

**FINRA
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

**Sean Spearman,
CRD No. 2945116,**

Respondent.

**Disciplinary Proceeding
No. 2010023220501**

Hearing Officer _____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In February 2009, Respondent Sean Spearman ("Spearman"), while working for BMA Securities, Inc. ("BMA" or "the firm"), liquidated a position held by BMA customer, SWA, to meet margin requirements. Instead of selling the shares to the market and maximizing the return to his customer, Spearman bought the shares into his proprietary account, which he then sold to the street on the same day. He gave the customer a price below the market and failed to inform the customer how the trades were done and the basis for the pricing. By these actions, Spearman made close to a \$240,000 profit at the expense of the customer, the profit not being disclosed to the customer. As a result, Spearman willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and also violated FINRA Rules 2020 and 2010.

2. SWA's principals later deposited stock with BMA, some of which was sold to cover the margin debit. Spearman had complete discretion over when and how much of the stock to sell. On the last sale of the shares in September 2009, Spearman again traded in a way to benefit himself at the expense of the customer. Rather than sell the shares into the market, he bought a block of the shares into one of his proprietary accounts at a price that was well below the market price for the day. He then sold the shares for a profit of over \$45,000. He again failed to inform the customer how the trades were done and the basis for the pricing and did not disclose the profit to the customer. As a result, Spearman willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and also violated FINRA Rules 2020 and 2010.

3. Spearman also periodically executed customer sale orders by buying the position in his proprietary account at the market price, holding it and selling it to the market later the same day or the next day. For customer purchases, he periodically purchased from the street at market price and then sold to customers from his proprietary accounts. Customers were charged the alleged market price at the time when the order was placed and also were charged a commission. Spearman did not disclose to customers any profits made in those situations that involved exchange traded securities. As a result, Spearman willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-10 thereunder and also violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

4. Sean Spearman, CRD No. 2945116, has been registered with 8 different firms since first registering with FINRA in 1999. He was registered as a series 62 and an equity trader

with BMA from April 25, 2007 through February 28, 2011. He is currently registered with another FINRA member firm.

5. Under Article V, Section 4 of the FINRA By-Laws, FINRA possesses jurisdiction over Spearman because: (a) he currently is associated with a FINRA member and registered with FINRA; and (b) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

FACTS

Spearman's Trading at BMA

6. Between January 2009 and February 2011 ("the review period"), Spearman was a trader at BMA.

7. Spearman got 90% of all profits generated in his trading accounts. For traders he brought in to the firm, he received the difference between 90% and the percentage given to the trader.

8. Spearman periodically executed customer sale orders by buying the position into his proprietary account, holding it and selling it to the market later the same day or the next day. For customer purchases, he periodically purchased from the street at market price and then sold to the customer from his proprietary account.

9. In those situations, customers were given what Spearman claimed was the market price at the time when the order was placed and also were charged a commission.

10. Spearman failed to disclose to the customer the profits he made on those transactions, including trades involving exchange traded securities. The confirmation only indicated the commission amount.

11. All of the customer sales were supposed to be done on a riskless principal basis and the customer was only supposed to pay the commission.

SWA Margin Sales

12. SWA was a Spearman customer which took very large positions in the securities it traded and frequently carried a large margin balance.

13. In February 2009, the market moved against SWA, causing a margin call on its account.

14. When the customer failed to deposit additional funds or securities, on February 18, 2009, Spearman liquidated SWA's account to cover as much of the customer's debit balance as possible. Spearman had both time and price discretion as to all aspects of the sales.

15. At that time, SWA's account held only 610,900 shares of Direxion Daily Small Cap Bull 3X Shares ("TNA"), an exchange traded fund.

16. On February 18, 2009, Spearman entered a sale of 610,900 shares of TNA from SWA's account. The trade was marked as a principal trade and was charged a commission of \$18,327, based on the normal commission rate of 0.03 per share charged to the customer.

17. Rather than selling the shares directly to the market from the SWA account, Spearman did the trade by buying all 610,900 shares into his proprietary account and selling them to the market from that account at an average price of \$20.31569 per share.

18. The sale from the customer was originally marked at a price of \$21.1778 per share. It was then cancelled and rebilled at a price of \$19.9232 per share. The latter price did not accurately reflect the market in TNA that day or the price Spearman received.

19. To cover the margin balance, Spearman should have sold out the customer's positions in the most efficient fashion to maximize the amount received. Instead he executed the trades in a manner to benefit himself to the detriment of SWA.

20. Based on the difference of .39249 between the price given SWA and the average price he received, Spearman made a \$239,772 profit at the expense of the customer, excluding the commission charged.

21. Spearman intentionally chose not to or recklessly failed to disclose to his customer both the manner in which he handled the trades and the profit he realized from them.

Sales to Resolve the Margin Debit

22. After the sales of SWA's TNA shares, the account was left with a \$704,809.58 debit balance on February 18, 2009.

23. Following that, discussions continued with the customer about repaying the debit, with the customer saying repeatedly it would make payment.

24. It was ultimately agreed that SWA would deposit shares of Immunosyn Corporation ("IMYN") stock for BMA to hold until the customer could get the cash to pay off the balance.

25. The customer delivered a certificate dated February 26, 2009 for 26 million shares of IMYN in the name of BMA to the firm on March 3, 2009 to serve as collateral for the debit balance.

26. The shares were placed in a BMA inventory account over which Spearman had trading authority.

27. After a few months, firm management and Spearman determined that the customer was not going to send in payment and agreed that IMYN shares should be sold to offset the balance owed.

28. Spearman had price and time discretion for how the shares would be sold. Since the stock did not trade every day, he sold when the opportunity presented itself.

29. SWA's debit balance was gradually whittled down through recurring sales of IMYN.

30. By September 16, 2009, SWA's debit balance had been reduced to the point where, at the then current market price, there were more IMYN shares remaining in the account than needed to eliminate the remaining debt.

31. As he had done with the sale of SWA's TNA shares, rather than sell the shares held in the BMA inventory account into the market, Spearman bought 288,600 of the IMYN shares in one of his proprietary accounts at a price of 0.0894 per share.

32. That price was well below the market price for September 16, 2009; the daily low and high for IMYN on September 16, 2009 were .21 and .36 respectively.

33. Spearman then sold 153,600 shares from his proprietary account at .2565 per share that day and sold the remaining 125,000 shares at .2574 per share the next day. The differential between that and what he paid the BMA account for the shares resulted in a profit of \$45,771 for Spearman, at the expense of his customer.

34. Spearman was supposed to sell the IMYN shares to the market solely to recoup the debit balance. Spearman had no authority from the firm to buy the position and take on the risk. The manner in which he executed the trades was solely to benefit himself to the detriment of SWA.

35. Regardless of how he did the trades, Spearman was required to give the BMA account, and by extension SWA, a price that accurately reflected the market price. Instead he gave a price that had no market basis and was selected solely for his own pecuniary gain.

36. The price given the firm and the customer was used to calculate the final amount generated by the sales to eliminate the debit balance. After those shares were sold, the shares remaining in the account were returned to the customer.

37. Spearman intentionally chose not to or recklessly failed to disclose to his customer both the manner in which he handled the trades and the profit he realized from them.

FIRST CAUSE OF ACTION

Fraudulent Sales of TNA and IMYN Willful Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Thereunder and Violations of FINRA Rules 2020 and 2010

38. The Department realleges and incorporates by reference paragraphs 1 through 37 above.

39. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder are broad anti-fraud provisions. Rule 10b-5 makes it unlawful for any person to 1) employ any device, scheme, or artifice to defraud; 2) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading; or 3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

40. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

41. On February 18, 2009, Spearman was required to sell SWA's holdings of TNA because of margin requirements.

42. He sold shares for several hours that day out of his proprietary account.

43. The customer was given a price of \$19.9232 per share for all of the shares sold even though Spearman knew that the price did not reflect the market price and that he had sold the shares to the street at an average price of \$20.31569 per share on the same day.

44. By giving the customer less than the market price and less than the amount for which he sold the shares, Spearman made a \$239,772 profit, excluding the \$18,327 commission, at the expense of SWA.

45. Spearman did not disclose to the customer how he handled the trades and the profit he made on the trades.

46. On September 16, 2009, Spearman sold IMYN shares out of a BMA account to reduce SWA's debit balance.

47. He did not sell the shares directly out of the BMA account. Instead he bought 288,600 of the shares in one of his proprietary accounts and he marked the sale at a price of 0.0894 per share.

48. Spearman knew or was reckless in not knowing that price was well below the market price.

49. He sold the shares out of his proprietary account that day and the next at .2565 per share and .2574 per share, respectively.

50. By giving the customer an unfair price, which was significantly less than the market price, and significantly less than the amount for which he sold the shares, Spearman made a \$45,771 profit, at the expense of SWA.

51. He did not disclose to the customer how he handled the trades and the profit he made on the trades.

52. Spearman's failure to disclose how he handled the TNA and IMYN trades and the profits he made was intentional, or at a minimum, reckless.

53. The facts that Spearman failed to disclose to the customer were material and he had a duty to disclose those facts.

54. The transactions in questions were done by the use of means of interstate commerce and through national securities exchanges.

55. Spearman therefore willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and also violated FINRA Rule 2020 and, by virtue of those violations, FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Disclose Markups or Markdowns Willful Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-10 Thereunder and Violations of FINRA Rule 2010

56. The Department realleges and incorporates by reference paragraphs 1 through 55 above.

57. SEC Rule 10b-10 requires a broker-dealer to give or send the customer written notification of any markup, markdown or similar remuneration it receives in principal transactions involving equity securities when not acting as a market maker.

58. When the firm is acting as principal for its own account, the rule requires it to disclose, "[i]n the case where such broker or dealer is not a market maker in an equity security and, if, after having received an order to buy from a customer, the broker or dealer purchased the equity security from another person to offset a contemporaneous sale to such customer or, after

having received an order to sell from a customer, the broker or dealer sold the security to another person to offset a contemporaneous purchase from such customer, the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales).”

59. The rule further requires when the firm is acting as principal for its own account, “[i]n the case of any other transaction in an NMS stock ..., or an equity security that is traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, [the firm must disclose] the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.”

60. In five separate situations in February 2009, Spearman executed a customer order for an exchange traded security by selling to or buying from the street in his account and completing the trade with the customer from that account at a price that gave him a profit.

61. In each situation, Spearman did not disclose any of the markups or markdowns to his customer or BMA.

62. Spearman was not a market maker in the securities being traded, and the trades were contemporaneous and designed to be offsetting.

63. Spearman therefore willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-10 promulgated thereunder and also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

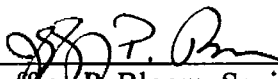
- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Spearman be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. make specific findings that Spearman willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-10 thereunder; and
- D. 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

DATED: May 9, 2014

Respectfully submitted,



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