

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-02 (2006007105101).

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. 2006007105101

Hearing Officer – LBB

**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION**

On July 8, 2010, the Department of Enforcement filed a five-cause Complaint in this disciplinary proceeding against Respondent. All five causes of action related to Respondent's allegedly unsuitable trading and switching of his clients' investments in unit investment trusts, closed-end funds, and mutual funds. On January 24, 2011, Respondent filed a motion for summary disposition, arguing that FINRA does not have jurisdiction in this matter because the Complaint was not filed within the time prescribed by FINRA's By-Laws, and that FINRA's jurisdiction was not extended by the filing of a Form U5 for possible violations that are not charged in the Complaint. The Department of Enforcement filed an opposition to the motion on February 4, 2011, arguing that FINRA had jurisdiction over Respondent at the time the Complaint was filed; and therefore, FINRA retains jurisdiction, because the Complaint was filed within two years of the filing of a Form U5 reporting allegations that Respondent may have engaged in unauthorized trading. For the reasons set forth below, Respondent's motion is denied.

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-02 (2006007105101).**

Article V, Section 4(a) of FINRA's By-Laws provides that FINRA retains jurisdiction over a registered person based upon conduct that occurred prior to the filing of a complaint for two years after the effective date of the termination of registration.<sup>1</sup> The period is extended for an additional two years after the filing of an amendment to the representative's Form U5, if the amendment "discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation ...." By its terms, the extension of jurisdiction applies to jurisdiction over the person if the Form U5 discloses possible actionable conduct. There is no provision in the By-Laws that limits the extension of FINRA's jurisdiction to the violations disclosed by the amended filing.<sup>2</sup>

Respondent's CRD records indicate that Respondent was registered with [his firm] until November 17, 2006, when the firm terminated his employment. CX-1 at 14. The firm filed an amended Form U5 on August 8, 2008, reporting that Respondent allegedly made unauthorized

---

<sup>1</sup> (a) A person whose association with a member has been terminated and is no longer associated with any member of Corporation or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the Corporation Rules based upon conduct that commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the Corporation's jurisdiction as provided herein, to provide information requested by Corporation pursuant to the Corporation's Rules, but any such complaint shall be filed within:

- (i) two years after the effective date of termination of registration pursuant to Section 3, provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection;
- (ii) two years after the effective date of revocation or cancellation of registration pursuant to the Corporation's Rules; or
- (iii) in the case of an unregistered person, two years after the date upon which such person ceased to be associated with the member.

<sup>2</sup> Cf. *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*2-3 (N.A.C. Apr. 19, 2000) (holding that FINRA's jurisdiction had been extended for two years from the date of the filing of the amended Form U5 despite the fact that the alleged violations were disclosed in the original Form U5 because the amended Form U5 "disclosed additional details regarding the misconduct at issue."); see also *Dep't of Enforcement v. Jenkins*, No. C10980041, 1998 NASD Discip. LEXIS 69, at \*4-6 (O.H.O. Dec. 14, 1998) (finding jurisdiction extended based on Form U5 filing by a firm where respondent had been employed prior to the firm at which the alleged misconduct took place).

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-02 (2006007105101).**

trades in a customer's account. CX-1 at 38-39. Unauthorized trading is actionable under FINRA's Code of Conduct.<sup>3</sup>

An amended Form U5 was filed within two years after the termination of Respondent's registration with [the firm], and the Form U5 disclosed that Respondent may have engaged in conduct that is actionable under FINRA's Rules. For the foregoing reasons, Respondent's motion for summary disposition is denied.

**SO ORDERED.**

---

Lawrence B. Bernard  
Hearing Officer

Dated: February 8, 2011

---

<sup>3</sup> See, e.g., *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at \*6 (July 1, 2008); *Dep't of Enforcement v. Wiard*, No. C8A030078, 2005 NASD Discip. LEXIS 45, at \*8 (N.A.C. Oct. 18, 2005).