

Quarterly Disciplinary Review

April 2011

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 website.

Willful Failure to Disclose Material Information on the Form U4

- ▶ FINRA's NAC issued a decision involving a registered individual who failed to disclose material information on a Form U4. The registered person was also an attorney licensed to practice law. A state attorney discipline board suspended his law license for three years based on a variety of misdeeds, including false representations to clients, affixing a client's signature to a document and commingling client funds with his own.

Approximately four months later, the registered individual filed a Form U4 to register as an investment company products/variable contracts limited representative with a member firm. In response to a question on the Form U4 asking whether any state regulatory agency has ever found him to have made a false statement or omission, or been dishonest, unfair or unethical, the registered individual inaccurately answered "no." He also inaccurately answered "no" to a question of whether any state regulatory agency has ever revoked or suspended his license to practice law.

The registered person's law license subsequently was suspended a second time and ultimately revoked, but he never amended his Form U4 to indicate these actions. One year later, he submitted another Form U4 when he changed firms, and he again failed to disclose the suspensions and revocation of his law license. After an investigation ensued, the registered individual amended his Form U4.

FINRA's NAC found that the registered person's conduct violated NASD Rule 2110* (ethical standards) and IM-1000-1** (filing misleading information as to registration). As such, the NAC barred him from associating with any member firm in any capacity and assessed costs of \$3,204. The NAC also held that because the registered person's failures to disclose were willful and involved material information, he is subject to a statutory disqualification.

Misuse of Confidential Customer Information

- ▶ FINRA's NAC also issued a decision involving a registered representative who misused confidential customer information, including information that constituted non-public personal information under Regulation S-P, a federal regulation that governs the treatment of non-public, personal information about consumers by financial institutions, including member firms.

Previously, the registered representative had signed several agreements with his firm in which he agreed that confidential customer account information was proprietary to the firm, that such information could not be reproduced or appropriated for the use of others, and that it could not be disclosed to third parties without the firm's prior written permission. He also agreed to abide by codes of conduct and ethics that indicated that associated persons were authorized access to customer information only for legitimate firm business purposes and not for any other use.

When the registered representative left his firm to join a new one, he downloaded customer information onto a flash drive, which he took with him. He later learned that he had downloaded not only information pertaining to his 200 customers, but also confidential customer information belonging to 36,000 others. He provided his new firm with information regarding his customers so the new firm could mail a "welcome package" to the customers and transfer their accounts to the new firm. The registered representative never told the new firm that the customer information he provided was his former firm's proprietary information.

The NAC found that the registered representative's conduct violated NASD Rule 2110* (ethical standards). The NAC fined the representative \$10,000 and suspended him from associating with any member firm in any capacity for 10 business days.

Improperly Withdrawing Funds from Deceased Relative's Account

- ▶ FINRA settled a matter involving a registered representative who failed to alert his member firm that his mother—an account holder at the firm—had died, and he thereafter withdrew funds from her account. The registered representative was listed as the broker of record on his mother's account at his firm, but he did not have power of attorney or discretionary authority over the account, and was not a party to it.

One year after his mother's death, the representative terminated his association with the firm without ever notifying them that she had died. Some months after he left the firm, the representative requested a \$60,000 withdrawal from his mother's account and asked that the check be sent to the address of record (which also was the representative's home address). The representative deposited the check into a joint bank account he had maintained with his mother. Several months later, he repeated the conduct, asking this time for \$10,000. He tried a third time to withdraw funds (again \$10,000), but this time, the firm noticed that the signature on the withdrawal request did not match the customer signature on file. The firm then discovered that the representative's mother was deceased and froze the account.

FINRA found that the registered representative's conduct violated NASD Rules 2110* (ethical standards) and 2330(a)[†] (customers' securities or funds). As such, FINRA barred the representative from associating with any member firm in any capacity.

Receiving and Distributing a Continuing Education Answer Key

- ▶ FINRA settled a matter involving a registered representative who violated FINRA's ethics rules by receiving and distributing a continuing education answer key and asking another firm representative to do the same.

The registered representative was an external wholesaler of a universal life insurance policy with long-term care benefits. Certain states require financial advisors who sell long-term care insurance products to retail customers in those states to take a continuing education course and pass a state exam before selling those products. FINRA found that the registered representative requested and received from another internal wholesaler an answer key to a Florida long-term care insurance continuing education examination. The representative then sent the answer key to an outside financial advisor. FINRA also found that the registered representative asked another representative of his firm to obtain and distribute an answer key to another Florida long-term care insurance continuing education examination.

FINRA concluded that the registered representative violated NASD Rule 2110* (ethical standards) and FINRA Rule [2010](#) (ethical standards). As such, FINRA suspended the representative in all capacities for one month and fined him \$5,000.

Changing Customer Records, Causing Firm Records to be Inaccurate

- ▶ FINRA settled a matter involving a registered representative who used his broker work station to change customers' telephone numbers in the firm's electronic database, thereby causing the firm's records to become inaccurate.

The registered representative had accepted an employment offer with a new firm. Before leaving his current firm, he used his broker work station to change 28 customers' telephone numbers to inaccurate numbers in the firm's database. The representative made these changes without the customers' knowledge or authorization, and the changes caused firm records for 76 customer accounts to be inaccurate.

FINRA found that the representative's conduct violated NASD Rule [3110](#) (books and records) and FINRA Rule [2010](#) (ethical standards). In light of these violations, FINRA suspended the registered representative in all capacities for 30 days and fined him \$5,000.

Falsifying Firm Documents

- ▶ FINRA settled a matter involving a registered representative who falsified two documents—an investor application and agreement, and an investor profile questionnaire—by signing another registered representative’s name.

A customer visited a firm office to open an account, and completed an application and questionnaire to do so. The broker who had been working with this particular customer was not in the office that day. In his absence, the registered representative met with the customer, signed the other broker’s name to the application and questionnaire, and submitted the documents to the firm without the other broker’s consent.

FINRA concluded that the representative’s conduct violated FINRA Rule [2010](#) (ethical standards). For these violations, FINRA fined the representative \$5,000 and suspended him in all capacities for one month.

Borrowing Funds From an Elderly Firm Customer Against Firm Policies

- ▶ FINRA settled a matter involving a registered representative who accepted three personal loans from an elderly customer, despite a firm policy that prohibited borrowing from customers who are not immediate family members; the customer was not related to the representative.

The customer was a 64-year-old retiree with an annual income of \$10,200, liquid net worth of \$8,000 and net worth of \$200,000. At the time, the customer relied on the funds in his securities account to pay his living expenses. The registered representative was aware that the customer was experiencing both long- and short-term memory problems.

During a period of just over a year, the representative borrowed a total of \$30,000 from the customer in three loans. Each loan was unsecured and the repayment terms were not memorialized in writing. There were no written records of any kind of the loans, and the representative did not disclose the loans to the firm. The representative also did not repay the loans until the firm discovered them when the customer lodged a complaint against the representative. After the firm discovered the loans, the representative repaid them with \$2,105 in interest.

FINRA found that the registered representative’s conduct violated NASD Rules 2110* (ethical standards) and 2370‡ (borrowing from or lending to customers), and FINRA Rule [2010](#) (ethical standards). FINRA censured the representative, suspended him from associating with any member firm in any capacity for 45 days and fined him \$5,000.

Trading on Material Non-Public Information

- ▶ FINRA settled a matter involving an unregistered associated person who bought and sold securities while in possession of material non-public information about the issuer.

The associated person was employed in the investment banking department of a member firm. The firm's investment banking department was advising the issuer, who was listed on NASDAQ at the time, on general merger discussions and a specific offer from another issuer to acquire all of the first issuer's outstanding shares. The associated person held two securities accounts at another firm. When he joined the member firm, he failed to disclose his interest in the two securities accounts. He also failed to advise the firm that he held his two accounts that he had become associated with a member firm.

As a result of the associated person's position in the investment banking department, the associated person eventually learned of his employer's confidential merger discussions with the first issuer, and he obtained access to material, non-public information regarding the other issuer's possible acquisition of the first issuer. While this information remained non-public, the associated person purchased 8,000 shares and sold 3,000 shares of the first issuer's stock, realizing a profit of \$2,770.

The first issuer thereafter publicly announced that it had reached an agreement for the acquisition of the outstanding shares of its stock through a tender offer for \$6.38 per share and a total transaction value of approximately \$61 million. The next day, the price of that issuer's stock increased 116 percent. That day, the associated person sold his remaining 5,000 shares of that issuer's stock for \$6.34 per share, realizing an additional profit of \$21,516. The associated person thereafter failed to respond to FINRA requests for information regarding his trading in the issuer's stock.

FINRA found that the associated person's conduct violated Section 10(b) of the [Securities Exchange Act of 1934](#) and Rule 10b-5 thereunder (by purchasing and selling stock while in knowing possession of material, non-public information), Section 14(e) of the [Exchange Act](#) and Rule 14e-3 thereunder (by purchasing securities prior to public announcement of a tender offer and while in possession of material information related to the tender offer), NASD Rule [3050](#)(c) (transactions for or by associated persons), and FINRA Rules [2010](#) (ethical standards), [2020](#) (fraud) and [8210](#) (information requests). As a result of these violations, FINRA barred the associated person from associating with any member firm in any capacity and ordered that he disgorge unlawful profits of \$24,286.

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

** NASD IM-1000-1 has been superseded by FINRA Rule [1122](#), effective August 17, 2009.

† NASD Rule 2330(a), (e) and (f) have been superseded by FINRA Rule [2150](#), effective December 14, 2009.

‡ NASD Rule 2370 has been superseded by FINRA Rule [3240](#), effective June 14, 2010.