") and Brian Matt Borakowski ("Borakowski") (collectively "Respondents"), while registered with FINRA member firms, engaged in a Ponzi scheme whereby they solicited approximately \$665,000 in funds from customers of their respective employer member firms and converted approximately \$634,000, representing 95 percent of investors' funds, for expenses related to their branch office businesses and for their personal expenses. Respondents solicited these customers to purchase promissory notes in Echo Canyon LLC, a limited liability company in Arizona organized by Borakowski. In furtherance of their Ponzi scheme, Respondents falsely represented to customers that by purchasing promissory notes

in Echo Canyon LLC their investment would be used to purchase vehicles at US auto auctions and to export those vehicles to Russia for re-sale.

2. Instead of investing the funds in Echo Canyon LLC as they represented to customers, Respondents, through fraud and deceit, used investors' funds to pay for business expenses related to their respective branch office businesses and to pay personal expenses. By engaging in the foregoing conduct, Respondents willfully violated Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and violated NASD Rules 2110 and 2120 (for conduct prior to December 15, 2008) and FINRA Rules 2010 and 2020 (for conduct on or after December 15, 2008).

3. To further their Ponzi scheme, Respondents used investors' funds to make payments to earlier investors. By engaging in the foregoing conduct, Respondents violated NASD Rule 2330 (for conduct prior to December 14, 2009) and FINRA Rule 2150 (for conduct on or after December 14, 2009).

4. Respondents, acting outside the course and scope of their employment with their respective employer member firms, participated in private securities transactions for which they were compensated. Respondents, however, failed to provide written notice to their employer member firms describing in detail the proposed transactions and their roles therein in violation of NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and NASD Rule 3040.

5. In or around October 2010, Borakowski borrowed \$11,500 from a non-family member customer of his employer member firm without obtaining pre-approval from his employer member firm in violation of FINRA Rules 2010 and 3240. Borakowski also falsely

denied that he had received this loan to his employer member firm in violation of FINRA Rule 2010.

6. On December 23, 2011 and January 18, 2012, staff requested documents from Borakowski pursuant to FINRA Rule 8210. The FINRA Rule 8210 request letters were sent to Borakowski's CRD address via FedEx, first class and certified mail. Borakowski signed the FedEx delivery confirmation for the December 23, 2011 FINRA Rule 8210 request letter. Borakowski failed to respond to the FINRA Rule 8210 request letters in violation of FINRA Rules 2010 and 8210.

7. On October 20, 2011 and November 10, 2011, staff requested documents from Kardaras pursuant to FINRA Rule 8210. The FINRA Rule 8210 request letters were sent to Kardaras' CRD address via FedEx, first class and certified mail. Kardaras signed certified mail receipts for both FINRA Rule 8210 letters. Kardaras failed to respond to the FINRA Rule 8210 request letters in violation of FINRA Rules 2010 and 8210.

The Respondents

8. Kardaras was registered with FINRA member firms from January 1999 until September 2011. Kardaras was registered with his most recent employer from February 2005 through September 28, 2011, when the firm filed a Form U5 terminating his registration. On September 30, 2011, Kardaras' member firm filed an amended Form U5 disclosing certain conduct described herein. Kardaras is not currently associated with a FINRA member firm but remains subject to FINRA's jurisdiction 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 Kardaras' registration with a FINRA member, namely, September 28, 2011; (2) the Complaint was filed within two years after the date upon which his employer member firm filed an

amended Form U5, namely April 16, 2012; (3) the Complaint charges him with misconduct committed while he was associated with a FINRA member; and (4) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered with a FINRA member.

9. Borakowski was registered with FINRA member firms from June 2000 until March 2011. Borakowski was registered with his most recent employer from August 4, 2009 until the firm filed a Form U5 terminating his registration on March 8, 2011. Borakowski remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of FINRA's By-Laws because (1) the Complaint was filed within two years after the date upon which his employer member firm filed an amended Form U5 namely, May 9, 2012; (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member; and (3) the Complaint charges him with failing to respond to requests for information during the two-year period after the date upon which he ceased to be registered with a FINRA member.

Facts Common to All Causes of Action

10. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

11. Respondents have known each other since approximately 2001, when they worked together at the same FINRA member firm. On or about October 12, 2006, Borakowski organized Echo Canyon LLC as a limited liability company in Arizona.

12. In order to purchase used vehicles in the US and to ship them to Russia for re-sale, Respondents needed capital. From October 2007 through March 2011, Respondents solicited investments in Echo Canyon LLC from customers of their employer FINRA member firms.

13. Respondents told customers that their funds would be used to purchase cars at US auto auctions and to ship those cars to Russia for re-sale. Respondents told customers that once the cars arrived in Russia, Russian buyers would pay for the cars and customers would receive payments from the proceeds of the car sales.

14. Respondents purchased two cars for Echo Canyon LLC in or around late-2007 or early-2008 and spent approximately \$30,885 to buy the cars and ship them to Russia. Echo Canyon LLC made approximately \$300 in profit from the sale of the two cars.

15. In 2008, however, the Russian economy declined and Respondents did not purchase any more cars for Echo Canyon LLC after late-2007 or early-2008.

16. Despite not purchasing any more cars for Echo Canyon LLC, Respondents continued to solicit customers of their respective employer FINRA member firms to purchase promissory notes in Echo Canyon LLC under the false pretense that the investments would be used to purchase used cars in the US for re-sale in Russia. Together, they raised a total of approximately \$665,900. Respondents, however, did not tell customers that they were not purchasing cars in the US for re-sale in Russia with their funds. Respondents, instead, used customers' funds to pay personal expenses, to pay expenses related to their respective employer FINRA member firms' branch office businesses and to make payments to earlier investors in furtherance of their Ponzi scheme. Respondents did not pay for expenses related to Echo Canyon LLC with investors' funds as they represented to customers.

Customer RB

17. In furtherance of their Ponzi scheme, Respondents solicited customer RB, age 67, a customer of Kardaras' employer member firm, to invest in Echo Canyon LLC. Respondents falsely told RB that his investment would be used to purchase cars at auto auctions in the US and

to ship the cars to Russia for re-sale. Kardaras told RB not to worry about his investment in Echo Canyon LLC and that Kardaras would not let RB "get hurt."

18. From on or around October 3, 2007 through June 20, 2010, RB, on the advice of Kardaras, withdrew funds invested with Kardaras' employer member firm and invested those funds in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with RB. The promissory note bore a 14 percent annual interest rate.

19. RB invested a total of \$130,000 in Echo Canyon LLC from October 2007 through June 2010. RB received payments from his investment in Echo Canyon LLC from late-2007 until mid-2010, but did not receive any further payments after mid-2010.

20. RB met with Kardaras in or about September 2010 at the offices of Kardaras' employer member firm to discuss RB's investment in Echo Canyon LLC. During the meeting, Kardaras told RB that Borakowski's father had agreed to purchase all of the outstanding promissory notes in Echo Canyon LLC at the end of the first quarter 2011. Kardaras said that Borakowski's father would pay all of the interest and principal owed to Echo Canyon LLC's investors.

21. On or about March 31, 2011, RB met with Borakowski to again discuss RB's investment in Echo Canyon LLC. At that time, Borakowski told RB that his father had changed his mind and would not purchase the outstanding promissory notes in Echo Canyon LLC and would not pay the outstanding interest and principal owed to investors.

22. Respondents did not use all of RB's funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents converted funds that RB placed into their custody for their own use, including paying for their personal expenses, paying expenses related to their

respective employer FINRA member firms' branch office businesses and making payments to other investors. Respondents did not tell RB that they were using his funds in this manner.

23. Respondents repaid \$55,000 of RB's \$130,000 investment in Echo Canyon LLC.

24. RB did not authorize Respondents to convert any of his funds, or use his funds to pay for expenses related to their respective employer FINRA member firms' branch offices or to pay for their personal expenses or to make payments to other investors.

Customers SF and TF

25. In furtherance of their Ponzi scheme, Borakowski solicited SF and TF, customers of his employer FINRA member firm, to invest in Echo Canyon LLC in or around December 2010. Borakowski falsely told SF and TF that he would use their funds to purchase cars at auto auctions in the US for re-sale in Russia.

26. On or about December 20, 2010, SF and TF invested \$5,000 in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with SF and TF. The promissory note bore a 14 percent quarterly interest rate.

27. From December 2010 until March 2011, SF and TF had telephone conversations with Borakowski about their investment in Echo Canyon LLC. In March 2011, before the note matured, Borakowski convinced SF and TF to reinvest the \$5,700 accrued value of the promissory note for the next six months. SF and TF consented and re-invested \$5,700 in Echo Canyon LLC with the principal and interest of approximately \$1,400 due in October 2011.

28. Respondents have not repaid SF and TF the interest of \$1,400 or the \$5,000 principal investment in Echo Canyon LLC.

29. Respondents did not use any of SF and TF's funds to purchase used cars in the US for re-sale in Russia. Instead, from December 2010 until March 2011, Respondents converted

the funds SF and TF placed in their custody to pay for their personal expenses, to pay for expenses related to their branch office businesses and to make payments to earlier investors. Respondents did not tell SF and TF that their funds would be used in this manner. SF and TF did not authorize Respondents to convert any of their funds, or use their funds for Respondents' personal expenses, to pay for expenses related to their respective employer FINRA member firms' branch office businesses or to make payments to earlier investors.

Customer DZ

30. In furtherance of their Ponzi scheme, Borakowski solicited customer DZ, a customer of his employer FINRA member firm, to invest in Echo Canyon LLC in or around July 2009. Borakowski told DZ that his funds would be used to purchase vehicles at US auto auctions for re-sale in Russia.

31. On or around July 24, 2009, DZ invested \$20,000 in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with DZ. The promissory note bore an 18 percent annual interest rate.

32. Respondents repaid a portion of DZ's \$20,000 in Echo Canyon LLC.

33. Respondents did not use any of DZ's funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents converted the funds DZ placed in their custody to pay for their personal expenses, to pay for expenses related to their branch office businesses and to make payments to earlier investors. Respondents did not tell DZ that his funds would be used in this manner.

34. DZ did not authorize Respondents to convert any of his funds, or use his funds to pay for expenses related to their branch office businesses or to pay for their personal expenses or to make payments to earlier investors.

Additional Customers

35. In furtherance of their Ponzi scheme, Respondents falsely told customers of their respective employer FINRA member firms, that is, customers, CG, LA, RH, MM, NW, TM, SS and KS, that their funds would be used to purchase vehicles at US auto auctions for re-sale in Russia.

- a. Customer CG invested \$20,000 in Echo Canyon LLC and was partially repaid.
- b. Customer LA invested \$10,000 in Echo Canyon LLC and was fully repaid.
- c. Customer RH invested \$25,000 in Echo Canyon LLC and was partially repaid.
- d. Customer MM invested \$15,500 in Echo Canyon LLC and was fully repaid.
- e. Customer NW invested \$20,000 in Echo Canyon LLC and was partially repaid.
- f. Customer TM invested \$45,000 in Echo Canyon LLC and was fully repaid.
- g. Customer SS invested \$100,000 in Echo Canyon LLC and was fully repaid.
- h. Customer KS invested \$28,000 in Echo Canyon LLC and was partially repaid.

36. Respondents did not use any of CG's, LA's, RH's, MM's, NW's, TM's, SS's and KS's funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents used the funds investors placed in their custody to pay for their personal expenses and to pay for expenses related to their respective employer FINRA member firms' branch office businesses.

Respondents did not use investors' funds to pay for expenses related to Echo Canyon LLC as they represented to investors. Instead, Respondents also used investors' funds to make payments to earlier investors in furtherance of their Ponzi scheme. Respondents did not tell investors that their funds would be used in this manner.

37. Respondents also used income earned from their brokerage businesses to make payments to the investors. Respondents, however, did not tell investors that their payments were

being made from Respondents' earned income, not from the proceeds of the sales of cars in Russia.

CAUSE ONE

Fraud in the Sale of Securities (Violation of Rule 10b-5 of the Securities Exchange Act, NASD Rules 2110 and 2120 and FINRA Rules 2010 and 2020 as to Both Respondents)

38. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

39. The Echo Canyon LLC promissory notes were securities within the meaning of the Exchange Act of 1934 Section 3(a)(10).

40. By engaging in the foregoing conduct, Respondents, in connection with the purchase or sale of a security, directly or indirectly, by use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and in violation of NASD Rules 2110 and 2120 (for conduct prior to December 15, 2008), and FINRA Rules 2010 and 2020 (for conduct on or after December 15, 2008).

CAUSE TWO

Conversion of Customers' Funds (Violation of NASD Rules 2110 and 2330 and FINRA Rules 2010 and 2150 as to Both Respondents)

41. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

42. Respondents misappropriated customers' funds by falsely representing that they would purchase used cars at US auto auctions with customers' funds and re-sell those cars in Russia for a profit. Instead, Respondents converted customers' funds for their own personal use.

43. In furtherance of their Ponzi scheme, Respondents used customers' funds to make payments to earlier investors. Customers did not know that Respondents used their funds in this manner and did not authorize Respondents to do so.

44. By making improper use of and converting customer funds, Respondents violated NASD Rule 2110 (for conduct prior to December 15, 2008) and NASD Rule 2330 (for conduct prior to December 14, 2009) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and FINRA Rule 2150 (for conduct on or after December 14, 2009).

CAUSE THREE

Respondents Engaged in Private Securities Transactions without Informing Their Employer Member Firms (Violation of NASD Rules 2110 and 3040 and FINRA Rule 2010 as to Both Respondents)

45. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

46. Beginning in October 2007 and continuing through approximately March 2011, Respondents, while associated with a FINRA member firm, sold promissory notes issued by Echo Canyon LLC totaling \$665,900 to investors. Each investor was a customer of Respondents' employer member firms.

47. All investors, except TM, received a promissory note issued by Echo Canyon LLC. The promissory notes bore different interest rates ranging from 14 to 56 percent per annum with quarterly, semi-annual and annual maturity dates. The notes included a date on which all outstanding principal and interest was due. Investors' funds were then deposited into an account for Echo Canyon LLC that Borakowski controlled.

48. Respondents were compensated from the issuance of the promissory notes by virtue of their use of the proceeds generated from the sale of the notes, including use of the proceeds to pay the expenses of their respective employer FINRA member firms' branch office businesses and to pay personal expenses and to make payments to earlier investors.

49. The Echo Canyon LLC promissory note transactions in which Respondents participated occurred outside the regular course and scope of their associations with their respective employer member firms. Respondents' employer member firms did not participate in, and were not aware of, the promissory notes sold by Respondents for Echo Canyon LLC.

50. Respondents did not provide their respective employer member firms with prior written notification describing the proposed transactions and their proposed role therein. Respondents did not receive written permission from their respective employer FINRA member firms to participate in the sale of Echo Canyon LLC promissory notes.

51. By engaging in the foregoing conduct, Respondents violated NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and NASD Rule 3040.

CAUSE FOUR

**Borakowski Borrowed from a Customer without Pre-Approval from his Employer
Member Firm
(Violation of FINRA Rules 2010 and 3240 as to Borakowski)**

52. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

53. On or about October 22, 2010, Borakowski borrowed \$11,500 from TT, a non-family member and customer of Borakowski's employer member firm, but did not receive approval from his employer member firm.

54. In or around October 2010, Borakowski told TT about Echo Canyon LLC and that the purpose of Echo Canyon LLC was to purchase used vehicles in the US and transport those vehicles to Russia for re-sale. Borakowski told TT that he needed additional funds because he had borrowed funds from another customer of his employer member firm and that the customer wanted to be re-paid immediately and had threatened to contact Borakowski's employer member firm about the loan.

55. TT loaned Borakowski \$11,500 to repay the customer from whom Borakowski had borrowed money. On or about October 20, 2010, Borakowski and TT executed a promissory note in Echo Canyon LLC as evidence of the loan. The promissory note provided for Borakowski to repay TT \$11,500 plus \$1,000 on December 22, 2010 for a total amount of \$12,500.

56. On or about December 23, 2010, Borakowski sent TT a check drawn on the Echo Canyon LLC bank account in the amount of \$500. Borakowski, however, did not repay the outstanding balance of \$12,000 that was owed on the loan.

57. By borrowing money from his customer TT without obtaining pre-approval from his employer FINRA member firm Borakowski violated FINRA Rules 2010 and 3240.

CAUSE FIVE

Borakowski Provided False Information to his Employer Member Firm (Violation of FINRA Rule 2010)

58. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

59. At all relevant times to this Complaint, Borakowski's employer member firm prohibited its registered representatives from borrowing money from its customers. Section 2.14.7 of the firm's written supervisory procedures state:

RRs are generally not permitted to borrow from or lend to their own customers. Any proposed loan with the RR's customer (other than a loan with a family member or financial institution) requires the PRIOR review and approval by the Compliance Department. RRs requesting exceptions must provide a written statement explaining the reason and details of the request and submit it to the Compliance Department for approval prior to effecting the loan arrangement.

60. On March 28, 2010, Borakowski completed a branch audit questionnaire issued by his employer FINRA member firm.

61. In response to the question "Have you borrowed or loaned money or securities from or to any customer, excluding immediate family members" Borakowski falsely answered "no."

62. Borakowski did not submit a written statement explaining the reason and details of the loan from TT to his employer member firm for approval prior to effecting the loan arrangement with TT.

63. By borrowing money from his customer TT and falsely denying that he had borrowed money, Borakowski violated FINRA Rule 2010.

CAUSE SIX

Failure to Respond to FINRA Rule 8210 Requests (Violation of FINRA Rules 2010 and 8210 as to Borakowski)

64. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

65. On December 23, 2011, staff sent Borakowski a letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. The response was due on January 6, 2012. Borakowski signed the FedEx delivery confirmation for the FINRA Rule 8210 letter on December 27, 2011. Borakowski did not respond to the FINRA Rule 8210 letter.

66. On January 18, 2012, staff sent Borakowski a follow-up letter pursuant to FINRA Rule 8210 requesting information for this matter. Staff sent the follow-up FINRA Rule 8210 letter to his CRD address via FedEx, first class and certified mail. The FINRA Rule 8210 letter sent via FedEx was delivered on January 19, 2012. Borakowski did not respond to the FINRA Rule 8210 letter.

67. As a result of Borakowski's repeated failure to respond to FINRA Rule 8210 requests, staff was prevented from pursuing certain material areas of its investigation into Borakowski's conduct in this matter.

68. By engaging in the foregoing conduct, Borakowski violated FINRA Rules 2010 and 8210.

CAUSE SEVEN

Failure to Respond to FINRA Rule 8210 Requests (Violation of FINRA Rules 2010 and 8210 as to Kardaras)

69. Market Regulation re-alleges and incorporates by reference preceding paragraphs 1 through 51.

70. On October 20, 2011, staff sent Kardaras a letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. Kardaras signed the certified mail receipt and returned it to staff on October 31, 2011. His response was due on October 27, 2011. Kardaras did not respond to the FINRA Rule 8210 request.

71. On November 10, 2011, staff sent Kardaras a follow-up letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. Kardaras signed the certified mail receipt and returned it to staff on November 21, 2011. Kardaras did not respond to the FINRA Rule 8210 request.

72. As a result of Kardaras' repeated failure to respond to FINRA Rule 8210 requests, staff was prevented from pursuing certain material areas of its investigation into Kardaras' conduct in this matter.

73. By engaging in the foregoing conduct, Kardaras violated FINRA Rules 2010 and 8210.

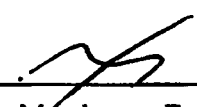
Prayer for Relief

WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents George Alexander Kardaras and Brian Matt Borakowski committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Procedural Rule 8310 be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains and/or make full restitution, together with interest;
- C. make specific findings that Respondents willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder;
- D. order that Respondents bear such costs of any proceeding as are deemed fair and appropriate under the circumstances, in accordance with FINRA Procedural Rule 8330; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

Dated: March 27, 2013

FINRA Department of Market Regulation



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