FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION, Complainant, v. JAIME ANDRES DIAZ (CRD No. 4298373), Respondent.	Disciplinary Proceeding No. 20110295459-02 Hearing Officer – CC **DEFAULT DECISION** April 17, 2014

Respondent is barred for willfully misrepresenting and omitting material facts in connection with purchases and sales of securities, in violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010; converting and misusing customer and co-worker funds, in violation of FINRA Rules 2150 and 2010; engaging in private securities transactions without disclosing the transactions to his member firm, in violation of NASD Rule 3040 and FINRA Rule 2010; providing false information to a FINRA member firm, in violation of FINRA Rule 2010; and failing to timely respond to requests for information and failing to respond in any manner to another request for information, in violation of FINRA Rules 8210 and 2010. Respondent also is ordered to pay restitution, plus interest, to the affected customers.

Appearances

Lora W. Alexander, Esq., James J. Nixon, Esq., David E. Rosenstein, Esq., and Robert Marchman, Esq., for the Department of Market Regulation, Complainant.

No appearance by or for Respondent Jaime Andres Diaz.

DECISION

I. INTRODUCTION

FINRA's Department of Market Regulation ("Market Regulation") filed the six-cause Complaint in this disciplinary proceeding on November 22, 2013. The First Cause of Action alleges that Jaime Andres Diaz ("Diaz") violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010,[1] by engaging in fraudulent and deceptive practices in connection with the offer, purchase, or sale of securities. Specifically, the Complaint alleges that Diaz's misconduct was part of a fraudulent scheme related to investments in two restaurant ventures and a property development business, in which Diaz also invested his personal funds. The Second Cause of Action alleges that Diaz violated FINRA Rules 2150 and 2010 by converting to his own use investment funds that he procured from customers as part of the fraudulent scheme. The Third Cause of Action alleges that Diaz violated FINRA Rule 2010 by converting the funds that a co-worker invested.

The Fourth Cause of Action alleges that Diaz violated FINRA Rule 2010 and NASD Rule 3040 by participating in the private securities transactions referenced in Cause One without disclosing his participation to his member firm. The Fifth Cause of Action alleges that Diaz violated FINRA Rule 2010 by providing false information regarding his outside business activities to a member firm. The Sixth Cause of Action alleges that Diaz violated FINRA Rules 8210 and 2010 by providing numerous untimely and incomplete responses to FINRA requests for information. Cause Six also alleges that Diaz committed a separate violation of FINRA Rules 8210 and 2010 by failing to respond in any manner to a subsequent request for information.

[1] FINRA's Rules are available at www.finra.org/rules.

Market Regulation served Diaz in accordance with FINRA's Code of Procedure, and Diaz failed to answer both the First and Second Notices of Complaint. Accordingly, on February 19, 2014, Market Regulation filed a Motion for Entry of Default Decision ("Default Motion"), which is supported by the Declaration of Lora Alexander in Support of the Default Motion ("Alexander Decl.") and six exhibits (hereafter referred to as "CX-1 – CX-6"). Diaz did not respond in any manner to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Diaz in default, grants Market Regulation's Default Motion, and deems the allegations in the attached Complaint to be admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Diaz's Background

Diaz entered the securities industry in November 2000.[2] Diaz was registered most recently with FINRA member National Securities Corporation ("National") as a general securities representative and, as of April 2008, a general securities principal.[3] Diaz remained registered with FINRA in those capacities and associated with National until December 1, 2011, when National filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that the firm had terminated Diaz because of "perceived violations of FINRA and firm rules with respect to alleged selling away activities."[4]

B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Market Regulation filed the Complaint on November 22,

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[2] Alexander Decl. ¶ 5; CX-1.

[3] *Id.*

[4] *Id.*

2013, which is within two years of FINRA's termination of Diaz's registration on December 1, 2011; and (2) Market Regulation alleged violations in the Complaint based upon conduct that commenced prior to the termination of Diaz's registration.[5]

C. Origin of the Investigation

Market Regulation commenced an investigation of Diaz based on a September 7, 2011 customer complaint that alleged that Diaz defrauded an elderly customer in connection with the customer's investment in Diaz's investment advisory business.[6] The customer advised FINRA that Diaz failed to make required interest payments and, when he sought the return of his investment from Diaz, Diaz refused to return the funds.[7]

D. Diaz's Default

On November 22, 2013, Market Regulation served Diaz with the Complaint and Notice of Complaint by U.S. Express Mail, and first-class registered mail, return receipt requested.[8] Market Regulation served Diaz at the residential address recorded in the Central Registration Depository ("CRD") and at an alternate address in Bogota, Columbia that Diaz provided to FINRA staff during investigative testimony.[9] Market Regulation also sent a copy of the Complaint and Notice of Complaint to Diaz at an email address that Diaz provided to FINRA staff during investigative testimony.[10]

On December 2, 2013, the United States Postal Service ("USPS") delivered the Complaint and Notice of Complaint to Diaz at his alternate Bogota, Columbia address by U.S.

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[5] *See* Article V, Section 4(a), FINRA's By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

[6] Alexander Decl. ¶ 4.

[7] *Id.*

[8] Alexander Decl. ¶¶ 8-10.

[9] *Id.*

[10] *Id.*

Express Mail.[11] As of the date of the Default Motion, the USPS had not provided proof of delivery of the Complaint and Notice of Complaint that Market Regulation sent to Diaz's alternate address by first-class registered mail and also had not returned the mailing as undeliverable.[12] On December 3, 2013, the USPS returned as undeliverable the Complaint and Notice of Complaint that Market Regulation sent to Diaz's CRD address by U.S. Express Mail.[13] On December 31, 2013, the USPS similarly returned the mailing sent to Diaz's CRD address by first-class registered mail.[14] Diaz's answer was due by December 20, 2013.[15] Diaz did not file an answer.[16]

On December 23, 2013, Market Regulation served a Second Notice of Complaint and the Complaint on Diaz at his CRD address and alternate Bogota, Columbia address by U.S. Express Mail and first-class registered mail.[17] Market Regulation also sent a copy of the Second Notice of Complaint and Complaint to Diaz's email address.[18]

On January 7, 2014, the USPS delivered the Complaint and Second Notice of Complaint to Diaz at his alternate Bogota, Columbia address by U.S. Express Mail.[19] As of the date of the Default Motion, the USPS had not provided proof of delivery of the Complaint and Second Notice of Complaint that Market Regulation sent to Diaz's alternate address by first-class

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[11] Alexander Decl. ¶ 11; CX-2.

[12] Alexander Decl. ¶ 14; CX-2.

[13] Alexander Decl. ¶ 12; CX-2.

[14] Alexander Decl. ¶ 13; CX-2.

[15] Alexander Decl. ¶ 17; CX-2.

[16] *Id.*

[17] Alexander Decl. ¶ 18; CX-3.

[18] Alexander Decl. ¶ 11.

[19] Alexander Decl. ¶ 21; CX-3.

registered mail and also had not returned the mailing as undeliverable.[20] On December 26, 2013, the USPS returned as undeliverable the Complaint and Second Notice of Complaint that Market Regulation sent to Diaz's CRD address by first-class registered mail.[21] On December 30, 2013, the USPS similarly returned the mailing that Market Regulation sent to Diaz's CRD address by U.S. Express Mail.[22] Diaz's answer was due by January 9, 2014.[23] Diaz did not file an answer.[24]

The Hearing Officer finds that Diaz received constructive notice of this proceeding. FINRA Rule 9134(b) provides for service on a natural person at the person's residential address as indicated in CRD.[25] Accordingly, the Hearing Officer finds that Diaz defaulted by failing to answer or otherwise respond to the Complaint.

E. Causes One, Two, and Three – Fraud, Conversion, and Improper Use of Funds

Beginning in December 2009, Diaz employed a fraudulent scheme involving the solicitation of four customers and one co-worker to invest in three business ventures in which Diaz also had invested – Nuela Restaurant ("Nuela"), a Latin-inspired restaurant in New York City that had not yet opened, Marca Restaurant ("Marca"), an Argentinian steakhouse and underground nightlife space that had not yet opened, and Nordica Development ("Nordica"), a property development venture for a housing project in New York and a resort community in Bermuda.[26]

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[20] Alexander Decl. ¶ 22; CX-3.

[21] Alexander Decl. ¶ 19; CX-3.

[22] Alexander Decl. ¶ 20; CX-3.

[23] Alexander Decl. ¶ 25.

[24] *Id.*

[25] *See Dep't of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in CRD, by certified mail).

[26] Complaint ("Compl.") ¶¶ 7, 9, 36, 49.

1. Nuela

In late 2008, Diaz and other Nuela developers realized that they did not have sufficient funding to open Nuela and that the opening would be delayed.[27] Diaz and his brother had invested $500,000 to develop and open Nuela and, in mid-2009 after receiving additional capital calls, invested an additional $500,000.[28] In late 2009, Diaz began soliciting clients of National to invest in Nuela.[29]

In December 2009, Diaz solicited National customer JM to purchase an equity interest in Nuela without telling JM that: (1) he had received capital calls; (2) the opening of the restaurant had been delayed for lack of funding; and (3) JM may not receive a return on his investment and may lose principal.[30] In reliance on Diaz's solicitation, JM liquidated securities that he held at National and invested the $70,000 proceeds plus an additional $130,000, for a total investment of $200,000, in Nuela.[31] On December 23, 2009, JM wired $200,000 to Diaz's advisory company, Worldwide Asset Protection ("Worldwide"), but Diaz never provided JM with documents evidencing his $200,000 investment in Nuela.[32]

Immediately after receiving JM's wire transfer into Worldwide's bank account, Diaz wired $75,000 to Nuela's bank account and $125,000 to a bank account owned by AT, one of Diaz's close friends.[33]

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[27] Compl. ¶ 9.

[28] Compl. ¶ 9. Diaz also secured an investment of $500,000 from AT. *Id.*

[29] Compl. ¶ 10.

[30] Compl. ¶ 11.

[31] Compl. ¶¶ 12, 13.

[32] Compl. ¶¶ 13, 16. At the time that JM wired funds to Worldwide, Worldwide's bank account balance was $6,717.54. Compl. ¶ 13.

[33] Compl. ¶¶ 14, 15.

Diaz solicited JM for a second investment. On January 15, 2010, JM sold securities held in his National account and transferred $50,000 to Diaz's Worldwide bank account.[34] Again, Diaz failed to provide JM with documents to evidence his investment.[35] Diaz immediately wrote a check drawn from the Worldwide bank account to himself for $9,000.[36] On January 20, 2010, Diaz wrote a second check payable to himself for $6,200.[37] On January 25, 2010, Diaz wired $35,000 from the Worldwide bank account to VF, another of Diaz's friends who had invested in Nuela.[38] Diaz misrepresented to JM how his investment would be used, and JM did not authorize the manner in which Diaz used the funds.[39]

In February 2010, Diaz solicited National customer CW to purchase an equity interest in Nuela without telling CW that: (1) he had received capital calls; (2) the opening of the restaurant had been delayed for lack of funding; and (3) CW may not receive a return on his investment and may lose principal.[40] Diaz solicited CW to purchase a promissory note in the amount of $100,000 that would pay interest periodically, and indicated that the funds would be invested in Nuela.[41] In reliance on Diaz's solicitation, on February 16, 2010, CW borrowed $75,000 against the securities in his National brokerage account, wired the proceeds to his personal bank account, and thereafter wired a total of $100,000 to Diaz's Worldwide bank account.[42] Immediately after receiving CW's wire transfer into Worldwide's bank account, Diaz wired $50,000 from the

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[34] Compl. ¶ 17. At the time, the balance in Worldwide's bank account was $137.54. *Id.*

[35] Compl. ¶ 20.

[36] Compl. ¶ 18. Diaz wrote "payment Nuela interest" in the memo line of the check. *Id.*

[37] *Id.* Again, Diaz wrote "payment Nuela interest" in the memo line of the check. *Id.*

[38] Compl. ¶ 19.

[39] Compl. ¶¶ 21, 22.

[40] Compl. ¶ 23. At the time of CW's investment, CW was 79 years old. *Id.*

[41] Compl. ¶ 24.

[42] Compl. ¶¶ 25, 26. At the time, the balance in Worldwide's bank account was $262.54. Compl. ¶ 26.

Worldwide bank account to his personal bank account.[43] At the time, the balance in Diaz's personal bank account was $3.93.[44]

Thereafter, on February 18, 2010, Diaz wrote two checks from his personal bank account to himself for $35,000 and $15,000, leaving a balance in his personal account of $3.93.[45] Diaz deposited the $15,000 check into a bank account for one of his businesses named Worldwide Wealth Management and used the money to pay expenses related to his branch office.[46] Diaz deposited the $35,000 check into another personal bank account.[47] Also on February 18, 2010, Diaz wrote two checks payable to himself from the Worldwide bank account, one for $5,000 and one for $5,100.[48] On the same day, Diaz also wired $40,000 from his Worldwide bank account to Nuela.[49]

CW never received a promissory note from Diaz, or any other documentation to evidence his $100,000 investment.[50] CW received one $10,000 interest payment.[51] CW repeatedly asked Diaz to return his investment, but Diaz refused.[52] In July 2010, CW sold all of the securities in his National brokerage account and used the proceeds to repay the $75,000 loan against the securities that CW had taken to invest with Diaz.[53] Diaz misrepresented to CW how his

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[43] Compl. ¶ 27.

[44] *Id.*

[45] Compl. ¶ 28.

[46] Compl. ¶ 29.

[47] *Id.*

[48] Compl. ¶ 31. On the memo line for the $5,000 check, Diaz wrote "Nuela." *Id.* On the memo line for the $5,100 check, Diaz wrote "Jaime Reimbursement!" *Id.*

[49] Compl. ¶ 30.

[50] Compl. ¶ 32.

[51] *Id.*

[52] *Id.*

[53] Compl. ¶ 33.

investment would be used, and CW did not authorize Diaz to use his investment for branch office expenses or for Diaz's personal use.[54]

2. Nordica

Diaz invested $70,000 in Nordica before soliciting National customers to invest.[55] Diaz, however, had not received any financial data for Nordica, the Nordica property developers were having difficulty getting permits to begin construction, and Diaz had not conducted any due diligence on the principal investors responsible for completing the project.[56] In July 2010, Diaz solicited National customer JM for an investment in Nordica, but failed to tell him these facts.[57]

On July 13, 2010, JM wired $150,000 from his personal bank account to Diaz's Worldwide bank account.[58] Again, Diaz failed to provide JM with any documents to evidence his investment.[59] Shortly thereafter, Diaz transferred $90,000 from the Worldwide bank account to his personal bank account and used the funds for his personal benefit.[60] On July 16, 2010, JM sold securities held in his National account and, on July 20, 2010, wired the sales proceeds of $150,000 first to his personal bank account and then to Diaz's Worldwide bank account.[61] On July 21, 2010, Diaz wired $100,000 from the Worldwide bank account to his friend, VF.[62] On the same day, Diaz wrote a check drawn from the Worldwide bank account to himself for

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[54] Compl. ¶¶ 34, 35.

[55] Compl. ¶ 36.

[56] Compl. ¶ 38.

[57] Compl. ¶¶ 36, 37, 38.

[58] Compl. ¶ 39. At the time, the balance in Worldwide's bank account was $1,171.68. *Id.*

[59] Compl. ¶ 48.

[60] Compl. ¶ 40.

[61] Compl. ¶¶ 41, 42.

[62] Compl. ¶ 43.

$10,000 and deposited the check into his personal bank account.[63] Diaz used these funds to cover personal expenses.[64] On July 23, 2010, Diaz transferred $8,000 from the Worldwide bank account to his personal bank account.[65] On July 26, 2010, he transferred an additional $10,000 from the Worldwide bank account to his personal bank account.[66] Diaz used these funds for personal expenses.[67]

Diaz did not invest JM's funds in Nordica as represented, and instead used the funds for purposes that JM had not authorized.[68] JM requested that Diaz return his investment in Nordica, but Diaz refused.[69]

3. Marca

Diaz invested $800,000 in Marca before soliciting National customers and another registered representative at National to invest.[70] Diaz, however, had not received any financial data for Marca from the principal investors, had not conducted any due diligence on the principal investors responsible for completing the project, and knew that the principal investors did not possess the necessary permits to proceed with operating Marca.[71] In January 2011, Diaz solicited National registered representative CR for an investment in Marca and encouraged him to solicit investments from National customers. Diaz did not tell CR any negative information

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[63] Compl. ¶ 44.

[64] *Id.*

[65] Compl. ¶ 45.

[66] *Id.*

[67] *Id.*

[68] Compl. ¶¶ 46, 47, 48.

[69] Compl. ¶ 48.

[70] Compl. ¶ 49.

[71] Compl. ¶ 51.

about Marca.[72] Instead, Diaz misrepresented to CR that Marca was a good investment and that he was an owner of Marca.[73] Diaz also falsely represented that CR's and other customers' funds would be used to purchase equity interests in Marca, and he encouraged CR and his customers to deposit funds into two bank accounts that Diaz represented belonged to Marca.[74] Diaz did not tell CR that he was not authorized to make representations on Marca's behalf, did not have authorization to sell equity interests in Marca, did not have authority to make direct deposits into Marca's bank accounts, and did not possess the right to access bank accounts created for Marca.[75]

In response to Diaz's solicitation and representations, CR transferred $50,000 from his personal bank account to a bank account that Diaz represented belonged to Marca.[76] Diaz did not provide CR with documentary evidence of his investment.[77] At Diaz's request, CR contacted two of his National customers, DKB and DMB, to invest $100,000 each in Marca.[78] Thereafter, DKB deposited $100,000 from his personal bank account into a bank account that Diaz identified as belonging to Marca.[79] DMB sold $100,000 worth of securities from his National account, deposited the funds into his personal account, wrote a check payable to Marca, and tendered it for deposit into a bank account that Diaz identified as belonging to Marca.[80]

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[72] Compl. ¶¶ 50, 51, 54.

[73] Compl. ¶¶ 50, 51.

[74] Compl. ¶¶ 50, 52.

[75] Compl. ¶¶ 50, 51, 52.

[76] Compl. ¶ 53.

[77] *Id.*

[78] Compl. ¶ 54.

[79] Compl. ¶ 55.

[80] Compl. ¶ 56.

Diaz provided CR with promissory notes purportedly to document DMB's and DKB's investments.[81] The promissory notes provided for periodic 10 percent interest payments and return of principal by June 2011.[82] Diaz falsely represented to CR, DMB, and DKB that, if Marca's fund-raising efforts reached $5 million in the first three years, investors would receive an additional six percent interest payment.[83] As of the end of 2011, Marca still had not opened for business, and Diaz did not pay the first interest payment due under the promissory notes.[84] CR requested that Diaz return his, DKB's and DMB's investments.[85] Diaz failed to return the funds, and CR filed a complaint with the New York Office of the Attorney General.[86] Diaz thereafter returned DKB's and DMB's money, but never returned CR's money.[87]

4. Fraud

A finding of violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 requires a showing that respondent: (1) made material misrepresentations or omissions; (2) in connection with the purchase or sale of a security; and (3) acted with scienter.[88] FINRA Rule 2020 provides that no member shall effect any transactions, or induce the purchase or sale of any security, by means of any manipulative, deceptive or fraudulent device. FINRA Rule 2020 and

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[81] Compl. ¶¶ 57, 58.

[82] Compl. ¶ 58.

[83] *Id.*

[84] Compl. ¶ 60.

[85] Compl. ¶ 61.

[86] Compl. ¶¶ 61, 62.

[87] *Id.*

[88] In addition, violations of Section 10(b) of the Exchange Act 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, SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, the requirement of interstate commerce is satisfied. Diaz falsely represented in person, via telephone communication, and via electronic mail, that he would use investors' funds to invest in various business ventures when, in fact, he converted the funds to his own use. Alexander Decl. ¶ 29. In addition, three of the customers sold securities held in their National accounts and provided the proceeds, through wire transfer or check sent via U.S. mail, to Diaz. *Id.* One customer transferred funds via bank journal. *Id.*

Exchange Act Rule 10b-5 are designed to ensure that sales representatives fulfill their obligation to their customers to be accurate when making statements about securities and soliciting investments.[89] The allegations in the Complaint are sufficient to show that Diaz misrepresented and omitted material facts in connection with soliciting the purchases and sales of securities.

First, Diaz misrepresented and omitted material facts. "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."[90] Diaz misrepresented to four customers and one co-worker that he would purchase securities with their funds when, in fact, he never intended to do so.[91] Instead, he converted the funds to his own use and benefit, made monetary payments to friends, and covered office expenses.[92] He also concealed from investors negative financial information, the risk of loss of principal, known delays in the ventures' business plans, his own failures to conduct due diligence, and his lack of authority to sell some of the products involved.[93] Omissions and misrepresentations of this nature have consistently been found to be material.[94]

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[89] *Michael R. Euripides*, 1997 NASD Discip. LEXIS 45 (NASD NAC July 28, 1997). "The antifraud provisions 'give rise to a duty to disclose any information necessary to make an individual's voluntary statements not misleading.'" *Donner Corp., Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *32 (Feb. 20, 2007) (citing *SEC v. Druffner*, 353 F. Supp. 2d 141, 148 (D. Mass. 2005)); *see also SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (stating that the federal securities laws impose a duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading).

[90] *Donner Corp.*, 2007 SEC LEXIS 334, at *29; *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *In re Time Warner, Inc. Securities Litigation*, 9 F.3d 259 (2d Cir. 1993).

[91] Anderson Decl. ¶ 30.

[92] *Id.*

[93] Compl. ¶¶ 11, 21, 23, 38, 46, 47, 50, 51, 59.

[94] *See Charles E. French*, 52 S.E.C. 858, 863 n.19 (1996) (holding that one cannot successfully challenge the materiality of information about the financial condition, solvency, and profitability of the entity responsible for the success or failure of an enterprise); *Dep't of Enforcement v. Cipriano,* Complaint No. C07050029, 2007 NASD Discip. LEXIS 23, at *27-29 (NASD NAC July 26, 2007) (finding that information not disclosed, including fact that issuer had never made a profit, was in need of additional capital to continue its operations, and its liabilities

Second, Diaz misrepresented and omitted facts in connection with purchases or sales of securities. Diaz's stated purpose in obtaining money from four customers and one co-worker was to purchase securities that he alternately described as investments, equity interests, promissory notes, and fractional interests in business enterprises.[95] Furthermore, Diaz convinced customers JM and CW to sell securities or borrow against securities (that CW ultimately sold) held in their National accounts.[96] The fact that Diaz never intended to deliver securities in exchange for the funds or that the securities were non-existent does not absolve him of liability.[97]

Third, the Complaint alleges facts sufficient to show that Diaz acted with scienter. Scienter is defined as the "intent to deceive, manipulate or defraud."[98] 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

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substantially exceeded its tangible assets, was material); *Dep't of Enforcement v. Tretiak*, Complaint Nos. C02990042, C02980085, 2001 NASD Discip. LEXIS 1, at *38 (NASD NAC Jan. 23, 2001) (finding material information regarding the issuer's investment in and development of property, assumption of debt, and probable future development), *aff'd* 56 S.E.C. 209 (2003); *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.").

[95] Compl. ¶¶ 11, 24, 37, 50, 57. The promissory notes that Diaz provided to DMB and DKB fall within the definition of "security" in Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. § 77b(a)(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10), as "any note," and they are not excluded from that definition under the Supreme Court's "family resemblance" test set forth in *Reves v. Ernst & Young*, 494 U.S. 56, 63-65 (1990). *See* II.F, *infra*. Additionally, the other interests in business enterprises that Diaz offered are securities under the three-part test established by the Supreme Court in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). In *Howey*, the Court held that an investment constitutes an investment contract security when a person invests his or her money in a common enterprise and is led to expect profits from the efforts of others. *Id.* The investments that Diaz offered met these criteria.

[96] Compl. ¶¶ 12, 17, 25, 26, 33.

[97] *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 that they are investing in securities"), *aff'd*, 2012 U.S. App. LEXIS 8623 (10th Cir. Utah, Apr. 27, 2012); *First National Bank of Chicago v. Shearson Lehman Brothers, Inc.*, 1988 U.S. Dist. LEXIS 17186, at *13 (N.D. Ill. 1989) ("Common sense also dictates the conclusion that Shearson should not escape liability under the securities laws . . . because the securities that it agreed to hold were wholly non-existent rather than simply worthless.").

[98] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

to the [actor] or is so obvious that the actor must have been aware of it."[99] Diaz misrepresented and omitted material facts to four customers and one co-worker to convince them to give him money to invest in fictitious securities. For some of the ventures, he had not conducted a due diligence investigation into the funding of the underlying business enterprise. For others, he was aware of significant funding shortfalls that he concealed from investors. Additionally, when Diaz solicited the investments, he intended to (and ultimately did) convert some of the funds to his own use. Given the purposeful nature of Diaz's misrepresentations and omissions, the efforts he made to conceal material facts, and his outright theft of investor money, Diaz must have been aware that his actions presented a danger of misleading the investors.[100] Diaz acted with scienter.

Diaz's misrepresentations were also willful. The term "willful" need not connote that Diaz intended to violate FINRA rules and federal statutes.[101] "A willful violation under the federal securities laws simply means 'that the person charged with the duty knows what he is doing.'"[102] The finding that Diaz acted with scienter supports a finding that his violations were willful.

5. Improper Use and Conversion of Customer and Co-Worker Funds

FINRA Rule 2150(a) states that persons associated with FINRA members shall not make improper use of a customer's funds or securities. FINRA's Sanction Guidelines state that "conversion generally is an intentional and unauthorized taking of and/or exercise of ownership

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[99] *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))).

[100] *See Kenneth R. Ward*, 56 S.E.C. 236, 259-60 (2003) (finding scienter established where representative was aware of material information and failed to disclose it).

[101] *See Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976).

[102] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012) (*citing Wonsover v. SEC*, 205 F.3d 408. 414 (D.C. Cir 2000)).

over property by one who neither owns the property nor is entitled to possess it."[103] The allegations in the Complaint are sufficient to show that Diaz converted funds that he received from four customers and one colleague. Indeed, Diaz fraudulently solicited and received $900,000 from customers and a colleague, and kept the vast majority for his own use.[104] Diaz used the funds for personal and business expenses, to pay off friends, and to pad his own bank accounts. Diaz had no right to these funds, and he lied to get them. Then he converted the funds to his own use.

Accordingly, the Hearing Officer concludes that Diaz violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2150, 2020 and 2010,[105] as alleged in the First, Second, and Third Causes of the Complaint.

F. Causes Four and Five – Private Securities Transactions and Providing False Information to a Member Firm

NASD Rule 3040 restricts an associated person from participating in any manner in a private securities transaction unless, prior to participating, he provided written notice to his member firm, describing in detail the proposed transaction, his proposed role in the transaction, and whether he will receive compensation, and if the firm approves the person's participation in the transaction. In January 2011, Diaz sold two promissory notes to customers DKB and

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[103] FINRA Sanction Guidelines ("Guidelines") at 36, n. 2 (2013), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

[104] Anderson Decl. ¶ 32.

[105] Violations of other FINRA rules, such as Rules 2150 and 2020, constitute conduct inconsistent with just and equitable principles of trade and violations of FINRA Rule 2010. *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999); *Dep't of Enforcement v. CapWest Securities, Inc.*, Complaint No. 2007010158001, 2013 FINRA Discip. LEXIS 4, at *25, n. 21 (FINRA NAC Feb. 25, 2013).

DMB.[106] Diaz received compensation from his sales of the notes by virtue of his use of the proceeds of their investments.[107]

The promissory notes were securities under the Supreme Court's "family resemblance" test set forth in *Reves v. Ernst & Young*.[108] The four factors identified by the Court in *Reves* were: (1) the motivations of the seller and buyer of the note —"[i]f the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security'"; (2) the plan of distribution — notes that are "offered and sold to a broad segment of the public" are likely to be "securities"; (3) the reasonable expectations of the investing public — if notes are characterized as "investments" they are likely to be "securities"; and (4) "whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary."[109] Here, Diaz offered the promissory notes, and DMB and DKB bought the notes, as investments in the business enterprise of opening and operating restaurant Marca. DMB and DKB expected a return of their principal, periodic ten percent interest payments, and a potential six percent bonus. Diaz offered the investment to his colleague at National, CR, and encouraged him to offer it widely to his own clients. Both CR and his customers reasonably expected these instruments to be investments, and there is no other regulatory scheme that would provide an adequate substitute for the protection of the federal securities laws applicable to these instruments.[110] The Marca promissory notes that Diaz sold were securities.

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[106] Compl. ¶¶ 56, 57, 58, 75.

[107] DKB and DMB deposited their investments into a bank account that Diaz identified to them. Compl. ¶¶ 55, 56.

[108] *Reves*, 494 U.S. at 63-65.

[109] *Id.* at 66-69.

[110] *See Reves*, 494 U.S. at 71-72.

Diaz's sales of Marca promissory notes to DMB and DKB occurred outside the regular course and scope of his association with National, and the firm did not participate in and was unaware of the sales.[111] Diaz did not provide National with prior written notification of these sales, describe the proposed transactions to National, describe his proposed role in the sales, nor obtain prior authorization from the firm before making the sales.[112]

Diaz not only failed to provide advance notice to National of his sales of Marca promissory notes, he also affirmatively misrepresented his conduct to the firm. Diaz misrepresented on an outside business disclosure form maintained in CRD that he was involved in the following outside businesses: Worldwide, Worldwide Wealth Management, and Nuela.[113] Diaz did not identify Marca or Nordica as outside business activities, and inaccurately identified Nuela as non-investment-related, notwithstanding that he solicited CW's and JM's investments in Nuela.[114] On March 16, 2011, Diaz falsely represented on National's compliance questionnaire (in response to Question 6.1) that his outside business disclosure form in CRD was correct.[115] Diaz also falsely answered "no" on the firm's questionnaire when asked whether he had raised capital, issued debt, made referrals for financial arrangements, or loaned or invested personally or invested funds on behalf of others in an identified outside business activity (Nuela).[116]

Diaz falsely represented in response to Question 10 of the same questionnaire that he had not received verbal or written complaints when he had received complaints from CW and JM

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[111] Anderson Decl. ¶ 39.

[112] *Id.*

[113] Compl. ¶ 82.

[114] *Id.*

[115] Anderson Decl. ¶ 45; Compl. ¶¶ 83, 84.

[116] Anderson Decl. ¶ 44; Compl. ¶ 85.

requesting the return of their investments.[117] Diaz also falsely represented to National (in response to Questions 5, 12, and 47) that he had not raised capital for any group or entity other than through National, that customers of National would not be investors in his outside business, and that he had not been involved in the purchase or sale of a security other than through National.[118] Finally, Diaz falsely represented to National (in response to Question 55) that he had not recommended securities to clients older than the age of 60 years when, in fact, he recommended that CW invest in Nuela when CW was 79 years old.[119]

Accordingly, the Hearing Officer concludes that Diaz violated NASD Rule 3040 and FINRA Rule 2010,[120] as alleged in the Fourth and Fifth Causes of the Complaint.

G. Cause Six – Failure to Fully and Timely Respond and Complete Failure to Respond to Requests for Information

The Complaint alleges that Diaz provided untimely and incomplete responses to a series of FINRA requests for information pursuant to FINRA Rule 8210 and, as a separate violation, that he failed to respond in any manner to a subsequent FINRA Rule 8210 request for information.

Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide documents and information with respect to any matter involved in an investigation, examination, or proceeding. FINRA Rule 8210(d) provides that notice shall be deemed received by a registered person by mailing or otherwise transmitting it to the last known residential address of the person as reflected in CRD. Rule 8210(d) further provides that, if FINRA staff is aware that a person is

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[117] Compl. ¶ 86.

[118] Anderson Decl. ¶ 44; Compl. ¶¶ 87, 88, 90.

[119] Anderson Decl. ¶ 44; Compl. ¶ 89.

[120] A violation of another FINRA rule, such as NASD Rule 3040, constitutes conduct inconsistent with just and equitable principles of trade and a violation of FINRA Rule 2010. *Gluckman*, 54 S.E.C. at 185.

represented by counsel regarding an investigation, examination, or proceeding that is the subject of a request, then notice shall be served on counsel by mailing or otherwise transmitting to counsel.

1. Untimely Responses to Rule 8210 Requests

On October 14, 2011, FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") sent Diaz a written request for information and documents related to OFDMI's investigation of this matter and directed that he respond by October 21, 2011.[121] OFDMI sent the request by certified and first-class mail to Diaz's former residential address as indicated in CRD.[122] The USPS returned the certified mailing to OFDMI.[123] On October 25, 2011, OFDMI sent Diaz a follow-up letter indicating that FINRA had not received a response to the October 14 request.[124] OFDMI included a copy of the October 14, 2011 letter (which had been sent to an old address) and sent the October 25, 2011 letter to Diaz's then-current residential address as indicated in CRD by certified and first-class mail.[125] OFDMI also sent a copy of the October 25 mailing by email to Diaz's compliance officer at National.[126]

On October 26, 2011, OFDMI received an email from an attorney who indicated that he represented Diaz.[127] Diaz's attorney requested and was granted an extension of time to respond to the request until November 3, 2011.[128] On November 3, 2011, Diaz's attorney requested and

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[121] Anderson Decl. ¶ 49; Compl. ¶ 94; CX-4.

[122] Compl. ¶ 94; CX-1; CX-4. The complaint alleges that OFDMI sent the letter to Diaz's then-current CRD address, but the address to which OFDMI addressed the October 14, 2011, letter was Diaz's former CRD address.

[123] Compl. ¶ 94.

[124] Compl. ¶ 95; CX-4.

[125] Compl. ¶ 95; CX-1; CX-4.

[126] *Id.*

[127] Compl. ¶ 96.

[128] *Id.*

was granted a second extension until November 10, 2011.[129] Diaz did not respond by November 10, and on November 16, 2011, Diaz's attorney requested a third extension until November 18, 2011.[130] On November 18, 2011, Diaz's attorney submitted an incomplete response that failed to include all of Diaz's personal bank account statements for the period of July 2007 through October 2011.[131] OFDMI contacted Diaz's attorney on December 8, 2011, and requested the missing documents.[132] Having received no response, OFDMI reiterated the request in a second call to Diaz's attorney on March 16, 2012.[133] On March 27, 2012, Diaz's attorney indicated to OFDMI that he would produce the missing bank account statements.[134] He did not, however, produce the statements.[135]

On April 3, 2012, OFDMI sent Diaz's attorney a written request that included a request for a list of documents and information that had not been produced in Diaz's November 18, 2011 response.[136] The April 3, 2012 letter warned that Diaz could be barred from the securities industry if he failed to respond.[137] On April 11 and 16, 2012, OFDMI contacted Diaz's attorney to request the missing documents.[138] On April 16, 2012, Diaz, through his counsel, provided a second incomplete response that failed to include all bank statements from July 2009 through October 2011 for accounts in which Diaz held a financial interest.[139] On April 27 and May 24,

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[129] Compl. ¶ 97.

[130] Compl. ¶ 98.

[131] Compl. ¶ 99.

[132] Compl. ¶ 100.

[133] Compl. ¶ 101.

[134] *Id.*

[135] *Id.*

[136] Compl. ¶ 102; CX-4.

[137] CX-4.

[138] Compl. ¶¶ 103, 104.

[139] Compl. ¶ 105.

2012, OFDMI requested that Diaz's attorney produce the missing bank statements, but received no response.[140]

On June 1, 2012, OFDMI sent Diaz's counsel a third written request that listed the documents and information that Diaz failed to produce in his November 18, 2011, and April 16, 2012, responses.[141] OFDMI sent the June 1, 2012 letter by certified and first-class mail and provided a copy by email.[142]

More than two months later, on September 12, 2012, OFDMI still had not received a response.[143] On that day, Market Regulation sent Diaz a Notice of Suspension pursuant to Rule 9554, in which Market Regulation outlined Diaz's prior failures to respond fully to Rule 8210 requests for information and documents, indicated that he could request a hearing, and stated that he would be suspended on October 8, 2012, if he failed to respond fully to the outstanding requests.[144] Market Regulation sent the Notice of Suspension to Diaz's CRD address by overnight delivery and first-class mail, and provided a copy to his attorney.[145] On September 24, 2012, Diaz's attorney submitted a third incomplete response that failed to include all of the bank account statements requested in the initial request pursuant to Rule 8210.[146] Market Regulation advised Diaz's attorney, during a telephone call on October 2, 2012, that Diaz's September 24, 2012 response was incomplete and identified the specific documents and information that remained missing.[147]

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[140] Compl. ¶¶ 105, 106.

[141] Compl. ¶ 107; CX-4.

[142] CX-4.

[143] Compl. ¶ 108.

[144] Compl. ¶ 109; CX-5.

[145] Compl. ¶ 108; CX-5.

[146] Compl. ¶ 110.

[147] Compl. ¶ 111.

On October 9, 2012, Market Regulation notified Diaz, by overnight delivery and first-class mail, that he was suspended from associating with any member firm in any manner for his failure to respond fully to FINRA's Rule 8210 information requests.[148] The October 9, 2012 letter indicated that Diaz's continuing failure to provide the requested information would result in a bar from the securities industry on December 12, 2012.[149] Market Regulation sent the October 9 suspension letter to Diaz's CRD address and provided a copy to his attorney.[150] On December 10, 2012, two days before the suspension of Diaz was scheduled to convert into a bar, and more than one year after OFDMI initially requested information and documents from Diaz, Diaz's attorney submitted the missing documentation and information originally requested on October 25, 2011.[151]

Accordingly, the Hearing Officer concludes that Diaz violated FINRA Rules 8210 and 2010 by failing, between October 2011 and December 2012, to respond timely and fully to repeated requests for information, as alleged in the Sixth Cause of the Complaint. Market Regulation properly served Diaz with multiple requests for information and documents and Diaz, through counsel, failed for more than one full year to respond fully to the requests. By doing so, Diaz violated FINRA Rule 8210.[152]

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[148] CX-6.

[149] Compl. ¶ 112; CX-6.

[150] *Id.*

[151] Compl. ¶ 112.

[152] A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

2. Failure to Respond in any Manner

On May 7, 2013, Market Regulation took Diaz's on-the-record testimony and asked him about his involvement with Nuela, Nordica, and Marca.[153] Diaz testified that he had several million dollars in various bank accounts and that he held the majority of his money in a bank account in the name of "WVI," an entity that Diaz claimed to own with his wife.[154] Diaz, however, had not previously identified WVI nor produced documents or other information to support these claims.[155] On May 10, 2013, Market Regulation sent Diaz's attorney a Rule 8210 request for specific documents related to Diaz's revelations during his investigative testimony that had not been previously produced.[156] On May 22, 2013, Diaz's attorney advised Market Regulation that he no longer represented Diaz.[157]

On June 4, 2013, Market Regulation contacted Diaz directly and emailed him a copy of its May 10, 2013 request for information.[158] On June 5, 2013, Diaz responded to Market Regulation's email.[159] Market Regulation provided Diaz until June 10, 2013, to provide a response to FINRA's Rule 8210 letter.[160] Diaz never responded.[161]

The Hearing Officer concludes that Diaz violated FINRA Rules 8210 and 2010 by failing to respond to the May 10, 2013 request for information. Diaz received the request and asked for

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[153] Compl. ¶ 113.

[154] Compl. ¶¶ 114, 115.

[155] *Id.*

[156] Compl. ¶ 116; CX-4.

[157] Compl. ¶ 117.

[158] Compl. ¶ 118.

[159] *Id.*

[160] *Id.*

[161] Anderson Decl. ¶ 50; Compl. ¶ 119.

an extension of time to respond, which the staff granted. Nonetheless, Diaz failed to provide the requested information.

III. SANCTIONS

A. Fraud, Conversion, and Improper Use of Funds

For intentional or reckless misrepresentations and omissions of material facts, the FINRA Sanction Guidelines ("Guidelines") provide for fines ranging from $10,000 to $100,000, a suspension for a period of ten business days to two years, and, in an egregious case, a bar.[162] For conversion of funds, particularly funds belonging to a customer, the Guidelines indicate that a bar in all capacities should be standard.[163] The Guidelines do not include specific principal considerations for those violations; rather, they direct the adjudicator's attention to the general Principal Considerations for Determining Sanctions.[164]

Here, many of the principal considerations are aggravating. As discussed above, Diaz made fraudulent statements to his customers and withheld material information about Nuela's, Nordica's, and Marca's financial conditions in an effort to misappropriate customer money and convert it to his own use and benefit. Diaz demonstrated a pattern of deception that involved four customers and one co-worker and resulted in his conversion of $900,000.[165] Diaz's misconduct was intentional, occurred over the course of two years, resulted in significant customer loss, and enabled Diaz to profit handsomely.[166] Additionally, Diaz refused to return the customers' funds when requested, and returned CW's, DKB's, and DMB's funds only after

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[162] Guidelines at 88 (2013).

[163] Guidelines at 36.

[164] *Id.*

[165] Guidelines at 6-7 (Principal Consideration Nos. 8, 18).

[166] Guidelines at 6-7 (Principal Consideration Nos. 9, 11, 13, 17).

they or CR complained to National and the New York Attorney General.[167] For Diaz's fraudulent misconduct and conversion of customer and co-worker funds under Causes One, Two, and Three, Diaz is barred in all capacities and ordered to pay restitution to the injured parties as detailed below.

B. Private Securities Transactions and Providing False Information to a Member Firm

The Guidelines for private securities transactions recommend a fine of $5,000 to $50,000.[168] The Guidelines also recommend that the adjudicator consider that Diaz sold away investments of $200,000 from his firm to two customers and that the sales resulted in the violation of federal securities laws.[169] Both of these factors are aggravating, as are Diaz's proprietary or beneficial interest in Marca and Diaz's solicitation of another registered person at National to sell Marca.[170] In addition, Diaz misrepresented to National that he was not involved in an outside business other than Nuela, Worldwide, and Worldwide Wealth Management, and he misrepresented the nature of his dealings with Nuela.[171] The Guidelines further state that, for sales between $100,000 and $500,000, a suspension of three to six months is recommended, but in cases such as this, involving significant aggravating factors, a more significant sanction may be appropriate. Given the aggravating factors present here, the Hearing Officer would fine Diaz and impose a suspension for violations under Causes Four and Five of the Complaint. In light of the bar imposed for violations under Causes One, Two, and Three, however, the Hearing Officer has not imposed additional sanctions under Causes Four and Five.

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[167] Anderson Decl. ¶ 36.

[168] Guidelines at 14.

[169] *Id.*

[170] *Id.*

[171] There are no Guidelines addressing Diaz's misrepresentation to National.

C. Failure to Fully and Timely Respond and Complete Failure to Respond to Requests for Information

The Guidelines for untimely responses to requests for information pursuant to Rule 8210 recommend a fine of $2,500 to $25,000.[172] The Guidelines also recommend that the adjudicator consider a suspension of up to two years.[173] The Guidelines recommend consideration of the importance to FINRA of the information requested, the degree of regulatory pressure required to obtain a response, and the length of time to respond.[174] These factors are all aggravating. Diaz failed to respond to Market Regulation for more than one year before finally producing the requested information and documents. In order to get Diaz to respond, Market Regulation had to expend significant effort. Diaz responded after FINRA suspended him for his failure to respond and two days before his suspension would have converted to a bar. Furthermore, Market Regulation represents that the information that it sought from Diaz was important to this investigation because, without it, Market Regulation could not pursue all aspects of its inquiry.[175] Diaz's delaying tactics interfered with the investigation.[176]

The Guidelines for the failure to respond in any manner to requests for information pursuant to Rule 8210 recommend a bar.[177] The Guidelines for a partial but incomplete response recommend a bar unless the person can demonstrate substantial compliance with all aspects of the request.[178] By either standard, Diaz's misconduct warrants a bar because Diaz cannot demonstrate substantial compliance with Market Regulation's May 10, 2013 request for

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[172] Guidelines at 33.

[173] *Id.*

[174] *Id.*

[175] Anderson Decl. ¶ 54.

[176] *Id.*

[177] Guidelines at 33.

[178] *Id.*

information and documents. Between October 2011 and December 2012, FINRA requested information from Diaz about his personal financial holdings.[179] After Diaz failed to respond for more than one year, he finally provided information that Market Regulation deemed responsive.[180] During subsequent on-the-record testimony, however, Diaz disclosed that he held additional funds in other accounts for which he had not previously provided documentation to FINRA.[181] In May 2013 correspondence, Market Regulation requested documentation related to Diaz's newly disclosed financial resources.[182] Diaz failed to respond.[183] Diaz has not demonstrated substantial compliance. Furthermore, the Guidelines recommend consideration of the importance to FINRA of the information requested.[184] This factor is aggravating in that Market Regulation represents that the information that it sought from Diaz was important to this investigation.[185]

For Diaz's Rule 8210 violations under Cause Six of the Complaint, the Hearing Officer bars Diaz from associating with any member firm in any capacity. As discussed above, there are numerous aggravating factors present and no mitigating factors.

Accordingly, Diaz is barred from associating with any FINRA member firm in any capacity. In addition, Diaz is ordered to pay restitution to: (1) JM in the amount of $550,000; and (2) CR in the amount of $50,000. All restitution payments shall be paid to the individuals with interest from the date of their investments, until paid in full.

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[179] Compl. ¶¶ 94-112; CX-4.

[180] Compl. ¶ 112.

[181] Compl. ¶¶ 114, 115.

[182] Compl. ¶ 116, CX-4.

[183] Anderson Decl. ¶ 50; Compl. ¶ 119.

[184] Guidelines at 33.

[185] Anderson Decl. ¶ 54.

IV. ORDER

For willfully violating Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, NASD Conduct Rule 3040, and FINRA Rules 8210, 2150, 2020 and 2010, as outlined in this decision, Respondent Jaime Andres Diaz is barred from associating with any FINRA member firm in any capacity. In addition, Diaz is ordered to pay restitution to (1) JM in the amount of $550,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from July 2010, until paid; and (2) CR in the amount of $50,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from January 2011, until paid.[186] The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

Carla Carloni
Hearing Officer

Copies to: Jaime Andres Diaz *(by overnight courier and first-class mail)*
Lora W. Alexander, Esq. *(by electronic and first-class mail)*
James J. Nixon, Esq. *(by electronic mail)*
David E. Rosenstein, Esq. *(by electronic mail)*
Robert Marchman, Esq. *(by electronic mail)*

[186] 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. JM and CR are identified in the addendum to this decision, which is served only on the parties. In the event that JM and CR cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the states in which JM and CR were last known to reside. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Market Regulation no later than 90 days after the date when this decision becomes final.

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION, Complainant, v. JAIME ANDRES DIAZ (CRD 4298373), Respondent.	DISCIPLINARY PROCEEDING No. 20110295459 - 02 HEARING OFFICER: **COMPLAINT**

The Department of Market Regulation alleges:

Summary

1. Beginning in December 2009 and continuing through November 2011, Jaime Andres Diaz ("Diaz"), while registered at a FINRA member firm, by means of deceptive, manipulative, and other fraudulent devices or contrivances, converted approximately $850,000 from four customers, one of whom, customer CW, was elderly. Diaz also converted $50,000 from a registered representative who worked at Diaz's FINRA member firm. Diaz told customers that their funds would be used to invest in two new restaurants in New York City and told one customer that his funds would be invested in real estate developments in New York City and a resort in Bermuda. Diaz, however, did not invest the funds as he had represented to his customers. Instead, he converted the funds for his personal use, to pay expenses related to his branch office business and to pay earlier investors.

2. As a result, Diaz engaged in transactions, acts, practices and courses of business that constituted willful violations of Section 10(b) of the Exchange Act of 1934 and SEC Rule 10b-5 thereunder, and violations of FINRA Rules 2010, 2020, and 2150.

3. In addition, Diaz participated in private securities transactions for which he was compensated. Diaz, however, failed to provide written notice to his employer member firm describing in detail the proposed transactions, his role therein in, or whether he was receiving or would receive selling compensation in connection therewith, in violation of FINRA Rule 2010 and NASD Rule 3040.

4. Moreover, Diaz solicited investments from clients of his employer FINRA member firm and falsely denied that he had solicited those investments to his FINRA member firm in violation of FINRA Rule 2010.

5. Furthermore, in connection with FINRA's investigation of this matter, Diaz failed to timely respond and completely failed to respond to FINRA Rule 8210 requests for documents and information in violation of FINRA Rules 2010 and 8210.

The Respondent and Jurisdiction

6. Diaz first became employed in the securities industry when he registered as a General Securities Representative with a FINRA member firm in November 2000. Diaz continued in the industry and registered with his most recent employing FINRA member firm in July 2007. In April 2008, Diaz also registered as a General Securities Principal. He remained registered until December 1, 2011, when his firm filed a Form U5 terminating his registration. On June 27, 2012, Diaz's former firm filed an amended Form U5 disclosing a customer complaint/arbitration by customer JM alleging that Diaz may have engaged in conduct actionable under applicable federal securities laws and regulations and the rules of FINRA. 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, December 1, 2011; (2) the Complaint was filed within two years after the date upon which his FINRA member firm filed an amended Form U5 disclosing actionable conduct, namely, June 27, 2012; and (3) the Complaint charges him with misconduct committed while he was registered with a FINRA member and with failing to respond to a FINRA request for documents and information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

The Fraudulent Scheme

7. Beginning in or about December 2009, Diaz employed a deceptive, fraudulent scheme involving the solicitation of four customers and a co-worker to invest money in three separate business ventures: (1) Nuela Restaurant; (2) Nordica Development; and (3) Marca Restaurant.

8. The promissory notes and equity interests that Diaz sold to customers relating to these business ventures were securities pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934.

Diaz Solicits Customers JM and CW to Invest in Nuela Restaurant

9. In 2007, Diaz, along with two other investors, became involved in developing a new restaurant in New York City called Nuela. Nuela was intended to be a Latin inspired restaurant and was supposed to open in late 2007 or early 2008. The investors, however, did not have enough money to complete the project. In late 2008, Diaz and his brother invested

$500,000 in Nuela. A few months later, Diaz began receiving capital calls from other investors stating that another $1 million was needed to complete the project. In mid-2009, Diaz and his brother invested an additional $500,000 in Nuela and he solicited his friend AT to also invest $500,000 in Nuela.

10. In late 2009, Diaz began soliciting clients of his FINRA member firm to invest in Nuela.

Customer JM

11. In December 2009, Diaz solicited a client of his FINRA member firm, JM, to invest in Nuela. Diaz told JM that his investment would be used to purchase an equity interest in Nuela. Diaz, however, did not tell JM about the capital calls he had received, that the opening of the restaurant had been delayed, or that he may not receive a return on his investment and could lose his principal investment.

12. On or about December 22, 2009, upon Diaz's recommendation and advice, JM sold approximately $70,000 worth of securities that he held in his brokerage account at Diaz's FINRA member firm.

13. The next day, on December 23, 2009, JM wired the $70,000, plus an additional $130,000 from another source, for a total of $200,000 to the bank account for Diaz's investment advisory company, Worldwide Asset Protection. The balance in the Worldwide Asset Protection account was $6,717.54 immediately before JM's wire transfer.

14. After he received JM's wire transfer of $200,000, on or about December 23, 2009, Diaz wired $75,000 from the Worldwide Asset Protection account to the bank account for Nuela.

15. Also on December 23, 2009, Diaz wired $125,000 from the Worldwide Asset Protection account to AT, Diaz's friend who had also invested in Nuela.

16. Diaz did not deliver any shares in Nuela to JM or provide him with any documents evidencing his purported $200,000 equity investment in Nuela.

17. On or about January 15, 2010, upon Diaz's recommendation and advice, JM again sold securities, approximately $50,000 worth, from his brokerage account and wired the proceeds to Diaz's Worldwide Asset Protection account. The balance in the Worldwide Asset Protection account was $262.54 immediately before JM's wire transfer.

18. On January 15, 2010, shortly after he received JM's $50,000 wire transfer, Diaz wrote a check payable to himself for $9,000. In the memo line, Diaz wrote "payment Nuela interest." On January 20, 2010, Diaz wrote a second check payable to himself for $6,200 and the memo line stated "payment Nuela interest."

19. On January 25, 2010, Diaz wired $35,000 from the Worldwide Asset Protection account to VF, another one of Diaz's friends who had also invested in Nuela.

20. Diaz did not provide JM any shares or other documents evidencing his purported $50,000 equity investment in Nuela.

21. Contrary to his representations to JM, Diaz did not invest all of JM's funds in Nuela. Diaz misappropriated JM's funds by falsely representing that he would use the money to purchase an equity interest in Nuela, when instead, Diaz converted JM's funds for his personal use and to make payments to earlier investors.

22. Diaz did not tell JM that his funds would be used in this manner, nor did JM authorize Diaz to use his funds in this manner.

Customer CW

23. In February 2010, Diaz solicited another client of his FINRA member firm, CW, age 79 at the time, to invest in Nuela. Diaz did not tell CW about the capital calls, that the opening of the restaurant had been delayed, or that he may not receive any return on his investment and that he could lose his principal investment.

24. Diaz solicited CW to purchase a promissory note in the amount of $100,000. The promissory note was to pay interest on a periodic basis. Diaz told CW that his funds would be used to invest in Nuela.

25. On or about February 16, 2010, CW, upon Diaz's recommendation and advice, borrowed $75,000 against the securities in the brokerage account he held at Diaz's FINRA member firm. CW wired the proceeds to his personal bank account with Citibank.

26. On February 17, 2010, Diaz sent CW an email with instructions on how to wire funds from his Citibank account to Diaz's Worldwide Asset Protection account. After receiving the email, CW wired the $75,000 he borrowed from his brokerage account plus an additional $25,000, for a total of $100,000, from his personal bank account with Citibank to Diaz's Worldwide Asset Protection account. The balance in the Worldwide Asset Protection account was $137.54 immediately before the wire transfer from CW.

27. On the same day that he received the wire transfer from CW, Diaz wired $50,000 from the Worldwide Asset Protection account to his personal bank account. The balance in Diaz's personal bank account was $3.93 immediately before he wired in $50,000 from the Worldwide Asset Protection account.

28. On February 18, 2010, Diaz wrote two checks payable to himself from his personal bank account, one for $35,000 and one for $15,000, leaving a balance in his personal bank account of $3.93.

29. Diaz deposited the $15,000 check into his Worldwide Wealth Management account and used the money to pay for expenses related to his branch office business including telephone bills and other expenses. Diaz deposited the $35,000 check into another one of his personal bank accounts.

30. Also on February 18, 2010, Diaz wired $40,000 from his Worldwide Asset Protection Account to Nuela.

31. That same day, Diaz wrote two checks payable to himself from the Worldwide Asset Protection account, one for $5,000, and one for $5,100. In the memo line for the $5,000 check, Diaz wrote "Nuela" and in the memo line for the $5,100 check, Diaz wrote "Jaime Reimbursement!"

32. CW did not receive a promissory note from Diaz and did not receive any documents evidencing his investment in Nuela. He did, however, receive one interest payment of $10,000 on his investment but did not receive any other interest payments. CW repeatedly asked Diaz to return his principal investment of $100,000 but Diaz did not return his funds.

33. In July 2010, CW sold all of the securities in his brokerage account at Diaz's FINRA member firm and used the proceeds to repay the $75,000 loan against the securities in his brokerage account that he had taken in order to invest with Diaz.

34. Contrary to his representations to CW, Diaz did not invest all of his funds in Nuela. Diaz misappropriated CW's funds by falsely representing that he would use the money to

invest in Nuela, when instead, Diaz converted CW's funds for his personal use and for expenses related to his branch office business.

35. Diaz did not tell CW that his funds would be used in this manner, nor did CW authorize Diaz to use his funds in this manner.

Diaz Solicits Customer JM to Invest in Nordica Development

36. In or around mid-2010, Diaz became involved with Nordica Development. According to Diaz, the purpose of Nordica was to develop a new housing project in New York and to develop a resort community in Bermuda. Diaz personally invested $70,000 in Nordica and again solicited investors, including clients of his FINRA member firm, to invest in Nordica.

37. In July 2010, Diaz convinced JM to invest $300,000 in Nordica. Diaz told JM that his funds would be used to purchase a fractional interest in the New York housing development and the resort in Bermuda.

38. Diaz, however, did not tell JM that he had not received any financial data for Nordica, that the developers were having difficulty getting permits to begin construction, or that he had not conducted any due diligence on the principal investors who were responsible for completing the project.

39. On July 13, 2010, JM wired $150,000 from his personal bank account to Diaz's Worldwide Asset Protection account. The balance in Diaz's Worldwide Asset Protection account was $1,171.68 immediately before JM's wire transfer.

40. Shortly after he received JM's wire transfer of $150,000, Diaz transferred $90,000 to his personal bank account and used those funds to pay for his personal expenses.

41. On July 16, 2010, JM sold approximately $150,000 worth of securities in his brokerage account at Diaz's FINRA member firm.

42. JM wired the proceeds of his sale to his personal bank account and on July 20, 2010, he wired $150,000 from his personal bank account to Diaz's Worldwide Asset Protection account.

43. On July 21, 2010, Diaz wired $100,000 from the Worldwide Asset Protection account to his friend, VF.

44. Also on July 21, 2010, Diaz wrote a check from the Worldwide Asset Protection account for $10,000 and, that same day, deposited a check for $10,000 into his personal account. Diaz used the funds to pay for his personal expenses.

45. On July 23, 2010, Diaz transferred $8,000 from the Worldwide Asset Protection account to his personal account, and on July 26, 2010, he transferred $10,000 to his personal account. Diaz used the funds to pay for his personal expenses.

46. Contrary to his representations to JM, Diaz did not invest JM's funds in Nordica. Diaz misappropriated JM's funds by falsely representing that he would use the money to invest in Nordica, when instead, Diaz converted JM's funds for his personal use and used the funds to make a payment to an earlier investor.

47. Diaz did not tell JM that his funds would be used in this manner, nor did JM authorize Diaz to use his funds in this manner.

48. In total, JM invested approximately $550,000 with Diaz between his investment in Nuela and his investment in Nordica. Diaz, however, did not make any interest payment to JM and, despite requests to do so, Diaz did not return his principal investment and did not provide JM with documents regarding his investments in Nordica or Nuela.

Diaz Solicits Customers DKB and DMB and Co-worker CR to Invest in Marca Restaurant

49. In or around late 2010, Diaz became involved in a second restaurant venture, Marca Restaurant. According to Diaz, Marca was intended to be an Argentinian steakhouse with an underground nightlife space. Diaz personally invested $800,000 in Marca and again, began soliciting investors, including clients of, and a co-worker at, his FINRA member firm.

50. In or about January 2011, Diaz solicited CR, a registered representative with Diaz's FINRA member firm, to invest $50,000 in Marca. Diaz told CR that he was an owner of Marca and that by investing in the restaurant, CR's funds would be used to purchase an equity interest in Marca. Diaz, however, was not an owner in Marca and was not authorized to make any representations on behalf of Marca or to sell CR an equity interest in Marca.

51. Diaz told CR that Marca was a good investment. In doing so, Diaz failed to tell CR that he (i) had conducted no due diligence on the principal investors responsible for the project; (ii) had not received any financial documents from the principal investors; and, (iii) knew that the developers did not have the necessary permits to complete the project.

52. Diaz also asked CR to solicit clients of their FINRA member firm to invest in Marca. Diaz told CR to have investors deposit funds into one of two bank accounts for Marca, one at HSBC and one at Citibank. Diaz, however, did not tell CR that he did not have authority to access any bank accounts that had been created for Marca by the principal investors of the restaurant. Further, Diaz did not have the authority to direct investors to deposit funds into any Marca bank account.

53. CR transferred, via bank journal, $50,000 from his personal bank account at HSBC to the HSBC bank account purportedly for Marca. CR, however, did not receive any documents evidencing his equity interest in Marca.

54. CR, at Diaz's request, called two clients of their FINRA member firm, DKB and DMB, and asked them to invest $100,000 each in Marca.

55. DKB deposited $100,000 from his personal bank account into the HSBC bank account purportedly for Marca.

56. DMB sold $100,000 worth of securities that he held in a brokerage account with Diaz's FINRA member firm and received a check from the firm for the proceeds. Once he received the money, DMB deposited it into his personal account and then wrote a check payable to Marca and mailed it to Citibank for deposit into the account purportedly for Marca.

57. Diaz drafted promissory notes for DKB and DMB evidencing their purported investment in Marca and emailed them to CR, who in turn, emailed the notes to DKB and DMB.

58. The promissory notes provided for 10 percent interest and the return of their principal by the end of 2011. Diaz told CR that if Marca reached $5 million in sales in any of the first three years, investors would all receive an additional interest payment of six percent.

59. Diaz, however, did not tell CR that he did not have the authority to sell Marca promissory notes to DKB or DMB or to make any representations on behalf of Marca.

60. At the end of 2011, Marca had not opened for business but the principal and 10 percent interest was due on the promissory notes. Diaz did not make any payments on the notes.

61. CR requested that Diaz return his funds and the funds of DKB and DMB. When he had not returned their funds after repeated requests to do so, CR filed a complaint with the New York Attorney General.

62. After he filed the complaint, Diaz returned DKB's and DMB's funds. Diaz did not return CR's funds.

63. Contrary to his representations, Diaz did not have the authority to make any representations on behalf of Marca. Consequently, Diaz falsely sold an equity interest in Marca to CR and falsely sold Marca promissory notes to DKB and DMB. Moreover, instead of investing the funds as he represented, Diaz misappropriated and converted the funds for his personal use.

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)

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

65. By engaging in the foregoing conduct, Diaz, 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 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.

66. In addition, Diaz effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances, in violation of FINRA Rules 2010 and 2020.

SECOND CAUSE OF ACTION
Improper Use and Conversion of Customers' Funds
(FINRA Rules 2010 and 2150)

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

68. Customers JM, CW, DKB or DMB neither knew about nor authorized Diaz's misappropriation of their funds for his own personal use.

69. By engaging in the foregoing conduct, Diaz made improper use of, and converted, his customers' funds in violation of FINRA Rules 2010 and 2150.

THIRD CAUSE OF ACTION
Improper Use and Conversion of Funds
(FINRA Rule 2010)

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

71. CR neither knew about nor authorized Diaz's misappropriation of his funds for his own personal use.

72. By engaging in the foregoing conduct, Diaz made improper use of, and converted, CR's funds in violation of FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Private Securities Transactions in Marca
(FINRA Rule 2010 and NASD Rule 3040)

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

74. Diaz, while associated with a FINRA member firm, participated in private securities transactions involving his sale of promissory notes in Marca, without disclosing his participation in such private securities transactions to his employing FINRA member firm.

75. In January 2011, Diaz sold two promissory notes in Marca totaling $200,000 to DKB and DMB, customers of Diaz's FINRA member firm.

76. The promissory notes bore a 10 percent interest rate. The notes included a date on which all outstanding principal and interest was due. The funds were provided to Diaz for the purpose of investing in Marca.

77. Diaz was compensated from the issuance of the promissory notes by virtue of his use of the proceeds generated by the sale of the notes, including the use of the proceeds for his personal benefit.

78. Prior to participating in the private securities transactions involving Marca, Diaz failed to provide written notice to the member firm with which he was associated describing in detail the proposed transaction and his proposed role therein and whether he had received or might receive selling compensation in connection with each transaction.

79. As a result, Diaz's employing member firm was unaware that Diaz was engaging in private securities transactions with customers of the firm or that Diaz was receiving compensation in connection with the transactions.

80. By engaging in the foregoing conduct, Diaz violated FINRA Rule 2010 and NASD Rule 3040.

FIFTH CAUSE OF ACTION
Providing False Information to his FINRA Member Firm
(FINRA Rule 2010)

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

82. On his Outside Business Disclosure form in the Central Registration Depository System ("CRD"), Diaz identified Worldwide Asset Protection, Worldwide Wealth Management

and Nuela Restaurant as outside business activities. Diaz identified Nuela as a non-investment related business activity. Diaz did not disclose Marca or Nordica as outside business activities.

83. On March 16, 2011, Diaz completed the firm's semi-annual compliance questionnaire.

84. On the questionnaire, Diaz falsely certified that his outside business disclosure form in CRD was accurate and there were no additions/deletions or changes. Diaz's certification was false because he had not disclosed his involvement in Nordica or Marca in CRD. In addition, although Diaz identified Nuela as an outside business activity, he falsely claimed that it was a non-investment business activity.

85. Question 6.1 of the questionnaire asked: "[w]hile engaged in this outside business [Nuela] have you raised capital, issued debt, made referrals for financial arrangements, loaned or invested funds either personally or on behalf of others?" Diaz falsely answered "no." In fact, Diaz personally invested $1 million in Nuela, solicited a customer of his FINRA member firm to purchase a $100,000 promissory note for Nuela and solicited another customer of his FINRA member firm to invest $250,000 in Nuela. Further, Diaz did not receive prior written approval, as required by his FINRA member firm, for CW or JM to invest or otherwise participate in Nuela.

86. Question 10 of the questionnaire asked: "[d]id you receive any verbal complaints or written complaints or grievances between July 1, 2010 and present?" Diaz falsely answered "no." Diaz's response was false because customers CW and JM had complained to him about their investments in Nuela and/or Nordica.

87. Question 12 of the questionnaire asked: "[b]etween July 1, 2010 and present, have you raised capital for any group or entity other than through business that was conducted through

your Broker Dealer?" Diaz falsely answered "no." In fact, Diaz had raised capital for Nuela, Nordica and Marca.

88. Question 47 of the questionnaire asked: "[h]ave you been involved in any capacity in the purchase or sale of a security not conducted through your Broker Dealer?" Diaz falsely answered "no." In fact, Diaz did solicit the sale of promissory notes on behalf of Marca and Nuela.

89. Question 55 of the questionnaire asked: "[d]o you recommend securities to clients over age 60?" Diaz falsely answered "no." In truth, Diaz solicited customer CW, age 79 at the time, to purchase a promissory note, a security, in Nuela.

90. On May 19, 2011, Diaz completed his firm's outside business interest form for Nordica. In response to question 5 "[w]ill any customers of [the firm] also be customers, investors or otherwise involved in this [Nordica] outside business interest?" Diaz falsely answered "no."

91. To the contrary, Diaz had raised capital for Nordica by soliciting a customer of his FINRA member firm to invest $300,000 in Nordica.

92. By engaging in the foregoing conduct, Diaz violated FINRA Rule 2010.

SIXTH CAUSE OF ACTION
Failure to Fully and Timely Respond and Complete Failure to Respond to FINRA Rule 8210 Requests (FINRA Rules 2010 and 8210)

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

Untimely Response

94. On October 14, 2011, Office of Fraud Detection and Market Intelligence (OFDMI) staff sent Diaz a letter pursuant to FINRA Rule 8210 requesting information in

connection with OFDMI's investigation of this matter. OFDMI staff sent the FINRA Rule 8210 letter to the residential address that was provided in CRD via certified mail, first class mail and FedEx. The certified mail letter was returned to staff as undeliverable.

95. On October 25, 2011, OFDMI staff sent Diaz a follow-up letter pursuant to FINRA Rule 8210 requesting information in this matter. OFDMI staff sent the follow-up FINRA Rule 8210 letter to his residential CRD address via certified mail and first class mail. A copy of the letter was also sent to the compliance officer at Diaz's FINRA member firm.

96. On October 26, 2011, OFDMI staff received an email from the law firm representing Diaz in this matter. The law firm requested on behalf of Diaz, and was granted, an extension to respond to the FINRA Rule 8210 request until November 3, 2011.

97. On November 3, 2011, Diaz's attorney requested, and was granted, a second extension to respond to the FINRA Rule 8210 request until November 10, 2011.

98. On November 16, 2011, six days after the response was due, Diaz's attorney requested, and was granted, a third extension to respond to the FINRA Rule 8210 request until November 18, 2011.

99. On November 18, 2011, Diaz, through his attorney, submitted an incomplete response to the FINRA Rule 8210 request. In reviewing his response, staff noticed that Diaz did not produce all of his personal bank account statements for the period July 2007 through October 2011.

100. On December 8, 2011, staff called Diaz's attorney and requested the documents that had not been produced. Diaz's attorney did not provide the missing documents.

101. On March 16, 2012, staff called Diaz's attorney and again requested the documents that had not been produced. On March 27, 2012, Diaz's attorney told staff that Diaz

was producing the bank account statements that had been previously requested. The staff, however, did not receive the bank account statements from Diaz or his attorney.

102. On April 3, 2012, when his response had still not be received, staff sent a second follow-up FINRA Rule 8210 request to Diaz, through his attorney, with a list of documents and information that had not been included in the November 18, 2011 production.

103. On April 11, 2012, when staff still had not received the requested documents, staff contacted Diaz's attorney to again request the documents that had not been produced.

104. On April 16, 2012, when staff still had not received the requested documents, staff again contacted Diaz's attorney to request the documents that had not been produced.

105. On April 16, 2012, Diaz, through his attorney, provided a second incomplete response to the FINRA Rule 8210 request. Diaz failed to produce all bank statements from July 2009 through October 2011 for accounts in which he had a financial interest. On April 27, 2012, staff requested that Diaz's attorney produce the remaining bank account statements. The staff, however, did not receive the remaining bank statements.

106. On May 24, 2012, staff again contacted Diaz's attorney and requested the documents that had not been produced. The staff, however, did not receive the remaining bank statements.

107. On June 1, 2012, staff sent Diaz, through his attorney, a third follow-up FINRA Rule 8210 request with a list of the documents and information that had not been included in either the November 18, 2011 production or the April 16, 2012 production. Diaz, however, did not respond to this request and did not request an extension.

108. On September 12, 2012, more than two months later, when his response had still not been received, staff initiated a FINRA Rule 9552 proceeding against Diaz for failing to fully

respond to repeated FINRA Rule 8210 requests. The Notice of Suspension was sent via FedEx and first class mail to Diaz's CRD address. A copy of the Notice of Suspension was sent to Diaz's attorney.

109. The Notice of Suspension letter included, among other things, notice that Diaz would be suspended from associating with any FINRA member in any capacity unless he fully complied with the FINRA Rule 8210 requests on or before October 9, 2012.

110. On September 24, 2012, Diaz, through his attorney, submitted a third incomplete response to the FINRA Rule 8210 letter. Diaz did not submit all of the bank account statements that had been requested in the initial FINRA Rule 8210 request.

111. On October 2, 2012, staff contacted Diaz, through his attorney, and informed him that the response was still incomplete and identified the specific documents and information that had not been submitted. Diaz, however, did not respond and did not request an extension.

112. On October 9, 2012, Diaz was sent a letter informing him that he was suspended from associating with any FINRA member firm in any capacity and would be barred on December 12, 2012, if he did not fully comply with the FINRA Rule 8210 response. On December 10, 2012, two days before he was to be barred, Diaz, through his attorney, submitted additional documents and information. At that time, staff reasonably believed that Diaz had substantially complied with the FINRA Rule 8210 requests.

Complete Failure to Respond

113. On May 7, 2013, staff took Diaz's testimony to question him about his involvement with Nuela, Nordica, and Marca and to determine what happened to the customers' money.

114. During his investigative testimony, Diaz testified that he had several millions of dollars. The bank account statements that Diaz provided in his prior FINRA Rule 8210 responses, however, did not support his claim.

115. In his testimony, Diaz stated that he kept the majority of his funds in a bank account in the name of WVI, which is a company that he owns with his wife. Diaz, however, had not provided any documents or other information for the WVI account in response to the previous FINRA Rule 8210 requests.

116. On May 10, 2013, staff sent Diaz, through his attorney, a FINRA Rule 8210 request and identified the specific documents that had not been produced in any of his prior responses. The response was due on May 22, 2013. Diaz did not respond and did not request an extension.

117. On May 22, 2013, Diaz's attorney sent staff a letter stating that he no longer represented Diaz in this matter.

118. On June 4, 2013, staff contacted Diaz directly and sent him the FINRA Rule 8210 letter that had previously been sent to his attorney. The FINRA Rule 8210 letter was sent to Diaz via email and, on June 5, 2013, Diaz responded to staff's email. Staff provided Diaz until June 10, 2013 to provide a response to the FINRA Rule 8210 letter.

119. To date, Diaz has not responded to the FINRA Rule 8210 letter and has not requested an extension.

120. As a result of Diaz's untimely and incomplete responses and his complete failure respond to Rule 8210 requests for documents and information, FINRA staff was prevented from pursuing material areas of its investigation into Diaz's conduct in this matter.

121. By engaging in the foregoing conduct, Diaz 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 Jaime Andres Diaz 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: NOV. 22, 2013

FINRA Department of Market Regulation

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