

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KYLE P. HARRINGTON
(CRD No. 2282328),

and

LINDA C. MILBERGER
(CRD No. 4939206),

Respondents.

DISCIPLINARY PROCEEDING
No. 2015047303901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This case involves a series of deceptions by Respondent Kyle Harrington with the help of his assistant, Respondent Linda Milberger, to conceal Harrington's conversion of customer funds and private securities transactions. Harrington converted approximately \$20,000 from one of his customers, engaged in several undisclosed private securities transactions that he attempted to conceal from his firm and FINRA and, with the help of Milberger, he created false documents to submit to FINRA to conceal his misconduct. For her part, Milberger falsified wire request forms which allowed Harrington's conversion of customer funds, submitted those falsified wire request forms to her firm and another broker dealer as if they were authentic records, and knowingly assisted Harrington in providing an altered bank statement to FINRA.

2. In August 2012, Harrington converted approximately \$20,000 from one of his customers, LD, by convincing her to authorize a wire transfer to Harrington's registered investment advisor firm for a purported investment. In fact, after LD's funds were wired to Harrington's business checking account, Harrington took LD's money without her knowledge or consent, and used it to pay his own business expenses. By virtue of the foregoing, Harrington violated FINRA Rule 2010 through his conversion of customer funds.

3. When difficulties arose completing the \$20,000 wire transfer from LD's account in August 2012, Harrington's assistant, Milberger, altered the wire request form that LD had signed without LD's knowledge or consent, on at least two occasions, in order to transfer all available cash out of LD's account to Harrington. Milberger submitted the altered wire request forms to her own firm and another broker dealer as if they were authentic, thereby causing those firms to maintain inaccurate books and records regarding the wire transfer. By virtue of the foregoing, Milberger violated FINRA Rules 4511 and 2010.

4. In August 2012 and early 2013, Harrington engaged in a series of private securities transactions with at least two individuals through which he sold over 300,000 shares of restricted stock he had purportedly received as compensation from a company named Islet Sciences, Inc. for approximately \$276,000. Harrington failed to disclose these transactions, including his role as seller of the securities, to his employing firm or seek its prior approval of them. By virtue of the foregoing, Harrington violated NASD Rule 3040 and FINRA Rule 2010.

5. Harrington not only failed to disclose his private securities transactions in Islet stock to his employing firm, but he actively attempted to conceal them. Specifically, in July 2014, during a firm audit of his business, Harrington submitted falsified records to his firm mischaracterizing payments he had received for the sale of his Islet stock. With respect to one

set of Islet transactions, Harrington created and provided his firm with two falsified Vacation-Rental-By-Owner ("VRBO") agreements for a property he owned in La Jolla, California, which purported to justify the payments he received for his Islet stock. By virtue of the foregoing, Harrington violated FINRA Rule 2010.

6. As FINRA began investigating him, Harrington continued to actively conceal his misconduct with the knowing assistance of Milberger. Specifically, at Harrington's direction or with his knowledge and consent, Milberger altered certain bank statements requested by FINRA in order to conceal the originator of a payment Harrington received for Islet stock. Harrington, by and through his attorney, submitted the altered bank statement to FINRA as if it were an authentic, non-altered document. In addition, during his investigative testimony, Harrington falsely and repeatedly insisted that the fake VRBO agreements he had created for his firm's audit in July 2014 were authentic and represented legitimate rental transactions. By virtue of the foregoing, Harrington and Milberger violated FINRA Rules 8210 and 2010.

7. Finally, in November 2016, after FINRA uncovered Harrington's above-alleged conversion of customer funds, Harrington contacted the customer and asked her sign a document falsely stating that she had stayed at Harrington's VRBO property in 2012, as a purported explanation for her transfer of the approximately \$20,000 he converted. By virtue of the foregoing, Harrington violated FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

8. Harrington entered the securities industry in 1992 as a General Securities Representative with a FINRA member firm. Thereafter, he worked for several firms before joining Matrix Capital Group, Inc. in December 2009. Harrington left Matrix in November 2011, when he was permitted to resign after the firm discovered that Harrington failed to timely

disclose a bankruptcy on his Form U4. After leaving Matrix, Harrington was briefly registered with another member firm before joining National Securities Corporation (“National”) in July 2012. Harrington was registered with National until November 2016, when he was discharged from the firm. Since December 7, 2016, Harrington has been and currently is registered with Aurora Capital LLC. Harrington has been registered as a General Securities Representative (Series 7) since 1993 and General Securities Principal (Series 24) since 2009. In addition, since 2009 and throughout the relevant time period, Harrington maintained a registered investment advisor, Harrington Capital Management, LLC (“HCM”) (CRD No. 150808).

9. Milberger entered the securities industry in 2005 in a non-registered capacity, and from that time she was associated with three member firms, including Matrix Capital from November 2011 through December 2011. Milberger began working with Harrington as a sales assistant in September 2010. Thereafter, she followed Harrington to National, where she was associated until November 2016, when Harrington was discharged from the firm. Since December 2016, Milberger has been and is currently associated with Aurora Capital.

FACTUAL ALLEGATIONS

I. HARRINGTON CONVERTED CUSTOMER LD’S FUNDS THROUGH WIRE REQUEST FORMS FALSIFIED BY MILBERGER

10. As of July 2012, LD maintained several investment accounts with Harrington, including a trust account and SEP IRA custodied at Matrix Capital.

11. On or about August 14, 2012, Harrington caused LD to sign an authorization for a wire transfer in the amount of \$20,000 from her trust account with Matrix Capital to HCM’s bank account. Harrington told her that the purpose of the transfer was for a purported investment for her benefit at National, which Harrington had joined the month before.

12. Harrington instructed Milberger to work with LD to execute the wire.

13. On August 15, 2012, Milberger sent LD via email an unsigned wire request form for LD's signature and notarization to complete the \$20,000 wire transaction. The wire request form Milberger sent to LD on August 15 had the following information pre-filled by Milberger: (i) date ("8/14/12"); (ii) wire amount ("20,000"); (iii) Beneficiary / Recipient name ("LD"); (iv) Beneficiary Account Number ("HCM's Bank of America account"); (v) Beneficiary Address ("LD's home address").

14. On August 16, 2012, Milberger received from LD via e-fax a signed and notarized copy of the wire request form that Milberger had emailed LD the day before.

15. Just prior to receiving the signed wire request form from LD, Milberger learned from Matrix that there was insufficient cash in LD's Matrix account to complete a \$20,000 wire. Securities would need to be sold to generate cash for the wire transfer, and it would take time for proceeds from those sales to settle into LD's account. To begin the process, Harrington exercised the discretion granted him under his investment advisory agreement with LD to instruct Matrix to liquidate certain securities held in LD's account.

16. Meanwhile, on or about August 17, 2012, in order to complete the immediate transfer of available cash in LD's account, without authority from LD, Milberger altered the wire request form LD had signed to change the wire amount to \$7,245.00 and then submitted the altered form to Matrix Capital as if it were authentic.

17. On August 17, 2012, due to Milberger's submission of the altered wire request form, Matrix Capital initiated a \$7,224.24 wire transfer from LD's trust account to HCM's Bank of America checking account. This amount represented all the cash available in LD's account minus certain fees associated with the wire transfer. This wire, however, was rejected because

the beneficiary name on the form (*i.e.*, “[LD]”) did not match the beneficiary name on the recipient account (*i.e.*, “[HCM’s Bank of America account]”).

18. On or about August 21, 2012, Milberger learned that the August 17 wire from LD’s account had been rejected. Also, additional cash was available in the account due to the sales directed by Harrington. In order to complete the wire of all available cash from LD’s account, Milberger again without authority from LD altered the wire transfer form LD had signed—this time to change (i) the date to August 20, 2012; (ii) the wire amount to \$19,929.58; and (iii) the beneficiary/recipient name to HCM (from LD). She then submitted this second altered wire request form to Matrix Capital, as if it were authentic.

19. On August 21, 2012, due to Milberger’s submission of the second altered wire request form, Matrix Capital executed a \$19,874.64 wire transfer from LD’s trust account to HCM’s Bank of America checking account.

20. By submitting two altered wire request forms to Matrix Capital, as if they were authentic, Milberger caused Matrix Capital to maintain inaccurate books and records regarding the wire transfers requested from LD’s account on August 17 and 21.

21. Upon receiving the wire from LD’s Matrix trust account, Harrington used the funds to pay HCM payroll and other expenses. LD did not authorize Harrington to take her \$19,874.64 and use it for his personal business expenses.

22. None of the \$19,874.64 received by HCM from LD’s Matrix trust account was ever transferred to any account in LD’s name for her benefit or otherwise used to purchase an investment on her behalf.

23. By intentionally and without authorization taking and exercising ownership over \$19,874.64 belonging to LD, when he neither owned the property nor was entitled to possess it, Harrington converted his customer LD's funds.

**II. HARRINGTON ENGAGED IN UNDISCLOSED PRIVATE SECURITIES
TRANSACTIONS IN ISLET SCIENCES STOCK**

24. Sometime in 2011, Harrington entered into a "consulting" arrangement with Islet Sciences, whereby Harrington received over 800,000 shares of restricted Islet stock as "compensation" for his services, including the introduction of potential investors to Islet.

25. After he joined National, Harrington began opening accounts through National for himself and other Islet investors to deposit their restricted stock. By mid-October 2012, Harrington had opened customer accounts collectively holding approximately \$20 million in restricted Islet stock at National.

26. Harrington sold 319,500 shares of his restricted Islet stock to two individuals in private transactions as follows:

- a. On or about August 17, 2012, Harrington and AB entered into an agreement by which Harrington would sell 200,000 shares of his restricted Islet stock to AB at 50 cents per share for a total of \$100,000. Harrington received payment for these shares on or about August 21, 2012, and transferred the 200,000 shares to AB on or about October 12, 2012.
- b. On or about January 3, 2013, Harrington sold TZ 50,000 shares of his restricted Islet stock to TZ at \$1.60 per share for a total of \$80,000. Harrington received payment for these shares on or about January 3, 2013, and transferred the shares to TZ on or about April 15, 2013.

c. On or about January 18, 2013, Harrington sold TZ 9,500 shares of his restricted Islet stock to TZ at \$1.68 per share for a total purchase price of \$16,000.

Harrington received payment for these shares on or about January 25, 2013, and transferred the shares to TZ on or about April 15, 2013.

d. On or about February 7, 2013, Harrington sold TZ 60,000 shares of his restricted Islet stock to TZ at \$1.333 per share for a total purchase price of \$80,000.

Harrington received payment for these shares on or about February 15, 2013, and transferred the shares to TZ on or about April 15, 2013.

27. National's written supervisory policies and procedures in effect at the time required registered representatives associated with the firm, such as Harrington, to provide "written notice" to the firm prior to their "participation in any purchase or sale of any financial instrument not conducted through the broker dealer." National's written supervisory policies and procedures further reminded representatives that they had to disclose private securities transactions beforehand as well as in response to periodic questionnaires:

Associated persons are advised through the new applicant paperwork that they have an affirmative duty to notify the firm in advance of engaging in private securities transactions. The firm will make inquiry, no less than annually, of registered representatives about such activities as part of a periodic questionnaire.

28. While he was associated with National, Harrington failed to disclose the AB or TZ transactions (described above) to National or seek its prior approval of the transaction, even though at the time Harrington was aware that the transaction might be a private securities transaction for which he needed approval.

29. In addition, Harrington transferred Islet stock to various individuals during 2012 or 2013, including 15,000 shares to RF and 12,500 shares to PS. Harrington failed to disclose such transfers to National or seek its prior approval of them.

30. During the time he was associated with National, Harrington completed several of National's compliance questionnaires in which he falsely claimed that (i) he had received no compensation from any person or entity other than National while associated with the firm; (ii) he had neither given, nor received any gifts or gratuities valued over \$100 while associated with the firm; and (iii) he had not participated or been involved in any capacity in any private securities transactions.

III. HARRINGTON FALSIFIED DOCUMENTS AND INFORMATION TO CONCEAL HIS PRIVATE SECURITIES TRANSACTIONS FROM NATIONAL

31. In or about July 2014, National initiated an internal audit to determine whether Harrington was engaged in improperly raising capital for companies away from National.

32. As part of this audit, Harrington provided National with copies of bank statements for his own and HCM's accounts dating back to 2012.

33. During the audit, Harrington was asked to explain and provide evidence supporting all deposits into his bank accounts over \$1,000 that did not originate from National. In response, Harrington sent National a spreadsheet purporting to explain such deposits.

34. The spreadsheet, however, falsely characterized the payments received from TZ on January 3, 2012, January 28, 2012, and February 21, 2012 as "Vacation Rental / Income / + Deposit / Event Fees." The spreadsheet also mischaracterized the \$100,000 payment received from AB on August 21, 2012 as "Residual Payment under Former Broker Dealer." As alleged above, such payments were, in reality, for the purchase of Islet stock from Harrington.

35. On July 28, 2014, Harrington's supervisor at National requested additional information from Harrington, including contracts for those payments Harrington claimed were for VRBO rentals and copies of all checks associated with such rentals. While Harrington provided copies of certain checks to National, he did not provide National with copies of the checks TZ made out to HCM for the purchase of Islet stock in January and February 2013.

36. On or about July 29, 2014, Harrington contacted TZ and asked him to sign a document falsely indicating that he had rented one of Harrington's VRBO properties. Harrington told TZ that signing the document would somehow help TZ deposit at National the Islet stock that Harrington had sold TZ in early 2013. Per Harrington's request, TZ provided a scanned copy of a single signed, but un-dated signature page of a VRBO rental agreement to one of Harrington's assistants (NG) on July 30, 2014.

37. On July 30, 2014, after receiving the signed, but undated signature page from TZ through his assistant (NG), Harrington knowingly caused at least two falsified VRBO rental agreements to be submitted to National in order to conceal his private securities transactions with TZ. Specifically, Harrington instructed his assistant (NG) to provide National via email with what purported to be two VRBO rental contracts signed by TZ on December 26, 2012 and February 20, 2013, respectively, for extended stays at Harrington's VRBO property. In fact, the VRBO agreements were false; TZ never rented or intended to rent Harrington's VRBO property. Harrington had the two VRBO agreements created in July 2014 and caused them to be backdated in order to conceal his private securities transactions with TZ.

38. Harrington never disclosed to National that the TZ VRBO rental agreements were, in fact, false. He never disclosed that they were created at his request in July 2014 or that

they were backdated. Nor did Harrington disclose that the rental agreements were created in order to conceal his private securities transaction with TZ.

39. In September 2015, TZ filed a FINRA Dispute Resolution arbitration against Harrington and National related to Harrington's sales of Islet stock to TZ. Harrington and National filed a joint Answer to TZ's Statement of Claim, wherein Harrington admitted engaging in three private securities transactions with TZ.

40. During his investigative testimony taken by FINRA staff pursuant to Rule 8210, Harrington falsely insisted that the two VRBO agreements for TZ that he had created in July 2014 were authentic documents that represented legitimate rental transactions. In truth, Harrington knew the VRBO agreements were fake documents that he created during his firm's audit in 2014 to conceal his private securities transactions with TZ.

IV. HARRINGTON AND MILBERGER PROVIDED FINRA WITH AN ALTERED BANK STATEMENT TO CONCEAL THE SALE OF ISLET STOCK TO AB

41. After TZ initiated his arbitration against Harrington, FINRA began an investigation into Harrington's relationship with Islet and his sales of Islet stock to TZ and possibly other investors. In response to FINRA's requests for information, Harrington claimed that he had not sold Islet stock to anyone other than TZ. This was false — as alleged above, Harrington sold \$100,000 of Islet stock to AB.

42. On June 21, 2016, pursuant to FINRA Rule 8210, FINRA staff requested that Harrington provide copies of bank statements for all accounts in which he had a financial interest, including bank statements for his personal account with HSBC, for the time period from July 1, 2012 through the most recent statement.

43. Sometime after receiving FINRA's June 21 Rule 8210 request, Harrington informed Milberger of the request and enlisted her assistance in gathering documents and information to provide to FINRA in response to its request.

44. On July 5, 2016, Harrington provided a response to FINRA's June 21 Rule 8210 request that purported to produce all the requested documents. Harrington failed, however, to produce relevant bank statements, including bank statements for his personal account with HSBC reflecting the \$100,000 wire he received from AB on August 21, 2012.

45. On July 26, 2016, FINRA staff followed up with a second Rule 8210 Request for bank statements, which notified Harrington that his July 5 production was incomplete.

46. On August 3, 2016, in response to FINRA's July 26 Rule 8210 Request, Harrington and Milberger knowingly provided FINRA with an altered bank statement for Harrington's personal account with HSBC.

47. Specifically, the bank statement provided to FINRA was altered by Milberger, either at Harrington's direction or with his knowledge and approval, to remove AB's name as the originator of the \$100,000 wire Harrington received from AB on August 21, 2012 in exchange for 200,000 shares of Islet stock.

V. HARRINGTON ATTEMPTED TO CONCEAL HIS CONVERSION OF CUSTOMER FUNDS THROUGH ADDITIONAL FALSIFICATION OF EVIDENCE

48. On November 3, 2016, FINRA staff took Harrington's investigative testimony in this matter, wherein, among other things, FINRA asked Harrington about the \$19,874.64 wire transfer HCM received from LD on August 21, 2012. Harrington claimed that he believed the payment from LD was for the rental of one of his VRBO properties.

49. On November 9, 2016, pursuant to FINRA Rule 8210, FINRA sent Harrington a request asking him to explain the \$19,874.64 wire HCM received from LD on August 21, 2012 and provide supporting documentation for his explanation.

50. On November 10, 2016, LD lodged a verbal complaint with National regarding, among other things, the fraudulent August 21, 2012 wire transfer from her Matrix Capital trust account to HCM's Bank of America checking account.

51. On November 14, 2016, National sent Harrington and Milberger a request for documents and information related to LD's verbal complaint, including: "A copy of any docs/info that was provided to the client including, but not limited to, all email correspondence between RR(s) and client – (If applicable)."

52. On November 15, 2016, in response to National's request for documents and information, Milberger forwarded to National certain documentation regarding the August 21, 2012 wire, including copies of the altered wire request forms that she had falsified to complete the August 2012 wires, as if they were authentic.

53. By maintaining the altered wire request forms and submitting them to National in response to LD's verbal complaint, Milberger caused National to maintain inaccurate records regarding the transactions and LD's complaint.

54. Meanwhile, on or about November 5, 2016, after he was asked about the wire from LD's account during his investigative testimony, Harrington contacted LD via telephone and text asking her to sign a document falsely stating that she had stayed at one of Harrington's VRBO properties in September 2012. LD refused.

55. On November 22, 2016, in response to FINRA staff's November 9 Rule 8210 Request, Harrington falsely stated that the \$19,874.64 he took from LD represented payment for

“financial planning & (sic) incentive fees” owing to HCM. In fact, LD never authorized any such payment and did not owe HCM any such payment.

FIRST CAUSE OF ACTION
CONVERSION OF CUSTOMER FUNDS
(Violation of FINRA Rule 2010)
(Harrington)

56. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

57. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Converting customer funds violates FINRA Rule 2010.

58. As alleged above, Harrington converted customer funds in violation of FINRA Rule 2010 by intentionally and without authorization taking and exercising ownership over \$19,874.64 belong to LD when he neither owned the property nor was entitled to possess it.

SECOND CAUSE OF ACTION
FALSIFICATION OF WIRE REQUEST FORMS
(Violation of FINRA Rule 2010)
(Milberger)

59. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

60. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Forgery and falsification of customer records is inconsistent with FINRA Rule 2010.

61. As alleged above, Milberger falsified a wire request form she had received from customer LD on at least two occasions. Specifically, Milberger removed and replaced information appearing on the original form signed and notarized by the customer.

62. Milberger submitted the falsified wire request forms to the customer's broker dealer, as if they were authentic, in order to complete wire transfers.

63. As a result of her falsification of the wire request forms, Milberger made possible the conversion of the customer's money by Harrington.

64. By virtue of the foregoing, Milberger violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
FAILURE TO DISCLOSE PRIVATE SECURITIES TRANSACTIONS
(Violation of NASD Rule 3040¹ and FINRA Rule 2010)
(Harrington)

65. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

66. NASD Rule 3040 provided, in pertinent part, "[n]o person associated with a member shall participate in any private securities transaction" without "provid[ing] written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction."

67. Under NASD Rule 3040, a private securities transaction is "any securities transaction outside the regular course or scope of an associated person's employment with a member," regardless of the representative's receipt of compensation.

68. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

69. As described above, between August 2012 and February 2013, Harrington engaged in private securities transactions involving Islet stock: he sold 200,000 shares of his

¹ FINRA Rule 3280 superseded NASD Rule 3040 on September 21, 2015. Given that Harrington's conduct occurred prior to the effective date for FINRA Rule 3280, NASD Rule 3040 applies.

Islet stock to AB in August 2012 and sold 119,500 shares of his Islet stock to TZ in January and February 2013.

70. Harrington failed to provide National with prior written notice of his private securities transactions, including his proposed role as seller in the transactions.

71. By reason of the foregoing, Harrington violated NASD Rule 3040 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
MISSTATEMENTS AND FALSIFICATION OF DOCUMENTS
IN CONNECTION WITH NATIONAL'S INTERNAL INVESTIGATION
(Violation of FINRA Rule 2010)
(Harrington)

72. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

73. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade, and it is a violation of FINRA Rule 2010 for associated persons to make false representations to their member firm.

74. As described above, on or about July 25, 2014, Harrington lied to his firm when he mischaracterized the purpose of payments received into his bank accounts. Specifically, Harrington falsely characterized three payments received from TZ for the purchase of Islet stock as VRBO rental income. He also falsely characterized the \$100,000 payment he received from AB for the purchase of Islet stock as a payment from his former broker-dealer.

75. As further alleged above, on or about July 30, 2014, Harrington knowingly caused at least two falsified VRBO rental contracts to be sent to National in order to conceal the true purpose of funds he had received in private securities transactions.

76. By reason of the foregoing, Harrington violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION
PROVISION OF FALSIFIED RECORDS TO FIRM
(Violation of FINRA Rules 4511 and 2010)
(Milberger)

77. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

78. FINRA Rule 4511 requires member firms to “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Those applicable rules include Section 17(a) of the Securities Exchange Act of 1934, which requires broker-dealers to make and preserve certain books and records and SEC Rule 17a-4(b)(4), promulgated thereunder, requires that a firm preserve records relating to communications concerning the broker-dealer's business.

79. Causing a firm to make and preserve false or inaccurate books and records is a violation of FINRA Rule 4511. It is also inconsistent with high standards of commercial honor and just and equitable principles of trade and, thus, violates FINRA Rule 2010.

80. As described above, National sought documents and information from Respondents related to customer LD's complaint. In response, Milberger provided National with wire request forms that she had falsified to complete the transactions at issue and failed to advise National that the forms were not authentic.

81. By reason of the foregoing, Milberger violated FINRA Rules 4511 and 2010.

SIXTH CAUSE OF ACTION

**PROVIDING FALSE DOCUMENTS AND INFORMATION TO FINRA
(Violation of FINRA Rule 8210 and FINRA Rule 2010, both
independently and by virtue of violating Rule 8210)
(Harrington and Milberger)**

82. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

83. FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to “provide information orally [or] in writing . . . with respect to any matter involved in the investigation” FINRA Rule 8210(c) requires those persons to provide such information when requested by FINRA.

84. Providing false or misleading information to FINRA constitutes conduct inconsistent with just and equitable principles of trade and, thus, independently violates FINRA Rule 2010.

85. As described above, in response to a request for documents and information issued by FINRA Staff pursuant to Rule 8210, Harrington and Milberger provided FINRA with an altered bank statement with the name AB removed as the originator of a \$100,000 wire related to one of Harrington’s undisclosed private securities transactions.

86. In addition, during his investigative testimony, Harrington repeatedly insisted that the two falsified VRBO agreements created to conceal his private securities transactions with TZ were authentic and represented legitimate rental transactions, when in fact the documents were fake and created at his instruction during his firm’s 2014 audit of his business.

87. Additionally, as alleged above, in November 2016, Harrington submitted to FINRA a written response to a Rule 8210 request which falsely stated that he was entitled to the

approximately \$20,000 he took from LD in August 2012, as payment for investment advisory services rendered to the client from 2009 through 2012.

88. By providing FINRA with an altered bank statement in response to a FINRA Rule 8210 request, Harrington and Milberger each violated FINRA Rule 8210. In addition, by providing FINRA with an altered bank statement, Harrington and Milberger each violated FINRA Rule 2010 both independently and by virtue of their violations of Rule 8210.

89. In addition, by providing false information to FINRA staff during his investigative testimony regarding the TZ VRBO agreements and in response to FINRA's Rule 8210 request regarding the money he took from LD, Harrington violated FINRA Rule 8210. In addition, by providing such false information, Harrington also violated FINRA Rule 2010 both independently and by virtue of his violation of Rule 8210.

SEVENTH CAUSE OF ACTION
ATTEMPT TO CONCEAL CONVERSION
(Violation of FINRA Rule 2010)
(Harrington)

90. Enforcement realleges and incorporates by reference paragraphs 1 through 55 above.

91. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Attempting to interfere with a FINRA investigation, including attempting to create false documents to conceal misconduct and otherwise improperly influence the potential testimony of witnesses, violates FINRA Rule 2010.

92. As alleged above, after he learned that FINRA was investigating his conversion of LD's customer funds, Harrington contacted LD and attempted to have her sign a false document stating that he was entitled to the money he stole.

93. By virtue of the foregoing, Harrington violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

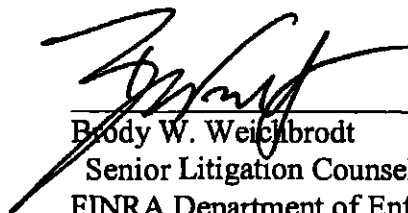
A. Make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;

B. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent Harrington be required to make full and complete restitution, together with interest; and

C. Order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

Dated: June 23, 2017

FINRA DEPARTMENT OF ENFORCEMENT



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