

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

Department of Enforcement,

Complainant,

v.

Raymond T. Clark,
CRD No. 3120696,

Respondent.

DISCIPLINARY PROCEEDING
No. 2008014383901

Hearing Officer - MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: September 10, 2012

INTRODUCTION

Disciplinary Proceeding No. 2 008014383901 was filed on November 15, 2011 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Raymond T. Clark submitted an Offer of Settlement (Offer) to Complainant dated September 6, 2012. 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 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

Respondent first became registered with FINRA in September 1998. From June 29, 2007 through December 3, 2008, he was registered as a General Securities Representative and as a General Securities Principal through member firm J.P. Turner & Company, LLC (Firm). He is currently registered in those capacities through another FINRA member firm.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. Respondent used a personal e-mail account for business-related communications with customers without his employer member firm's knowledge or approval. He also sent business-related documents by overnight courier and by facsimile without providing his firm copies of the documents. He thereby circumvented supervisory review of the communications and documents and caused his firm to fail to preserve required records. Respondent also failed to retain personally certain of the business-related e-mails and documents at issue, precluding their production to FINRA. This conduct violated NASD Conduct Rules 3110 and 2110.

CAUSING A MEMBER FIRM TO VIOLATE RECORDKEEPING RULES (NASD Conduct Rules 3110 and 2110)

2. From about June 29, 2007 to about July 22, 2008, the Firm had an internal "Registered Representative Guide" (RRG) that set forth various Firm policies. The RRG defined correspondence as "any written or electronic communication prepared for delivery to a

single current or prospective customer.” The RRG further stated that correspondence could take the form of letters, faxes, e-mails or instant messages. Under the RRG, a registered representative’s outgoing correspondence was subject to review and approval by an assigned manager, and failure to provide the manager with a copy of *all* [emphasis added] correspondence could result in disciplinary action including termination.

3. Further, the RRG stated that facsimile transmissions *must* [emphasis added] be provided in hard copy with all attachments to the representative’s assigned supervisor.
4. A separate section of the RRG addressed policies specific to e-mails. It stated in part:

Records of all outgoing and incoming email [sic] are maintained on the company’s servers in accordance with industry rules. . . . No outside email accounts are permitted unless approved by the Compliance Department and must meet certain internal requirements. . . . Electronic communications with customers and/or the public are permitted only through company approved facilities (such as your “RR”@jpturner.com email account). . . . Personnel need to preserve all messages sent and received according to statutory and regulatory requirements. . . . Electronic communications sent to external recipients require approval in accordance with the Firm policies and procedures established for written communications. . . . Every branch will automatically be assigned an e-mail address, via @jpturner.com. THIS IS THE ONLY E-MAIL THAT CAN BE USED TO COMMUNICATE WITH CUSTOMERS [all capitals in original] unless written approval to use an alternate system has been granted by the Compliance Department.

Respondent's Evasion of Firm's Procedures

5. From about June 29, 2007 to about July 22, 2008, Respondent worked in Buffalo, New York. He worked alone. No other Firm employee worked where he conducted his securities business and he did not employ an administrative assistant or any other person to assist him in conducting his securities business.
6. At all or most times from about June 29, 2007 to about July 22, 2008, Respondent had an e-mail address that had been assigned to him by the Firm to use in connection with conducting his securities business through the Firm.
7. At all or most times from about June 29, 2007 to about July 22, 2008, Respondent maintained a personal e-mail account (i.e., an account with an address that was not assigned to him for business use by the Firm). The account was maintained with AOL.
8. Respondent did not at any time receive approval from the Firm to use his personal e-mail account to communicate with customers or to use it for any other business-related communications or purpose. Respondent also did not, at any time relevant herein, notify the Firm that he was using the personal e-mail account to communicate with customers or for any other business-related purpose.
9. In fact, Respondent prepared and submitted to the Firm a "Monthly Branch Report" (Report) for each month from July 2007 through July 2008. Each Report contained a question about e-mail usage that asked, in substance, if Respondent was using a Firm approved e-mail vendor "for the purpose of conducting investment business." Respondent did not, on the Report he submitted for any month from November 2007 through July 2008, answer "No" to that question. Moreover, in completing and submitting the Reports for those months he did not indicate in any manner that he had

used or was using a personal e-mail account held with or at an unapproved vendor to communicate with any customer, or authorized representative of a customer, about investment matters.

Respondent's Communications with Customers BN and WJ

10. While associated with the Firm, Respondent served as the account executive for the account of CPW, a company located in East Syracuse, New York. The CPW account was established and controlled by BN, the company's principal or sole owner. BN lived in East Syracuse, New York. At the times relevant to this matter, BN and Respondent had never met in person. BN initially established an account in CPW's name with Respondent in about September 2006 at his prior employer member firm (Prior Firm). The CPW account at the Firm was opened on or about June 29, 2007 and was in substance transferred to the Firm through an "ACAT" transfer.
11. On or about November 5, 2007, Respondent sent a package to BN in East Syracuse, New York by Federal Express, transmitting certain business-related documents to him. The documents were sent in connection with their broker-customer relationship.
12. In about November 2007, BN asked WJ, and authorized WJ, to contact Respondent to request certain documents relating to the CPW account BN maintained with Respondent at the Prior Firm. WJ was a friend or acquaintance of Respondent's, and WJ had introduced BN to Respondent before BN opened the CPW account at the Prior Firm.
13. On November 20, 2007, Respondent received several e-mails from and transmitted several e-mails to WJ, all through his (Respondent's) personal AOL e-mail account. The e-mails concerned WJ's request on behalf of BN for documents relating to the CPW

account that BN had maintained at the Prior Firm. The e-mails thus concerned the broker-customer relationship between Respondent and BN and were business-related.

14. On November 20, 2007, after exchanging the e-mails with WJ as alleged above, Respondent faxed at least one and perhaps multiple documents to WJ. Respondent faxed the document(s) to WJ pursuant to WJ's request for documents concerning the CPW account BN maintained at the Prior Firm, and the document(s) pertained to that account.

Respondent's Communications with Customers AK and CW

15. In about January 2008, AK established an account at the Firm, for which Respondent served as the account executive, in the name of ALLC, a company located in Latham, New York. AK was the manager of ALLC and he controlled the ALLC account.
16. On various occasions from about January 30, 2008 to about July 22, 2008, Respondent received e-mails from AK and sent e-mails to AK through Respondent's personal AOL e-mail account that concerned the ALLC account or otherwise occurred in connection with the broker-customer relationship between Respondent and AK.
17. Some of the e-mails referred to above were also sent simultaneously to CW, who worked with or for AK.
18. The e-mails that Respondent sent to and received from AK through his personal AOL e-mail account comprised at least 30 known separate communications that were obtained in conducting the investigation in this matter.

Respondent's Failure to Provide Copies of These Records to the Firm

19. The documents Respondent sent to BN by Federal Express, the e-mails Respondent received from and sent to WJ and AK, and the document(s) Respondent faxed to WJ, all constituted correspondence under the Firm's RRG and constituted business records that

the Firm was required to preserve in conformance with applicable recordkeeping requirements. Respondent did not provide a copy of any of those documents and e-mails to the Firm or otherwise make them available to the Firm for review and/or retention within its records.

20. By failing to provide the Firm with copies of the documents he sent to BN, the document(s) he faxed to WJ, and the e-mails he received from and sent to WJ and AK, Respondent circumvented review and/or approval by the Firm of the documents and e-mails, and he caused the Firm to fail to retain copies of the documents and e-mails in conformance with applicable recordkeeping requirements. As a result of his failure, the Firm could not produce copies of the documents and e-mails to FINRA in its investigation.
21. Respondent's conduct set forth in Paragraphs 5 through 20 above caused the Firm to violate applicable record retention rules including Rule 17a-4 of the Securities Exchange Act of 1934 and NASD Conduct Rule 3110.
22. Respondent also did not retain or preserve copies of the documents he sent to BN and WJ or all of the e-mails he exchanged with WJ, AK or CW within his own records or files. By failing to preserve copies of the documents and e-mails within his own records, Respondent likewise could not produce them to FINRA in its investigation.
23. By causing the Firm to fail to retain business-related e-mails, documents and facsimiles in violation of recordkeeping rules, and by failing to retain certain of those records himself, Respondent violated NASD Conduct Rules 3110 and 2110.

Based on the foregoing, Respondent t violated NASD Conduct Rules 3110 and 2110. 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 Respondent be fined \$5,000 and suspended for two months from association with any FINRA member in any capacity.

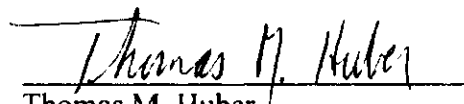
Respondent agrees to pay the monetary sanction upon notice that the Offer has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority


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