Quarterly Disciplinary Review

April 2010

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.

Willful Failure to Amend Form U4

- FINRA's National Adjudicatory Council (NAC) issued a decision involving a registered representative who willfully failed to disclose material information regarding his criminal history on a Uniform Application for Securities Industry Registration or Transfer (Form U4). The representative was charged with petit larceny and criminal possession of stolen property—misdemeanors that involve the wrongful taking of property. The representative pled guilty to petit larceny. The criminal disclosure questions on the Form U4 required the representative to respond affirmatively and supplement the affirmative answers with complete information regarding these charges and convictions. The registered representative failed to do this and knowingly omitted information about the charges and conviction from the Form U4.

  The NAC found that the representative's willful failure to update his Form U4 violated NASD Rule 2110* (ethical standards) and NASD Membership and Registration IM-1000-1† (filing misleading membership information). As a result, the NAC suspended the representative in all capacities for nine months, fined him $5,000 and ordered him to pay hearing costs. Furthermore, because the NAC found that the representative's failure to disclose was willful and the omitted information was material, the representative is statutorily disqualified from the securities industry.

Financial Industry Regulatory Authority

Advertising Violations

- FINRA settled a matter involving a registered representative who posted unapproved and misleading messages on an electronic bulletin board. The representative posted 100 electronic bulletin board messages to the Google Finance Web site using his firm email address as a user name. The firm email address identified him as an employee of his member firm. In the messages, the registered representative discussed, and in some cases recommended and made predictions about, several securities in which he held positions and traded during the same time frame that he posted the messages. The representative failed to obtain a firm principal's approval before posting the messages; failed in 23 messages to disclose material information (such as risks and that the representative held positions in the stocks); posted five messages that contained claims that were false, exaggerated, unwarranted or misleading; posted 28 messages in which the representative made predictions or projected future stock performance; and posted 31 messages in which he gave investment recommendations regarding specific securities without providing a reasonable basis for the recommendations.

  FINRA found that the representative's conduct violated numerous sections of NASD Rule **2210** (communications with the public), NASD Rule 2110* (ethical standards) and NASD **IM-2210-1** (guidelines for communications with the public). As a result, FINRA suspended the representative in all capacities for six months and fined him $10,000.

Failure to Provide Complete Response to FINRA Staff Inquiry

- FINRA settled a matter involving a registered representative who failed to completely respond to FINRA staff requests for information. FINRA staff commenced an investigation of a $100,000 loan to the registered representative. The registered representative failed to respond in any way to FINRA staff's first request for information. The registered representative responded incompletely to FINRA's second request by submitting a single document to FINRA and indicating in an email that many documents were stolen. FINRA sent a third information request to the registered representative, to which he responded with additional documentation that failed to provide an accounting of the $100,000 in loan proceeds and bank records to substantiate the accounting, as FINRA requested. The representative indicated that he would produce the remaining documents, but he never did.

  FINRA found that the representative failed to provide a complete response to FINRA staff's requests for information and documents, in violation of FINRA Rules **2010** (ethical standards) and **8210** (information requests). As such, FINRA suspended the representative in all capacities for two years and fined him $5,000.

Failure to Timely Respond to a FINRA Staff Inquiry

➤ FINRA settled a matter involving a registered representative who failed to timely respond to a FINRA staff request for information. FINRA staff issued a written request for information to the registered representative in connection with its investigation of a customer complaint. The representative partially responded to the request. FINRA issued a complaint against the representative for failing to respond, and the representative thereafter fully responded.

FINRA found that the representative failed to timely respond to a FINRA information request, in violation of NASD Rules 2110* (ethical standards) and 8210‡ (information requests). FINRA suspended the representative in all capacities for 12 months and fined him $5,000.

Misuse of Corporate Credit Card

➤ FINRA settled a matter involving a registered representative who misused his firm-issued corporate credit card by charging personal expenses and not making payment when it was due. The representative's firm had issued the representative a corporate credit card in his name to be used for business expenses. The monthly bills were sent to the representative's home, and the representative was responsible for paying the bills upon receipt. During a two-month period, the representative charged approximately $2,000 to the corporate credit card, of which approximately $1,500 were not business-related expenses. The representative requested and received reimbursement for the $500 in business-related expenses charged to the credit card. The representative did not, however, apply the $500 that the firm reimbursed him to the outstanding balance on the credit card. The representative failed to pay the credit card bill and, six months later, the firm paid the outstanding $2,000 balance and terminated the representative.

FINRA found that the representative's actions violated NASD Rule 2110* (ethical standards) and suspended the representative in all capacities for three months. In light of the representative's submission of a sworn financial statement indicating an inability to pay a fine, FINRA did not impose one.

Private Securities Transactions

- FINRA settled a matter involving a registered representative who engaged in private securities transactions with a firm customer without providing prior written notice to, or obtaining prior written approval from, his firm. The registered representative referred a firm customer to another registered representative at the firm. The referred representative convinced the customer to invest in a company under his control. The referred representative paid the representative who referred the customer a $1,000 referral fee as compensation.

  FINRA found that the representative who referred the customer and accepted compensation violated NASD Rules 2110* (ethical standards) and **3040** (private securities transactions). As a result, FINRA suspended him in all capacities for one month, fined him $5,000 and ordered him to pay the customer $1,000 in restitution.

Failure to Supervise

- FINRA settled a matter involving a registered individual (supervisor) who failed to supervise a registered representative (representative) at the same firm. The supervisor was responsible for supervising a representative who owned an independent entity through which the representative sold insurance products. The representative also sold securities products through the member firm. The supervisor failed to adequately conduct office visits to oversee the representative, review customer account information, review communications with customers (including email) and respond to red flag irregularities on the firm's blotters. Furthermore, the supervisor failed to respond to a customer complaint against the representative. The supervisor also failed to report the customer complaint to his superiors at the firm. As a result of the supervisor's failure to supervise, the representative's misappropriation of approximately $90,000 from two firm customers went undetected.

  FINRA concluded that the supervisor's conduct violated NASD Rules 2110* (ethical standards) and **3010** (supervision). As such, FINRA suspended the supervisor in all supervisory capacities for six months, ordered that he requalify as a principal and fined him $10,000.

Misappropriation of Customer Funds

- FINRA settled a matter involving a registered representative who misappropriated a customer's funds. The customer had sent the representative a check for approximately $550 as payment of a premium for the customer's homeowner's policy. The representative personally endorsed the check and deposited it into his personal bank account. The representative did not apply the funds to the customer's premium payment and instead, without permission or authority, used the funds for his own purposes. The representative subsequently repaid the funds to the customer.

  FINRA found that the representative's conduct violated NASD Rule 2110* (ethical standards) and, as a result, barred the representative in all capacities.

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

† NASD Membership and Registration IM-000-1 has been superseded by FINRA Rule **1122**, effective August 17, 2009.

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

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