Quarterly Disciplinary Review

October 2008

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 decisions and decisions of the SEC 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 Web site.

Unethical Conduct

- FINRA settled a matter that involved a sales assistant who misappropriated $1,000 from another firm employee. The sales assistant had become accustomed to receiving a quarterly bonus of $1,000 from the registered representative with whom she worked. The registered representative notified the sales assistant that she would not receive a bonus for the quarter because of a decline in her job performance. The sales assistant nonetheless entered a credit request via the firm's internal system to transfer $1,000 from the registered representative's personal firm account to her own personal firm account.

  FINRA concluded that this conduct violated Rule 2110 (ethical standards) and, as a result, barred the sales assistant in all capacities.

- FINRA also settled a matter that involved a registered representative who completed a firm-element continuing education program on behalf of another firm employee. The firm required all registered representatives who had customer contact to complete an internal, computer-based firm element continuing education session and then to pass a proficiency test. The registered representative's superior asked the registered representative to complete the program and take the proficiency test for him. The registered representative agreed, logged on to the firm's computer system using the superior's user ID and password, and passed the proficiency exam.

  FINRA concluded that this conduct violated Rule 2110 (ethical standards) and, as a result, suspended the representative in all capacities for 30 days and fined the representative $5,000.

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Deceptive Practices

➤ FINRA settled a matter involving a registered representative who engaged in deceptive and unethical business practices. An elderly and financially unsophisticated customer retained the registered representative as her financial advisor. The registered representative convinced the customer to lend him $500,000 and misled the customer by stating that he had collateral for the loan when he did not. The registered representative also negotiated repayment terms that did not properly amortize, and he missed several loan payments to the customer. Furthermore, the registered representative concealed the transaction from his firm. The representative also asked a notary who was a firm employee to notarize the customer's signature on a designation of beneficiary form for the customer's account when the customer was not present at the time of notarization. The form designated the registered representative as beneficiary of half of the account's value upon the customer's death when, in fact, the customer never intended to designate the representative as a beneficiary.

FINRA concluded that the representative violated Rule 2110 (ethical standards). As a result, FINRA barred the representative in all capacities.

Violating Restrictions on Personal Trading by Research Analysts

➤ FINRA settled a matter involving a registered representative who purchased securities issued by companies he followed as a research analyst. The purchases occurred during periods beginning 30 calendar days prior to, and ending five calendar days after, the publication of research reports concerning one or more of the issuers.

FINRA concluded that the representative's conduct violated Rules 2110 (ethical standards) and 2711 (research analysts and reports). As a result, FINRA suspended the representative in all capacities for ten business days and fined the representative $5,000.

Failure to Respond Timely and Accurately to Information Requests, Failure to Amend Form U4, and Denial of Prior Letter of Acceptance, Waiver and Consent

➤ FINRA settled a matter that involved a registered representative who provided incomplete, inaccurate and untimely responses to FINRA requests for information. Additionally, FINRA notified the registered representative that he was the subject of an investigation, and the representative failed to amend his Form U4 within 30 days after learning that he was the subject of an investigation. The registered representative also filed an amendment to his Form U4 that included an optional comment about an earlier settlement to which the representative had agreed. The comment stated that the representative should not have been held responsible for the rule violation in the settled matter. FINRA held that the public comment constituted a public statement denying an allegation in a settlement and created the impression that the settlement was without a factual basis.

FINRA determined that the representative violated Rules 2110 (ethical standards), 8210 (provision of information and testimony), and IM-1000-1 (filing misleading registration information). As a result, FINRA suspended the representative in all capacities for eight months and fined him $10,000.

Failure to Disclose Material Fact on Form U4

➤ FINRA settled a matter involving a registered representative who failed to disclose on a Form U4 that he had an unsatisfied judgment against him. The representative answered "no" to a question on the Form U4 regarding unsatisfied judgments and liens despite knowing that a previous employer had obtained a civil judgment against him in an amount in excess of $50,000. The representative later amended the Form U4.

FINRA concluded that the representative's conduct violated Rule 2110 (ethical standards), IM-1000-1 (misleading registration information), and Article V, Section 2 of the FINRA By-Laws (registration applications). As a result, FINRA suspended the representative in all capacities for 20 business days and fined him $5,000.

Fraud

➤ FINRA settled a matter that involved a registered representative who intentionally effected 18 paired securities transactions between his personal account and brokerage accounts that he traded on an institutional customer's behalf. The representative knowingly failed to disclose to the customer that he was the party on the other side of the trades. The representative realized a trading profit from the transactions and caused losses in the customer's accounts. The registered representative effected the trades in thinly traded securities and did so outside of regular market hours in order to minimize the risk that his orders and the customer's orders would receive executions with other parties.

FINRA found that the representative violated Rules 2110 (ethical standards) and 2120 (fraud) and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. FINRA barred the representative in all capacities.