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

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| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>JOHN ANTHONY VEDOVINO<br>(CRD No. 6113995),<br><br>Respondent. | Disciplinary Proceeding<br>No. 2015048362402<br><br>Hearing Officer–MC<br><br>**HEARING PANEL DECISION**<br><br>July 5, 2018 |

**Respondent is barred from associating with any FINRA member in any capacity for converting funds and failing to provide testimony and documents.**

*Appearances*

For the Complainant: John R. Baraniak, Jr., Esq., Jessica Brach, Esq., and Elissa Meth Kestin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Albert J. Cifelli, Esq., Cifelli & Davie.

## DECISION

## I. Introduction

Over a six-month span, while registered with FINRA as a General Securities Representative at member firm Wells Fargo Advisors, LLC, Respondent John Anthony Vedovino used his Wells Fargo Bank accounts to make a number of purchases and cash withdrawals. After each transaction he contacted the bank, claimed that someone had made a purchase or withdrawal without his consent, and asked for reimbursement. Relying on Vedovino's misrepresentations, Wells Fargo Bank reimbursed him for all but one of the transactions. When the bank later investigated and confronted Vedovino, he admitted his wrongdoing and Wells Fargo Advisors terminated his employment.

When FINRA investigated, it issued requests to Vedovino pursuant to FINRA Rule 8210 to provide testimony at an on-the-record interview ("OTR") and to produce documents related to his bank accounts. Vedovino did not testify and provided only a late, partial response to the document requests. FINRA's Department of Enforcement then issued the Complaint in this disciplinary proceeding. The two causes of action allege that Vedovino: (i) converted Wells Fargo Bank funds, in violation of FINRA Rule 2010; and (ii) failed to provide testimony and documents, in violation of FINRA Rules 8210 and 2010.

The parties filed joint stipulations agreeing to most of the facts underlying the Complaint. As noted below, Vedovino's testimony at the hearing differed from some of the stipulations.[1] However, the differences are minor and do not materially alter the thrust of the stipulations, by which Vedovino substantially concedes that he engaged in the misconduct alleged in the Complaint.

There are two points of contention between the parties. The first concerns whether Vedovino's conversions of bank funds from his own checking account qualify as business-related conduct regulated by Rule 2010. Enforcement asserts the conversions are within the reach of the rule; Vedovino disagrees. The second concerns sanctions. Enforcement insists that a bar should be imposed for each cause of action. Vedovino demurs, claiming his circumstances should be considered as substantially mitigating. These are the two issues on which the hearing and briefs filed by the parties focused, and that the Hearing Panel confronted in its deliberations. After carefully considering the testimony, evidence, arguments of the parties and relevant legal precedents, we resolve both issues against Vedovino, for the reasons stated below.

## II. Respondent

Vedovino first associated with a FINRA member firm in August 2012. He registered with FINRA through that firm in January 2013. In May 2014, he associated with Wells Fargo Advisors as a financial analyst in training and registered as a General Securities Representative.[2] His office was located at a Wells Fargo Advisors' branch office in Wayne, New Jersey.[3]

On December 2, 2015, Wells Fargo Advisors discharged him. On December 23, the firm filed a Uniform Termination Notice for Securities Industry Registration stating it terminated his employment because of allegations that he had violated "industry-related statutes, regulations, rules or industry standards of conduct" by making false claims for reimbursement for transactions in personal bank and credit card accounts he maintained at Wells Fargo Bank.[4]

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[1] For example, the parties stipulate that Vedovino made his first fraudulent claim for reimbursement, for $35.95, on December 8, 2014. Joint Stipulations ("Stip.") ¶¶ 6, 8–10. Vedovino testified, however, that he does not recognize the December 8 transaction and cannot admit making a false claim for reimbursement for it. Hearing Transcript ("Tr.") 76–78. The Hearing Panel therefore does not include this transaction among those constituting the conversions of bank funds.

[2] Stip. ¶ 1; Tr. 33.

[3] The parties stipulate that Vedovino's office was located at a branch office of the firm's affiliated bank. Stip. ¶ 1. However, Vedovino testified, without contradiction, that although there was a bank located in the same building at the firm's Wayne, New Jersey branch office, the bank was unrelated to Wells Fargo. Tr. 68. The Hearing Panel credits Vedovino's testimony on this point over the factual representation in the stipulation.

[4] Stip. ¶¶ 1–2; Complainant's Exhibit ("CX")-2, at 4, 6–7.

The Department of Enforcement filed the Complaint on November 7, 2017. Vedovino is no longer registered with FINRA or associated with a FINRA member firm. However, he is subject to FINRA's jurisdiction in this case because: (i) Enforcement filed the Complaint less than two years after the termination of his FINRA registration; (ii) the conversions alleged in the Complaint occurred while he was registered; and (iii) his failures to respond to the Rule 8210 requests to testify and to produce documents occurred within two years of the termination of his registration.[5]

## III. Facts

### A. The Conversions

From December 2014 to October 2015, while employed by Wells Fargo Advisors and registered as a General Securities Representative, Vedovino opened and maintained personal Wells Fargo "team member" bank and credit card accounts at Wells Fargo Bank.[6]

From April 16 through October 16, 2015, Vedovino used the debit and credit cards associated with the accounts 19 times to withdraw cash and make sundry purchases. After completing each transaction, he contacted the bank and reported that he was the victim of fraud and someone had made the transaction on his account without permission.[7] Based on these false claims, the bank reimbursed him for eighteen of the transactions, crediting a total of approximately $3,400 to his account.[8]

In the fall of 2015, the bank noticed that Vedovino's reimbursement claims were excessive and assigned Patricia Moran, a Wells Fargo Bank investigator, to review them.[9] Moran, a senior investigator with 27 years of experience in the bank's Internal Investigations Division, was responsible for investigating alleged misconduct by "Wells Fargo team members" like Vedovino.[10] She testified that whenever she conducted an investigative interview of a licensed Wells Fargo Advisors employee, she worked with a member of the Wells Fargo

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[5] Stip. ¶ 3.

[6] Tr. 164; Stip. ¶ 4.

[7] Stip. ¶¶ 5, 6, 9.

[8] Stip. ¶ 7. The bank denied Vedovino's fourth false report that on July 9, 2015, someone else had withdrawn $300 from his account using his card at an ATM. A bank employee viewed a surveillance camera recording the transaction, compared it to a video record of a bona fide transaction and determined Vedovino personally made the withdrawal. Tr. 53-54. Despite this discovery, the bank reimbursed Vedovino for the fifteen additional transactions he fraudulently reported from July 23 to October 16, 2015. CX-3. Vedovino testified that he did not make separate calls for each reimbursement, because sometimes he made a single call concerning several transactions. He estimated that he made a total of eight or nine calls to make his false claims. Tr. 132–33.

[9] Tr. 23–24, 54.

[10] Tr. 23–24, 32–33.

Advisors Special Surveillance Group, which reviews matters involving licensed individuals, and she did so in this case.[11]

As a Wells Fargo employee, Vedovino had a "team member checking account," differing from a regular customer account because the bank did not charge fees for using the account.[12] Moran testified that it was her understanding that all Wells Fargo Advisory team members were required to maintain Wells Fargo bank and credit card accounts.[13]

Moran compared photographs from ATM video recordings of some of the suspect transactions to others taken of Vedovino engaging in legitimate transactions in the same account. Although the individual shown in pictures of the suspect transactions attempted to cover his face to conceal his identity, Moran was able to observe that he was wearing a distinctive bracelet identical to one worn by Vedovino in pictures of the legitimate transactions.[14]

After concluding that it was Vedovino using his card at the ATM, and his reimbursement claims were fraudulent, Moran, with Vedovino's Wells Fargo Advisors manager, interviewed him in the branch where his office was located. Moran explained they were conducting an internal review of his reimbursement claims.[15] She then asked him questions about the suspect transactions. Vedovino initially maintained the transactions were not his, claiming that a drug-addicted friend, who had been stealing from him, was responsible.[16] However, Vedovino's supervisor recalled that Vedovino had told him previously that the addicted friend had died prior to the false claims for reimbursement.[17]

Vedovino did not maintain his innocence for long. When Moran confronted him with the photographs of suspect transactions that clearly showed his bracelet, and pointed out that Vedovino was wearing the same bracelet at the interview, he confessed he used the card on those occasions.[18] This pattern repeated as the interview proceeded: Moran asked about a transaction, Vedovino initially denied responsibility, then recanted the denial and admitted wrongdoing as

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[11] Tr. 62–63.

[12] Tr. 164.

[13] Tr. 33–34. Vedovino disputed this, testifying that it was his understanding that Wells Fargo did not require him to have a personal account with Wells Fargo Bank. Tr. 131.

[14] Tr. 24–26.

[15] Tr. 28.

[16] Tr. 28–30.

[17] Tr. 29; CX-5, at 3.

[18] Tr. 28–30.

soon as Moran described the evidence against him.[19] By the end of the interview, Vedovino acknowledged being responsible for all 19 transactions and making the false claims.[20]

At the conclusion of the interview, at Moran's request, Vedovino wrote and signed a statement admitting that he "withdrew money from ATM's [sic] & reported it as fraud."[21]

Wells Fargo Advisors fired Vedovino on December 2, 2015. His registrations with FINRA terminated on December 23, 2015.[22]

### B. The Rule 8210 Requests

In the interview, Vedovino did not disclose that he became addicted to drugs in 2014 and was, during the months he made the false reimbursement claims, in the throes of serious opioid drug abuse for which he did not seek treatment until entering an outpatient rehabilitation program in January 2016.[23] As an excuse for his misconduct, Vedovino told Moran that his close friend became addicted, stole from him, and subsequently died of an overdose in August 2015.[24] Vedovino testified that he lived with his parents during this period until he entered a drug rehabilitation program in January 2016, completed it successfully in November 2016, and a month or two later moved to Colorado.[25]

Vedovino cites these circumstances—his addiction recovery and move to Colorado—to explain why he failed to comply with FINRA's Rule 8210 requests. According to Vedovino, his parents interacted with FINRA on his behalf in the course of the investigation and shielded him from dealing with it so he could concentrate on his recovery.[26] However, Vedovino's testimony about when he learned of the investigation and the Rule 8210 requests is confusing, inconsistent and contradictory and, in the Hearing Panel's estimation, renders his credibility suspect.

At one point in the hearing, Vedovino testified that his parents gave him "periodic updates" on the investigation,[27] but he also testified that his father kept him ignorant of the Rule 8210 requests.[28] Vedovino testified that he never saw the written Rule 8210 letters asking for testimony and documents. Yet he also testified that his parents told him about the investigation in April or May of 2017, around the time FINRA issued the requests, and at that time they informed

[19] Tr. 61–62; CX-5, at 3.

[20] Tr. 61.

[21] CX-4.

[22] CX-1, at 3.

[23] Tr. 147–48.

[24] Tr. 29.

[25] Tr. 91, 107–08.

[26] Tr. 90–92.

[27] Tr. 90.

[28] Tr. 91–92.

him "of everything," although he did not understand the "ramifications . . . of what was being requested."[29]

FINRA issued the first Rule 8210 request to Vedovino in April 2017, to provide sworn testimony at an OTR in May.[30] The parties stipulate that FINRA sent the letter to the attorney then representing him, Vedovino received it, then asked for, and was granted, a postponement of the OTR.[31] At the hearing, however, Vedovino contradicted the stipulation. He testified that in the spring of 2017 he resided in Colorado, was unaware of the request,[32] and did not learn until "[a]round November" of 2017 that FINRA had asked him to appear for an OTR scheduled for the previous May.[33] However, he also testified that in April 2017 he spent two and a half weeks vacationing in Egypt with his sister and mother.[34]

Similarly, at the hearing Vedovino contradicted the joint stipulations that he received the Rule 8210 requests for documents FINRA sent to his attorney.[35] He testified that he was unaware of the requests at the time they were issued.[36]

Vedovino claimed that when he learned of the request for bank statements for his Wells Fargo Bank checking and credit card accounts, he promptly asked the bank for the records, and sent the checking account statements to FINRA on November 19, 2017.[37] This was months after the May and June deadlines set in the request letters.[38] He did not, however, provide his credit card statements because, he claimed, he was unable to "track them down through Wells Fargo."[39]

Despite the confusing inconsistencies as to whether or when Vedovino learned of the Rule 8210 requests, he concedes, and the record is clear, that he failed to provide testimony as requested, failed to provide his credit card statements as requested, and failed to produce his checking account records when he should have, as the Complaint charges.[40]

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[29] Tr. 93–95.

[30] CX-13.

[31] Stip. ¶¶ 11–12.

[32] Tr. 91.

[33] Tr. 116.

[34] Tr. 119.

[35] Stip. ¶¶ 17, 20.

[36] Tr. 92–93. However, Vedovino described his recollection of these events as "kind of a blur." Tr. 94.

[37] Tr. 113–14.

[38] Tr. 100–102; CX-12.

[39] Tr. 99–100.

[40] Tr. 100, 110; Stip. ¶¶ 22–23; Respondent's Answer to the Complaint ("Ans.") ¶¶ 16–17.

## IV. Legal Issues

### A. The Conversions

FINRA's Sanction Guidelines define conversion as "intentional and unauthorized taking of . . . property of one who neither owns the property nor is entitled to possess it."[41] There is no dispute that when he obtained Wells Fargo Bank funds by claiming falsely that someone else had improperly made unauthorized withdrawals using his debit card and purchases using his credit card, he converted bank funds to his own use. Rather, the dispute in this case is whether under these facts and circumstances his conversions of bank funds violated FINRA Rule 2010.

#### 1. The Parties' Arguments Regarding the Applicability of FINRA Rule 2010 to Vedovino's Conversions

Admitting he converted bank funds,[42] Vedovino's position is that Rule 2010 does not proscribe what he insists was "purely personal conduct."[43] Vedovino's argument, succinctly put, is that in order for alleged wrongdoing to fall within the ambit of the rule, it must occur "in the conduct of the respondent's business."[44] Vedovino insists it did not. Vedovino claims that "nothing in the testimony, nothing in . . . evidence" links Wells Fargo Advisors with Wells Fargo Bank. He stresses that Wells Fargo Advisors, not Wells Fargo Bank, employed him, and the conversions had nothing to do with his employer, his customers, or the conduct of his securities business. Thus, he argues, his misconduct had no connection to "his commercial or trading life that would bring him within the purview of Rule 2010."[45]

Enforcement disagrees, contending the bank and the broker-dealer shared "personnel and resources and provid[ed] common benefits,"[46] and "Vedovino's conversions at the Bank were closely connected to his business or commercial conduct" at Wells Fargo Advisors, and therefore violated Rule 2010.[47]

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[41] FINRA's Sanction Guidelines ("Guidelines") at 36 (2018), http://www.finra.org /industry/sanction-guidelines.

[42] Tr. 17, 198–99.

[43] Tr. 17, 196. At the hearing, Vedovino characterized the question of the applicability of Rule 2010 as "a threshold jurisdictional issue." Tr. 196. However, as the SEC has previously observed, when the question is "whether the facts alleged are actionable under Rule 2010," that is, "whether FINRA may appropriately sanction a member or associated person for conduct that it finds violates Rule 2010," it is not a question of jurisdiction. Because Vedovino was a registered person associated with a member firm, FINRA has jurisdiction to discipline him for violating FINRA rules. *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *14 n.15 (Mar. 29, 2016).

[44] John Anthony Vedovino's Post-Hearing Brief ("Respondent's Post-Hr'g Br."), at 8 (quoting *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6 (June 2, 2000)).

[45] Tr. 196–97.

[46] Department of Enforcement's Post Hearing Brief ("Complainant's Post-Hr'g Br."), at 1.

[47] *Id*. at 3–4.

### 2. Discussion

The authority for FINRA to discipline its members for violating just and equitable principles of trade derives from Section 15A(b)(6) of the Securities Exchange Act of 1934. It is the statute that provides FINRA with the authority to, among other things, "promote just and equitable principles of trade . . . and, in general, protect investors and the public interest." FINRA Rule 2010 implements this provision of the Exchange Act.[48] It states in its entirety:

> A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.[49]

With its reference to "just and equitable principles of trade," the rule is sometimes referred to as the "J&E" rule. It is well-settled that the J&E rule incorporates broad ethical principles and focusses on the ethical implications of the conduct of associated persons.[50] It prohibits dishonest conduct by an associated person, even if the conduct is legal and does not violate a particular rule,[51] because the rule's purpose is to serve "as a tool to prohibit dishonest practices."[52]

Vedovino acknowledges that the rule is broad, and concedes that it applies to "a wide range of illegal or unethical behavior" by associated persons not involving securities transactions. He argues, however, that all of the cases Enforcement relied upon in its pre-hearing brief "connect the dots between the unethical conduct and some aspect of the member's business or trade," but there is no such linkage on the facts presented here.[53] The basis of Vedovino's position is his assertion that there is not "any relevant nexus between the respondent's employer [Wells Fargo Advisors] and the defrauded entity [Wells Fargo Bank]" whose funds he converted.[54] He insists that since "nothing" in the evidence "links those two entities together," and because having a Wells Fargo Bank account "was not a term of his employment with Wells Fargo Advisors," his misconduct was unrelated to his employment by Wells Fargo Advisors and beyond the reach of Rule 2010.[55]

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[48] *Thomas W. Heath III v. SEC*, 586 F.3d 122, 132–33 (2d Cir. 2009) (citing *Robert E. Kauffman*, 51 S.E.C. 838 (1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994)).

[49] The rule applies to individual registered representatives as well as member firms. FINRA Rule 0410(a) states explicitly that FINRA rules "shall apply to all members and persons associated with a member."

[50] *Kirlin Securities, Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, *65, n.89 (Dec. 10, 2009) (citing *Thomas W. Heath, III*, Exchange Act Release No. 59233, 2009 SEC LEXIS 14, *8 (Jan. 9, 2009), *aff'd*, 586 F.3d 122). *See also, e.g., Timothy L. Burkes*, 51 S.E.C. 356, 360 (1993).

[51] *Grivas*, 2016 SEC LEXIS 1173, at *21.

[52] *Id*. at *22.

[53] Respondent's Post-Hr'g Br., at 8–9.

[54] Respondent's Post-Hr'g Br., at 11–12.

[55] Tr. 197.

However, after careful consideration, the Hearing Panel concludes that Vedovino's focus is too narrow. We find that he ignores the interconnectedness of his professional status as a registered person associated with a FINRA member firm, his team member bank accounts, and the ethical implications of his misconduct. We find the evidence of that interconnectedness sufficient to determine that his misconduct violated the ethical standards Rule 2010 required of him.

The relationship between an associated person's unethical actions and the conduct of his securities business need not be close. As Vedovino concedes, Rule 2010 has consistently been found to prohibit misconduct even when it is unrelated to securities transactions. Indeed, there is no requirement that, for a registered representative's misconduct to fall within the proscriptive scope of the rule, "the misconduct must bear a 'close relationship' to the associated person's 'investment banking or securities business.'"[56] To hold otherwise would be "contrary to the precedent interpreting" the rule."[57] Thus, conversion by an associated person violates Rule 2010 even when the person misuses funds belonging to neither a customer nor a FINRA member firm.[58]

Contrary to Vedovino's contention, Wells Fargo Bank and Wells Fargo Advisors are not unrelated. The parties stipulate that Wells Fargo Bank is an affiliate of Wells Fargo Advisors.[59] And although Vedovino claimed otherwise,[60] Moran, with 27 years of experience as a Wells Fargo Bank investigator, testified credibly and persuasively that Wells Fargo Advisors' registered representatives are required to maintain a personal bank account at Wells Fargo Bank.[61]

Reinforcing the connection between the bank and the brokerage firm is the fact that Vedovino was a "Wells Fargo team" member, accordingly entitled to a "team" account, which came with a privilege: he did not incur the fees that non-team account holders were charged for using their accounts.[62] It was because of his business status as a registered representative, licensed to engage in the securities business of Wells Fargo Advisors, that the firm provided him with the team accounts he used to convert bank funds. And, as Vedovino explained, when Wells Fargo Advisors fired him, and he was no longer able to conduct business as an associate of Wells

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[56] *Grivas*, 2016 SEC LEXIS 1173, at *16–17.

[57] *Id*. at *17.

[58] *Id*. at *19.

[59] Stip. ¶ 1.

[60] Tr. 131.

[61] Tr. 33–34.

[62] Tr. 164.

Fargo Advisors, his account reverted "from a team member checking account to a regular checking account," no longer free of fees.[63]

The Panel finds that these facts establish a sufficient relationship between Vedovino's conversions of bank funds and his employment as a registered representative to bring the misconduct within reach of Rule 2010, and to disprove Vedovino's assertion that his use of his bank and credit card accounts at Wells Fargo Bank were "in no way connected with his employment" at Wells Fargo Advisors.[64]

Furthermore, Vedovino's assertion that his misconduct was purely personal minimizes its gravity by ignoring its relevance to his fitness to be a securities professional. As the United States Court of Appeals for the District of Columbia noted, the Securities and Exchange Commission ("SEC") in past cases has not focused so much on "the source of mistreated funds," but rather has emphasized that "it is the deception and fraud in the handling of others' property that endangers the integrity of the securities industry, and that threat remains the same whether the victim is a trusting employer or trusting client."[65] This rationale—that the deception inherent in the act of conversion, not the source of the misappropriated property, is what poses the danger to the industry's integrity—also applies to conversion of funds that, as here, belong to neither the employer nor a customer of the wrongdoer, but to an affiliate of his employer. The SEC has concluded that a registered person who converts funds violates the J&E rule even though the funds come from neither a member firm employer nor a customer.[66] This is consistent with the SEC's holding that a registered representative who served as treasurer of a private club and misappropriated the club's funds violated the J&E rule, and his misconduct demonstrated that he lacked the "commitment to the high fiduciary standards demanded by the securities industry."[67]

Instructive, too, are the cases applying the J&E rule to insurance agents who happen also to be registered persons, when their misconduct related solely to their insurance business, which was not regulated by FINRA. In one case, an agent forged insurance applications in an unsuccessful attempt to receive commissions he had not earned. Charged with violating the J&E rule, he argued that FINRA's predecessor, NASD, lacked jurisdiction. Not so, ruled the SEC: he failed to adhere to the standards set by the J&E rule, and even though his "wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion

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[63] Tr. 164.

[64] Respondent's Pre-Hr'g Br., at 11.

[65] *Saad v. SEC*, 873 F.3d 297, 303 (D.C. Cir. 2017).

[66] *Leonard John Ialeggio*, 52 S.E.C. 1085 (1996) (holding that employee of non-member insurance company who converted insurance company funds, while also registered as a representative of the insurance company's affiliated broker-dealer, violated ethical standard of Article III, Section 1 of NASD Rules, the then-applicable NASD J&E rule, predecessor of FINRA Rule 2010), *aff'd*, 1999 U.S. App. LEXIS 10362 (9th Cir. May 7,1999) (unpublished), *cited in Grivas*, 2016 SEC LEXIS 1173, *18–19.

[67] *Henry E. Vail*, 52 S.E.C. 339, 342 (1995) ("His actions make us doubt his commitment to the high fiduciary standards demanded by the securities industry."), *aff'd*, 101 F.3d 37 (5th Cir. 1996).

it might."[68] More recently, the SEC upheld a finding that Rule 2010 applied to an independent insurance agent who converted his customers' insurance premiums, even though the misconduct did not involve securities transactions, and the agent had never engaged in securities business. The only link between the respondent and the securities industry was that he held two securities licenses and was associated with a FINRA member firm affiliated with the insurance company for which he was an agent.[69] The SEC held that his misconduct, despite being unrelated to the securities business, violated the insurance company's procedures and was "inconsistent with just and equitable principles of trade."[70]

Under circumstances similar to those here, a registered person misused the funds, not of his FINRA member firm employer, but of an affiliated entity. In that case, the member firm had created the affiliate, a charitable foundation. The purpose of the foundation was to match contributions the member firm's employees made to charities of their choice. The foundation required that the donations be given for the unrestricted use of the receiving charity and not for the benefit of the employees.[71] The registered person falsely represented to the foundation that he had personally made charitable donations totaling $1,600 to his daughter's private school, and the foundation's matching donations would not benefit him.[72] In fact, he had made no such donations. And when the foundation made a "matching" donation of $1,600 to the school, the school applied it to defray his daughter's tuition, amounting to his personal benefit.[73] The registered person argued he did not violate the J&E rule because he merely committed "a technical omission to follow [the foundation's] rules," and his conduct had "nothing to do with his functions as a securities salesman." Even though the foundation to which the misrepresentations were made was a non-FINRA member entity, and the registered person's misrepresentations were entirely unrelated to his securities business, the SEC rejected his arguments. The SEC concluded that the registered person's misconduct reflected "directly on [his] ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money," and therefore was "unethical conduct" prohibited by the J&E rule.[74]

We find Vedovino's conversions of Wells Fargo Bank funds similarly reflect an inability to comply with ethical standards imposed by Rule 2010 in handling other people's money.

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[68] *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975).

[69] *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *2–3 (Dec. 4, 2015).

[70] *Id.* at *16, 22.

[71] *James A. Goetz*, 53 S.E.C. 472, 473 (1998).

[72] *Id.* at 474-75.

[73] *Id.* at 475.

[74] *Id.* at 477-78.

### B. The Rule 8210 Violations

Rule 8210 provides FINRA with an essential investigative tool to obtain information it requires to fulfill its self-regulatory responsibilities.[75]

As discussed above, Vedovino admits in the Joint Stipulations, and conceded in his hearing testimony, that he failed to respond to FINRA's Rule 8210 requests to appear at an OTR, and he responded tardily and only partially to FINRA's Rule 8210 request for him to produce records of his bank and credit card accounts. It is well-settled that associated persons who do not provide full and timely cooperation in response to FINRA's requests for information violate Rule 8210 and thereby also Rule 2010.[76]

## V. Sanctions

### A. The Conversions

Under FINRA's Sanction Guidelines, "a bar is standard" for converting funds, without regard to the amount converted.[77] It is one of only four violations for which the Guidelines call for such a stringent standard sanction.[78]

The question presented is whether in this case there are sufficiently mitigating circumstances to justify imposing a less severe sanction than a bar.

#### 1. The Arguments of the Parties

Conceding that his actions were "wrongful and dishonest," Vedovino nonetheless argues that a bar is inappropriate. He takes issue with the Guidelines' presumptive recommendation of a bar, describing it as "draconian" and contrary to the requirement that sanctions not be excessive.[79]

Vedovino posits a number of circumstances he believes to be mitigating: (i) his misconduct was a youthful indiscretion (he was 25 years old when he converted the funds); (ii) he inflicted no harm to customers, or Wells Fargo Advisors; (iii) he has no disciplinary history; (iv) he accepts responsibility for his misconduct; (v) at the time of the misconduct, he suffered from opioid addiction as well as emotional stress, which were the primary causes of his

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[75] *CMG Institutional Trading*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009). Violations of Rule 8210 also violate Rule 2010. *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *29 (NAC July 21, 2011).

[76] *Reichman*, 2011 FINRA Discip. LEXIS 18, at *29.

[77] Guidelines at 36.

[78] The others are: failure to respond in any manner to a request pursuant to Rule 8210; forgery with aggravating factors present (in furtherance of another violation, with customer harm or accompanied by other significant aggravating factors); and cheating or using an imposter for a qualifying examination. *Id.* at 33, 37, 40.

[79] Respondent's Post-Hr'g Br., at 13–14.

misconduct; (vi) his successful completion of a rehabilitation program makes it less likely he will recidivate; (vii) he is paying restitution; and (viii) Wells Fargo Advisors has already punished him by terminating his association with it prior to FINRA's investigation.[80]

Enforcement disagrees that these "ostensible mitigating factors" alleviate the seriousness of Vedovino's misconduct. Enforcement rejects Vedovino's argument that his youthfulness is mitigating. As for Vedovino's emphasis on the lack of harm to customers, his firm and the investing public, Enforcement notes that his conversions resulted in monetary loss to Wells Fargo Advisors' affiliated bank. And although Vedovino now accepts responsibility, Enforcement points out that he does so after months of repeated fraudulent transactions and only after Wells Fargo Advisors uncovered his wrongdoing. Enforcement argues that Vedovino's acceptance of responsibility is inconsistent with his continuing to blame his addiction for his misconduct. As for Vedovino's claim that he should be credited for making restitution, Enforcement points out that he had, at the time of the hearing, paid only about ten percent of what he owed. Taken together, in Enforcement's view, the factors Vedovino claims as mitigating "do not outweigh the substantial aggravating factors" in this case.[81]

Finally, Enforcement argues that Vedovino's stressful personal problems and addiction do not mitigate, nor does being fired by Wells Fargo Advisors. Thus, Enforcement's view is that a bar is "the only appropriate sanction" in this case.[82]

### 2. Discussion

The Panel has carefully considered the facts in evidence, the arguments of the parties, and the applicable Sanction Guidelines. We are not without sympathy for the emotional stresses Vedovino suffered prior to and during the period of his misconduct, which he testified included the termination of a long-term romantic relationship in 2014, the death by drug overdose of a close friend, the death of his grandmother in 2015,[83] and his undisputed serious opioid addiction. We acknowledge the time and effort he has invested in a drug rehabilitation program. We also find sincere the expressions of remorse he has made consistently, from the time of his confession to Moran through his testimony at the hearing.

However, for the reasons explained below, we do not consider Vedovino's personal challenges and troubles to be mitigating under the circumstances of this case.

Consideration of the fundamental nature of conversion explains why, contrary to Vedovino's argument, the Guidelines' standard sanction of a bar is not excessive here. Registered representatives assume the responsibility of managing the money of their clients, a responsibility requiring the utmost trustworthiness. As the SEC has held, "conversion is

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[80] *Id.* at 14–15.

[81] Complainant's Post-Hr'g Br., at 5.

[82] *Id.* at 5–6.

[83] Tr. 137–46, 182–83.

generally among the most grave violations committed by a registered representative"[84] and demonstrates a "failure to observe the high standards of commercial honor required of registered persons."[85] As noted in the discussion above, numerous cases recognize that misappropriating funds "reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money,"[86] raising the concern that, even when a particular case does not involve securities or a customer's funds, "on another occasion it might."[87] Conversion evidences a "troubling disregard for basic principles of ethics and honesty" bearing directly upon one's fitness to participate in the securities industry.[88] Conversion therefore "is extremely serious and patently antithetical" to the principles embodied in the J&E rule.[89]

Other factors we must weigh include that in the six months from April 16 to October 16, 2015, Vedovino engaged in 19 transactions—eight separate cash withdrawals, and eleven purchases—for which he falsely sought reimbursement.[90] His extended and repeated misconduct is not excusable as a stress- or drug-induced rash episode by one overwhelmed with upsetting personal circumstances, which might be considered mitigating. Rather, it consists of "multiple instances of deliberate and deceptive conduct spread out over a long period of time," a course of conduct that the SEC has determined to be devoid of mitigating value.[91] And although Vedovino has accepted responsibility for what he did, his acceptance came after detection of his wrongdoing by Wells Fargo Advisors, and therefore does not qualify as mitigating.[92]

The Panel is also troubled by Vedovino's testimony attributing his misconduct to his addiction.[93] Vedovino testified that "[a]ny time" he made cash withdrawals from the ATM, it was to purchase drugs. He claimed "I would stop at the exact same location every single time . . . and I would just pull $300 out so I could get ten pills. And that was enough for the day or the next two days. And I would just keep making the same exact trip repetitively, day in, day out."[94]

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[84] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012).

[85] *Grivas*, 2016 SEC LEXIS 1173, at *2–3.

[86] *Dep't of Enforcement v. Manoff*, No. C9A990007, 2001 NASD Discip. LEXIS 4, at *21 (Apr. 26, 2001), *aff'd*, 2002 SEC LEXIS 2684 (Oct. 23, 2002).

[87] *Jackson*, 45 S.E.C. 771, 772.

[88] *District Business Conduct Committee v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 12 (NAC Jan. 16, 1998) (finding that respondent obtained more than $800 by making false claims for reimbursement of funds from employer firm).

[89] *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976), *quoted in Mullins*, 2012 SEC LEXIS 464, at *42.

[90] CX-3; Guidelines at 7 (Principal Considerations Nos. 8, 9, 10).

[91] *Saad*, 873 F.3d at 302; Guidelines, at 7 (Principal Considerations Nos. 8, 9).

[92] *See* Guidelines at 7 (Principal Considerations No. 2).

[93] Tr. 151–52. Vedovino testified that his drug abuse problem affected his personal decision-making process "in every regard."

[94] Tr. 147.

That he intended to use the money he converted to purchase drugs does not in any way mitigate his misconduct.

Vedovino's claim that he is entitled to mitigation because of making restitution is undermined by the record. Although he promised to make full restitution when Moran interviewed him on November 24, 2015, it was not until almost two years later, in October 2017, that he made his initial partial payment toward restitution. By March 15, 2018, he had only paid $300 in restitution.[95] When asked why he had not paid more, he replied that he did "not have a good answer" to the question, conceding that making restitution "wasn't always the biggest priority."[96] It appears that his failure to make restitution was not because he lacked resources; on the contrary, he testified that he was able to afford his expensive drug habit because he had access to "a lot of money from all sorts of jobs" and "a pretty nice-sized brokerage account"[97] and, he testified, he has remained employed since losing his Wells Fargo Advisors job.[98] Considering these circumstances, the Panel finds that he has not earned the mitigating effect he might merit had he made voluntary and reasonable attempts to pay restitution prior to detection of his misconduct.[99]

Vedovino insists that when associated with Wells Fargo Advisors, he worked successfully to separate his work life and his drug abuse.[100] However, we do not find this credible. He testified that on the day of his interview with Moran, when he returned to his office at his supervisor's request after completing an important meeting with a client, he was under the influence of drugs.[101]

Also troubling for the Panel, and calling into question Vedovino's credibility, was his testimony that it was at the hearing on April 17, 2018, that he became aware for the first time that FINRA had suspended him on July 17, 2017, for failing to comply with the Rule 8210 requests.[102] This was simply not true. As he admitted under further questioning at the hearing, Vedovino knew about the suspension at least by September 2017, seven months prior to the hearing, when he wrote to FINRA to ask that his suspension be lifted.[103]

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[95] Stip. ¶ 24.

[96] Tr. 184–85.

[97] Tr. 182.

[98] Tr. 171–72, 184–85.

[99] *See* Guidelines at 7 (Principal Considerations No. 4).

[100] Tr. 151.

[101] Tr. 169, 179–80.

[102] Tr. 109–10.

[103] Tr. 174–76; CX-19.

In sum, the record establishes numerous and material aggravating circumstances: Vedovino's pattern of misconduct evidences its intentionality,[104] extending over a significant period[105] with numerous discrete actions;[106] it resulted in his monetary gain of more than $3,000;[107] he did not accept responsibility and acknowledge his misconduct before detection, but only after confronted with irrefutable evidence by the Wells Fargo investigation;[108] despite his promise to make restitution in full, he has made only a few insufficient payments to Wells Fargo Bank, long after his misconduct was detected,[109] and is unable to explain why he did not make paying restitution a priority. For these reasons, the Panel concludes that a bar is the appropriate sanction for Vedovino's conversions.

### B. The Rule 8210 Violations

Under FINRA's Sanction Guidelines, a bar is the standard sanction for a complete failure to respond to a Rule 8210 request for information, and for providing a partial but incomplete response, unless that response substantially complied with all aspects of the request."[110] The Principal Considerations in Determining Sanctions for providing a partial but incomplete response call for an assessment of the importance of the information not provided, and whether the information produced was relevant and responsive to FINRA's Rule 8210 request.[111]

#### 1. The Arguments of the Parties

With regard to his failure to testify and produce information during FINRA's investigation, Vedovino contends that it was of negligible import and his "failure did not exceedingly impair FINRA's investigation" because FINRA obtained from Wells Fargo Advisors all of the information it asked him to produce.[112] In Enforcement's view, however, Vedovino's complete refusal to testify and failure to comply fully with the document requests were serious, reflecting a disregard for his obligations to FINRA, and an intent to conceal information and delay the investigation.[113]

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[104] Guidelines at 8 (Principal Considerations No. 13).

[105] *Id*. at 7 (Principal Considerations No. 9).

[106] *Id*. (Principal Considerations No. 8).

[107] *Id*. at 8 (Principal Considerations No. 16).

[108] *Id*. at 7 (Principal Considerations No. 2).

[109] *Id*. (Principal Considerations No. 4).

[110] *Id*. at 33.

[111] *Id.*

[112] Respondent's Post-Hr'g Br., at 16.

[113] Enforcement's Pre-Hr'g Br., at 10–11.

### 2. Discussion

The starting point for the Panel's determination of sanctions for Vedovino's violations of Rule 8210 is the fundamental nature of the responsibility of registered persons to cooperate with FINRA's requests for information. Rule 8210 "is at the heart of the self-regulatory system for the securities industry" and imposes an "unequivocal" responsibility to comply with information requests.[114] Failure to respond to requests to provide FINRA investigators with information via testimony at an OTR or production of documents is "so fundamentally incompatible" with FINRA's self-regulatory function that, in the absence of mitigating factors, the appropriate remedial sanction is a bar.[115]

Here, the most that can be said on Vedovino's behalf is that he made, in November 2017, a partial production of documents requested pursuant to Rule 8210 approximately six months earlier. He failed subsequently to complete the requested document production. He failed completely to provide testimony as FINRA first requested in April 2017, when he took a two-week vacation in Egypt, well after he had completed his rehabilitation program in September 2016. In the ensuing months leading up to the hearing, he made no offer to set a new, belated date for an OTR. Vedovino's claim that his focus on recovering from his addiction justified his ignoring the Rule 8210 requests for documents and testimony does not withstand scrutiny. And his assertion that his failure to cooperate "did not exceedingly impair" the investigation is without merit: it does not "thoroughly [provide] valid reason(s) for the deficiencies" in his responses to FINRA's Rule 8210 requests.[116] The record establishes clearly that Vedovino did not assist FINRA's information-gathering efforts, as he should have. Rather, the Panel infers that Vedovino, by not cooperating, essentially sought to delay the investigation and conceal information he would have been asked to give had he appeared as required at an OTR.[117] As was the case when confronted with his conversions, the evidence discloses that Vedovino intentionally chose not to cooperate fully as required,[118] after receiving two requests for testimony and two for documents, sent to him between April 25 and June 12, 2017.

The Panel concludes that the aggravating circumstances outweigh any mitigation stemming from Vedovino's limited document production.

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[114] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

[115] Guidelines at 33; *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010) (citing *Paz Securities, Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *9 (Apr. 11, 2008) (quoting *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *21–22 (Nov. 8, 2007))).

[116] Guidelines at 33.

[117] *Id*. at 8 (Principal Considerations No. 12).

[118] *Id*. (Principal Considerations No. 13).

For these reasons, the Panel concurs with Enforcement's recommendation, and concludes that a bar is the appropriately remedial sanction to deter Respondent and others who receive requests to provide information pursuant to Rule 8210.[119]

## VI. Order

For converting funds, in violation of FINRA Rule 2010, Respondent John Anthony Vedovino is barred from associating in any capacity with any FINRA member firm. He is also barred from associating with any FINRA member firm in any capacity for his failure to testify and to comply substantially and promptly with requests to produce records, in violation of FINRA Rules 8210 and 2010. Vedovino is ordered to pay hearing costs in the amount of $2,885.16, which includes an administrative fee of $750 and hearing transcript costs of $2,135.16.

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

**SO ORDERED**.

Matthew Campbell
Hearing Officer
For the Hearing Panel

Copies to:

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[119] The Hearing Panel considered and rejected without discussion all other arguments by the parties.