

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Tracy Chen (CRD No. 2553295),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036678201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between November 2011 and April 2013 (“the relevant period”), while associated with Morgan Stanley, Tracy Chen submitted 12 false expense reports to her firm containing reimbursement claims for fictitious “business development” expenses totaling \$38,538.52. In each instance, Chen first placed an online order for goods, called and cancelled the order, and then used the online purchase confirmation as support for an expense reimbursement request. Before her misconduct was discovered, Chen received \$22,986.52 in reimbursements for these expense reports. Most of that amount was funded by Chen’s pre-tax compensation and the rest was funded by Morgan Stanley. With respect to \$1,600 of reimbursements funded by Morgan Stanley, Chen intentionally converted such funds for her own use and benefit, and thereby violated FINRA Rule 2010.

2. By submitting the 12 false expense reports for fictitious “business development” expenses totaling \$38,538.52, Chen falsified firm documents in violation of FINRA Rule 2010.

In addition, Chen violated NASD Rule 3110 for conduct occurring before December 5, 2011 and FINRA Rule 4511 for conduct occurring after December 5, 2011, and FINRA Rule 2010, by causing Morgan Stanley to maintain false records.

RESPONDENT AND JURISDICTION

3. Tracy Chen first entered the securities industry in October 1994, and became registered as a State Securities Agent in November 1994 and a General Securities Representative in January 1995. At various times between October 1994 and June 1999, Chen was employed by two member firms. She was employed by Morgan Stanley from June 1999 until May 2013, where she was associated as a General Securities Representative, State Securities Agent, and Investment Advisor Representative. The firm terminated Chen's employment on May 6, 2013. On May 9, 2013, the firm filed a Form U5 reporting that it discharged Chen for "requesting and receiving reimbursement from the firm for expenses described as client gifts, when the orders for the gifts were cancelled by the representative."

4. Since May 2013, Chen has been associated with member firm Oppenheimer & Co., Inc.

STATEMENT OF FACTS

Morgan Stanley's Programs for Reimbursement of Business Development Expenses

5. During the relevant period, Morgan Stanley maintained two programs through which registered representatives could fund business development expenses such as client gifts and entertainment, business travel, and advertising.

6. One program was the Business Development Allowance program ("BDA"), which involved an annual grant of money from Morgan Stanley to registered representatives. BDA was to be used for reimbursement of valid business development purposes that could

include, among other things, client gifts, travel to meet clients, client entertainment, and marketing efforts.

7. The second source of funds was the Automated Flexible Grid program ("AFG"), which operates in a manner similar to a health flexible spending account. Participating Morgan Stanley registered representatives set aside a percentage of their compensation on a pre-tax basis to be used for three categories of valid business expenses, including expenses eligible for the BDA program. Registered representatives would forfeit any AFG balances they did not use during the year.

8. During the relevant period, registered representatives did not have the ability to choose whether business development expenses submitted for reimbursement were paid out of BDA or AFG. In a given year, reimbursement requests for business development expenses were first paid out of the representative's BDA account, and once the BDA was exhausted, were then paid out of the representative's AFG account.

9. During the relevant period, Morgan Stanley provided registered representatives with various resources to track their BDA and AFG account use and balances.

Chen Falsified Expense Reports

10. During the relevant period, Chen participated in and was able to request reimbursement for various business expenses from both the BDA and AFG programs.

11. In addition, between June 2012 and December 2012, Morgan Stanley provided Chen a firm-funded grant of \$400 per month to be used for reimbursement of expenses associated with new business development.

12. On November 16, 2011, Chen placed an online order with Nordstrom for various items totaling \$4,829.00. She then called Nordstrom and cancelled the order and incurred no

charges to her credit card. On the same day, she caused an expense report to be filed falsely claiming that she had made the Nordstrom purchases for "client gifts." Chen later received a payment from Morgan Stanley as reimbursement for the purported gifts.

13. On June 27, 2012, Chen placed an online order with Nordstrom for various items totaling \$456.75. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On the same day, she caused an expense report to be filed requesting reimbursement for \$400 in "client gifts" based on her cancelled purchase from Nordstrom. Chen later received a \$400 payment from Morgan Stanley as reimbursement for the purported gifts.

14. On July 30, 2012, Chen placed an online order with Nordstrom for various items totaling \$424.15. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On July 31, 2012, she caused an expense report to be filed claiming reimbursement for \$400 in "client gifts" based on her cancelled purchase. Chen later received a \$400 payment from Morgan Stanley as reimbursement for the purported gifts.

15. On September 6, 2012, Chen placed an online order with Nordstrom for various items totaling \$457.95. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On September 26, 2012, she caused an expense report to be filed claiming reimbursement for \$400 in "client gifts" based on her cancelled purchase. Chen later received a \$400 payment from Morgan Stanley as reimbursement for the purported gifts.

16. On October 16, 2012, Chen placed an online order with Nordstrom for various items totaling \$862. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On October 22, 2012, she caused an expense report to be filed claiming reimbursement for \$8,280.67. This amount included claimed expenses from the cancelled \$862 Nordstrom order from October 16, 2012 as well as additional falsely claimed expenses discussed

in the following two paragraphs of this Complaint and *some* legitimate business expenses. Chen characterized all of the falsely claimed expenses on her October 22, 2012 expense report as “client gifts.” Chen later received a payment from Morgan Stanley that included reimbursement for the \$862 for purported gifts.

17. On October 16, 2012, Chen placed an online order with Nordstrom for various items totaling \$730.80. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On October 22, 2012, she caused an expense report to be filed claiming reimbursement for \$8,280.67, including the cancelled Nordstrom order for \$730.80 from October 16, 2012, which she characterized as “client gifts.” Chen later received a payment from Morgan Stanley that included reimbursement for the \$730.80 of purported gifts.

18. On October 22, 2012, Chen placed an online order with Saks 5th Avenue (“Saks”) for various items totaling \$4760.20. She then called Saks and cancelled the order and incurred no charges to her credit card. On October 22, 2012, she caused an expense report to be filed claiming reimbursement for \$8,280.67, of which \$4,760.20 was based on the cancelled purchase from Saks, which she characterized as “client gifts.” Chen later received a payment from Morgan Stanley that included reimbursement for the \$4,760.20 of purported gifts.

19. On October 16, 2012, Chen placed an online order with Nordstrom for various items totaling \$431.00. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On October 22, 2012, she caused an expense report to be filed claiming reimbursement for \$400 for “client gifts” based on the cancelled purchase. Chen later received a payment of \$400 from Morgan Stanley as reimbursement for the purported gifts.

20. On January 4, 2013, Chen placed an online order with Nordstrom for various items totaling \$2,781.10. She then called Nordstrom and cancelled the order and incurred no

charges to her credit card. On January 17, 2013, she caused an expense report to be filed claiming reimbursement for \$3,648.56, including the cancelled \$2,781.10 Nordstrom order from January 4, 2013, which she characterized as "client gifts." Chen later received a payment from Morgan Stanley, which included \$2,781.10 as reimbursement for the purported gifts.

21. On January 14, 2013, Chen placed an online order with Neiman Marcus for various items totaling \$3,006.07. She then called Neiman Marcus and cancelled the order and incurred no charges to her credit card. On January 31, 2013, she caused an expense report to be filed claiming reimbursement for \$4,235.50, including the cancelled \$3,006.07 Neiman Marcus order from January 14, 2013, which Chen characterized as "client gifts." Chen later received a payment from Morgan Stanley which included \$3,006.07 as reimbursement for the purported gifts.

22. On March 4, 2013, Chen placed an online order with Saks for various items totaling \$4,417.35. She then called Saks and cancelled the order and incurred no charges to her credit card. On March 5, 2013, she caused an expense report to be filed claiming reimbursement for this cancelled order, which she characterized as "client gifts." Chen later received a payment from Morgan Stanley as reimbursement for the purported gifts.

23. On March 14, 2013, Chen placed an online order with Costco for various items totaling \$5,448.91. She then called Costco and cancelled the order and incurred no charges to her credit card. On March 20, 2013, she caused an expense report to be filed claiming reimbursement for \$7391.04, including the cancelled \$5,448.91 Costco order from March 14, 2013, which Chen characterized as "client gifts." Chen later received a payment from Morgan Stanley that included \$5,448.91 as reimbursement for the purported gifts.

24. On April 5, 2013, Chen placed an online order with Nordstrom for various items totaling \$6,026.40. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On April 5, 2013, she caused an expense report to be filed claiming reimbursement for this cancelled order as "client gifts." Chen did not receive reimbursement for this expense report because her submission of false expense reports was discovered by Morgan Stanley prior to payment.

25. On April 21, 2013, Chen placed an online order with Nordstrom for various items totaling \$9,526.60. She then called Nordstrom and cancelled the order and incurred no charges to her credit card. On April 23, 2013, she caused an expense report to be filed claiming reimbursement for this cancelled order as "client gifts." Chen did not receive reimbursement for this expense report because her submission of false expense reports was discovered by Morgan Stanley prior to payment.

Chen Converted Firm Funds

26. Chen submitted falsified expense reports requesting reimbursements for \$400 on June 27, 2012, July 30, 2012, September 6, 2012, and October 22, 2012, which totaled \$1,600.

27. Chen received payments directly from Morgan Stanley for each of these reimbursement requests, \$1,600 in total.

28. For each of these four \$400 reimbursement requests (totaling \$1,600), Chen knew that the source of repayment was funds from Morgan Stanley provided to reimburse her for expenses associated with new business development.

**FIRST CAUSE OF ACTION
CONVERSION
(VIOLATION OF FINRA RULE 2010)**

29. The Department realleges and incorporates by reference paragraphs 1 to 28 above.

30. FINRA Rule 2010 requires a registered person to observe high standards of commercial honor and just and equitable principles of trade in the conduct of her business.

31. Conversion is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it. Conversion is inconsistent with high standards of commercial honor and just and equitable principles of trade.

32. Chen submitted false expense reports on June 27, 2012, July 30, 2012, September 6, 2012, and October 22, 2012 and received payments funded by Morgan Stanley to which she was not entitled, thereby converting \$1,600 from Morgan Stanley.

33. By converting \$1,600 from Morgan Stanley, Chen violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
FALSIFICATION OF DOCUMENTS
(VIOLATION OF NASD RULE 3110 AND FINRA RULES 4511 AND 2010)**

34. The Department realleges and incorporates by reference paragraphs 1 to 28 above.

35. Chen prepared or caused to be prepared 12 expense reimbursement requests falsely representing that she had spent \$38,538.52 to purchase client gifts, when in fact she had not.

36. A registered person's preparation of false firm documents is conduct inconsistent with FINRA Rule 2010's requirement that all individuals associated with FINRA member firms observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

37. In addition, FINRA Rule 4511 currently (and NASD Rule 3110 formerly)¹ requires member firms to “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Section 17(a) of the Exchange Act and SEC Rule 17a-3(a)(3) thereunder require broker-dealers to maintain current “[l]edger accounts (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”

38. Chen’s preparation of false expense reports that she submitted to Morgan Stanley during the period November 2011 through April 2013—falsely claiming to have purchased thousands of dollars’ worth of reimbursable client gifts—constituted falsification of records, and Chen’s actions were inconsistent with high standards of commercial honor and just and equitable principles of trade. Chen’s submission of false expense reports also caused Morgan Stanley to maintain inaccurate books and records.

39. As a result of the foregoing conduct, Chen violated FINRA Rule 2010. Also as a result of the foregoing conduct, Chen violated NASD Rule 3110 for conduct occurring before December 5, 2011 and FINRA Rule 4511 for conduct occurring after December 5, 2011. By virtue of her violations of NASD Rule 3110 and FINRA Rule 4511, Chen also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

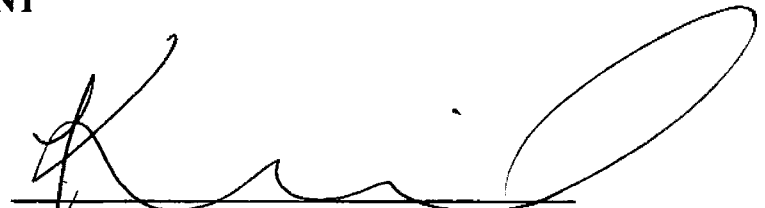
¹ Effective December 5, 2011, the relevant portion of NASD Rule 3110—which required firms to “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, ... and as prescribed by SEC Rule 17a-3”—was replaced by FINRA Rule 4511. The conduct at issue took place before and after December 5, 2011; therefore NASD Rule 3110 applies to the November 2011 conduct, and FINRA Rule 4511 applies to the January 2012 through April 2013 conduct.

- 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, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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:

Aug 13, 2014



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