

Quarterly Disciplinary Review

January 2013

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 SEC decisions 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.

Failing to Conduct Inquiry to Ensure That Customer's Trading Instructions Are Not Manipulative

- ▶ FINRA's NAC issued a decision regarding a registered representative who acted unethically by failing to inquire diligently into a customer's trading instructions to ensure that the trades were not for manipulative purposes. The NAC found that the representative had a duty to conduct a diligent inquiry when presented with suspicious circumstances surrounding trading activity. The NAC found that the timing and size of the customer's orders were sufficiently suspicious to place the representative on notice that the customer might be participating in a manipulative scheme. The NAC also found that the representative failed to ensure the accurate preparation of order tickets, thereby causing his member firm's books and records to be inaccurate.

FINRA's NAC concluded that the registered representative's actions violated NASD Conduct Rules 3110* (books and records) and 2110** (ethical standards). In light of these violations, the NAC suspended the representative in all capacities for one year and fined him \$25,000 for failing to conduct an adequate inquiry into his customer's trading instructions. The NAC also suspended the representative in all capacities for an additional 30 business days (which would run concurrently) and fined him an additional \$5,000 for causing his firm's books and records to be inaccurate.

Failing to Provide Member Firm With Notice of Outside Business Activities and Improperly Administering a State Insurance Continuing Education Course

- ▶ FINRA settled a matter involving a registered representative who formed two business entities without providing notice to his member firm and acted improperly during the course of administering a state insurance continuing education course. The representative and a business partner formed two business



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entities—one for the purpose of engaging in purchase-order financing and the other for raising capital to fund the operations of an oil and gas refinery. The registered representative failed to disclose his association with either business entity to the member firm with which he was registered.

While administering a state insurance continuing education course, the same representative also provided multiple choice answers to an examination to course attendees and completed the course examination for another representative who left the course early. The representative also submitted to state insurance regulators an inaccurate form stating that another registered representative had completed the continuing education examination when he had not.

FINRA found that the registered representative's conduct violated FINRA Rule [2010](#) (ethical standards). FINRA suspended the representative in all capacities for four months.

Selling Away

- ▶ FINRA settled a matter involving a registered representative who participated in private securities transactions without providing prior written notice to, and obtaining prior written approval from, his member firm. Over the course of six months, the registered representative was involved in the sale of approximately \$300,000 in promissory notes and common stock as part of a private offering to four investors, three of whom were customers of the representative's firm. At the time of the sales, the representative knew that his firm had previously decided not to place these securities on its approved product list. The representative did not receive commissions from the investments.

FINRA found that by participating in these private securities transactions without providing prior written notice to, or obtaining prior written approval from, his employer firm, the representative violated NASD Rule [3040](#) (private securities transactions) and FINRA Rule [2010](#) (ethical standards). In light of the misconduct, FINRA suspended the registered representative in all capacities for three months and fined him \$5,000.

Obtaining Signed, Blank Securities-Related Customer Forms

- ▶ FINRA settled a matter involving a registered representative who obtained and maintained blank securities-related forms that clients had previously signed, and securities-related documents containing photocopied client signatures and dates. The representative secured at least six clients' signatures on blank securities-related business forms and retained the documents in his office. The registered representative also photocopied customer signatures and dates onto securities-related customer business records. The representative's firm discovered a folder in the representative's desk that contained 17 blank pre-signed client securities-related business forms, five securities-

related business documents that contained a photocopy of clients' signatures, and six securities-related business documents that contained a photocopy of the clients' signatures and dates. The registered representative's firm prohibited its staff from obtaining or retaining documents that had been pre-signed by a customer or using a photocopied customer signature as an original signature. FINRA concluded that the representative's conduct violated FINRA Rule [2010](#) (ethical standards). As such, FINRA suspended the representative in all capacities for 90 days and fined him \$7,500.

Misusing Confidential Customer Information

- ▶ FINRA settled a matter involving a registered representative who misused customer information by providing confidential information regarding firm customers to unauthorized third parties in exchange for money. Over the course of eight months, third parties periodically provided the registered representative with a specific name or Social Security number and asked him to provide confidential financial information. Third parties also sometimes provided the registered representative with a profile that set forth general parameters, such as gender, age and geographic location, and requested confidential financial information regarding customers who fit the profile. The registered representative received payments as high as \$500 each time he provided confidential customer information. In total, the representative received \$6,000 from third parties in exchange for confidential, customer information. As a result of the representative's misconduct, the customers lost more than \$600,000.

FINRA concluded that the representative's actions violated FINRA Rule [2010](#) (ethical standards). In light of the representative's misconduct, FINRA barred the representative from associating with any FINRA member in any capacity.

Improperly Exercising Time and Price Discretion

- ▶ FINRA settled a matter involving a registered representative who exercised time and price discretion in two customers' accounts beyond the limited allowable scope of discretion and without his employer firm's acceptance of the accounts as discretionary. The registered representative utilized time and price discretion in two customer accounts beyond the end of the business days for which the customers had granted time and price discretion. Neither customer had extended his grant of discretion, nor had the firm accepted either account for discretionary trading beyond the end of the business day.

FINRA concluded that the representative's conduct violated NASD Rule [2510](#) (discretionary accounts) and FINRA Rule [2010](#) (ethical standards). FINRA suspended the representative from associating in any capacity with a member firm for 10 business days and fined him \$2,500.

Posting Unwarranted and Misleading Statements on a Message Board

- ▶ A registered representative settled a matter involving posting comments, which contained unwarranted and misleading statements, on a message board under different author names. The representative sought to procure investment-banking and consulting business from a publicly traded company. During a four-day period, he posted 13 comments on a message board for the company under six author names. In the postings, some of which involved purported conversations between his different author names, the representative included unwarranted and misleading statements that embellished the prospects for the publicly traded company and provided the allusion of consensus among different individuals posting on the board. The representative's misleading statements included, among other optimistic statements, "this one looks like a gem" and "looks like the real deal." To make these postings, the registered representative used multiple non-firm-provided email accounts in violation of his firm's procedures.

The registered representative also used non-firm-provided email accounts to communicate with representatives of the publicly traded company regarding firm-related business matters. The representative also gave the impression in some of the emails that the member firm had provided the email account. This conduct also contravened the firm's policies. FINRA found that the representative's conduct violated NASD Rule [2210\(d\)](#) (communications with the public – content standards) and FINRA Rule [2010](#) (ethical standards). FINRA fined the registered representative \$20,000 and suspended him in all capacities for one year.

Improperly Engaging in Private Securities Transactions and Willfully Failing to Disclose Material Information on a Form U4

- ▶ FINRA settled a matter involving a registered representative who borrowed funds and executed a promissory note without informing his employer firm, and willfully failed to amend his Form U4 in a timely manner to disclose civil litigation, a civil settlement and a bankruptcy filing. The registered representative solicited two individuals to lend \$500,000 to the representative and his brother in return for a promissory note. The note had a six-month maturity and called for the payment of 14 percent interest. The representative failed to inform his employer firm of this transaction or to obtain the firm's prior written approval.

While employed with the same member firm, the representative failed to repay the note within the required time period. The two lenders sued the representative in state court, claiming more than \$535,000 in damages. The representative willfully failed to amend his Form U4 within 30 days to reflect this litigation. The representative thereafter settled the litigation with the lenders for a lump sum of \$220,000 and a promissory note for \$120,000. The representative again willfully failed to update his Form U4 within 30 days to reflect the settlement. Finally, the representative filed a voluntary petition for bankruptcy protection under Chapter 7 of the Bankruptcy Act. After filing the bankruptcy petition, the representative willfully failed within 30 days to amend his Form U4 to disclose his bankruptcy filing.

FINRA concluded that the representative's failure to inform the firm of his outside business activity violated NASD Rules 3040 (private securities transactions) and 2110** (ethical standards). FINRA found that the representative's failure to timely update his Form U4 to disclose civil litigation, a settlement and a bankruptcy filing were willful and violated [Article V, Section 2\(c\)](#) of NASD's and FINRA's By-Laws (applications for registration), NASD Rule 2110** (ethical standards), IM-1000-1† (filing misleading registration information) and FINRA Rules [2010](#) (ethical standards) and [1122](#) (filing misleading registration information). As such, FINRA suspended the representative in all capacities for 15 months.

* NASD Rule 3110 has been superseded by FINRA Rules [2268](#), [4511](#), [4512](#), [4513](#), [4514](#), [4515](#) and [7440](#), effective December 5, 2011.

** 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.