

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

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

RANDY J. SCHNEIDER
(CRD No. 2499925),

Respondent.

Disciplinary Proceeding
No. 20110296760

Hearing Officer – AWL

DEFAULT DECISION

December 11, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for (1) misappropriation of customer funds, in violation of FINRA Rules 2150(a) and 2010; and (2) failing to appear and provide testimony and produce documents, in violation of FINRA Rules 8210 and 2010. Respondent is ordered to pay restitution.

Appearances

Gary E. Jackson, Esq. and James J. Nixon, Esq., for the Department of Market Regulation, Complainant.

No appearance by or on behalf of Randy J. Schneider, Respondent.

DECISION

I. Introduction

Respondent Randy J. Schneider, a former broker with Oppenheimer & Co. Inc., misappropriated checks and bonds from two customers, in violation of FINRA Rules 2150(a) and 2010, and failed to appear for testimony and produce information in connection with FINRA's investigation into his misconduct, in violation of FINRA Rules 8210 and 2010. For these violations, the Hearing Officer bars Schneider from associating

with any FINRA regulated firm and orders him to pay restitution to his former customers.¹

The Hearing Officer bases the findings in this Default Decision on Market Regulation's Complaint and the evidence it submitted in support of its Motion for Entry of Default Decision, which Market Regulation filed after Schneider failed to answer the Complaint.²

II. The Motion for Entry of Default Decision is Granted

The Hearing Officer grants Market Regulation's Motion for Entry of Default Decision because Schneider failed to file an answer with the Office of Hearing Officers after he received valid constructive notice of this proceeding. Market Regulation properly served Schneider at his residential address recorded in the Central Registration Depository ("CRD Address") by certified mail, return receipt requested, and FedEx courier service, in accordance with Rules 9134(a)(2) and (3).

Market Regulation filed the Complaint with the Office of Hearing Officers on June 29, 2012, and served Schneider with notice of the Complaint. FedEx's records show that it delivered the Notice of Complaint and Complaint to Schneider's CRD Address on July 2, 2012.³ The Notice of Complaint required Schneider to file an answer on or before July 27, 2012. He did not answer the Complaint by the deadline. Market Regulation then issued a Second Notice of Complaint on July 31, 2012, which required

¹ FINRA has jurisdiction of this proceeding because (1) the Complaint was filed within two years after the effective date of termination of Schneider's registration or association with a FINRA member; and (2) the Complaint charges Schneider with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to FINRA Rule 8210 requests to appear and provide testimony and to provide documents and other information during the two-year period after the date he ceased to be registered or associated with a FINRA member firm. See Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

² The motion is supported by the Declaration in Support of Motion for Entry of Default Decision ("Decl.") and three attached exhibits, labeled CX-1 through CX-3.

³ Decl. ¶ 6; CX-2, at 4.

Schneider to file an answer on or before August 17, 2012. FedEx's records show that it delivered the Second Notice of Complaint and Complaint to Schneider's CRD Address on August 1, 2012.⁴ Schneider did not file an answer or otherwise respond to the Second Notice of Complaint by the deadline.

Pursuant to Schneider's default, the Hearing Officer grants Market Regulation's Motion for Entry of Default Decision and deems the allegations in the attached Complaint admitted.⁵

III. Findings of Fact

Schneider started his career in the securities industry in 1994. In January 2002, he joined Oppenheimer, where he worked as a broker until Oppenheimer terminated his employment on October 6, 2011.⁶ Oppenheimer reported Schneider's termination to FINRA by filing a Uniform Termination Notice for Securities Industry Registration ("Form U5") on October 18, 2011, stating that Schneider violated firm policies regarding the handling of customer funds and securities.⁷

One of Schneider's customers also called FINRA, complaining that Schneider misappropriated the caller's funds and securities from his brokerage account at Oppenheimer. FINRA determined, during its resulting investigation, that Schneider misappropriated approximately \$282,000 from two elderly customers, MA(1) and his brother MA(2).⁸

⁴ Decl. ¶ 8; CX-3, at 4.

⁵ Rules 9215(f) and 9269(a).

⁶ CX-1, at 4. Schneider is no longer working in the industry after associating briefly with member firms Newbridge Securities Corporation and Newbridge Financial Services Group, Inc. (December 5-16, 2011) and Global Arena Capital Corp. (January 17-23, 2012). CX-1, at 3-4.

⁷ *Id.* at 4, 10.

⁸ Decl. ¶ 2; Compl. ¶¶ 7, 13.

1. Misappropriation of Customer Checks and Bonds

MA(1), an 86-year old customer of Schneider, delivered at least eight personal checks, payable to "cash" and totaling approximately \$39,000, to Schneider between March and September 2011.⁹ MA(1) instructed Schneider to deposit the checks into MA(1)'s brokerage account for later purchases of bonds.¹⁰ Schneider, however, did not follow MA(1)'s instructions and either cashed or deposited the checks into Schneider's own bank account.¹¹ Schneider never disclosed that he cashed or deposited the funds in his own bank account and used the funds for his own personal benefit, and MA(1) never authorized Schneider to use MA(1)'s funds for Schneider's own personal use.¹²

In addition, on four occasions between August 2010 and June 2011, Schneider deposited bearer bonds owned by MA(1) into Schneider's own brokerage account and then sold the bonds and used the proceeds, totaling \$223,000, for his own personal use.¹³ Schneider wired at least \$200,000 of the bond proceeds to his own personal bank account.¹⁴ Schneider, however, did not disclose to MA(1) that Schneider sold the bonds or took the proceeds for his own personal benefit.¹⁵ MA(1) never authorized Schneider to deposit the bonds into his personal account or sell the bonds and take the proceeds for Schneider's own personal use.¹⁶

⁹ Compl. ¶¶ 8-9.

¹⁰ *Id.* ¶ 9.

¹¹ *Id.*

¹² *Id.* ¶ 10.

¹³ *Id.* ¶ 11.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 12.

¹⁶ *Id.*

MA(2), the 80-year old brother of MA(1) and customer of Schneider, delivered bearer bonds to Schneider on three occasions between May and August, 2011.¹⁷ The bonds had a total market value of approximately \$20,000.¹⁸ MA(2) instructed Schneider to deposit them into MA(2)'s brokerage account, and Schneider provided MA(2) with a receipt evidencing acceptance of the bonds.¹⁹ However, instead of depositing the bonds as instructed by MA(2), Schneider sold the bonds and took the proceeds from the sale for his own use.²⁰

Schneider did not disclose to MA(2) that Schneider sold the bonds or used the proceeds for his own personal benefit.²¹ Further, MA(2) never authorized Schneider to sell the bearer bonds or use the proceeds for Schneider's own benefit.²²

Schneider deposited MA(1)'s and MA(2)'s funds and securities into his personal accounts on 15 separate occasions, including wiring portions of the funds and bond proceeds between his brokerage and personal bank accounts.²³ Schneider's handling of the funds and bearer bonds made it more difficult to trace them back to his customers.²⁴

¹⁷ *Id.* ¶¶ 13-14.

¹⁸ *Id.* ¶ 14.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* ¶ 15.

²² *Id.*

²³ Decl. ¶ 13.

²⁴ *Id.*

2. Failure to Provide Information in Connection with an Investigation

Schneider failed to comply with three Rule 8210 requests to appear and provide on-the-record (“OTR”) testimony and one Rule 8210 request to produce documents. FINRA staff properly sent the four 8210 requests to Schneider’s CRD Address.²⁵

On November 2, 2011, Schneider acknowledged receipt of the first request but sought to postpone his testimony to November 15, 2011, and change the location to FINRA’s New York offices.²⁶ FINRA staff agreed and sent a second Rule 8210 request for testimony on that day to reflect the agreed changes.²⁷ On the day before Schneider’s rescheduled testimony, he again requested that his testimony be postponed and advised that he would provide a new date by November 18, 2011.²⁸ FINRA staff agreed to Schneider’s second postponement request and sent a confirming letter by first-class mail to Schneider’s CRD Address on November 15, 2011.²⁹

On November 23, 2011, when Schneider failed to provide a new date, FINRA staff mailed to Schneider’s CRD Address a third Rule 8210 request to appear and provide testimony.³⁰ The request required Schneider’s appearance and testimony on December 1, 2011.³¹ Schneider failed to appear for testimony on December 1, 2011.³²

FINRA staff also requested Schneider to produce documents and information in writing. On November 4, 2011, FINRA staff mailed a Rule 8210 request for documents

²⁵ Compl. ¶¶ 19-21, 24. The requests, dated October 25, 2011, November 2, 2011, November 4, 2011, and November 23, 2011, were all sent to Schneider’s CRD Address and electronically to his email address.

²⁶ Compl. ¶ 20.

²⁷ *Id.*

²⁸ *Id.* ¶ 22.

²⁹ *Id.*

³⁰ *Id.* ¶ 24.

³¹ *Id.*

³² *Id.* ¶ 25.

and information to Schneider's CRD address by certified mail, requiring Schneider to produce certain documents by November 15, 2011.³³ As part of the November 14 postponement, FINRA staff also agreed to postpone Schneider's production of documents to the date of his rescheduled OTR testimony.³⁴ When FINRA staff sent the third Rule 8210 request rescheduling Schneider's testimony for December 1, 2011, Schneider's response date for the document and information request also was set for December 1, 2011.³⁵ On December 1, 2011, Schneider not only failed to appear for OTR testimony, but he also failed to provide any of the requested documents.³⁶

Schneider effectively prevented FINRA staff from pursuing significant aspects of its investigation by his failing to appear and provide testimony and failing to produce the requested documents and information.³⁷

IV. Conclusions of Law

1. Misappropriation of Customer Checks and Bonds

Schneider's misconduct violates FINRA Rule 2150(a) which provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds."³⁸ The improper use of customer funds violates the fundamental

³³ *Id.* ¶ 21.

³⁴ *Id.* ¶ 22.

³⁵ *Id.*

³⁶ *Id.* ¶ 26.

³⁷ Compl. ¶ 27.

³⁸ See also *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *21 (N.A.C. Feb. 24, 2011, *aff'd*, 2012 SEC LEXIS 464 (Feb. 10, 2012)) (applying NASD Rule 2330(a), predecessor to FINRA Rule 2150); *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (N.A.C. May 23, 2001) (improper use of customer funds occurs when respondent failed to apply the funds (or uses them for some purpose other than) as directed by the customer).

relationship with the customer and undermines the integrity of the securities industry.³⁹

By violating FINRA Rule 2150(a), Schneider also violated FINRA Rule 2010.⁴⁰

2. Failure to Provide Information in Connection with an Investigation

Rule 8210 is a key element in FINRA's oversight function as it allows FINRA to carry out its regulatory functions without subpoena power.⁴¹ Rule 8210 authorizes FINRA staff to require members and persons subject to its jurisdiction to "to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding" authorized by the FINRA By-Laws or rules.⁴² Schneider's failure to comply with FINRA's requests violates Rule 8210.⁴³ It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.⁴⁴

³⁹ *Dist. Bus. Conduct Comm. v. Westberry*, No. C07940021, 1995 NASD Discip. LEXIS 225 (N.B.C.C. Aug. 11, 1995); *see also, Dep't of Enforcement v. Schwarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (N.A.C. June 2, 2000) (violations of federal securities laws and NASD Conduct Rules are violations of Rule [2010] without attention to the surrounding circumstances because members of the securities industry are expected and required to abide by the applicable rules and regulations, citing *In re L.H. Alton & Co., et al.*, Exchange Act Rel. No. 40886, at 5 (Jan. 6, 1999)).

⁴⁰ The first cause of action in the Complaint also alleged that the same facts constituted violations of Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and FINRA Rule 2020. In light of the Hearing Officer's conclusion that Schneider misappropriated customer funds, in violation of Rule 2150(a), the Hearing Officer declines to address the additional fraud theories, which Market Regulation did not set forth in a separate cause of action.

⁴¹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) *pet. denied*, 347 Fed. App'x. 692 (2d Cir. 2009); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000); *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (lack of subpoena power requires reliance on Rule 8210 to regulate its members and associated persons).

⁴² Rule 8210(a)(1).

⁴³ Rule 8210(c).

⁴⁴ *See CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of Rule 8210 also was violation of [FINRA] Rule [2010]); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

V. Sanctions

The FINRA Sanction Guidelines (“Guidelines”)⁴⁵ provide guidance for determining the proper remedial action, including restitution, for Schneider’s misconduct.

1. Misappropriation of Customer Checks and Bonds

A bar is the standard sanction under the Guidelines for conversion of funds or securities, regardless of the amount converted.⁴⁶ Conversion is “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.”⁴⁷ Here, neither MA(1) nor MA(2) authorized Schneider to exercise ownership over their funds and securities but instead had given Schneider different instructions for the handling of their property. Schneider’s misappropriation of their funds and securities constitutes conversion.

Schneider misappropriated MA(1)’s and MA(2)’s funds and securities, on 15 separate occasions over more than a year. The repetitive nature of the misconduct negates any inference that it was a mistake or mere negligence. Schneider’s misconduct is egregious as he preyed on two elderly investors, obtained a significant dollar amount from them, and was able to keep his repeated misappropriations from detection for more than a year. No mitigating fact exists. Accordingly, the Hearing Officer bars Schneider for his violation of Rules 2150(a) and 2010.

Market Regulation also requested the Schneider be ordered to pay restitution to both MA(1) and MA(2) for the value of securities and funds that Schneider wrongfully took. The Guidelines encourage ordering restitution “to restore the status quo ante where

⁴⁵ See <http://www.finra.org/Industry/Enforcement/SanctionGuidelines> (2011).

⁴⁶ Guidelines 36.

⁴⁷ Guidelines 36 n.2.

a victim otherwise would unjustly suffer loss.”⁴⁸ Restitution is appropriate in this case. The Hearing Officer orders Schneider to pay the principal amounts of (1) \$262,000 to MA(1) and (2) \$20,000 to MA(2), plus interest to both customers from the date that Schneider last took their securities or funds until the principal amounts are paid in full.

2. Failure to Provide Information in Connection with an Investigation

Rule 8210 “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.”⁴⁹ According to the Guidelines, the principal consideration in determining sanctions for a violation of Rule 8210 is the importance of the information requested when viewed from FINRA’s perspective.⁵⁰ Here, the seriousness of Schneider’s misconduct, the dollar amount involved, and the age of the customers demonstrate the importance of Schneider’s testimony and documents to FINRA’s investigation. FINRA staff worked with Schneider through two postponements and the relocation of his testimony but still failed to obtain the information. Schneider’s failure to appear and provide testimony as well as failure to provide documents and information effectively stopped FINRA from further investigating Schneider’s serious misconduct.

The Guidelines recommend a bar when an individual fails to respond in any manner to a Rule 8210 request to provide information or to appear and give testimony.⁵¹ As the Securities and Exchange Commission has emphasized, “[a] complete failure to

⁴⁸ Guidelines 4 (General Principles Applicable to All Sanction Determinations ¶ 5).

⁴⁹ *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *13 (2008).

⁵⁰ Guidelines 33.

⁵¹ Guidelines 33. *See also*, *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *pet. denied*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. 2009) (complete failure renders violator unfit for securities industry because self-regulatory system cannot function without compliance with Rule 8210).

respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests.”⁵² Here, Schneider completely failed to appear and provide testimony despite three properly-issued Rule 8210 requests for testimony and another Rule 8210 request for production of documents.

No mitigating facts exist to justify a sanction less than a bar. Accordingly, the Hearing Officer bars Schneider for his complete failure to appear and provide testimony and produce documents and information, in violation of Rules 8210 and 2010.

VI. Order

Respondent Randy J. Schneider is barred from associating with any FINRA member firm in any capacity for (1) misappropriating customer funds, in violation of FINRA Rules 2150 and 2010; and (2) failing to appear and provide testimony and to provide documents and information, in violation of FINRA Rules 8210 and 2010.

Respondent Randy J. Schneider is ordered to pay restitution to Customer MA(1) in the total principal amount of \$262,000, consisting of (1) \$39,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from September 30, 2011, until paid;⁵³ and (2) \$223,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from June 30, 2011, until paid.⁵⁴ Respondent Randy J. Schneider is also ordered to pay restitution to Customer MA(2) in the principal amount of \$20,000, plus interest thereon at the rate

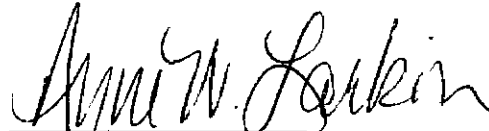
⁵² *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *10 (2008).

⁵³ 26 U.S.C. § 662(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions.

⁵⁴ *Id.*

established under Section 6621(a)(2) of the Internal Revenue Code from August 31, 2011, until paid.⁵⁵

If this Default Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately. Restitution shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action.⁵⁶


Anne W. Larkin
Hearing Officer

Copies to: Randy J. Schneider (*via overnight courier and first-class mail*)
Gary E. Jackson, Esq. (*via electronic and first-class mail*)
James J. Nixon, Esq. (*via electronic mail*)

⁵⁵ *Id.*

⁵⁶ The Addendum to this decision identifies the customers receiving restitution and is served only on the parties.

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

Department of Market Regulation,

Complainant,

v.

Randy J. Schneider (CRD No. 2499925),

Respondent.

Disciplinary Proceeding
No. 20110296760

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. From August 2010 through at least September 2011, Randy J. Schneider ("Schneider"), while registered at a FINRA member firm, made improper use of, and converted, at least \$282,000 in funds and bearer bonds from two elderly customers of his employer firm. Specifically, through fraud and deceit, Schneider misappropriated at least eight checks that were to be deposited into a brokerage account maintained by an elderly customer at Schneider's FINRA member employer firm, and either cashed those checks or deposited them into his own bank account, and then converted the funds to his own use. In addition, Schneider obtained, through fraud and deceit, bearer bonds from the same elderly customer and another elderly customer of his FINRA member employer firm, deposited the bearer bonds into his own brokerage account, sold the bonds, and then converted the proceeds from the sale of the bonds to his own use.

2. On December 1, 2011, Schneider failed to appear for investigative testimony and failed to produce documents and other information requested by FINRA staff, pursuant to FINRA Rule 8210.

3. As a result of this conduct, Schneider violated FINRA Rules 2150(a), 2010, 2020, and 8210, and willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

Respondent and Jurisdiction

4. Schneider first became registered in the securities industry with a FINRA member firm in May 1994. Schneider was employed in the securities industry as a registered representative with four different FINRA member firms from on or about May 1, 1994 until on or about October 18, 2011, when his registration was terminated by the filing of a Form U-5 which disclosed that Schneider was terminated for violating his firm's policies regarding the handling of customer funds. Schneider was subsequently registered at FINRA member firms from December 5, 2011 through December 16, 2011, and January 17, 2012 through January 23, 2012.

5. Although Schneider 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 Schneider's registration or association with a FINRA member, namely January 23, 2012, and (2) the Complaint charges Schneider with misconduct committed while he was registered or associated with a FINRA member, and with failing to appear for on-the-record testimony and failing to respond to

FINRA requests for documents and other information during the two-year period after the date upon which he ceased to be associated with a FINRA member firm.

First Cause of Action

**Misuse of Customer Funds, Conversion, and Fraud
(Violations of and FINRA Rules 2150(a), 2020, and 2010, and Section 10(b) of the
Securities Exchange Act of 1934 and Rule 10b-5 thereunder)**

6. The Department of Market Regulation realleges and incorporates by reference all preceding paragraphs.

7. From August 2010 through at least September 2011, Schneider converted approximately \$282,000 in cash and bearer bonds from two elderly customers of his FINRA member employer firm, while he was registered with that firm.

Customer MA(1)

8. Customer MA(1) is 86 years old and a professor at a university in Jersey City, NJ. At all times relevant to this Complaint, Schneider was MA(1)'s assigned registered representative at a FINRA member firm.

9. From March 2011 through at least September 2011, MA(1) delivered at least eight personal checks, each made payable to "cash" and in the total amount of approximately \$39,000, to Schneider, with instructions that each of the checks be deposited into the brokerage account maintained by MA(1) at Schneider's FINRA member firm. The funds from these eight checks were to be used for the purchase of bonds in MA(1)'s brokerage account at a later date. Instead of depositing these checks into MA(1)'s brokerage account, Schneider misappropriated the checks, and either cashed them or deposited the checks into his own bank account, and then converted the funds to his own use.

10. Schneider did not disclose to MA(1) that he misappropriated the checks described above or that, instead of purchasing bonds for MA(1), Schneider converted the funds obtained from those checks to his own personal use. Furthermore, MA(1) did not authorize Schneider to take the eight checks described above, cash the checks, or deposit the proceeds from the checks into Schneider's personal bank account, and MA(1) did not authorize Schneider's conversion of the proceeds of the checks.

11. In addition, from August 2010 through at least June 2011, on four separate occasions, Schneider deposited bearer bonds owned by MA(1) into his own brokerage account, sold the bonds, and converted the proceeds from his sale of the bonds, a total amount of at least \$223,000, to his own personal use. As part of this same conversion scheme, Schneider wired at least \$200,000 of the \$223,000 in converted proceeds to his own personal bank account.

12. Schneider did not disclose to MA(1) that he misappropriated the bearer bonds described above, sold the bonds, or that he converted the proceeds from the sale of the bonds to his own personal use. Furthermore, MA(1) did not authorize Schneider to deposit the bonds described above into Schneider's own brokerage account, sell the bonds, or convert the proceeds from the sale of the bonds to his own personal use.

Customer MA(2)

13. Customer MA(2) is the brother of customer MA(1) and is 80 years old. At all times relevant to this Complaint, Schneider was MA(2)'s assigned registered representative at a FINRA member firm.

14. From May 2011 through at least August 2011, on three separate occasions, MA(2) delivered bearer bonds, with a market value of approximately \$20,000, to Schneider with instructions that he deposit the bearer bonds into MA(2)'s brokerage account. Schneider provided MA(2) with a receipt evidencing his acceptance of the bearer bonds. Instead of maintaining the bearer bonds for MA(2)'s benefit, Schneider sold the bearer bonds and converted the proceeds from the sale of the bonds to his own personal use.

15. Schneider did not disclose to MA(2) that he misappropriated the bearer bonds described above, sold the bonds, or that he converted the proceeds from the sale of the bonds to his own use. Furthermore, MA(2) did not authorize the sale of his bearer bonds by Schneider, or the conversion of the proceeds from the sale of the bonds to Schneider's own personal use.

16. Based on the foregoing conduct, Schneider made improper use of, and converted customer funds and securities, in violation of FINRA Rules 2150(a) and 2010.

17. In addition, Schneider, in connection with the purchase or sale of securities, to wit, bearer bonds and other bonds, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, knowingly or recklessly, employed manipulative or deceptive devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or a 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 Exchange Act and Rule 10b-5 thereunder, and in violation of FINRA Rules 2020 and 2010.

Second Cause of Action

Failure to Appear for Testimony and Produce Documents (Violations of FINRA Rules 8210 and 2010)

18. The Department of Market Regulation realleges and incorporates by reference all preceding paragraphs.

19. On October 25, 2011, staff from FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") sent a letter to Schneider, pursuant to FINRA Rule 8210, requiring him to appear for on-the-record testimony at FINRA's offices in Rockville, Maryland on November 3, 2011 ("First Rule 8210 Letter"). Schneider's appearance for testimony was requested as part of OFDMI's investigation into allegations that Schneider fraudulently converted customer funds, and committed other violations of FINRA and SEC Rules. The First 8210 Letter was mailed to Schneider, via certified and first class U.S. mail, to his home address, as reflected in the Central Registration Depository ("CRD"), and a copy of the First 8210 Letter was also sent to Schneider by electronic mail. The First Rule 8210 Letter warned Schneider that failure to appear for testimony could subject him to disciplinary action.

20. On November 2, 2011, Schneider acknowledged receiving the First Rule 8210 Letter, and requested that his testimony be postponed to November 15, 2011, and moved to FINRA's offices in New York, New York, instead of Rockville, Maryland. On November 2, 2011, OFDMI consented to Schneider's request and sent him a letter, pursuant to FINRA Rule 8210, requiring him to appear for testimony at FINRA's offices in New York, New York, on November 15, 2011 ("Second Rule 8210 Letter"). The Second Rule 8210 Letter was mailed to Schneider, via first class U.S. mail, to his home address, as reflected in CRD, and a copy of the letter was also sent to Schneider by electronic mail. The Second Rule 8210

Letter also warned Schneider that failure to appear for testimony could subject him to disciplinary action.

21. On November 4, 2011, OFDMI sent a letter to Schneider, pursuant to FINRA Rule 8210, requiring him to produce documents and other information relating to certain bank accounts maintained by Schneider by November 15, 2011 ("Document Request Letter"). The Document Request Letter was mailed to Schneider, via certified U.S. mail, to his home address, as reflected in CRD, and a copy of the letter was sent to Schneider by electronic mail. The Document Request Letter warned Schneider that failure to produce the requested documents and other information could subject him to disciplinary action.

22. On November 14, 2011, just one day before his rescheduled testimony, Schneider again requested that his testimony be postponed, and told OFDMI staff that he would contact them by November 18, 2011 to provide a date for testimony. On November 15, 2011, OFDMI staff mailed Schneider a letter, via first class U.S. mail, to his home address, as reflected in CRD, consenting to his second request for a postponement of testimony, and agreeing to postpone the date that he must produce the documents and other information requested in the Document Request Letter to the same date that his testimony is rescheduled.

23. Schneider did not contact OFDMI staff about rescheduling his testimony by November 18, 2011, as he had promised to do. On November 21, 2011, OFDMI staff left Schneider a voicemail message on his cellphone requesting that he contact OFDMI staff by later that morning to reschedule a time and place for his testimony. Schneider did not return that voicemail message.

24. On November 23, 2011, OFDMI sent another letter to Schneider, pursuant to FINRA Rule 8210, requiring him to appear for testimony at FINRA's offices in Rockville, Maryland, on December 1, 2011 ("Third Rule 8210 Letter"). The Third Rule 8210 Letter was mailed to Schneider, via certified U.S. mail, to his home address, as reflected in CRD, and a copy of the letter was sent to Schneider by electronic mail. The Third Rule 8210 Letter also warned Schneider that failure to appear for testimony could subject him to disciplinary action.

25. Schneider failed to appear for testimony, as was requested. On December 1, 2011, after waiting approximately 20 minutes for Schneider to appear, OFDMI staff opened the testimony record at 10:20 a.m. EST, and noted on the record that Schneider had failed to appear for testimony. OFDMI staff then placed a telephone call to Schneider at his cell phone number, but he did not answer the call or return a voicemail that OFDMI staff left for him. After waiting for another 15 minutes, OFDMI staff noted on the testimony record that Schneider had failed to appear for testimony and closed the testimony record.

26. Schneider also failed to produce any of the documents and other information requested by OFDMI staff in its Document Request Letter, which were due to be produced by Schneider no later than December 1, 2011.

27. By failing to appear for on-the-record testimony and by failing to provide the documents and other information requested in OFDMI staff's Rule 8210 requests, OFDMI staff was delayed and prevented from pursuing certain significant aspects of its investigation of this matter.

28. Based on the foregoing, Schneider violated FINRA Rules 2010 and 8210 by failing to appear for testimony, and by failing to produce documents and other information that was requested by FINRA staff in connection with its investigation of this matter.

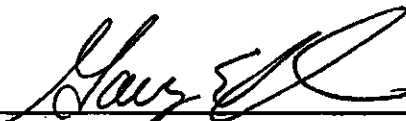
RELIEF REQUESTED

WHEREFORE, Market Regulation respectfully requests that the Panel:

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

FINRA DEPARTMENT OF MARKET REGULATION

June 29, 2012


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