

Quarterly Disciplinary Review

January 2014

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 Timely Disclose IRS Tax Liens

- ▶ FINRA settled a matter involving a registered person who failed to disclose federal and state tax liens on his Form U4 in a timely manner. FINRA rules require registered representatives to update Forms U4 within 30 days after learning of the circumstances creating the need to amend. In June 2009, the representative received notice of two federal tax liens (for approximately \$155,000 and \$160,000) and one state tax lien (for approximately \$25,000). In May 2010, he received notice of an additional federal tax lien for approximately \$217,000. His firm learned of the liens in July 2010 and amended his Form U4 in December 2010. The representative received an additional state tax lien notice for approximately \$68,000 and a federal tax lien notice for approximately \$137,000 in May 2011. The firm amended the registered representative's Form U4 to disclose the state tax lien in August 2011 and the federal tax lien in November 2011.

FINRA found that the registered representative's conduct violated FINRA Rules [2010](#) (ethical standards), [1122](#) (filing misleading registration information), and [Article V, Section 2\(c\)](#) of the FINRA By-Laws (application for registration). For this misconduct, FINRA fined the registered representative \$5,000 and suspended him from associating with any member firm in any capacity for three months.

Improperly Accepting Cash Gifts From an Insurance Customer

- ▶ FINRA settled a matter involving a registered representative who was also a registered insurance agent. During an eight-month period in 2009 and 2010, the registered representative accepted cash gifts totaling \$18,500 from an insurance customer. The representative's firm prohibited registered representatives from accepting payments, gifts, loans, or other remuneration from any securities or insurance customer. FINRA found that the representative's conduct violated FINRA Rule [2010](#) (ethical standards). FINRA suspended the representative in all capacities for three months and fined him \$5,000.

Executing Backdated Official Firm Documents

- ▶ FINRA settled a matter involving a registered representative and principal who signed backdated documents relating to the firm's annual certification of its compliance and supervisory processes. FINRA rules require member firms to designate an executive officer to certify annually that the firm has processes in place to establish, maintain, review, test, and modify its policies and procedures to achieve compliance with securities laws and regulations. During a routine examination of the firm, FINRA requested copies of the firm's annual certifications for 2006 through 2009. The registered representative could not locate the firm's 2006 and 2007 certifications, so he signed replacement certifications in November 2010 and backdated them to reflect 2006 and 2007 dates. He provided the certifications to FINRA without indicating that he had signed replacement certifications and backdated them.

FINRA found that the representative's actions violated FINRA Rules [2010](#) (ethical standards) and [3130](#) (annual certification of compliance and supervisory processes). FINRA suspended the registered representative from associating with a member firm in any principal capacity for 30 days and fined him \$10,000.

Exercising Discretion Without Written Customer Authorization and Firm Acceptance

- ▶ FINRA settled a matter involving a registered representative who used discretion to affect customer trades without the customer's prior written authorization or the firm's acceptance of the accounts as discretionary. FINRA rules require that discretionary accounts be authorized by the customer in writing and accepted by the member firm. The registered representative executed 55 discretionary trades in 28 customer accounts after receiving the customers' verbal, but not written, consent to make the trades during the days and months preceding the trades. The representative also exercised discretion in three customer accounts without having received any order for a definite amount of a specified security. For each of these 58 discretionary trades, the registered representative failed to obtain the customers' written authorization or the firm's acceptance of the accounts as discretionary. At the time, the firm prohibited discretionary trading.

FINRA concluded that the representative's conduct violated NASD Rule [2510](#) (discretionary accounts) and FINRA Rule [2010](#) (ethical standards). FINRA fined the representative \$5,000 and suspended him in all capacities for 10 business days.

Submitting Inaccurate Order Tickets and Failing to Timely Respond to FINRA Information Requests

- ▶ FINRA settled a matter involving a registered representative who inaccurately completed order tickets. During two days in August 2011, the registered representative submitted to his member firm 24 order tickets to liquidate mutual fund positions in 10 accounts involving six customers. The representative marked each ticket as "unsolicited" and included a notation that the client contacted the firm and asked to "move out of" the fund. In fact, the representative recommended and solicited the sales but inaccurately

marked the tickets as unsolicited, thereby causing the firm's books and records to be inaccurately maintained. FINRA concluded that the representative's conduct violated NASD Rule [3110](#) (books and records) and FINRA Rule [2010](#) (ethical standards).

FINRA thereafter began an investigation of disclosures on the representative's Form U5. In May 2012, FINRA requested a detailed written statement regarding the 24 mismarked order tickets from the representative. FINRA's letter requested a response by June 2012. The representative received the letter but did not respond. FINRA sent a second request in June 2012 and requested that the representative reply by the end of June. Again, the representative received the request, but failed to respond. In February 2013, FINRA reiterated its earlier requests for information, and the representative provided the requested written statement the following month. FINRA concluded that the representative's conduct violated FINRA Rules [8210](#) (information and testimony) and [2010](#) (ethical standards).

FINRA suspended the representative in all capacities for 15 months and imposed a \$15,000 fine.

Engaging in Prohibited Outside Business Activity and Maintaining Outside Securities Accounts Without Notice

- ▶ FINRA settled a matter involving a registered representative who improperly engaged in outside business activities and opened and maintained outside securities accounts without providing notice to his member firm.

In December 2010, the representative formed a hedge fund to trade his own money. The representative completed an outside business activity form and submitted it to the firm, but the firm denied approval. The representative nonetheless formed the hedge fund, opened securities accounts in the name of the hedge fund and directed trading through the accounts. As a result of this conduct, FINRA found that the representative violated FINRA Rules [2010](#) (ethical standards) and [3270](#) (outside business activities).

In connection with the hedge fund, the registered representative opened three securities accounts in January 2011. The new account applications for the accounts asked if the account holder was an employee of a brokerage firm, and the representative falsely answered "no." Between January and April 2011, the representative entered 34 transactions in one of the securities accounts and, between June and July 2011, 48 securities transactions in another of the accounts. The representative failed to disclose to his firm that he had opened securities accounts with another firm and had executed transactions in those accounts. FINRA found that the representative's conduct violated FINRA Rule [2010](#) (ethical standards) and NASD Rule [3050](#) (transactions for or by associated persons).

For this misconduct, FINRA suspended the representative in all capacities for one year. The representative submitted to FINRA a sworn and documented financial statement demonstrating an inability to pay a fine, so FINRA did not impose one.

Failing to Timely Disclose Personal Bankruptcy on Form U4

- ▶ FINRA settled a matter involving a registered representative who failed to timely disclose a personal bankruptcy on his Form U4. FINRA rules require registered representatives to update Forms U4 within 30 days after learning of the circumstances creating the need to amend. Question 14(K)(1) of the Form U4 specifically requires registered representatives to disclose a bankruptcy petition filed within the previous 10 years. Furthermore, the firm's policies required registered representatives to report all disclosure events, including bankruptcy, within five days. The registered representative filed a Chapter 13 bankruptcy petition on October 7, 2009. The bankruptcy court subsequently dismissed the bankruptcy petition without discharge on December 3, 2009. Upon the firm's independent discovery of the representative's bankruptcy petition, the firm updated the representative's Form U4 on October 9, 2012.

FINRA concluded that the representative's conduct violated FINRA Rules [2010](#) (ethical standards) and [1122](#) (filing misleading registration information), and [Article V, Section 2\(c\)](#) of the FINRA By-Laws (application for registration). As a result, FINRA suspended the representative in all capacities for 30 days and fined him \$2,500.

Converting Customer Funds and Failing to Respond to FINRA Information Requests

- ▶ FINRA settled a matter involving a registered representative who converted customer funds and did not respond to FINRA information requests. Between January 2008 and April 2012, the registered representative convinced 13 customers to withdraw funds from their securities accounts and write personal checks to him. He represented to the customers that he would invest their funds in an asset management vehicle, which—unbeknownst to the customers—did not actually exist. Instead, he converted \$792,612 of customer funds to his own use. FINRA concluded that the representative's conduct violated FINRA Rules [2010](#) (ethical standards) and [2150](#) (improper use of customer funds), and NASD Rules 2110* (ethical standards) and 2330† (customers' securities or funds).

In September 2012, FINRA sent the representative two requests for information to which the representative never responded. FINRA concluded that this conduct violated FINRA Rules [8210](#) (information and testimony) and [2010](#) (ethical standards).

FINRA barred the representative from associating with any member firm in any capacity.

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

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