

Quarterly Disciplinary Review

January 2017

FINRA publishes this quarterly review to provide firms with a sampling of recent disciplinary actions involving misconduct by registered representatives. The sample includes settled matters and decisions in litigated cases (National Adjudicatory Council (NAC) decisions and Securities and Exchange Commission (SEC) decisions in FINRA cases). These summaries call attention to, and remind registered representatives and firms of, specific conduct that violates FINRA rules and may result in disciplinary action. FINRA also provides [detailed disciplinary information](#), [disciplinary decisions](#), and a summary of [monthly disciplinary actions](#) on its website.

Improperly Using Fund Transfers to Artificially Inflate a Brokerage Account Balance

- ▶ FINRA settled a matter involving a registered representative who improperly used fund transfers to artificially inflate his brokerage account balance. Between September and November 2015, the representative made 10 electronic fund transfers totaling \$5,000 from his personal bank account to his personal brokerage account knowing that he did not have sufficient funds to cover those transfers. The improper transfers artificially inflated the representative's brokerage account balance, which the representative used to withdraw funds for personal use. The transfers were eventually rejected due to insufficient funds and created a deficit in the representative's brokerage account. A few weeks later, the representative deposited sufficient funds in his brokerage account to clear the deficits created by his improper transfers. After discovering the representative's conduct, his member firm fired him.

The representative's improper use of fund transfers to artificially inflate his brokerage account balance violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for three months and fined him \$5,000.

Participating in Private Securities Transactions Without Proper Notice to the Firm

- ▶ FINRA settled a matter involving a registered representative who participated in private securities transactions without providing proper notice to his firm. Between 2010 and 2015, while registered with a FINRA member, the representative participated in close to 40 private securities transactions on three different occasions without providing proper notice to his firm. In total, 27 people, most of whom were firm customers, invested over \$3.5 million through the representative.

In the first instance, in 2010, the representative requested and received his firm's permission to act as a business planning consultant to an entity two of his customers had founded. The representative exceeded the scope of the firm's permissive involvement with the entity by soliciting the firm's customers to purchase the entity's 13 percent "Senior Notes." The representative participated in 35 transactions through which 27 individuals, most of whom were firm customers, invested more than \$2 million in the entity's notes.

In the second instance, in 2014, the founders of the entity that issued the Senior Notes purchased a distressed real estate development. To finance the development project, the entity issued 12 percent Senior Notes. The representative recommended to two customers that they invest in the development project by purchasing Senior Notes. The two customers invested a total of \$750,000 to assist with the capital-raising effort for the real estate development project. In the third instance, the representative participated in undisclosed private securities transactions by facilitating the development project investors' conversion of their Senior Notes to notes issued through the entity's parent company.

In each instance, the investments were made outside the representative's firm, and the representative did not provide prior notice to his firm of his participation in these securities transactions. The representative's participation in the private securities transactions without proper notice to the firm violated NASD Rule 3040* (private securities transactions) and FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for two years and fined him \$20,000.

Failing to Timely Update a Form U4

- ▶ FINRA settled a matter involving a registered representative who failed to timely disclose a compromise with a creditor on his Uniform Application for Securities Industry Registration or Transfer (Form U4). In January 2014, the representative entered into a compromise with a creditor through which he agreed to pay \$175,000 to satisfy a debt in connection with a FINRA arbitration award. The compromise with the creditor required disclosure on the representative's Form U4 beginning 30 days after learning of the facts and circumstances giving rise to the amendment; however, he did not make the required disclosure on his Form U4 until more than two years later, in May 2016.

The representative's failure to timely update the Form U4 to disclose the compromise with the creditor violated [Article V, Section 2\(c\) of FINRA's By-Laws](#) (application for registration) and FINRA Rules [1122](#) (filing of misleading information as to membership or registration) and [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for three months and fined him \$10,000.

Improperly Borrowing Funds From a Customer

- ▶ FINRA settled a matter involving a registered representative who improperly borrowed funds from a customer of his firm. In May 2011, while registered with a FINRA member firm, the representative borrowed \$10,000 from one of his customers. The loan was undocumented and did not have specific repayment terms or a fixed maturity date. The representative verbally agreed to repay the loan when he was able to do so. The loan remained outstanding when the representative obtained new employment with a different FINRA member firm, and he transferred the customer's account to his new firm. As of November 2016, the representative has not repaid the customer the full amount he borrowed.

During the relevant period, the procedures of each of the representative's firms prohibited registered representatives from borrowing funds from customers, except in limited circumstances. The representative did not meet any of the limited circumstances articulated in the firms' procedures. The representative's improper borrowing arrangement with the firms' customer violated FINRA Rules [3240](#) (borrowing from or lending to customers) and [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for three months, fined him \$5,000, and ordered him to pay the customer the balance of the loan as restitution.

Misleading FINRA and Directing an Employee to Mislead FINRA

- ▶ FINRA settled a matter involving a registered representative who directed an employee to mislead FINRA during on-the-record testimony, and then repeated the same falsities during her own on-the-record testimony. In December 2013, the representative was attempting to transfer an elderly customer's assets to her firm. The customer's son had a power of attorney that had been executed many years earlier, but the son had been unsuccessful in obtaining information about his mother's accounts. The representative directed an employee to obtain the customer's brokerage account statements from the customer's existing firm. To accomplish this, the employee called the existing firm and claimed that she was a relative of the customer in order to obtain copies of the customer's account statements. The existing firm ultimately provided the son with the requested documents after determining that he had a valid power of attorney to act on his mother's behalf.

After the representative learned that FINRA had initiated an investigation of the employee's claims that she was the customer's relative, the representative told the employee to testify to FINRA that the employee had only stated that she was "like" the son's daughter during the telephone calls with the existing firm. The representative also repeated this false claim during her own on-the-record testimony with FINRA. When the representative provided the on-the-record testimony to FINRA, the representative knew that the employee had falsely claimed to be the customer's relative.

By instructing the employee to mislead FINRA during the on-the-record testimony, and by making misleading statements during her own on-the-record testimony, the representative violated FINRA Rules [8210](#) (provision of information, testimony, and documents) and [2010](#) (ethical standards). For this misconduct, FINRA barred the representative from associating with any FINRA member in any capacity.

Making Misrepresentations to Effect Wire Transfers for a Purported Customer

- ▶ FINRA settled a matter involving a registered representative who made misrepresentations on firm verification forms to effect wire transfers for a purported customer. When the wire transfers occurred, the representative was an analyst on the firm's sales team. One of the representative's duties was to effect wire transfers for the sales team's customers.

In September 2014, the representative received an email from the email address of record for a customer. The email was similar to prior communications the representative had received from the customer. But, in this instance, the customer did not send the email to the representative. Rather, an imposter was posing as the customer, and was requesting a wire transfer. In response to the imposter's first email, the representative provided the imposter with the information needed to effect a wire transfer. Once the imposter obtained the wire transfer information from the representative, the imposter asked the representative to wire more than \$12,000 from the customer's bank account. The imposter explained that he would be difficult to reach by telephone, and that the best way to reach him was via email. After receiving the wire request, the representative called the customer, but the representative was unable to reach the customer. Despite this fact, the representative forwarded the customer's wire transfer instructions to the firm's cashiering department for execution. Along with the wire transfer instructions, the representative provided the cashiering department with the firm's "Signature Guarantee Witness Verification Form." The representative checked a box on the verification form indicating that "verbal verification was obtained by calling the client at the phone number on file." When the firm's cashiering department received the verification form from the representative, the cashiering department effected the wire transfer from the customer's account to the imposter.

Later in September 2014, the representative received a second email from the customer's email address. Once again, it was the imposter who was posing as the customer. The imposter sought to effect two additional wire transfers, totaling nearly \$50,000, from the customer's bank account. The representative called the customer to confirm the request for the wire transfers, but he was unable to reach the customer. Despite this fact, the representative entered the necessary information onto the firm's verification form, including verbal customer confirmation via telephone, and then forwarded the wire transfer instructions to the firm's cashiering department for execution. The cashiering department successfully effected one of the two wire transfers from the customer's account to the imposter. The second wire transfer did not occur because the receiving bank account did not accept wire transfers. The representative contacted the imposter to convey what had occurred with the second wire transfer. The imposter replied by email that he would soon provide new wire transfer instructions.

In October 2014, the imposter emailed new wire instructions to the representative. Although the imposter changed the recipient bank account for the wire transfer, the representative did not speak with the customer to verbally confirm the wire transfer instructions. To the contrary, the representative entered the wire instructions into the firm's systems and forwarded the wire transfer instructions to the cashiering department for execution. On the firm's verification form, the representative checked a box indicating that he had verbally confirmed the wire transfer by calling the customer at the telephone number on file. The cashiering department attempted to effect the wire transfer, but the wire transfer still failed.

The firm's written supervisory procedures (WSPs) prohibited the execution of wire transfer instructions received via email without verbal confirmation from the customer. The representative failed to obtain verbal confirmation from the customer for the four wire transfer requests, and he falsely indicated on the firm's verification forms that he had spoken with the customer about each wire when he had not done so.

The representative's misrepresentations on the firm's verification forms violated FINRA Rule [2010](#) (ethical standards). The representative also caused the firm to maintain inaccurate books and records in violation of FINRA Rules [4511](#) (books and records) and [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for 30 calendar days and fined him \$5,000.

Forging a Customer's Signature and Using the Signature Stamp of Another Representative Without Authorization

- ▶ FINRA settled a matter involving a registered representative who forged a customer's signature on a firm document and used another registered representative's signature stamp without that representative's authorization. During the relevant period, the representative was a licensed assistant who worked for a supervising registered representative at the firm. As part of his duties, the representative assisted with the completion of customer new account documentation.

In October 2014, the representative copied a customer's signature from a financial planning services agreement, and then pasted the signature to a credit card authorization form for the payment of financial services fees. Although the customer intended to pay the fee via credit card and verbally authorized the credit card payment, the customer did not authorize the representative to paste her signature onto the signature line of the credit card authorization form.

The representative also improperly signed his supervisor's name to customer account documents without the supervisor's approval. Between August 2014 and October 2014, the representative signed the supervisor's name to 17 customer account documents using the supervisor's signature stamp. The representative affixed the supervisor's signature to the customer account documents without the supervisor's authorization or consent. The customer account documents included six new account forms and related documents. The supervisor had authorized the representative to use the signature stamp to sign checks for payroll and office expenses when he was unavailable, but the representative was not permitted to use the stamp on customer account documents.

The representative's forgery of the customer's signature and improper use of the supervisor's signature stamp violated FINRA Rules [4511](#) (books and records) and [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for three months and fined him \$5,000.

Engaging in a Securities Business Before Being Properly Licensed and Registered

- ▶ FINRA settled a matter involving a registered representative who engaged in securities activity prior to being properly licensed and registered. The representative became associated with a firm in September 2014. In order for the representative to interact with customers, he was required to take—and pass—the Series 7 (General Securities Representative Examination) and Series 66 (North American Securities Administrators Association (NASAA) Uniform Combined State Law Examination). The representative had previously obtained Series 7 and 66 licenses, but his Series 7 license had expired in July 2014 due to his failure to complete continuing education requirements, and his Series 66 license was due to expire in October 2014. The representative began the application filing process to transfer his licenses from his previous firm in September 2014, but he did not complete the application process until December 2014.

Between September 2014 and November 2014, the representative entered 87 customer orders without being properly registered. At all times during the execution of these orders, the representative knew that he was not properly registered.

By executing orders without being registered, the representative violated NASD Rule [1031](#) (registration requirements) and FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member in any capacity for 30 business days and fined him \$5,000.

Using a Non-Firm Email Account for Securities Business and Settling a Customer Complaint Away From the Firm

- ▶ FINRA settled a matter involving a registered representative who used his personal email account to correspond with a customer concerning firm-related business, and settled a customer complaint without providing notice of the complaint or settlement to the firm. Throughout 2014, while associated with a firm, the representative used his personal email account for securities business purposes without the firm's knowledge or approval, failed to cause the emails to be sent or directed to a firm email account, and failed to retain copies of all of the emails in electronic or other form. The representative's use of the personal email account for firm business violated the firm's WSPs and precluded the firm from discharging its supervisory and recordkeeping obligations. The representative's use of the personal email account for securities business violated FINRA Rule [2010](#) (ethical standards).

The representative also improperly settled a customer complaint away from the firm. In 2014, while associated with a firm, the representative became aware that a customer was unhappy with commissions charged in the customer's account. To appease the customer and to reimburse the customer for commissions, in May 2014, the representative paid the customer \$1,000 by check. The representative paid the customer the funds without the firm's knowledge or consent. By settling a customer complaint, without the knowledge or approval of his firm, the representative violated FINRA Rule [2010](#) (ethical standards).

For this misconduct, FINRA suspended the representative in all capacities for two months and fined him \$7,500.

Engaging in Undisclosed Outside Business Activities and Improperly Obtaining Business Credit Cards

- ▶ FINRA settled a matter involving a registered representative who engaged in undisclosed outside business activities and intentionally provided his firm's business credit card company with false information to improperly obtain 25 business credit cards. In March 2015, the representative applied for and obtained a business credit card account under a fictitious business name. He opened the account by providing the credit card company with false information related to the purported company's name, revenues, profits and employees.

In April 2015, the representative contacted the credit card company a second time. On the second occasion, the representative obtained 24 credit cards under the purported business account by using the names of fictitious employees. Despite opening the account under a fictitious business name, the representative was personally liable for all charges on the account. The credit card company sent the 24 credit cards to the representative at his firm. The firm intercepted the cards before the cards were activated.

The representative obtained the cards for a friend who was employed in the ticket resale business. Specifically, the representative's friend purchased and resold concert and sporting event tickets and intended to use the cards to bypass event ticket purchase limits. In return for obtaining the cards, the representative expected to receive credit card reward points that would be generated from his friend's purchases on the cards.

By providing false information to the business credit card company, the representative violated FINRA Rule [2010](#) (ethical standards). Because the representative's activities with the friend also constituted an outside business activity, the representative also violated FINRA Rules [3270](#) (outside business activities) and [2010](#) (ethical standards) because he had engaged in the outside business without providing his firm prior written notice of the activity. For this misconduct, FINRA suspended the representative in all capacities for 18 months and fined him \$10,000.

* NASD Rule 3040 has been superseded by FINRA Rule [3280](#), effective September 21, 2015.