

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

Department of Enforcement,

Complainant,

v.

**Ascendant Capital Markets, LLC,
CRD No. 152912,**

Respondent.

**Disciplinary Proceeding
No. 2010023220507**

Hearing Officer - KBW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 25, 2015

INTRODUCTION

Disciplinary Proceeding No. 2010023220507 was filed on February 23, 2015 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Ascendant Capital Markets, LLC (Respondent or Ascendant) submitted an Offer of Settlement (Offer) to Complainant dated June 19, 2015. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Ascendant has been a member of FINRA since February 2011. The firm is based in Irvine, California and has five branches. It currently has 27 registered persons working in the five branches.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. From July 2012 through July 2014 ("the relevant period"), Ascendant failed to satisfy important supervisory, disclosure and reporting responsibilities. It failed (i) to update two registered representatives' Forms U4 (Uniform Application for Securities Industry Registration or Transfer); (ii) to report a customer complaint to FINRA; and (iii) to maintain and enforce adequate supervisory systems and written procedures regarding U4 amendments and the reporting of customer complaints.
2. Throughout the relevant period, Ascendant failed to timely update the Forms U4 of two registered representatives to reflect "Wells" notices that they were the subjects of regulatory investigations by FINRA.
3. Ascendant also failed to timely update the Form U4 of one of the registered representatives to reflect that the representative was subject to an IRS tax lien and to reflect a written customer complaint against the registered representative including a claim for more than \$5,000.

4. As a result, Ascendant violated FINRA By-Laws Article V, Section 2 and FINRA Rule 2010.

5. From November 1, 2012 to March 1, 2013, Ascendant failed to report the aforementioned customer complaint and subsequent arbitration claim made against the firm and one of its registered representatives to FINRA. The customer claimed that certain trades were unauthorized and made a demand for damages.

6. Despite those claims, Ascendant failed to report the complaint in a timely fashion as required by FINRA rules. In so doing, Ascendant violated FINRA Rules 4530 and 2010.

7. Finally, during the relevant period, Ascendant did not have adequate written procedures and it failed to implement its supervisory system adequately with regard to customer complaint reporting and Form U4 disclosure. As a result, the firm violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.¹

FACTS

The Disciplinary Investigation and Complaint

8. SS and KT were registered representatives who were registered with Ascendant during the relevant period.

9. Both SS and KT previously had been employed by and registered with a different firm but joined Ascendant at the time or shortly after its registration was approved.

10. SS left Ascendant in July 2014 and has since been barred from the industry. KT is still registered with Ascendant.

11. Ascendant was notified by letter dated July 6, 2012 that Enforcement proposed bringing charges against registered representatives SS and KT, both then registered with

¹ FINRA Rule 3110 superseded the former NASD Rule 3010 effective December 1, 2014.

Ascendant, for various violations of federal securities law and SEC, FINRA and NASD rules while they were registered with a previous firm.

12. The letter stated it was “written notification that [the registered representatives] are the subject of an investigation for purposes of triggering an obligation on the[ir] part to update their Form U4 (Uniform Application for Securities Industry Registration or Transfer).”

13. Despite that notice, Ascendant failed to update the registered representatives’ Forms U4 to reflect the regulatory investigation.

14. Enforcement filed a disciplinary complaint against SS on May 9, 2014. Ascendant was sent a notice on that date advising it of the complaint. The notice stated the information about the complaint was “provided to [Ascendant] so that, in light of the pending charges, [Ascendant could] take whatever steps [were] necessary to fulfill [its] supervisory and other obligations under securities industry rules and regulations.”

15. Despite that notice, Ascendant failed to update SS’s Form U4 to reflect the complaint.

16. On or about March 21, 2014, Ascendant was advised that Enforcement made a preliminary determination to recommend that disciplinary action be brought against the firm for the violations alleged in this Complaint. At that time and again by letter dated March 26, 2014, Ascendant was advised that the violation for the failure to timely update SS’s Form U4 to reflect that he was the subject of a regulatory investigation was continuing.

17. Once again, despite that notice, Ascendant failed to update the SS’s Form U4.

18. Ascendant did not update SS’s Form U4 to reflect that he was the subject of a regulatory investigation and later complaint at any time prior to the termination of SS’s registration with Ascendant on or about July 28, 2014.

19. SS was barred from the industry by order dated January 13, 2015 for various violations of federal securities law and SEC, FINRA and NASD rules, including violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder for fraudulent omissions of material facts.

The IRS Lien

20. Ascendant also failed to timely update SS's Form U4 with regard to a tax lien.

21. A \$247,000 IRS tax lien was filed against SS on February 8, 2013.

22. Ascendant became aware of the lien no later than March 28, 2013, when the firm's then Chief Compliance Officer was told about it by a representative of FINRA.

23. Once notified of the Form U4 filing requirement by FINRA on March 28, 2013, Ascendant should have amended SS's Form U4 on or before April 27, 2013.

24. The firm did not amend SS's Form U4 to reflect the IRS lien until June 24, 2013.

The Customer Complaint

25. Customer JI alleged in an email to Ascendant on November 1, 2012 that SS had committed unauthorized trades in an account controlled by JI. The customer claimed damages exceeding \$5,000.

26. The customer filed an arbitration claim against Ascendant and SS on or about December 7, 2012. The customer ultimately received an arbitration award against the firm and SS.

27. Based on the initial complaint date of November 1, 2012, Ascendant should have updated SS's Form U4 on or before December 1, 2012.

28. Ascendant did not amend SS's Form U4 to reflect the customer complaint until March 1, 2013.

29. The firm also failed to report the customer complaint to FINRA in a timely fashion.

30. Based on the initial complaint date of November 1, 2012, Ascendant should have reported the complaint, pursuant to FINRA Rule 4530, by January 15, 2013.

31. Ascendant did not report the complaint until February 19, 2013.

Deficient Supervisory Procedures

32. Ascendant's policies and procedures did not provide adequate guidance on updating Forms U4 and reporting customer complaints to FINRA.

33. Specifically, there were no procedures to address compliance with FINRA Rule 4530, the Firm's written supervisory procedures did not identify the principal responsible for ensuring Form U4 amendments were filed timely, and the written supervisory procedures did not describe how the firm would ensure that registered representatives keep current the information on Form U4.

34. The firm also failed to adequately implement its supervisory system with regard to Form U4 disclosure reporting and customer complaint reporting.

FIRST CAUSE OF ACTION

Failure to Update Forms U4 Violations of the FINRA By-Laws Article V, Section 2(c) and FINRA Rule 2010

35. Article V, Section 2(c) of the FINRA By-Laws provides that "Every application for registration filed with [FINRA] shall be kept current at all times. . . . Such amendment to the application shall be filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

36. FINRA uses the Form U4 to screen applicants and monitor their fitness for registration within the securities industry. The information on the Form U4 is also important to

FINRA member firms that are evaluating whether to hire an employment applicant. Disclosures from the Form U4 are available to the public through FINRA's BrokerCheck, and may be important in an investor's choice of a broker.

37. Member firms are required to amend Forms U4 for their registered representatives when they become aware of facts requiring disclosure.

38. Enforcement sends notices of investigations and disciplinary proceedings such as those sent to Ascendant specifically to remind firms of their reporting obligations.

39. Question 14(G) on the Form U4 requires disclosure of regulatory investigations and complaints or proceedings. Specifically, question 14(G) asks, "Have you been notified, in writing, that you are now the subject of any regulatory complaint or *proceeding* that could result in a 'yes' answer to any part of 14C, D or E" or "*investigation* that could result in a 'yes' answer to any part of 14A, B, C, D or E?" (emphasis in original)

40. Ascendant was aware of the regulatory investigation of SS and KT on or about July 6, 2012. The firm was aware of the proceeding against SS on or about May 9, 2014. It was advised on or about March 21, 2014 that Enforcement made a preliminary determination to recommend that disciplinary action be brought against the firm for, *inter alia*, the failure to update SS's Form U4 and that the violation was continuing.

41. Despite knowledge of the investigation and complaint and after repeated notice from FINRA, Ascendant never disclosed the disciplinary proceeding on SS's Form U4, which remained inaccurate until SS left the firm.

42. Question 14(M) on the Form U4 requires disclosure of liens. Specifically, question 14(M) asks, "Do you have any unsatisfied judgments or liens against you?"

43. Ascendant was aware of the IRS lien against SS no later than March 28, 2013. Based on that date, the firm should have updated SS's Form U4 on or before April 27, 2013.

44. It did not amend SS's Form U4 to reflect the IRS lien until June 24, 2013.

45. Question 14(I)(3) on the Form U4 requires disclosure of certain customer complaints. Specifically, question 14(I)(3)(a) asks "Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported under question 14(2) above, which alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000)?"

46. Ascendant was aware of the JI complaint on or about November 1, 2012. Based on that date, the firm should have updated SS's Form U4 on or before December 1, 2012.

47. Ascendant did not amend SS's Form U4 to reflect the customer complaint until March 1, 2013.

48. By virtue of this conduct, Ascendant violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Timely Report Written Customer Complaint Violation of FINRA Rules 4530 and 2010

49. FINRA Rule 4530(d) requires member firms to report statistical and summary information regarding written customer complaints to FINRA by the 15th day of the month following the calendar quarter in which customer complaints are received by the member.

50. The member must report any written grievance made by any person with whom the member has engaged in securities activities involving the member or a person associated with the member.

51. Ascendant received written communication containing a customer complaint from JI on or about November 1, 2012 stating clearly that trades reflected in the account he controlled were unauthorized and demanding compensation commensurate with the losses resulting from the unauthorized trades.

52. Ascendant should have reported the complaint by January 15, 2013. It did not do so until February 19, 2013.

53. By virtue of this conduct, Ascendant violated FINRA Rules 4530 and 2010.

THIRD CAUSE OF ACTION

Supervision Violations of NASD Conduct Rule 3010 and FINRA Rule 2010

54. NASD Conduct Rule 3010(a) requires members to establish, maintain and enforce supervisory systems, including written supervisory procedures, which are reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules. Under NASD Rule 3010(b), these systems must be documented in the firm's written supervisory procedures.

55. Ascendant did not establish, maintain and implement adequate supervisory systems and procedures reasonably designed to comply with updating Forms U4 and reporting customer complaints properly during the relevant period.

56. Ascendant did not have adequate procedures in place to report customer complaints and update Forms U4 properly, and customer complaints were not handled properly by supervisors.

57. The firm failed to ensure that Forms U4 were updated and customer complaints were reported timely.

58. By virtue of this conduct, Ascendant violated NASD Conduct Rule 3010(a) and (b) and FINRA Rule 2010.

Based on the foregoing, Respondent violated Article V, Section 2(c) of the FINRA By-Laws, FINRA Rules 4530 and 2010 and NASD Rule 3010(a) and (b).

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured and fined \$20,000.²

Respondent agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



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² Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.