

# Quarterly Disciplinary Review

July 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 and decisions](#) and a summary of [monthly disciplinary actions](#) on its website.

## Participating in Undisclosed Private Securities Transactions and Making False Statements on Annual Compliance Questionnaires

- ▶ FINRA settled a matter involving a registered representative who participated in undisclosed private securities transactions and made false statements concerning them on his firm's annual compliance questionnaires. During the summer of 2012, a professional acquaintance who was performing consulting work for a privately held sports-drink company told the representative that the company was looking for a professional athlete to invest in the company and become a spokesperson for one of its products. The representative arranged and participated in an in-person meeting between one of his customers—who was a professional athlete—and the acquaintance. After the meeting, the customer expressed an interest in investing in the sports-drink company.

Between August and September 2012, the representative, the customer, and the sports drink company engaged in email communications and telephone conferences discussing the customer's investment and the terms under which the customer would work as a company spokesman. The representative used his personal email address during this process. The customer invested \$500,000 in the company and received a convertible promissory note. The customer also received a warrant entitling him to purchase equity at a reduced cost. Shortly thereafter, the customer entered into a spokesperson agreement with the company. The representative did not disclose this private securities transaction to his member firm. The representative's participation in the private securities transaction without providing prior written notice to his member firm violated NASD Rule 3040\* (private securities transactions) and FINRA Rule [2010](#) (ethical standards).

During that same period, the representative also completed his member firm's annual compliance questionnaires on two occasions. In each instance, the questionnaire asked the representative if he had participated in any private securities transaction at any point during the preceding two years. The representative answered "no" each time. Because the representative's responses on the questionnaires were false, the representative violated FINRA Rule [2010](#) (ethical standards). For participating in undisclosed private securities transactions and making false statements on his member firm's annual compliance questionnaires, FINRA suspended the representative from associating with any FINRA member firm in any capacity for seven months and fined him \$7,500.

### Making Unsuitable Recommendations

- ▶ FINRA settled a matter involving a registered representative who recommended unsuitable trades in at least three customer accounts. The representative maintained limited trading authorization over various customer accounts maintained at his member firm, and he received compensation on the trades that he placed in such accounts.

Between January 2012 and January 2013, the representative engaged in short-term bond trading, including bond swap transactions, in three customers' accounts. Although each of the customers had long-term growth investment objectives and moderate risk tolerances, more than 98 percent of the assets in their accounts was concentrated in bonds typically denominated in Brazilian reais. The customers also maintained significant margin balances in their accounts.

The representative did not have a reasonable basis to believe that the short-term trading in bonds, undue concentration of positions, or the use of margin was suitable for any of the three customers, or that such trading was consistent with the customers' investment objectives, risk tolerances, and financial situations and needs. The representative's unsuitable recommendations violated NASD Rule 2310<sup>+</sup> (recommendations to customers (suitability) (prior to July 9, 2012) and FINRA Rules [2111](#) (suitability) (on and after July 9, 2012) and [2010](#) (ethical standards). For making unsuitable recommendations and trades, FINRA suspended the representative from associating with any FINRA member firm in any capacity for four months and fined him \$7,500.

### Borrowing Funds From a Customer Without Notifying the Firm and Engaging in Outside Business Activities Without Prior Written Notice or Approval

- ▶ FINRA settled a matter involving a registered representative who improperly borrowed funds from a customer and engaged in undisclosed outside business activities. In October 2011, the representative borrowed \$12,000 from a customer. The loan was documented by a handwritten promissory note, which required the representative to repay the loan within one year in equal \$1,000 monthly payments.

The member firm's written supervisory procedures prohibited its representatives from borrowing funds from customers unless previously authorized in writing by the firm, but the representative did not provide the firm with notice of the loan and never sought or received the firm's approval for the loan. In addition, the representative completed three annual compliance questionnaires for the firm between 2011 and 2013, and he indicated that he had neither solicited nor accepted a loan from a customer.

The representative made some payments on the loan, but he did not repay the loan in full. In 2015, the customer filed an arbitration claim against the representative and his member firm seeking, among other things, repayment of the loan. The firm settled the customer's claim. The representative's improper borrowing arrangement with the customer violated FINRA Rules [3240](#) (borrowing from or lending to customers) and [2010](#) (ethical standards).

From July 2011 to January 2014, the representative also participated in an outside business activity, a promotional item import business. In July 2011, the representative filed articles of incorporation for the business, in which he was listed as the company's Vice President. In January 2014, the representative filed articles of dissolution for the business.

The member firm's written supervisory procedures required written disclosure of outside business activities. But the representative failed to provide prior written notice to or receive written acknowledgement from the firm regarding his role in the outside business activity, his planned participation in the activity, or his expected compensation from the activity. Moreover, the representative completed three annual compliance questionnaires for the firm between 2011 and 2013, indicating that he was not involved in any outside business activity. The representative's undisclosed promotional item import business violated FINRA Rules [3270](#) (outside business activities of registered persons) and [2010](#) (ethical standards).

For borrowing funds from a customer without notifying the firm and engaging in undisclosed outside business activities, FINRA suspended the representative from associating with any FINRA member firm in any capacity for four months and fined him \$10,000.

### Improperly Engaging in an Outside Business Activity and Creating Backdated Partnership Agreements

- ▶ FINRA settled a matter involving a registered representative who engaged in an undisclosed outside business activity and created backdated partnership agreements. During the summer of 2012, the representative began working with a local tax preparer from whom he sought referral business. The representative created partnership agreements for the tax preparer's clients and held himself out to be a partner of the tax preparer. The representative's activity was outside the scope of his business with his member firm, and he did not provide the firm with notice of this activity at any time. The representative's undisclosed tax preparation services violated FINRA Rules [3270](#) (outside business activities of registered persons) and [2010](#) (ethical standards).

In connection with the tax preparation services, the representative created partnership agreements for the tax preparer's customers when he had reason to believe the customers were the subject of a state tax audit. The representative understood that the audits related to tax deductions claimed by the tax preparer's customers on partnership tax returns filed in prior years. The representative also understood that the tax preparer's customers who were under audit did not have documented partnership agreements. The representative did not have any prior experience creating partnership agreements, nor did he have any legal or tax expertise regarding partnerships.

Notwithstanding these facts, the representative created at least 50 backdated partnership agreements for the tax preparer's customers. The representative inserted backdated effective dates using information in the previously filed returns regarding the date the businesses were started, but the representative did not adequately investigate the purported partnerships. As a result, the representative did not know whether the agreements he drafted accurately reflected partnerships that existed as of the effective dates that he had inserted in the agreements. The representative also failed to ascertain whether the individuals who may review the newly created documents, such as state auditors, may be misled to believe that the written partnership agreements had been in existence years earlier. The representative's creation of the backdated partnership agreements violated FINRA Rule [2010](#) (ethical standards). For improperly engaging in an outside business activity and creating backdated partnership agreements, FINRA barred the representative from associating with any FINRA member firm in any capacity.

### Providing False Information to a Member Firm Affiliate During an Internal Investigation

- ▶ FINRA settled a matter involving a registered representative who provided false information to an affiliate of his member firm during the course of an internal investigation concerning his claim that certain charges on his credit card were fraudulent. In August 2015, the representative contacted the issuer of one of his credit cards, which also was an affiliate of the representative's member firm. The representative claimed that several recent charges on his credit card were fraudulent because he had lost his wallet during the timeframe when the charges were incurred.

In October 2015, the representative spoke to the security division of the credit card issuer. During the telephone call, the representative claimed he had never been at the location where the charges had been incurred. But after the representative was informed the signatures on the credit card receipts at issue matched that of his bank signature card, the representative claimed someone must have forged his signature. The credit card initiated an internal investigation to determine the veracity of the representative's claims.

In November 2015, the representative was interviewed as part of the investigation. During the interview, the representative abandoned his stolen-wallet and forgery claims. Rather, the representative now claimed that someone must have drugged him before the disputed charges were incurred because he did not have any memory of the 15-hour period when the charges were incurred. The representative claimed that he could neither confirm nor deny that he made any of the disputed charges.

The representative did not have any plausible basis for claiming that someone had drugged him. Moreover, the representative knew he had been at the location where the charges had been incurred, and that he had authorized the charges at issue. In December 2015, the representative's member firm and its banking affiliate terminated the representative after concluding that the representative's initial fraud claim, and his subsequent alternative explanations during the internal investigation, were false.

By making false statements during an internal investigation, the representative violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member firm in any capacity for six months and fined him \$10,000.

### Structuring Cash Withdrawals to Circumvent the Federal Reporting Requirements of the Bank Secrecy Act

- ▶ FINRA settled a matter involving a registered representative who “structured” cash withdrawals from his personal bank account to avoid the federal reporting requirements of the Bank Secrecy Act (BSA). Structuring occurs when an individual conducts, or attempts to conduct, one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements of the BSA. The phrase “in any manner” includes the breaking down of a single sum of currency exceeding \$10,000 into smaller sums at or below \$10,000, as well as conducting a series of currency transactions at or below \$10,000.

Between January 2012 and May 2014, the representative made 23 cash withdrawals totaling \$218,000 from his personal bank account in the amounts of \$9,000 or \$9,500. The representative intentionally made the 23 cash withdrawals in amounts less than \$10,000 in an attempt to evade the banks' federal reporting requirements under the BSA. The withdrawals did not involve customer funds nor were customers impacted in any way. By intentionally making cash withdrawals from his personal bank account in a manner designed to evade the bank's BSA federal reporting requirements, the representative violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member firm in any capacity for two years and fined him \$10,000.

### Impersonating Customers on Telephone Calls to an Insurance Company

- ▶ FINRA settled a matter involving a registered representative who impersonated two customers who held annuity contracts with an insurance company. On four occasions between July 2013 and July 2016, the representative telephoned an insurance company's annuity service department and impersonated two customers who held equity-indexed annuities with the company. The representative's telephone calls were intended to obtain current information in preparation for customer meetings, obtain documents that would facilitate a mortgage refinance, and to update a contract holder's address of record. By misrepresenting his identity to the insurance company, the representative violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative from associating with any FINRA member firm in any capacity for 30 business days and fined him \$5,000.

### Converting Member Firm Funds

- ▶ FINRA settled a matter involving a registered representative who converted his member firm's funds for his own benefit. Between July and November 2015, the representative's member firm paid for employee parking at the representative's office location under certain circumstances. The member firm typically paid the parking expense by validating parking garage tickets using a parking stamp. When approved, a manager or other designated employee signed or initialed the back of the parking garage ticket.

During the relevant period, the representative, without authorization, validated his daily parking garage ticket on 50 separate days by stamping the parking garage ticket with the member firm's parking stamp and forging a manager's or other employee's signature or initials on the back of the ticket. The total value of the falsely validated parking garage tickets was \$731. By using the falsely validated parking garage tickets to pay for parking expenses to which he was not entitled, the representative converted \$731 of his member firm's funds for his own benefit. By converting his member firm's funds for his personal use, the representative violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA barred the representative from associating with any FINRA member firm in any capacity.

### Effecting Unauthorized Trades, Exercising Discretion Without Authorization, Failing to Disclose Customer Complaints, and Making Misrepresentations to the Firm

- ▶ FINRA settled a matter involving a registered representative who made unauthorized trades in six customer accounts, exercised discretion without authorization in two customer accounts, failed to disclose two customer complaints to his member firm, and made misrepresentations to his member firm. Between February and April 2015, the representative effected 11 unauthorized trades, both sales and purchases of securities, in accounts belonging to six customers without the customers' knowledge or consent. By executing the trades in customer accounts without the customers' prior knowledge or consent, the representative violated FINRA Rule [2010](#) (ethical standards).

In April and May 2015, respectively, the representative made one discretionary trade in the account of one customer, and made three discretionary trades in the account of a second customer. Although the customers had verbally authorized the trades, the representative did not speak with either customer on the dates of the trades, and he did not speak to the customers before he entered the trade orders. By exercising discretion in customer accounts without obtaining the customers' prior written authorization or his member firm's written acceptance of the accounts as discretionary, the representative violated NASD Rule [2510](#)(b) (discretionary accounts) and FINRA Rule [2010](#) (ethical standards).

In February and April 2015, respectively, the representative failed to disclose two customer complaints to the member firm. The representative received a written complaint from one customer, which alleged that the representative had provided poor customer service to the customer. The representative also received a written complaint from a second customer in April 2015. The second customer complaint alleged that the representative had made unauthorized trades in the customer's account. By failing to disclose the two customer complaints to the member firm, the representative prevented the member firm's compliance with its reporting obligations under FINRA Rules [4513](#) (records of written customer complaints) and [4530](#) (reporting requirements), and the representative had violated FINRA Rule [2010](#) (ethical standards).

When the representative received the above-referenced customer complaint from the customer who alleged that the representative had made unauthorized trades in the customer's account, the representative submitted a trade correction request to the member firm. The trade correction request required that the representative provide a reason for the correction. The representative stated in writing that the customer had changed her mind about the trades, and that the customer needed access to the funds for a family emergency. The representative's representations were false.

By making misrepresentations to his member firm on the trade correction request, the representative violated FINRA Rule [2010](#) (ethical standards). For effecting unauthorized trades, exercising discretion without authorization, failing to disclose customer complaints, and making misrepresentations to the firm, FINRA suspended the representative from associating with any FINRA member firm in any capacity for two years.

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

† NASD Rule 2310 has been superseded by FINRA Rule [2111](#), effective July 9, 2012.