

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

Department of Enforcement,

Complainant,

v.

Marco A Martin, CRD No. 3100944,

Respondent.

Disciplinary Proceeding
No. 2008014982901

Hearing Officer: MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: March 3, 2011

INTRODUCTION

Disciplinary Proceeding No. 2008014982901 was filed on August 10, 2010, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Marco A. Martin submitted an Offer of Settlement (Offer) to Complainant dated February 15, 2011. 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

Marco A. Martin, CRD No. 3100944, age 40, became registered with FINRA in 1998. At the time of the filing of the Complaint he held Series 3, 7, 31, 63 and 65 licenses. He became registered with Citigroup Global Markets Inc. or one of its predecessor entities ("CGMI" or the "Firm") on July 10, 1998 when he began working as a general securities representative in the Firm's office in El Paso, Texas. He continued working in that capacity until CGMI terminated him for cause effective August 27, 2008. Since September 2008, Martin has been working as a registered representative for a Canadian brokerage firm in Toronto, Ontario.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. Between April 2006 and July 2008, while working as a registered representative of CGMI, Respondent executed over 50 unauthorized trades in the account of a customer, in violation of NASD Rules 2110 and IM-2310-2(b).
2. Martin hid the losses that resulted from his unauthorized trading from this customer by sending false and misleading monthly summaries that overstated the value of the assets in the customer's accounts, in violation of NASD Rule 2110.
3. On October 24, 2006, Martin also executed an unauthorized trade in the account of a different customer by purchasing \$126,000 worth of a mutual fund without the customer's prior knowledge, authorization, or approval, in violation of NASD Rules 2110 and IM-2310-2(b).

**FIRST CAUSE OF ACTION
(Unauthorized Trading in BDC's Fixed Income Account)
(NASD Rules 2110 and IM-2310-2(b))**

4. In the spring of 2004, a company ("BDC") based in Chihuahua, Mexico opened five separate accounts at CGMI, each with a different investment purpose. Martin inherited the accounts after the original brokers on the accounts, MV and SU, left for another firm.

5. One of the BDC's accounts was referred to as the Fixed Income Account.

6. At the outset of Martin's assignment as the broker of record for BDC's Fixed Income Account in February 2006, the account contained one investment: 286,528 units of a single, conservative product — SBGH US Dollar Reserve Fund CL A distribution units ("SBGH units"). The investment objective of the SBGH US Dollar Reserve Fund, one of SBGH's Fixed Income funds, was to "aim to maximize current income consistent with liquidity and conservation of capital." This Fund was like a money market fund in that it sought "to ensure that, to the extent reasonably possible, the Net Asset Value per Unit of each class of Distribution Units in the Fund will not change from U.S. \$1.00"

7. All five BDC accounts were managed accounts on which CGMI and the broker were paid through a management fee, with one exception: CGMI and its broker were paid commissions on purchases of newly issued securities.

8. Between February and April 2006, the Fixed Income Account held approximately 287,000 SBGH units, and interest on those units was reinvested. In April 2006, Martin liquidated nearly the entire position. Martin used those proceeds and an additional cash deposit to begin purchasing unauthorized investments for the account, including various closed end funds.

9. Starting in January 2007, Martin began purchasing proprietary structured products for the Fixed Income Account referred to as equity-linked securities or "ELKS." ELKS are a series of unsecured senior debt securities issued by Citigroup Funding, Inc. These equity-linked investments offered income as well as limited protection against declines in the prices of the common stocks upon which the ELKS were based, but they provided no protection to principal. ELKS investors were paid a fixed coupon at the maturity date of the ELK, or if the underlying equity's shares dropped below a "Downside Threshold Price," a fixed number of shares of the underlying equity equal to an equity ratio.

10. None of Martin's purchases of ELKS for the Fixed Income Account was authorized by BDC.

11. Martin continued to buy and sell the ELKS and other unauthorized products in the account until July 15, 2008. Even though BDC's Fixed Income account was a managed, fee-based account, CGMI and Martin earned commissions on all of the products recommended and sold in the BDC Fixed Income account (such as most of the ELKS purchases) that were classified as "new issues" by CGMI's underwriting department.

12. Between April 5, 2006 and July 15, 2008, Martin executed at least 50 separate transactions in the Fixed Income Account that were not authorized by BDC. The commissions Martin earned on the unauthorized transactions in the BDC Fixed Income Account were over and above his portion of the quarterly fees generated from the account.

13. In approximately July 2008, BDC became aware that Martin had been purchasing ELKS and other unauthorized investments in BDC's Fixed Income Account, and that the investments had suffered significant losses. BDC complained to Martin and CGMI. CGMI paid BDC restitution totaling over \$325,000.

14. Since BDC's first complaint about the unauthorized purchases, Martin has alternatively and inconsistently claimed that his purchases of ELKS and other unauthorized transactions in the Fixed Income Account were (1) a mistake, (2) done with "implicit discretion," or (3) each explicitly authorized by BDC.

15. CGMI did not permit brokers to exercise "implicit" discretion. CGMI's policies only allow brokers to exercise discretion in an account when the broker has first obtained written authorization and approval from three different sources: a) the customer; b) the CGMI branch manager; and c) the CGMI regional director. Nobody at CGMI gave Martin approval or authorization to exercise any form of discretion in the Fixed Income Account.

16. By executing over 50 transactions without authorization from his customer, Martin violated NASD Rules 2110 and IM-2310-2(b).

**SECOND CAUSE OF ACTION
(Providing Misleading Monthly Account Summaries to Customer BDC)
(NASD Rule 2110)**

Martin's Monthly Summaries

17. In approximately May 2006, soon after Martin began executing transactions for new investments in the Fixed Income Account, Martin created and began e-mailing one-page monthly account summaries ("Monthly Summaries") to two BDC representatives — CH and AC.

18. For more than two years, Martin created these Monthly Summaries and e-mailed them each month to CH and AC from his CGMI e-mail address. He used a consistent format from month to month with few substantive changes.

19. The Monthly Summaries purported to provide the total monthly account values and year-to-date performance for each of the five BDC accounts without identifying any of the specific investments or positions that were held in the various accounts.

20. Martin designed the Monthly Summaries to appear to be official CGMI documentation. Among other information, he inserted a copy of CGMI's official "Smith Barney Citigroup" brand logo and frequently included a copy of the firm's emblematic "umbrella" brand logo.

21. Martin's Monthly Summaries violated CGMI's policies and procedures in multiple respects: (i) representatives were not permitted to alter firm-generated monthly account statements; (ii) documents containing account valuations or performance indicators needed pre-approval before being sent to customers and Martin failed to get such pre-approval; (iii) documents containing client account equity or net worth and statistical data needed certain specified disclosures and Martin failed to include such disclosures; and (iv) representatives were prohibited from sending confidential information about clients via email. Here, the Monthly Summaries contained such information and were sent by email.

Martin's Monthly Summaries Hid Losses In BDC's Accounts

22. Shortly after Martin's first purchase of ELKS for the Fixed Income Account, the value of the ELKS declined and other ELKS purchased for the Account thereafter similarly declined in value, leading to losses in the Fixed Income Account. Martin did not reflect these losses in the Monthly Summaries sent to the customer; the 17 Monthly Summaries following Martin's first ELKS purchase all overstated the value of the assets in BDC's Fixed Income Account. At least four Monthly Summaries also overstated the values of one or more of BDC's other accounts at CGMI as well.

23. In the 17 Monthly Summaries that Martin sent to CH and AC between March 2007 and July 2008, there were at least 40 separate misrepresentations regarding the account values of the BDC accounts.

24. These Monthly Summaries misrepresented the value of the CGMI accounts and failed to accurately reflect the substantial losses that had been incurred in the Fixed Income Account as a result of Martin's purchase of investments that were less conservative than standard fixed income investments. For example:

- a. The Monthly Summary dated March 31, 2007 misrepresented the total balances for four of BDC's five accounts at CGMI.
- b. Each of the five Monthly Summaries sent for the period between November 30, 2007 and March 31, 2008 stated that the Fixed Income Account held at least \$90,000 more than the account actually held.
- c. The last Monthly Summary Martin issued before the unauthorized trades were discovered, dated June 30, 2008, overstated the value of the Fixed Income Account by over \$109,000 — an 18 percent overstatement.

25. By sending false and misleading Monthly Summaries to his customer, Martin violated NASD Rule 2110.

**THIRD CAUSE OF ACTION
(Unauthorized Trading in Customer FB's Account)
(NASD Rules 2110 and IM-2310-2(b))**

26. Customer FB opened an account with CGMI in December 2003 to hold the assets of his deceased father's estate. FB was the sole executor of his father's estate and the only person authorized to approve purchases or sales on the account ("the FB account").

27. FB informed his initial broker, SU, that he wanted all of the assets in the account invested conservatively in no-risk money market instruments. SU placed the assets into a money market fund.

28. When SU left CGMI in November 2005, Martin inherited the FB account. Between January 2006 and May 2006, the FB account maintained a very low balance, all of which was invested into CGMI's "Bank Deposit Program" — FDIC-insured sweep accounts. On May 4, 2006, approximately \$83,000 was deposited into the Bank Deposit Program, followed by further account deposits and withdrawals in the following months.

29. On October 24, 2006, without obtaining authorization from FB, Martin purchased over 12,000 shares of a mutual fund — the Eaton Vance Floating Rate Fund (Class A), or EVBLX, for the FB account at a cost of \$126,000. Martin's \$126,000 purchase of EVBLX shares constituted nearly all of the remaining assets in the account, and all of the investable assets of FB.

30. The EVBLX fund's objective was to provide "a high level of current income." The risk analysis section of the EVBLX prospectus and fact sheet described the mutual fund as one "which invests primarily in below-investment-grade debt obligations, which are considered speculative because of the increased credit risk of their issuers."

31. The EVBLX purchase represented a shift of the assets in the FB account from a conservative, FDIC-insured, money-market type of investment with little risk to principal to a riskier mutual fund investment.

32. By October 2008, the mutual fund investment in FB's account had lost approximately \$25,000, or nearly 20 percent of its original value. The \$126,000 investment had declined to \$100,894.

33. FB complained to CGMI and the firm paid FB \$11,500 in restitution.

34. FB did not approve or authorize Martin's purchase of 12,000 shares of EVBLX for the FB account.

35. By purchasing the mutual fund shares without authorization from FB, Martin violated NASD Rules 2110 and IM-2310-2(b).

Based upon the foregoing, Respondent violated NASD Rules 2110 and IM-2310-2(b).

Based upon 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 barred from association with any FINRA member in any capacity.

Pursuant to FINRA Rule 8313(e), the bar is 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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