Quarterly Disciplinary Review

July 2011

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.

Failure to Provide Written Notice of an Outside Brokerage Account

FINRA's NAC issued a decision involving a registered individual who failed to provide his employer firm with written notice of his outside brokerage accounts, failed to provide notice of his employment with a broker-dealer to the brokerage firm where he maintained the accounts, and falsely stated on employment disclosure forms that he did not hold any outside brokerage accounts. The NAC rejected the registered representative's contention that oral notice to his firm's president and director of compliance should suffice. The NAC also rejected the registered individual's defense argument, which was that since he previously was associated with the firm that carried his brokerage accounts, the firm should have known that he was a registered person.

FINRA's NAC found that the registered representative's conduct violated NASD Rules 3050(c) (transactions for or by an associated person) and 2110* (ethical standards). The NAC concluded that the gravity of the registered person's misconduct, which the NAC concluded was intentional, justified an increase in the sanctions the hearing panel imposed. The NAC fined the registered representative $25,000, suspended him in all capacities for two years and assessed total costs of $3,276.

Private Securities Transactions and Outside Business Activities

FINRA's NAC also issued a decision involving a registered representative who participated in private securities transactions and engaged in undisclosed outside business activities. The registered representative sold membership interests in a real estate limited liability corporation (LLC) for which he received commissions. The registered representative also served as the financial officer for the LLC for which he received annual compensation. The NAC determined that the LLC membership interests were in fact securities and that the registered representative participated in the sales of the LLC membership interests without

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prior written notice to and approval from his member firm. The NAC rejected the representative's argument that his misconduct should be excused because he relied on the advice of legal counsel. The NAC also found that the representative's work as a financial officer for the LLC constituted outside business activities, which the representative failed to disclose to his member firm.

The NAC found that the registered representative's conduct violated NASD Rules 3030† (outside business activities by an associated person), 3040 (private securities transactions by an associated person) and 2110* (ethical standards). The NAC fined the representative $16,000 and suspended him from associating with any member firm in any capacity for one year.

Willful Failure to Disclose Criminal History on Form U4

FINRA settled a matter involving a registered person who willfully failed to disclose his criminal history on a Form U4. The registered person submitted a Form U4 to FINRA in June 2008. In response to a question that asked whether he had ever been charged with a felony, he falsely answered "no," even though he had been charged with the criminal felony of first-degree burglary two years prior. The registered person also falsely answered "no" to the questions of whether he had ever been convicted or pled guilty to a misdemeanor involving the wrongful taking of property and whether he had ever been charged with a misdemeanor. In 2001, he had been charged with the misdemeanor offense of property theft by check, to which he pled guilty.

FINRA found that the registered person's failures to disclose were willful and violated NASD Rule 2110* (ethical standards), NASD Membership and Registration Rule IM-1000-1‡ (filing misleading information as to registration), and Article V, Section 2(c) of the FINRA By-Laws (application for registration). As such, FINRA fined the registered person $5,000 and suspended him in all capacities for six months. Additionally, because the registered person's failures to disclose were willful and involved material information, he is subject to statutory disqualification.

Misrepresentative and Unbalanced "Tweets" and Other Misconduct

FINRA settled a matter involving a registered representative who failed to notify her member firm that she served as president of a jewelry company and as a translator for a foreign currency trading firm, failed to disclose to her firm that she held financial interests or trading authority in multiple brokerage accounts she held away from the firm, falsely represented on outside brokerage account applications that she was not affiliated with a brokerage firm, created websites related to the firm without obtaining the firm's prior approval, failed to notify the firm that she sometimes touted stocks on her Twitter account and "tweeted" unbalanced stock recommendations that failed to disclose material information.

FINRA found that in 2007 and 2009, the registered representative earned remuneration for performing translation services away from the firm and serving as an officer of a jewelry design company without providing her employer firm with prompt written notice. FINRA concluded that this conduct violated NASD Rules 2110* (ethical standards) and 3030† (outside business activities by an associated person). FINRA further found that the registered representative opened or maintained at least 13 accounts in which she held a financial interest or over which she held discretionary authority at two other broker-dealers, and that on at least six account applications, she falsely answered "no" to the question of whether she was affiliated with a securities firm. The registered representative also failed to provide her employer firm with prior written notice of the accounts. FINRA concluded that this conduct violated NASD Rules 2110* (ethical standards) and **3050** (transactions for or by an associated person).

The registered representative also created two websites that included misrepresentations about her career accomplishments and employer firm without obtaining approval from a principal of the firm. FINRA found that this conduct violated NASD Rules 2110* (ethical standards) and **2210** (communications with the public). FINRA also found that during eight months in 2009, the registered representative maintained a Twitter account and had more than 1,400 followers. Without notifying a principal of her employer firm, the registered representative posted 32 "tweets" related to a particular security. The tweets were unbalanced, overly positive and often predicted an imminent price increase. In the tweets, the representative failed to disclose that she and her family held a significant number of shares of the security. FINRA concluded that this conduct violated NASD Rules **2210** (communications with the public) and **IM-2210-1** (guidelines to ensure that communications with the public are not misleading), and FINRA Rule **2010** (ethical standards). FINRA fined the registered representative $10,000 and suspended her from associating with any member firm in any capacity for one year.

Creating and Distributing Continuing Education Answer Key

FINRA settled a matter involving a registered representative who violated FINRA's ethics rules by creating and distributing a continuing education answer key. The registered representative was an external wholesaler of a universal life insurance policy with long-term care benefits. In January 2008, certain states began requiring financial advisors who sell long-term care insurance products to retail customers in those states to take a continuing education (CE) course and pass a state CE exam before selling those products. In July 2008, the registered representative took a state CE exam and immediately afterward created an answer key for it. FINRA found that the registered representative then sent the answer key to two representatives in his firm and a portion of the answer key to one outside financial advisor.

FINRA concluded that the registered representative's conduct violated NASD Rule 2110* (ethical standards) and FINRA Rule **2010** (ethical standards). As a result, FINRA suspended the representative in all capacities for 60 days and fined him $5,000.

Effecting Transactions in a Personal Account With Insufficient Funds

FINRA settled a matter involving a registered representative who effected transactions in his personal account at his employer firm for which he did not have sufficient funds. In December 2007, the representative opened a personal account at his employer firm. Between January 2008 and March 2009, he effected 88 transactions in that account, including checks, debits and ATM withdrawals in the aggregate amount of approximately $11,000. FINRA found that the representative knew or should have known that he did not have sufficient funds to cover the transactions.

FINRA concluded that the registered representative's conduct violated NASD Rule 2110* (ethical standards) and FINRA Rule **2010** (ethical standards). FINRA barred the representative from associating with any member firm in any capacity.

Backdating Annuity Applications

FINRA settled a matter involving a registered representative who backdated annuity applications and acknowledgement forms for clients. Between January and March 2009, the representative backdated annuity applications and annuity acknowledgement forms to provide 23 clients with higher interest rates on the annuity contracts than the annuity company was offering. The representative backdated the documents to make it appear as if the customers had signed the paperwork on a date when the interest rate the annuity company offered was higher than the interest rate it offered when the representative sold the annuities to his clients.

FINRA concluded that the representative's conduct violated FINRA Rule **2010** (ethical standards). As such, FINRA suspended the registered representative from associating with any member firm in any capacity for nine months and fined him $5,000.

Improper Borrowing From Customers

FINRA settled a matter involving a registered representative who contravened firm procedures by borrowing a total of $214,000 from three customers. Between November 2005 and March 2009, the representative borrowed money from three customers in undocumented loans that functioned as lines of credit. With respect to each customer, the representative borrowed an amount, repaid a portion and then borrowed additional funds. The representative used the loan proceeds to meet personal expenses. Although the representative repaid the outstanding balances he owed the three customers, he did not fully repay them until April 2010. The member firm had written procedures that forbade registered representatives from borrowing funds from customers except under certain circumstances, none of which applied in this case. The registered representative did not disclose the existence of the loans to his member firm. Furthermore, the representative falsely certified to his firm that he was familiar with the firm's policies and procedures regarding borrowing from customers and that he had not borrowed money from customers.

FINRA found that the representative's conduct violated NASD Rules 2370[§] (borrowing from or lending to customers) and 2110[*] (ethical standards) and FINRA Rule **2010** (ethical standards). As such, FINRA fined the representative $5,000 and suspended him from associating with any FINRA member in any capacity for three months.

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

† NASD Rule 3030 has been superseded by FINRA Rule **3270**, effective December 15, 2010.

‡ NASD IM-1000-1has been superseded by FINRA Rule **1122**, effective August 17, 2009.

§ NASD Rule 2370 has been superseded by FINRA Rule **3240**, effective June 14, 2010.

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