

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADOLFO LEON URIBE
(CRD No. 4243890),

Respondent.

Disciplinary Proceeding
No. 2012030890501

Hearing Officer – MC

DEFAULT DECISION

November 20, 2013

Respondent Adolfo Leon Uribe participated in private securities transactions without notifying his employer firm, in violation of NASD Rule 3040 and FINRA Rule 2010, and engaged in outside business activities for which he received compensation, without providing prior written notice to his employer firm, in violation of FINRA Rules 3270 and 2010. For these violations, Respondent is suspended from associating with any FINRA member firm in any capacity for two years, is fined in the amount of \$40,000, and is ordered to disgorge to FINRA the compensation he received in connection with his participation in the private securities transactions.

Appearances

Sean W. Firley, Esq., Boca Raton, Florida, for the Department of Enforcement.

Respondent Adolfo Leon Uribe appeared pro se.

DECISION

I. Background

Respondent Adolfo Leon Uribe was employed and received compensation for business activity outside the scope of his relationship with his FINRA member firm employer, without providing his firm with prior written notice of his activity. Respondent also participated in

private securities transactions for selling compensation without providing his firm with prior written notice of his activity.

The Department of Enforcement filed and served the attached two-cause Complaint upon Uribe on May 22, 2013. Uribe responded with a letter dated June 21, 2013, which was filed as his Answer. In it, he denies violating FINRA rules, claiming that he had “verbally” informed his employer firm of the alleged outside business activities and therefore had “complied with informing” his supervisors appropriately.

An Order dated August 19, 2013, set a telephonic pre-hearing conference in this matter for August 23, 2013. The Order was served upon Uribe by e-mail and by first-class mail at his residential address listed in the Central Registration Depository (“CRD address”). Uribe failed to appear for the pre-hearing conference. Subsequently an Order to Show Cause Why Respondent Should Not be Held in Default, served on Uribe by e-mail and by first-class mail at his CRD address, set a telephonic conference for September 5, 2013, to provide him with an opportunity to show cause why he should not be held in default for failing to appear at the pre-hearing conference. Respondent did not appear for the September 5 hearing.¹ Consequently, on September 6, 2013, the Hearing Officer issued an Order directing Enforcement to file a motion for entry of a default decision and served the Order on Uribe by e-mail and first-class mail at his CRD address. Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”), with a supporting Declaration of Sean W. Firley, Esq. (“Firley

¹ Uribe received actual notice of the telephonic conferences, as evidenced by an e-mail he sent to the Office of Hearing Officers and Enforcement on September 16, 2013, in which he wrote, “I would like to offer my apologies for my absence.”

Declaration”) and six exhibits on September 19, 2013. Enforcement served the Default Motion and Firley Declaration on Uribe by e-mail and by first-class mail at his CRD address.²

FINRA Rule 9241(f) provides that the “Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has due notice.” By failing to appear at an initial pre-hearing telephone conference and a telephonic show cause hearing as directed by orders issued by the Hearing Officer, of which he had due notice, Uribe defaulted. Accordingly, pursuant to FINRA Rule 9269(a)(1) and (2), and for the reasons given below, the Default Motion is granted.³

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first associated with a FINRA member firm in July 2000. In May 2006, he became registered as a Foreign Associate with FINRA member firm vFinance.⁴ The firm terminated his employment on November 9, 2011.⁵ Respondent was associated with another FINRA member firm from February 2012 until May 7, 2013.⁶

Respondent has not associated with another FINRA member firm. FINRA retains jurisdiction over him, however, because (i) the Complaint charges him with misconduct occurring while he was associated with a FINRA member firm, and (ii) Enforcement filed the

² Uribe had previously responded to messages Enforcement sent to him at his e-mail address and informed Enforcement that he had received the Complaint and Notices of Complaint, which Enforcement sent to him at his e-mail address and at his CRD address. Firley Declaration ¶¶ 17, 21; CX-4.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Default Motion, the Firley Declaration, and Enforcement’s exhibits CX-1 through CX-6.

⁴ CX-1, at 4. Uribe is a resident of Colombia.

⁵ Compl. ¶ 2.

⁶ *Id.* ¶ 3.

Complaint less than two years after the termination of Respondent's association with a FINRA member firm.⁷

B. Respondent's Outside Employment

On January 18, 2011, Respondent entered into a formal employment agreement with a company to work as a full-time "Business Development Vice President."⁸ One of Respondent's responsibilities was to solicit people to invest in the company by making loans to it that paid interest and returned principal at maturity. Respondent's position entitled him to a \$5,000 monthly draw and additional compensation based on earnings the company achieved with the funds Respondent succeeded in soliciting.⁹

At the time he signed the employment agreement with the company, Respondent was a registered Foreign Associate employed by vFinance. The firm's supervisory procedures required associated persons to obtain prior written approval of proposed outside business activity. Respondent did not provide such written notice, and vFinance did not grant him written approval to engage in the activity.¹⁰

Respondent solicited seven persons, six of whom were vFinance customers, who, from March 10 to May 11, 2011, invested in the company by executing promissory notes.¹¹ The total principal amount of the notes for the seven investors was \$1,222,200. Six of the notes had a one-year maturity date; the other matured in six months. The notes paid interest ranging from seven to 10 percent.¹² The investors expected to profit by their investments, and there is evidence that

⁷ FINRA By-Laws, Article V, Section 4.

⁸ Compl. ¶ 6.

⁹ *Id.* ¶ 9.

¹⁰ *Id.* ¶¶ 7-8.

¹¹ *Id.* ¶¶ 6-11. The other investor was a vFinance employee.

¹² *Id.* ¶¶ 11-12.

some of them did so.¹³ Respondent received compensation for his efforts on behalf of the company. Between February and December 2011, he received \$30,000 in draws and an additional \$22,021.36 in selling compensation for the notes.¹⁴

Respondent also did not provide vFinance with prior written notice describing the proposed securities transactions, his role in them, or his expectation of receiving compensation, despite the firm's written supervisory procedures, and despite certifications he made on two compliance forms. He made the certifications while he was employed by the outside company, and in them he certified falsely that he had no outside business interests and that he had not raised any capital through entities outside of vFinance. He also certified that he would notify the firm prior to participating in any private securities transaction.¹⁵

1. Respondent Engaged in Private Securities Transactions in Violation of NASD Rule 3040 and FINRA Rule 2010

NASD Rule 3040 prohibits any person associated with a member from participating in any manner in a private securities transaction unless the person first provides written notice to the member describing the proposed transaction in detail, the person's proposed role, and whether or not the person may receive selling compensation.¹⁶

Respondent participated in private securities transactions by soliciting the investors to invest in the notes, which were securities, and receiving selling compensation from the company

¹³ Firley Decl. ¶ 12.

¹⁴ Compl. ¶ 13.

¹⁵ *Id.* ¶¶ 14-16.

¹⁶ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). NASD Rule 3040, however, remains effective because it has not been replaced by a new FINRA rule. See <http://www.finra.org/ruleconversionchart>. The applicable rules are available at www.finra.org/rules.

for making the referrals.¹⁷ Respondent failed to notify and obtain approval from vFinance of the proposed transactions and his participation in them.¹⁸ By this conduct, Uribe violated NASD Rule 3040 and FINRA Rule 2010.

2. Respondent Engaged in Outside Business Activities in Violation of FINRA Rules 3270 and 2010

FINRA Rule 3270 prohibits registered persons from being compensated by another, or having a reasonable expectation of receiving compensation, as a result of business activity outside the scope of their relationship with their firm, unless they provide written notice to the firm in the manner prescribed by the firm.

As noted above, the employment agreement Respondent signed with the company in January 2011 entitled him to receive compensation in the form of draws in addition to the selling compensation he might earn for private securities transactions.¹⁹ His employment agreement was outside the scope of his relationship with vFinance. Because Respondent did not provide written notice to vFinance before becoming employed with the outside company, he violated FINRA Rules 3270 and 2010.

¹⁷ Compl. ¶¶ 18-19.

¹⁸ *Id.* ¶ 20.

¹⁹ *Id.* ¶ 23. FINRA Rule 3270 replaced the former outside business rule, NASD Rule 3030, effective December 15, 2010, see <http://www.finra.org/ruleconversionchart>, and is substantially the same, with minor changes to language. In its previous form as NASD Rule 3030, it has been described as applying to activity “‘outside the scope’ of the registered person’s ‘relationship with his employer firm’” except for “activities subject to the requirements of Conduct Rule 3040” which “specifically prohibits *securities* transactions outside the scope of a registered person’s relationship with his firm. Accordingly, Rule 3030 has been generally applied to activities that are “unrelated to securities transactions.” *Dep’t of Enforcement v. Sahai*, C9B020032, 2003 NASD Discip. LEXIS 29, at *28-29 (June 23, 2003) (quoting *District Bus. Conduct Comm. v. Douglass*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at *18 (NAC Sept. 19, 1995) and citing *District Bus. Conduct Comm. v. Doherty*, No. C06940014, 1995 NASD Discip. LEXIS 46, at *13 (NAC Dec. 7, 1995)). Here, Respondent was paid by monthly draws for his full-time employment as a “Business Development Vice President” and received, separately, selling compensation for his successful sales of private securities depending on the success the outside company achieved with the proceeds of those sales. Thus, this is an instance in which disciplinary action is appropriate both for Respondent’s engagement in outside business as a full-time employee of the outside company, and for his sales of private securities.

III. Sanctions

For the selling away violation, Enforcement recommends a fine of \$30,000, suspension in all capacities for 18 months, and disgorgement of the selling compensation Respondent received. For the outside business activities, Enforcement recommends suspension in all capacities for six months and a fine of \$10,000. The overall sanction Enforcement requests therefore consists of suspension in all capacities for two years, a fine of \$40,000, and disgorgement of \$22,021.36.²⁰

FINRA's Sanction Guidelines recommend a fine between \$5,000 and \$50,000 for selling away, and an order for disgorgement of any financial gain resulting from the misconduct. The Guidelines explain that the "first step in determining sanctions is to assess the extent of the selling away, including the dollar amount of sales, the number of customers and the length of time over which the selling away occurred." For sales totaling more than \$1 million, as they do in this case, the Guidelines recommend suspension for 12 months, or a bar.²¹ The applicable Principal Considerations include the number of customers; whether the respondent sold to customers of the respondent's firm; the length of time the respondent engaged in the activity; whether he misled his firm about the activity; and whether the respondent had a "beneficial interest in" or was affiliated with the selling enterprise and, if so, whether the respondent disclosed this to customers.²²

As set forth above, Respondent solicited investments totaling over \$1 million. He sold notes to seven people, six of them customers of vFinance, over a relatively brief period, from March to May 2011. Respondent misled vFinance by falsely certifying twice that he had no outside business interests and that he had not raised capital outside of the firm.

²⁰ Default Mot. 4.

²¹ *FINRA Sanction Guidelines* 14 (2011).

²² *Id.* at 14-15.

For engaging in outside business activities, the Guidelines recommend a fine between \$2,500 and \$50,000, and suspension for up to a year depending upon the presence of aggravating factors. The Principal Considerations applicable here, similar to those for selling away, include whether the activity involved customers of the firm, the duration of the activity, number of customers and dollar volume of sales, and whether the respondent misled the firm about engaging in the activity.²³

In the context of the facts set forth above, Enforcement's recommendations are reasonable and consistent with the remedial goals of the Sanction Guidelines.

IV. Order

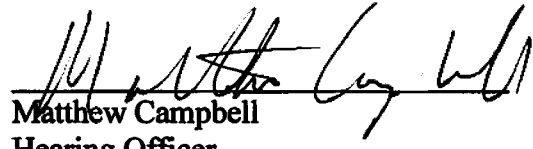
For participating in private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010, Respondent Adolfo Leon Uribe is suspended from associating with any FINRA member firm in any capacity for 18 months and fined \$30,000. For engaging in outside business activities, in violation of FINRA Rules 3270 and 2010, he is suspended from associating with any FINRA member firm in any capacity for an additional six months and fined \$10,000. Therefore, he shall be suspended for two years in all capacities and pay a fine of \$40,000. In addition, he is ordered to disgorge to FINRA the selling compensation he received from his participation in the private securities transactions, in the amount of \$22,021.36, plus interest from December 31, 2011, until paid. Interest shall be calculated at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(a).²⁴

²³ *Guidelines* at 13.

²⁴ 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.

If this Decision becomes FINRA's final disciplinary action, Respondent's suspension shall become effective on the opening of business on January 6, 2014, and shall end at the close of business on January 5, 2016.

The fines and disgorgement shall be due and payable on Respondent's return to the securities industry.


Matthew Campbell
Hearing Officer

Copies to:

Adolfo L. Uribe *(via overnight courier and first-class mail)*
Sean W. Firley, Esq. *(via electronic and first-class mail)*
David B. Klafter, Esq. *(via electronic mail)*
Mark P. Dauer, Esq. *(via electronic mail)*
Jeffrey D. Pariser, Esq. *(via electronic mail)*

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

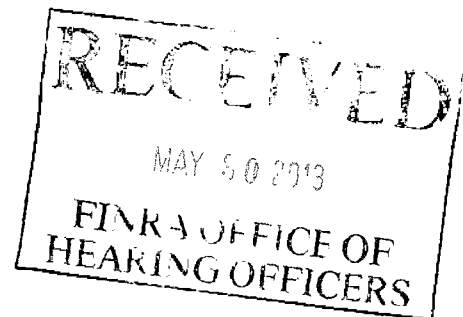
v.

Adolfo Leon Uribe (CRD No. 4243890),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012030890501

Hearing Officer - TBD



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with vFinance Investments, Inc. ("vFinance"), Adolfo Leon Uribe ("Uribe") was employed by and received compensation from EC¹ for business activity outside the scope of Uribe's relationship with vFinance, without providing prior written notice to vFinance. While employed at EC, Uribe participated in private securities transactions for selling compensation without providing prior written notice to vFinance describing in detail the proposed transactions and his proposed role therein. As a result of the foregoing, Uribe violated NASD Rule 3040 and FINRA Rules 3270 and 2010.

¹ A schedule of initials used in the Complaint is attached hereto as Exhibit 1.

RESPONDENT AND JURISDICTION

2. Uribe entered the securities industry in July 2000 when he became associated with a FINRA member. On May 4, 2006, vFinance filed a Form U4 for Uribe, listing his employment date as May 2, 2006. On December 9, 2011, vFinance filed a Form U5 for Uribe, listing his termination date as November 9, 2011. Uribe is a Foreign Associate and has never held any securities licenses.
3. On February 15, 2012, another FINRA member firm filed a Form U4 for Uribe, commencing his association with the firm as of that date. On May 7, 2013, that firm filed a Form U5 for Uribe, listing his termination as of that date.
4. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with his most recent FINRA member firm, namely, May 7, 2013; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS COMMON TO ALL CAUSES OF ACTION

5. The Department realleges and incorporates by reference paragraphs one through four above.
6. On January 18, 2011, Uribe executed an Employment Agreement with EC.² Under the terms of the Employment Agreement, Uribe was hired as a full-time "Business

² EC is based in Miami, Florida and engages in "receivable factoring." Receivables factoring is a financing technique whereby a company that needs immediate cash sells one or more of its accounts receivable to a lender (the factor) at 80% to 90% of face value. The remaining 10% to 20% is held by the factor as a deposit. Once the full

Development Vice President.” The term of the Employment Agreement included a six-month trial period, after which EC could terminate the agreement for any reason.

7. At the time that Uribe executed the Employment Agreement, vFinance’s written supervisory procedures required that persons associated with the firm receive written approval of any prospective outside business activities prior to engaging in the outside activity.
 8. Uribe did not provide prior written notice to vFinance of his EC employment and further did not receive written approval from the firm to engage in the outside employment.
 9. Under the terms of the Employment Agreement, one of Uribe’s job functions was to solicit individuals to lend money to EC, which the company would use to engage in receivables factoring. The Employment Agreement provides for a \$5,000 monthly draw and a “spread” to be paid to Uribe based on the money earned by EC on the investor money that Uribe originated.
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10. While employed at EC in his business development role, Uribe informed seven investors about an investment opportunity with EC and referred the investors to EC, all of whom thereafter executed promissory notes (“notes”) with EC. Six of the seven investors were vFinance customers.

receivable is paid to the factor, the deposit amount, less fees charged by the factor, is delivered to the borrowing company.

11. The investors and the basic terms of their notes are summarized as follows:

Date of Note	Investor Name	Amount	Interest Rate	Customer of vFinance
March 10, 2011	DIC	\$35,000	8.50%	Yes
March 16, 2011	HRC	\$27,000	8.50%	Yes
April 5, 2011	SMS	\$60,000	8.50%	Yes
April 6, 2011	HK	\$30,000	9.00%	Yes
April 13, 2011	JMG	\$20,000	10.00%	No (vFinance employee)
May 6, 2011	MTS	\$300,000	7.00%	Yes
May 11, 2011	AI	\$650,000	7.00%	Yes

12. The total principal amount of the notes for the seven aforementioned investors is \$1,222,000. All of the notes, except for JMG's³ note, have a one-year maturity date.

13. In consideration for his EC employment and the aforementioned referrals, Uribe received compensation from EC. Specifically, between February and July 2011, Uribe was paid \$30,000 in draws. Between June and December 2011, Uribe was paid selling compensation for the aforementioned referrals in the amount of \$22,021.36.

14. At the time that Uribe made the aforementioned referrals and received selling compensation for the referrals, vFinance's written supervisory procedures required that persons associated with the firm provide prior written notice and receive written approval to participate in private securities transactions.

15. Uribe failed to provide prior written notice to vFinance of seven investors' promissory notes with EC describing in detail the proposed transactions and his proposed role therein, including his expectation of receiving selling compensation.

³ JMG's note matured six months after the date of execution.

16. During his employment with EC and while associated with vFinance, Uribe falsely certified on two firm compliance forms that he would notify the firm in writing prior to participating in any private securities transactions and that he had no outside business interests and had not raised capital through any entities outside of the firm.

FIRST CAUSE OF ACTION

(Private Securities Transactions - NASD Rule 3040 and FINRA Rule 2010)

17. The Department realleges and incorporates by reference paragraphs one through 16 above.

18. The notes described in paragraphs 11 and 12 above are securities.

19. Uribe participated in the private securities transactions by informing the investors about the investment opportunity with EC, referring the investors to EC, and thereafter receiving selling compensation from EC for making the referrals.

20. Prior to participating in the transactions, Uribe did not notify vFinance about the proposed transactions and Uribe's role in the transactions. Moreover, Uribe's participation in the transactions was not within the course and scope of his employment with vFinance.

21. As a result of the foregoing, Uribe violated NASD Rule 3040 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Outside Business Activities - FINRA Rules 3270 and 2010)

22. The Department realleges and incorporates by reference paragraphs one through 16 above.

23. Starting in January 2011, Uribe was employed by EC. Upon executing the Employment Agreement with EC, Uribe had a reasonable expectation of receiving compensation for his employment.
24. Uribe's employment with EC was outside the scope of his relationship with vFinance.
25. After becoming employed by EC, Uribe received compensation in the total amount of \$52,021.36, consisting of \$30,000 in draws and \$22,021.36 in selling compensation.
26. Prior to his employment with EC, Uribe did not provide prior written notice to vFinance of his employment with EC.
27. As a result of the foregoing, Uribe violated FINRA Rules 3270 and 2010.

RELIEF REQUESTED

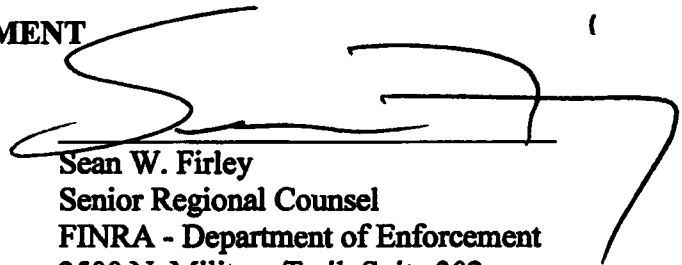
WHEREFORE, the Department respectfully requests that the Panel:

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

- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: May 22, 2013



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