

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM CHARLTON MAYS
(CRD No. 2693626),

Respondent.

Disciplinary Proceeding
No. 2013036238801

Hearing Officer—RLP

DEFAULT DECISION

November 7, 2014

Respondent is barred from associating with any FINRA member in any capacity for: converting customer funds in violation of FINRA Rules 2150(a) and 2010; failing to disclose an outside business activity in violation of FINRA Rules 3270 and 2010; and failing to respond to requests for information in violation of FINRA Rules 8210 and 2010. Respondent is statutorily disqualified for his willful failure to timely amend his Form U4 to disclose an unsatisfied tax lien in violation of NASD Rule 2110 and NASD IM-1000-1, but in light of the bars imposed for his other violations, no additional sanction is imposed for this violation. Respondent also is ordered to pay restitution.

Appearances

Aida Vernon, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

From January through October 2011, Respondent William Charlton Mays was employed by and registered with FINRA through FINRA member SWS Financial Services. On November 1, 2011, SWS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA reporting that Mays had terminated his employment with the firm on October

31, 2011.¹ Thereafter, in early 2013, investors, including LH, one of Mays' former SWS customers, contacted the Texas State Securities Board to express concern about investments Mays had solicited. After the Texas State Securities Board sent FINRA an investigation report, FINRA began its own investigation and then filed the complaint in this proceeding on October 4, 2013.²

The complaint alleges in the first cause of action that Mays converted and misused customer funds in violation of FINRA Rules 2150(a) and 2010. In the second cause of action, the complaint alleges that Mays failed to disclose an outside business activity to his firm in violation of FINRA Rules 3270 and 2010. The third cause of action alleges that Mays willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose an unsatisfied federal tax lien in violation of Article V, Section 2(c) of NASD's By-Laws, NASD Rule 2110, and NASD IM-1000-1. The fourth cause of action alleges that Mays failed to comply with requests for documents and information issued in connection with a FINRA investigation in violation of FINRA Rules 8210 and 2010.

For the reasons stated below, the Hearing Officer concludes that: FINRA has jurisdiction over this proceeding; Mays is in default; the allegations in the complaint are deemed admitted; Mays has violated FINRA rules; and bars appropriately remedy three of his four violations.

II. Jurisdiction

Mays entered the securities industry in 1995 and became registered with FINRA as a general securities representative in 1996. Most recently, Mays was employed by SWS and registered with FINRA as a general securities representative and a general securities principal.

¹ Complaint ¶¶ 5, 6; Declaration of Aida Vernon in Support of Motion for Entry of Default Decision and Imposition of Sanctions ("Vernon Decl.") ¶¶ 4, 5; Complainant's Exhibit ("CX") 1, at 2, 4; CX-2. Given that Mays is in default, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, as well as on the Vernon Declaration and its exhibits.

² Vernon Decl. ¶¶ 7-10.

Since November 1, 2011, Mays has not been associated with or registered with FINRA through any FINRA member.³ He remains subject to FINRA's jurisdiction, however, because the complaint: (1) was filed within two years after the effective date of termination of his registration; and (2) charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.⁴

III. Respondent's Default

On October 4, 2013, Enforcement served the notice of complaint and complaint on Mays by first-class and first-class certified mail addressed to Mays' residential address as reflected in FINRA's Central Registration Depository, among other addresses.⁵ On November 6, 2013, Mays submitted to the Office of Hearing Officers a response to the complaint that did not comply with FINRA Rule 9215(b) in that it did not specifically admit or deny the complaint's factual allegations or state an inability to admit or deny each allegation.⁶

After Mays failed to attend pre-hearing conferences convened to address, among other things, his deficient answer, the Hearing Officer stayed the proceeding on March 27, 2014, upon determining that Mays, who had been incarcerated, was unable to participate. In a status report filed July 30, 2014, Enforcement informed the Hearing Officer that Mays had been released on bond. The Hearing Officer therefore lifted the stay, directed Mays to file an answer in compliance with FINRA rules by August 15, 2014, and ordered the parties to attend a pre-

³ Complaint ¶¶ 5-7; Vernon Decl. ¶¶ 4-6; CX-1, at 2, 4; CX-2.

⁴ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁵ Vernon Decl. ¶ 50.

⁶ Nor did the response comply with Rule 9137(a), in that it was not signed.

hearing conference on August 19, 2014. Although the conference was held as scheduled, Mays failed to attend.

Consequently, on August 20, 2014, the Hearing Officer issued an order directing Mays to attend a hearing by telephone conference on August 26 to show cause why he should not be held in default for failing to (i) file an answer in compliance with Rule 9215(b), and (ii) attend the August 19 pre-hearing conference. The order cautioned Mays that a failure to appear might be deemed a default and could result in sanctions for the underlying misconduct charged in the complaint. The hearing was rescheduled for September 8, but Mays did not appear. Accordingly, the Hearing Officer issued an order on September 9 holding Mays in default and directing Enforcement to file a motion for entry of default decision. On October 9, 2014, Enforcement filed its motion, together with the declaration of Aida Vernon and 35 exhibits. Mays did not respond.

IV. Findings of Fact and Conclusions of Law

A. Mays Converted Customer Funds.

In 2011, Mays served as the broker for the account of SWS customer JH. Around August 2011, Mays solicited JH to invest \$50,000 in stocks and commodities. Mays told JH that his investment would yield a 6% annual return and that, after one year, JH could elect to have the principal amount of his investment returned to him or to obtain a partnership interest in the investment program. With the understanding that his funds would be invested in stocks and commodities, JH gave Mays a check for \$50,000, made out to Mays and dated September 5, 2011. On the memorandum line of the check, Mays wrote "Renovar." JH understood that "Renovar" was the vehicle through which his investments would be made.⁷ On September 6,

⁷ Complaint ¶¶ 9-11, 17; Vernon Decl. ¶¶ 13-16; CX-3-CX-6.

2011, Mays deposited JH's check into a bank account for Mays Financial Group, a business Mays controlled. During September and October 2011, Mays used at least \$30,968.58 of JH's money for personal purposes.⁸ In October, JH requested that Mays return his investment principal. Mays initially told JH that he would not be able to return the money but later repaid JH \$40,000 of his \$50,000 investment.⁹

FINRA Rule 2150(a) prohibits the "improper use of a customer's securities or funds." An associated person makes improper use of customer funds and violates this provision whenever he or she fails to apply a customer's money as the customer has directed.¹⁰ Misuse rises to the level of conversion when there "is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."¹¹

The Hearing Officer concludes that Mays engaged in conversion and therefore violated Rule 2150(a). Mays' conversion also violated Rule 2010, as his conduct was patently inconsistent with the high standards of commercial honor and just and equitable principles of trade that FINRA seeks to promote.¹² Although JH expected an investment in securities and commodities, Mays used JH's funds for other purposes, as though the funds were his own. It is plain that Mays intentionally took JH's money and used it for his own benefit without authority. Moreover, it is immaterial that Mays ultimately returned most of JH's funds.¹³

⁸ Complaint ¶¶ 12-16; Vernon Decl. ¶¶ 17-20; CX-6-CX-11.

⁹ Complaint ¶ 18.

¹⁰ *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (NAC May 23, 2001) (addressing predecessor rule and citing cases).

¹¹ FINRA Sanction Guidelines, at 36 n.2 (2013), available at www.finra.org/sanctionguidelines.

¹² See *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012); see also *Dep't of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *8-9 (Bd. of Governors May 9, 2014), appeal docketed, No. 3-15916 (SEC June 9, 2014).

¹³ See, e.g., *Bernard D. Gorniak*, 52 S.E.C. 371 (1995).

B. Mays Failed to Disclose an Outside Business Activity to His Firm.

Mays Financial Group was established as a Texas limited liability company in September 2004. According to the Articles of Organization, Mays was the entity's registered agent and sole member.¹⁴

While he was associated with SWS in 2011, Mays identified himself (on a franchise tax information report) as the president and a director of Mays Financial. He also maintained an active bank account for the company. Specifically, from January through November 2011, payments were made from the company's bank account; Mays wrote checks on the account; and deposits were received into the account, including two checks from investors made payable to Mays or Mays Financial Group. Nevertheless, Mays did not disclose to SWS his outside business activities with Mays Financial Group.¹⁵

FINRA Rule 3270 provides that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member." A violation of Rule 3270 is also a violation of FINRA Rule 2010.¹⁶

The Hearing Officer concludes that, in failing to provide the requisite notice of his activities and positions with Mays Financial Group to SWS, Mays violated FINRA Rules 3270 and 2010.

¹⁴ Complaint ¶ 24; Vernon Decl. ¶ 23; CX-12.

¹⁵ Complaint ¶¶ 24-26; Vernon Decl. ¶¶ 24-28; CX-13-CX-16; CX-17, at 2 (item 5).

¹⁶ See *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *17 & n.7 (NAC Dec. 7, 2005) (addressing predecessor rules).

C. Mays Willfully Failed to Timely Disclose a Federal Tax Lien on His Form U4.

In September 2004, Mays joined FINRA member LPL Financial as a general securities representative. On the September 20, 2004 Form U4 the firm filed on his behalf, Mays answered “No” to Question 14M, which asked whether he had any unsatisfied judgments or liens against him.¹⁷

Mays was still associated with LPL when, on March 26, 2007, the IRS filed a notice of federal tax lien against Mays and his ex-wife in the amount of \$67,032.57. Mays nevertheless did not disclose the lien to LPL until on or around September 11, 2007, even though, as he acknowledged in a September 14, 2007 email to the firm, he had become aware of the lien 10 days after it was filed. On September 19, 2007, almost six months after the lien was filed, Mays filed an amendment to his Form U4 disclosing the lien and explaining the lien in the comments section.¹⁸

Article V, Section 2(c) of FINRA’s By-Laws (in effect since July 30, 2007), like its predecessor, Article V, Section 2(c) of NASD’s By-Laws (in effect until July 29, 2007), requires that associated persons applying for registration provide FINRA with “such ... reasonable information with respect to the applicant as [FINRA] may require” and that “[e]very application for registration ... shall be kept current at all times by supplementary amendments ... filed ... not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” At all pertinent times, NASD IM-1000-1, in turn, notified registrants that filing registration information that “is incomplete or inaccurate so as to be misleading ... or ... fail[ing] to correct such filing after notice thereof may be deemed conduct inconsistent with just and equitable

¹⁷ Complaint ¶ 30; Vernon Decl. ¶ 29; CX-18.

¹⁸ Complaint ¶¶ 31, 35; Vernon Decl. ¶¶ 30-32, 35; CX-19-CX-21. According to Mays, he paid the outstanding taxes in full on September 13, 2007. CX-20; *see* Vernon Decl. ¶¶ 31, 33; CX-22 (certificate of release of federal tax lien dated September 26, 2007).

principles of trade” Accordingly, failing to timely amend a Form U4 violated NASD Rule 2110, as well as NASD IM-1000-1.¹⁹

In contravention of his obligation to keep his Form U4 current, Mays failed to amend the form within 30 days of receiving notice of the lien to answer “yes” to Question 14M and disclose the lien. Accordingly, Mays violated NASD Rule 2110 and NASD IM-1001-1. The Hearing Officer further concludes that Mays’ violative conduct was willful²⁰ and that the information he failed to disclose was material both because it was reportable on the Form U4²¹ and because it was critical to assessing his fitness to work in the securities industry.²² Accordingly, Mays is subject to statutory disqualification.²³

D. Mays Failed to Respond to Requests for Information.

On May 7, 2013, pursuant to Rule 8210, FINRA staff sent Mays a letter requesting information and documents pertinent to its investigation into whether Mays had misappropriated funds, operated a Ponzi scheme, and engaged in unapproved outside business activities while he was registered with SWS. The request was sent by certified mail, return receipt requested, and first-class mail to Mays’ residential address as then reflected in CRD and to his last known firm branch office address. On May 15, 2013, Mays called FINRA staff and requested an extension

¹⁹ *E.g., Dep’t of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *15-17 (NAC Dec. 12, 2008), *aff’d*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff’d*, 671 F.3d 210 (2d Cir. 2012).

²⁰ Mays need not have intended to violate FINRA’s rules. Instead, he acted willfully because he knew what he was doing. *See Mathis*, 671 F.3d at 216-218 (respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens).

²¹ *See Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004).

²² Applying the traditional materiality standard, a reasonable employer, regulator, or investor would have viewed Mays’ lien as altering the mix of information made available because liens “constitute[] serious financial problems critical to evaluating [a person’s] fitness to associate in the securities industry and the firm’s ability to assess his business judgment.” *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *32 (Nov. 9, 2012) (citing *Mathis*, 671 F.3d at 220).

²³ *See* Section 3(a)(39)(F) of the Securities Exchange Act of 1934; Article III, Section 4 of FINRA’s By-Laws; *see also Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (NAC Dec. 18, 2009) (stating that willful omission of material information on Form U4 results in statutory disqualification).

to respond to the request. Although Enforcement staff agreed to a 10-day extension (until May 31, 2013), Mays did not provide a response.²⁴

Accordingly, on June 4, 2013, the staff sent another request for the documents and information requested in the May 7 letter. This request also was sent by certified mail, return receipt requested, and first-class mail to Mays' CRD address, his firm's branch office address, and an alternate address of which Enforcement was aware. Mays did not respond to the request.²⁵

FINRA Rule 8210(c) sets forth an unequivocal requirement that registered persons comply with FINRA information requests, providing that "[n]o member or person shall fail to provide information" requested pursuant to the Rule. Mays failed to respond to requests for information. Accordingly, the Hearing Officer finds that Mays violated Rule 8210. His violation of Rule 8210 is also a violation of Rule 2010.²⁶

V. Sanctions

A. Conversion

In cases involving conversion, the Sanction Guidelines recommend a bar regardless of the amount converted.²⁷ Given that the record does not disclose any factors that would warrant a lesser sanction, the Hearing Officer concludes that Mays should be barred from associating with any FINRA member in any capacity for converting JH's funds in violation of FINRA Rules 2150(a) and 2010.

²⁴ Complaint ¶¶ 41-43, 47-48; Vernon Decl. ¶¶ 37, 41; CX-23; CX-28.

²⁵ Complaint ¶¶ 49-51, 55-56; Vernon Decl. ¶¶ 42, 48; CX-29.

²⁶ See *Michael A. Rooms*, 58 S.E.C. 220, 228 & n.15 (2005) (holding that efforts to impede NASD (now FINRA) investigations violate high standards of commercial honor and just and equitable principles of trade), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

²⁷ FINRA Sanction Guidelines, at 36.

The Sanction Guidelines also provide for restitution in appropriate cases. Restitution is a traditional remedy used to restore the *status quo ante* where a victim otherwise would unjustly suffer loss. Adjudicators may order restitution when an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct.²⁸ JH suffered a loss of \$10,000 as a result of Mays' misconduct. Mays is ordered to pay \$10,000, plus interest, to JH.

B. Outside Business Activity

For violations of FINRA Rule 3270, the Sanction Guidelines recommend fines of \$2,500 to \$50,000 and suspensions of up to 30 business days. When the outside business activities involve aggravating conduct, or in egregious cases, a longer suspension of up to one year or a bar is recommended. Pertinent guideline-specific principal considerations include: (i) whether the outside activity involved firm customers; (ii) the extent of injury to customers; (iii) the duration of the outside activity, number of customers, and dollar volume of sales; and (iv) whether the respondent misled his firm about the existence of the activity or concealed it from the firm.²⁹

The first and second guideline-specific considerations are significantly aggravating. Mays convinced JH to write a \$50,000 check as an investment and then used Mays Financial Group's bank account as the vehicle for converting those funds. Thereafter, when JH requested the return of his funds, Mays returned only \$40,000 of the \$50,000—resulting in a \$10,000 loss. Given that Mays involved his company in harming a customer, the Hearing Officer considers Mays' misconduct sufficiently egregious to warrant a bar.

C. Failure to Timely Amend U4

For late filing of amendments to a Form U4, the Sanction Guidelines recommend that an individual be fined from \$2,500 to \$25,000. The Sanction Guidelines also provide that, in

²⁸ FINRA Sanction Guidelines, at 4.

²⁹ FINRA Sanction Guidelines, at 13.

determining the appropriate sanction, adjudicators should consider: (1) whether the information at issue was significant; (2) the nature of that information; and (3) whether the respondent's failure to disclose information resulted in a statutorily disqualified individual associating with a firm.³⁰

Mays failed to timely disclose information that would have been important for his employer and customers to know. In addition, turning to general considerations applicable to all violative conduct, the Hearing Officer notes that Mays failed to update his Form U4 for nearly six months after he became aware of the lien.³¹ Under these circumstances, the Hearing Officer finds that it would be appropriate to impose a significant fine. However, in light of the bars imposed upon Mays for his other violations, the Hearing Officer does not impose a sanction for his violation of NASD Rule 2110 and NASD IM-1000-1.³²

D. Failure to Respond to Rule 8210 Requests

A violation of Rule 8210 is serious because Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."³³ The rule thus "is at the heart of the self-regulatory system for the securities industry."³⁴ For these reasons, FINRA's Sanction Guidelines recommend a bar when an individual does not respond in any manner.³⁵

³⁰ FINRA Sanction Guidelines, at 69-70.

³¹ FINRA Sanction Guidelines, at 6 (Principal Consideration 9).

³² Enforcement did not propose a sanction for this violation.

³³ *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993) (addressing predecessor provision).

³⁴ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009).

³⁵ FINRA Sanction Guidelines, at 33.

Mays completely failed to respond to two requests for information. In such cases, a bar is standard.³⁶ The record does not reveal any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer concludes that Mays should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

VI. Order

Respondent William Charlton Mays is barred for violating FINRA Rules 2150(a) and 2010 by converting his customer's funds. He is ordered to pay JH \$10,000 (along with interest on any unpaid balance, starting on September 5, 2007, until paid in full).³⁷ Interest shall accrue at the rate set out in 26 U.S.C. Section 6621(a)(2).³⁸

Mays also is barred for violating FINRA Rules 3270 and 2010 by failing to disclose an outside business activity. He also is barred for violating FINRA Rules 8210 and 2010 by failing to respond completely to requests for information and documents. Finally, Mays is subject to statutory disqualification as a result of his willful failure to timely amend his Form U4 to disclose an unsatisfied tax lien in violation of NASD Rule 2110 and NASD IM-1000-1. In light of the bars imposed for his other violations, no additional sanction is imposed for this misconduct.

³⁶ FINRA Sanction Guidelines, at 33.

³⁷ JH is identified in the addendum to this decision, which is served only on the parties.

³⁸ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter. If JH cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate State of Texas escheat, unclaimed-property, or abandoned-property fund. 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 Enforcement no later than 90 days after the date this decision becomes final. Mays shall receive credit for any restitution he paid to JH pursuant to court order.

If this decision becomes FINRA's final disciplinary action, the bars shall become effective immediately.

Rada Lynn Potts
Rada Lynn Potts
Hearing Officer

Copies to:

William Charlton Mays (*via email and first-class mail*)
Aida Vernon, Esq. (*via email and first-class mail*)
Steven F. Korostoff, Esq. (*via email*)
Richard Chin, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

William Charlton Mays
(CRD No. 2693626),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036238801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of January 2011 to November 2011 (the "Relevant Period"), while registered with SWS Financial Services Inc. ("SWS Financial Services" or the "Firm"), William Charlton Mays ("Respondent") converted and misused at least \$30,968 of a Firm customer's funds, in violation of FINRA Rules 2150(a) and 2010.

2. During the Relevant Period, Respondent also engaged in an outside business activity—Mays Financial Group, LLC ("Mays Financial Group")—that he did not disclose to the Firm, in violation of FINRA Rules 3270 and 2010.

3. During March to September 2007, while he was associated with LPL Financial Corporation ("LPL Financial"), Respondent willfully failed to amend his Uniform Application for Securities Industry Registration ("Form U-4") to timely disclose an unsatisfied federal tax

lien, in violation of Article V, Section 2(c) of the NASD By-Laws (until July 29, 2007) and the FINRA By-Laws (after July 29, 2007), NASD Rule 2110, and NASD IM-1000-1.

4. Furthermore, in connection with FINRA's investigation into the foregoing misconduct, Respondent failed to provide documents and information requested pursuant to FINRA Rule 8210 on two occasions, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Respondent entered the securities industry in November 1995 and became a general securities registered representative in August 1996. During the period of November 1995 to November 2011, he was associated and registered with nine different FINRA-regulated firms, including LPL Financial and SWS Financial Services. Respondent was associated and registered with LPL Financial from September 2004 to April 2009. Most recently, he was associated and registered with SWS Financial Services from January 2011 to November 2011.

6. On November 1, 2011, SWS Financial Services filed a Form U-5 ("Uniform Termination Notice for Securities Industry Registration") for Respondent, disclosing that he voluntarily terminated his employment with the Firm on the previous day. Respondent has not been associated or registered with any FINRA-regulated firm since November 1, 2011.

7. 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 the Firm, namely, November 1, 2011, 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 requests

for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
Conversion and Misuse of Customer Funds
(FINRA Rules 2150(a) and 2010)

8. Enforcement realleges and incorporates by reference paragraphs 1 to 7 above.

9. JH was a customer of the Firm during the Relevant Period. While Respondent was associated and registered with the Firm, he served as JH's broker for his Firm account.

10. In or about August 2011, Respondent solicited JH to invest \$50,000 for a period of one year. Respondent told JH that his money would be invested in stocks and commodities. Respondent also told JH that, after one year, JH would be able to have his principal returned to him or to obtain a partnership interest in the investment program.

11. On September 5, 2011, JH presented Respondent with a check for \$50,000 drawn against JH's bank account, to be invested in stocks and commodities as Respondent had represented. At Respondent's instruction, JH had made the check payable directly to Respondent.

12. Respondent deposited JH's check into a bank account (the "Bank Account") for Mays Financial Group, a business that Respondent controlled, on September 6, 2011.

13. At the close of business on September 5, 2011, the Bank Account had a balance of only \$401.42. Other than the check from JH, Respondent only deposited \$1,730 into the Bank Account from September 5, 2011 to October 7, 2011.

14. On September 15, 2011 and September 30, 2011, Respondent wrote two checks, each in the amount of \$550, drawn against the Bank Account to his ex-wife purportedly for child support. These checks were debited from the Bank Account on September 19, 2011 and October 5, 2011, respectively.

15. Furthermore, on October 6, 2011, Respondent wrote a check drawn against the Bank Account for \$32,000 to his father purportedly for a "loan repayment." The check was debited from the Bank Account on October 7, 2011.

16. During September and October 2011, Respondent gave his own family members \$33,100 from the Bank Account. Approximately \$2,131.42 can be attributed to funds deposited into the account from sources other than JH. The remainder of the \$33,100 came from the funds invested by JH. As such, Respondent gave at least \$30,968.58 of JH's money to his own family members.

17. When JH gave Respondent the check, he believed that his money would be used to invest in stocks and commodities. He did not authorize Respondent to give any of his funds to Respondent's family members.

18. In or about October 2011, JH requested that Respondent return his investment. After Respondent initially told JH that he would not be able to return his money, he repaid JH approximately \$40,000. Respondent has not returned the rest of JH's funds.

19. FINRA Rule 2150(a) states that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." An associated person improperly uses funds where he or she fails to apply the funds or uses the funds for some purpose other than as directed by the customer. Improper use of customer funds rises to the level

of conversion when the associated person intends permanently to deprive the customer of the use of his funds. Conversion and misuse of customer funds also violates FINRA Rule 2010, which requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business.

20. By reason of the foregoing, Respondent converted and misused at least \$30,968 in customer funds by providing funds to his ex-wife and his father without customer JH's authorization.

21. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

Failure to Disclose an Outside Business Activity to His Firm (FINRA Rules 3270 and 2010)

22. Enforcement realleges and incorporates by reference paragraphs 1 to 21 above.

23. Respondent engaged in an unapproved outside business activity, involving Mays Financial Group, while he was associated with the Firm.

24. Respondent filed Articles of Organization, forming Mays Financial Group as a limited liability company under the laws of Texas, on September 13, 2004. According to the Articles, Respondent was the entity's registered agent and sole member. He also served as the president and a director of Mays Financial Group while he was associated with the Firm.

25. Respondent maintained an active bank account for Mays Financial Group during the period of January 2011 to November 2011. During this time, payments were made from the Bank Account and deposits were received into the Bank Account, including two checks from

investors made payable to Mays or Mays Financial Group. Respondent also wrote checks from the Bank Account during this period.

26. Respondent never disclosed to the Firm his outside business activities with Mays Financial Group.

27. FINRA Rule 3270 provides that “[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.” A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

28. By reason of the foregoing, Respondent participated in an outside business activity during the Relevant Period without providing prior written notice of such activity to the Firm, in violation of FINRA Rules 3270 and 2010.

THIRD CAUSE OF ACTION

Willful Failure to Timely Amend Form U-4 to Disclose an Unsatisfied Federal Tax Lien (Article V, Section 2(c) of the NASD By-Laws until July 29, 2007 and the FINRA By-Laws after July 29, 2007, NASD Rule 2110, and NASD IM-1000-1)

29. Enforcement realleges and incorporates by reference paragraphs 1 to 28 above.

30. On September 13, 2004, Respondent signed a Relicensing Form U-4, which LPL Financial filed on September 20, 2004. He answered “No” to Question 14M on this Form U-4, which asked whether he had any unsatisfied judgments or liens against him.

31. Thereafter, on March 26, 2007, the Internal Revenue Service filed a Notice of Federal Tax Lien in the amount of approximately \$67,032.57 against Respondent and his ex-

wife. Respondent became aware of the lien approximately 10 days after the lien was filed. He was employed by LPL Financial and registered with FINRA when the lien was filed and when he received notice of the lien. Respondent did not satisfy the lien until September 2007.

32. Article V, Section 2(c) of the NASD By-Laws, which was in effect until July 29, 2007, required that "[e]very application for registration filed with the NASD shall be kept current at all times by supplementary amendments" and that "[s]uch amendment to the application shall be filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment." On July 30, 2007, Article V, Section 2(c) of the NASD By-Laws was superseded by Article V, Section 2(c) of the FINRA By-Laws, which imposes identical obligations on the registered representative.

33. The "General Instructions" for the Form U-4 state that individuals are "under a continuing obligation to amend and update information required by Form U-4 as changes occur."

34. Respondent was required to amend his Form U-4 to disclose the unsatisfied lien within 30 days after he learned of the lien. Accordingly, he was required to amend his Form U-4 by approximately May 4, 2007.

35. Respondent did not disclose the lien to LPL Financial until approximately September 11, 2007 and did not amend his Form U-4 to disclose the lien until September 19, 2007, which was almost six months after he received notice that the lien was filed and almost five months late.

36. The existence of an unsatisfied lien is a material fact. Given that Respondent was aware of the lien, his failure to disclose the lien was a willful failure to disclose material information on his Form U-4.

37. NASD IM-1000-1, which was in effect during throughout 2007, stated “[t]he filing with the [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”

38. Conduct that was violative of the NASD By-Laws, FINRA By-Laws, or NASD IM-1000-1 prior to December 15, 2008 was conduct that was inconsistent with just and equitable principles of trade and violative of NASD Rule 2110.¹

39. By reason of the foregoing, Respondent willfully failed to amend his Form U-4 to timely disclose the foregoing lien, in violation of Article V, Section 2(c) of the NASD By-Laws (until July 29, 2007) and the FINRA By-Laws (after July 29, 2007), NASD Rule 2110, and NASD IM-1000-1.

FOURTH CAUSE OF ACTION

Failure to Comply with Two Requests for Documents and Information in connection with a FINRA Investigation (FINRA Rules 8210 and 2010)

40. Enforcement realleges and incorporates by reference paragraphs 1 to 39 above.

41. On May 7, 2013, Enforcement sent a letter (the “May 7th Letter”) to Respondent, requesting pursuant to FINRA Rule 8210 that he provide certain information and documents in connection with its investigation by May 21, 2013.

¹ On December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010, which imposes identical obligations on associated persons.

42. The May 7th Letter advised Respondent that his failure to provide the requested information and documents could subject him to sanctions, which could include a bar from the securities industry.

43. Enforcement sent the May 7th Letter by certified first-class mail, return receipt requested, and regular first-class mail to Respondent's last known residential address as reflected in the Central Registration Depository (the "CRD Address") and to his last known Firm branch office address as reflected in the CRD (the "Business Address"), which also is identified as a business address for Mays Financial Group on documents associated with that entity.

44. The U.S. Postal Service (the "USPS") returned to Enforcement the return receipt card for the May 7th Letter sent to Respondent's Business Address by certified mail. The return receipt card was signed by someone other than Respondent and was dated May 13, 2013.

45. The USPS returned to Enforcement the copy of the May 7th Letter sent to the CRD Address by certified mail, with a label affixed to the front of the envelope identifying an address in Fort Worth, Texas as Respondent's current address (the "Current Address"). In addition, the USPS returned the copy of the May 7th Letter sent to the Business Address by regular first-class mail, with a label affixed to the front of the envelope identifying Respondent's Current Address.

46. The copy of the May 7th Letter sent to Respondent's CRD Address by first-class mail was not returned to Enforcement.

47. On May 15, 2013, Respondent called Enforcement and made an oral request for an extension to respond to the May 7th Letter. Enforcement staff granted Respondent a 10-day extension until May 31, 2013, which he accepted.

48. Respondent did not respond to the May 7th Letter by May 31, 2013.

49. On June 4, 2013, Enforcement sent a second letter (the "June 4th Letter") to Respondent, advising him that Enforcement had not received his response to the May 7th Letter.

50. In the June 4th Letter, Enforcement asked Respondent pursuant to FINRA Rule 8210 to provide the information and documents requested in the May 7th letter by June 14, 2013. The letter further advised Respondent that his failure to provide the requested information and documents could subject him to sanctions, which could include a bar from the securities industry.

51. Enforcement sent the June 4th Letter by certified first-class mail, return receipt requested, and regular first-class mail to Respondent's CRD Address, his Business Address, and his Current Address. Enforcement also sent the letter by e-mail to Respondent's e-mail address (the "E-mail Address"), which he provided to Enforcement during the telephone conversation on May 15, 2013.

52. The USPS returned to Enforcement the return receipt card for the June 4th Letter sent to Respondent's Current Address by certified mail. The return receipt card was signed by someone other than Respondent and was dated June 8, 2013.

53. The USPS also returned to Enforcement the copies of the June 4th Letter sent to the CRD Address and the Business Address by certified mail, with labels affixed to the front of the envelopes indicating that delivery was not able to be completed because there was "no mail receptacle" and that the USPS was "unable to forward" the letter. In addition, the USPS returned the copy of the June 4th Letter sent to the Business Address by regular first-class mail, with a label affixed to the front of the envelope identifying Respondent's Current Address.

54. The copies of the June 4th Letter sent to the CRD Address and the Current Address by first-class mail were not returned to Enforcement.

55. Respondent did not respond to the June 4th Letter by June 14, 2013.

56. To date, Respondent has not provided the information and documents that Enforcement requested in the May 7th and June 4th Letters.

57. FINRA Rule 8210 provides, in relevant part, that FINRA staff "shall have the right to require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information... with respect to any matter involved in [an] investigation." A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.

58. By reason of the foregoing, Respondent failed to provide specific documents and information requested in connection with a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

59. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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;

- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the Third Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U-4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: _____

10/4/13

RC

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM CHARLTON MAYS
(CRD No. 2693626),

Respondent.

Disciplinary Proceeding
No. 2013036238801

Hearing Officer—RLP

ADDENDUM TO DEFAULT DECISION

JH: Judson Hall