

Quarterly Disciplinary Review

January 2010

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 decisions and decisions of the SEC 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 Web site.

Advertising Violations

- FINRA settled a matter involving a registered representative who recorded video advertisements that were broadcast to the public in violation of FINRA's advertising rules. The representative operated a branch office in which he was the only representative. The representative entered into an agreement with a local television station to broadcast a total of 16 two-minute video advertisements for the representative's securities business. The representative's firm was unaware of the agreement. Nine of the advertisements were broadcast on television and four were posted on the television station's public Web site. The advertisements covered various topics, including mutual funds, investment mistakes, life insurance, long-term care insurance, college planning, market timing and individual retirement accounts. Because the member firm was unaware of the advertisements, the firm had neither reviewed nor approved the ads before they were disseminated to the public.

FINRA found that the representative used prohibited and misleading professional designations such as "certified mutual fund specialist" in the advertisements, and that the advertisements contained incomplete, unfair, unbalanced, oversimplified and exaggerated statements, causing the advertisements to be misleading. FINRA also found that the representative failed to file his mutual fund advertisement with FINRA within 10 days of its first use and failed to include a reference to his member firm's SIPC membership in the advertisement as FINRA rules required. FINRA concluded that the representative's conduct violated NASD® Rules [2210](#) (communications with the public) and [2110*](#) (ethical standards). As a result, FINRA suspended the representative for 10 business days and fined him \$10,000.

Falsification of IPO Eligibility Letters

- ▶ FINRA settled a matter involving a representative who falsified client IPO eligibility letters. The registered representative was employed as a sales assistant at a member firm. His responsibilities included sending prospectuses to clients who had expressed a general interest in IPOs and had signed IPO eligibility letters. These clients could then express interest in specific deals and be entered into the firm's system for allocations of shares. Nine clients expressed interest to the representative to participate in a particular deal, but the system would not accept their indications of interest because their IPO eligibility letters had expired. After speaking with the clients, the representative re-dated or re-completed the clients' eligibility letters from prior years and then submitted the falsified letters to the firm so that the customers' indications of interest would be accepted.

FINRA concluded that the representative's conduct violated NASD Rule 2110* (ethical standards) and suspended him in all capacities for 30 days and fined him \$5,000.

Sales of Unregistered Securities

- ▶ FINRA settled a matter involving a registered representative who sold unregistered securities. The representative opened an account for a corporate customer whose initial deposit was 40 million shares of a Pink Sheet stock. The customer opened the account with the sole purpose of liquidating the stock and began selling the shares in market transactions two days after opening it. At the time the sales took place, the stock was not registered for public sale and was not subject to an exemption. The representative relied on his firm's compliance department to decide whether the shares were freely tradable, and the compliance department incorrectly approved the securities for public resale even though the shares were restricted. The representative, however, was in possession of information that established that the shares were not registered for public sale and were not subject to an exemption. Accordingly, FINRA concluded that the representative should not have entered the sale orders but did so anyway.

FINRA found that the representative participated in the sale of unregistered securities, which was in violation of NASD Rule 2110* (ethical standards) by virtue of the representative's violation of Section 5 of the Securities Act of 1933. As such, FINRA censured the representative and fined him \$10,000.

Causing Inaccurate Books And Records

- FINRA's National Adjudicatory Council (NAC) affirmed findings that a registered representative violated FINRA's rules by falsely claiming disabilities for 15 non-disabled clients and improperly obtaining for the clients waivers of contingent deferred sales charges on mutual fund share redemptions. The NAC found that the representative entered disability waivers in more than 20 mutual fund redemptions for customers whom the representative knew were not disabled, thereby obtaining waivers of more than \$5,000 in contingent deferred sales charges to which the customers were not entitled.

FINRA's NAC found that the representative's actions resulted in his entering false information in a member firm's books and records, which violated NASD Rules [3110](#) (books and records) and 2110* (ethical standards). As a result, FINRA suspended the representative in all capacities for 90 days, fined him \$10,000 and assessed hearing costs.

Willful Failure to Amend Form U4

- FINRA settled a matter involving a registered representative who willfully failed to disclose a felony conviction on his Form U4. The representative was charged in a United States District Court with the Class D felony of attempted income tax evasion and, one month later, pled guilty to the charge. The representative thereafter was sentenced to two years of probation, a \$2,000 fine, and was required to pay more than \$9,000 in restitution and special tax assessments. The felony conviction also subjected the representative to a statutory disqualification from the securities industry. FINRA's rules require that registrations filed with FINRA be kept current at all times and that amendments be filed within 30 days of the occurrence. Moreover, FINRA's rules require that amendments that involve statutory disqualification, such as the amendment at issue here, be filed no later than 10 days after the occurrence. The representative never amended his Form U4 to indicate that he had been convicted of or pled guilty to a felony, even though the representative had been reminded of the disclosure requirements in an annual disclosure email from his firm and at his firm's annual compliance meeting.

FINRA concluded that the representative willfully failed to update his Form U4 and that he violated NASD Rule 2110* (ethical standards), Membership and Registration IM-1000-1** (filing misleading membership information), and [Article V, Section 2 of the NASD By-Laws](#) (applications for registration). As a result, FINRA suspended the representative in all capacities for 18 months and fined him \$5,000.

Guarantee Against Loss and Improper Sharing In Customer Account

- ▶ FINRA settled a matter involving a representative who improperly guaranteed a customer against loss and shared in the losses in a customer account. The representative's customer deposited \$100,000 with the representative's firm for investment. On the representative's recommendation, the customer invested in growth equity mutual funds and four individual equities. Eventually, the value of the customer's account declined to approximately \$72,000. In a letter drafted on firm letterhead, the representative advised the customer that, if the account had not generated a 6 percent return on the initial investment by a particular date, the representative would make up the difference with personal funds. Thereafter, the representative wrote personal checks to the customer on a monthly basis totaling approximately \$19,000. The representative's firm was unaware of the guarantee and payments.

FINRA found that the representative's letter to the customer constituted a prohibited guarantee against loss and that the representative improperly failed to obtain prior written consent from his member firm before sharing in his customer's losses. FINRA concluded that the representative's conduct violated NASD Rules [2330](#) (customer securities and funds) and 2110* (ethical standards). In light of these findings, FINRA suspended the representative in all capacities for 20 business days and fined him \$5,000.

Conversion of Co-Worker's Funds

- ▶ FINRA settled a matter that involved a registered representative who converted funds that belonged to a coworker. The representative deposited into his personal bank account a check for approximately \$290 that a coworker wrote and made payable to a third party. The representative converted the funds to his own use and benefit without the coworker's knowledge or consent.

FINRA found that that the representative's conduct violated NASD Rule 2110* (ethical standards) and, as a result, barred the representative in all capacities.

Forgery and Misappropriation of Funds

- FINRA settled a matter involving a registered representative who was also an employee of his member firm's affiliated bank. On four separate occasions, the representative forged a bank customer's signature on four withdrawal slips and used them to withdraw cash totaling approximately \$20,000 from the customer's bank account without the customer's knowledge, authorization or consent. FINRA found that the representative's conduct violated FINRA Rule [2010](#) (ethical standards) and, as a result, barred the representative in all capacities.

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

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