

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

Department of Enforcement,

Complainant,

v.

Aon D. Miller (CRD No. 3083225),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034393801

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From November 2011 through September 2012, Aon D. Miller (“Miller”) participated in five private securities transactions with three different entities in which four of his customers invested a total of \$1,550,000.

2. At the time he participated in these private securities transactions, Miller did not provide his firm, Benjamin F. Edwards & Company, Inc. (“BFE” or the “Firm”), with prior written notice describing the transactions or his role in any of the transactions.

3. By participating in securities transactions without providing prior written notice to his firm, Miller violated NASD Rule 3040 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

4. Miller initially became registered with another FINRA member firm in August 1998 as a General Securities Representative and remained registered with that firm and its successors until July 2011.

5. In July 2011, Miller registered with BFE as a General Securities Representative.

6. BFE terminated Miller's registration on October 12, 2012 for "violation of firm procedures regarding outside business activities and private securities transactions."

7. Miller became registered as a General Securities Representative and an Operations Professional through a FINRA-member firm in November 2012, but voluntarily terminated his registration on April 10, 2013.

8. Although Miller 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 the Complaint was filed within two years after the effective date of termination of Miller's registration with a FINRA-member firm, namely April 10, 2013, and the Complaint charges him with misconduct committed while Miller was registered with a FINRA member.

FACTS

9. Miller participated in five private securities transactions involving three different entities in which four of his customers invested a total of \$1,550,000.

ENTITY 1: CDP

Miller's Personal Involvement With CDP

10. In September 2011, SW, who was starting a real estate development company ("CDP") with two other individuals, emailed Miller to ask for Miller's help to obtain investors for his new company.

11. CDP is an LLC through which investors would pool their money to be invested in real estate-related projects that were chosen by SW and his partners for purposes of generating profits for those investors.

12. CDP was selling securities in the form of investment "units" for \$100,000 each.
13. SW also invited Miller to invest personally in CDP.
14. On September 27, 2011, Miller attended a meeting with SW and one of SW's partners to discuss CDP.
15. To assist SW in obtaining investors and raising money for CDP, Miller provided SW with documents, including the investment agreement and other sales materials, from a limited liability partnership in which Miller had previously invested.
16. In mid-March 2012, Miller, with the support of his Branch Manager at BFE, WP, sought to have BFE become a selling agent for CDP by sending information about the investment to the Firm's Product Review Committee.
17. Miller also told the Firm verbally that he was considering investing in CDP.
18. On or around March 28, 2012, PB, of the Firm's Product Review Committee, told Miller that the Firm had determined it would not act as a selling agent for CDP.
19. Also on or around March 28, 2012, PB told Miller that Miller was prohibited from soliciting any BFE customers to invest in CDP and that Miller needed to follow Firm procedures for outside investments if he wanted to personally invest in CDP.
20. On or around March 28, 2012, WP reiterated to Miller that Miller needed to follow Firm procedures and fill out the appropriate paperwork if Miller wanted to personally invest in CDP.
21. BFE's procedures for outside investments mirror NASD Rule 3040, and require that a registered representative provide the Firm with prior written notice before personally investing in or soliciting customers for investment in a security not on the Firm's approved products list.

22. On April 18, 2012, Miller signed multiple documents, including a Subscription Agreement, Partnership Agreement, and Promissory Note (collectively, the “CDP Subscription Documents”), committing himself to purchase one half of a unit, for a personal \$50,000 investment in CDP, but Miller did not pay any consideration towards his investment at that time.

23. SW at CDP counter-signed the documents on May 11, 2012.

24. On September 17, 2012, after being prompted by SW to make an initial payment of \$1,000 (two percent of his investment), Miller requested that JW, an Assistant Branch Manager at BFE, deposit his personal check into CDP’s BFE account.

25. JW rejected Miller’s request, recognizing the impropriety of a registered representative depositing a personal check into a customer’s account and BFE initiated an investigation into Miller’s conduct.

26. Ultimately, BFE denied Miller’s personal investment in CDP so Miller was never able to consummate the transaction he had initiated in April 2012.

Miller’s Participation in Soliciting BFE Customers to Invest in CDP

27. Contrary to the firm’s specific prohibition, between May and September 2012, Miller solicited at least eight BFE customers to invest in CDP, three of whom invested.

JH (CDP Customer #1)

28. On June 11, 2012, SW emailed Miller asking how to set up a meeting to discuss CDP with JH, a BFE customer. Miller responded that Miller would call JH.

29. On June 12, 2012, Miller spoke with JH to set up a phone call between JH and SW to discuss CDP.

30. That same day, Miller emailed SW that Miller had recommended that JH “should give [CDP] a couple hundred K.”

31. Also on June 12, 2012, Miller mailed to JH documents relating to the investment in CDP.

32. On July 12, 2012, Miller discussed CDP with JH and recommended that JH use proceeds from another investment held in an IRA with Miller to invest in CDP.

33. That same day, Miller emailed SW that JH would “do 1 to 2 units. Good news!”

34. In or around September 2012, JH purchased one unit, investing \$100,000 in CDP.

35. Miller did not provide prior written notice to BFE before participating in JH’s investment in CDP.

KJ (CDP Customer #2)

36. On May 30, 2012, in response to an email inquiry from KJ, a BFE customer, regarding CDP, Miller wrote to KJ, “I reviewed [CDP] very closely. [SW] made the pitch a couple weeks ago. I have already signed the offering documents. I put in 50K. It is a solid income play with upside as you mentioned. [GR] is tight as a tick as well. He WILL NOT lose a penny.” GR and SW were partners at CDP.

37. On at least one other occasion around the same time, Miller also discussed CDP by telephone with KJ, during which Miller told KJ that Miller was investing in CDP.

38. Contrary to what he told KJ, Miller had not finalized his investment of \$50,000 in CDP.

39. In or around September 2012, KJ purchased two units, investing \$200,000 in CDP.

40. Miller did not provide prior written notice to BFE before participating in KJ’s investment in CDP.

WR (CDP Customer #3)

41. On August 27, 2012, SW wrote to Miller that he met with WR, a BFE customer, about CDP and that WR was planning to call Miller to “discuss with you.”

42. SW noted that WR’s mother-in-law “may be an option but WR seemed to be interested as well. Would appreciate a good word for us.” Miller responded to SW, “Of course. I will go over it with him as well.”

43. On August 29, 2012, WR emailed Miller to ask Miller whether CDP would be a good investment for his mother-in-law.

44. On at least one occasion around the same time, Miller discussed CDP with WR, during which Miller told WR that Miller was investing in CDP.

45. On September 17, 2012, WR emailed Miller and his staff, asking them to “transfer \$1000 to [CDP]’s holding account.”

46. Miller responded to the request affirming that his team would take care of the transfer and then emailed SW to obtain copies of WR’s completed subscription agreements on behalf of WR to assist WR with making the payment for WR’s investment.

47. In or around September 2012, WR purchased one half of a unit, investing \$50,000 in CDP.

48. Miller did not provide prior written notice to BFE before participating in WR’s investment in CDP.

ENTITY 2: KBI

49. In May 2012, KG, the owner of KBI, a specialty chemical company, sent documentation to Miller by email about an opportunity to purchase partnership units in KBI.

50. Miller responded to KG, writing that he would discuss the investment with one of his BFE customers, JDS.

51. KG sent the offering documents for the investment to Miller on May 10, 2012.

52. On May 23, 2012, Miller forwarded the information to JDS, recommending that JDS review it.

53. On June 12, 2012, Miller received an email from KG informing Miller that KG wanted to change the form of the investment being offered to JDS.

54. The new investment involved the sale of securities in the form of promissory notes for \$200,000 that offered a 15% annual return and would be used to buy raw materials for general use by the company.

55. The same day, Miller forwarded the information about the loan to JDS, writing, "JDS, This doesn't look like a bad deal!"

56. On June 13, 2012, Miller obtained a draft promissory note for JDS from KBI and forwarded it to JDS.

57. On the same day, Miller emailed KG on JDS's behalf, writing, "I have left [JDS] a message. . . . We might not be able to wire the monies until first thing tomorrow." KG responded, "That will be fine."

58. On June 14, 2012, on behalf of Miller, Miller's business partner, LO, coordinated with KG to wire money on behalf of JDS for the investment. Miller was copied on the correspondence between LO and KG.

59. JDS invested \$200,000 in KBI on June 14, 2012.

60. Miller did not provide prior written notice to BFE before participating in JDS's investment in KBI.

ENTITY 3: CTL

61. Prior to joining BFE, Miller became a limited partner in an investment fund (“LMP”). Miller disclosed this outside investment to BFE when he joined the Firm.

62. One of Miller’s customers, JDS, was also a limited partner in LMP.

63. On July 31, 2012, LMP offered its investors (including Miller and JDS) an opportunity to separately invest outside of LMP directly in the refinancing of senior secured debt of one of LMP’s portfolio companies (“CTL”).

64. The investment involved the sale of securities in the form of promissory notes that CTL would issue to help it grow its business substantially and which promised investors a 16% annual return.

65. On August 5, 2012, Miller told a representative of LMP he would talk with JDS and assess JDS’s interest in the CTL investment opportunity.

66. Throughout August 2012, Miller interacted on behalf of JDS with representatives of LMP to determine the details of the CTL investment and provided those details to JDS.

67. For example, on August 10, 2012, Miller emailed JL, one of the principals at LMP, asking, “Can you call me this a.m. regarding the [CTL] notes? [JDS] is interested in a piece but has a couple questions.”

68. JL spoke to Miller later that morning and sent Miller an email containing “key points” regarding the CTL investment.

69. Miller forwarded his email exchange with JL to JDS with a short summary of what Miller had learned from JL and LMP about the CTL opportunity.

70. On August 20, 2012, Miller emailed JDS, asking if he still wanted to discuss the CTL investment because another investment opportunity had come up for JDS as well, and JDS responded, "Yes, I want to do all if it meets with your approval."

71. Miller responded by email to JDS the same day, writing, "I wish I had some more room to do this personally. This is a solid/VERY Low risk Income play. It makes sense for you and the [S] Family in my opinion."

72. JDS responded, asking Miller to tell LMP that JDS would "take it all or a large portion" of the CTL investment.

73. On August 21, 2012, a representative of LMP wrote to Miller that LMP believed it had \$1 million available for JDS to invest.

74. The same day, Miller responded to the LMP representative, writing, "I emailed to let him know. Hold it until I receive confirm back from him but I imagine he will do \$1MM this week."

75. The same day, Miller forwarded additional information received directly from a representative of LMP regarding the CTL investment to JDS, noting, "They have \$1MM remaining. I told them to hold it for you."

76. On August 23, 2012, Miller emailed JDS about the CTL investment, writing, "JDS, My recommendation would be \$1MM."

77. On August 24, 2012, Miller emailed his contact at LMP, informing her that, "We are going to do a \$1MM to start. I will start the paperwork on Monday."

78. On August 29, 2012, Miller emailed his contact at LMP asking, "Can you email me the forms [JDS] needs to sign for [the CTL] Note?"

79. On August 30, 2012, Miller forwarded by email forms received from a representative of LMP to Miller's assistant and partner to be sent to JDS's assistant so that JDS could invest in CTL. Miller wrote in the email to his staff, "[JDS] wants to place \$1MM in this."

80. JDS invested \$1,000,000 in CTL on October 3, 2012.

81. Miller did not provide prior written notice to BFE before participating in JDS's investment in CTL.

FIRST CAUSE OF ACTION

Private Securities Transactions

(NASD Rule 3040 and FINRA Rule 2010)

82. The Department realleges and incorporates by reference paragraphs 1-81 above.

83. NASD Rule 3040 provides that "prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction"

84. Under the rule, a private securities transaction is "any securities transaction outside the regular course or scope of an associated person's employment with a member."

85. The rule makes clear that a representative need not receive compensation to violate the rule.

86. Between April and September 2012, Miller participated in at least five private securities transactions with three different entities in which four of his BFE customers invested a total of \$1,550,000.

87. All five transactions involved securities.

88. At no time were any of the entities in which his customers invested on the list of approved investment products at BFE.

89. Miller participated in each transaction by, among other things:

- a. Endorsing CDP and its principals to BFE customers, including JH, KJ, and WR;
- b. Coordinating a discussion between JH and the CDP issuer;
- c. Providing JH with CDP marketing materials;
- d. Specifically recommending an amount JH should invest in CDP and a source for the funds;
- e. Assisting WR with the transaction by which WR consummated his investment in CDP;
- f. Bringing KBI to his BFE customer, JDS;
- g. Acting as the go-between in collecting information about KBI from the issuer, providing that information to JDS, and communicating with the issuer on JDS's behalf;
- h. Handling the transfer of funds on behalf of JDS for JDS's investment in KBI;
- i. Acting as the go-between in collecting information about CTL from the issuer, providing that information to JDS, and communicating with the issuer on JDS's behalf;
- j. Recommending a specific amount JDS should invest for CTL; and
- k. Assisting JDS with the paperwork to transfer funds for JDS's investment in CTL.

90. Miller did not provide prior written notice or a full and detailed description of the investment to BFE about any of the transactions.

91. By virtue of the above conduct, Miller violated NASD Rule 3040 and, as a result, 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), including monetary sanctions, be imposed; and
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: _____

9/10/14



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