

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Brian H. Brunhaver (CRD No. 2498928,

Respondent.

DISCIPLINARY PROCEEDING
No. 2011026852001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Brian H. Brunhaver used an unauthorized e-mail account for communications related to his securities business and made oral and written misrepresentations to customers regarding a non-traded REIT.

RESPONDENT AND JURISDICTION

2. Brian H. Brunhaver entered the securities industry in May 1994 as an associated person of a member firm. He became registered as an Investment Company / Variable Contracts Representative in June 1994. From May 1995 until June 2011, he was registered through LPL Financial, LLC ("the Firm"), initially as an Investment Company / Variable Contracts Representative; beginning in October 1996, as a General Securities Representative; beginning in August 1998, as a General Securities

Principal; and, beginning in November 2004, as a Municipal Fund Securities Limited Principal.

3. On or about June 2, 2011, the Firm filed a Uniform Termination Notice for Securities Industry Termination (Form U5) on behalf of Respondent Brunhaver, which disclosed that he had been discharged on May 3, 2011.
4. From August 2011 until December, 2011, Respondent Brunhaver was registered through another member firm as a General Securities Principal, General Securities Representative, and Investment Company / Variable Contracts Representative.
5. On or about February 25, 2013, within two years after the Firm filed its original Form U5 on behalf of Respondent Brunhaver, the Firm filed an Amended Form U5, disclosing the receipt of a Statement of Claim in which certain customers of Respondent Brunhaver alleged that he had recommended unsuitable investments in REITs and had made misrepresentations to them while employed by the Firm.
6. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the filing of the Amended Form U5 on February 25, 2013, which disclosed that Respondent Brunhaver may have engaged in conduct actionable under an applicable statute, rule or regulation, and which was filed within two years after the filing of his original Form U5 on June 2, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
(Unapproved Use of Outside E-mail Account
(NASD Conduct Rule 2110 and FINRA Rule 2010))

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. During a period beginning no later than October 4, 2006, and continuing until at least April 19, 2011, Brian H. Brunhaver used an unauthorized e-mail account to communicate with customers and with his assistant, SLB, regarding his securities business.
9. In August 2006, the Firm issued an Advisor Alert to its registered representatives, informing them that, effective October 1, 2006, they would be required to adhere to the policies and procedures in the Firm's Electronic Communications Policy Guide. The Electronic Communications Policy Guide stated that all of the Firm's financial advisors and associated persons must use either the e-mail address provided by the Firm or a compliance-approved proprietary Doing Business As ("DBA") address hosted with a Firm-approved e-mail host vendor for all business communications. The Advisor Alert further stated that registered representatives who used a "generic" e-mail address would be required to discontinue use of that address and either replace it with a Firm e-mail address or establish a "DBA" e-mail address with a Firm-approved e-mail host vendor.
10. Before August 2006, Respondent Brunhaver used both his Firm-provided e-mail address and a personal e-mail account with AOL.com for business communications. Following the Advisor Alert, he continued to use both e-mail addresses for his

securities business, without obtaining the Firm's permission or informing the Firm that he was doing so. He also permitted his assistant, SLB, to use her personal AOL account for business communications. Respondent Brunhaver thereby violated the Firm's policies.

11. Because messages sent from and received by his personal AOL account were not transmitted to the Firm, Respondent Brunhaver prevented the Firm from reviewing his business-related e-mail communications and thus from satisfying its supervision obligations under NASD Conduct Rule 3010(d) and its obligation to maintain and preserve business-related communications under SEC Rule 17a-4.

12. During the period before December 15, 2008, such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Brunhaver. During the period on and after December 15, 2008, such acts, practices and conduct constitute separate and distinct violations of FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Communications with the Public (NASD Conduct Rules 2210(d)(1) and 2110 and FINRA Rule 2010))

13. The Department realleges and incorporates by reference paragraphs 1 through 6 and 8 through 12 above.

14. During the period from on or about September 10, 2008, until on or about November 10, 2008, Respondent Brunhaver made false statements in approximately five e-mail messages to customer MMT regarding the Inland American Real Estate Trust, a non-traded REIT ("the Inland REIT"). In those messages, sent from his personal

AOL account, Respondent Brunhaver falsely informed MMT that her principal investment in the Inland REIT would be guaranteed, that the investment involved no risk, and that she could not possibly lose her money if she invested.

15. On or about November 11, 2008, MMT invested \$114,300 in the Inland REIT. She incurred a loss as a result of that investment.
16. On or about January 7, 2009, Respondent Brunhaver sent a "blast" e-mail message to an unknown number of existing retail customers from his personal AOL account. In that message, he made false statements regarding the Inland REIT. Respondent Brunhaver falsely stated that the REIT had a "guarantee of principle [sic]" and that there was "no fundamental default of principle [sic] risk" in the Inland REIT.
17. Respondent Brunhaver's e-mail messages to MMT and his "blast" e-mail to retail customers were "correspondence" within the meaning of NASD Conduct Rules 2210(a)(3) and 2211(a)(1). The messages provided information regarding the Inland REIT, but did not disclose the substantial risks of the investment. They were not fair and balanced and they contained false, exaggerated, unwarranted or misleading statements.
18. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2210(d)(1) by Respondent Brunhaver. During the period before December 15, 2008, such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110. During the period on and after December 15, 2008, such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Fraud (NASD Conduct Rules 2120 and 2110, Section 10(b) of the Securities Exchange Act of 1934, and Securities and Exchange Commission Rule 10b-5 promulgated thereunder))

19. The Department realleges and incorporates by reference paragraphs 1 through 6, 8 through 12, and 14 through 18 above.
20. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder are broad anti-fraud provisions. Exchange Act Rule 10b-5 makes it unlawful, among other things, “for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” to “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading” in connection with the purchase or sale of any security.
21. NASD Conduct Rule 2120 stated 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.”
22. As described in paragraphs 14 and 15 above, Respondent Brunhaver intentionally or recklessly made untrue statements of material facts to MMT when he wrote to her in e-mail messages that her principal investment in the Inland REIT would be guaranteed, that the investment involved no risk, and that she could not possibly lose her money if she invested. He made those untrue statements by the use of a means or instrumentality of interstate commerce in connection with purchases or sales of a security.

23. As described in paragraphs 14 and 15 above, Respondent Brunhaver effected transactions in, or induced the purchase of, a security by means of a manipulative, deceptive or other fraudulent device when he wrote to MMT in e-mail messages that her principal investment in the Inland REIT would be guaranteed, that the investment involved no risk, and that she could not possibly lose her money if she invested.
24. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2120. As a result of the foregoing conduct, Respondent Brunhaver willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 promulgated thereunder. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110.

FOURTH CAUSE OF ACTION
(Misrepresentations (NASD Conduct Rules 2120 and
2110 and FINRA Rules 2020 and 2010))

25. The Department realleges and incorporates by reference paragraphs 1 through 6, 8 through 12, 14 through 18, and 20 through 24 above.
26. During the period from on or about October 6, 2008, until on or about December 15, 2008, Respondent Brunhaver made false statements to customers MMT and SAT regarding the Inland REIT. In meetings with the customers, he falsely informed them that their principal investment in the Inland REIT would be guaranteed and that there was "no way" they could lose their money if they invested.

27. When he made those false statements to MMT and SAT, Respondent Brunhaver induced the purchase of a security by means of a manipulative, deceptive or other fraudulent device.
28. During the period before December 15, 2008, such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2120 by Respondent Brunhaver. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110. On December 15, 2008, such acts, practices and conduct constitute separate and distinct violations of FINRA Rule 2020. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of 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), other than monetary sanctions, be imposed; and
- C. make specific findings that Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 promulgated thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 11, 2013

David Utevsky
David Utevsky, Senior Regional Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
601 Union Street, Suite 1616
Seattle, WA 98101
Phone (206) 624-0790; Fax (206) 623-2518
E-mail David.Utevsky@finra.org