Quarterly Disciplinary Review

January 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 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.

Misappropriation of Customer Funds

➤ FINRA settled a matter that involved a registered representative who misappropriated $50 from a customer. The customer had earned a $50 credit by referring two new customers to the representative's employer bank. The representative obtained the $50 from the bank but never deposited the funds into the customer's account. Instead, the representative kept the money for himself.

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

Market Timing and Late Trading of Mutual Funds

➤ FINRA settled a matter that involved a registered representative who facilitated market timing and the late trading of mutual funds on his customers' behalf. The registered representative accepted orders from seven customers to buy and sell mutual fund shares. All of the orders involved short-term buying and selling, and market timing. The representative facilitated the establishment of multiple accounts for some of the customers, and used the customers' multiple accounts to disguise the market timing and evade restrictions the mutual funds imposed. The registered representative was responsible for executing approximately 600 orders to exchange, purchase and sell mutual funds in contravention of the prohibitions the mutual funds imposed. Additionally, the representative received nearly 200 orders for the purchase or sale of mutual fund shares from his customers after 4 p.m., but nonetheless improperly caused the orders to be executed at that day's NAV rather than the following day's NAV.

FINRA concluded that this conduct was inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110 (ethical standards). As a result, FINRA barred the representative in all capacities.

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Exercise of Discretion Without Written Authority

- FINRA settled a matter involving a registered representative who exercised discretion in customer accounts without written authority to do so. The registered representative participated in a firm-sponsored fee-based account program that allowed the registered representative to exercise discretion in customer accounts. The registered representative had many clients who participated in this program. Subsequently, the firm requested that the representative stop participating in the program, and the representative converted his clients to another of the firm's fee-based programs that did not permit registered representatives to exercise discretion in customer accounts. The representative, however, continued to exercise discretion. Despite converting his customers to the non-discretionary fee-based program, he executed approximately 1,600 sales in more than 20 customer accounts without first contacting his customers or obtaining written authorization to exercise discretion.

  FINRA concluded that the representative violated NASD Rules 2110 (ethical standards) and 2510 (discretionary accounts). As a result, FINRA fined the representative $5,000 and suspended him in all capacities for 10 business days.

Selling Away

- FINRA settled a matter involving a registered representative who engaged in violative private securities transactions. During a period of several months, the registered representative referred potential investors to a third-party entity for the customers' possible purchase of time-share condominium interests that were sold in the form of universal leases. Four of the representative's referrals ultimately purchased a universal lease interest. The representative referred the investors without providing his member firm with prior written notice and obtaining written approval from the firm.

  FINRA concluded that the representative's conduct violated NASD Rules 2110 (ethical standards) and 3040 (private securities transactions). As a result, FINRA suspended the representative in all capacities for 20 business days and fined him $5,000.

Private Securities Transactions

- FINRA also settled a matter involving a registered representative who failed to provide written notice of securities transactions to his member firm. The registered representative recommended to his customers that they purchase 25,500 shares of an issuer, which they purchased based on his recommendation. During the same period, the representative also purchased more than 24,000 shares of the same issuer. Thereafter, a promoter for the issuer offered to give the representative's wife 20,000 shares of the company's stock, and the representative agreed. The promoter placed the stock in an account in which the registered representative had an interest. The representative's wife then sold the stock. The registered representative failed to notify his firm in writing of the account, the transactions and his role in them.

  FINRA concluded that the representative's conduct violated NASD Rules 2110 (ethical standards), 3040 (private securities transactions) and 3050 (transactions for or by associated persons). As a result, FINRA censured the representative, suspended him in all capacities for six weeks and fined him $25,000.

Settling a Customer Complaint Without the Firm's Knowledge

- FINRA settled a matter that involved a registered representative who settled a customer complaint without his member firm's involvement. The representative sold a customer a variable life insurance policy that required an annual premium of $50,000. The representative subsequently resigned from his member firm. Thereafter, the customer complained to the representative about various aspects of the variable life insurance policy. The representative wrote a $19,000 check to the customer in an attempt to settle his complaint and sent a policy surrender form to the customer via facsimile. The customer cashed the representative's check and filed a written complaint with the firm. The customer requested that the firm cancel the policy and reimburse him the entire $50,000 premium. The representative then notified the firm that he previously had attempted to settle with the customer. The firm canceled the policy and refunded the customer the $50,000 premium.

  FINRA determined that the representative's conduct violated NASD Rules 2110 (ethical standards) and 3070 (reporting requirements). As a result, FINRA suspended the representative in all capacities for 10 business days and fined him $5,000.

Forging Customer Signatures and Failing to Appear for Testimony

- FINRA settled a matter involving a registered representative who forged the signatures of husband and wife customers on life insurance applications and failed to appear to give testimony.

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

Unapproved and Unbalanced Communications With the Public

- FINRA settled a matter that involved a registered representative who mailed invitations and informational brochures to members of the public without obtaining his member firm's prior approval of the communications and without properly disclosing information in the communications. The representative conducted five financial services seminars in which he used an information brochure and for which he mailed invitations to the seminars to approximately 700 existing and prospective public customers. The registered representative provided the brochures and invitations to customers without obtaining the prior approval of a registered principal from his member firm. He also failed to make the proper disclosures in the brochures and invitations, and his representations regarding management fees and guaranteed rates of return were not balanced.

  FINRA found that the representative violated Rules 2110 (ethical standards) and 2210 (communications with the public). FINRA suspended the representative in all capacities for 15 business days and fined him $5,000.