

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeffrey E. Rodgers (CRD No. 4965478),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036836801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about January 2011 through in or about December 2012, Respondent borrowed a total of \$38,600 from two of his customers – AA and BU – who each held brokerage accounts with his FINRA-member broker-dealer employer. Respondent has failed to repay most of the money he borrowed from clients. Respondent received these loans in contravention of the written procedures established by his FINRA-member broker-dealer employer and in violation of FINRA Rules 3240 and 2010.

2. While employed by a FINRA-member broker-dealer from in or about March 2012 through in or about April 2013, Respondent also engaged in unapproved outside business activities by working as a Senior Business Developer/software salesman/consultant for an information technology and business consultancy company. Respondent received compensation in connection with these activities but failed to provide written notice to his FINRA-member

broker-dealer employer prior to participating in this business in contravention of FINRA Rules 3270 and 2010.

3. In or about June 3, 2011 and again in or about April 26, 2012, Respondent falsely represented to his FINRA-member broker-dealer employer that he had not borrowed money from clients of his FINRA-member broker-dealer employer.

4. Also in or about April 26, 2012, Respondent falsely represented to his FINRA-member broker-dealer employer that he was not currently engaged in any outside business interests or affiliations that require disclosure.

5. On several occasions during the period from August 2013 through April 2015, Respondent failed to provide documents and information and appear to complete giving testimony as required by FINRA staff pursuant to FINRA Rule 8210.

RESPONDENT AND JURISDICTION

6. Respondent entered the securities industry in May 2005 as a Financial Advisor trainee with a FINRA-member broker-dealer and remained there until September 2010 when he became associated with Morgan Stanley ("Morgan Stanley" of the "Firm").

7. Respondent obtained his Series 7 securities license (General Securities Representative) and a Series 66 securities license (NASAA Uniform Combined State Law Examination) in August 2005 and September 2005, respectively.

8. From September 2010 through April 2013, Respondent was employed as a registered representative with Morgan Stanley. Morgan Stanley terminated Respondent's employment on or about April 9, 2013. On May 2, 2013, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Respondent was

terminated for accepting funds pursuant to “unapproved loans from a customer [AA] in 2012.” Subsequently, on October 1, 2013, the Firm filed an Amended Form U-5 reporting its receipt on September 19, 2013, of a customer complaint against Rodgers. The complaint alleged that Respondent had accepted funds pursuant to a second unapproved loan from a different customer – BU – which he had not repaid.

9. 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 of the October 1, 2013 filing of an amended Form U5 which disclosed that Respondent may have engaged in actionable misconduct, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA Member and with failing to appear for on-the-record 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
(Unauthorized Customer Loans)
Violations of FINRA Rules 3270 and 2010**

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

11. FINRA Rule 3240 prohibits registered persons from borrowing money from or lending money to any customer unless: (1) the representative’s employing firm has written procedures allowing borrowing from or lending to customers; (2) the borrowing or lending meets at least one of the conditions specified in Rule 3240(a)(2); and (3) the registered person notifies the firm of the borrowing or lending arrangement and obtains pre-approval in writing.

12. FINRA Rule 2010 provides that, "A member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade."

13. Morgan Stanley had written policies prohibiting its associated persons from borrowing money or securities from a customer unless the customer was an immediate family member of the registered representative. Even then, Morgan Stanley allowed such borrowing only after the Firm approved it.

14. During 2011 and 2012, Respondent was experiencing financial difficulties.

Loan From AA

15. From September 2010 through at least April 2013, AA maintained an account at the Firm for which Respondent was the registered representative. Rodgers and AA were not members of the same family.

16. On various occasions from in or about January 2012 through in or about December 2012 AA loaned varying sums of money to Respondent totaling at least \$4,800.

17. Respondent signed a promissory note ("Promissory Note") dated January 10, 2012 related to the loan from AA. The Promissory Note references a loan from AA to Respondent in the amount of \$7,700 to be repaid at a 7% interest rate beginning on April 15, 2012.

18. On or about December 3, 2012, AA provided to Respondent a \$4,800 check drawn against his personal bank account. This check bears a notation in the "memo" section that reads, "loan."

19. Respondent repaid to AA a portion of the sum Respondent borrowed, totaling approximately \$3,100.

20. Respondent neither sought nor obtained approval from Morgan Stanley to accept the loan from AA. The circumstances of AA's loan to Respondent did not satisfy any of the conditions set forth in FINRA Rule 3240(a)(2).

Loan From BU

21. From September 2010 through at least April 2013, BU maintained an account at Morgan Stanley for which Respondent was the registered representative. Rodgers and BU were not members of the same family.

22. On several occasions from in or about January 2012 through in or about December 2012 BU loaned varying sums of money to Respondent totaling approximately \$33,800.

23. BU provided loan funds to Respondent by making cash deposits directly into Respondent's personal checking account and/or by writing checks payable to him that Respondent deposited or cashed.

24. On or about January 15, 2013, Respondent acknowledged his acceptance of loans from BU as reflected in the following e-mail exchange between BU and Respondent.

On January 15, 2013 at 6:18 a.m., BU wrote:

Hi Jeff,

I just got your \$50.00 deposit to my account this morning. The first loan that I gave you was for \$8,000.00 on January 5, 2011 and you promised to pay me within 6 months. Then you kept borrowing until September of 2012 and promised to pay me after your divorce is final. You now owe me at least \$30,000. I am in need of my money and hate touching my investment with Morgan Stanley, which I have taken money out of from that account to loan to you as well. You got a \$250,000 signing bonus with MS when you started working for them. Why can't you sell some of your investment to pay me, like you sold some of my investments to loan you....

Your last deposit in my account was \$250.00 last December 19th, and your deposit of \$50.00 was this morning, January 15th. I really feel insulted with that \$50.00 deposit. December 2, 2011 you sold some stocks from my account to make \$7,300.00 available for me to loan to you. I had begged you to pay for it right away because I hate touching my money from my MS account. You promised to pay me back the following week and had even put your life on it that you put back in my account. That loan portion has been over a year ago and it's still not paid....

On the same day at approximately 8:37 a.m. Rodgers responded by e-mail as follows:

I never got my 250k
I am waiting on two larger amounts that are due to me
I knew 50 was an insult but better than nothing today
We are almost there you will
Don't consider me anything less than giving you everything I can
I will call you in a while
Please hang in there

Minutes later at 8:45 a.m. Rodgers sent another e-mail to BU writing:

I am very sorry
Please hang on there

25. In a series of payments between in or about August 25, 2011 through in or about March 22, 2013, Respondent repaid to BU a portion of the sum he borrowed, totaling approximately \$5,685.

26. Morgan Stanley subsequently reimbursed BU in the amount of \$10,500.

27. Respondent neither sought nor obtained approval from Morgan Stanley to accept the loan from BU. The circumstances of BU's loan to Respondent did not satisfy any of the conditions set forth in FINRA Rule 3240(a)(2).

28. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Rules 3240 and 2010.

**SECOND CAUSE OF ACTION
(Outside Business Activities)
Violations of FINRA Rules 3270 and 2010**

29. The Department realleges and incorporates by reference paragraphs 1 through 28 above.

30. 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 FINRA-regulated broker dealer employer, unless he or she has provided prior written notice to his FINRA-regulated broker dealer employer.

31. From in or about March 2012 through April 2013, Respondent worked as a Senior Business Developer / software salesman / consultant for a company called Net@work. This company holds itself out as a full service information technology and business consultancy with expertise in the development of business technology.

32. Respondent's Net@work-related business activities were outside the scope of his relationship with Morgan Stanley.

33. During 2012 and 2013, Respondent participated in business activities related to Net@work as described above without first providing written notice to the Firm of his participation in those activities.

34. From in or about March 2012 through April 2013, Respondent received compensation totaling approximately \$75,000 in connection with his Net@work-related activities.

35. The acts, practices and conduct described above constitute a violation of FINRA Rules 3270 and 2010.

**Third Cause of Action
(False Statements on Annual Compliance Questionnaires)
Violations of FINRA Rule 2010**

36. The Department realleges and incorporates by reference paragraphs 1 through 35 above.

37. Morgan Stanley required its registered associates to complete annually a Sales Questionnaire.

38. In or about June 3, 2011, Respondent completed his 2011 Sales Questionnaire (the "2011 Questionnaire").

39. In or about April 26, 2012, Respondent completed his 2012 Sales Questionnaire (the "2012 Questionnaire").

40. Prior to June 3, 2011, Respondent had received loans of money from BU. Prior to April 26, 2012, Respondent had received additional loans of money from BU and loans of money from AA.

41. On April 26, 2012, Respondent participated in outside business activities with Net@work and had received or expected to receive compensation in connection with those activities.

42. One question posed in both the 2011 Questionnaire and the 2012 Questionnaire asked, "Have you borrowed from or loaned money/securities to clients and/or family members who have account(s) at Morgan Stanley Smith Barney?"

43. In response to this question, in both the 2011 Questionnaire and the 2012 Questionnaire, Respondent checked the box indicating, "No," which was not true.

44. Another question posed in the 2012 Questionnaire asked "Do you participate in any outside business interests or affiliations that require disclosure?"

45. In response to this question in the 2012 Questionnaire, Respondent checked the box indicating, "No," which was not true.

46. The act, practices and conduct described above, constitute violations of FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
(Failure to Provide Documents and Information)
Violations of FINRA Rules 8210 and 2010**

47. The Department realleges and incorporates by reference paragraphs 1 through 46 above.

48. FINRA Rule 8210(a) provides, in relevant part, that FINRA "shall have the right to require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information orally, in writing or electronically . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding."

49. FINRA Rule 8210(c) states that "no member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule."

50. By letter dated July 31, 2013 (the "July 31, 2013 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent provide various documents and information, among other things, (i) identification of all banking accounts Rodgers maintained or exercised control over; (ii) monthly account statements for each of Rodgers' bank accounts; (iii)

identification of all personal e-mail addresses and telephone numbers; and (iv) copies of electronic communications between Rodgers and AA (collectively the "Requested Materials").

51. Enforcement sent the July 31, 2013 Letter to Respondent's residential address as listed in the Central Registration Depository (the "CRD Address") by certified mail, return receipt requested and by first class mail. The July 31, 2013 Letter directed that production be made on or before August 14, 2013.

52. During a telephone conversation with Enforcement Staff on August 9, 2013, Rodgers confirmed receipt of the July 31, 2013 Letter.

53. Respondent did not provide the Requested Materials on or before August 14, 2013.

54. On or before September 3, 2013, Respondent communicated to Enforcement that mailings to him should be sent to 70 Southwest Century Drive, Suite 100-174, Bend, Oregon 97701 (the "Southwest Address").

55. By letter dated September 3, 2013 (the "September 3, 2013 Letter"), Enforcement once again requested pursuant to FINRA Rule 8210 that Respondent provide the Requested Materials.

56. Enforcement sent a total of four copies of the September 3, 2013 Letter: (1) to the CRD Address by certified mail, return receipt requested; (2) by first class mail to the CRD Address; (3) by certified mail, return receipt requested to the Southwest Address; and (4) by first class mail to the Southwest address. The September 3, 2013 Letter directed that production be made on or before September 17, 2013.

57. The certified mail receipt corresponding to the September 3, 2013 Letter for the CRD Address was returned to Enforcement indicating that delivery had been made on September

4, 2013. A United States Postal Service Track & Confirm Report indicated that the September 3, 2013 Letter sent by certified mail to the Southwest Address was delivered on September 6, 2013. The September 3, 2013 Letters sent by first class mail to the CRD Address and the Southwest Address have not been returned to Enforcement.

58. Respondent did not provide the Requested Materials on or before September 17, 2013.

59. By letter dated September 18, 2013 (the "September 18, 2013 Letter"), Enforcement once again requested pursuant to FINRA Rule 8210 that Respondent provide the Requested Materials.

60. As with the September 3, 2013 Letter, Enforcement sent the September 18, 2013 Letter to the CRD Address and the Southwest Address by certified mail, return receipt requested and by first class mail. The September 18, 2013 Letter directed that production be made on or before October 2, 2013.

61. A United States Postal Service Track & Confirm Report indicated that the September 18, 2013 Letter sent by certified mail to the CRD Address was delivered on October 4, 2013. The certified mail receipt corresponding to the September 18, 2013 Letter for the Southwest Address was returned to Enforcement indicating that delivery had been made on September 21, 2013. The September 18, 2013 Letters sent by first class mail to the CRD Address and the Southwest Address have not been returned to Enforcement.

62. Respondent did not provide the Requested Materials on or before October 2, 2013.

63. By letter dated August 18, 2014 (the "August 18, 2014 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent provide the Requested Materials.

64. As before, Enforcement sent the August 18, 2014 Letter to the CRD Address and the Southwest Address by certified mail, return receipt requested and by first class mail. The August 18, 2014 Letter directed that production be made immediately.

65. The August 18, 2014 Letter sent by certified mail to the CRD Address was returned to Enforcement marked "Forward time Exp – Return to Sender." The August 18, 2014 Letter sent by certified mail to the Southwest Address was returned to Enforcement marked, "Undeliverable." The August 18, 2014 Letter sent by first class mail to the CRD Address and the Southwest Address were not returned to Enforcement.

66. Respondent did not provide the Requested Materials in response to the August 18, 2014 Letter.

67. By letter dated April 2, 2015 (the "April 2, 2015 Letter"), Enforcement once again requested pursuant to FINRA Rule 8210 that Respondent provide the Requested Materials.

68. Enforcement sent the April 2, 2015 Letter to the CRD Address by certified mail, return receipt requested and by first class mail. The April 2, 2015 Letter directed that production be made on or before April 10, 2015.

69. The April 2, 2015 Letter sent by certified mail was returned to Enforcement with a notation that read, "Return to Sender – Unclaimed – Unable to Forward – Return to Sender." The April 2, 2015 Letter sent by first class mail was not returned to Enforcement.

70. Respondent did not provide the Requested Materials on or before April 10, 2015.

71. To date, Rodgers has not provided the Requested Materials as requested pursuant to FINRA Rule 8210 in the five above-referenced letters.

72. The acts, practices and conduct described above constitute a violation of FINRA Rule 8210 and 2010.

**FIFTH CAUSE OF ACTION
(Partial Failure to Appear for Testimony)
Violations of FINRA Rules 8210 and 2010**

73. The Department realleges and incorporates by reference paragraphs 1 through 72 above.

74. By letter dated October 8, 2013 (the October 8, 2013 Letter), Enforcement requested pursuant to FINRA Rule 8210 that Respondent appear and testify at a facility located in Bend, Oregon on November 25, 2013, in connection with the investigation of the misconduct alleged herein.

75. Enforcement sent the October 8, 2013 Letter by certified mail, return receipt requested and by first class mail to the CRD Address and the Southwest Address.

76. On November 25, 2013 Respondent appeared as directed in the October 8, 2013 Letter and gave testimony for approximately two hours. After the two hours had passed, Respondent indicated that he had other commitments and needed to leave. Enforcement was unable to complete its questioning regarding the unauthorized loans from AA. Enforcement also was unable to pose any questions regarding the loans from BU during this proceeding.

77. By letter dated January 6, 2014 (the "January 6, 2014 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent appear and provide continued testimony at a facility located in Bend, Oregon on February 20, 2014, in connection with the investigation of the misconduct alleged herein. The January 6, 2014 Letter requested that Respondent allocate eight hours for the scheduled proceeding.

78. Enforcement sent the January 6, 2014 Letter by certified mail, return receipt requested and by first class mail to the CRD Address and the Southwest Address.

79. On February 20, 2014 Respondent appeared as directed in the January 6, 2014 Letter and gave testimony for approximately 28 minutes. After the 28 minutes had passed, Respondent indicated that he wanted to retain counsel and would not proceed without representation. The testimony was adjourned. Enforcement was unable to pose any substantive questions regarding the unauthorized loans to AA and BU during this proceeding.

80. By letter dated March 5, 2014 (the "March 5, 2014 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent appear and testify at a facility located in Bend, Oregon on March 20, 2014, in connection with the investigation of the misconduct alleged herein.

81. Enforcement sent the March 5, 2014 Letter by certified mail, return receipt requested and by first class mail to the CRD Address and the Southwest Address.

82. On March 18, 2014 Respondent informed Enforcement Staff that he had retained counsel and requested an adjournment of the continued testimony to April 3rd or 4th, 2014 so that his counsel had time to prepare. Respondent refused Enforcement's request to provide the name and contact information for his counsel. Nonetheless, Enforcement granted Respondent's request for an adjournment.

83. By letter dated March 20, 2014 (the "March 20, 2014 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent appear and provide continued testimony at a facility located in Bend, Oregon on April 3, 2014, in connection with the investigation of the misconduct alleged herein.

84. Enforcement sent the March 20, 2014 Letter by certified mail, return receipt requested and by first class mail to the CRD Address and the Southwest Address.

85. On April 3, 2014 Respondent appeared as directed in the March 20, 2014 Letter and gave testimony for approximately four hours. He was not accompanied by counsel at the time. After the four hours had passed, Respondent indicated that he was finished answering questions and left, despite having been advised several times that Enforcement's examination was not completed. Enforcement was unable to complete its questioning regarding the unauthorized loans to BU.

86. By letter dated April 2, 2015 (the "April 2, 2015 Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Respondent appear and provide continued testimony at a facility located in Bend, Oregon on April 17, 2015, in connection with the investigation of the misconduct alleged herein.

87. Enforcement sent the April 2, 2015 Letter by certified mail, return receipt requested and by first class mail to the CRD Address.

88. The April 2, 2015 Letter sent by certified mail to the CRD Address was returned to Enforcement marked, "Return to Sender – Unable to Forward." The April 2, 2015 Letter sent to the CRD Address by first class mail was not returned to Enforcement.

89. Respondent did not appear and give continued testimony at the identified facility in Bend, Oregon on April 17, 2015.

90. The acts, practices and conduct described above constitute a violation of 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 Respondent(s) 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, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- C. order that Respondent(s) 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: September 28, 2015



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