

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY WAYNE WEAVER
(CRD No. 5755974),

Respondent.

Disciplinary Proceeding
No. 2012035107701

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 15, 2015

Respondent is barred from associating with any FINRA registered firm in any capacity for: (i) writing checks on his account when he knew the bank account had insufficient funds available (check-kiting), in violation of FINRA Rule 2010; and (ii) failing to respond completely to requests for information and documents, in violation of FINRA Rules 8210 and 2010.

Appearances

Christopher M. Burky, Esq., for the Department of Enforcement.

No appearance by or for Jeffrey Wayne Weaver.

DECISION

FINRA's Department of Enforcement initiated this disciplinary proceeding against Jeffrey Wayne Weaver after FINRA member firm J.P. Morgan Securities LLC filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Weaver's behalf that disclosed that J.P. Morgan had terminated Weaver's employment because he had engaged in check-kiting. Check-kiting is a crime involving an account holder (i) writing a check on an account (Account A) knowing that there are insufficient funds available to cover the check amount, (ii) depositing the check in a second account (Account B), and then (iii) withdrawing the funds from Account B before the bank has time to clear the check written on Account A.

In the course of FINRA's investigation into Weaver's check-kiting, FINRA staff sent Weaver three requests for information and documents. Weaver did not provide any of the requested information and documents.

Enforcement filed the attached Complaint with the Office of Hearing Officers on November 24, 2014, alleging that Weaver violated FINRA Rule 2010 by engaging in check-

kiting and FINRA Rules 8210 and 2010 by failing to respond to three requests for information and documents FINRA staff issued pursuant to Rule 8210. Weaver did not file an Answer to the Complaint.

On February 27, 2015, Enforcement filed a Motion for Entry of Default Decision and Memorandum of Law (Motion), with a Declaration of Christopher M. Burky in support of the Motion (Declaration). Enforcement attached 11 exhibits to the Declaration.¹

Weaver did not respond to the Motion.

I. Findings of Fact and Conclusions of Law

A. Background

Weaver was most recently registered with FINRA as an Investment Company and Variable Contracts Products Representative with J.P. Morgan from October 2012 until December 7, 2012.² Weaver is not currently registered with FINRA or associated with a FINRA member firm.

B. Jurisdiction

FINRA has jurisdiction over Weaver pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct while he was subject to FINRA's jurisdiction.

C. Weaver Defaulted by Failing to Answer the Complaint

Enforcement served Weaver with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on November 24, 2014, the Complaint and an Amended First Notice of Complaint on December 4, 2014, and the Complaint and Second Notice of Complaint on January 12, 2015.³ In each case, Enforcement served Weaver by first-class certified mail addressed to his current residential address recorded in the Central Registration Depository.⁴ Thus, Weaver received valid constructive notice of this proceeding.⁵

¹ Citations to Enforcement's exhibits are noted as "CX-____."

² CX-1, at 2.

³ Burky Decl. ¶¶ 9-11. The Amended First Notice of Complaint included Weaver's apartment number in the service address, which Enforcement had inadvertently omitted from the original mailing.

⁴ Burky Decl. ¶¶ 9-11.

⁵ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-15964 (July 3, 2014).

Pursuant to Rule 9215, Weaver's Answer was due on or before January 29, 2015. Weaver did not respond to the Complaint and Second Notice of Complaint. Thus, Weaver is in default.⁶

D. Weaver Engaged in Check-Kiting

Weaver admitted in a detailed hand written statement dated November 29, 2012, that he kited three checks between November 6 and November 10, 2012.⁷ Weaver gave the statement to J.P. Morgan during its investigation of his activities. Weaver admitted that he wrote checks for \$700, \$1,000, and \$1,600 payable to himself on an account he held at Chase Bank that he knew contained insufficient funds. Weaver then deposited the checks in two other accounts he held at Chase Bank. After he deposited the checks he withdrew some funds, which he used for gambling at a casino.⁸ Each check was later dishonored for insufficient funds.⁹

Weaver also gave FINRA a written statement dated January 22, 2013, in which he admitted to check-kiting and explained the personal problems he was having at the time that led him to engage in this conduct.¹⁰

I conclude that the evidence establishes that Weaver kited three checks in November 2012, in violation of FINRA Rule 2010. Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business. FINRA Rule 0140 applies this requirement to associated persons such as Weaver. FINRA Rule 2010 "states a broad ethical principle" and is violated when a respondent engages in unethical conduct.¹¹ "FINRA's authority to pursue disciplinary action for violations of FINRA Rule 2010 encompasses unethical business-related misconduct, regardless of whether the misconduct involves a security."¹²

E. Weaver Failed to Respond to Requests for Information

After FINRA staff received the Form U5 that J.P. Morgan filed on Weaver's behalf, the staff began an investigation to determine if Weaver had violated FINRA conduct rules. FINRA's Preliminary Investigation Unit sent Weaver a Rule 8210 request for information in early January 2013. FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation,

⁶ Weaver is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁷ CX-9.

⁸ CX-9, at 2.

⁹ Compl. ¶ 15.

¹⁰ CX-10.

¹¹ *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) (citing *Benjamin Werner*, 44 S.E.C. 622 (1971)). See *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 (NAC Feb. 27, 2007); *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).

¹² *Dep't of Enforcement v. West*, No. 2009018076101, 2014 FINRA Discip. LEXIS 1, at *21 (NAC Feb. 20, 2014).

examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide information and documents with respect to any matter involved in the investigation, examination, or proceeding. Weaver provided a response dated January 22, 2013, in which he admitted that he had written checks to himself knowing that he had insufficient funds on deposit to cover the amount of the checks and that they would be dishonored when they were presented for payment.¹³

In furtherance of the investigation, FINRA staff sent him written requests for documents and information pursuant to Rule 8210(a) on April 12, 2013, April 29, 2013, and June 6, 2013.¹⁴ Weaver did not provide any of the requested documents and information.¹⁵

Weaver received constructive notice of each request. FINRA staff mailed each request to Weaver's CRD address by first-class mail. The second and third requests also were sent by first-class certified mail.¹⁶ Weaver did not respond to any of the Rule 8210 requests.¹⁷ Thus, Weaver violated FINRA Rules 8210 and 2010.¹⁸

In addition, FINRA staff contacted Weaver by telephone on or about May 21, 2013. During that call, Weaver stated that he would produce copies of the three checks at issue no later than the end of May 2013. Nonetheless, Weaver did not provide the copies of the checks as he promised.¹⁹

I conclude that the evidence establishes that Weaver failed to respond to the three Rule 8210 requests for documents and information and that he thereby violated Rules 8210 and 2010.

II. Sanctions

A. Check-Kiting

FINRA's Sanction Guidelines ("Guidelines") do not specifically address check-kiting. I therefore applied the Guidelines for conversion and improper use of funds because check-kiting involves using funds that do not belong to the account the holder.²⁰ In this case, Weaver

¹³ CX-10.

¹⁴ CX-11.

¹⁵ Compl. ¶ 26.

¹⁶ See FINRA Rule 8210(d) (stating that a notice issued under FINRA Rule 8210 is "deemed received" by a formerly registered person to whom it is sent when mailed to that person's last known residential CRD address); see also *Evansen*, 2014 FINRA Discip. LEXIS 10, at *32-33.

¹⁷ Compl. ¶¶ 18-26.

¹⁸ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010. See, e.g., *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009).

¹⁹ Compl. ¶¶ 22-23.

²⁰ FINRA Sanction Guidelines at 36 (2013), www.finra.org/Industry/Sanction-Guidelines.

intentionally wrote checks on an account with insufficient funds for the purpose of monetary gain. By doing so Weaver was able to spend funds that he did not have in his account.

I also examined the record for any mitigating factors. In the letter Weaver sent to FINRA on January 22, 2013, he attempted to excuse his misconduct. Weaver pointed out that he had not acted with malice and that he did not realize that check-kiting was such a serious offense. He also enumerated a number of stressful events in his life that he contended led to his actions. Weaver stated that his grandfather had moved away the previous year, his wedding was called off, and he lost his place to live when his father moved to Florida.²¹ As a result, Weaver claimed he became depressed and started gambling and drinking to excess.

These personal pressures of the nature Weaver claims he was under at the time of his violations generally do not mitigate violations of FINRA rules.²² “When such factors have been given some mitigating effect, it is where the respondent has presented evidence that such problems interfered with respondent’s ability to comply with FINRA rules.”²³ Here, however, the factors Weaver cites in his letter did not prevent him from acting honestly and in accord with the high ethical standards required of securities professionals under FINRA Rule 2010. Thus, I conclude that the appropriate sanction for this violation is a bar in all capacities.

B. Failure to Respond to Information Requests

FINRA’s Guidelines recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.²⁴ The Guidelines further provide that, where an individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.²⁵ Additionally, the Guidelines contain certain principal considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA’s perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reasons(s) for deficiencies in the response.²⁶

²¹ CX-10.

²² *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *38 (Mar. 9, 2015) (citing *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226 (1994) (rejecting as mitigating the argument that an associated person who converted customer funds was “under extreme emotional stress as a result of severe financial problems and his parents’ and children’s ill health”)).

²³ *Id.* at *39.

²⁴ Guidelines at 33.

²⁵ *Id.*

²⁶ *Id.*

Here, Weaver responded to FINRA staff's initial request for information by letter dated January 22, 2013. Thus, I applied the Guidelines for a partial, rather than complete, failure to respond.²⁷ The evidence reflects a number of aggravating factors.

First, Weaver failed to substantially comply with Enforcement's information requests. Enforcement's requests for information asked Weaver to verify the accuracy of the written statement he provided to J.P. Morgan in which he admitted that he had kited three checks totaling \$3,300. Enforcement also requested copies of the checks and related bank account statements. Weaver failed to provide any of the requested information and documents.

Second, the conduct under investigation was serious. Check-kiting is a fraudulent criminal scheme.

Third, Weaver provided no reason for his failure to comply with the requests. Indeed, when he spoke to FINRA staff in May 2013, he promised to send Enforcement copies of the three checks by the end of the month. He failed to do so.

Weaver failed to respond completely to Enforcement's information requests. There are no mitigating factors present in this case. Thus, I conclude that the appropriate sanction is a bar in all capacities.

III. Order

Jeffrey Wayne Weaver is barred from associating with any FINRA member firm in any capacity for (i) check-kiting, in violation of FINRA Rule 2010, and (ii) failing to respond completely to Rule 8210 requests for documents and information, in violation of FINRA Rules 8210 and 2010.

The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Andrew H. Perkins
Hearing Officer

Copies to:

Jeffrey Wayne Weaver (*via first-class mail*)
Christopher M. Burky, Esq. (*via email and first-class mail*)
Jeffrey D. Pariser, Esq. (*via email*)

²⁷ See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55-56 (June 14, 2013) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at *25 & 27 (Dec. 20, 2011)).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeffery Wayne Weaver (CRD No. 5755974),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2012035107701

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between November 6 and November 10, 2012, Respondent Jeffery Wayne Weaver (“Respondent” or “Weaver”) engaged in check kiting. Weaver wrote three personal checks to himself from his Chase checking account, in the total amount of \$3,300, when he knew that there were insufficient funds in his checking account to cover those checks. As a result of this conduct, Weaver violated FINRA Rule 2010.

2. Also, between April 12 and June 21, 2013, Weaver failed to respond to multiple requests for information from FINRA in connection its investigation into his activities. As a result of this conduct, Weaver has also violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Between February 2010 and December 2012, Weaver was registered as an Investment Company/Variable Contracts Product Representative with Chase Investment Services

Corp. ("Chase") and J.P. Morgan Securities LLC ("J.P. Morgan"), affiliated FINRA-registered firms.

4. Respondent's registration with J.P. Morgan was terminated on December 7, 2012, after the Firm investigated the conduct at issue in this Complaint.

5. 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) this Complaint was filed within two years after the effective date of termination of Weaver's registration with J.P. Morgan, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA Member and with failing to respond to FINRA's requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
Unethical Conduct – Check Kiting
(FINRA Rule 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. Between October and December 2012, Weaver was registered with and employed by J.P. Morgan.

8. At that time, Weaver maintained two checking accounts and a savings account at Chase bank.

9. Between November 6 and November 10, 2012, Weaver wrote three checks from his Chase checking account no. XXXXXX9451, payable to himself, in the amounts of \$700, \$1,000 and \$1,600.

10. When Weaver wrote the above-noted checks to himself, he knew that he did not have funds in his checking account no. XXXXXXX9451 to cover those checks.

11. Weaver deposited two of the above checks in his Chase checking account no. XXXXXX7268 and one into his Chase savings account no. XXXXXXX0730 shortly after he wrote them.

12. After depositing these checks into his checking account no. XXXXXX7268 and savings account no. XXXXXXX0730, Weaver withdrew funds from those accounts.

13. At the time that Weaver deposited the checks into his checking account no. 850377268 and savings account no. XXXXXXX0730, those accounts held insufficient funds to cover the amount that he withdrew.

14. Weaver has admitted in writing to JP Morgan that he knew he had insufficient funds in Chase checking account no. XXXXXXX9451 to cover those checks at the time that he wrote them. Weaver later affirmed this admission in writing to FINRA as well.

15. Each of the checks was subsequently returned for insufficient funds.

16. Weaver's activities constitute check-kiting, which involves writing checks against a bank account knowing the check amount exceeds the funds available; depositing it into another account, knowing it will eventually be dishonored; and making use of the funds before the check is dishonored by writing checks or withdrawing funds from the second account.

17. By virtue of the foregoing, Weaver violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to Respond to Requests for Information
(Violation of FINRA Rules 8210 and 2010)

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.

19. On or about April 12, 2013, FINRA staff sent Weaver a Request for Information via First Class U.S. Mail, to Weaver's last known residential address as reflected in the Central Registration Depository ("CRD").

20. FINRA staff received no response to the April 12, 2013, mailing. Accordingly, on or about April 29, 2013, FINRA staff sent Weaver another Request for Information via first class mail, again to Weaver's last known residential address as reflected in the CRD. On that same day, FINRA also sent that Request for Information to Weaver via certified mail at that same address.

21. FINRA staff received no response to the April 29, 2013, Request for Information sent via first class and certified mail, but Weaver signed the certified receipt for the copy sent via certified mail. Weaver never responded to that April 29, 2013, Request for Information sent via first class and certified mail to his last known residential address as reflected in the CRD.

22. Accordingly, FINRA staff called Weaver on or about May 21, 2013. During that call, Weaver stated that he would produce copies of the checks at issues (which had been requested in the preceding Requests for Information) by the end of May 2013.

23. Weaver never produced the documents as he had promised, and staff sent Weaver another Request for Information on June 6, 2013. One copy of this Request was sent via first class mail to Weaver's last known residential address as reflected in the CRD, and a second copy of this request was sent via certified mail to that same address.

24. Also on June 6, 2013, FINRA staff contacted Weaver via email at the email address he previously provided to FINRA, to request documents relevant to Weaver's conduct, including copies of the checks at issue.

25. Weaver failed to respond in any way to FINRA's June 6, 2013, Request for Information, whether sent via certified mail, U.S. Mail or e-mail.

26. Weaver has failed to respond to any request for documents and information described above, and the dates for responding to the requests have passed.

27. The acts, practices and conduct described above constitute violations of FINRA Rules 8210 and 2010 by Weaver.

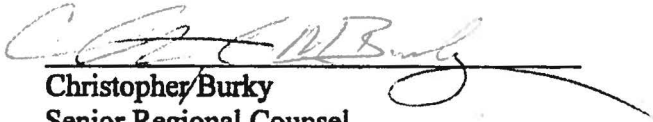
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that 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: November 24, 2014


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