

Quarterly Disciplinary Review

October 2013

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.

Sales of Bank Customer Information

- ▶ FINRA settled a matter involving a registered person who sold bank customer information to a third party and conducted unauthorized withdrawals from the customers' accounts. At the time of the misconduct, the registered person was associated with both a broker-dealer firm and a bank. The registered representative used bank resources to target bank customers who met a certain demographic profile, and used their bank account numbers to access their signature cards. The registered representative forwarded this information to a third party and, in exchange, expected to receive payment for the information. As a result, 10 bank customers were the victims of unauthorized money withdrawals from their bank accounts. FINRA found that the registered representative's conduct violated FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA barred the registered representative from associating with any member firm in any capacity.

Misconduct Involving Customer Investments in Over-the-Counter Securities

- ▶ FINRA settled a matter involving a registered representative who engaged in misconduct involving customers' investments in over-the-counter securities. During a four-month period, the registered representative mismarked as unsolicited all of the trading tickets for trades in five over-the-counter securities, even though they were solicited. As a result, the representative mismarked 364 trade tickets, causing the tickets to be inaccurate. During the same time period, the representative exercised discretion in 11 customer accounts. Although some of the customers had verbally authorized the representative to exercise discretion, none had provided written authorization and the representative did not have the firm's prior written acceptance of the account as discretionary. During the same four months, the representative negligently misrepresented facts to two customers by promising unrealistic returns and improperly predicting price increases. During a two-year period, the representative also

sent email communications to six customers that failed to disclose material information about recommended securities, included false or misleading information, contained price predictions and failed to include a reasonable basis for the recommendations. Additionally, the representative recommended and sold a low-priced, over-the-counter security to two elderly customers without having reasonable grounds for believing that the recommendations were suitable based on the customers' other security holdings, financial situations and needs.

FINRA found that the representative's conduct violated NASD Rules [3110](#) (books and records), [2510](#) (discretionary accounts), 2310[‡] (recommendations to customers) and 2210[†] (communications with the public), and FINRA Rule [2010](#) (ethical standards). As a result, FINRA suspended the representative in all capacities for two years and fined him \$15,000.

Multiple Customer-Related Violations

- ▶ FINRA settled a matter involving a registered representative who engaged in a variety of misconduct. The representative effectuated three private securities transactions by acting as an investment intermediary between customers. In December 2006, one customer provided the representative with a check for \$6,260 to effectuate the purchase from another customer of shares in a limited liability company (LLC). In July 2009, the first customer provided the representative with a check for \$12,770 to facilitate the purchase from a third customer of shares in a real estate investment trust (REIT). In March 2010, the first customer provided the representative with a check for \$8,800 to facilitate the purchase from a fourth customer of shares in a second LLC. The registered representative received \$2,770 in commissions from these transactions, and he engaged in the transactions without providing prior written notice to, or receiving approval from, the member firm. In November 2009, the representative accepted a \$25,000 loan on behalf of a family member of the first customer. The representative accepted the loan without the firm's knowledge or approval, and in contravention of firm procedures.

Between February 2007 and January 2011, the registered representative failed to disclose certain fiduciary appointments to his member firm. In violation of firm procedures, the representative failed to disclose to the firm that the first customer had granted a power of attorney to the representative and that the representative had been named personal representative for that customer's estate. Furthermore, from 1998 through 2005, the representative was subject to 29 liens totaling \$100,000 filed by a state department of revenue for unpaid personal, property and withholding taxes. The representative satisfied nine of the liens by 2004 and the remainder by 2009. The representative failed to amend his Form U4 to disclose the existence of the liens within 30 days as FINRA rules required.

FINRA found that the representative's actions violated NASD Rules 2110* (ethical standards), 2370^s (borrowing from or lending to customers) and [3040](#) (private securities transactions); IM-1000-1^{ll} (filing misleading registration information); [Article V, Section 2](#) of FINRA's By-Laws (applications for registration); and FINRA Rule [2010](#) (ethical standards). For this misconduct, FINRA suspended the registered representative in all capacities for six months and fined him \$25,000.

Engaging Improperly in Outside Business Activities and Private Securities Transactions, and Failing to Respond to Requests for Information and Documents

- ▶ FINRA settled a matter involving a registered representative who engaged in private securities transactions and outside business activities without providing his firm with the required notification, and failed to respond to FINRA requests for information and documents. Through a private business entity that the registered representative owned and operated, the representative facilitated the investment by nine of his customers of approximately \$325,000 in a local pawn and jewelry shop that he introduced to the customers. He executed a series of contracts between the customers, his private business, and the local pawn and jewelry shop, and facilitated monthly distributions to the customers. The registered representative failed to notify his member firm of his participation in the customers' investments and his ownership and operation of two outside business entities.

During the course of FINRA's investigation of the representative, FINRA requested information and documents from the representative. The representative responded to the first request, but refused to respond to the second and subsequent requests.

FINRA concluded that the representative's conduct violated NASD Rule [3040](#) (private securities transactions), and FINRA Rules [2010](#) (ethical standards), [3270](#) (outside business activities) and [8210](#) (provision of information and testimony). As a result, FINRA barred the representative in all capacities.

Failing to Disclose Material Facts on Form U4

- ▶ FINRA settled a matter involving a registered representative who failed to disclose judgments, tax liens and other material matters on Forms U4. The representative had numerous civil judgments against him between 2004 and 2009—including alleged securities fraud, negligent misrepresentations, conversion and state securities law violations.

In September and October 2009, the registered representative signed Forms U4 in which he falsely answered "no" to the question of whether he had any unsatisfied judgments or liens against him. He also answered "yes" to the question of whether he had ever been named a respondent in an investment-related, consumer-initiated arbitration or civil litigation for sales practice violations that settled. In the section of the Form U4

that requested details of such actions, however, the representative failed to disclose information regarding the civil litigation filed in federal court. The representative also falsely answered “no” to the same question on other Forms U4. The representative falsely answered “no” to a question on several Forms U4 that asked whether he had ever been named as a respondent in an investment-related, consumer-initiated arbitration or civil litigation for sales practice violations that remained pending.

FINRA concluded that several of the representative’s failures to disclose were willful. FINRA found that the representative’s conduct violated FINRA Rules [1122](#) (filing misleading information as to membership) and [2010](#) (ethical standards). FINRA suspended the representative in all capacities for 18 months. Because the settlement included a finding that the representative’s omissions were willful, under the Securities Exchange Act of 1934, the representative may be statutorily disqualified from the industry.

Improper Borrowing From Customers

- ▶ FINRA settled a matter involving a registered representative who improperly borrowed funds from two customers. The representative borrowed \$16,688 from one customer and \$12,000 from another. At the time the loans were made, the representative’s firm did not have procedures that allowed representatives to borrow funds from customers. The representative has since repaid both loans. FINRA found that the representative’s conduct violated FINRA Rules [2010](#) (ethical standards) and [3240](#) (borrowing from or lending to customers). For this misconduct, FINRA fined the representative \$5,000 and suspended him in all capacities for one month.

Misappropriating Customer Funds and Forging Customer Signatures

- ▶ FINRA settled a matter involving a registered representative who misappropriated customer funds and forged customer signatures. During a period of four years, the registered representative misappropriated approximately \$140,000 from 10 customers by forging their signatures on letters of authorization that instructed the clearing firm to issue checks payable to the customers. The representative intercepted the checks, endorsed them, deposited them into his personal account, and then used the funds for his personal use without the customers’ knowledge or authorization. FINRA concluded that the representative’s conduct violated FINRA Rules [2010](#) (ethical standards) and [2150\(a\)](#) (improper use of customer funds or securities), and NASD Rule 2330(a)*† (improper use of customer securities or funds). As a result, FINRA barred the representative in all capacities.

Forging Customer Signatures, Failing to Notify the Firm of Ownership Interests in Securities Accounts and Failing to Respond to Information Requests

- ▶ FINRA settled a matter involving a registered representative who failed to provide his member firm with prior written notice of two outside brokerage accounts, and forged customer signatures or initials on firm forms. The representative maintained two outside brokerage accounts at an unaffiliated firm. He failed to provide written notice and the details of where the accounts were located to his firm. During a period of six months in 2011, the representative also forged five customer signatures or initials on forms that required customer authorization and submitted the forged forms to his firm. FINRA staff requested that the representative provide information regarding these matters, but the representative refused to respond.

FINRA concluded that the representative's conduct violated FINRA Rules [2010](#) (ethical standards) and [8210](#) (provision of information and testimony), and NASD Rules 2110* (ethical standards) and [3050](#) (transactions for or by associated persons). As a result, FINRA barred the representative from associating with any member firm in any capacity.

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

† NASD Rule 2210 has been superseded by FINRA Rule [2210](#), effective February 4, 2013.

‡ NASD Rule 2310 has been superseded by FINRA Rule [2111](#), effective July 9, 2012.

§ NASD Rule 2370 has been superseded by FINRA Rule [3240](#), effective June 14, 2010.

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

¶ NASD Rule 2330(a) has been superseded by FINRA Rule [2150](#), effective December 14, 2009.