

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALLEN WILLIAM FOILES
(CRD No. 2045454),

Respondent.

Disciplinary Proceeding
No. 2009016494001

Hearing Officer – MC

DEFAULT DECISION

April 1, 2011

Respondent, employed as a compliance officer for a FINRA member firm, falsified the firm's compliance records and misled the firm by falsely claiming to have discharged supervisory responsibilities assigned to him, in violation of NASD Conduct Rules 2110 and 3110. Subsequently, Respondent failed to respond to repeated requests for information issued to him by FINRA staff, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210. For these violations, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances:

Erin Mary Kelly, Principal Counsel, and Paul M. Schindler, Director,
Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Allen William Foiles.

DECISION

I. Introduction

The Department of Enforcement filed the attached two-cause complaint on August 30, 2010. The First Cause of Action charges that Respondent Allen William Foiles violated NASD

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Conduct Rules 2110 and 3110¹ by engaging in unethical conduct when, while employed as a compliance officer, he misled his firm by submitting falsified records to conceal his failure to fulfill his compliance supervision responsibilities, consequently causing his firm's books and records to be inaccurate. The Second Cause of Action charges that Foiles violated FINRA Conduct Rule 2010 and Procedural Rule 8210 when he failed to respond to a series of requests for information FINRA staff sent to him pursuant to Rule 8210.

Despite being properly served with the Complaint, Foiles failed to file an Answer or otherwise respond to the Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Erin Mary Kelly and five exhibits on November 24, 2010. Enforcement subsequently augmented the record by filing the Supplementary Declaration of Erin Mary Kelly and two additional exhibits on January 3, 2011, and the Second Supplementary Declaration of Erin Mary Kelly and two additional exhibits on February 3, 2011.² Foiles did not respond to the Default Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, and for the reasons set forth below, the allegations in the Complaint will be deemed admitted and Enforcement's Default Motion will be granted.³

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this Decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). The First Cause of Action relates to conduct occurring prior to the adoption of the new rules, and the Second Cause of Action relates to conduct occurring after their adoption. Thus, the First Cause of Action alleges that Foiles violated NASD Conduct Rules 2110 and 3110, and the Second Cause of Action alleges that he violated FINRA Procedural Rule 8210 and Conduct Rule 2010. This Decision refers to and relies on the Conduct Rules that were in effect at the time of Foiles' alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement made the supplemental filings in response to the Hearing Officer's Orders of December 30, 2010, and January 13, 2011. Enforcement's exhibits will be referred to as "CX-__" with the appropriate exhibit and page numbers. The Declaration of Erin Mary Kelly will be referred to as "Decl." or "Kelly Declaration," the Supplementary Declaration will be referred to as "Supp. Decl.," and the Second Supplementary Declaration will be referred to as "Second Supp. Decl.," with citation to specific paragraphs.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Kelly Declaration, the Supplementary Declarations, and the exhibits filed by Enforcement.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Foiles first registered with FINRA through a member firm in April 1990.⁴ After associating with two other FINRA member firms, on September 11, 2007, Foiles became associated with Northwestern Mutual Investment Services, LLC ("NMIS") in Beaverton, Ohio.⁵ Through NMIS, Foiles was registered with FINRA as a General Securities Principal, a General Securities Representative, a General Securities Sales Supervisor, and a State Agent.⁶ NMIS terminated Foiles' employment as of December 15, 2008. The Form U5 filed by NMIS stated that it discharged Foiles for submitting false documentation of compliance reviews and falsely telling supervisors that he had completed compliance reviews he had been assigned to perform.⁷

Because the Complaint was filed within two years of the last date Foiles was registered, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding.⁸

B. Default

Enforcement served the Complaint and Notice of Complaint on Foiles at his residential address listed in FINRA's Central Registration Depository ("CRD address") by certified mail and FedEx on August 30, 2010. Enforcement received the return receipt for the certified mailing showing that it was delivered on September 1, 2010. The receipt was signed, although the signature is illegible.⁹ Foiles did not file an Answer or otherwise respond to the Complaint. Therefore, on October 4, 2010, Enforcement served the Second Notice of Complaint upon Foiles at his CRD address by FedEx and first-class mail.¹⁰ The first-class mailing was not returned.

⁴ Decl. ¶ 4; CX-1.

⁵ Decl. ¶¶ 5-6.

⁶ In these capacities, Foiles was registered as a Series 7, 9, 10, 24, 63, and 66. Decl. ¶ 7; CX-2.

⁷ Decl. ¶ 8; CX-3.

⁸ Decl. ¶ 7; Article V, Section 4, FINRA By-Laws.

⁹ Decl. ¶ 10; CX-4.

¹⁰ Decl. ¶ 11; CX-5.

The FedEx tracking report shows that that package was left at the front door at Foiles' CRD address.¹¹ Subsequently, on January 14, 2011, Enforcement served the Complaint and Additional Second Notice of Complaint upon Foiles at his CRD address by certified mail.¹² The receipt for the certified mailing was not returned to Enforcement. Enforcement, however, confirmed that the mailing was served on Foiles' CRD address on January 18, 2011.¹³

Foiles has not filed an Answer or otherwise responded to the Complaint.

By serving the Complaint, Notice of Complaint, Second Notice of Complaint, and Additional Second Notice of Complaint upon Foiles by certified mail or courier at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided Foiles with constructive notice that the Complaint had been filed.¹⁴ By failing to file an Answer, Foiles has defaulted.

C. Foiles Engaged in Unethical Conduct by Misleading His Firm, Submitting Falsified Records, and Causing His Firm to Maintain Inaccurate Books and Records

NMIS employed Foiles as a compliance officer starting September 11, 2007.¹⁵ By June 2008, NMIS placed Foiles under heightened supervision because of its concern over his performance of his compliance responsibilities.¹⁶ The heightened supervision imposed several requirements upon Foiles. NMIS assigned Foiles a specific number of clients to contact, required him to meet with registered representatives assigned to him, and required him to review

¹¹ Supp. Decl. ¶ 3; CX-7.

¹² Second Supp. Decl. ¶ 2.

¹³ *Id.*, ¶ 3; CX-9.

¹⁴ FINRA Procedural Rule 9134(a); *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁵ Decl. ¶ 14.

¹⁶ Decl. ¶ 15.

a number of registered representatives' files.¹⁷ In addition, NMIS required Foiles to record onto compliance forms the information gathered during his review of representatives' files.¹⁸

From June to November 2008, however, Foiles fabricated records to indicate that he had taken the required actions when he had not.¹⁹ For example:

- On June 16, 2008, Foiles wrote and signed a letter addressed to one of the registered representatives assigned to him that falsely indicated he had attempted to review a customer file but had been unable to do so because the representative failed to produce it. The letter also falsely represented that Foiles had reviewed three of the representative's customer files. Foiles put the letter into NMIS's files, making the firm records appear to document Foiles' completion of these tasks.²⁰
- Foiles wrote a memorandum identifying compliance problems he claimed to have found during an annual review of a registered representative's files. The memorandum also falsely stated that the representative was unable to produce a client file because the representative had shredded it. Foiles had not conducted the annual review of this representative's files. Furthermore, the client file had not been shredded.²¹
- On July 8 and August 11, 2008, Foiles submitted a form to NMIS stating that he had completed file reviews for registered representatives in June and July 2008. In fact, he had not completed reviews for several of the representatives.²²
- In November 2008, in a phone conversation that was part of his heightened supervision, Foiles falsely stated that he had completed all but two of the annual registered representative file reviews that he was responsible for performing.²³

On December 15, 2008, NMIS terminated his employment after Foiles admitted lying to supervisors about completing required compliance reviews of registered representatives.²⁴

These facts, as alleged in the Complaint and supported by the Kelly Declaration and Enforcement's exhibits, are sufficient to establish, for the purposes of this Default Decision, that Foiles violated NASD Rules 2110 and 3110, by deceiving his firm about performing his assigned

¹⁷ Decl. ¶ 16.

¹⁸ Decl. ¶ 17.

¹⁹ Decl. ¶ 18.

²⁰ Decl. ¶ 19.

²¹ Decl. ¶ 20.

²² Decl. ¶ 21.

²³ Decl. ¶ 23.

²⁴ CX-3, p. 4.

compliance responsibilities, creating and submitting false documents, and causing NMIS to maintain inaccurate books and records.

D. Foiles Failed to Respond to Requests for Information

On January 26, 2009, FINRA staff issued its first request for information to Foiles pursuant to FINRA Rule 8210. The request was sent by certified and first-class mail to his CRD address. The return receipt for the certified mailing was returned to Enforcement signed “K. Foiles.” Foiles did not respond by the deadline set in the request.²⁵

On March 24, 2009, pursuant to FINRA Rule 8210, FINRA staff sent a second request for the information by certified mail to Foiles’ CRD address. The certified mailing was returned to Enforcement marked “unclaimed.” Foiles did not respond.²⁶

Much later, on December 16, 2009, FINRA staff sent a third Rule 8210 request for information to Foiles’ CRD address by certified mail. The same day Foiles spoke with the staff by telephone. He informed the staff that he had received service of the first request for information dated January 26, 2009. When the staff advised him of the third request, Foiles said that he would respond by the deadline of December 30, 2009. He did not do so. Furthermore, the December 16 request was returned to Enforcement marked “Unclaimed/Return to Sender.”²⁷

For these reasons, Enforcement has established, for the purposes of this Default Decision, that Foiles violated FINRA Conduct Rule 2010 and Procedural Rule 8210, as alleged in the Complaint and supported by the Kelly Declarations.

²⁵ Decl. ¶ 27.

²⁶ Decl. ¶ 28.

²⁷ Decl. ¶ 29.

III. Sanctions

A. Falsification of Records

NASD Conduct Rule 2110 requires a registered person, “in the conduct of his business,” to “observe high standards of commercial honor and just and equitable principles of trade.” Conduct Rule 3110 requires registered persons to maintain accurate books and records, including customer account information. It is well established that falsification of documents and entering inaccurate dates on required records are “inconsistent with the high ethical requirements of Conduct Rule 2110.”²⁸

For an individual who engages in misconduct involving falsification of firm records, the FINRA Sanction Guidelines direct adjudicators to consider the nature and materiality of the inaccurate information. In egregious cases, the Guidelines recommend consideration of a suspension for up to two years or a bar.²⁹ Enforcement asserts that Foiles’ falsifications of firm records were egregious. It is an aggravating factor that Foiles fabricated the records after NMIS placed him on heightened supervision over concern that he was failing to discharge his duties as a compliance officer. This was a warning to Foiles that he was under scrutiny for possible misconduct related to his compliance responsibilities.³⁰ Additional aggravating factors include that Foiles: (i) engaged in this misconduct over an extended period, in a series of unethical acts forming a pattern of misconduct;³¹ and (ii) concealed his failure to discharge his compliance responsibilities by falsifying records and lying to his supervisors.³²

For these reasons, Enforcement’s request for imposition of a bar is appropriate.

²⁸ *Dep’t of Enforcement v. Cuzzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *22-*23 (N.A.C. Feb. 27, 2007); *see also Dep’t of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *29-*30 (N.A.C. May 25, 2005).

²⁹ *FINRA Sanction Guidelines*, p. 29 (2011).

³⁰ *Guidelines*, p. 7 (Principal Consideration No. 15).

³¹ *Guidelines*, p. 6 (Principal Consideration Nos. 8-9).

³² *Id.* (Principal Consideration No. 10).

B. Failure to Respond to Requests for Information

For failure to respond to a request for information issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.³³ In this case, there are no mitigating factors. Foiles did not respond in any manner to multiple requests for information issued by FINRA pursuant to Procedural Rule 8210, even though he admitted to FINRA staff on December 16, 2009, that he had been aware of the request for information almost one year, and promised to provide the requested information before the deadline the staff set.

“Conduct Rule [2010] and Procedural Rule 8210 are crucial components of [FINRA’s] examinations and investigations. ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”³⁴ As for sanctions, “[t]he Guidelines treat a failure to respond ... as egregious.”³⁵

For these reasons, Enforcement’s recommendation of a bar from the securities industry is appropriate for Foiles’ egregious failure to respond to FINRA’s repeated requests for information.

IV. Order

Respondent Allen William Foiles is barred from associating with any FINRA member firm in any capacity for (i) violating NASD Conduct Rules 2110 and 3110 by falsifying his

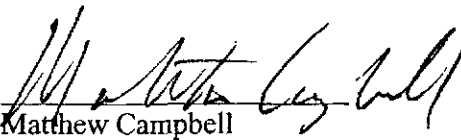
³³ *Guidelines*, p. 33.

³⁴ *Dep’t of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).

³⁵ *Id.* at *41.

employer firm's compliance records and misleading the firm by falsely claiming to have fulfilled his supervisory and compliance responsibilities; and (ii) violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond in any manner to repeated requests for information issued to him pursuant to Rule 8210.

If this Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Allen W. Foiles (*via overnight courier and first-class mail*)
Erin M. Kelly, Esq. (*via electronic and first-class mail*)
Paul M. Schindler, Esq. (*via electronic and first-class mail*)
Leo Kane, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Allen William Foiles
(CRD No. 2045454),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009016494001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Allen Foiles misled his brokerage firm, falsified records, and failed to comply with FINRA's requests for information. Over a period of more than six months in 2008, Foiles falsified records which caused his firm to conclude erroneously that he had completed certain supervisory reviews and other compliance-related work, when in fact he had not, and also caused the firm's books and records to be inaccurate. Further, Foiles failed to respond to FINRA's requests for information.

2. As a result, Foiles violated NASD Rules 2110, 3110, and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. In April 1990, Foiles registered with FINRA as an Investment Company Products and Variable Contracts Products Representative (Series 6) associated with a member firm based in Cincinnati, Ohio.

4. At various times from April 1993 to September 2005, Foiles was associated with two other FINRA members.

5. On September 11, 2007, Foiles became associated with Northwestern Mutual Investment Services, LLC ("NMIS") in Beaverton, Ohio when the firm filed a Form U4 for him. While associated with NMIS, Foiles maintained the following registrations:

- a. General Securities Principal (Series 24);
- b. General Securities Representative (Series 7);
- c. General Securities Sales Supervisor (Series 9/10); and
- d. State Agent (Series 63 and 66) – Ohio.

6. On January 13, 2009 NMIS terminated Foiles as of December 15, 2008.

7. Foiles is not currently associated with a FINRA member, but he is subject to FINRA's jurisdiction under Article V, Section 4 of FINRA's By-Laws because (a) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (b) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after December 15, 2008.

**FIRST CAUSE OF ACTION
UNETHICAL CONDUCT AND FALSIFICATION OF RECORDS
(NASD Rules 2110 and 3110)**

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.

9. As detailed below, in multiple instances, Foiles falsified NMIS compliance records in its Dayton Network Office ("Dayton Office"). Further, he misled NMIS about whether he had completed various compliance related tasks. As a result, he caused NMIS to have inaccurate books and records.

10. Between September 11, 2007 and December 15, 2008, Foiles worked as a compliance official for NMIS in Ohio.

11. By at least June 2008, as a result of concern over whether Foiles had completed certain compliance-related work, or completed it in a timely manner, NMIS implemented a formal plan of heightened supervision.

12. The formal plan required Foiles to initiate a minimum number of client contacts, hold meetings with assigned registered representatives, and, to complete a minimum number of file reviews for his registered representatives' files.

13. Foiles was also required to complete various standard compliance forms on which he was supposed to record the information he had gathered during the file reviews and customer contacts.

14. During at least the period of June 2008 to November 2008, Foiles falsified various compliance records so as to make it appear that certain tasks were completed when, in fact, they were not.

15. On June 16, 2008, Foiles created and signed a letter addressed to registered representative BD stating, among other things, that Foiles had tried to review the file for one of BD's clients, but that he had been unable to do so because BD could not produce the file. The letter also stated that Foiles reviewed three other customer files. The letter was false. Foiles did not complete an annual file review for BD and he did not review the client files. Instead, he fabricated the letter and placed it in NMIS's files so as to mislead NMIS that the compliance work was completed.

16. Furthering his deception, during the same period, Foiles created a "Supervisory Memo" outlining the compliance-related problems he identified while performing his annual review of BD's files. This Supervisory Memo stated that BD was unable to produce a certain client file during the review with Foiles and that BD indicated that he had shredded the file after the client went to another firm. In fact, Foiles had never initiated an annual review for BD. The supposedly missing file had never been lost, and was still located in BD's files.

17. On July 8, 2008, Foiles signed a form entitled "Managing Partner's Supervisory Review Checklist" and placed it in NMIS's files. The form indicated, among other things, that file reviews for five registered representatives had been completed during the month of June 2008. However, at least two of these reviews were never completed by Foiles.

18. On August 11, 2008, Foiles signed another "Managing Partner's Supervisory Checklist" and placed it in NMIS's files. The form indicated that file reviews for three registered representatives had been completed during the month of July. However, at least one of these reviews was never completed by Foiles.

19. In November 2008, Foiles further misled NMIS by telling a Network Office Supervision Consultant, during a weekly monitoring call which had been instituted pursuant to

the heightened supervision plan, that he had completed all but two of the annual registered representative file reviews. This was false.

20. As a result of the foregoing, Foiles forged certain compliance-related materials and otherwise misled NMIS about whether he had completed various compliance related tasks, thereby violating NASD Rule 2110. He also caused NMIS to have inaccurate books and records violating NASD Rules 3110 and 2110.

**SECOND CAUSE OF ACTION
FAILURE TO RESPOND TO REQUESTS FOR INFORMATION
(VIOLATION OF FINRA RULES 8210 AND 2010)**

21. The Department realleges and incorporates by reference paragraphs 1 through 20 above.

22. On January 26, 2009, FINRA staff sent a written request for information to Foiles via certified receipt request and first class mail at the address listed in Web CRD ("the CRD address") pursuant to FINRA Rule 8210 ("Rule 8210"). FINRA received the return receipt signed by a K. Foiles. Foiles failed to respond by the requested deadline of February 26, 2009.

23. On March 24, 2009, FINRA staff sent to Foiles a second request pursuant to Rule 8210 seeking the same information requested in the January 26, 2009 letter. The letter was sent by certified mail to the CRD address. FINRA received back the certified return receipt copy marked unclaimed. The letter requested a deadline of April 7, 2009.

24. On December 16, 2009, FINRA staff sent a third request pursuant to Rule 8210 by certified mail to Foiles' CRD address. On the same day, in a telephone call with Staff, Foiles acknowledged receiving at least the January 26, 2009 request and told Staff that he would respond to the forthcoming December 16, 2009 request within the allotted time. Despite his promise to respond, Foiled failed to respond in any fashion by the stated deadline of December

30, 2009 or at any point thereafter. And, the December 16, 2009 letter was returned to FINRA marked "Unclaimed/Return to Sender." Accordingly, Foiles violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and,
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 30, 2010


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