

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Eduardo Guillermo Diaz
(CRD No. 1621873),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2012034594402

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Eduardo Guillermo Diaz (“Diaz”), at all relevant times herein, was associated with NEXT Financial Group, Inc. (“NEXT Financial”). AH is a widow with two minor children. Diaz befriended AH prior to her husband’s death. At her husband’s wake, Diaz approached AH and told her that he would take care of her finances. Shortly afterwards, Diaz opened a non-discretionary brokerage account for AH at NEXT Financial and told AH to deposit the death benefit she received from her husband’s life insurance policy into the account. AH, who had no prior investment experience, trusted Diaz and complied.

2. Within six months of receiving the death benefit, Diaz solicited AH to make a passive investment in CR, a company controlled by Diaz. During the solicitation, Diaz made numerous untrue statements of material fact and omitted material facts. For example, Diaz told AH that CR owned five rental properties on the Gulf Coast, and that Diaz was going to use AH’s

money to refinance and remodel the properties. In reality, CR did not own any properties and had no rental operations. Rather than using the money invested by AH in CR for the purposes that he had represented to AH, Diaz converted over \$126,000 of AH's funds.

3. After AH's initial investment in CR, Diaz continued to make material untrue statements to AH for approximately eight months to extract more money from her. In all, AH provided approximately \$365,000 to CR. In addition to AH's investments in CR, Diaz also borrowed money from AH, which violated his firm's WSPs. To generate the money that Diaz solicited from AH, Diaz sold securities in AH's non-discretionary brokerage account at NEXT Financial without AH's authorization. Additionally, Diaz failed to notify NEXT Financial about the CR securities that he sold to AH away from the firm or that CR was an outside business activity, both of which violated the firm's policies.

4. As a result of his misconduct, Diaz willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and also violated NASD Rules 3030 (from June 2010 through December 14, 2010) and 3040, NASD IM-2310-2, and FINRA Rules 2010, 2020, 2150, 3240 and 3270 (from December 15, 2010 through October 2012).

RESPONDENT AND JURISDICTION

5. In 1987, Diaz entered the securities industry as a general securities representative for a FINRA member. Beginning in January 2009, and throughout the time period encompassed by the conduct set forth in this Complaint, Diaz was associated with NEXT Financial and registered with FINRA as a general securities representative, general securities principal and municipal fund securities principal, until his termination from NEXT Financial in November

2012. Subsequently, Diaz briefly associated with another FINRA member in December 2012, until he was terminated from that firm on January 10, 2013.

6. Although Diaz 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 Diaz's registration with a member firm, namely, January 10, 2013; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

Other Relevant Entity Controlled by Diaz

7. CR, a non-FINRA member, is a Mississippi limited liability company formed in Mississippi on June 1, 2010.

8. The purported purpose of CR was to own and rent five rental properties on the Mississippi coast.

9. Diaz controlled the day-to-day management and operations of CR.

Diaz's Relationship of Trust and Confidence with AH

10. In 1997, AH met ND. ND subsequently married Diaz. Through her friendship with ND, AH met Diaz in 2000 or 2001. AH, ND, and Diaz were friends until July 2011, when AH became concerned about an investment that she made with Diaz, which is the subject of this Complaint. Before July 2011, AH trusted Diaz and had confidence in him to do what was best for AH.

11. AH is not related to either ND or Diaz.

12. AH's first husband, JC, died in December 2009. Prior to his death, JC owned a jewelry store. AH worked at JC's store and made a nominal salary.

13. Prior to JC's death: (1) JC handled all of AH's finances; (2) AH had no investment experience; and (3) AH never handled a brokerage account. In short, AH was not a sophisticated investor.

14. After JC died, Diaz told AH that he would take care of her.

15. At JC's wake, Diaz approached AH and said that he would handle AH's investments.

16. On or around Christmas Day of 2009, AH learned that she would receive a life insurance benefit from JC's insurance policy.

17. Between Christmas Day of 2009 and New Year's Day of 2010 (the last week of 2009), Diaz reviewed JC's financial records and told AH what to do with JC's financial estate. Diaz said that he would handle everything regarding AH's finances.

18. Prior to July 2011, Diaz told AH that he considered AH part of his family.

19. Prior to July 2011, Diaz and AH talked every day by telephone, sometimes several times a day. AH also met Diaz in person several times a month.

20. Because of AH's close relationship with Diaz and ND and her trust in them, they were guardians of AH's two minor children from January 2010 until 2012. Additionally, before July 2011, AH bought a life insurance policy for the benefit of her children and designated Diaz to manage the proceeds for AH's children in the event of her death.

21. Based on the facts in paragraphs 10-20, Diaz and AH had a relationship of trust and confidence.

AH's Brokerage Account at NEXT Financial

22. In February 2010, AH received over \$600,000 from an insurance company, which was the death benefit paid to her upon JC's death, referenced in paragraph 16 above.

23. In February 2010, in anticipation of receiving the more than \$600,000 death benefit, Diaz opened account #XXX863 at NEXT Financial for AH.

24. On February 10, 2010, AH deposited \$500,000 of the death benefit into her NEXT Financial account #XXX863 at Diaz's direction. AH did so because of her relationship of trust and confidence with Diaz. At the time, this represented the majority of AH's personal liquid net worth.

25. Initially, Diaz bought a number of securities in AH's brokerage account. Diaz did not discuss specific investments with AH. AH trusted Diaz to do what was best for her.

26. The funds that were not used to purchase securities were placed in a money market investment at NEXT Financial.

27. At the end of the first month that AH's NEXT Financial account was open, AH's account was allocated \$199,998.75 in a money market investment and \$300,453.51 in securities.

28. AH did not understand her brokerage account statements. AH asked Diaz how much money she had. Diaz told AH that she had plenty of money and that she did not need to worry about money. Diaz assured AH that she had plenty of money to take care of herself and her children.

Diaz Solicits AH to Invest in CR

29. During telephone conversations between March 1, 2010 and July 8, 2010, Diaz told AH that he had a very good investment for AH, her kids, and their future. This investment was in CR. During telephone conversations and email communications between March 1, 2010

and July 8, 2010, Diaz told AH that: (1) Diaz, ND, GDB (his brother), and AH would be the owners of CR (each owning a 25% interest); (2) AH's 25% ownership interest would cost \$75,000; (3) AH would not be responsible for making any portion of the mortgage payments for the properties owned by CR; (4) AH would not have any responsibilities in running or managing CR; (5) AH's money would be put into CR with the other investors' money; (6) Diaz was responsible for managing, controlling, and operating CR; and (7) AH's investment in CR was passive.

30. On or around July 8, 2010, based on the oral and written representations that Diaz made to AH (including the misrepresentations identified in paragraphs 31 to 36 below), and because AH trusted Diaz, AH invested \$75,000 in CR in exchange for a share of its earnings and profits.

Diaz's Untrue Statements and Omissions of Material Fact to Secure AH's Initial Investment in CR

31. During telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz made numerous untrue statements of material fact to AH in connection with her purchase of CR securities. More specifically, during telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz made the following untrue statements of material fact to AH: (1) the CR properties were rental houses located on the Mississippi coast in Ocean Springs, Mississippi; (2) the five properties owned by CR were: (a) 119 Waters Edge; (b) 118 Waters Edge; (c) 3412 Dijon Avenue; (d) 109 San Souci Avenue; and (e) 106 La Branche (collectively, the "Properties"); (3) that AH's \$75,000 investment in CR would generate a yearly return of 5% annually, which would provide a return of \$3,750 annually; (4) the Properties had a collective value of \$1,525,000; (5) that Diaz would rent the houses, CR would make money from the rentals, and that if AH invested in CR, AH

would earn income from the Properties; and (6) Diaz would use AH's money to: (a) refinance the mortgages on the Properties; (b) make cosmetic repairs to the Properties; (c) change appliances at the Properties; and (d) pay property taxes on the Properties.

32. On June 30, 2010, Diaz emailed a document to AH. Diaz created the document and used a personal email account to transmit it to AH.

33. The document identified in paragraph 32 was consistent with the false statements Diaz had previously told AH about CR in paragraph 31. The emailed document: (1) identified the Properties; (2) described the outstanding indebtedness on the Properties; (3) represented a current market value for the Properties; and (4) represented the equity value AH would receive for investing \$75,000 in CR.

34. The representations in paragraphs 31 and 33 were false because: (1) CR did not own the Properties; (2) AH's investment in CR did not generate a yearly return of 5% annually or a return of \$3,750 annually; (3) CR could not rent the Properties because: (a) it did not own the Properties; (b) some of the Properties were severely damaged and were uninhabitable; and (c) several of the Properties were in various stages of foreclosure; (4) the damaged Properties that had not been rebuilt had a current market value that was materially less than Diaz represented to AH; and (5) Diaz intended to use a substantial portion of AH's money to pay his personal expenses, which included past due debts to his former employer, past due taxes to the IRS, trips, haircuts, clothing, and other personal expenditures.

35. During telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz omitted to state material facts to AH in connection with AH's purchase of CR securities. More specifically, during telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz omitted to state the following

material facts to AH: (1) 119 Waters Edge, Ocean Springs, Mississippi was owned by AD (Diaz's mother); (2) 118 Waters Edge, Ocean Springs, Mississippi was owned by GDF (Diaz's deceased father); (3) 3412 Dijon Avenue, Ocean Springs, Mississippi was owned by Diaz's mother and deceased father; (4) 109 San Souci Avenue, Ocean Springs, Mississippi was owned by Diaz's mother and deceased father; (5) 106 La Branche, Ocean Springs, Mississippi was owned by Diaz's mother and deceased father; (6) many of the Properties were behind on mortgage payments and were in varying stages of possible foreclosure; (7) some of the Properties had substantial damage from a hurricane and would need to be rebuilt before they would be suitable for renting to tenants; (8) Diaz intended to use a substantial portion of the money that AH provided to CR to pay Diaz's personal income taxes, personal debts, and other personal expenses; and (9) Diaz owed over \$200,000 to the IRS.

36. On or around July 8, 2010, Diaz told AH in a telephone conversation that Hancock Bank account #XXX824 was an account he controlled and that money in that account was for CR. On or around July 8, 2010, Diaz sent the wiring instructions to AH via text message. Diaz, however, omitted to state the material fact to AH that Hancock Bank account #XXX824 was a joint personal account for Diaz and his wife, ND.

37. On or around July 8, 2010, AH funded her initial \$75,000 investment identified in paragraph 30. Actually, AH wired \$150,000 from her checking account at Regions Bank to Hancock Bank account #XXX824 on or around July 8, 2010: \$75,000 was for her initial investment in CR; and the remaining \$75,000 was to fund a loan to CR, which is discussed in paragraphs 63-64 below.

38. From July 9, 2010 (after AH sent the money identified in paragraph 37 to Hancock Bank account #XXX824) to September 2, 2010, Diaz spent, without AH's knowledge

or authorization, at least \$75,600 of AH's \$150,000 (\$75,000 initial investment and \$75,000 loan) from that account on personal expenses, including payments to the IRS, payment of a debt to Diaz's former employer, lodging, restaurants, payments to Diaz's investment-adviser business, charitable contributions, clothing, car rental, gas, haircuts, cosmetics, liquor, and medical expenses.

Diaz's Unauthorized Trading in AH's NEXT Financial Account and AH's Additional Investments in CR in Reliance on Diaz's Untrue Statements of Material Fact

39. On or about August 20, 2010, AH received a "Notice of Standing Instruction" from NEXT Financial indicating that NEXT Financial had established a standing instruction in AH's brokerage account to allow the electronic transfer of assets with AH's Regions Bank account. Diaz asked AH to sign documents to permit the transfer of money that AH might need. At Diaz's direction, AH signed the documents because AH trusted Diaz.

40. On August 26, 2010, AH received \$90,000 in her Regions Bank account. Diaz, without telling AH, wired the \$90,000 from AH's NEXT Financial account to AH's Regions Bank account. Diaz, without AH's knowledge or authorization, sold some of the securities held in AH's NEXT Financial account to generate the cash necessary for the \$90,000 wire transfer. [Attached hereto as Appendix A is a table detailing all of the unauthorized transactions in AH's brokerage account].

41. Around the time that AH received the \$90,000 wire transfer, Diaz made an untrue statement of material fact to AH in a telephone conversation by stating that Diaz needed more money for the CR Properties. AH agreed to send CR \$80,000 for the CR Properties.

42. On September 3, 2010, at Diaz's direction, AH wired \$80,000 from AH's checking account at Regions Bank to Hancock Bank account #XXX824. This money represented an additional investment in CR.

43. AH provided the \$80,000 referenced in paragraphs 41-42 to CR for its general business operations. AH expected to be repaid from CR profits, rents, and/or refinancing. AH expected to earn a profit from the money AH provided to CR. The money AH provided to CR: (1) did not have a specified interest rate; (2) was not supported by collateral; and (3) was not insured. The money was not required to be repaid in less than nine months. The money was not: (1) delivered in consumer financing; (2) secured by a mortgage on a home; (3) short term and secured by a lien on a small business or some of its assets; (4) a character loan to a bank customer; (5) short term and secured by an assignment of accounts receivable; (6) a simple formalization of an open-account debt incurred in the ordinary course of business; and/or (7) evidencing loans by a commercial bank for current operations. The money AH provided to CR was uncollateralized and uninsured. As a result of the foregoing, the additional \$80,000 provided by AH to CR constituted the purchase of a security.

44. From September 4, 2010 (after AH wired the money identified in paragraph 42 to Hancock Bank account #XXX824) to October 11, 2010, Diaz spent, without AH's knowledge or authorization, at least \$11,500 of the \$80,000 AH sent to that account on personal expenses, including hotels, gas, auto parts, restaurants, haircuts, payments to Diaz's investment-adviser business, and theater tickets.

45. On October 8, 2010, AH received \$40,000 in her Regions Bank account. AH thought this money came from CR. Diaz, however, without telling AH, wired the \$40,000 from AH's NEXT Financial account to AH's Regions Bank account. Diaz, without AH's knowledge or authorization, sold some of the securities held in AH's NEXT Financial account to generate the cash necessary for the \$40,000 wire transfer. [See Appendix A].

46. Around the time AH received the \$40,000 wire transfer, Diaz made an untrue statement of material fact to AH in a telephone conversation by stating that Diaz needed more money for the CR Properties. AH agreed to send CR \$25,000 for the CR Properties.

47. On October 12, 2010, at Diaz's direction, AH submitted wire instructions to Regions Bank to wire \$25,000 from AH's checking account at Regions Bank to Hancock Bank account #XXX824. The wire transfers were completed over the next three days. This money represented an additional investment in CR.

48. AH provided the \$25,000 referenced in paragraphs 46-47 to CR for its general business operations. AH expected to be repaid from CR profits. AH expected to earn a profit from the money AH provided to CR. The money AH provided to CR: (1) did not have a specified interest rate; (2) was not supported by collateral; and (3) was not insured. The money was not required to be repaid in less than nine months. The money was not: (1) delivered in consumer financing; (2) secured by a mortgage on a home; (3) short term and secured by a lien on a small business or some of its assets; (4) a character loan to a bank customer; (5) short term and secured by an assignment of accounts receivable; (6) a simple formalization of an open-account debt incurred in the ordinary course of business; and/or (7) evidencing loans by a commercial bank for current operations. The money AH provided to CR was uncollateralized and uninsured. As a result of the foregoing, the additional \$25,000 provided by AH to CR constituted the purchase of a security.

49. From October 13, 2010 (after AH wired the money identified in paragraph 47 to Hancock Bank account #XXX824) to November 17, 2010, Diaz spent, without AH's knowledge or authorization, at least \$6,600 of the \$25,000 AH sent to that account on personal expenses,

including restaurants, medical expenses, books, gas, and payments to Diaz's investment-adviser business.

50. In early November 2010, AH asked Diaz to send AH money so that she could remodel her garage. On November 16, 2010, AH received \$45,000 in her Regions Bank account. Diaz explained to AH that this was money that Diaz had set aside for AH. Based on Diaz's explanation, AH believed that this money came from CR. Instead, Diaz, without telling AH, wired the \$45,000 from AH's NEXT Financial account to AH's Regions Bank account. In actuality, Diaz was sending money from AH's NEXT Financial account to AH's Regions Bank account. Diaz, without AH's knowledge or authorization, sold some of the securities held in AH's NEXT Financial account to generate the cash necessary for the \$45,000 wire transfer. [See Appendix A].

51. Around the time AH received the \$45,000 wire transfer, Diaz made an untrue statement of material fact to AH in a telephone conversation by stating that Diaz needed more money for the CR Properties. AH agreed to send CR \$35,000 for the CR Properties.

52. On November 18, 2010, at Diaz's direction, AH wired \$35,000 from AH's checking account at Regions Bank to Hancock Bank account #XXX824. This money represented an additional investment in CR.

53. AH provided the \$35,000 referenced in paragraphs 51-52 to CR for its general business operations. AH expected to be repaid from CR profits. AH expected to earn a profit from the money AH provided to CR. The money AH provided to CR: (1) did not have a specified interest rate; (2) was not supported by collateral; and (3) was not insured. The money was not required to be repaid in less than nine months. The money was not: (1) delivered in consumer financing; (2) secured by a mortgage on a home; (3) short term and secured by a lien

on a small business or some of its assets; (4) a character loan to a bank customer; (5) short term and secured by an assignment of accounts receivable; (6) a simple formalization of an open-account debt incurred in the ordinary course of business; and/or (7) evidencing loans by a commercial bank for current operations. The money AH provided to CR was uncollateralized and uninsured. As a result of the foregoing, the additional \$35,000 provided by AH to CR constituted the purchase of a security.

54. From November 18, 2010 (after AH wired the money identified in paragraph 52 to Hancock Bank account #XXX824) to April 11, 2011, Diaz spent, without AH's knowledge or authorization, at least \$23,700 of the \$35,000 AH sent to that account on personal expenses, including restaurants, disability insurance premiums, professional licensing fees, car rental, photography, gas, hotel, medical, haircuts, children's clothing, shoes, charitable contributions, theater tickets, gifts, gas, parking, auto repair, and payments to Diaz's investment-adviser business.

55. On March 8, 2011, AH received \$20,000 in her Regions Bank account. Diaz, without telling AH, wired the \$20,000 from AH's NEXT Financial account to AH's Regions Bank account. AH did not know that Diaz was sending money from AH's NEXT Financial account to AH's Regions Bank account. Diaz, without AH's knowledge or authorization, sold some of the securities held in AH's NEXT Financial account to generate the cash necessary for the \$20,000 wire transfer. [See Appendix A].

56. In April 2011, Diaz made an untrue statement of material fact to AH in a telephone conversation by stating that Diaz needed more money for the CR Properties. AH agreed to send CR \$25,000 for the CR Properties.

57. On April 12, 2011, at Diaz's direction, AH wired \$25,000 from AH's checking account at Regions Bank to Hancock Bank account #XXX824. This money represented an additional investment in CR.

58. AH provided the \$25,000 referenced in paragraphs 56-57 to CR for its general business operations. AH expected to be repaid from CR profits. AH expected to earn a profit from the money AH provided to CR. The money AH provided to CR: (1) did not have a specified interest rate; (2) was not supported by collateral; and (3) was not insured. The money was not required to be repaid in less than nine months. The money was not: (1) delivered in consumer financing; (2) secured by a mortgage on a home; (3) short term and secured by a lien on a small business or some of its assets; (4) a character loan to a bank customer; (5) short term and secured by an assignment of accounts receivable; (6) a simple formalization of an open-account debt incurred in the ordinary course of business; and/or (7) evidencing loans by a commercial bank for current operations. The money AH provided to CR was uncollateralized and uninsured. As a result of the foregoing, the additional \$25,000 provided by AH to CR constituted the purchase of a security.

59. From April 12, 2011 (after AH wired the money identified in paragraph 57 to Hancock Bank account #XXX824) to April 22, 2011, Diaz spent, without AH's knowledge or authorization, at least \$3,100 of the \$25,000 AH sent to that account on personal expenses, including restaurants and payments to Diaz's investment-adviser business.

60. In April 2011, Diaz made an untrue statement of material fact to AH in a telephone conversation by stating that Diaz needed \$50,000 to refinance a CR Property. On or about April 22, 2011, Diaz went to Hancock Bank and obtained paperwork for AH to sign that pledged a certificate of deposit as collateral for a loan. AH received the paperwork through the

mail. As Diaz instructed, AH signed the paperwork and returned it along with a check for \$50,000 to obtain the certificate of deposit that would be used as collateral for the loan. AH did not understand the paperwork, but AH signed the paperwork and returned it as Diaz instructed because AH trusted Diaz. Several months later, AH received a notice from Hancock Bank that AH had a delinquent loan. AH did not know that she had a loan with Hancock Bank. AH contacted Hancock Bank to ask about the delinquent loan. During this conversation, AH learned that Diaz opened a line of credit at Hancock Bank in AH's name and used the entire amount of the credit. Diaz did not tell AH that Diaz opened a line of credit in AH's name. It was only after Diaz failed to make payments on this loan that AH discovered it.

61. From April 23, 2011 (after AH provided the money identified in paragraph 60 to Diaz) to June 20, 2011, Diaz spent, without AH's knowledge or authorization, at least \$5,400 of the \$50,000 that AH provided to CR on personal expenses, including restaurants, gas, theater tickets, hotel, and payments to Diaz's investment-adviser business.

62. Diaz represented that the money AH provided to CR in paragraphs 39-61 (beyond AH's initial investment of \$75,000 and the concurrent loan of \$75,000 as identified in paragraphs 63-65 below) may have entitled her to an additional ownership interest in CR.

AH's Loans to Diaz

63. During telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz asked AH to loan \$75,000 to CR. During telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz made numerous untrue statements of material fact to AH in connection with the \$75,000 loan. More specifically, during telephone conversations and email communications between March 1, 2010 and July 8, 2010, Diaz made the following untrue statements of material fact to AH to induce AH to loan

\$75,000 to CR: (1) the loan would be used to: (a) refinance the mortgages on the Properties; (b) make cosmetic repairs to the Properties; (c) change appliances at the Properties; and (d) pay property taxes on the Properties; (2) the loan would be repaid in sixty days; and (3) Diaz would make AH a beneficiary on Diaz's life insurance policy if AH loaned money to CR.

64. The representations in paragraph 63 were false because, as identified in paragraph 38, Diaz: (1) used a substantial portion of the money that AH provided to CR to pay Diaz's personal income taxes, personal debts, and other personal expenses; (2) did not repay the loan in sixty days; and (3) did not make AH the beneficiary on his life insurance policy.

65. On or around July 8, 2010, AH funded the \$75,000 loan by wiring the money from AH's checking account at Regions Bank to Hancock Bank account #XXX824.

66. In March 2011, Diaz told AH in a telephone conversation that he needed money for personal reasons. AH agreed to send Diaz \$12,000.

67. On March 11, 2011, at Diaz's direction, AH wired \$12,000 from AH's checking account at Regions Bank to Hancock Bank account #XXX824.

Diaz Converted a Substantial Portion of the Money AH Provided to CR

68. From July 2010 through November 2010, Diaz's Hancock Bank account #XXX824 was comprised almost entirely of funds that were provided by AH for purposes of her investments in CR and loan to CR to use for its general business operations. From July 2010 through November 2010, Diaz spent at least \$126,000 of the money provided by AH on personal expenditures that did not benefit CR or AH. As described in paragraphs 38, 44, 49, 54, 59, and 61 above, these personal expenditures included Diaz's personal income tax payments to the IRS, the settlement of a debt owed to Diaz's previous employer, meals, salon services, clothing, and several other personal matters that did not involve CR business matters.

69. The only loan that Diaz told AH would be used for Diaz's personal expenses was the \$12,000 loan referenced in paragraphs 66-67. For all of the other investments and the loan to CR identified in this Complaint, Diaz did not tell AH that he would use any of the money that AH provided to him for personal expenses.

NEXT Financial's Policies and AH's Account

70. Diaz failed to notify NEXT Financial of the loans made by AH to Diaz. From July 2010 through November 2010, NEXT Financial's policy prohibited Diaz from borrowing from customers in all circumstances.

71. AH's NEXT Financial account was not discretionary. NEXT Financial did not accept AH's account as discretionary.

72. Diaz failed to notify NEXT Financial about his solicitation of AH's investment in CR.

73. While employed at NEXT Financial, Diaz engaged in business activities with CR outside the scope of his relationship with NEXT Financial, without providing prior written notice to NEXT Financial or receiving NEXT Financial's written approval.

FIRST CAUSE OF ACTION

**MISREPRESENTATIONS AND MATERIAL OMISSIONS OF FACT
(Willful Violations of Section 10(b) of the Exchange Act and Rule 10b-5
and Violations of FINRA Rules 2020 and 2010)**

74. The Department realleges and incorporates by reference paragraphs 1 through 73 above.

75. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, by the use of any means or instrumentality of interstate commerce, or of the mails, to employ a device, scheme or artifice to defraud; make any untrue statement of material

fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engage in an act, practice, or course of business that operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of a security.

76. FINRA Rule 2020 likewise provides that: “No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

77. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”

78. Diaz, in connection with the sale of a security, directly or indirectly, by use of means or instrumentalities of interstate commerce or the mails, knowingly or recklessly employed a device, scheme or artifice 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 in which they were made, not misleading; and engaged in an act, practice, or course of business that 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. More specifically, Diaz, during telephone conversations and email communications between March 1, 2010 and July 8, 2010, intentionally or recklessly made the following untrue statements of material fact to AH: (1) the CR properties were rental houses located on the Mississippi coast in Ocean Springs, Mississippi; (2) CR owned the Properties; (3) that AH’s \$75,000 investment in CR would generate a yearly return of 5% annually, which would provide a return of \$3,750 annually; (4) the Properties had a current market value of \$1,525,000; (5) that Diaz would rent the houses, CR

would make money from the rentals, and that if AH invested in CR, AH would earn income from the Properties; and (6) Diaz would use AH's money to: (a) refinance the mortgages on the Properties; (b) make cosmetic repairs to the Properties; (c) change appliances at the Properties; and (d) pay property taxes on the Properties.

79. The representations in paragraph 78 were false because: (1) CR did not own the Properties; (2) AH's investment in CR did not generate a yearly return of 5% annually or a return of \$3,750 annually; (3) the damaged Properties that had not been rebuilt had a current market value that was materially less than Diaz represented to AH; (4) CR could not rent the Properties because: (a) CR did not own the Properties; (b) some of the Properties were severely damaged and were uninhabitable; and (c) several of the Properties were in foreclosure; and (5) Diaz used a substantial portion of the money AH invested in CR to pay his personal expenses, which included past due debts to his former employer, past due taxes to the IRS, trips, haircuts, clothing, and other personal expenditures.

80. Moreover, Diaz intentionally or recklessly omitted to state material facts to AH. More specifically, during telephone conversations and email communications from March 2010 through October 2012, Diaz intentionally or recklessly omitted to state the following material facts: (1) Hancock Bank account #XXX824 was a joint personal account for Diaz and his wife; (2) 119 Waters Edge, Ocean Springs, Mississippi was owned by AD (Diaz's mother); (3) 118 Waters Edge, Ocean Springs, Mississippi was owned by GDF (Diaz's deceased father); (4) 3412 Dijon Avenue, Ocean Springs, Mississippi was owned by his mother and deceased father; (5) 109 San Souci Avenue, Ocean Springs, Mississippi was owned by his mother and deceased father; (6) 106 La Branche, Ocean Springs, Mississippi was owned by his mother and deceased father; (7) many of the Properties were behind on mortgage payments and were in varying stages

of foreclosure; (8) some of the Properties had substantial damage from a hurricane and would need to be rebuilt before they would be suitable for renting to tenants; (9) Diaz was going to take AH's initial \$75,000 investment and use it for personal expenses; and (10) Diaz owed over \$200,000 to the IRS. Diaz had a duty to disclose this omitted material information to AH because: (1) the omitted material facts made the facts that Diaz disclosed to AH materially false and/or misleading; and (2) Diaz owed a duty of trust and confidence to AH.

81. In addition, the money provided by AH to CR, identified in paragraphs 39-61, constituted additional purchases of CR securities because: (1) AH provided the money to CR for its general business operations; (2) AH expected to be repaid from CR profits, rents, and/or refinancing; (3) AH expected to earn a profit from the money AH provided to CR; (4) the money AH provided to CR: (a) did not have a specified interest rate; (b) was not supported by collateral; (c) was not insured; (d) was not required to be repaid in less than nine months; (e) was not: (i) delivered in consumer financing; (ii) secured by a mortgage on a home; (iii) short term and secured by a lien on a small business or some of its assets; (iv) a character loan to a bank customer; (v) short term and secured by an assignment of accounts receivable; (vi) a simple formalization of an open-account debt incurred in the ordinary course of business; and/or (vii) evidencing loans by a commercial bank for current operations; (5) the money AH provided to CR was uncollateralized and uninsured; and (6) Diaz represented that the money AH provided to CR identified in paragraphs 39-61 (beyond the initial investment of \$75,000 and the concurrent loan of \$75,000 as identified in paragraphs 37, 63-65) may have entitled AH to an additional ownership interest in CR.

82. During telephone conversations and written communications between August 26, 2010 and April 30, 2010, Diaz, in connection with sales of securities identified in paragraphs 39-

61, intentionally or recklessly made untrue statements of material fact to AH; namely that Diaz needed more money for the CR Properties. This statement was untrue because Diaz intended to use a substantial portion of the money AH provided to pay his personal expenses, which included past due debts to his former employer, past due taxes to the IRS, trips, haircuts, clothing, hotels, gas, auto parts, restaurants, haircuts, payments to Diaz's investment-adviser business, and theater tickets. Diaz's use of the proceeds for his personal expenses did not benefit CR, the Properties, or AH.

83. Diaz employed the means of transportation or communication in interstate commerce in connection with sales of CR securities, including: (1) telephone calls to AH; (2) the use of emails and mail to send documents to AH concerning the CR investments; (3) sending instructions to wire money to Diaz's bank account via text message; and (4) wire transfers from AH's brokerage account to AH's bank account, followed by wire transfers from AH's bank account to Diaz's bank account.

84. By engaging in the foregoing misconduct, Diaz willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and also violated FINRA Rules 2020 and 2010.

SECOND CAUSE OF ACTION

CONVERSION (Violations of FINRA Rules 2150 and 2010)

85. The Department realleges and incorporates by reference paragraphs 1 through 84 above.

86. FINRA Rule 2150(a) provides that: "No member or person associated with a member shall make improper use of a customer's securities or funds."

87. AH's investments in CR and the loan to CR, which totaled at least \$365,000, were not paid directly from AH's NEXT Financial account. Rather, amounts withdrawn from AH's

NEXT Financial account were transferred to AH's bank account. At Diaz's request, AH then wired the funds comprising the investments and loan to Hancock Bank account #XXX824, which was a personal bank account controlled by Diaz. These deposits occurred between July 2010 and April 2011. In reliance upon representations made by Diaz, the funds provided by AH to Diaz were intended for use by CR for its general business operations.

88. From July 2010 through October 2012, Diaz's Hancock Bank account #XXX824 was comprised almost entirely of funds that were provided by AH for purposes of her investments in CR and the loan to CR. Between July 2010 and June 2011, Diaz improperly converted at least \$126,000 of these funds in Hancock Bank account #XXX824 to his personal use for expenditures that did not benefit CR or AH. The converted funds were used to pay for Diaz's personal income tax debt to the IRS, the settlement of a debt owed to Diaz's previous employer, hotels, gas, auto parts, restaurants, haircuts, medical bills, payments to Diaz's investment-adviser business, and theater tickets.

89. As a result of the foregoing conduct, Diaz violated FINRA Rules 2150 and 2010.

THIRD CAUSE OF ACTION

UNAUTHORIZED TRADING (Violations of FINRA Rule 2010 and NASD IM-2310-2)

90. The Department realleges and incorporates by reference paragraphs 1 through 89 above.

91. FINRA Rule 2010 mandates that members observe high standards of commercial honor and just and equitable principles of trade. IM-2310-2 requires registered representatives to deal fairly with customers, which includes refraining from executing unauthorized transactions.

92. During the period from on or about August 12, 2010 through on or about March 8, 2011, Diaz executed 22 transactions in AH's account, as more fully detailed on Appendix A

attached hereto and incorporated herein by reference, without AH's prior knowledge, authorization or consent.

93. The unauthorized transactions in AH's NEXT Financial brokerage account as listed in Appendix A (attached hereto) resulted in over \$195,000 in cash that Diaz sent to AH, which AH believed were distributions from CR.

94. Such acts, practices and conduct constituted separate and distinct violations of FINRA Rule 2010 and NASD IM-2310-2 by Diaz.

FOURTH CAUSE OF ACTION

SELLING AWAY (PRIVATE SECURITIES TRANSACTIONS) (Violations of NASD Rule 3040 and FINRA Rule 2010)

95. The Department realleges and incorporates by reference paragraphs 1 through 94 above.

96. NASD Rule 3040(b) provides that:

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

97. Diaz, acting outside the course and scope of his employment with his employing member firm NEXT Financial, participated in private securities transactions for compensation with AH without providing prior written or oral notice to NEXT Financial of his proposed role in, or the selling compensation that he may receive from, the transactions. NEXT Financial did not approve Diaz's private securities transactions with AH.

98. AH's investments in CR constituted securities.

99. Specifically, from July 2010 through October 2012, while associated with NEXT Financial, Diaz participated in the CR securities transactions by: (1) soliciting AH to invest in CR; (2) facilitating AH's investment in CR; (3) assisting AH with the mechanics of the CR investment; and (4) receiving the proceeds of AH's investment in CR. The facts and circumstances as described in paragraphs 29-62 establish that AH's investments in CR were private securities transactions.

100. As a result of the foregoing, Diaz violated NASD Rule 3040 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

OUTSIDE BUSINESS ACTIVITY

(Violations of NASD Rule 3030 (from June 2010 through December 14, 2010); FINRA Rule 3270 (from December 15, 2010 through October 2012); and FINRA Rule 2010)

101. The Department realleges and incorporates by reference paragraphs 1 through 100 above.

102. NASD Rule 3030 prohibits any person associated with a member in any registered capacity from being employed by, or accepting 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.

103. FINRA Rule 3270 prohibits any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another 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 firm in the form specified by the firm and received approval from the firm.

104. From June 2010 through October 2012, NEXT Financial required its representatives to disclose their outside business activities.

105. From June 2010 through October 2012, while employed at NEXT Financial, Diaz engaged in business activities with CR outside the scope of his relationship with NEXT Financial, without providing prior written notice to NEXT Financial or receiving NEXT Financial's written approval. Diaz's participation in CR was not passive. Diaz was a member and manager of CR and received approximately \$126,000 in compensation as a result of his business activity with CR.

106. As a result of the foregoing conduct, Diaz violated NASD Rule 3030 (from June 2010 through December 14, 2010); FINRA Rule 3270 (from December 15, 2010 through October 2012); and FINRA Rule 2010.

SIXTH CAUSE OF ACTION

IMPERMISSIBLE BORROWING FROM A CUSTOMER (Violations of FINRA Rules 3240 and 2010)

107. The Department realleges and incorporates by reference paragraphs 1 through 106 above.

108. FINRA Rule 3240 prohibits registered persons from borrowing money from their customers except in limited circumstances, and then only if the member firm has written procedures permitting the borrowing.

109. Between July 2010 and April 2011, while associated with NEXT Financial, Diaz solicited two loans from AH.

110. First, in July 2010, Diaz solicited a \$75,000 loan from AH, which is detailed in paragraphs 63-65 above. The \$75,000 loan discussed in paragraphs 63-65 was directed to CR and deposited into Diaz's Hancock Bank account #XXX824, which was a personal bank account

that Diaz controlled. Diaz used a substantial portion of the money provided by AH for personal income tax payments to the IRS, the settlement of a debt owed to Diaz's previous employer, hotels, gas, auto parts, restaurants, haircuts, medical bills, payments to Diaz's investment-adviser business, and theater tickets.

111. Second, in March 2011, Diaz solicited a \$12,000 loan from AH specifically for personal expenses, which is detailed in paragraphs 66-67 above. The money was directed to Diaz and deposited into Diaz's Hancock Bank account #XXX824, which was a personal bank account that Diaz controlled. Diaz used the money provided by AH for personal expenses.

112. Diaz failed to notify NEXT Financial of the loans made by AH to Diaz. From July 2010 through October 2012, NEXT Financial's policy prohibited Diaz from borrowing from customers in all circumstances.

113. As a result of the foregoing conduct, Diaz violated FINRA Rules 3240 and 2010.

RELIEF REQUESTED

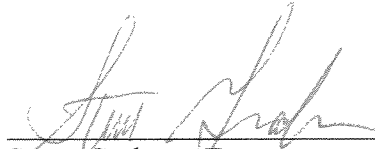
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Diaz 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 Diaz be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Diaz bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondent Eduardo Guillermo Diaz 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 ENFORCEMENT

Date: June 28, 2013



Steve Graham, Esq.
Senior Regional Counsel
Member of Texas Bar Only
FINRA – Department of Enforcement
12801 North Central Expressway, Suite 1050
Dallas, Texas 75243
(972) 716-7608; (972) 716-7612 (fax)
steven.graham@finra.org

Aimee Williams
Deputy Regional Chief Counsel
FINRA – Department of Enforcement
12801 North Central Expressway, Suite 1050
Dallas, Texas 75243
(972) 716-7637; (972) 716-7612 (fax)
aimee.williams@finra.org

David B. Klafter
Regional Chief Counsel
FINRA Department of Enforcement
Crystal Corporate Center
2500 N. Military Trail, Suite 302
Boca Raton, FL 33431-6324
561-443-8110; 561-443-7998 (fax)
david.klafter@finra.org
Authorized House Counsel
Member of NY and NJ Bars Only

Appendix A – Unauthorized Transactions in AH’s NEXT Financial Brokerage Account

Date of Sale	Security	Proceeds
August 12, 2010	Southern Co.	\$72,861
August 12, 2010	Southern Co.	\$32,303
October 6, 2010	FT Unit 2287 Conv & Inc.	\$10,288
October 6, 2010	FT Unit 2294 Inv Grade Select	\$10,346
October 6, 2010	FT Unit 2298 Equity Advantage	\$10,184
October 6, 2010	FT Unit 2327 Equity Income Plus	\$10,014
November 2, 2010	FT UNIT 2308 COVERED CALL SELECT	\$6,041
November 2, 2010	FT UNIT 2287 CONV & INCOME SELECT	\$2,022
November 2, 2010	FT UNIT 2294 INVESTMENT GRADE SELECT	\$1,022
November 2, 2010	FT UNIT 2327 EQUITY INCOME PLUS PORT SER 22	\$1,019
November 15, 2010	FT UNIT 2308 COVERED CALL SELECT	\$8,941
November 15, 2010	FT UNIT 2283 DIVID & INCOME PLUS	\$4,964
November 15, 2010	FT UNIT 2287 CONV & INCOME SELECT	\$9,047
November 15, 2010	FT UNIT 2294 INVESTMENT GRADE SELECT	\$8,970
November 15, 2010	FT UNIT 2298 EQUITY ADVANTAGE	\$8,953
November 15, 2010	FT UNIT 2327 EQUITY INCOME PLUS PORT SER 22	\$8,865
March 8, 2011	FT UNIT 2308 COVERED CALL SELECT	\$5,053
March 8, 2011	FT UNIT 2283 DIVID & INCOME PLUS	\$5,046
March 8, 2011	FT UNIT 2287 CONV & INCOME SELECT	\$5,034
March 8, 2011	FT UNIT 2294 INVESTMENT GRADE SELECT	\$5,001
March 8, 2011	FT UNIT 2298 EQUITY ADVANTAGE	\$5,043
March 8, 2011	FT UNIT 2327 EQUITY INCOME PLUS	\$5,065