Quarterly Disciplinary Review

January 2016

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 Securities and Exchange Commission (SEC) decisions in FINRA cases). These summaries call attention to, and remind registered representatives and 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.

Failing to Disclose Outside Business Activities

- FINRA settled a matter involving a registered representative who failed to disclose two outside business activities. In the first instance, the representative participated in a 401(k) advisory business between April 2011 and March 2014. The representative began participating in the advisory business before he provided his firm with written notice of the activity. After he began engaging in the activity, however, the representative sought approval from the firm. The firm expressly denied the representative's request. Despite receiving notice of the firm's disapproval of the activity, the representative continued to perform some activities for the advisory business.

  In the second instance, the representative served on the board of directors for a college alumni club, and he worked as the alumni club's webmaster. Once again, the representative sought approval his firm's approval to engage in the outside business activities, but only after he began his employment with the alumni club. In response to his request for permission to serve on the alumni club's board of directors and manage the alumni club's technology, the firm informed the representative that there were certain steps that he needed to take for the firm to grant him approval. The representative never performed the required steps to receive the firm's approval, but he continued his activities for the alumni club.

  The representative's involvement with the 401(k) advisory business and college alumni club without his firm's approval violated FINRA Rules 3270 (outside business activities) and 2010 (ethical standards). For engaging in the outside business activities, FINRA suspended the representative in all capacities for 60 calendar days and fined him $5,000.

Financial Industry Regulatory Authority

Accepting Powers of Attorney Without Obtaining Prior Approval, Accepting a Gift from Customers, Borrowing Funds from Customers, and More

- FINRA settled a matter involving a registered representative who accepted powers of attorney without obtaining the firm's prior approval, accepted a gift from customers, borrowed funds from customers, made misstatements to the firm, and used improper discretion in customer accounts. In January 2013, the representative's elderly relatives appointed her as an agent under two powers of attorney. The representative's relatives were not considered to be her "immediate family members," as the term is defined in the firm's policies. Consequently, the firm required the representative to obtain its approval prior to accepting the appointment under the powers of attorney. The representative's failure to obtain the firm's prior approval for the agent appointments violated FINRA Rule 2010 (ethical standards).

  In April 2013, acting as an agent under the relatives' powers of attorney, the representative issued a check in the amount of $26,000 as a gift to herself. The representative deposited the proceeds of the check into her personal bank account and used the funds to pay her personal expenses. Even though the representative's relatives authorized the gift, the amount of the gift exceeded the written authority of the powers of attorney and $100-limit on gifts that may be received from customers without the firm's prior approval. After the firm discovered the gift, the firm requested that the representative return the funds to her relatives, and she did. The representative did not obtain the firm's approval prior to accepting the gift, and in so doing, the representative acted unethically and violated FINRA Rule 2010 (ethical standards).

  In October 2013, acting in her capacity as agent under the powers of attorney, the representative issued a $12,000 check from her relatives' account as a loan to herself. The loan was interest free, and it was not subject to repayment terms other than that it had to be repaid on demand. The representative deposited the proceeds of the loan into her personal bank account and used the funds to pay her personal expenses. When the relatives lent the funds to the representative, the relatives were the firm's customers. The representative repaid the loan in December 2013, also while the relatives were the firm's customers. The representative did not notify the firm that she had received the loan, or obtain the firm's approval to do so. The representative therefore borrowed funds from firm customers—in contravention of the firm's prohibition on such lending arrangements—and violated FINRA Rules 3240 (borrowing from or lending to customers) and 2010 (ethical standards).

  In November 2013, the firm's staff questioned the representative concerning the gift and loan she had received in April 2013 and October 2013, respectively. The representative represented to the firm that she had issued the checks for the gift and loan for her relative's benefit, and that she had used the proceeds of the gift and loan to pay the relatives' hospital and ambulance bills. These representations were false. The checks issued from the relatives' account as a gift and loan to the representative were not used to benefit the relatives—they were used to pay the representative's personal expenses. The representative similarly represented to the firm's staff that she was holding the proceeds of the $26,000 "gift" check in her personal bank account to safeguard the funds in case her relatives needed the funds back. This representation was false because the representative was using the funds to pay her personal expenses. The representative's misrepresentations to the firm violated FINRA Rule 2010 (ethical standards).

Finally, from January 2013 to May 2013 the representative executed 10 securities purchases in the relatives' account without contacting the relatives prior to executing the trades. The firm's policies stated that only the representatives who received the firm's preapproval to exercise discretion in customer accounts could do so. When the representative executed the 10 trades, the firm had not approved the powers of attorney or accepted the representative's relatives' account as discretionary. The representative's improper exercise of discretion in the relatives' account violated NASD Rule 2510(b) (discretionary accounts) and FINRA Rule 2010 (ethical standards). For accepting powers of attorney without obtaining prior approval, accepting a gift from customers, borrowing funds from customers, making misstatements to the firm, and using improper discretion in a customer account, FINRA suspended the representative in all capacities for two years and fined her $40,000.

Failing to Disclose Financial Interest in Securities That Were the Subject of Research Reports, Omitting a Material Fact from Research Reports, and Failing to Provide a Sound Basis to Evaluate the Securities Discussed in the Research Reports

- FINRA settled a matter involving a research analyst who failed to disclose her financial interest in securities that were the subject of her research reports, omitted a material fact from the research reports, and failed to provide a sound basis to evaluate the subject securities. Prior to joining her firm, the analyst owned shares of two pharmaceutical companies (collectively, "subject securities") in an outside brokerage account and employer-sponsored 401(k) plan. The analyst disclosed the two securities accounts to the firm, but she did not disclose her financial interest in the subject securities.

  Shortly after the analyst began her employment with the firm, she began working as a junior research analyst in the "large cap" division of the firm's equity research department. The department researched and issued research reports related to the subject securities. The analyst attempted to inform the firm of her holdings in the subject securities, but she did not obtain the firm's authorization to retain her holdings in the companies, as required by firm policy.

  Despite the analyst's failure to obtain the firm's approval to maintain her financial interest in the subject securities, she continued with her junior research analyst duties at the firm, which included proofreading and editing research reports, inputting data into earnings models, calculating discounted cash flow for the securities discussed in research reports, and, on occasion, drafting research report language.

  During the period under review (June 2011 to June 2013), the analyst worked on 166 research reports that included analyses of the subject securities. The analyst's financial interest in the subject securities should have been disclosed in the research reports, and her failure to ensure that the research reports contained the proper disclosures violated NASD Rule 2711(h)(1)(A) (disclosure requirements of research analysts) and FINRA Rule 2010 (ethical standards).

The analyst's failure to disclose her financial interest in the subject securities in the research reports also constituted a material omission from the reports, which caused the reports to be misleading and lacking a sound basis to evaluate the subject securities. As a result, the analyst's omission also violated FINRA Rule 2010 (ethical standards), NASD Rule 2210(d)(1)(A)* (communications with the public) for conduct occurring prior to February 4, 2013, and FINRA Rule 2210(d)(1)(A) (communications with the public) for conduct occurring on or after February 4, 2013.

For failing to disclose her financial interest in the subject securities, omitting a material fact from the research reports, and failing to provide a sound basis to evaluate the subject securities, FINRA suspended the analyst in all capacities for 60 business days and fined her $5,000.

Participating in Undisclosed Private Securities Transactions

- FINRA settled a matter involving an investment company products/variable contracts representative who participated in undisclosed private securities transactions. Between July 2012 and December 2013, while associated with a firm, the representative recommended that two customers invest in a private investment venture managed by the representative's wife. The wife's venture focused on alternative investments in start-up companies that were relatively illiquid and had high minimum investment thresholds. After the representative recommended his wife's investment venture to the customers, the customers invested approximately $60,000 with the representative's wife.

  The representative's solicitation of the customers violated NASD Rule 3040 (private securities transactions) and FINRA Rule 2010 (ethical standards) because the representative did not provide prior written notice to the firm, or receive the firm's written approval, to solicit customers to participate in his wife's investment venture. For this misconduct, FINRA suspended the representative from associating with any firm in any capacity for three months and fined him $10,000.

Instructing Customers to Pre-Sign Firm Forms, Completing Pre-Signed Forms, and Submitting Pre-Signed Forms to the Firm

- FINRA settled a matter involving a registered representative who instructed customers to pre-sign blank or incomplete firm forms, completed the forms, and submitted them to the firm for processing. In December 2009, the representative instructed a customer to sign and date blank customer account transfer forms, which authorized the firm's transfer of assets from a financial institution to the firm. The representative completed the blank pre-signed forms and submitted them to the firm for processing.

  In May 2010, the representative instructed a second customer to sign and date a partially completed investment switch letter, which authorized the firm's exchange of one investment product for another investment product. The representative completed the customer's partially complete investment switch form, by, among other things, explaining why the customer wanted to exchange investment products. The representative submitted the completed investment switch form to the firm for processing.

In September 2010, the representative instructed a third customer to sign a blank investment switch form. Once again, the representative completed the pre-signed investment switch form and submitted it to the firm for processing.

The pre-signed forms, which the representative completed and submitted to the firm, inaccurately implied that the customers had reviewed and approved all the information contained on the forms prior to affixing their signatures to them. The representative's actions were unethical and violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the representative from association with any firm in any capacity for 30 calendar days and fined him $5,000.

Misrepresenting the Registered Representative of Record on Customer Accounts

- FINRA settled a matter involving a registered sales assistant who misrepresented that she was the registered representative of record on nine customer accounts. From March 2006 to September 2013, the sales assistant served as the office manager for her employer, an individual who also was registered with FINRA. For nearly five years, the sales assistant falsely represented that she was the registered representative of record on nine customer accounts, when her employer was the individual actually servicing the accounts. The employer, not the sales assistant, conducted the analysis of the account holdings and made all investment recommendations to the customers. The sales assistant placed trades for the customers, but she did so following the employer's instructions.

  The sales assistant misrepresented her handling of the accounts in order to permit the employer to make recommendations and earn commissions on transactions with the customers. The employer could not be listed as the registered representative of record for the nine accounts because each of the accountholders resided in a state in which the employer had been denied registration due to customer complaints.

  The sales assistant falsely represented in the firm's books and records, including customer account statements, that she was the registered representative of record for the nine customer accounts. When the sales assistant made this misrepresentation, she caused her firm to create and maintain inaccurate books and records, in violation of Section 17(a) of the Securities Exchange Act of 1934 (records and reports), Exchange Act Rule 17a-3 (records to be made by certain exchange members, brokers, and dealers), FINRA Rule 2010 (ethical standards), NASD Rule 3110(a)† (books and records) for conduct occurring prior to December 5, 2011, and FINRA Rule 4511(a) for conduct occurring on or after December 5, 2011. For this misconduct, FINRA suspended the sales assistant from associating with any firm in any capacity for 30 business days and fined her $5,000.

Falsifying Insurance Coverage

- FINRA settled a matter involving an investment company and variable contracts products representative who falsified his insurance coverage. Beginning in April 2012, the representative owned and operated an insurance agency. He also was registered to sell investment company and variable contracts products through a limited liability company.

  In April 2015, the representative was involved in a three-car accident, which resulted in injuries to one of the other drivers. After the accident, the representative wrote an umbrella policy for himself, which would have insured him for potentially significant liabilities arising out of the accident. He backdated the policy to two days before the accident, and he made it appear that the policy was submitted approximately 90 minutes before the accident, when it actually was submitted approximately 90 minutes after the accident. The representative also told a claims adjuster that he had submitted the umbrella policy three days prior to the accident, which was untrue.

  By virtue of this conduct, the representative engaged in unethical business practices, failed to observe high standards of commercial honor and just and equitable principles of trade, and violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA barred the representative from association with any FINRA member in any capacity.

Acting as an Unlicensed State Securities Agent, Making Misstatements to Compliance Personnel, Attempting to Make a Registered Person Complicit in Misconduct, and More

- FINRA settled a matter involving a registered representative who acted as an unlicensed state securities agent, made misstatements to the firm's compliance personnel, attempted to make another registered person complicit in her misconduct, improperly exercised discretion in customer accounts, and made misrepresentations on compliance questionnaires. From April 2013 to September 2013, while registered with a firm, the representative accepted 22 trade orders on behalf of six Hawaii-based customers. When the representative accepted the trade orders from the customers, she was not licensed as a securities agent in Hawaii. To mask the unlicensed securities sales, the representative entered the trade orders through the firm's trade order system, but she inaccurately identified her registered sales assistant as the representative who had accepted the trade orders from the customers. By entering inaccurate trade orders through the firm's trade order system, the representative violated FINRA Rule 2010 (ethical standards), and she violated FINRA Rules 4511 (books and records) and 2010 (ethical standards) by causing the firm to maintain inaccurate books and records in connection with inaccurate trade orders.

  In September 2013, when the firm's compliance personnel questioned the representative about one of the 22 trade orders at issue, she falsely stated that the sales assistant accepted and entered the trade order on the customer's behalf. The representative then attempted to persuade the sales assistant to corroborate her verbal misstatements.

By making verbal misstatements to the firm's compliance personnel and attempting to persuade the sales assistant to corroborate her verbal misstatements, the representative violated FINRA Rule 2010 (ethical standards).

The representative also executed at least 200 discretionary trades in two customer accounts without the customers' prior written authorization or the firm's written approval. The representative's improper discretionary trading in the customers' accounts violated NASD Rule 2510(b) (discretionary accounts) and FINRA Rule 2010 (ethical standards).

Finally, in connection with the improper exercise of discretion, the representative falsely represented to the firm on four annual compliance questionnaires that she had not entered trades in customer accounts on a discretionary basis. The representative's misrepresentations on the compliance questionnaires violated FINRA Rule 2010 (ethical standards). For all of these violations, FINRA suspended the representative from association with any firm in any capacity for 10 months and fined her $15,000.

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

† NASD Rule 3110(a) has been superseded by FINRA Rule 4510(a), effective December 5, 2011.