Quarterly Disciplinary Review

October 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.

Causing Inaccurate Books And Records

- FINRA's National Adjudicatory Council (NAC) affirmed findings that a registered representative violated FINRA's rules by falsely claiming disability waivers of contingent deferred sales charges on Class B mutual fund share redemptions. The NAC found that, during a period of nine months, the representative entered disability waivers in more than 40 mutual fund transactions for 14 customers whom the representative knew were not disabled, thereby obtaining more than $14,000 in contingent deferred sales charge waivers for his customers, to which they were not entitled. The NAC found that the representative's misconduct violated FINRA Rules, notwithstanding the representative's arguments that he garnered no personal financial benefit from his misconduct and that the customers would have redeemed the mutual fund shares even if they had to pay contingent deferred sales charges. The representative claimed that he was simply attempting to save his customers money.

  FINRA's NAC found that the representative's actions resulted in his entering false information in a member firm's books and records, which violated NASD® Rules 3110 (books and records) and 2110* (ethical standards). As a result, FINRA suspended the representative in all capacities for 90 days, fined him nearly $20,000, and assessed hearing costs. The NAC considered the representative's acknowledgment of his misconduct from the outset to both his member firm and to FINRA, his recognition of the gravity of his misconduct and his expression of sincere remorse when determining the sanctions.

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Failure To Obtain Necessary State Registration

- FINRA settled a matter involving a registered representative who failed to obtain the state registration that is required for referring customers and receiving referral fees. The representative referred 10 customers to another registered person at his member firm. The second registered representative served as the registered representative of record for the accounts and paid the first registered representative $50,000 as compensation for referring the customers to him. The first representative, however, was not registered to do business within the states where those customers resided.

  FINRA found that, by receiving a fee for the referral of business in states in which the representative was not properly registered, the representative violated NASD Rule 2110* (ethical standards). As a result, FINRA suspended him in all capacities for three months and fined him $10,000.

Exerting Improper Influence On A Member Firm

- FINRA settled a matter involving a registered representative who improperly influenced other member firms. The representative was a credit default swaps (CDS) sales person at a CDS interdealer broker. The representative communicated with registered personnel at other CDS interdealer brokers about CDS dealers' proposed brokerage fee rate reductions in an effort to improperly influence other CDS interdealer brokers regarding CDS dealers' proposed brokerage fee rates. The representative's communications with individuals at other CDS interdealer brokers included reactions to the proposed rate reductions and statements concerning actual or contemplated interdealer broker responses or counter-positions to the schedules.

  FINRA concluded that the representative failed to abide by his duty to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110* (ethical standards) and IM-2110-5** (anti-intimidation and coordination). As a result, FINRA suspended the representative for six months and fined him $350,000.

Borrowing Funds From A Customer Without Firm Approval

- FINRA settled a matter that involved a registered representative who accepted a loan from a customer without his firm's approval. The representative purchased a building from a customer with whom he had a pre-existing business relationship away from the member firm. The representative paid $850,000 for the building, and the customer agreed to finance the purchase. The representative executed a promissory note, which the building secured, for the entire purchase price. The representative did not default on the terms of the note and was current on his payments. The representative's firm, however, allowed registered representatives to borrow from customers only with the firm's prior written approval.

  The representative failed to obtain prior written approval for the loan, and FINRA found that his conduct violated NASD Rules 2370 (borrowing from customers) and 2110* (ethical standards). As a result, FINRA suspended the representative in all capacities for 60 days and fined him $5,000.

Failure To Disclose Outside Securities Account

- FINRA settled a matter involving a registered representative who failed to disclose an outside securities account to two member firms with which he was associated. The representative, while registered with "Firm A" for eight years, failed to disclose to the firm that he maintained and controlled a personal securities account at another firm, "Firm B." The representative also failed to inform Firm B (where he maintained a personal brokerage account) that he was associated with Firm A. The representative thereafter left Firm A and associated with another firm, "Firm C". He failed to disclose to Firm C that he maintained and controlled a personal securities account at Firm B. He also failed to inform Firm B that he was associated with Firm C.

  FINRA concluded that the representative's conduct violated NASD Rules 2110* (ethical standards) and 3050 (transactions for associated persons). As such, FINRA suspended the representative in all capacities for five business days and fined him $2,500.

Misappropriation Of Spouse/Customer Funds And Failure to Respond

- FINRA settled a matter involving a registered representative who misappropriated funds from his spouse's variable annuity account. The representative's spouse was the sole owner of a variable annuity held at the representative's firm, and the representative was responsible for the account. Without his spouse's knowledge or consent, and without written or oral authorization to exercise discretion, the representative submitted 13 surrender or withdrawal requests through his firm to the issuer of the spouse's variable annuity and caused the liquidation of more than $48,000 from the variable annuity account. As a result of the partial liquidation of the variable annuity, the representative received 13 checks that he negotiated without his spouse's knowledge or consent. The representative caused the liquidations and negotiated the checks by affixing his spouse's signature to liquidation requests and checks without his spouse's knowledge or consent. The representative also failed to respond to letters from FINRA staff requesting that he appear for on-the-record testimony, and he did not appear to provide testimony.

  FINRA concluded that the representative's conduct violated NASD Rules 2110* (ethical standards), 2330 (misuse of customer funds) and 8210*** (requests for information or testimony). As a result, FINRA barred him in all capacities.

Engaging In Outside Business Without Providing Notice To The Firm

- FINRA settled a matter involving a registered representative who engaged in outside business activities without providing prompt written notice to his member firm. The representative referred four customers to another individual who sold equity indexed annuities and received compensation of more than $11,000 for the referrals. The representative failed to provide prompt written notice to his member firm of the referrals, and failed to disclose the referrals and his receipt of referral fees on an annual certification statement that his firm required. Additionally, the representative falsely denied involvement with equity indexed annuities sales when his supervisor directly questioned him on two occasions.

  FINRA found that the representative's conduct violated NASD Rules 2110* (ethical standards) and 3030 (outside business activities). As a result, FINRA suspended him in all capacities for six months and fined him $5,000.

Misappropriation Of Funds And Forgery

➤ FINRA settled a matter involving a registered representative who misappropriated customer funds and forged customer signatures. The representative made two unauthorized disbursements totaling more than $15,000 from one customer's variable annuity. The representative transferred the customer's funds to his own checking account by forging the customer's signature on two variable annuity surrender request forms. The representative also made six unauthorized disbursements totaling approximately $44,000 from another customer's variable annuity by forging the customer's signature on six variable annuity surrender request forms.

FINRA found that the representative's conduct violated NASD Rules 2330 (misuse of customer funds) and 2110* (ethical standards), and IM-2310-2 (fair dealing with customers). As a result, FINRA barred the representative in all capacities.

Improper Use Of Funds, Forgery, And Falsifying Account Documents

➤ FINRA settled a matter involving a registered representative who, during an eight-year period, converted $850,000 from more than 20 customers, falsified account records, and engaged in unauthorized trades, disbursements and transfers in customer accounts. The representative converted the customers' funds to his own personal use, and carefully targeted only customers who he believed were not monitoring their accounts. For instance, the representative preyed on elderly customers, customers whose spouses were recently deceased, diplomats working overseas and his own father.

FINRA concluded that the representative improperly used and converted customer funds, in violation of NASD Rules 2330 (improper use of customer funds) and 2110* (ethical standards); falsified account records, in violation of NASD Rule 2110* (ethical standards); engaged in unauthorized trading, in violation of NASD Rule 2110* (ethical standards); and caused his member firm to maintain inaccurate books and records, in violation of NASD Rules 3110 (books and records) and 2110* (ethical standards). As a result of these findings, FINRA barred him in all capacities.

* NASD Rule 2110 has been superseded by FINRA Rule **2010**, effective December 15, 2008.

** IM-2110-5 has been superseded by FINRA Rule **5240**, effective June 15, 2009.

*** NASD Rule 8210 has been superseded by FINRA Rule **8210**, effective December 15, 2008.