Quarterly Disciplinary Review

April 2014

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.

Falsely Providing a Signature Guarantee

- FINRA settled a matter involving a registered sales assistant who falsely guaranteed the authenticity of a customer's signature on wire transfer requests. The registered person's firm required customer requests for wire transfers to be in writing and accompanied by a signature guarantee or a notarized signature. The firm's signature guarantee procedures required the customer to sign the wire request in the presence of a firm-authorized individual, and to provide the authorized individual with government-issued photographic identification to substantiate the customer's identity. At the time of the wire transfer requests, the firm had authorized the registered sales assistant to guarantee signatures.

  The registered sales assistant was responsible for assisting three registered representatives. In 2012, an imposter hacked one of the representative's customer's email accounts. The imposter contacted a registered representative at the firm to request a wire transfer from the customer's account to a third-party account in Singapore. The imposter emailed the registered representative a signed wire transfer form, which the representative gave to the sales assistant. The sales assistant falsely represented on the wire transfer request that he had authenticated the customer's signature in accordance with the firm's policy, even though he had not actually witnessed the customer signing the document or obtained identification to verify the signor's identity. The firm honored the request and transferred more than $40,000 from the customer's account.

  One week later, the imposter requested a second transfer. Once again, the sales assistant falsely represented on the wire transfer request that he had authenticated the customer's signature in accordance with the firm's policy, even though he had not actually witnessed the customer signing the document or obtained identification to verify the signor's identity. The firm honored the request and transferred an additional $30,000 from the customer's account.

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The same course of events occurred a third time, and the sales assistant again falsely represented on the wire transfer request that he had authenticated the customer's signature in accordance with the firm's policy when he had not. The firm contacted the customer before honoring the third transfer request and placed a hold on the account.

FINRA found that the sales assistant's conduct violated FINRA Rules 2010 (ethical standards) and 4511 (general requirements for books and records). For this misconduct, FINRA fined the sales assistant $7,500 and suspended him from associating with any member firm in any capacity for two months.

Failing to Disclose Civil Judgments on Form U4

- FINRA settled a matter involving a registered representative who failed to disclose four civil judgments and failed to timely disclose an additional judgment on his Form U4. FINRA's rules require registered representatives to update Forms U4 within 30 days after learning of the circumstances creating the need to amend. Question 14M on the Form U4 requires registered representatives to disclose unsatisfied judgments and liens. Furthermore, the firm regularly reminded registered representatives to update Forms U4 to report all reportable events.

  In September 2007, a creditor obtained a judgment against the registered representative for more than $5,000. The registered representative failed to update his Form U4 for more than one year. Between 2009 and 2011, creditors obtained four additional judgments against the registered representative for a total amount of approximately $23,000. A member of the firm's licensing department advised the representative that one of the creditors had garnished his wages and that he needed to update his Form U4. The registered representative never amended the Form U4 to disclose these judgments. Because the representative was on notice of the need to update his Form U4, FINRA concluded that his violations were willful.

  FINRA concluded that the representative's conduct violated Article V, Section 2 of FINRA's By-Laws (applications for registration), NASD IM 1000-1+ (filing misleading information as to registration), NASD Rule 2110* (ethical standards), and FINRA Rules 2010 (ethical standards) and 1122 (filing misleading registration information). As a result, FINRA suspended the representative in all capacities for three months and fined him $5,000. In addition, because his failure to disclose material information was deemed willful, the representative was statutorily disqualified from the securities industry.

Selling Away and Selling Securities Without the Proper Registration

- FINRA settled a matter involving an individual registered as an investment company products/variable contracts limited representative who sold away from his firm and sold securities without the proper registration. The individual's firm prohibited private securities transactions, regardless of whether compensation was paid for effecting the transaction. The individual facilitated two private sales of limited liability company interests, one for $100,000 and one for $50,000, to two of the firm's customers, without providing notice to or receiving prior approval from the firm. The individual received $6,700 in compensation for the transactions. FINRA found that the individual's conduct violated NASD Rules 3040 (private securities transactions) and 2110* (ethical standards).

  At the time when the individual facilitated the two private securities transactions, he was registered as an investment company products/variable contracts limited representative, which was not adequate for engaging in the sales of securities. FINRA found that the representative's conduct violated NASD Rules 1031 (registration requirements) and 2110* (ethical standards). FINRA suspended the individual in all capacities for 100 days and fined him $16,700.

Exercising Discretion Without Authorization or Approval

- FINRA settled a matter involving a registered representative who exercised discretion in two customer accounts without authorization or approval. The two customers periodically discussed their account strategies with the representative and gave him verbal authorization to exercise discretion in their accounts. The customers did not give him written authorization and the firm did not approve the accounts as discretionary. During a period of two months, the representative exercised discretion by placing 20 trades in the two accounts. FINRA found that the representative's conduct violated NASD Rules 2510 (discretionary accounts) and 2110* (ethical standards). FINRA suspended him in all capacities for 10 business days and fined him $5,000.

Failing to Appear to Provide On-the-Record Testimony

- FINRA settled a matter involving a registered representative who failed to appear to provide on-the-record testimony. FINRA was investigating the firm's anti-money laundering procedures and the reporting of suspicious activities. In November 2012, FINRA staff requested information from the representative. He provided a written response. In March 2013, FINRA staff requested that he appear and provide on-the-record testimony. The representative thereafter confirmed with FINRA staff that he would appear and provide sworn testimony. In April 2013, however, he advised FINRA staff that he would neither appear nor provide sworn testimony. FINRA concluded that the representative's conduct violated FINRA Rules 8210 (information and testimony) and 2010 (ethical standards). FINRA barred the representative in all capacities.

Refusing to Respond to FINRA's Information Requests

- FINRA settled a matter involving a registered representative who refused to provide information and documents requested pursuant to FINRA's investigation of a firm's compliance with the Bank Secrecy Act and the liquidation of penny stocks. On two instances in late 2012, FINRA requested information and documents from the representative, and he responded within the time indicated. After FINRA discovered additional, related information, FINRA issued a third request for documents and information. The registered representative refused to respond to the third request. FINRA concluded that the representative's conduct violated FINRA Rules 8210 (information and testimony) and 2010 (ethical standards). FINRA barred the representative in all capacities.

Forging Customer Names and Converting Customer Funds

- FINRA settled a matter involving a registered representative who forged customer signatures on bank withdrawal slips and converted customer funds to his own use. On four occasions in January 2012, the registered representative, without the customer's knowledge or authorization, completed a bank withdrawal slip, forged the customer's signature on each withdrawal slip, and directed that an amount less than $200 be withdrawn from the customer's checking account. The representative used his employee number to make the withdrawals without the customer being present and providing identification. The representative converted a total of $700 of the customer's funds to his own use.

  FINRA found that the representative's conduct violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA barred the representative from associating with any member firm in any capacity.

Borrowing Customer Funds Without Approval, Failing to Timely Update a Form U4 and Failing to Provide Truthful Testimony

- FINRA settled a matter involving a registered representative who engaged in several acts of misconduct. The representative was associated with a firm that did not allow registered representatives to borrow money from customers. In 2007, the representative nonetheless borrowed $1,200 from an elderly customer without the firm's approval. FINRA concluded that the representative's conduct violated NASD Rules 2370** (borrowing from or lending to customers) and 2110* (ethical standards).

  FINRA's By-Laws require registered representatives to update their Form U4 within 30 days of the date when a reportable event occurs, including in the event that the representative enters into a compromise for the forgiveness of outstanding debt. In late 2010, the registered representative agreed to make three payments totaling more than $1,500 to a creditor for the forgiveness of an outstanding debt. At the same time, the representative paid more than $7,000 to another creditor for the forgiveness of another outstanding debt. The representative failed to disclose the first compromise for 11 months after he entered the agreement, and failed to disclose the second compromise for more than nine months after the disposition date. FINRA concluded that the representative's actions violated FINRA Rules 1122 (filing misleading registration information) and 2010 (ethical standards).

  The registered representative appeared before FINRA and provided on-the-record testimony. During this on-the-record interview, the representative provided inaccurate testimony regarding his receipt of payments from a third party. FINRA concluded that this conduct violated FINRA Rules 8210 (information and testimony) and 2010 (ethical standards).

  FINRA suspended the representative from associating with any member firm in any capacity for two years and fined him $5,000.

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

\+ 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.