

Quarterly Disciplinary Review

April 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.

Exercise of Discretion Without Written Authority

- FINRA settled two matters that involved registered representatives who exercised discretion in customer accounts without prior written authorization. In one instance, a registered representative effected 15 discretionary trades over the course of three months in the account of a customer who had not granted the representative prior written authorization to exercise discretion. The representative also had not received his member firm's prior approval to exercise discretion in a customer account.

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

- In another instance, a registered representative effected 322 discretionary trades in one customer's account over the course of one year, and 320 discretionary trades in a second customer's account. The representative did not have written authority from either customer to exercise discretion in their accounts, and the member firm had not accepted either account as discretionary.

FINRA concluded that the representative violated NASD Rules 2110* (ethical standards) and [2510](#) (discretionary accounts). As a result, FINRA suspended the representative in all capacities for 90 days and fined him \$15,000.

Unauthorized Trading

- ▶ FINRA settled a matter involving a registered representative who executed an unauthorized order in a customer's account. FINRA concluded that the representative's conduct violated NASD Rule 2110* (ethical standards) and [IM-2310-2](#) (fair dealing with customers). As a result, FINRA suspended the representative in all capacities for 10 business days and fined him \$5,000.

Refusal to Provide Testimony

- ▶ FINRA settled a matter involving a registered representative who failed to appear for on-the-record testimony. FINRA requested that the representative appear for on-the-record testimony to provide information regarding the possible conversion of funds by a former registered principal at the representative's firm. The representative informed FINRA that he would not appear and he did not, in fact, appear to testify.

FINRA found that the representative's actions violated NASD Rules 2110* (ethical standards) and 8210** (provision of information and testimony). FINRA barred the representative from associating with any member firm in any capacity.

Forging Customer Signatures

- ▶ FINRA settled a matter involving a registered representative who forged customer signatures to forms needed in order to complete customer-approved transactions or transfers. The registered representative signed one customer's name to two forms in order to have the customer's mutual funds from two separate institutions transferred to the representative's firm, and to a third form in order to request reduced sales charges. The customer had approved of the transfers, but had not given the representative authorization to sign his name. The registered representative also signed two other customers' names to forms that directed the customers' employers to divert a portion of the customers' paychecks to the customers' accounts at the representative's firm. The customers had agreed to divert a portion of their paychecks, but had not authorized the representative to sign their names.

FINRA concluded that the representative's conduct violated NASD Rule 2110* (ethical standards) and, as a result, suspended the representative in all capacities for five months and fined him \$5,000.

Misuse of Customer Funds and Failure Timely to Respond

- FINRA settled a matter involving a registered representative who misused customer funds. Two elderly customers of the representative withdrew more than \$250,000 from their mutual fund investments. They gave the funds to the representative with instructions to hold the funds for distribution upon their deaths for their daughter's benefit. The representative deposited the funds in an account for an outside business that he operated and disbursed the funds to his father, business partner and a lawyer. When the member firm discovered the representative's activities, the representative repaid the funds to his customers. Subsequent to an on-the-record interview of the representative, FINRA sent the representative written requests for information to which the representative did not fully and timely respond.

FINRA concluded that the representative's conduct violated NASD Rules 2110* (ethical standards) and 8210** (provision of information). As such, FINRA suspended the representative for two years in all capacities and fined him \$10,000.

Form U4 Disclosure

- FINRA settled a matter involving a registered representative who failed to disclose a felony charge on a Form U4. Question 14A(1)(b) on the Form U4 asked if the representative had ever been charged with a felony. The representative answered "no" to the question when, in fact, he previously had been charged with obstructing justice, a felony.

FINRA concluded that the representative had failed to disclose a material fact on the Form U4 and that his conduct violated NASD Rule 2110* (ethical standards) and [IM-1000-1](#) (misleading registration information). As a result, FINRA suspended the representative for three months in all capacities and fined him \$5,000.

Unsuitable Trading

- The SEC upheld FINRA findings that a registered representative violated FINRA rules by recommending unsuitable mutual fund switches to customers. During a period of less than six months, the representative recommended various mutual fund switches to 12 customers, many of whom were financially unsophisticated, and the switch recommendations subjected the customers to higher expenses, longer holding periods, or denied them lower operating costs. The Commission affirmed FINRA's findings that the representative did not have reasonable grounds for believing that his recommendations were suitable for his customers based upon their financial situation and needs, and that the representative's switch recommendations served his own interests in generating production credits rather than his clients' financial welfare.

The SEC upheld FINRA's conclusion that the representative's conduct violated NASD Rules 2110* (ethical standards) and [2310](#) (suitability), and [IM-2310-2](#) (fair dealing with customers). The SEC also affirmed FINRA's imposition of a bar in all capacities.

- FINRA also settled a matter involving a registered representative who recommended and engaged in excessive and unsuitable trading. During a period of approximately two years, the registered representative recommended trading that resulted in annualized turnover rates of between six and 29 in three customers' accounts. In these same accounts, the annualized commission-to-equity ratios ranged from 29 percent to 133 percent. The representative also exercised discretion in the accounts without obtaining the customers' prior written authorization and the firm's written acceptance of the accounts as discretionary.

FINRA concluded that the representative's conduct violated NASD Rules 2110* (ethical standards), [2310](#) (suitability) and [2510](#) (discretionary accounts), and [IM-2310-2](#) (fair dealing with customers). As a result, FINRA suspended the representative in all capacities for six months, fined him \$19,000 and ordered him to pay restitution of \$6,000.

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

** NASD Rule 8210 has been superseded by [FINRA Rule 8210](#), effective December 15, 2008.