

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Malleswara Tuthika
CRD No. 5131117

Respondent.

DISCIPLINARY PROCEEDING
No. 20080142424017

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of approximately October 2007 to March 2008, Malleswara Tuthika engaged in discretionary trading in the accounts of three customers without written discretionary authority. In addition, he effected unsuitable mutual fund transactions in the accounts of two customers by liquidating the A share mutual fund investments of the two customers and investing in 27 different mutual funds in 13 different fund families in one customer account; and 34 different mutual funds in 16 different mutual fund families in another customer account.

RESPONDENT AND JURISDICTION

2. Malleswara Tuthika (Tuthika) became registered as a general securities representative of Ameriprise Financial Services, Inc., a FINRA member from October 6, 2006 until his termination on June 24, 2008. Tuthika is not currently registered with a FINRA member.

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Although Respondent has not been associated with a FINRA member firm since June 24, 2008, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) Tuthika's Form U5 was amended on September 18, 2008, and the Complaint was filed within two years after the date of his amendment to his Form U5, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

**FIRST CAUSE OF ACTION
EXERCISE OF DISCRETION WITHOUT WRITTEN CUSTOMER AUTHORIZATION
OR APPROVAL OF AMERIPRISE FINANCIAL SERVICES, INC.
Violations of NASD Conduct Rules 2110 and 2510**

3. The Department realleges and incorporates by reference paragraphs 1 through 2 above.
4. From approximately October 2007 until December 2007, Tuthika effected approximately 150 transactions in different equity securities in the account of JB on a discretionary basis. Tuthika executed these transactions without having obtained prior written authorization from JB and prior written acceptance of the account as discretionary by Ameriprise, in violation of NASD Conduct Rules 2110 and 2510.
5. From approximately January 2008 until March 2008, Tuthika effected mutual fund purchases on a discretionary basis amounting to approximately \$284,000 invested in 27 different mutual funds from 13 different mutual fund families for the account of BI. Tuthika executed these transactions without having obtained prior written authorization from BI and prior written acceptance of the account as discretionary by Ameriprise, in violation of NASD Conduct Rules 2110 and 2510.
6. In approximately February 2008 and in March 2008, Tuthika effected mutual fund purchases on a discretionary basis amounting to approximately \$74,000 invested in 34 different

mutual funds in 16 different mutual fund families for the account of NB, who was married to BI. Tuthika executed these transactions without having obtained prior written authorization from NB and prior written acceptance of the account as discretionary by Ameriprise, in violation of NASD Conduct Rules 2110 and 2510.

**SECOND CAUSE OF ACTION
UNSUITABLE MUTUAL FUND TRANSACTIONS
Violations of NASD Conduct Rules 2110 and 2310 and IM-2310-2(b)(3) by Tuthika**

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. During the relevant time period, NASD Conduct Rule 2310 required that, before making a recommendation to a customer, a representative "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."
9. IM-2310-2(b)(3) further developed this rule by stating that mutual funds are not generally proper trading vehicles, and stating that trading mutual funds, particularly on a short-term basis, "on its face may raise the question of Rule violation."
10. From approximately January 2008 until March 2008, Tuthika executed transactions in the account of BI consisting of the liquidation of Class A share mutual funds and subsequent investment of approximately \$284,000 in Class B shares of 27 different mutual funds from 13 different mutual fund families.
11. Tuthika executed the transactions in BI's account without having reasonable grounds for believing that such transactions were suitable for BI, in view of the nature of the recommended transactions, and in light of BI's financial situations, investment objectives, circumstances and needs. The Class B share mutual fund transactions that Tuthika effected in BI's account

deprived BI of savings in fees and expenses that BI could have obtained had Tuthika instead purchased Class A shares with the same family of funds or from fewer fund families. This conduct was in violation of NASD Conduct Rules 2110 and 2310 and IM-2310-2(b)(3).

**THIRD CAUSE OF ACTION
UNSUITABLE MUTUAL FUND TRANSACTIONS
Violations of NASD Conduct Rules 2110 and 2310 and IM-2310-2(b)(3) by Tuthika**

12. The Department realleges and incorporates by reference paragraphs 1 through 11 above.

13. During the relevant time period, NASD Conduct Rule 2310 required that, before making a recommendation to a customer, a representative "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

14. IM-2310-2(b)(3) further developed this rule by stating that mutual funds are not generally proper trading vehicles, and stating that trading mutual funds, particularly on a short-term basis, "on its face may raise the question of Rule violation."

15. In approximately February 2008 and in March 2008, Tuthika executed transactions in the account of NB, consisting of the liquidation of Class A share mutual funds and subsequent investment of approximately \$74,000 in B shares in 34 different mutual funds in 16 different mutual fund families for the account of NB, who was married to BI.

16. Tuthika executed the transactions in NB's account without having reasonable grounds for believing that such transactions were suitable for NB, in view of the nature of the recommended transactions, and in light of NB's financial situations, investment objectives, circumstances and needs. The Class B share mutual fund transactions that Tuthika effected in NB's account deprived NB of savings in fees and expenses that NB could have obtained had Tuthika instead

purchased Class A shares with the same family of funds or from fewer fund families. This conduct was in violation of NASD Conduct Rules 2110 and 2310, and IM-2310-2(b)(3).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 14, 2010


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