Quarterly Disciplinary Review

October 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.

False Impersonation to Obtain Documentation and Status Updates and Providing False Statements in Response to FINRA's Requests for Testimony and Information

- FINRA settled a matter involving a registered representative who falsely claimed to be a customer's relative to obtain account documents, misrepresented her identity on another occasion to obtain the status of a FINRA complaint, and provided false statements in response FINRA's requests for testimony and information. In December 2013, the representative was attempting to transfer an elderly customer's assets to her firm. The customer's son had a power of attorney over the customer, but he had been unsuccessful in obtaining copies of the account statements from the firm where the customer's assets were held. On five occasions in December 2013, the representative called the FINRA firm that held the customer's assets, and she falsely claimed to be the customer's granddaughter (specifically the daughter of her customer's son) in an effort to obtain the customer's account statements.

  In December 2013, the customer's son submitted an online complaint to FINRA, which alleged that the firm that held the customer's assets improperly refused to provide him with the customer's account statements. In March 2014, the representative called FINRA's Office of Fraud Detection and Market Intelligence (OFDMI) and attempted to obtain information about the status of the son's complaint. During the call with FINRA, the representative—once again—falsely claimed that she was the customer's granddaughter. The firm, which held the customer's assets, ultimately provided the customer's son with the requested documents after determining that he had a valid power of attorney to act on the customer's behalf.

FINRA

Financial Industry Regulatory Authority

FINRA initiated an investigation concerning the representative's claims that she was the customer's granddaughter. During on-the-record testimony taken in connection with FINRA's investigation, the representative testified that she had not claimed to be the customer's relative during the telephone calls. Rather, the representative testified that she said that she was "like" the customer's granddaughter. To support her false claim, the representative testified that she had known the son since 2006. In addition, in written responses to a request for information and documents related to FINRA's investigation, the representative claimed that the customer's son was "like her part-time father," and that he and his wife had unofficially adopted her. In fact, the representative never had a close personal relationship with the customer's son. She first became acquainted with the customer's son in late 2013, and she only knew him in a professional capacity.

By falsely claiming to be the customer's granddaughter in telephone conversations with FINRA and the firm that held the customer's assets, the representative violated FINRA Rule 2010 (ethical standards). The representative's misrepresentations during her on-the-record testimony, and in her written responses to FINRA's request for information and documents, violated FINRA Rules 8210 (provision of information, testimony, and documents) and 2010 (ethical standards). For this misconduct, FINRA barred the representative from associating with any FINRA member in any capacity.

Concealing the Improper Receipt of Customer Funds, Using Text Messages to Circumvent the Review of Business Communications, Providing False Attestations Concerning the Use of Text Messages, and Making an Unsuitable Recommendation

- FINRA settled a matter involving a registered representative who concealed the improper receipt of customer funds, used text messages to circumvent his firm's review of his business communications, falsely attested that he did not use text messages in his business communications, and made an unsuitable recommendation. Between 2007 and 2012, the representative was the broker of record for a married couple. After the husband died, the husband's widow became the sole point of contact on the joint account held at the representative's firm.

  In July 2014, the widow contacted the representative about providing him with money to share in the profits of the widow's account at the firm. On the same date, the widow provided the representative with a check for $2,500 drawn from the widow's cash management account. The representative immediately contacted the widow because he was concerned that his firm would learn of the deposit, which he knew was prohibited. In order to avoid his firm's detection, the representative provided the widow with bank account details for a personal bank account that he maintained at another financial institution. He informed the widow that she could directly deposit shared profits into the personal bank account that he had identified. As a result, between July and November 2014, the widow deposited eight additional checks, totaling $29,000, into the representative's personal bank account. The representative used all of the funds for personal expenses. Throughout this time period, the representative knew that he was prohibited from sharing in profits with customers. By sharing in the profits of the widow's brokerage account, the representative violated FINRA Rules 2150 (prohibition against sharing in brokerage account profits) and 2010 (ethical standards).

From at least 2012 until 2016, the representative also used his personal cell phone to send text messages to customers, including the widow. But the representative's firm prohibited its registered representatives from text messaging with customers unless the representative used the firm's approved test messaging platform. Despite the representative's use of text messages to communicate with customers, in the first quarter of 2015, the representative submitted an annual attestation to his firm that certified that he had not used text messaging with any customer in the prior 12 months. Because this attestation was false, the representative prevented his firm from discharging its supervisory responsibilities concerning the review of his electronic business communications. The representative's conduct constituted two separate violations of FINRA Rule 2010 (ethical standards). The representative violated FINRA Rule 2010 (ethical standards) in the first instance by falsifying an annual compliance attestation, and he violated the rule a second time by causing his firm to violate FINRA Rule 4511 (books and records) and SEC Rules 17a-3 (records to be made by certain exchange members, brokers, and dealers) and 17a-4 (records to be preserved by certain exchange members, brokers, and dealers).

Finally, in January 2015, the representative recommended that the widow purchase units of a non-traditional, leveraged crude oil exchange-traded fund (ETF) without having a reasonable basis for the recommendation. The representative did not know how non-traditional ETFs worked, failed to account for the compounding risk associated with holding non-traditional ETFs overnight, and did not understand that the non-traditional ETF that he had recommended to the widow was designed to achieve its stated objectives within a single trading day. The representative also failed to appreciate that the widow's long-term holding of the non-traditional, leveraged ETF could result in significant losses. Despite these facts, the representative recommended, and the widow purchased, 5,000 units of the non-traditional, leveraged crude oil ETF for a principal amount of $41,850. The widow experienced losses until the representative liquidated her position eight months later. The representative's unsuitable recommendation violated FINRA Rules 2111 (suitability) and 2010 (ethical standards). For this misconduct, FINRA barred the representative from associating with any FINRA member in any capacity.

Improperly Accepting Loans From Customers and Making False Representations on Compliance Questionnaires

- FINRA settled a matter involving a registered representative who improperly accepted loans from customers and made false representations on two of his firm's compliance questionnaires. In December 2011, two customers opened a joint brokerage account at the representative's firm. The firm assigned the representative to manage the customers' joint account. The representative also had discretionary trading authority over the customers' brokerage account. On five separate occasions between June 2013 and September 2014, the representative received $325,000 in loans from the two customers. Of the $325,000 in loaned funds, the customers obtained $300,000 from their brokerage account, which resulted in the near-depletion of the customers' account.

  The five loans were documented in a single promissory note. The note provided for a 24-month, 3 percent per month, interest-only loan that commenced payments in October 2014, and ended with a final balloon payment of $325,000 in September 2016. The note contained a default clause by which the customers could demand the entire principal balance and any accrued interest if the representative failed to make any payment. In accordance with the promissory note, the representative began making the interest-only payments, but in February 2015, he ceased making payments. To date, the principal balance remains outstanding.

  The representative did not notify his firm, or receive its approval, prior to accepting the loans from the customers. Moreover, the firm's written policies and procedures prohibited the representative from accepting the loans. Specifically, the firm's written policies and procedures prohibited representatives from entering into borrowing or lending arrangements with customers, except in very limited circumstances such as loans between family members.

  The representative was aware of the firm's policies and procedures governing loans, and in compliance questionnaires dated October 2013 and November 2014, respectively, the representative certified that he had read and understood the firm's policies and procedures. In addition, in both questionnaires, the representative falsely answered "no" to the question, "have you ... borrowed or loaned any money or securities from or to another individual or entity?" In the November 2014 questionnaire, the representative also falsely answered "no" to a question asking if he had issued, offered or participated in a promissory note.

  By improperly borrowing $325,000 from two of the firm's customers, the representative violated FINRA Rules 3240 (borrowing from or lending to customers) and 2010 (ethical standards). In addition, by falsely representing to the firm in two compliance questionnaires that he was in compliance with the firm's policies and procedures concerning borrowing and lending arrangements and promissory notes, the representative violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA barred the representative from associating with any FINRA member in any capacity.

Participating in Private Securities Transactions Without Prior Written Notice and Approval

- FINRA settled a matter involving a registered representative who participated in private securities transactions without prior written notice to, and written approval from, his firm. In June and July 2014, the representative assisted 11 investors, including three investors who were customers of his firm, with the purchase of more than $800,000 of a company's shares and warrants. The representative facilitated the investors' purchases by:

  - providing the investors with research and information about the transactions;
  - responding to investors' questions about the investment;
  - recommending the investment to certain investors; and
  - routing the investment paperwork to investors.

  Although the representative participated in the securities transactions, he did not provide his firm with prior written notice of the securities transactions, nor did he receive the requisite written approval from the firm for his participation.

  The representative participated in a second undisclosed private securities transaction in August 2014. While associated with a new firm, the representative became involved with a limited liability limited partnership. The representative formed the partnership with two other individuals, one individual who was a customer of the representative's firm and another individual whose involvement was limited to masking the firm customer's investments in the partnership. The representative facilitated the partnership's purchase of a $50,000 equity interest in a limited liability company by identifying, researching and recommending the investment opportunity to the partnership. The partnership's investment in the limited liability company was a securities transaction, and the representative participated in the private securities transaction without providing prior written notice to his firm or obtaining its written approval.

  By participating in undisclosed private securities transactions, the representative violated NASD Rule 3040* (private securities transactions) and FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for nine months and fined him $10,000.

Failing to Adequately Supervise a Firm's Placement of Unregistered Securities

- FINRA settled a matter involving a general securities principal who failed to adequately supervise his firm's placement of an unregistered securities offering. Between October and December 2011, the principal's firm acted as a co-placement agent for an energy company's minimum contingency private placement offering of senior secured notes. The principal's primary responsibility at the firm was to ensure that all of the firm's private placements and minimum contingency offerings complied with the Securities Act of 1933 (Securities Act) and Securities Exchange Act of 1934 (Exchange Act).

  The principal, however, failed to adequately supervise the firm's placement of the energy company's notes. The principal failed to understand the specific requirements of the two registration exemptions that applied to the energy company's offering, failed to ensure that purchasers of the energy company's notes complied with the requirements of either of the exemptions, and failed to monitor investments in the offering to determine if the $5,000,000 minimum contingency was met before the firm remitted the offering's proceeds to the energy company.

  The principal's supervisory failures violated NASD Rule 3010(a)† (supervision) and FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the principal in all principal capacities for 18 months.

Falsifying Monthly Commission Sheets to Give the Appearance of Increased Sales Production

- FINRA settled a matter involving a registered representative who falsified branch office monthly commission sheets to give the false appearance of increased sales production.

  Between August 2014 and January 2015, while registered with a firm, the representative personally purchased certificates of deposit (CDs) on a weekly basis in increments of $5,000. The representative purchased a total of 24 CDs in an aggregate amount of $120,000 and provided false customer names and dollar amounts for the CD purchases on her monthly commission sheets to conceal the fact that she had in fact personally purchased the CDs. Higher productions or sales logged on the commission sheet would qualify the representative for incentives such as firm-sponsored travel and increased commissions.

  In January 2015, the representative's firm became concerned about the source of the representative's increased sales production, and it initiated an internal review of the representative's CD transactions. The firm discovered that the representative had falsified customer names on the CD applications in order to conceal the fact that the representative had made the purchases herself. The firm terminated the representative.

  The representative's falsification of the firm's monthly commission sheets violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for 18 months and fined her $10,000.

Exercising Discretion in Customers' Accounts Without Written Authorization

- FINRA settled a matter involving a registered representative who improperly exercised discretion in two customers' accounts. The representative's firm prohibited its registered representatives from using discretion in customers' accounts except in limited circumstances, and it had an absolute prohibition on the use of price and time discretion.

  Despite the firm's prohibition, between September and October 2015, the representative exercised discretion in two customers' accounts. The representative effected 27 trades in the two accounts, but he failed to obtain the customers' prior written authorization before executing the trades. The representative's firm also had not accepted the accounts as discretionary. Rather than obtain the customers' written authorization for discretionary trading, and the firm's approval of the accounts as discretionary, the representative spoke to the customers about the transactions approximately one month before he executed the trades, or he spoke to the customers about the trades after he had effected them.

  The representative's improper discretionary trading violated NASD Rule 2510(b) (discretionary accounts) and FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for 20 business days and fined him $5,000.

Forging Customers' Signatures on Advisory Contracts

- FINRA settled a matter involving a registered representative who forged customer signatures on advisory contracts. In 2013, the representative's firm decided to close an existing advisory program and convert its existing customers to another discretionary advisory program. To participate in the program, the firm required each customer to execute a single advisory contract that permitted the firm to open a new account and authorized a financial advisor to manage the customer's advisory assets on a fully discretionary basis.

  The representative acted as a client service assistant on behalf of a financial advisor. His responsibilities included the transfer of the financial advisor's existing customers to the newer advisory program. Between March 2013 and December 2014, the representative forged 35 different customers' signatures on 41 investment advisory account documents. Specifically, the representative cut-and-pasted or traced customer signatures on the advisory contracts for the firm's new advisory program. Although each of the customers subsequently agreed to enroll in the new advisory program, the representative forged the customers' signatures on the new advisory contracts without the customers' prior knowledge, authorization or consent.

  By forging the customers' signatures on the account documents, the representative violated FINRA Rule 2010 (ethical standards). For this misconduct, FINRA suspended the representative in all capacities for six months and fined him $5,000.

* NASD Rule 3040 has been superseded by FINRA Rule 3280, effective September 21, 2015.

† NASD Rule 3010 has been superseded by FINRA Rule 3110, effective December 1, 2014.