

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

Department of Enforcement,

Complainant,

v.

ANDREW C. CALLIHAN
Registered Representative
(CRD No. 4427620)

Respondent.

**Disciplinary Proceeding
No. 2007010731201**

Hearing Officer Matthew Campbell

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: July 8, 2010

INTRODUCTION

Disciplinary Proceeding No. 2007010731201 was filed on April 23, 2010, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Andrew C. Callihan (Callihan) submitted an Offer of Settlement (Offer) to Complainant dated June 10, 2010. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Andrew C. Callihan entered the securities industry as a General Securities Representative of a FINRA registered firm on August 17, 2001. On July 6, 2005, he became registered with Chase Investment Services Corp. (Chase), a FINRA registered firm. He was employed with Chase until October 18, 2007. From October 9, 2007 to May 7, 2008, Callihan was registered in the same capacity with another FINRA registered firm. Callihan is not currently registered with any FINRA registered firm and he has no disciplinary history.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. From November 20, 2006, to May 7, 2007, Callihan withdrew or caused the withdrawal of a total of \$19,000 from three bank customers' checking or retirement accounts and deposited the funds into his securities account without the customers' knowledge and consent, in violation of NASD Rule 2110. Callihan then used the funds for some purpose other than the benefit of the customers.

2. On April 28, and May 15, 2008, FINRA Staff (Staff) sent letters to Callihan requesting that he respond to questions about allegations that he misappropriated funds from customers of his securities firm and its bank affiliate, but Callihan failed to respond to the Staff's requests, in violation of NASD Rules 2110 and 8210.

3. During all relevant times, AC, SD, and AD were members of the public. Each was over 65 years old, and they all maintained retirement accounts or checking accounts with Chase's bank affiliate (Bank).

4. On November 20, 2006, Callihan withdrew or caused the withdrawal of \$2,000 from AC's retirement account through the Bank, and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of AC. Callihan then used AC's funds for some purpose other than the benefit of AC.

5. On December 21, 2006, Callihan withdrew or caused the withdrawal of \$2,000 from AC's checking account with the Bank and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of AC. Callihan then used AC's funds for some purpose other than the benefit of AC.

6. On November 20, 2006, Callihan withdrew or caused the withdrawal of \$2,000 from SD's retirement account with the Bank, and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of SD. Callihan then used AC's funds for some purpose other than the benefit of SD.

7. On December 18, 2006, Callihan withdrew or caused the withdrawal of \$3,000 from AD's checking account with the Bank, and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of AD. Callihan then used AD's funds for some purpose other than the benefit of AD.

8. On January 9, 2007, Callihan withdrew or caused the withdrawal of \$3,000 from AD's retirement account with the Bank, and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of AD. Callihan then used AD's funds for some purpose other than the benefit of AD.

9. On May 7, 2007, Callihan withdrew or caused the withdrawal of \$7,000 from AD's retirement account with the Bank, and deposited the funds into AD's checking account with the Bank, without the knowledge or consent of AD. On or about May 7, 2007, Callihan withdrew or caused the withdrawal of \$7,000 from AD's checking account with the Bank, and deposited the funds into Callihan's securities account with Chase, without the knowledge or consent of AD. Callihan then used AD's funds for some purpose other than the benefit of AD.

10. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Rule 2110 by Callihan.

11. On April 28, 2008, Staff sent Callihan a request that he provide a written response to questions about his misappropriation of funds of bank and brokerage customers assets, including the misuse of AC's, SD's and AD's funds described above in paragraphs 3 through 9, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Callihan's address of record as contained in the records of the Central Registration Depository, in Lexington, KY (CRD Address).¹ Neither the first class mailing nor the certified mailing was returned to the Staff. The certified return receipt was also not returned to the Staff. The request letter was also sent by facsimile and first class mail to the Chief Compliance Officer for the firm where Callihan was registered and employed on April 28, 2008. The transmission report for the facsimile showed that the letter had been successfully transmitted and the first class mailing was not returned to the Staff.

¹ The Staff previously had sent requests for information and documentation related to separate assertions from Chase to Callihan's CRD Address, and he responded to those requests.

12. Having not received a response to the request for information and documentation sent on April 28, 2008, on May 15, 2008, the Staff sent Callihan a letter marked "Second Request," requesting that he provide a written response to questions about his misappropriation of funds of bank and brokerage customers assets, including the misuse of AC's, SD's, and AD's funds described above in paragraphs 3 through 9, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Callihan's CRD Address. The first class mailing was not returned to the Staff, and the certified mailing was returned to the Staff marked "Return to Sender - Unclaimed - Unable to Forward."

13. Callihan failed to respond to each and all of the requests for documents and information described in paragraphs 11 and 12 above, and the time for Callihan to respond has passed.

14. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Rules 2110 and 8210 by Callihan.

Based on the foregoing, Callihan violated NASD Rules 2110 and 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Callihan be barred from associating with any FINRA registered firm in any capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the

Director of ODA, by delegated authority



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