

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Brian Michael White (CRD No. 5126711),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033128703

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From August 2010 through at least May 2011, Brian White ("White"), at the time a registered representative at AXA Advisors, LLC ("AXA" or the "Firm"), along with two other AXA registered representatives, engaged in an undisclosed outside business activity called SMW Ventures. In March 2011, White participated in an undisclosed private securities transaction involving the sale of a promissory note to his mother. During his January 30, 2013 on-the-record interview ("OTR"), White provided false testimony regarding SMW Ventures. By virtue of his conduct, White violated NASD Rule 3030¹ and FINRA Rules, 3040, 3270, 8210, and 2010.

¹ NASD Rule 3030 was superseded by FINRA Rule 3270, effective December 15, 2010.

RESPONDENT AND JURISDICTION

2. White was first associated with a FINRA member firm in April 2006. He obtained his General Securities Representative (Series 7) license on March 2, 2007. White was registered with AXA as a General Securities Representative from August 2007 through August 2011. He was registered with another FINRA member firm from September 2012 through October 29, 2013. White has not been registered or associated with a FINRA member firm since October 29, 2013.
3. FINRA retains jurisdiction over White pursuant to Article V, Section 4(a) of FINRA's By-Laws, because the complaint (i) was filed within two years after the effective date of the termination of White's registration with his last firm; and (ii) charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Outside Business Activity (NASD Rule 3030 and FINRA Rules 3270 & 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. In August 2010, White and two other AXA registered representatives (JM and BS) signed a partnership agreement creating an entity called SMW Ventures, LP ("SMW Ventures"). Each held a 33% interest in the partnership, whose purpose was to provide a vehicle for the three to develop various business opportunities outside of AXA, including the sale of fixed annuity and insurance products, real estate investments, and business planning services.
6. SMW Ventures did business from August 2010 to at least May 2011, when JM left AXA. Such business was outside the scope of White's employment with AXA.

7. White and his two partners never sought permission to participate in SMW Ventures, nor did they disclose its existence to AXA.
8. During an internal AXA annual compliance examination on or about March 29, 2011, before being confronted with the existence of SMW Ventures by the compliance examiner, White stated and verified by signature that he was not involved in any outside business activities beyond what he had previously disclosed in a 2009 Outside Business Activity Form, which did not mention SMW Ventures.
9. The AXA Compliance Manuals dated February 2010 and December 2010 both required that the Firm's "Associates, including registered brokers and employees . . . disclose all outside business activities ("OBAs")." The manual also required all associates to "obtain written approval prior to undertaking any OBA."
10. White never obtained written approval from AXA to participate in SMW Ventures.
11. NASD Rule 3030 prohibits registered persons from being employed by, or accepting compensation from, "any other person as a result of any business activity, other than a passive investment, outside the scope of employment with his employer firm, unless he has provided prompt written notice to the member [firm]." Such notice must be in the form required by the member. FINRA Rule 3270, effective December 15, 2010, contains a similar prohibition.
12. As a result of the foregoing conduct, White violated NASD Rule 3030 for his conduct prior to December 15, 2010 and FINRA Rule 3270 for his conduct on December 15, 2010 and thereafter. White's conduct is also contrary to high standards of commercial honor and inconsistent with just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION
Private Securities Transaction (NASD Rule 3040 and FINRA Rule 2010)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.
14. Sometime in early 2011, White, JM, and White's mother KW, who was a joint customer of White and JM, traveled to the offices of Material Science Technology, Inc. ("MST") to meet with MC, a director of MST and its chief operating officer.
15. MC was seeking to borrow money for MST to fund the company's operations until certain contracts materialized. MC was to issue notes in his personal capacity, and the loaned money would be used by MST.
16. White, KW, and JM toured the MST facility. During the meeting at the MST facility between MC, JM, KW, and White, MC provided documents detailing MST current and projected financial condition as well as a written "Company Overview."
17. Following this meeting with MC and tour of the MST facility, KW loaned MC \$100,000. KW received a \$100,000 promissory note (Convertible Note") from MC dated March 23, 2011, payable at a rate of 25% per annum due on September 30, 2011. The Convertible Note was convertible into MST common stock upon KW's request.
18. The Convertible Note investment by KW was a security.
19. The Convertible Note was one of four notes issued by MC to four different investors totaling \$300,000 in or about March 2011. KW and the others invested in these notes seeking to profit in the form of a 25% yield on the investment. All of these notes were unsecured and matured at the same time.

20. Other than the Convertible Note she purchased, KW has not had any connection to MST, and she has never been involved in the company's business operations.
21. MC's stated reason for raising the funds was to sustain MST's business operations until certain contracts materialized.
22. Neither MC nor MST were lending institutions or in the business of making loans.
23. No other regulatory scheme applied to the Convertible Note investment made by KW.
24. On or about March 26, 2011, White was paid compensation of \$2,500 by JM for the MST transaction.
25. On April 4, 2011, MC sent an e-mail to White and JM offering financial incentives to find still more investors for MST.
26. Neither White nor JM disclosed the existence of this transaction to AXA, nor did either seek permission from the Firm to participate in it. White participated in this transaction outside the regular course or scope of his employment with AXA.
27. During an AXA annual compliance examination on or about March 29, 2011, White stated and verified by signature that he had not participated in any private securities transactions.
28. To date, KW has not received any payments on the Convertible Note. In January 2012, MST filed for bankruptcy.
29. AXA's Compliance Manual, dated December 2010, specifically prohibited engaging in private securities transactions unless prior written notice was provided and prior written permission was given. Moreover, the AXA Compliance Manual specifically listed the sale of promissory notes as being within the prohibition.

30. White never provided written notice of, or received written permission for, participation in the sale of notes by MC.
31. NASD Rule 3040 prohibits all associated persons from participating in any manner in private securities transactions without providing prior written notice of such to his member firm describing in detail the nature of the proposed transaction and the person's proposed role in that transaction. The associated person must also state whether or not he has received or may receive compensation in connection with the transaction.
32. Rule 3040(e) defines a private securities transaction as "any securities transaction done outside the regular course or scope of an associated person's employment with a member[.]"
33. As a result of the foregoing conduct White violated NASD Rule 3040 and FINRA Rule 2010.

**THIRD CAUSE OF ACTION
False Testimony (FINRA Rules 8210 & 2010)**

34. The Department realleges and incorporates by reference paragraphs 1 through 33 above.
35. On January 30, 2013 White appeared in Houston, TX for an on-the-record interview in response to a request to appear and give testimony pursuant to FINRA Rule 8210.
36. While under oath during his January 30, 2013 on-the-record interview, White gave, in words or substance, the following false testimony:
- That SMW Ventures was an AXA producer group that White was going to form with JM and BS.

- That he first learned of SMW Ventures' August 2010 formation during a March 2011 compliance audit.
- That JM had formed SMW Ventures without White's knowledge.
- That the formation of SMW Ventures had not been discussed with him prior to it being formed.
- That he never had any responsibilities at SMW Ventures.
- That when he learned about SMW Ventures' existence in March 2011, he immediately went to JM's office, along with the AXA compliance auditor, and asked JM to tell him what the entity was.

37. The purpose of SMW Ventures was to provide a vehicle for White, JM, and BS to develop various business opportunities outside of AXA, including the sale of fixed annuity and insurance products, real estate investments, and business planning services.

38. On August 26, 2010, JM sent White an e-mail forwarding to him paperwork relating to the formation of SMW Ventures for White's signature.

39. White signed the SMW Ventures partnership on August 27, 2010. This partnership agreement conformed to what White, JM, and BS had previously discussed and agreed upon.

40. White's responsibilities with respect to SMW Ventures extended to administrative matters, such as business processing and technology.

41. SMW Ventures' checking account statements bore White's address.

42. On January 10, 2011, White wrote a check to himself drawn on an SMW Ventures checking account for \$365.00.
43. On March 30, 2011, the day of White's compliance examination by AXA, JM was not in the office.
44. FINRA Rule 8210 prohibits an associated person from giving false or misleading testimony in response to a Rule 8210 request for such testimony. Doing so is also contrary to high standards of commercial honor and inconsistent with just and equitable principles of trade.
45. As a result of the foregoing conduct, White violated FINRA Rules 8210 and 2010.

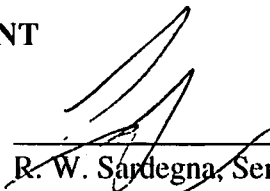
RELIEF REQUESTED

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), including monetary sanctions, be imposed; and,
- C. order that Respondent(s) 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: MAY 15, 2014



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