

# Quarterly Disciplinary Review

April 2015

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.

## Selling Unregistered Securities Without a Registration Exemption

- ▶ FINRA settled a matter involving a registered representative who sold unregistered securities without the benefit of a registration exemption. Between May 2009 and May 2010, 14 customers deposited and sold over 71 million shares of a speculative issuer's thinly traded security. The accountholders, who were not related to the representative, were family members and generally maintained the same address of record. The shares they deposited and sold were not issued pursuant to a registration statement and were not permitted to be resold absent an applicable exemption from registration.

The representative was the broker of record and trader on the individuals' accounts. In that capacity, he was required to undertake reasonable efforts to ensure that the sales of the securities did not constitute an improper unregistered distribution. However, the representative failed to meet that standard. For example, despite the restrictions on the sale of the security, the representative repeatedly permitted the individuals to deposit and sell large blocks of the issuer's shares. He also allowed the customers to complete "Deposited Securities Questionnaires," in which they indicated that they acquired the shares in private transactions from other family members. The representative did not adequately investigate the transactions to determine the basis for the repeated issuance of large blocks of stock, and at one point, executed transactions that resulted in the 14 customers owning 11.2 percent of the issuer's outstanding shares, and six individuals selling four million shares in a single day.

The representative failed to undertake reasonable efforts to ascertain whether the unregistered securities could be sold without an exemption, and in so doing, acted in contravention of [Section 5 of the Securities Act of 1933](#) (Securities Act) (sales of unregistered securities) and violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for 30 calendar days and fined him \$10,000.

## Willfully Failing to Amend the Form U4, Submitting False Firm Compliance Affirmations, and Failing to Timely Respond to FINRA Requests

- ▶ FINRA settled a matter involving an associated person who willfully failed to amend her Form U4 to disclose two felony charges and a felony conviction, submitted two firm compliance affirmations that falsely certified that she had disclosed any arrests or criminal proceedings, and failed to timely respond to FINRA's request for information and documents. In September 2011, while employed with a FINRA firm, the associated person was arrested and charged with two felony counts of residential burglary. In July 2012, she pled guilty to, and was convicted of, one felony count of residential burglary. Although the associated person was required to keep her Form U4 current at all times and to file any amendment to the Form U4 within 30 days of learning of the facts or circumstances giving rise to the amendment, she failed to do so. The associated person's Form U4 was amended four times for various reasons after she was charged with residential burglary, but none of the amendments disclosed the two felony charges, or when applicable, the felony conviction. The associated person's failure to amend her Form U4 violated [Article V, Section 2\(c\) of the FINRA By-Laws](#) (application for registration), and FINRA Rules [1122](#) (filing misleading information as to registration) and [2010](#) (ethical standards).

The associated person also submitted false compliance affirmations to her firm. While the associated person was employed with the firm, her firm's Code of Conduct required that she immediately report any arrest or legal proceeding relating to a criminal charge. In July 2012, after the filing of the felony burglary charges but prior to the felony burglary conviction, the associated person electronically signed and submitted a Code of Conduct 2012 Affirmation Record, in which she affirmed that she had notified her employer of the disclosable events listed in the Code of Conduct. Because the associated person did not report the felony charges to her firm, this statement was false. She still had not notified her employer of the charges and conviction by July 2013, when she submitted a 2013 compliance affirmation in which she falsely affirmed disclosure of any arrests or legal proceedings related to criminal charges. The associated person's submission of the false firm compliance affirmations violated FINRA Rule [2010](#) (ethical standards).

Finally, the associated person failed to timely respond to FINRA's request for information and documents concerning her disclosure of the felony charges and conviction. In November 2013, FINRA sent the associated person a letter requesting documents and a written statement regarding the allegations that she had failed to amend her Form U4 to report felony charges. The letter required the associated person's response by December 18, 2013, but she failed to respond to FINRA's request within the prescribed time period. On December 26, 2013, having not received any response, FINRA sent the associated person a letter notifying her that her registration with FINRA may be suspended, and subsequently barred, unless she responded to the information and documents request. The associated person supplied the information and documents in March 2014, three months after the original prescribed time period. The associated person's failure to timely comply with FINRA's request for information and documents violated FINRA Rules [8210](#) (provision of information and testimony and inspection and copying of books) and [2010](#) (ethical standards).

For all of these violations, FINRA suspended the associated person in all capacities for 16 months and fined her \$15,000. FINRA also subjected the associated person to statutory disqualification because FINRA found that her failure to amend the Form U4 was willful.

### Engaging in Outside Business Activities Without Written Notice to the Firm and Providing Inaccurate Responses on Annual Compliance Certifications

- ▶ FINRA settled a matter involving a registered representative who engaged in two outside business activities without providing written notice to his firm and provided inaccurate responses regarding his outside business activities on his firm's annual compliance certifications. In December 2008, the representative sought his employer's approval to serve as the proprietor/owner and director of a third-party administrative trust company marketed to brokers and financial advisers. In April 2009, the firm denied the representative's request and also issued an internal reprimand to the representative due to his involvement with the trust company prior to receiving approval. In August 2012, he submitted a new request for approval of the trust company as an outside business activity. The firm denied the representative's second request. Despite the two denials and the April 2009 reprimand, he remained actively involved with the trust company as a partner and consultant.

In May 2012, the representative incorporated a marketing company, which the representative formed to help firms recruit agents and help them market to their clients. In November 2012, he requested the firm's approval to participate in the marketing company as an outside business activity. The firm denied the request. In April 2013, the firm reprimanded the representative for unauthorized activity related to the marketing company, fined him \$2,000, ordered him to cease his association with the marketing company, and reminded him of his reprimand in April 2009 for his activities with the trust company. Despite the warnings and reprimand, he continued to manage and direct the business and development of the marketing company. The representative's outside business activities violated FINRA Rules [3270](#) (outside business activities) and [2010](#) (ethical standards) for misconduct that occurred after December 15, 2010, and NASD Rule 3030\* (outside business activities) and FINRA Rule [2010](#) (ethical standards) for misconduct that occurred prior to December 15, 2010.

The representative also provided inaccurate responses regarding his outside business activities on his firm's annual compliance certifications. He completed and submitted the firm's annual compliance questionnaire in April 2009, October 2010, November 2011 and October 2012. In each questionnaire, he denied providing third-party administration services, denied being involved in any retail or wholesale merchandising or services, and certified that he had disclosed all outside business activities in which he was engaged. The representative's responses were inaccurate in light of his ongoing involvement with the trust company from 2009 through 2012, and the marketing company in 2012. The representative's inaccurate responses on the FACQs violated FINRA Rule [2010](#) (ethical standards).

For all of these violations, FINRA suspended the representative in all capacities for six months and fined him \$5,000.

### Willfully Failing to Timely Amend the Form U4 to Disclose Federal Tax Liens

- ▶ FINRA settled a matter involving a registered representative who willfully failed to timely amend his Form U4 to disclose six federal tax liens. Between February 2010 and October 2013, while associated with a FINRA firm, the IRS filed six federal tax liens that ranged from roughly \$15,000 to more than 75,000.

The representative received notice of these liens from the IRS, but he did not amend his Form U4 to reflect the liens until October 2013. And he only did so after his employer discovered an email between the representative and his accountant referencing the federal tax liens.

The representative's failure to timely amend his Form U4 to report the federal tax liens violated [Article V, Section 2\(c\) of FINRA's By-Laws](#) (application for registration), and FINRA Rules [1122](#) (filing misleading information as to registration) and [2010](#) (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for three months and fined him \$5,000. FINRA also subjected the representative to statutory disqualification because FINRA found that his failure to timely amend the Form U4 was willful.

### Failing to Disclose the Ownership of Securities Discussed on Social Media, and Making Unfair and Unbalanced Posts on Social Media That Failed to Provide a Sound Basis for Evaluating the Securities

- ▶ FINRA settled a matter involving a research analyst who failed to disclose that he owned securities he discussed on social media, and made posts on social media that were unfair and unbalanced and failed to provide a sound basis for evaluating the subject securities. Between April 2009 and June 2011, the analyst maintained an account on a social media outlet, on which he had approximately 50 followers. During this same period, while registered as a research analyst at a FINRA firm, he posted messages to his social media account concerning securities that he covered as an analyst. The representative also personally owned seven securities that he discussed in 11 of his social media posts, but he failed to disclose in those 11 posts that he owned shares of the subject securities. Finally, in 14 of the analyst's social media posts, he either failed to be fair and balanced by disclosing the risks or contingent factors associated with the purchase or sale of the securities, or failed to provide a sound basis for evaluating the subject securities.

The analyst's undisclosed ownership of the securities that he discussed on social media, his unfair and unbalanced discussion of securities on social media, and his failure to provide a sound basis for evaluating the securities discussed in his social media posts violated NASD Rules [2711\(h\)\(1\)\(A\)](#) (disclosure requirements of research analysts) and [2210\(d\)\(1\)\(A\)\\*\\*](#) (standards applicable to all communications with the public), NASD Interpretive Memorandum (IM) [2210-1\\*\\*](#) (guidelines to ensure that communications with the public are not misleading) and FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the analyst in all capacities for 10 business days and fined him \$15,000.

## Improperly Accepting Monetary Gifts and Loans From Customers, Providing False Information on the Firm's Annual Certifications, and Providing Materially False Responses and Misleading Information to the Firm

- ▶ FINRA settled a matter involving a registered representative who improperly accepted monetary gifts and loans from customers, falsely reported on the firm's annual certifications that he had not obtained gifts or loans from customers, and provided materially false responses and misleading information to the firm regarding the gifts and loans. The representative's employer maintained a strict prohibition against borrowing money from clients who were not immediate family members and prohibited its registered representatives from receiving monetary gifts from customers and if they received monetary gifts, to report them to the firm.

In January and October 2012, respectively, the representative received \$5,000 and \$2,000 as gifts from two customers. He was aware of the firm's policy against receiving loans and cash gifts, but nevertheless accepted the funds from the customers and failed to disclose the gifts to, or get approval from, the firm. In October 2013, he asked an elderly customer for a \$5,000 loan. The customer loaned him the money. The representative and the customer executed an unsecured promissory note, and the representative agreed to make payments of \$300 per month to the customer. The representative made \$450 in payments on the loan, but then stopped payment on the loan. The representative did not notify the firm, or receive the firm's approval, for the loan from the customer. The representative's improper acceptance of the monetary gifts violated FINRA Rule [2010](#) (ethical standards), and his acceptance of the loan violated FINRA Rules [3240\(a\)](#) (borrowing from or lending to customers) and [2010](#) (ethical standards).

The representative also made false attestations and statements to the firm concerning the monetary gifts and loans he had received. His firm required that all registered representatives complete an annual certification form to confirm their compliance with the firm's policies and procedures. In October 2012, the representative falsely stated on the annual certification that he had not received any gifts from customers in 2012; however, this wasn't true. As stated above, by October 2012, the representative had accepted \$7,000 in monetary gifts from customers. Similarly, in October 2013, the representative falsely stated in the firm's annual certification that he had not received any loans from customers during 2013; however, as stated above, the representative had received a \$5,000 loan from a customer in 2013 before submitting the annual certification.

In February 2014, the representative's supervisors initiated an investigation when they were alerted to the \$2,000 gift he had received from the customer in October 2012. During the investigation, the representative was asked whether he had accepted loans from customers. In response, the representative falsely informed the firm's investigators that the email was sent errantly to him, and that it was intended for the customer's other adviser at another firm who had the same name. He also falsely stated, orally and in writing, that he had never made any loan requests, or obtained any funds from, any customer.

The representative's materially false and misleading responses on the annual certifications, and false oral and written statements to the firm, violated FINRA Rule [2010](#) (ethical standards). For improperly accepting loans and monetary gifts from customers, providing false information on the firm's annual certification, and providing materially false responses and misleading information to the firm, FINRA suspended the representative in all capacities for one year, fined him \$20,000, and ordered him to pay restitution to one of the customers in the amount of \$4,550, plus interest.

### Attempting to Convert Firm Funds, Submitting False Expense Reports, Causing the Firm to Maintain Inaccurate Books and Records, and Failing to Comply With Requests for On-the-Record Testimony

- ▶ FINRA settled a matter involving a registered representative who attempted to convert firm funds, submitted false expense reports, caused his firm to maintain inaccurate books and records, and failed to comply with requests for on-the-record testimony. In October 2013, the representative submitted 11 travel and entertainment expense reports to the firm seeking reimbursement for \$9,700 in expenses he had incurred earlier that year. The representative falsely claimed that \$8,400 of the expenses, including personal taxi rides and meals, were related to the firm's business, even though the expenses were personal. The firm discovered the false expense reports and refused to pay the personal expenses. By seeking reimbursement from the firm for personal expenses, the representative attempted to convert funds from the firm, in violation of FINRA Rule [2010](#) (ethical standards). The representative also submitted false expense reports to the firm and caused the firm to maintain inaccurate books and records, in violation of FINRA Rules [4511](#) (books and records).

In April 2014, FINRA sent the representative's attorney a letter requesting that the representative appear to provide on-the-record testimony at FINRA's office in May. The representative failed to appear and provide testimony on the designated date. FINRA sent the representative's attorney a second request in July 2014 requesting that the representative appear to provide testimony in August. The representative failed to appear once again. By failing to provide testimony, the representative violated FINRA Rules [8210](#) (provision of information and testimony and inspection and copying of books) and [2010](#) (ethical standards).

For these violations, FINRA barred the representative in all capacities.

## Converting Funds

- ▶ FINRA settled a matter involving a registered representative who converted bank funds while serving as a personal banker. On two separate occasions between May and June 2014, the representative took \$700 and \$500, respectively, from a teller drawer while serving as a personal banker with a bank. The representative used the funds for his personal benefit, but later returned the funds to his teller drawer without his bank's knowledge. In July 2014, the representative took another \$800 from his teller drawer and used the funds for his personal benefit. Since the representative had did not have the bank's permission or authority to use the funds for his personal benefit, he converted the funds and violated FINRA Rule [2010](#) (ethical standards). FINRA barred the representative in all capacities for the misconduct.

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

\*\* NASD Rule 2210 and NASD IM-2210-1 have been superseded by FINRA Rule [2210](#), effective December 1, 2014.