

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

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

JEFFREY AUSTIN JARRETT
(CRD No. 4402927),

Respondent.

Disciplinary Proceeding
No. 20120315996-01

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

August 30, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) converting funds from two customers, in violation of FINRA Conduct Rules 2150 and 2010; (ii) defrauding a customer, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and FINRA Conduct Rules 2020 and 2010; (iii) failing to disclose outside business activities in violation of FINRA Conduct Rules 3270 and 2010; and (iv) failing to provide documents, written information and testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Additionally, Respondent is ordered to pay restitution, plus interest, to the affected customers.

Appearances

For the Department of Market Regulation, Complainant: James J. Nixon, Esq.; Joel S. Vengrin, Esq.; and Lora W. Alexander, Esq.

For Jeffrey Austin Jarrett, Respondent: no appearance.

DECISION

Jeffrey Austin Jarrett was formerly registered with FINRA and associated as a General Securities Representative at FINRA member firm Kovack Securities, Inc. ("KSI") from November 2007 through April 2011 and as a General Securities Principal at that firm from March 2008 through April 2011. FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") began an investigation of Jarrett after receiving two customer complaints about his

conduct. Based on that investigation, the Department of Market Regulation ("Market Regulation") filed a Complaint with the Office of Hearing Officers charging Jarrett with converting to his personal use \$375,000 from two KSI customers in violation of FINRA Conduct Rules 2150 and 2010, after inducing them to give him money to invest on their behalf.¹

Additionally, the Complaint charges Jarrett with obtaining the funds from one of these customers through fraudulent misrepresentations and omissions in connection with soliciting the purchase and sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and FINRA Conduct Rules 2020 and 2010.

The Complaint also charges that Jarrett never disclosed to KSI his affiliation with, or the money he obtained through, an entity he owned and used to assist him in perpetrating the conversions, in violation NASD Conduct Rules 3030 and 2110 and FINRA Conduct Rules 3270 and 2010.²

Finally, Jarrett is charged with failing to provide documents, written information, and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Jarrett did not answer the Complaint. Accordingly, Market Regulation filed a motion for entry of a default decision. The motion is supported by the Declaration of Joel S. Vengrin and three exhibits. Jarrett did not respond to the motion. For the reasons discussed below, the Hearing Officer grants Market Regulation's motion and bars Jarrett from associating with any FINRA member firm in any capacity and orders him to pay restitution, with interest, to the two customers whose funds he converted.

¹ FINRA Conduct Rule 2150 prohibits the improper use of a customer's securities or funds. FINRA Conduct Rule 2010 requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade.

² NASD Conduct Rule 3030 and its successor, FINRA Conduct Rule 3270, govern notification and approval requirements pertaining to business activity outside the scope of a registered representative's relationship with his member firm. NASD Conduct Rule 2110 was the predecessor of FINRA Conduct Rule 2010.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws³ because (1) the Complaint was filed within two years after Jarrett's last registration with FINRA terminated,⁴ and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA registered firm, and with failing to respond to requests for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

II. Market Regulation's Motion for Entry of a Default Decision Is Granted

Market Regulation filed the attached Complaint with the Office of Hearing Officers on April 5, 2013. That same day, Market Regulation served Jarrett with a copy of the Notice of Complaint and Complaint by Federal Express and first-class certified mail, return receipt requested, at his address as reflected in the Central Registration Depository ("CRD Address").⁵ Jarrett did not answer the Complaint by May 3, 2013, the deadline set in the Notice of Complaint.⁶

Accordingly, on May 8, 2013, Market Regulation served Jarrett with a copy of the Second Notice of Complaint and Complaint by Federal Express and certified mail, return receipt requested, at his CRD Address.⁷ The Second Notice of Complaint required Jarrett to file an

³ 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").

⁴ FINRA terminated Jarrett's last registration effective April 28, 2011. CX-1, at 2. The Complaint was filed on April 5, 2013, less than two years later.

⁵ Declaration of Joel S. Vengrin in Support of the Department of Market Regulation's Motion for Entry of Default Decision ("Decl.") ¶ 8. According to the FedEx delivery receipt and the U.S. Postal Service Certified Mail Receipt, the Notice of Complaint and Complaint were delivered. Decl. ¶ 8; CX-2.

⁶ Decl. ¶ 9.

⁷ Decl. ¶ 10. According to the FedEx delivery receipt and the U.S. Postal Service Certified Mail Receipt, the Second Notice of Complaint and Complaint were delivered. Decl. ¶ 10; CX-3.

answer with the Office of Hearing Officers on or before May 28, 2013.⁸ To date, Jarrett has not filed an answer. On July 8, 2013, Market Regulation filed a motion for entry of default decision. Jarrett did not respond to the motion.

The Hearing Officer concludes that Jarrett received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (3), and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Market Regulation's motion for entry of a default decision.

III. Findings of Fact

With one exception,⁹ the Hearing Officer treats the allegations in the attached Complaint as admitted pursuant to FINRA Rules 9215(f) and 9269(a).

A. Jeffrey Austin Jarrett

Jarrett was registered with FINRA member firms from August 2001 until April 2011.¹⁰ He was registered as a General Securities Representative and General Securities Principal at KSI until his voluntary termination, effective April 28, 2011.¹¹ He has not thereafter been associated with a FINRA-registered firm.¹²

B. Jarrett Converted Customers' Funds to His Personal Use

As discussed below, Jarrett induced two customers, one of whom was elderly, to give him \$375,000 to invest based on his recommendations. Instead of investing the funds, however, he converted them to his personal use.

⁸ Decl. ¶ 11.

⁹ The Complaint alleges that Jarrett was registered with a FINRA member firm beginning in May 2001. Compl. ¶ 7. The CRD excerpt for Jarrett, CX-1, at 4, however, indicates that his first registration became effective on August 3, 2001.

¹⁰ CX-1, at 4.

¹¹ Compl. ¶ 7; CX-1, at 2.

¹² Compl. ¶ 7; CX-1, at 2.

1. Customer JK

In March 2011, Jarrett's customer, JK, invested \$65,000 to purchase a mutual fund in an IRA held at KSI.¹³ One month later, Jarrett told her that the IRA was losing money and that she should sell the mutual fund, a security, and let him invest the funds for her in another security, a money market account with Jarrett Financial Services, LLC, a company he owned and controlled.¹⁴ On April 11, 2011, Jarrett telephoned JK to arrange a meeting with her to complete her investment in the money market fund with Jarrett Financial Services, LLC.¹⁵ The next day, on April 12, 2011, based on his recommendation and advice, JK sold her IRA consisting of a \$65,000 mutual fund investment with KSI.¹⁶ That day, when they met, JK gave Jarrett a check in the amount of \$65,000.¹⁷ Thereafter, Jarrett did not invest the funds as promised. Instead, he converted them for his personal use.¹⁸ JK made repeated requests for the return of her money, following which Jarrett wired \$10,200 to her on December 16, 2011.¹⁹ He has not, however, remitted to JK the remaining \$54,800 balance of her funds.²⁰ Customer JK neither knew about nor authorized Jarrett's conversion of her funds for his personal use.²¹

¹³ Compl. ¶ 9.

¹⁴ *Id.* At times, the Complaint identifies the intended investment as a "money market account," *Id.* ¶¶ 1, 9, and, at other times, as a "money market fund." *Id.* ¶¶ 10–12.

¹⁵ *Id.* ¶ 10.

¹⁶ *Id.* ¶ 11.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 12.

¹⁹ *Id.* ¶ 13.

²⁰ *Id.*

²¹ *Id.* ¶ 16.

2. Customer CR

CR, an elderly customer, was related to Jarrett by marriage.²² In 2009, Jarrett solicited CR to invest \$310,000 in two flexible premium indexed annuities with an insurance company.²³ CR then purchased the annuities based on Jarrett's recommendation.²⁴ Jarrett signed both annuities as CR's agent/broker.²⁵ In late June 2010, Jarrett convinced CR to withdraw her money from the two annuities and purchase a single annuity with another insurance company.²⁶ In August and December 2010, CR liquidated the two annuities and wrote checks to Jarrett Financial Services, LLC totaling \$310,000.²⁷ Jarrett represented to CR that he would invest the funds in a single annuity with a different life insurance company because she would receive a better return on her investment.²⁸ Instead of using CR's funds to purchase the annuity, he converted the funds for his own personal use, without CR's knowledge or authorization.²⁹ To date, Jarrett has not returned CR's \$310,000.³⁰

C. Jarrett Failed to Disclose an Outside Business Activity

On or around November 14, 2007, Jarrett organized Jarrett Financial Services, LLC as a limited liability company in Indiana.³¹ At all times relevant to the charges in the Complaint,

²² *Id.* ¶ 19. CR's son is married to Jarrett's sister.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* ¶ 20.

²⁷ *Id.*

²⁸ *Id.* ¶ 21.

²⁹ *Id.* ¶¶ 22–33.

³⁰ *Id.* ¶ 24.

³¹ *Id.* ¶ 27.

Jarrett was the principal and owner of, and was the registered agent for, Jarrett Financial Services, LLC.³² Jarrett utilized Jarrett Financial Services, LLC in his scheme to obtain and convert approximately \$375,000 from customers JK and CR. Jarrett did not provide written notice, or otherwise disclose his affiliation with, or the money he received through, Jarrett Financial Services, LLC to KSI.³³

D. Jarrett Failed to Provide Documents and Written Information or Appear for Testimony

In connection with its investigation into Jarrett's conduct, FINRA staff sent Jarrett a letter pursuant to FINRA Rule 8210 on March 8, 2012, and again on March 28, 2012, seeking documents and other information related to Jarrett Financial Services, LLC and his receipt of funds from CR and JK.³⁴ The requests were sent to his CRD address.³⁵ Jarrett did not respond to either request.³⁶

On May 1, 2012, FINRA staff sent Jarrett a request, pursuant to FINRA Rule 8210, requiring him to appear for testimony on May 15, 2012, in Rockville, Maryland, in connection with FINRA's investigation into the matters that are the subject of the Complaint.³⁷ The request was sent to his CRD address.³⁸ On May 3, 2012, Jarrett's attorney contacted FINRA staff by

³² *Id.*

³³ *Id.* ¶ 28.

³⁴ *Id.* ¶¶ 31–32.

³⁵ *Id.* According to FedEx records, both requests were delivered to the CRD Address.

³⁶ *Id.*

³⁷ *Id.* ¶ 33.

³⁸ *Id.*

email.³⁹ He confirmed that Jarrett had received the Rule 8210 request for testimony but stated that Jarrett would not appear and testify.⁴⁰

IV. Conclusions of Law

A. Jarrett Violated FINRA Conduct Rules 2150 and 2010 by Engaging in Conversion (Second and Third Causes of Action)

Jarrett induced two customers, one of whom was elderly, to give him \$375,000. He told them he would invest their funds. Instead, he misappropriated the funds for his own purposes without their knowledge or authorization. This conduct violated FINRA Conduct Rule 2150 which provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” Moreover, Jarrett’s improper use of customers’ funds constituted conversion. “Conversion generally 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.”⁴¹ Conversion has also been characterized as “the wrongful exercise of dominion over the personal property of another.”⁴² Improper use rises to the level of conversion “when the associated person intends to take the funds and use them for the associated person’s benefit.”⁴³ That is exactly what Jarrett did here. Accordingly, he converted funds from two customers in violation of FINRA Conduct Rule 2150.

³⁹ *Id.* ¶ 35.

⁴⁰ *Id.*

⁴¹ *FINRA Sanction Guidelines* 36 n.2 (2011), available at www.finra.org/sanctionguidelines [hereinafter *Guidelines*].

⁴² *Dep’t of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (NAC Mar. 7, 2008).

⁴³ *Dep’t of Enforcement v. Argomaniz*, No. C0799013, 1999 NASD Discip. LEXIS 49, at *20 (OHO Oct. 18, 1999); *Dep’t of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (NAC Nov. 12, 1999)(holding that “[i]mproper use” rises to the level of conversion where a registered representative deposits a customer’s check into his own account instead of into the customer’s account, without authorization, and fails to repay the customer.”).

Jarrett's conduct also violated FINRA Conduct Rule 2010 because conversion is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade⁴⁴ and because a violation of other NASD or FINRA Rules is inconsistent with the "high standards" required by the just and equitable principles of trade rule.⁴⁵

B. Jarrett Willfully Violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Conduct Rules 2020 and 2010 by Making Misrepresentations and Omissions to a Customer (First Cause of Action)

Jarrett recommended to Customer JK that she should sell her mutual fund. He falsely represented to her that he would then invest the proceeds into a money market fund at Jarrett Financial, LLC. She followed his recommendation, sold the mutual fund, and gave him a check in the amount of \$65,000. But contrary to his representation that he would invest the funds, he instead converted them to his own use. He did not tell her that he would convert, rather than invest, her funds. This conduct violated federal and FINRA anti-fraud rules as well as FINRA's just and equitable principles of trade rule.

"The [SEC's] and NASD's [and FINRA's] anti-fraud rules 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."⁴⁶ A finding of a violation requires a showing that a person acting with scienter misrepresented or omitted material facts in connection with

⁴⁴ *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012).

⁴⁵ See *Dep't of Enforcement v. CMG Inst. Trading, LLC*, No. 2006006890801, 2010 FINRA Discip. LEXIS 7, at *3 n.2 (NAC May 3, 2010). See also *Dep't of Enforcement v. Simbric*, No. 2011026168901, 2012 FINRA Discip. LEXIS 29, at *11-13 (OHO Apr. 23, 2012); *Dep't of Enforcement v. Pascucci*, No. 2010025751301, 2012 FINRA Discip. LEXIS 34, at *11-14 (OHO Apr. 13, 2012).

⁴⁶ *Dep't of Enforcement v. Donner Corp. Int'l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (NAC Mar. 9, 2006), vacated and remanded in part on other grounds, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007) (quoting *District Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *16-17 (NBCC July 28, 1997)).

securities transactions.⁴⁷ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.⁴⁸ Scienter is the “intent to deceive, manipulate or defraud.”⁴⁹ Scienter may be established by a showing of recklessness that involves 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.”⁵⁰

The facts in this case establish the above elements. Jarrett induced JK to sell a security by falsely stating that he would use the proceeds to purchase another security. Plainly, he had no intention of doing so and failed to tell her that. Thus, he acted with scienter in making the misrepresentation and omission. The facts misrepresented and omitted were material, as it would be important to any investor to know that a broker intends to convert funds rather than invest them. When a person represents that he will invest a customer’s funds while intending instead to convert the funds to his own personal use—as Jarrett did here—he has plainly misstated and

⁴⁷ *Donner Corp. Int’l*, 2006 NASD Discip. LEXIS 4, at *50. In addition, violations of Section 10(b) and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. See, e.g., *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, the requirement of interstate commerce is satisfied because Jarrett telephoned JK to arrange a meeting for the ostensible purpose of effectuating the customer’s investment in the money market fund. See *SEC v. Softpoint, Inc.* 958 F. Supp. 846, 865 (S.D.N.Y. 1997), *aff’d*, 159 F.3d 1348 (2d Cir. 1998) (stating that the jurisdictional requirement is satisfied by intrastate telephone calls).

⁴⁸ *Basic v. Levinson*, 485 U.S. 224, 231–32 (1988).

⁴⁹ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

⁵⁰ *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))).

omitted material facts.⁵¹ The facts clearly demonstrate that Jarrett made his misstatements and omissions “in connection with” the purchase or sale of a security because the stated purpose was to have the customer sell a mutual fund and then invest the funds in a money market fund.⁵² Therefore, Jarrett defrauded JK and violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Conduct Rule 2020.

Finally, Jarrett’s misrepresentations and omissions were willful. Under the securities laws, willfulness means that Jarrett voluntarily committed the act that constituted the violation.⁵³ Willfulness does not require proof of intent to violate the laws or rules.⁵⁴ The finding that Jarrett acted with scienter supports a finding that his violations were willful.

C. Jarrett Violated FINRA Conduct Rules 3270 and 2010 by Failing to Disclose Outside Business Activities (Fourth Cause of Action)

On or around November 14, 2007, Jarrett organized Jarrett Financial Services, LLC as a limited liability company in Indiana. He is the principal and owner of the company as well as its registered agent. Jarrett utilized that entity to receive the funds he converted from CR and JK. Jarrett did not disclose either his affiliation with that company to KSI, his employing member firm at the time, or his receipt of funds through that entity. In connection with these undisclosed

⁵¹ See *Dep’t of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *19 (OHO Feb. 23, 2012) (finding that “it is plainly material that Respondent did not invest [the customer’s] funds in a mutual fund as promised but instead converted the funds to his own use.”).

⁵² See *SEC v. Zandford*, 535 U.S. 813, 819 (June 3, 2002) (stating that the “in connection with” requirement of Section 10(b) would be met for “a broker who accepts payment for securities that he never intends to deliver”); *SEC v. Smart*, 2011 U.S. Dist. LEXIS 61134, at *43–44 (D. Utah June 8, 2011) (citing *Zandford* and stating “the ‘in connection with’ requirement is met regardless of whether or not Defendants invested the money in securities. . . All that is required is that an investor would reasonably believe they were investing in securities”), *aff’d*, 2012 U.S. App. LEXIS 8623 (10th Cir. Utah, Apr. 27, 2012). Also, mutual funds are securities within the meaning of the Exchange Act. See, e.g., *Tcherepnin v. Knight*, 389 U.S. 332, 343 (Dec. 18, 1967) (stating that it has “little doubt” that shares in mutual funds are securities).

⁵³ *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *13 n.11 (NAC Aug. 19, 2010); *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

⁵⁴ *Dep’t of Enforcement v. Zayed*, 2010 FINRA Discip. LEXIS 13, at *13 n.11; *Wonsover v. SEC*, 205 F.3d at 414.

outside business activities, the Complaint charged Jarrett with violating NASD Conduct Rules 3030 and 2110, as well as FINRA Conduct Rules 3270 and 2010. NASD Conduct Rule 3030 provided that:

No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member. Activities subject to the requirements of Rule 3040 shall be exempted.

NASD Conduct Rule 3030 was superseded by FINRA Conduct Rule 3270 on December 15, 2010.⁵⁵ Rule 3270 expanded the obligations imposed under Rule 3030⁵⁶ and states, in pertinent part,

No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

The purpose of the outside activities rule is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under applicable law.⁵⁷ The Rule requires disclosure of all outside business activity, not just securities-related activity.⁵⁸ By failing to disclose his outside business activities in connection with Jarrett Financial Services, LLC while he was a registered person,

⁵⁵ See Regulatory Notice 10-49.

⁵⁶ See Exchange Act Rel. No. 34-62762 (Aug. 23, 2010) (SR-FINRA-2009-042).

⁵⁷ *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Rel. No. 26063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

⁵⁸ *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NAC Dec. 7, 2005) (citing *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (NBCC Oct. 31, 1997)).

Jarrett violated FINRA Conduct Rules 3270 (for conduct on or after December 15, 2010) and 2010 (for conduct on or after December 15, 2008).⁵⁹

D. Jarrett Violated FINRA Procedural Rule 8210 and Conduct Rule 2010 by Failing to Provide Documents, Written Information and Testimony (Fifth Cause of Action)

In connection with its investigation into two customer complaints, FINRA staff sought documents, written information and testimony from Jarrett. Pursuant to FINRA Procedural Rule 8210, the staff sent him a request for documents and other information on March 8, 2012, and on March 28, 2012. The staff also sent him a request for an on-the-record interview on May 1, 2012. Each request was sent to Jarrett's CRD Address. He is deemed to have received each request.⁶⁰ He failed to comply with any of the requests and, through counsel, expressly refused to provide testimony.

FINRA Procedural Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to

⁵⁹ FINRA Conduct Rule 2010 became effective on December 15, 2008 (*See* Regulatory Notice 08-57) and is identical to NASD Conduct Rule 2110. In light of the Hearing Officer's conclusion that Jarrett violated FINRA Conduct Rules 3270 and 2010, and in view of the sanctions imposed as a result, it is not necessary to reach the question of whether Jarrett's affiliation and activities in connection with Jarrett Financial Services, LLC also fell within the scope of NASD Conduct Rule 3030 (for conduct before December 15, 2010). Accordingly, the Hearing Officer declines to find that Jarrett violated that Rule (or NASD Conduct Rule 2110 as a result thereof).

⁶⁰ *See* Rule 8210(d). Jarrett also had actual knowledge of the May 1, 2012 request, in light of his lawyer's May 3 email to the staff confirming receipt of that request.

cooperate fully and promptly with requests for information.⁶¹ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.⁶² It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁶³ Accordingly, based on his failures to respond to requests for documents, written information and testimony, the Hearing Officer concludes that Jarrett violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

V. Sanctions

A. Jarrett is Barred for Conversion and Securities Fraud and Ordered to Pay Restitution and Interest to the Affected Customers

Jarrett convinced two customers (JK and CR), one of whom was elderly, to give him \$375,000 to invest for them, based on his recommendations. He then misappropriated their funds for his own, unauthorized purposes. This conduct constitutes conversion and is patently antithetical to the high standards of conduct FINRA seeks to promote.⁶⁴ The Sanction Guidelines recommend a bar for conversion, regardless of the amount converted.⁶⁵ The record does not

⁶¹ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted). See also *Morton Bruce Erenstein*, 316 Fed. App'x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) ("[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.").

⁶² *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Secs., Inc. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

⁶³ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *29–30 (Jan. 30, 2009).

⁶⁴ See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24–25 (NAC May 23, 2001).

⁶⁵ *Guidelines*, at 36.

reflect any mitigating circumstances.⁶⁶ Accordingly, Jarrett will be barred from associating with any FINRA member firm in any capacity for conversion of customers' funds, in violation of FINRA Conduct Rules 2150 and 2010.

Jarrett also facilitated his conversion of JK's funds through securities fraud, namely, an intentional misrepresentation and omission. For intentional or reckless misrepresentations or omissions of material fact, the Guidelines recommend a bar in egregious cases.⁶⁷ Jarrett's violation was egregious. He told JK that her IRA was losing money and that she should sell it and give him the funds to invest in a money market fund at Jarrett Financial Services, LLC. He did not tell her that, instead, he would convert her funds to his personal use. His misrepresentation and omission enabled him to convert a significant sum—\$65,000.⁶⁸ Accordingly, given the absence of mitigating circumstances,⁶⁹ Jarrett will be barred from associating with any FINRA member firm in any capacity for engaging in securities fraud.

Additionally, if an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct, the Guidelines encourage ordering restitution "to restore the status quo ante where a victim otherwise would unjustly suffer loss."⁷⁰ In this case, both customers will

⁶⁶ After receiving repeated requests for the return of her money, Jarrett wired \$10,200 to JK's checking account on December 16, 2011—eight months after the conversion. Given that he made only a partial repayment after eight months and numerous requests, and given the complete failure to repay any of the converted funds to CR, the partial repayment to JK is not a mitigating factor. *See Dep't of Enforcement v. Easley*, No. 2008013474501, 2009 FINRA Discip. LEXIS 31, at *9–10 (OHO Sept. 14 2009) (finding that partial repayment after 15 months and only after respondent was threatened with legal action was not mitigating and finding, further, that respondent should have "voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct," quoting, *Dep't of Enforcement v. Farley*, No. C9A000038, 2001 NASD Discip. LEXIS 51, at *11 (OHO Oct. 2, 2001)).

⁶⁷ *Guidelines*, at 88.

⁶⁸ *See Id.* at 7 (Principal Considerations in Determining Sanctions, No. 18) ("The number size and character of the transactions at issue").

⁶⁹ *See supra* note 66.

⁷⁰ *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

continue to unjustly suffer a loss as a result of Jarrett's wrongful conduct unless restitution is ordered. For these reasons, an order of restitution is appropriate. Therefore, Jarrett will be ordered to pay restitution to JK in the amount of \$54,800 (the amount converted, less the \$10,200 Jarrett repaid), plus interest. Jarrett will also be ordered to pay restitution to CR in the amount of \$310,000, plus interest.

B. Jarrett is Barred for Undisclosed Outside Business Activities.

Jarrett failed to disclose to his employing member firm the existence of an entity he owned and used to facilitate his conversion of \$375,000 from two of KSI's customers. The Guidelines provide that "in egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm, consider a longer suspension [than a year] or a bar."⁷¹ Jarrett's conduct was egregious as it resulted in substantial injury to his member firm's customers.⁷² There are no mitigating factors. Jarrett will, therefore, be barred for violating FINRA Conduct Rules 3270 and 2010.

C. Jarrett is Barred for Failing to Provide Documents, Written Information, and Testimony

In violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, Jarrett failed to provide documents, written information, and testimony. Under the Guidelines, a bar should be standard if the individual did not respond in any manner.⁷³ If mitigation exists or the response was untimely, the adjudicator should consider a suspension of up to two years.⁷⁴ Additionally,

⁷¹ *Id.* at 13.

⁷² *See Id.* (Principal Considerations in Determining Sanctions, Nos. 1 & 2).

⁷³ *Id.* at 33.

⁷⁴ *Id.*

the Guidelines list as a principal consideration in assessing sanctions the importance of the information requested from FINRA's perspective.⁷⁵

Applying the relevant foregoing principles to this case, the Hearing Officer concludes that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction. The staff sent Jarrett three requests under Rule 8210: two requests for documents and written information, and one request for testimony. The information sought, but not provided, was important, as the staff was investigating two customer complaints about Jarrett's conduct.⁷⁶ Further, Market Regulation represents that his failure to comply with the requests impeded FINRA's investigation.⁷⁷ Finally, the record does not disclose any mitigating factors that would warrant permitting Jarrett to remain in the securities industry. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for Jarrett's failure to provide documents, written information, and testimony.

VI. Order

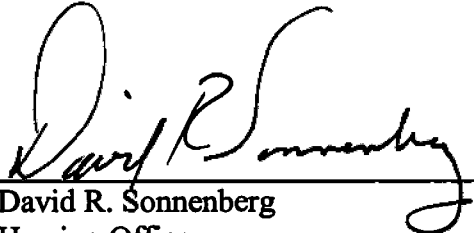
Jeffrey Austin Jarrett is barred from associating with any member firm in any capacity for (i) converting customers' funds, in violation of FINRA Conduct Rules 2150 and 2010; (ii) defrauding a customer in willful violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Conduct Rules 2020 and 2010; (iii) failing to disclose outside business activities, in violation of FINRA Conduct Rules 3270 and 2010; and (iv) failing to provide documents, written information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

⁷⁵ *Id.*

⁷⁶ Decl. ¶ 13.

⁷⁷ Motion 14.

Additionally, Jarrett is ordered to pay restitution to: (1) customer JK in the amount of \$54,800, plus interest from April 12, 2011 (i.e., the date of the conversion) until paid in full; and (2) customer CR in the amount of \$310,000, plus interest from December 31, 2010 (i.e., the end of the month in which Jarrett converted CR's second payment)⁷⁸ until paid in full. Interest shall accrue at the rate set in 26 U.S.C. § 6621(a)(2).⁷⁹ If this decision becomes FINRA's final disciplinary action, the bars shall take effect immediately.⁸⁰


David R. Sonnenberg
Hearing Officer

Copies to:

Jeffrey Austin Jarrett (*via overnight courier and first-class mail*)
Joel S. Vengrin, Esq. (*via electronic mail and first-class mail*)
Lora W. Alexander, Esq. (*via electronic mail and first-class mail*)
James J. Nixon, Esq. (*via electronic mail*)

⁷⁸ Under the Sanction Guidelines, interest on restitution generally runs from the date(s) of the violative conduct. *Guidelines*, at 11.

⁷⁹ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

⁸⁰ In the event that either customer JK or CR cannot be located, unpaid restitution (with interest) should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the respective state of JK's or CR's last known address. Satisfactory proof of payment of the restitution (with interest), or of reasonable and documented efforts undertaken to effect restitution (with interest), shall be provided to the staff of FINRA's Department of Market Regulation no later than 90 days after the date when this decision becomes final. The customers are identified here by their initials. In an addendum to this decision, which is served only on the parties, the customers are identified by name.

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

Department of Market Regulation,

Complainant,

v.

Jeffrey Austin Jarrett (CRD 4402927),

Respondent.

Disciplinary Proceeding
No. 20120315996-01

Hearing Officer:

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. Beginning in August 2010 and continuing through April 2011, Jeffrey Austin Jarrett ("Jarrett"), while registered at a FINRA member firm, through fraud and deceit, converted approximately \$375,000 from two customers, one of whom, customer CR, was elderly. Jarrett told one customer, customer JK, that he would invest her funds in a money market account with his company Jarrett Financial Services LLC and told another customer, customer CR, that he would invest her funds in an annuity with a life insurance company. Jarrett, however, did not invest the funds as he had represented to his customers. Instead, he converted the funds for his personal use in violation of FINRA Rules 2010 and 2150.

2. In connection with soliciting the purchase and sale of securities, that is, the purchase of a money market fund and the concomitant sale of mutual fund, Jarrett made fraudulent misrepresentations and omissions of material fact to customer JK concerning the use of her funds and how they would be invested, in willful violation of Section 10(b) of the

Exchange Act of 1934 and SEC Rule 10b-5 thereunder, and in violation FINRA Rules 2010 and 2020.

3. In furtherance of his fraudulent scheme, Jarrett used an outside business entity that he owned and controlled, namely Jarrett Financial Service LLC, to solicit funds from customers. On or around November 14, 2007, Jarrett organized Jarrett Financial Services LLC as a limited liability company in Indiana. Jarrett was the principal, owner and registered agent for Jarrett Financial Services LLC. Jarrett, however, failed to disclose the existence of Jarrett Financial Services LLC, as an outside business activity, to his FINRA member employer firm 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 3030 (for conduct prior to December 15, 2010) and FINRA Rule 3270 (for conduct on or after December 15, 2010).

4. In connection with the investigation into this matter, on March 8, 2012 and March 28, 2012, staff from FINRA's Offices of Fraud Detection and Market Intelligence ("OFDMI") and Market Regulation ("FINRA staff") requested documents from Jarrett pursuant to FINRA Rule 8210. Jarrett failed to respond to the FINRA Rule 8210 requests.

5. On May 1, 2012, FINRA staff requested Jarrett appear on May 15, 2012, in Rockville, Maryland, to provide testimony pursuant to Rule 8210. Jarrett refused to appear for testimony.

6. By failing to provide the requested documents and by failing to appear for testimony, Jarrett violated FINRA Rules 2010 and 8210.

The Respondent and Jurisdiction

7. Jarrett was registered with FINRA member firms from May 2001 until April 2011. Jarrett was registered with his most recent FINRA employer member firm from November 8, 2007 until April 28, 2011, when the firm filed a Form U5 terminating his registration. 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 a FINRA member firm, namely, April 28, 2011; and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member; and with failing to respond to FINRA requests for information and failing to appear for investigative testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION Manipulative and Deceptive Devices (Section 10(b) of the Securities Exchange Act, Rule 10b-5, and FINRA Rules 2010 and 2020)

8. Market Regulation realleges and incorporates by reference all preceding paragraphs.

9. In March 2011, Jarrett's customer JK, invested \$65,000 to purchase a mutual fund in an IRA held at Jarrett's FINRA member employer firm. In April 2011, Jarrett told JK that her IRA was losing money, and he recommended that she sell the mutual fund, a security, and allow him to use the proceeds to invest in another security, a money market account with Jarrett Financial Services LLC.

10. On April 11, 2011, Jarrett contacted JK by telephone to set up an in-person meeting to complete JK's investment in the money market fund with Jarrett Financial Services LLC.

11. On April 12, 2011, upon Jarrett's recommendation and advice, JK sold her IRA consisting of a \$65,000 mutual fund investment with Jarrett's FINRA member employer firm. That day, Jarrett and JK met as planned, and JK gave Jarrett a check in the amount of \$65,000. JK did not receive any documents evidencing her investment in a money market fund with Jarrett Financial Services LLC.

12. Contrary to his representations to JK, Jarrett did not invest any of her funds in a money market fund. Jarrett misappropriated JK's funds by falsely representing that he would use the money to purchase securities, when instead, Jarrett converted JK's funds for personal use.

13. After repeated requests for the return of her money, Jarrett wired \$10,200 to JK's checking account on December 16, 2011. To date, JK has not received the remaining balance of \$54,800 of her funds.

14. By engaging in the foregoing conduct, Jarrett, 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 a telephone, 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 Exchange Act of 1934 and SEC Rule 10b-5 thereunder, and in violation of FINRA Rules 2010 and 2020.

**SECOND CAUSE OF ACTION
Conversion of Customer's Funds
(FINRA Rules 2010 and 2150)**

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

16. Customer JK neither knew about nor authorized Jarrett's misappropriation of her funds for Jarrett's own personal use.

17. By engaging in the foregoing conduct, Jarrett unlawfully converted JK's funds for his personal use in violation of FINRA Rules 2010 and 2150.

**THIRD CAUSE OF ACTION
Conversion of Customer's Funds
(FINRA Rules 2010 and 2150)**

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

19. CR, an elderly customer, is related to Jarrett; her son, JR, is married to Jarrett's sister. In 2009, Jarrett solicited CR to invest \$310,000 in two flexible premium indexed annuities with an insurance company, and she purchased the annuities upon Jarrett's recommendation. Jarrett signed both annuities as CR's agent/broker.

20. In late 2010, Jarrett convinced CR to withdraw her money from the two annuities and purchase a single annuity with another insurance company. In August and December, 2010, CR liquidated the two annuities and wrote checks to Jarrett Financial Services, LLC totaling \$310,000.

21. Jarrett represented to CR that he was investing the \$310,000 in a single annuity with a different life insurance company because she would make a better return on her investment.

22. Jarrett misappropriated CR's funds by falsely representing that he would use her money to purchase the annuity, when instead, Jarrett converted CR's funds for his own personal use.

23. Customer CR neither knew about nor authorized Jarrett's misappropriation of her funds for Jarrett's own personal use.

24. To date, CR has not received any information from Jarrett regarding her funds and has not received the return of her \$310,000.

25. By engaging in the foregoing conduct, Jarrett unlawfully converted CR's funds for his personal use in violation of FINRA Rules 2010 and 2150.

FOURTH CAUSE OF ACTION
Failure to Disclose Outside Business Activities
(NASD Rules 2110 and 3030, and FINRA Rules 2010 and 3270)

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

27. On or around November 14, 2007, Jarrett organized Jarrett Financial Services LLC as a limited liability company in Indiana. At all times relevant to this Complaint, Jarrett was the principal and owner of, and was the registered agent for, Jarrett Financial Services LLC. Jarrett utilized Jarrett Financial Services LLC in his scheme to obtain and convert approximately \$375,000 from customers JK and CR.

28. Jarrett, however, did not provide written notice or otherwise disclose his affiliation with, or the money he received through, Jarrett Financial Services LLC to his FINRA member employer firm.

29. By failing to disclose his outside business activities while he was a registered person, Jarrett 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 3030 (for conduct on or after December 15, 2010), and FINRA Rule 3270 (for conduct on or after December 15, 2010).

FIFTH CAUSE OF ACTION
Failure to Respond to FINRA Rule 8210 Requests
(FINRA Rules 2010 and 8210)

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

31. On March 8, 2012, in furtherance of its investigation into Jarrett's conduct, FINRA staff sent Jarrett a letter pursuant to Rule 8210 requesting documents and other information related to Jarrett Financial Services LLC and Jarrett's receipt of funds from CR and JK. The Rule 8210 letter was sent to Jarrett's CRD address via first class mail and FedEx. According to FedEx records, the Rule 8210 request was delivered to Jarrett's CRD address on March 9, 2012. His response was due on March 23, 2012, but Jarrett did not respond to the request for information and documents.

32. On March 28, 2012, FINRA staff sent Jarrett a second letter pursuant to Rule 8210 again requesting documents and other information related to Jarrett Financial Services LLC and Jarrett's receipt of funds from CR and JK. The second Rule 8210 letter was sent to Jarrett's CRD address via first class mail and FedEx. According to FedEx records, the second Rule 8210

request was delivered to Jarrett's CRD address on April 3, 2012 and was signed for by J. Jarrett. Jarrett, however, did not respond to the request for information and documents.

33. On May 1, 2012, FINRA staff served a written request upon Jarrett, pursuant to Rule 8210, which required him to appear for testimony in Rockville, MD on May 15, 2012, in connection with FINRA's investigation into this matter. The request for testimony was sent to Jarrett's CRD address via first class mail and FedEx.

34. According to FedEx records, the Rule 8210 request was delivered to Jarrett's CRD address on May 2, 2012. The certified mail delivery card indicated that Jarrett received the Rule 8210 request on May 4, 2012.

35. On or about May 3, 2012, Jarrett's attorney contacted FINRA staff via email. The email confirmed that Jarrett had received the Rule 8210 request for testimony, but stated that Jarrett would not attend the testimony.

36. As a result of Jarrett's repeated failure to respond to Rule 8210 requests for documents and information and refusal to appear for testimony, FINRA staff was prevented from pursuing material areas of its investigation into Jarrett's conduct in this matter.

37. By engaging in the foregoing conduct, Jarrett violated FINRA Rules 2010 and 8210.

Prayer for Relief

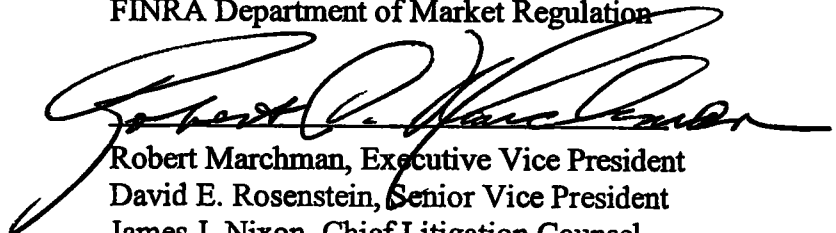
WHEREFORE, the Department of Market Regulation respectfully requests that the

Panel:

- A. make findings of fact and conclusions of law that Respondent Jeffrey Austin Jarrett 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 Respondent be required to disgorge fully any and all ill-gotten gains and/or make full restitution, together with interest;
- C. make specific findings that Respondent willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder;
- D. order that Respondent 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: April 5, 2013

FINRA Department of Market Regulation



Robert Marchman, Executive Vice President

David E. Rosenstein, Senior Vice President

James J. Nixon, Chief Litigation Counsel

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