Quarterly Disciplinary Review

April 2013

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 (NAC) decisions and SEC decisions 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.

Misusing Customer's Personal Information and Submitting Falsified Reimbursement Requests

- FINRA's NAC issued a decision involving a registered representative who misused a customer's personal information. The representative listed a customer as a guarantor of a student loan he sought to obtain for his daughter's college education, and included the customer's name, address, gross monthly income, monthly mortgage payment and Social Security number in the loan documents. The registered representative had access to this information through the firm that employed him. FINRA's NAC concluded that the registered representative's conduct violated FINRA Rule 2010 (ethical standards).

  The registered representative also falsified checks and submitted false expense reports for hundreds of dollars in reimbursements that were not yet due to him. The representative's firm reimbursed certain business-related expenses only after the registered representative incurred and paid the expenses. The representative sought reimbursement for six expenses he had incurred, but for which he had not yet paid. To support his claims, he altered personal checks to give the false impression that he had in fact paid the expenses. FINRA's NAC concluded that the registered representative's conduct violated NASD Rule 2110* (ethical standards) and FINRA Rule 2010 (ethical standards).

  In light of these violations, the NAC barred the representative from associating with any member firm in any capacity and assessed hearing and appeal costs.

Financial Industry Regulatory Authority

Falsifying an Expense Report and Supporting Documentation

- FINRA's NAC issued a decision involving a registered representative who falsified an expense report and supporting documentation to obtain a $500 reimbursement to which he was not entitled. The representative fabricated a hotel invoice and letter and falsified a personal check to obtain reimbursement from his firm for a work-related seminar he had not actually conducted. The representative admitted his misconduct when confronted. The NAC found that the representative's conduct violated NASD Rule 2110* (ethical standards). The NAC suspended the representative for six months in all capacities and fined him $5,000.

Backdating Insurance Documents

- FINRA settled a matter involving a registered representative who backdated two insurance forms. The representative backdated two forms by eight months and signed one of the forms. The customer for whom he backdated forms faced a fine from her homeowner's association for failing to provide proof of homeowner's insurance. The two insurance documents falsely represented that the customer had an effective homeowner's insurance policy dating back eight months when she did not. FINRA found that the representative's conduct violated FINRA Rule 2010 (ethical standards). FINRA suspended the registered representative in all capacities for eight months and fined him $5,000.

Excessive Trading and Exercising Discretion Without Authorization

- FINRA settled a matter involving a registered representative who traded excessively and exercised discretion without authorization in a customer account. The customer was a 69-year-old retired widow with an annual income of $14,000 and liquid net worth of $100,000 when the representative became the sole representative of record on the customer's IRA account. At the time, the account was valued at approximately $18,500, and the customer had little investment knowledge or experience. The customer's risk tolerance was moderate and her investment objective was long-term growth. During a one-year period, the registered representative effected 76 transactions in the account. During this year, the customer's account held securities for two to 119 days, generated costs of approximately $16,700, and generated gross commissions of nearly $15,500. FINRA determined that the customer's account would have had to earn a return of at least 86 percent to break even during the year. The registered representative did not have the customer's authorization to exercise discretion, and his firm did not permit discretionary trading. The representative nonetheless exercised discretion when he executed 56 of the 76 trades at issue.

  FINRA concluded that the representative's conduct violated NASD Rules 2310** (suitability) and 2510 (discretionary accounts), NASD IM-2310-2** (fair dealing with customers), and FINRA Rule 2010 (ethical standards). FNRA suspended the representative in all capacities for six months, fined him $5,000 and ordered him to pay the customer restitution of $2,000.

Providing Firm Continuing Education Course Questions and Answers to Co-Workers

- FINRA settled a matter involving a registered representative who provided exam questions and answers to co-workers. The registered representative completed the firm's anti-money laundering and economic sanctions courses and took the applicable exams. He then provided the exam questions and his answers to other firm employees who had not yet taken the courses. FINRA found that the representative's conduct violated FINRA Rule 2010 (ethical standards). FINRA suspended the representative in all capacities for 30 days and fined him $5,000.

Making Exaggerated, Unwarranted and Misleading Statements to the Public

- FINRA settled a matter involving a registered representative who sent several emails to clients that included exaggerated, unwarranted and misleading statements. The registered representative sent numerous emails to his customers to solicit interest in two unregistered offerings of special purpose vehicles, which were established to acquire pre-IPO shares in two issuers. In the emails, the representative made exaggerated and unwarranted statements about both issuers, including that the value of one issuer was $300 billion and that the stock would quintuple in price. The representative also made misleading claims about an issuer's sales and business prospects. FINRA concluded that the representative did not have a reasonable basis for his claims and did not provide prospective investors with a sound basis to evaluate his claims.

  FINRA found that the representative's conduct violated NASD Rule 2210† (communications with the public) and FINRA Rule 2010 (ethical standards). For this misconduct, FINRA fined the representative $10,000 and suspended him in all capacities for one month.

Acting Improperly as a Notary Public

- FINRA settled a matter involving a registered representative who functioned improperly as a notary public while associated with a firm. The representative was registered with the state as a notary public. The representative notarized a firm customer's signature on a power of attorney affidavit. The customer did not sign the document in the presence of the representative and was not present when the representative notarized the document. FINRA concluded that the representative's conduct violated NASD Rule 2110* (ethical standards). FINRA suspended the representative in all capacities for one month and fined him $5,000.

Participating in a Private Securities Transaction, Improperly Borrowing From a Customer and Failing to Amend the Form U4

- FINRA settled a matter involving a registered representative who, over the course of one year, participated in a private securities transaction, improperly accepted a loan from a customer, and failed to timely disclose a judgment and a settlement on the Form U4. The representative purchased 30,000 shares of an issuer for a firm customer for $100,000 away from his member firm and without providing prior written notice to, or obtaining written acknowledgment from, the firm. FINRA concluded that this conduct violated NASD Rule 3040 (private securities transactions) and FINRA Rule 2010 (ethical standards). The representative also borrowed approximately $115,000 from a firm customer with whom the representative also had a business relationship unrelated to the firm. The firm's procedures, however, required that, before accepting a loan from a customer, the representative must receive prior written approval from the firm's compliance department. The representative had not received such approval. FINRA concluded that the representative's conduct in this regard violated FINRA Rules 3240 (borrowing from or lending to customers) and 2010 (ethical standards).

  In addition, the representative failed to amend his Form U4. A state court entered a civil judgment against the representative for approximately $195,000. The registered representative did not amend his Form U4 to disclose this judgment for 350 days. The representative entered a settlement with the civil claimant subsequent to the date of the judgment. He never disclosed the settlement on the Form U4. FINRA concluded that the representative's conduct violated FINRA Rules 2010 (ethical standards) and 1122 (filing misleading registration information), and Article 5, Section 2(c) of the FINRA By-Laws (applications for registration). For all of the representative's misconduct, FINRA suspended the representative in all capacities for three months and fined him $15,000.

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

** NASD Rule 2310 and NASD IM-2310-2 have been superseded by FINRA Rule 2111, effective July 9, 2012.

† NASD Rule 2210 has been superseded by FINRA Rule 2210, effective February 4, 2013.

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