Quarterly Disciplinary Review

July 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 website.

Submitting False and Misleading Variable Annuity Applications and Circumventing Firm's Variable Annuity Procedures

➤ FINRA's National Adjudicatory Council (NAC) found that a registered representative submitted four false and misleading variable annuity applications to his firm, and failed to structure the transactions as variable annuity replacements and submit proper documentation for the transactions to the firm and its customers, thereby violating FINRA rules. The representative recommended that several of his customers replace their existing variable annuity contracts with new variable annuity contracts that he considered to be better products. The customers incurred surrender charges in connection with the variable annuity replacements; however, the representative responded "No" to questions on variable annuity applications about whether the customers' existing annuities would be surrendered or replaced as a result of the new variable annuity purchases. The representative also failed to submit replacement acknowledgement forms to his customers and to the firm, and structured the variable annuity transactions so that they would not appear to be replacements, thereby circumventing the firm's procedures.

FINRA's NAC found that the representative's failure to structure the transactions as variable annuity replacements and to submit proper documentation to the firm and the customers violated NASD Rule 2110* (ethical standards). As such, the NAC suspended the representative in all capacities for one year, fined him $5,000 and ordered him to pay the customers restitution of $14,909.49 (the amount of their surrender charges) plus interest. The NAC also assessed hearing costs.

Financial Industry Regulatory Authority

Misleading Examiners During Routine Examination

- FINRA settled a matter involving a registered representative who misled NYSE examiners during a routine examination of his branch office. Member firms are required to approve the use of interns as non-registered cold-callers via a special employment screening process. In this case, the branch office used interns that had not been approved for cold-calling. In anticipation of a routine examination, the registered representative, at his supervisors' request, instructed the branch office staff that, if asked by examiners, they should state that the branch office did not employ interns that were not approved for cold-calling. The registered representative also falsely represented to examiners that there were no unregistered cold-callers in the branch office.

  FINRA found that the registered representative's actions violated NASD Rule 2110* (ethical standards). As such, FINRA suspended the representative in all capacities for three months, suspended him concurrently for six months in all supervisory capacities, required that he requalify and fined him $5,000.

Refusing to Provide FINRA-Requested Information

- FINRA settled a matter involving a registered representative who failed to respond to a FINRA staff request for information. FINRA staff sent the registered representative a letter requesting information about an outside business activity that the representative potentially failed to disclose to his firm. The representative's attorney advised FINRA staff that the registered representative would not provide the requested information because of a separate, but related, pending legal matter. The representative, through counsel, similarly refused to respond to a second request for information.

  FINRA found that the representative's refusal to respond violated NASD Rules 2110* (ethical standards) and 8210† (requests for information or testimony). As such, FINRA barred the representative in all capacities.

Outside Unethical, Unlawful Conduct

- FINRA settled a matter involving a registered representative who conspired with others to steal money from a casino. The representative conspired with a dealer at the casino to cheat in a card game by, among other methods, keeping casino chips that he should have lost on losing hands. The representative conspired to steal approximately $16,000 from the casino.

  FINRA found that the representative's conduct was unethical and violated NASD Rule 2110* (ethical standards). As such, FINRA barred the representative in all capacities.

Altering Customer Records Without Authorization

➤ FINRA settled a matter involving a registered representative who altered his firm's customer records without authorization. Shortly before resigning from his firm, the representative used his broker workstation to inaccurately revise customer telephone numbers and delete customer email addresses for 38 customers. The representative recorded the changes to the firm's electronic database. The representative made the changes to hinder the efforts of other registered representatives at the firm assigned to call his customers after he resigned.

FINRA found that the registered representative's conduct violated NASD Rule 2110* (ethical standards). FINRA also found that the representative caused the firm's books and records to be inaccurate, in violation of NASD Rules **3110** (books and records) and 2110* (ethical standards). As such, FINRA suspended the representative in all capacities for one month and fined him $5,000.

Willfully Failing to Amend Form U4

➤ FINRA settled a matter involving a registered representative who willfully failed to amend his Form U4 to disclose that he had an unsatisfied tax lien and two unsatisfied civil judgments. In May 2007, a state filed a tax lien against the representative for a sum in excess of $8,000. Between May 2007 and January 2009, the lien remained unsatisfied, and the representative willfully failed to disclose the lien on his Form U4. In November 2008, a civil court imposed a judgment against the representative for approximately $400. The judgment remained unsatisfied between November 2008 and March 2009, and the representative willfully failed to disclose that fact on his Form U4. In January 2008, a civil court imposed a judgment against the representative for approximately $2,000. Between January 2008 and March 2009, the judgment remained unsatisfied, and the representative failed to disclose the judgment on his Form U4.

FINRA found that the registered representative's failures to disclose material facts on his Form U4 violated FINRA Rule **2010** (ethical standards) for conduct subsequent to December 14, 2008; NASD Rule 2110* (ethical standards) for conduct on or prior to December 14, 2008; and NASD IM-1000-1‡ (filing misleading membership information). As such, FINRA suspended the registered representative in all capacities for three months and fined him $5,000.

Selling Unregistered Stock

➤ FINRA settled a matter involving a registered representative who, over the course of six months, executed customer orders in the shares of four stocks that were not registered and not exempt from registration. Section 5 of the Securities Act of 1933 prohibits the sale of securities without an effective registration statement unless an exemption applies. Before selling unregistered securities, registered representatives have a duty under Section 5 to conduct a searching inquiry to determine whether or not the securities are exempt from registration.

In this case, the registered representative caused customer orders to be executed and caused the distribution of approximately 20 million shares of unregistered securities in four stocks. The registered representatives knew that the customers selling the securities were associated with the issuers and with an individual that the representative knew had been convicted of two counts of criminal securities fraud involving manipulation of biotech stocks and had been barred by the SEC. Furthermore, the sales transactions that the representative effected involved substantial blocks of thinly traded, low-priced biotech stocks. No registration statements were in effect for these securities. On the question of whether the securities were exempt from registration and freely tradable, the representative relied upon statements from the convicted individual, the selling customers and their attorneys, and he did not conduct an independent investigation.

FINRA found that the registered representative violated Section 5 of the **Securities Act of 1933** and, therefore, NASD Rule 2110* (ethical standards). As such, FINRA suspended the representative in all capacities for 30 business days and fined him $50,000, which included disgorgement of $25,000 in commissions.

Transferring Customer Signatures Without Authorization and Consent

➤ FINRA settled a matter involving a registered representative who signed or photocopied customer signatures onto account documents without the customers' authorization, knowledge or consent. During a period of nine months, the registered representative signed or photocopied at least nine customer signatures onto firm account documents and submitted those documents to the firm for processing without the customers' knowledge or authorization. In one instance, the representative copied a customer's signature onto a form and then notarized the document himself. The representative's conduct caused the firm's books and records to be inaccurate.

FINRA found that the registered representative's actions violated NASD Rules **3110** (books and records) and 2110* (ethical standards). As such, FINRA suspended the representative in all capacities for three months and fined him $5,000.

* 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.

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

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