

# Quarterly Disciplinary Review

July 2009

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 decisions of the SEC in FINRA cases). These summaries call attention to, and remind registered representatives and member 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 Web site.

## Failure to Update Form U4 Disclosures

- ▶ FINRA settled a matter involving a registered representative who failed to update his Uniform Application for Broker-Dealer Registration (Form U4) to disclose two felony charges and one conviction for unlawful possession of a controlled substance. The representative had been charged with the felonies in August 2006 and January 2007, and was convicted of a felony in June 2007. He failed, however, to amend his Form U4 to disclose the charges and conviction until November and December 2007, after FINRA staff alerted him to his failure to amend his Form U4.

FINRA concluded that the representative willfully failed to disclose a material fact on his Form U4 and that his conduct violated NASD Rule 2110\* (ethical standards) and [Article V, Section 2\(c\) of the NASD By-Laws](#) (applications for registration). As a result, FINRA barred the representative—who was also registered as a principal—from acting in any principal capacity, suspended the representative in all capacities for one year and fined him \$5,000. Additionally, since the settlement included a finding that the representative willfully failed to disclose material facts, under the Securities Exchange Act of 1934, the representative may be statutorily disqualified from the industry.

## Exercise of Discretion Without Written Authority

- ▶ FINRA settled a matter that involved a registered representative who, for more than three years, exercised discretion in a customer's accounts without prior written authorization. The representative effected in excess of 680 discretionary transactions in a customer's accounts without written discretionary authority and without his member firms' acceptance of the accounts as discretionary.

FINRA concluded that the representative's conduct violated NASD Rule [2510](#) (discretionary accounts) and, as a result, suspended the representative in all capacities for 30 business days and fined him \$10,000.

## Misrepresenting Material Facts to Customers

- ▶ FINRA's NAC affirmed findings that a registered representative violated FINRA's anti-fraud provisions and the anti-fraud provisions of the federal securities laws by making at least 14 material misstatements to eight customers during a one-month period. The NAC found that the representative projected an issuer's earnings and repeatedly predicted the future price of the issuer's stock without having a reasonable basis for the projections and predictions. The NAC also found that the representative made statements to customers that the same issuer would qualify for imminent listing on an exchange and that the issuer was free of debt when, in fact, the representative did not have a reasonable basis for making these statements. The NAC further found that the representative acted recklessly. The NAC held that, although there was some basis for the representative's enthusiasm for the issuer's prospects, the representative's customers were disadvantaged by the representative's recklessness in communicating information about the issuer to them.

FINRA's NAC concluded that the representative's conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (anti-fraud provisions of the federal securities laws), and NASD Rules 2120\*\* (anti-fraud provision) and 2110\* (ethical standards). As a result, FINRA suspended the representative in all capacities for six months, fined him \$25,000 and assessed hearing costs.

## Misuse of Funds of Community Association and Failure to Respond

- ▶ FINRA settled a matter involving a registered representative who misused the funds of a community association for which the representative served as treasurer. The representative had obtained his member firm's approval to act as treasurer of the community association—a position that granted the representative authority to sign checks on the association's behalf. As a safeguard, the association also required a second person's signature on the checks. In order to circumvent this safeguard, the representative obtained several blank checks that the second authorized signer had signed. During a period in excess of two years, the representative wrote checks from the association's account to himself totaling approximately \$38,000 and used the funds for his own personal expenses and for purposes other than for the association's benefit. The representative subsequently was convicted of fourth-degree felony theft. Thereafter, the representative failed to respond to FINRA staff's requests for information and documentation regarding his misconduct.

FINRA concluded that the representative's conduct constituted a misuse of funds in violation of NASD Rule 2110\* (ethical standards) and that the failure to respond to FINRA requests for information violated NASD Rules 8210\*\*\* (information requests) and 2110\* (ethical standards). As a result, FINRA barred the representative in all capacities.

## Conversion of Firm Funds

- ▶ FINRA settled a matter involving a registered representative who converted funds from his member firm's affiliate. The representative was associated with a member firm that was affiliated with a bank. The representative took in excess of \$500 in cash that he found on a counter at the affiliated bank and, without the bank's knowledge or consent, used the funds for his own benefit.

FINRA concluded that the representative's conduct violated NASD Rule 2110\* (ethical standards). As a result, FINRA barred the representative in all capacities.

## Making False Entries on an Insurance Application and Falsifying Firm Records

- ▶ FINRA settled a matter involving a registered representative who misstated facts on a variable life insurance application. The registered representative completed a customer's variable life insurance application in May 2003 and, one month later, learned that the policy had been declined. In August 2004, the representative again submitted a variable life insurance policy application for the same customer. The application contained a question asking whether the customer had ever been declined life insurance, to which the representative falsely answered "no." The insurer denied this application. In December 2004, the registered representative completed a third variable life insurance policy application for the same customer, and once again falsely answered "no" to the question of whether the customer had ever been denied variable life insurance. In January 2006, the insurance policy issuer issued a life insurance policy to the customer.

FINRA concluded that, by making false entries on insurance applications, the registered representative violated NASD Rule 2110\* (ethical standards), and by falsifying the firm's records (by falsifying insurance applications), the representative violated NASD Rules [3110](#) (books and records) and 2110\* (ethical standards). As a result, FINRA suspended the representative in all capacities for one year and fined him \$10,000.

## Impersonation of a Customer

- ▶ FINRA settled a matter involving a registered representative who persuaded his brother to impersonate a customer during a mandatory telephone interview for insurance coverage. The registered representative was associated with a member firm and licensed to sell insurance products through the firm's insurance affiliate. For each open insurance application, the insurance affiliate required that a telephone client history interview occur prior to a stated deadline. The registered representative submitted two non-variable life insurance policy applications for a single customer to the insurance affiliate. On the deadline date for the telephone interview for both applications, the registered representative provided his brother with information regarding the customer and directed him to telephone the insurance affiliate, identify himself as the customer, participate in a client history interview and obtain approval of the life insurance policy applications. Several days later, when the actual customer called the insurance affiliate for a telephone interview, the affiliate discovered the registered representative's misconduct. The firm thereafter terminated the representative.

FINRA found that the representative's actions violated NASD Rule 2110\* (ethical standards). FINRA suspended the representative from associating with any member firm in any capacity for 30 business days and fined him \$5,000.

## Failing to Respond to Requests for Information

- ▶ FINRA settled a matter involving a registered representative who failed to respond to FINRA requests for information. The registered representative failed to respond to two FINRA requests for information regarding the representative's termination from a member firm.

FINRA concluded that the representative's conduct violated NASD Rules 2110\* (ethical standards) and 8210\*\*\* (requests for information). As a result, FINRA barred the representative in all capacities.

## Misappropriation of Customer Funds

- ▶ FINRA settled a matter involving a registered representative who, during a two-month period, misappropriated approximately \$10,500 in cash premiums, which belonged to 60 customers, to his personal use. The registered representative attempted to conceal his misuse of customer funds by depositing some of the more recent cash payments that he had received from customers into the accounts of other customers whose funds he had previously misappropriated.

FINRA concluded that the representative's conduct violated NASD Rule 2110\* (ethical standards). As a result, FINRA barred the representative in all capacities.

\* NASD Rule 2110 has been superseded by FINRA Rule [2010](#), effective December 15, 2008.

\*\* NASD Rule 2120 has been superseded by FINRA Rule [2020](#), effective December 15, 2008.

\*\* NASD Rule 8210 has been superseded by FINRA Rule [8210](#), effective December 15, 2008.