

Quarterly Disciplinary Review

October 2015

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 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.

Misrepresenting Material Facts and Making Unsuitable Recommendations

- ▶ FINRA settled a matter involving a registered representative who willfully and recklessly misrepresented material facts to investors and made unsuitable recommendations to customers. Between December 2009 and February 2011, the representative sold \$3 million of a metals, milling and mining company's notes to 59 investors in a private placement offering.

When the representative sold the notes, he misrepresented material facts about the offering. For example, he misrepresented that investors who purchased the metals, milling and mining company's notes would receive a 100 percent return on their investments. He also misrepresented that an "ore concentrate" collateralized the notes, and that the ore concentrate had sufficient value to secure the purchasers' investment. In fact, there was not any collateral to secure the metals, milling and mining company's notes because the company did not own any ore concentrate, and even if the company had owned ore concentrate, ore concentrate was nearly worthless. Nearly all of the 59 purchasers of the metals, milling and mining company's notes lost their entire investment.

The representative failed to verify that the metals, milling and mining company's notes were collateralized, did not confirm that the collateral had any value, and misrepresented to prospective investors that collateral adequately secured their investments. In so doing, the representative willfully and recklessly misrepresented material facts in connection with his sales of the metals, milling and mining company's notes to investors, in violation of [Section 10\(b\) of the Securities Exchange Act of 1934](#) (Exchange Act) (manipulative and deceptive devices), [Exchange Act Rule 10b-5](#) (employment of manipulative and deceptive devices), and FINRA Rules [2020](#) (use of manipulative, deceptive, or other fraudulent devices) and [2010](#) (ethical standards).

The representative also lacked a reasonable basis to recommend the offering to investors because he did not obtain basic information about the metals, milling and mining company, or its issuance of notes. The representative's failure to satisfy his reasonable basis suitability obligations violated NASD Rule 2310* (suitability) and FINRA Rule [2010](#) (ethical standards). For all of his misconduct, FINRA barred the representative in all capacities. The representative's willful violation of the Exchange Act also results in his statutory disqualification.

Engaging in Undisclosed Outside Business Activities and Undisclosed Private Securities Transactions and Submitting a False Compliance Questionnaire

- ▶ FINRA settled a matter involving a registered representative who engaged in outside business activities without notifying his firm, submitted a false compliance questionnaire to his firm, and participated in a private securities transaction without seeking or obtaining his firm's approval.

Between April 2009 and November 2013, the representative provided financial advisory services to a personal friend who was not a customer of the broker-dealer that employed him. In his capacity as the friend's financial advisor, the representative analyzed and made recommendations concerning the friend's investment portfolio, attended conference calls and meetings related to the friend's current and potential investments, and prepared correspondence and held a power of attorney on the friend's behalf. The friend paid the representative approximately \$20,000 over four years for providing these services, but the representative failed to notify his firm of the outside business activities. The representative's failure to provide his firm with written notice of the outside business activities violated NASD Rule 3030† (outside business activities) for conduct occurring before December 15, 2010, FINRA Rule [3270](#) (outside business activities) for conduct occurring on or after December 15, 2010, and FINRA Rule [2010](#) (ethical standards).

In January 2012, the representative submitted a compliance questionnaire to his firm, in which he falsely stated that he was not engaged in any outside business activities. The representative's submission of the false compliance questionnaire to his firm violated FINRA Rule [2010](#) (ethical standards).

In March 2011, while he was associated with a firm, the representative entered into a written loan agreement with the friend. The friend agreed to lend the representative nearly \$158,000 to assist him with the purchase of a "tax lien certificate" related to real property in Illinois. The friend intended to purchase the other half of the tax lien certificate, and in April 2011, the representative and friend completed the transaction for the purchase of the certificate through a third-party investor. The representative and friend then attempted to sell their ownership interest in the tax lien certificate for a profit, relying on the third-party investor's efforts to identify prospective purchasers and handle the sale negotiations. In correspondence, the representative referred to himself as a co-owner of the certificate, but he did not provide written notice to, or obtain permission from, his firm to participate in the investment. The representative's participation in the undisclosed private securities transaction violated NASD Rule [3040](#) (private securities transactions) and FINRA Rule [2010](#) (ethical standards). For all of these violations, FINRA suspended the representative from association with any FINRA member in any capacity for five months and fined him \$15,000.

Permitting a Firm to Conduct a Securities Business While Net Capital Deficient, Filing Inaccurate FOCUS Reports, and Causing a Firm to Maintain Inaccurate Books and Records

- ▶ FINRA settled a matter involving a registered representative who permitted a firm to conduct a securities business while net capital deficient, filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) Reports on a firm's behalf, and caused a firm to maintain inaccurate books and records. Between May 2013 and June 2013, the representative was employed as a firm's Chief Financial Officer (CFO) and Financial and Operations Principal (FINOP). According to the firm's written supervisory procedures (WSPs), as the CFO and FINOP, the representative was responsible for maintaining the accuracy of the firm's books and records, including the firm's general ledger, trial balance and balance sheet. He was also responsible for calculating the firm's net capital.

During the period under review, the representative permitted the firm to conduct a securities business while it was net capital deficient by more than \$16,000 in May 2013, and by more than \$39,000 in June 2013. The representative also failed to ensure that the firm's general ledger, trial balance and balance sheet accurately reflected the firm's liabilities, and he failed to accurately compute the firm's net capital, resulting in the firm's filing of inaccurate FOCUS Reports for May 2013 and June 2013.

The representative's miscalculation of the firm's net capital and mishandling of the firm's books, records and FOCUS Reports violated FINRA Rules [4110\(b\)\(1\)](#) (capital compliance), [4511](#) (books and records) and [2010](#) (ethical standards). For the misconduct, FINRA fined the representative \$5,000, suspended him from association with any firm as a FINOP or Introducing Broker-Dealer/FINOP for one month, and required him to requalify as a FINOP and Introducing Broker-Dealer/FINOP following the suspension.

Exercising Discretion in a Customer's Account

- ▶ FINRA settled a matter involving a registered representative who exercised discretion in a customer's account without obtaining the customer's prior written authorization. Between February 2011 and June 2013, while associated with a firm, the representative effected nearly 200 discretionary transactions in a customer's fee-based securities account without obtaining the customer's prior written authorization or his firm's written acceptance of the account as discretionary. The account was a non-discretionary account, and the firm did not permit discretion in these types of accounts. Although the representative did not speak to the customer concerning each transaction, he relied on his discussions with the customer to execute the trades.

By exercising discretion in the customer's account without written authority, the representative violated NASD Rule [2510\(b\)](#) (discretionary accounts) and FINRA Rule [2010](#) (ethical standards). For the misconduct, FINRA suspended the representative from associating with any firm in any capacity for 15 business days and fined him \$5,000.

Falsifying Documents Related to Customer Accounts

- ▶ FINRA settled a matter involving a registered representative who failed to respond to FINRA's request for information and documents. Between October 2013 and March 2014, the representative falsified six documents related to five customer accounts. The representative falsified the documents by reusing original customer signatures from previously executed documents and altering the date, tax withholding amount or distribution dollar amount to effect transactions for the customers.

The representative altered the documents by applying "white-out" to change the dates of the customers' signatures and adding new dates. In several instances, the representative used white-out to change the percentage of tax withholding amounts and the dollar amounts of the disbursements. Although each of the customers authorized the transactions that the altered documents effected, the customers were unaware that the representative altered the documents, and they did not authorize the representative to reuse their prior signatures. Although the representative altered the documents to expedite transactions for the convenience of the customers, the firm's written procedures prohibited altering documents in any manner, including the methods that the representative employed in these situations.

The representative's falsification of the customer account documents violated FINRA Rule [2010](#) (ethical standards). For the misconduct, FINRA suspended the representative from association with any firm in any capacity for three months and fined her \$5,000.

Possessing Unauthorized Materials During the Uniform Combined State Law Examination (Series 66)

- ▶ FINRA settled a matter involving a registered representative who possessed unauthorized materials while she sat for the Uniform Combined State Law, or Series 66, Examination. In July 2013, the representative took the Series 66 examination in California. The study guide for the Series 66 examination advises applicants that the examination is conducted as a closed-book test. Applicants also must agree to abide by FINRA Test Center Rules of Conduct prior to beginning any examination. Under the FINRA Test Center Rules of Conduct, the representative was not permitted to possess any notes, formulas or study materials during the examination. Despite this fact, while taking the Series 66 examination, the representative was found to possess notes and formulas relating to the subject matter of the examination.

The representative's possession of the unauthorized materials during the Series 66 examination violated FINRA Rule [2010](#) (ethical standards). For the misconduct, FINRA suspended the representative from associating with any firm in any capacity for two years and fined her \$5,000.

Using a Personal Email Account to Conduct Firm Business, Causing a Firm to Maintain Inaccurate Records, and Failing to Disclose Private Securities Transactions

- ▶ FINRA settled a matter involving a registered representative who used a personal email account to conduct firm business, caused a firm to maintain inaccurate records, and failed to disclose his participation in private securities transactions. Between March 2008 and August 2011, the representative certified that he would comply with the firm's prohibition against using a personal email account for firm business, and that he would exclusively use his firm-issued email account to conduct firm business. Despite his certifications, the representative used a personal, Web-based (aol.com) email account to conduct firm business, which in turn, caused his firm to fail to comply with its recordkeeping obligations. The representative's use of his personal email to conduct firm business violated NASD Rule 2110[‡] (ethical standards) for conduct occurring before December 15, 2008, FINRA Rule [2010](#) (ethical standards) for conduct on or after December 15, 2008, NASD Rule 3110[§] (books and records) for conduct occurring before December 4, 2011, and FINRA Rule [4511](#) (books and records) for conduct occurring on or after December 5, 2011.

In December 2011, the representative signed a Memorandum of Understanding to invest in certain gold transactions and a Non-Recourse Monetization Agreement to invest in a cash-backed bank instrument. Later that same month, to fulfill the terms of the Memorandum of Understanding and Non-Recourse Monetization Agreement, the representative wired \$200,000 from his personal bank account to a bank account controlled by the individual soliciting his participation in the investments. The representative participated in both private securities transactions without giving prior written notice of such transactions to the firm or obtaining the firm's written approval. In so doing, the representative violated NASD Rule [3040](#) (private securities transactions) and FINRA Rule [2010](#) (ethical standards). FINRA suspended the representative from association with any firm in any capacity for 45 calendar days and fined him \$5,000 for using his personal email account to conduct firm business, causing his firm to maintain inaccurate records, and failing to disclose his two private securities transactions.

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

† NASD Rule 3030 has been superseded by FINRA Rule [3270](#), effective December 15, 2010.

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

§ NASD Rule 3110 has been superseded by FINRA Rule [4511](#), effective December 5, 2011.