

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GLENN MCDOWELL  
(CRD No. 2748337),

Respondent.

Disciplinary Proceeding  
No. 2013035902701

Hearing Officer—LOM

**DEFAULT DECISION**

March 7, 2017

**Respondent is barred in all capacities for unauthorized trading in violation of FINRA Rule 2010. He is also ordered to pay restitution in the amount of \$70,040.03, plus prejudgment interest.**

**Appearances**

For the Complainant: Jennifer M. Sepic, Esq., Douglas Ramsey, Esq., and Christopher Perrin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No Appearance.

**DECISION**

**I. Introduction**

On October 28, 2016, and again, on November 28, 2016, the Department of Enforcement served Respondent Glenn McDowell with a Complaint alleging that he had engaged in 38 unauthorized transactions in a customer's account in violation of FINRA Rule 2010. Despite being properly served, McDowell never responded to the Complaint.

Where a respondent fails to answer, under FINRA Rule 9269(a) the allegations of the Complaint may be deemed admitted and a default decision may be entered. Pursuant to that Rule, Enforcement filed and served a motion for entry of default decision ("Default Motion"), which was accompanied by a memorandum of law, a declaration by counsel ("Sepic Decl."), and sixteen exhibits ("CX-\_\_"). McDowell never responded to the Default Motion.

For the reasons set forth below, I grant Enforcement's Default Motion and bar Respondent Glenn McDowell from associating with any FINRA member firm in any capacity. In

addition I order him to pay restitution to his customer, along with prejudgment interest running from July 26, 2012.

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Background**

McDowell first became registered as a General Securities Representative through association with a FINRA member firm in February 1998.<sup>1</sup> McDowell was registered as a General Securities Representative through consecutive associations with three different FINRA member firms from 1998 until May 2001, when McDowell became associated with FINRA member firm National Securities Corporation.<sup>2</sup> McDowell's registration with National Securities was terminated in February 2013.<sup>3</sup> McDowell subsequently registered as a General Securities Representative with two other FINRA member firms and remained registered until October 2015.<sup>4</sup> McDowell has not been registered with FINRA, or been associated with a FINRA member firm, since October 6, 2015.<sup>5</sup>

### **B. FINRA's Jurisdiction**

Article V, Section 4 of FINRA's By-Laws provides a two-year period of retained jurisdiction after an individual's termination of association. During that period, FINRA may file a complaint based upon conduct that occurred while the person was associated with a member firm.

Enforcement filed its Complaint on October 28, 2016, within two years of McDowell's last association with a FINRA member firm, and the Complaint is based on misconduct that occurred while McDowell was associated with FINRA member firm National Securities. Accordingly, FINRA has jurisdiction.

### **C. Origin of the Investigation**

FINRA initiated its investigation in 2013 after National Securities filed a Form U5 on February 8, 2013, stating that it had terminated McDowell's employment on January 11, 2013, "upon review of allegations in a customer complaint."<sup>6</sup>

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<sup>1</sup> Complaint ("Compl.") at ¶ 2; Sepic Decl. at ¶ 3; CX-1.

<sup>2</sup> Compl. at ¶ 2; Sepic Decl. at ¶ 3; CX-1, at 7.

<sup>3</sup> Compl. at ¶ 2; Sepic Decl. at ¶ 3; CX-1.

<sup>4</sup> Compl. at ¶ 2; Sepic Decl. at ¶ 3; CX-1 and CX-2.

<sup>5</sup> Compl. at ¶ 3; Sepic Decl. at ¶ 3; CX-1 and CX-2.

<sup>6</sup> Sepic Decl. at ¶ 4; CX-3, CX-1, at 7.

#### **D. Respondent's Default**

Pursuant to FINRA Rule 9134(a)(2) and 9134(b)(1), a Complaint in a FINRA disciplinary proceeding may be served by first class certified mail on an individual's residential address, as reflected in the Central Registration Depository ("CRD"). FINRA Rule 9269(a) authorizes a Hearing Officer to issue a default decision against a respondent who fails to answer a properly served complaint.

Enforcement provided evidence that it properly served its Complaint against Respondent in this case by mailing the Notice of Complaint and Complaint, and the Second Notice of Complaint and Complaint, by first-class certified mail to McDowell's residential CRD address. In addition, Enforcement sent the Notice and Second Notice, each accompanied by the Complaint to three other addresses associated with McDowell in his CRD.<sup>7</sup> However, counsel represents that she has no actual knowledge and knows of no one in Enforcement who has any knowledge that McDowell's CRD address is out of date.<sup>8</sup> Accordingly, service of the Complaint at McDowell's CRD address was sufficient under Rule 9134.

McDowell failed to answer the Complaint. Accordingly, pursuant to Rule 9269(a), I deem him in default and treat the allegations of the Complaint as admitted.

#### **E. Respondent's Violations**

The Complaint's allegations establish that McDowell violated FINRA Rule 2010 by engaging in unauthorized transactions. FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 0140 specifies that an associated person has the same duties and obligations as a member.

An associated person is not permitted to trade in a customer's account without obtaining authority to do so. As the Securities and Exchange Commission ("SEC") has plainly stated, the burden is on the associated person to obtain authorization. "An associated person is 'responsible for obtaining his customer's consent prior to purchasing a security for the customer's account.'"<sup>9</sup> The SEC and FINRA have repeatedly held that unauthorized trading (transactions executed without the customer's prior knowledge or consent in a customer's account) violates Rule 2010.<sup>10</sup>

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<sup>7</sup> Sepic Decl. at ¶¶ 6-10, 12-15; CX-4; CX-5; CX-6; CX-7; CX-8; CX-9; CX-10; CX-11; CX-12; CX-13; CX-14.

<sup>8</sup> Sepic Decl. at ¶ 17.

<sup>9</sup> *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at \*6 (2008) (quoting *Carlton Wade Fleming, Jr.*, 52 S.E.C. 409, 412 (1995)).

<sup>10</sup> *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at \*13-14 (NAC Mar. 27, 2002) (applying NASD Rule 2110, now FINRA Rule 2010); *see also Robert Lester Gardner*, 52 S.E.C. 343, 343-344 n.1 (1995) (same).

According to the Complaint, while McDowell was the representative assigned to customer DG's account at National Securities, he entered 38 unauthorized transactions in DG's account from May 24 to July 26, 2012. These unauthorized trades are detailed in the attached Addendum A, which was CX-16 to the Default Motion. By engaging in those unauthorized trades, McDowell violated FINRA Rule 2010.

Accordingly, a default judgment should be entered finding that McDowell violated FINRA Rule 2010 by engaging in unauthorized transactions.

### III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$110,000 for effecting unauthorized transactions. The Guidelines also recommend consideration of suspending an individual respondent in any or all capacities for ten business days to one year, and in egregious cases, a suspension of up to two years or a bar.<sup>11</sup> Here, Enforcement recommends that McDowell be barred from associating with a FINRA member and ordered to pay restitution to customer DG in the amount of \$70,040.03, plus prejudgment interest.<sup>12</sup>

The relevant specific Principal Consideration in connection with unauthorized trading is whether the trading was egregious. The *Guidelines* refer to three types of egregious unauthorized trading: (i) quantitatively egregious; (ii) aggravating factors making trading egregious; and (iii) qualitatively egregious. In this case, all three categories exist.

Quantitatively egregious unauthorized trading exists where the sheer number of unauthorized trades is indicative of egregious conduct. McDowell engaged in 38 unauthorized transactions over the course of three months, making his misconduct quantitatively egregious.<sup>13</sup> Much smaller quantities of unauthorized trades—ranging from seven to sixteen—have been held to be quantitatively egregious.<sup>14</sup>

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<sup>11</sup> FINRA Sanction Guidelines at 97 (2016). The Guidelines can be found at <http://www.finra.org/Industry/Sanction-Guidelines>.

<sup>12</sup> Enforcement calculated prejudgment interest from the date of the last alleged unauthorized transaction made by McDowell, July 26, 2012, through the date of Enforcement's filing and service of its Default Motion, January 19, 2017. That figure was \$10,703.21. Enforcement added that figure to the amount of losses suffered and commissions paid on the unauthorized transactions, concluding that \$80,743.24 was appropriate restitution as of the date of the Default Motion. Default Motion, Schedule A.

<sup>13</sup> Sepic Decl. at ¶ 18; CX-16.

<sup>14</sup> *Dep't of Mkt Regulation v. Field*, No. CMS040202, 2008 FINRA Discip. LEXIS 63, \*42-44 (NAC Sept. 23, 2008) ("The total number of unauthorized trades executed by Field is consistent with our prior findings of quantitatively egregious unauthorized trading, whether we view the seven sales and purchases as single transactions or as independent transactions.") *See also Dep't of Enforcement v. Bond*, No. C10000210, 2002 NASD Discip. LEXIS 6, at \*12 (NAC Apr. 4, 2002) (finding quantitatively egregious conduct for 12 unauthorized trades); *Dist. Bus. Conduct Comm. v. Levy*, No. C07960085, 1998 NASD Discip. LEXIS 22, at \*11 (NAC Mar. 6, 1998) (finding quantitatively egregious conduct for 16 unauthorized trades).

Aggravating factors that support a finding that unauthorized trading is egregious include customer loss. Such loss occurred here. McDowell sometimes bought and then sold, or sold and then bought, the very same securities within a few days of the offsetting transactions. In doing so, he generated approximately \$5300 in commissions for himself<sup>15</sup> while causing almost \$65,000 in losses in the customer's account.<sup>16</sup>

Qualitative egregious unauthorized trading involves the strength of the evidence and whether the respondent acted intentionally or as a result of a reasonable misunderstanding. The number of unauthorized trades and the lack of any visible legitimate purpose for them both undercut any argument that McDowell's transactions could possibly have been placed as a result of a reasonable mistake or miscommunication.<sup>17</sup>

In light of the egregious nature of his unauthorized trading, it is appropriate and in the best interests of investors to bar McDowell from associating with any FINRA member in any capacity. It is also appropriate to order restitution to customer DG for McDowell's unauthorized transactions. The *Guidelines* recommend restitution "where necessary to remediate misconduct" and when an identifiable person "has suffered a quantifiable loss proximately caused by a respondent's misconduct."<sup>18</sup>

Here, as a direct result of McDowell's repeated unauthorized trading, customer DG suffered a quantifiable loss proximately caused by McDowell's unauthorized trading: \$5,299.95 in commissions paid on the unauthorized trades and \$64,740.08 in realized losses. McDowell should be ordered to pay customer DG restitution for both, in the total amount of \$70,040.03, plus pre-judgment interest calculated at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), and will run from July 26, 2012 until paid. The customer is identified by name in the Addendum B to this decision, which is served only on the parties.

#### **IV. Order**

Respondent Glenn McDowell is barred from associating with any FINRA member firm in any capacity for unauthorized trading in violation of FINRA Rule 2010. He is also ordered to pay restitution to customer DG in the total amount of \$70,040.03, plus pre-judgment interest at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), from July 26, 2012, until paid.

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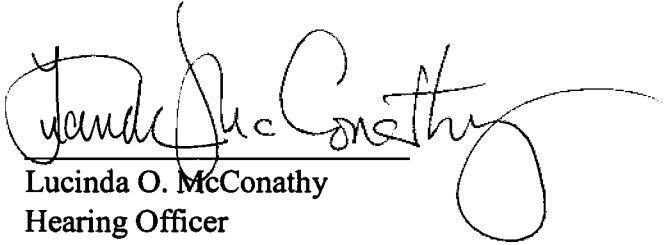
<sup>15</sup> Compl. ¶ 9.

<sup>16</sup> CX-16.

<sup>17</sup> The NAC has held that the nature and quality of unauthorized trades can undercut any argument that the trading was the result of mistake or miscommunication. See *Dep't of Enforcement v. Balbirer*, No. C07980011, 1999 NASD Discip. LEXIS 29, at \*5 (NAC October 18, 1999).

<sup>18</sup> *Guidelines* at 4, General Principle No. 5. See *Dep't of Enforcement v. Haq*, No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, \*32-33 (NAC April 6, 2009).

The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA. The restitution shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.



Lucinda O. McConathy  
Hearing Officer

**Copies to:**

Glenn McDowell (via first-class mail)  
Jennifer M. Sepic, Esq. (via email)  
Douglas Ramsey, Esq. (via email)  
Christopher Perrin, Esq. (via email)  
Jeffrey D. Pariser, Esq. (via email)

National Securities Account #

Trade Date	B/S	Quantity	Description	Symbol	Price	Amount	Gain / (Loss)	Commission
6/27/2012	B	1,000	Amarin Corp.	AMRN	\$ 14.969	\$ (14,969.000)		\$ 100.000
6/27/2012	B	1,000	Amarin Corp.	AMRN	\$ 14.569	\$ (14,569.000)		\$ 100.000
7/20/2012	S	(2,000)	Amarin Corp.	AMRN	\$ 15.150	\$ 30,300.000	\$ (762.000)	\$ 150.000
5/2/2012	B	1,500	Cardtronic Inc.	CATM	\$ 29.369	\$ (44,053.620)		
6/8/2012	S	(1,500)	Cardtronic Inc.	CATM	\$ 27.931	\$ 41,896.350	\$ (2,157.27)	\$ 100.000
6/27/2012	B	1,000	Facebook Inc.	FB	\$ 32.080	\$ (32,080.000)		\$ 100.000
6/27/2012	B	1,000	Facebook Inc.	FB	\$ 32.300	\$ (32,300.000)		\$ 100.000
7/26/2012	S	(1,500)	Facebook Inc.	FB	\$ 27.430	\$ 41,145.150		\$ 100.000
8/9/2012	S	(500)	Facebook Inc.	FB	\$ 20.930	\$ 10,465.100	\$ (12,769.75)	
7/20/2012	B	1,000	Fusion-IO	FIO	\$ 19.499	\$ (19,499.200)		\$ 350.000
7/24/2012	S	(1,000)	Fusion-IO	FIO	\$ 17.920	\$ 17,920.000	\$ (1,579.20)	\$ 250.000
5/24/2012	B	5,000	Synergy Pharmaceuticals Inc.	SGYP	\$ 4.526	\$ (22,628.000)		\$ 100.000
6/26/2012	S	(5,000)	Synergy Pharmaceuticals Inc.	SGYP	\$ 4.679	\$ 23,394.000	\$ 66.000	\$ 100.000
6/8/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 10.700	\$ (10,700.000)		\$ 100.000
6/11/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 11.360	\$ (11,360.000)		\$ 100.000
6/12/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 11.242	\$ (11,242.000)		\$ 100.000
6/14/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 10.398	\$ (10,398.000)		\$ 100.000
6/15/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 11.082	\$ (11,082.000)		\$ 100.000
6/18/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 11.618	\$ (11,618.000)		\$ 100.000
6/19/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 12.000	\$ (12,000.000)		\$ 100.000
6/19/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 12.020	\$ (12,020.000)		\$ 100.000
6/19/2012	B	579	Ventrus Biosciences Inc.	VTUS	\$ 11.957	\$ (6,922.871)		\$ 99.99
6/20/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 11.420	\$ (11,419.600)		\$ 100.000
6/22/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 12.120	\$ (12,120.000)		\$ 100.000
6/22/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 12.070	\$ (12,070.000)		\$ 100.000
6/22/2012	B	1,000	Ventrus Biosciences Inc.	VTUS	\$ 12.129	\$ (12,128.800)		\$ 100.000
6/22/2012	S	(9,000)	Ventrus Biosciences Inc.	VTUS	\$ 12.367	\$ 111,303.000		\$ 999.98
6/26/2012	S	(579)	Ventrus Biosciences Inc.	VTUS	\$ 4.910	\$ 2,842.890		\$ 100.000
6/26/2012	S	(2,000)	Ventrus Biosciences Inc.	VTUS	\$ 4.760	\$ 9,520.000		\$ 100.000
6/26/2012	S	(1,000)	Ventrus Biosciences Inc.	VTUS	\$ 4.904	\$ 4,904.000	\$ (16,511.38)	\$ 100.000
4/17/2017	B	3,903	Vringo Inc.	VRNG	\$ 4.020	\$ (15,688.109)		
4/17/2017	B	5,000	Vringo Inc.	VRNG	\$ 4.020	\$ (20,097.500)		
6/11/2012	S	(3,903)	Vringo Inc.	VRNG	\$ 3.543	\$ 13,829.110		\$ 99.98
6/18/2012	S	(5,000)	Vringo Inc.	VRNG	\$ 3.769	\$ 18,845.625		\$ 100.000
7/24/2012	B	3,000	Vringo Inc.	VRNG	\$ 4.030	\$ (12,089.700)		\$ 250.000
7/26/2012	B	1,000	Vringo Inc.	VRNG	\$ 3.930	\$ (3,929.900)		\$ 100.000

Naitonal Securities

Trade Date	B/S	Quantity	Description	Symbol	Price	Amount	Gain / (Loss)	Commission
7/26/2012	B	1,000	Vringo Inc.	VRNG	\$ 3.810	\$ (3,810.000)	\$ (22,940.47)	\$ 100.00
5/16/2012	B	2,000	Zynga Inc	ZNGA	\$ 8.010	\$ (16,020.000)		
5/31/2012	B	1,000	Zynga Inc.	ZNGA	\$ 6.140	\$ (6,140.000)		\$ 100.00
6/12/2012	S	(3,000)	Zynga Inc.	ZNGA	\$ 5.040	\$ 15,120.000		\$ 100.00
6/26/2012	B	1,000	Zynga Inc.	ZNGA	\$ 6.070	\$ (6,070.000)		\$ 100.00
6/26/2012	B	1,000	Zynga Inc.	ZNGA	\$ 5.770	\$ (5,770.000)		\$ 100.00
7/3/2012	S	(2,000)	Zynga Inc.	ZNGA	\$ 5.430	\$ 10,860.000	\$ (8,020.00)	\$ 100.00

\$ (64,740.08)  
Gain / (Loss)

\$ 5,299.95  
Commissions

Losses + Commissions = \$ 70,040.03

The following five transactions, highlighted in yellow above, are not alleged to be unauthorized but are included in this analysis for purposes of determining gain or loss for the unauthorized trades: (i) a May 2, 2012 purchase of Cardtronic Inc. shares; (ii) an August 9, 2012 sale of Facebook Inc. shares; (iii) two April 2017 transactions concerning the purchase of Vringo Inc. shares; and (iv) a May 16, 2012 purchase of Zynga Inc. shares.