

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Matthew M. Dooley (CRD No. 2507851),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090209303-01

COMPLAINT

Complainant alleges:

SUMMARY

1. Respondent Matthew M. Dooley made numerous unsuitable recommendations of inverse, leveraged exchange traded funds (ETFs) to two customers over the course of approximately one year. He also improperly shared in one customer's losses. Finally, Respondent failed to provide information requested by FINRA staff in connection with an investigation. As a result, Respondent violated NASD Conduct Rules 2310, 2330 and 2110 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in September 2005 when he became associated with a FINRA member as a back-office employee. He passed the Series 7 and 66 examinations in November 2005.
3. From on or about March 2, 2007 through November 19, 2009, Respondent was registered at FINRA member Internet Securities (the Firm) as a General Securities Representative. He has not since become associated with any other FINRA member.

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4. Although Respondent has not been associated with a FINRA member firm since November 19, 2009, Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:
- a. the Complaint was filed within two years after the date upon which Respondent ceased to be associated with a FINRA member; and
 - b. the Complaint charges Respondent with misconduct committed while Respondent was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which Respondent ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
Suitability (NASD Conduct Rules 2310 and 2110 and FINRA Rule 2010)

5. Complainant realleges and incorporates by reference paragraphs 1 through 4 above.

Background

6. The securities at issue in this case consist of approximately 15 different exchange-traded funds (ETFs). Each of these ETFs was designed to correspond to a multiple of the inverse of the daily price performance of an underlying index.
7. The prospectuses pertaining to these ETFs explicitly state that they employ leveraging, which is considered a "speculative" technique.
8. The prospectuses further explicitly state that the ETFs should not be expected to achieve their stated objectives when held for longer than one day.

Customer CV

9. On or about November 21, 2007, Customer CV signed an account application in order to open an account with Respondent at the Firm. According to the application, CV's investment experience consisted of approximately 4 transactions per year in stocks and mutual funds over the course of approximately 10 years. CV's chosen investment objectives were "Growth" and "Income." Other investment objectives on the account application *not* selected by CV were "Speculation" and "Day Trade."
10. From on or about December 24, 2007 through December 15, 2008, Respondent recommended and effected approximately 36 purchases and 36 sales of the ETFs described in paragraphs 6 through 8.
11. The vast majority of these transactions involved holding periods of longer than one day. Several ETFs were held for months in CV's account.

Customer CR

12. On or about December 3, 2007, Customer CR signed an account application in order to open an account with Respondent at the Firm. According to the application, CR's investment experience consisted of approximately 2 transactions per year in stocks and mutual funds over the course of approximately 25 years. CR's chosen investment objectives were "Growth" and "Income." Other investment objectives on the account application *not* selected by CR were "Speculation" and "Day Trade."
13. From on or about March 13, 2008 through December 12, 2008, Respondent recommended and effected approximately 26 purchases and 23 sales of the ETFs described in paragraphs 6 through 8.

14. The vast majority of these transactions involved holding periods of longer than one day. Several ETFs were held for months in CR's account.
15. CV's and CR's investment objectives were inconsistent with the purchased ETFs which, as described by their prospectuses, employed speculative techniques and were designed to be trading instruments (*i.e.*, held for no more than one day) rather than securities designed for growth or income.
16. Further, the fact that Respondent repeatedly caused CV and CR to hold the ETFs for longer than one day demonstrates his fundamental misunderstanding of these securities, such that any recommendation he made pertaining to them could not have been based on reasonable grounds.
17. Based on the foregoing, Respondent did not have reasonable grounds for believing that his recommendations to purchase and sell the above-described ETFs were suitable for CV and CR. With respect to the recommendations that occurred between on or about December 3, 2007 and December 14, 2008, Respondent violated NASD Conduct Rules 2310 and 2110. With respect to a recommendation that occurred on or about December 15, 2008, Respondent violated NASD Conduct Rule 2310 and FINRA Rule 2010.
18. As a result of Respondent's unsuitable recommendations, CV experienced market losses of approximately \$26,543 over the relevant time period.
19. As a result of Respondent's unsuitable recommendations, CR experienced market losses of approximately \$18,764 over the relevant time period.

SECOND CAUSE OF ACTION

Improper Sharing in Accounts (NASD Conduct Rule 2330 and FINRA Rule 2010)

20. Complainant realleges and incorporates by reference paragraphs 1 through 19 above.
21. In September 2008, CR contacted Respondent to complain about the losses she suffered from Respondent's ETF trades. CR subsequently told Respondent to invest her money in certain bonds.
22. Respondent did not honor CR's request but, instead, continued to purchase and sell the above-described ETFs.
23. In December 2008, CR contacted the president of the Firm to complain about Respondent's failure to honor her instructions. The president of the Firm immediately contacted Respondent to obtain additional information about the circumstances surrounding CR's complaint.
24. In January 2009, Respondent contacted CR. At that time, he gave her a handwritten note stating that he would pay her \$1,000 per month for eighteen months.
25. Between January and April 2009, Respondent made four payments to CR totaling \$2,500. Respondent never notified anyone at the Firm about these payments and did not obtain written authorization from CR to make these payments.
26. At no time did Respondent ever contribute any funds to CR's account.
27. By sharing in CR's losses without obtaining appropriate prior written authorization from CR and the Firm and, further, without having contributed any funds to CR's account, Respondent violated NASD Conduct Rule 2330 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Failure to Provide Information (FINRA Rules 8210 and 2010)

28. Complainant realleges and incorporates by reference paragraphs 1 through 27 above.

The First Request

29. On or about April 30, 2010, FINRA staff sent Respondent a letter (First Request), pursuant to FINRA Rule 8210. Among other things, the First Request asked for an explanation of Respondent's trading strategies in CV's and CR's accounts, and also requested documents pertaining to his payments to CR.
30. The First Request was sent by first class mail and first class certified mail to Respondent's current residential address as reflected in CRD: [REDACTED] (CRD Address).
31. With respect to the mailings of the First Request:
- a. the first class mailing was not returned; and
 - b. the first class certified mailing was returned, marked, "UNCLAIMED; UNABLE TO FORWARD."
32. The due date for the First Request was May 14, 2010 but Respondent failed to provide any of the requested information.

The Second Request

33. On or about May 14, 2010, FINRA staff sent Respondent a second letter (Second Request), pursuant to FINRA Rule 8210, re-requesting the information and documents sought in the First Request.
34. The Second Request was sent by first class mail and first class certified mail to the CRD address.
35. With respect to the mailings of the Second Request:
- a. the first class mailing was not returned; and

b. FINRA staff received a return receipt evidencing delivery of the certified mailing, signed by "Alma Calderon."

36. The due date for the Second Request was May 31, 2010 but Respondent failed to provide any of the requested information.

37. By failing to provide information requested by FINRA staff in connection with an investigation, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

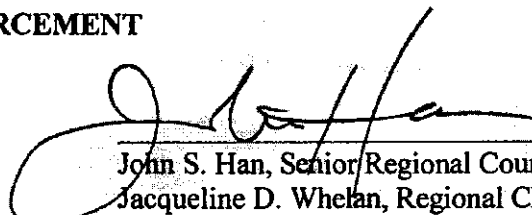
WHEREFORE, Complainant respectfully requests that the Panel:

A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.

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: June 15, 2011



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