

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

Department of Enforcement,

Complainant,

v.

Robert J. Beihoff,
CRD No. 2986562,

Respondent.

Disciplinary Proceeding
No. 2010025512301

Hearing Officer: MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 30, 2013

INTRODUCTION

Disciplinary Proceeding No. 2010025512301 was filed on December 6, 2012, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Robert J. Beihoff ("Beihoff") submitted an Offer of Settlement (Offer) to Complainant dated May 13, 2013. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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

Between 1997 and December 2009, Beihoff was registered as a General Securities Representative with SII Investments, Inc. ("SII Investments"), a FINRA-registered firm. Between December 2009 and December 8, 2010, Beihoff was registered in the same capacity with H. Beck, Inc. ("H. Beck"), a FINRA-registered firm. Beihoff is no longer registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. Between January 2005 and December 2010, Respondent Robert J. Beihoff ("Beihoff"), while holding himself out as an "exempt" unregistered investment adviser, effected approximately 1,500 securities transactions totaling \$27,845,000 in five accounts that were held away from, and owned by non-customers of, his employing broker-dealers. In return, Beihoff received at least \$81,413 in compensation.
2. Beihoff utilized discretionary authority to place trades in four of the five securities accounts that were held away from his employing broker-dealers. Although Beihoff had trading authority from these customers, his employing broker-dealers and the executing broker-dealers did not accept the accounts as discretionary. Accordingly, Beihoff violated NASD Conduct Rules 2510 and 2110 and FINRA Rule 2010.

3. Beihoff, in fact, violated NASD Conduct Rules 3050 and 2110 and FINRA Rule 2010, because he never notified his employing broker-dealers or the executing broker-dealers, orally or in writing, that he was effecting the trades in the customers' accounts utilizing discretion.

4. Beihoff completed annual compliance questionnaires in 2006, 2007 and 2008, and a separate outside business activity questionnaire in 2008. Beihoff incorrectly reported on the questionnaires that he had reported all sources of income to his broker-dealer, that he had ensured that all advisory fees had been paid through his broker-dealer, that he was complying with his broker-dealer's requirement that he not collect advisory fees while not registered as an investment adviser, and that he did not have any discretionary accounts. Beihoff also incorrectly reported on a 2009 Outside Business Activities Disclosure Form that he was not engaged in any consulting activity or investment advisory services. In doing so, Beihoff violated NASD Conduct Rule 2110 and FINRA Rule 2010.

FACTS

Trading Activity

5. Beihoff organized Beihoff Financial Consulting, LLC as a Wisconsin limited liability company on or about January 6, 2005, but he did not register the company as an investment adviser with the U. S. Securities and Exchange Commission or with any state authority, relying instead on an apparent exemption for registration. Through this company, Beihoff provided investment advice for compensation to at least four members of the public, and he executed transactions in their five securities accounts.

6. The accounts included one account cleared through Pershing LLC and four accounts cleared through Fidelity Investments.

7. Using his own assigned username and password, with authorization from his clients, Beihoff logged into these individuals' securities accounts using a computer, and placed trades in the five individuals' accounts. In sum, between approximately January 2005 and December 2010, Beihoff completed more than 1,500 transactions totaling more than \$27,845,000 worth of securities bought and sold. Beihoff collected a total of approximately \$81,413 from these individuals in compensation for this activity. Between approximately October 2006 and December 2010, Beihoff, with authorization from his clients, utilized discretion to effect the trades in four of the five customer accounts.

Written Disclosures to SII Investments and H. Beck

8. On November 11, 2004, while at SII, Beihoff completed and signed a "2004 Face-to Face (sic) Compliance Meeting," and submitted the form to SII. On the form, Beihoff marked "Yes" to the following statements:

- I understand that all forms of outside business activities must be disclosed in writing to SII and updated on Form U-4, and that I must receive written approval from SII prior to engaging in any outside business activity.
- SII prohibits its associated persons from maintaining Personal Brokerage Accounts other than through SII. Personal Brokerage Accounts are defined as...any account that the associate...has discretionary authority (including a member of an investment club).
- I am aware that SII does not allow me to...hold or exercise discretionary authority or power of attorney over any customer account without written approval from the Compliance Department.
- I understand that all fees must be paid through SII Investments and that I may not collect advisory fees directly.
- I provide a signed statement to SII for each client account that is established, signed by both the client(s) and myself.

- I promptly provide all required paperwork to SII, including a New Account Form, IA Transmittal Form, a corresponding Advisory Agreement, a Switching Form, and transactional documents (if applicable).
- I report all personal securities transactions in such accounts to SII Investments no later than 10 days after the end of each quarter, except for those involving open-end investment company shares, US. Government securities, and money-market instruments

9. On or about October 24, 2005, Beihoff completed and signed a “2005 Face-to Face (sic) Compliance Meeting,” and submitted the form to SII. On the form, Beihoff made all the same acknowledgements as contained in the 2004 form, and as described in Paragraph 8 above, with one exception. The 2005 form did not obligate Beihoff to report all personal securities transactions in such accounts to SII Investments within 10 days of the end of each quarter.

10. Beihoff completed and submitted to SII Investments annual compliance questionnaires in or about October 2006, in or about December 2007, and in or about November 2008 (collectively, the “2006, 2007 and 2008 questionnaires”). On this form, SII Investments queried whether the representative had declared in writing to the firm: *“All outside business activity? Outside business activities include all outside employment and sources of compensation....”* Beihoff responded “Yes” to this request and failed to disclose that he was receiving fees for acting as an investment adviser and effecting the trades in the customers’ accounts as described in Paragraphs 5 through 7 above.

11. On the 2006, 2007 and 2008 questionnaires, SII Investments also queried whether the representative had declared in writing to the firm *“All personal brokerage accounts? Personal brokerage accounts are any account that can purchase or sell any security...for which you have a financial interest or discretionary authority....”* Beihoff responded “Yes” to this

request and failed to disclose that he had utilized discretion to place the trades in four of the five customer accounts.

12. On the 2006, 2007 and 2008 questionnaires, SII Investments also requested the following information: *“As a Registered Representative, have you any clients or accounts: For which you have discretionary authority (excluding asset management accounts under the Firm’s RIA or an approved Outside RIA), including authority as a power of attorney, trustee, conservator, guardian, administrator, executor, or any similar function (except for immediate family members)?* Beihoff responded “No” to this request and failed to disclose that he had utilized discretion to place the trades in four of the five accounts.

13. On the 2006, 2007 and 2008 questionnaires, SII Investments also queried whether Beihoff was *“complying with the firm’s investment advisory requirements, including those prohibiting you from ‘holding yourself out’ as a financial planner, adviser, counsel or similar title, collecting fees for any investment advisory activity, ... without proper registration as an Investment Advisor Representative.”* Beihoff responded “Yes” to this request and failed to disclose that he was holding himself out, and was collecting fees for acting as, an investment advisor, and that he was effecting trades in the customers’ accounts as described in Paragraphs 5 through 7 above.

14. On the 2007 questionnaire, SII Investments also queried whether *“All compensation is paid through the firm such as securities commissions, advisory fees, financial planning fees, marketing allowances, wholesaler cash or non-cash support, finders fees, group annuity or other variable product compensation.”* Beihoff answered “Yes” to this request and failed to disclose that the commissions or advisory fees that he had collected from the customers for the trading activity as described in Paragraph 5 through 7 above was not paid through the

firm. Instead, the compensation was paid to Beihoff directly.

15. On the 2008 questionnaire, SII Investments also queried whether *“All securities-related compensation such as securities commissions, advisory fees, financial planning fees, marketing allowances, wholesaler cash or non-cash support, finders fees, group annuity or other variable product compensation paid through the firm or firm approved channel.”* Beihoff answered “Yes” to this request and failed to disclose that the commissions or advisory fees that he had collected from the customers for the trading activity as described in Paragraph through 7 above was not paid through the firm. Instead, the compensation was paid to Beihoff directly.

16. On or about September 23, 2008, Beihoff completed and signed an Outside Business Activity Questionnaire and submitted the form to SII. On this form, SII Investments asked, *“Are you currently involved in, or do you plan to be involved in, any Outside Business Activities other than the activities performed as a Registered Representative of SII?”* Beihoff answered “No” to the question and failed to disclose that he was receiving fees for acting as an investment adviser and effecting the trades in the customers’ accounts as described in Paragraphs 5 through 7 above.

17. On or about December 15, 2009, Beihoff completed, signed and submitted to H. Beck an Outside Business Activities Disclosure Form, which directed him to *“Check all boxes that apply to activities for which you receive direct or indirect compensation.”* Numerous forms of outside business activities were enumerated on the disclosure form, including “Consulting Activity,” “Financial Instruments not provided by H. Beck,” “Investment Advisory Services (other than IAR of H. Beck),” and “Investment Products not provided by H. Beck.” Beihoff marked the box, next to which stated, “Check here if you do NOT participate in any Outside Business Activities.” In fact, however, Beihoff was collecting fees by acting as an investment

adviser and for effecting trades in the customers' accounts as described in Paragraphs 5 through 7 above.

18. On or about July 23, 2010, Beihoff completed and submitted to H. Beck an Outside Business Disclosure form. On the form, Beihoff was advised that outside business activities *"include any activity that ...Registered Representatives and/or Investment Advisor Representatives ('IARs') are engaged in away from the securities business, and especially those activities which could involve securities transactions, including, but without limitation...Investment Advisory Business."* Next to the line on the form which stated, "Description of Business Activity," Beihoff wrote, "N/A." In fact, Beihoff, while holding himself out as an investment adviser, was effecting securities transactions in customers' accounts, as described in Paragraphs 5 through 7 above.

**Discretionary Trading
Violations of NASD Conduct Rules 2510 and 2110 and FINRA Rule 2010**

19. NASD Conduct Rule 2510(b) provides that no registered representative may exercise discretionary power in a customer's account, unless the customer has given prior written authorization to the representative and the account has been accepted as discretionary by the representative's firm in writing.

20. Between approximately January 2005 and December 2010, Beihoff utilized discretion, with customer authorization, while effecting securities transactions in four of the customer accounts.

21. SII Investments, H. Beck and the executing broker-dealers where the accounts were held never accepted the accounts as discretionary. In fact, SII Investments and H. Beck prohibited discretionary trading.

22. Based on the foregoing, Beihoff violated NASD Conduct Rules 2510 and 2110 and FINRA Rule 2010.

**Transactions for or by Associated Persons
Violations of NASD Conduct Rules 3050 and 2010 and FINRA Rule 2010**

23. NASD Conduct Rules 3050(c) and (e) provide that a registered representative, prior to placing an initial order for the purchase or sale of securities, using discretionary authority away from his employing member firm, shall notify both his employing member firm and the executing member firm, in writing, of his association with the other member firm.

24. Beihoff failed to notify SII Investments, H. Beck, and the executing broker-dealers where the accounts were located, of his association with such member firms prior to effecting transactions using discretion in four of the customer accounts.

25. Based on the foregoing, Beihoff violated NASD Conduct Rules 3050 and 2110 and FINRA Rule 2010.

**Submitting False and/or Misleading Disclosure Forms
Violations of NASD Conduct Rule 2110 and FINRA Rule 2010**

26. Beihoff provided incorrect responses to his firm on the 2006, 2007 and 2008 questionnaires.

27. On or about September 23, 2008, Beihoff provided incorrect responses to his firm on an Outside Business Activity Questionnaire.

28. On or about December 15, 2009, Beihoff provided an incorrect response to his firm on an Outside Business Activities Disclosure Form.

29. On or about July 23, 2010, Beihoff provided an incorrect response to his firm on an Outside Business Activities Disclosure Form.

30. Based on the foregoing, and by completing and submitting broker-dealers forms that he knew or should have known were false and/or misleading, Beihoff violated NASD Conduct Rule 2110 and FINRA Rule 2010.

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.

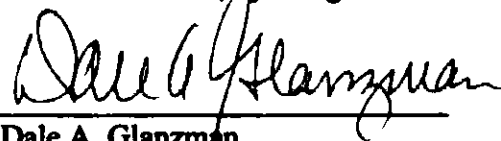
SANCTIONS

It is ordered that Respondent be barred from association with any member of FINRA in any capacity. The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "Dale A. Glanzman", is written over a horizontal line.

Dale A. Glanzman
Senior Regional Counsel
FINRA Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, IL 60603
(312)899-4312; Fax (312)899-4600
Dale.Glanzman@finra.org