

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Nicholas P. Vargas (CRD No. 4317358),

Respondent.

DISCIPLINARY PROCEEDING  
NO. 2012034946901

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Respondent Nicholas P. Vargas converted funds from his firm's bank affiliate. He also failed to provide information requested by FINRA staff pursuant to FINRA Rule 8210 in connection with its investigation of that misconduct.

**RESPONDENT AND JURISDICTION**

2. Vargas entered the securities industry in November 2000, when he became associated with FINRA member Charles Schwab & Co., Inc. (the Firm).
3. From on or about May 21, 2001, through on or about November 30, 2012, Vargas was registered at the Firm as a General Securities Representative. He has not since become associated with or registered at any other FINRA member.

4. Although Vargas 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:
  - a. the Complaint was filed within two years after the effective date of termination of Vargas' registration with the Firm, namely, November 30, 2012; and
  - b. the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information 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  
Conversion (FINRA Rule 2010)

5. The Department re-alleges and incorporates by reference paragraphs 1 through 4, above.
6. From on or about July 1, 2012, through on or about October 31, 2012, Vargas engaged in a pattern of conduct to obtain funds from the Firm's bank affiliate without authorization.
7. Vargas controlled three bank accounts at the bank affiliate. On numerous occasions, Vargas issued a check drawn on one account (the issuing account) and deposited it into one of the other two accounts (the receiving account). At the time he issued each such check, Vargas knew that the issuing account held insufficient funds to honor the check.
8. Although the values of the checks were immediately credited to the receiving account upon deposit, they were not debited from the issuing account for a period of days.

9. Vargas' scheme resulted in artificially inflated balances in the three accounts. He chose to take advantage of these artificially inflated balances by withdrawing money from automated teller machines, using debit cards for point-of-sale purchases and electronically transferring funds to various vendors.
10. Vargas never deposited sufficient funds into the accounts to cover the checks and withdrawals.
11. Vargas thereby converted approximately \$49,390.00 from the Firm's bank affiliate, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION  
Failure to Provide Information (FINRA Rules 8210 and 2010)

12. The Department re-alleges and incorporates by reference paragraphs 1 through 10, above.
13. Between December 2012 and June 2013, FINRA staff sent various requests to Vargas, pursuant to FINRA Rule 8210, for information and documents in connection with FINRA's investigation of the misconduct described in paragraphs 6 through 10, above. All such requests were sent to Vargas' residential address as listed in the Central Registration Depository (CRD address). Vargas provided responses to each of these requests.
14. On or about January 27, 2014, FINRA staff sent a letter to Vargas, pursuant to FINRA Rule 8210, again in connection with its investigation of the misconduct described in paragraphs 6 through 10 (the First Request). The First Request asked for information and documents not previously requested by FINRA, to wit:

- a. statements pertaining to a credit card account that received payments from the bank accounts described in paragraphs 6 through 10;
  - b. information about individuals who appeared to be joint owners of the bank accounts; and
  - c. copies of all checks, front and back, drawn from the bank accounts during the relevant period.<sup>1</sup>
15. The First Request was sent by first class and certified mail to the CRD address and included a due date of February 10, 2014.
16. The first class mailing of the First Request was not returned.
17. The certified mailing of the First Request was returned to FINRA by the U.S. Postal Service, marked, "UNCLAIMED."
18. Vargas never provided the information and documents described in the First Request.
19. On or about February 13, 2014, FINRA staff sent a second letter to Vargas, pursuant to FINRA Rule 8210 (the Second Request). In addition to the items described in the First Request, the Second Request also asked him to provide information and supporting documentation concerning the source of funds he had used to repay the bank affiliate.
20. The Second Request was sent by first class and certified mail to the CRD address and included a due date of February 20, 2014.
21. The first class mailing of the Second Request was not returned.
22. The certified mailing of the Second Request was returned to FINRA by the U.S. Postal Service, marked, "UNCLAIMED."

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<sup>1</sup> FINRA staff ultimately obtained some, though not all, of the requested checks from another source.

23. Vargas never provided the information and documents described in the Second Request.

24. At all relevant times herein, FINRA staff had no knowledge that the CRD address was out of date or inaccurate. Nor was FINRA staff aware of any other more current address for Vargas.

25. Vargas received proper notice of the First Request and the Second Request.

26. By failing to provide information requested by FINRA staff in connection with an investigation, Vargas violated FINRA Rules 8210 and 2010.

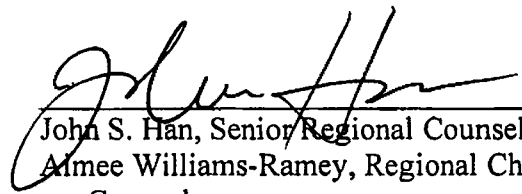
#### RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Vargas committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Vargas bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: November 18, 2014



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