

Quarterly Disciplinary Review

July 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.

Failure to Notify Firm of Outside Brokerage Accounts and to Notify Outside Firms of Association With a FINRA Member Firm

- ▶ FINRA's NAC issued a decision finding that a registered representative failed to notify his member firm that he held outside brokerage accounts at two other firms, and failed to advise the two outside firms that he was associated with a FINRA firm. While the registered representative was associated with a FINRA firm, he maintained nine outside brokerage accounts—four in his own name, one in his wife's name, two on behalf of his children, and two in the name of a partnership, but for which he was listed as account holder or authorized agent. The registered representative disclosed five of the accounts to his firm. He failed to disclose the remaining four, and the complaint alleged violations with respect to two.

The registered representative failed to disclose that he maintained the accounts at two different outside firms, both of which asked in account documentation whether he was associated with a broker-dealer firm. The registered person advised both firms incorrectly that he was not associated with a member firm and misrepresented his occupation. The registered person also did not disclose all of his outside accounts to his firm and, in fact, submitted at least three annual certificates of compliance in which he misrepresented that he had disclosed all outside accounts in which he held an interest. The NAC found that the registered representative's conduct violated NASD Rules [3050](#) (transactions for or by associated persons) and [2110*](#) (ethical standards), and FINRA Rule [2010](#) (ethical standards). In light of these violations, the NAC fined the representative \$25,000, suspended him in all capacities for two years and assessed hearing costs.

Impersonating a Customer to Obtain Confidential Information From Insurance Companies

- ▶ FINRA's NAC issued a decision finding that a registered representative participated in four telephone calls in which associates impersonated customers to obtain confidential information from the customers' insurance companies. The registered person reviewed customers' existing life insurance policies to determine if a replacement insurance policy would better serve the customers' needs. The registered representative determined that some customers held life insurance policies issued by an insurance company affiliated with his firm. For the customers who held insurance policies issued by unaffiliated insurance carriers, the registered person orchestrated an impersonation scheme whereby two junior sales associates impersonated customers during telephone conversations with the customers' insurance carriers to obtain confidential information regarding the customers and their insurance policies. The NAC found that the representative's conduct violated NASD Rule 2110* (ethical standards). The NAC suspended the representative for 18 months in all capacities and fined him \$20,000. The NAC also assessed hearing and appeal costs.

Publicly Disseminating Violative Advertising and Sales Literature

- ▶ FINRA settled a matter involving a registered representative who publicly disseminated videos through YouTube, invitations to seminars and letters regarding bonus incentives that did not comply with FINRA's rules. During a two-year period, the registered representative distributed the communications before obtaining the necessary principal approval. The communications also presented oversimplified claims that omitted material information or failed to provide a sound basis for evaluating the facts, and contained exaggerated, unwarranted or misleading statements. The representative also presented equity index annuities favorably in comparison to other types of annuities without disclosing the risks and limitations associated with them. Moreover, the comparisons contained incomplete information. The representative also presented customer testimonials in videos without making the required disclosures, and failed to file with FINRA advertising that discussed registered investment companies within 10 business days of its first use or publication.

FINRA found that the representative's actions violated NASD Rule 2210[†] (communications with the public) and FINRA Rule [2010](#) (ethical standards). FINRA suspended the registered representative in all capacities for 20 business days and fined him \$10,000.

Unethical Conduct Related to an Arbitration Award

- ▶ FINRA settled a matter involving a registered representative who engaged in unethical conduct related to an arbitration award against him. FINRA's rules require that all monetary arbitration awards be paid within 30 days of issuance unless a motion to vacate has been filed. In April 2012, an arbitration panel issued an arbitration award against the representative and in favor of three claimants in an amount in excess of \$550,000. The claimants moved to affirm the award in state court. FINRA rules require registered representatives to pay arbitration awards within 30 days unless a motion to vacate has been filed, and state that a registered person who does not timely pay an arbitration award may be subject to summary suspension of his license until payment is made. The representative filed a motion to vacate the award to prevent summary suspension of his license. Through counsel, the representative thereafter requested extensions of time and continuances of hearings, and represented to the court that he would require several weeks to obtain tape recordings of the arbitration proceedings and have them transcribed. The representative never attempted to obtain the tape recordings, and used the court continuances and extensions to avoid paying the arbitration award without being summarily suspended. In total, the representative requested that the court grant continuances of the proceedings until well into November 2012.

FINRA concluded that the representative's conduct was unethical and violated FINRA Rule [2010](#) (ethical standards). FINRA suspended the representative in all capacities for 30 days. Because the representative filed a Chapter 7 bankruptcy petition, FINRA did not impose a fine.

Engaging in Outside Business Activity Without Providing Prompt Written Notice and Providing False Information to Firm

- ▶ FINRA settled a matter involving a registered representative who provided false information to his firm and failed to provide the firm with notice of outside business activity. FINRA rules and firm procedures required associated persons to provide prompt written notice of outside employment. Firm procedures also required employees to provide prior notice and obtain prior approval before serving as a trustee for anyone other than an immediate family member. For a period of one-and-one-half years, the registered representative served as trustee to a client who was not his family member without providing notice to, or obtaining approval from, the member firm.

The firm also required its employees to report the receipt of all customer gifts valued in excess of \$100 except for gifts from immediate family members. The registered representative ignored this requirement, when:

- in a January 2007 audit, he falsely stated that he had not received a gift from a client valued at more than \$100 when he had received two gifts totaling more than \$10,000 during the audit period from the client for whom he served as trustee;

- in a July 2007 audit, he falsely stated that he had not received a gift from a client valued at more than \$100 when he had received a gift of \$5,000 during the audit period from the same client;
- in a July 2008 audit, he falsely stated that he had not received a gift from a client valued at more than \$100 when he had received four gifts totaling more than \$16,000 during the audit period from the same client;
- in a March 2009 audit, he falsely stated that he had not received a gift from a client valued at more than \$100 when he had received three gifts totaling \$7,000 during the audit period from the same client; and
- in a September 2010 audit, he falsely stated that he had not received a gift from a client valued at more than \$100 when he had received four gifts totaling more than \$38,000 during the audit period from the same client.

Additionally, on four occasions, the registered representative falsely answered “no” to the question of whether he was serving as a trustee on firm questionnaires and during firm audits.

FINRA found that the representative’s conduct violated NASD Rules 3030[†] (outside business activities) and 2110* (ethical standards), and FINRA Rules [3270](#) (outside business activities) and [2010](#) (ethical standards). FINRA suspended the representative in all capacities for five months and fined him \$15,000.

Failing to Disclose Liens, a Judgment and a Bankruptcy Filing on the Form U4

- ▶ FINRA settled a matter involving a registered representative who was aware of liens, a judgment against him and his own bankruptcy filing, but failed to disclose them on the Form U4 within 30 days after each event, as FINRA rules require. In June 2009 and March 2010, a state filed two tax liens against the representative in the amounts of approximately \$3,500 and \$2,000. The liens were subsequently released. Despite knowing about the liens, the representative failed to disclose them and the subsequent releases on the Form U4 within 30 days of the events. The registered representative eventually disclosed the liens on the Form U4, but only after the firm discovered the liens and releases. In September 2010, a state court entered a judgment against the representative in the amount of approximately \$4,100. The registered representative failed to disclose the judgment on the Form U4 until August 2011, after the firm requested that he do so. In May 2011, the representative filed a bankruptcy petition, but failed to update his Form U4 to disclose the petition until July 2011. FINRA concluded that the representative’s failures to disclose were willful. Because the settlement included a finding that the representative’s omissions were willful, under the Securities Exchange Act of 1934, the representative may be statutorily disqualified from the industry.

FINRA found that the representative’s conduct violated FINRA Rules [1122](#) (filing misleading information as to registration) and [2010](#) (ethical standards), NASD IM-1000-1[§] (filing misleading information as to registration), and [Article V, Section 2](#) of FINRA’s By-Laws (applications for registration). For this misconduct, FINRA fined the representative \$5,000 and suspended him in all capacities for three months.

Improper Borrowing From a Customer and Failing to Timely Notify Firm of Bankruptcy Filing

- ▶ FINRA settled a matter involving a registered representative who borrowed funds from a customer in contravention of firm policies and filed a petition in bankruptcy without providing timely notice to the firm. In 2005 and 2006, the representative borrowed from a customer approximately \$40,000, which he repaid with interest. In 2007, he borrowed an additional \$100,000 from the customer, of which he repaid only \$16,000. The remainder of the debt was discharged when the representative filed a petition for bankruptcy relief. The firm's policies expressly prohibited lending arrangements between registered representatives and customers. Additionally, the representative did not notify the firm of his bankruptcy filing until nearly two months after the filing. Firm procedures required the representative to notify the firm within 30 days.

FINRA concluded that the representative's conduct violated NASD Rules 237** (borrowing from or lending to customers) and 2110* (ethical standards), and [Article V, Section 2](#) of FINRA's By-Laws (applications for registration). FINRA suspended the representative in all capacities for nine months and fined him \$7,500.

Maintaining Securities Accounts Away From the Firm Without Providing Firm With Prior Written Notice

- ▶ FINRA settled a matter involving a registered representative who failed to provide his firm with prior written notice of numerous outside brokerage accounts. The representative maintained nine outside brokerage accounts at different firms. Four accounts were personal accounts, three were trust accounts for relatives for whom he was trustee, and one account was an IRA account he had inherited. The representative established or inherited these accounts before joining the member firm. The final account was a joint account with a relative that he opened when he joined the firm. When the representative joined the firm, he orally notified the firm of all of the accounts. He failed to provide written notice and the details of where the accounts were located, however, until nearly four years after joining the firm. The representative also failed to provide timely written notice to the outside firms of his association with a FINRA member.

FINRA concluded that the representative's conduct violated NASD Rules [3050](#) (transactions by or for associated persons) and 2110* (ethical standards), and FINRA Rule [2010](#) (ethical standards). FINRA censured the representative and fined him \$10,000.

* NASD Rule 2110 has been superseded by FINRA Rule [2010](#), effective December 15, 2008.

† NASD Rule 2210 has been superseded by FINRA Rule [2210](#), effective February 4, 2013.

‡ NASD Rule 3030 has been superseded by FINRA Rule [3270](#), effective December 15, 2010.

§ NASD IM-1000-1 has been superseded by FINRA Rule [1122](#), effective August 17, 2009.

** NASD Rule 2370 has been superseded by FINRA Rule [3240](#), effective June 14, 2010.