

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

DEPARTMENT OF ENFORCEMENT,
COMPLAINANT,

v.

DAVID PAUL ELLER (CRD No. 2464854),
RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2013039114102

HEARING OFFICER – MAD

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: March 8, 2016

INTRODUCTION

Disciplinary Proceeding No. 2013039114102 was filed on November 12, 2015, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent David Paul Eller (Eller) submitted an Offer of Settlement (Offer) to Complainant dated February 28, 2016. 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, 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, 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

Eller entered the securities industry in February 1994 when he became registered with a FINRA-regulated broker-dealer, and has worked in the securities industry for approximately 19 years with five different FINRA-regulated broker-dealers. Eller obtained the following securities licenses between 1994 and 2013: Series 7 (General Securities Representative); Series 63 (Uniform Securities Agent); Series 86 and 87 (Research Analyst); Series 56 (Proprietary Trader); and Series 66 (Investment Advisor).

In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated November 15, 2013, Wells Fargo reported that Eller voluntarily resigned his employment while the subject of an internal review regarding "issues relating to client communications and inaccurate documentation in [the] advisor's personal account." Since his resignation from Wells Fargo, Eller has not been associated with any FINRA-regulated broker-dealer.

Although Eller is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (i) the Complaint was filed within two years after the effective date of termination of Eller's registration with Wells Fargo, namely, November 15, 2013; and (ii) the Complaint charges Eller with misconduct committed while he was 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

From November 20, 2012 through April 19, 2013, Eller was associated with WTS Proprietary Trading Group LLC as a proprietary trader. When he was hired by Wells Fargo Advisors LLC on January 22, 2013 for their broker training program, he did not disclose to Wells Fargo his on-going association with WTS. Eller signed a false Form U4 on January 28, 2013, which was filed by Wells Fargo, stating that his association with WTS had ended in January 2013, when in fact the association with WTS continued for another three months.

From January 22, 2013 through October 25, 2013, when he ceased working for Wells Fargo (the “Relevant Period”), Eller also willfully failed to disclose to Wells Fargo a federal tax lien filed in March 2012 in the amount of \$4,588,740.

During the Relevant Period, in addition to his outside activities with WTS, Eller also engaged in outside business activities with Intellectual Property Exchange LLC and Investment U without providing prior written notice to, and obtaining prior approval from Wells Fargo.

Accordingly, Eller’s misrepresentations and omissions on his Form U4 violated Article V, Section 2 of FINRA’s By-Laws and FINRA Rules 1122 and 2010, while his failure to disclose multiple outside business activities to Wells Fargo violated FINRA Rules 3270 and 2010.

Eller Willfully Misrepresents the Status of His Association with WTS

Article V, Section 2(c) of the FINRA By-Laws requires registered representatives to keep their Forms U4 “current at all times,” and requires that amendments to a Form U4 must be filed “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

FINRA Rule 1122 prohibits members or associated persons from filing with FINRA information regarding registration “which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” Finally, FINRA Rule 2010 states that “[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rule 1122 is a violation of FINRA Rule 2010.

Registered representatives are required to provide a complete employment history for the past 10 years in their Form U4. Specifically, Question 12 asks registered representatives to account for all of their activities during the 10-year time period, including, for example, full and part-time employments, self-employment, and unemployment, and requires disclosure of the dates that employment started and ended and whether the employer was an investment-related business.

In a Form U4 dated January 28, 2013 and filed by Wells Fargo (the “January 2013 Form U4”), Eller attested that his association with WTS ended in January 2013.

Given that Eller’s proprietary trading on behalf of WTS continued until April 2013, Eller’s attestation in the January 2013 Form U4 was false.

In fact, Eller willfully misrepresented that his association with WTS ended in January 2013 in order to (i) protect his position as a proprietary trader with WTS in the event that he could not complete Wells Fargo’s training program; and (ii) preserve his potential to receive compensation from WTS until he started earning commissions at Wells Fargo.

Eller Fails to Timely Report his IRS Tax Lien via an amended Form U4

During the Relevant Period, Eller was also the subject of an Internal Revenue Service (“IRS”) tax lien filed on March 29, 2012 in Westport, Connecticut, for the amount of \$4,588,470

(“the 2012 Tax Lien”). The Lien identifies the Debtor as David Eller and was filed against certain real property located in Westport, Connecticut.

Eller owns property located in Westport, Connecticut at the same address against which the 2012 Tax Lien was filed (the “Westport Property”). Eller purchased the Westport Property in 2008 and, at the time the 2012 Tax Lien was filed, the Westport Property was Eller’s primary residence. Moreover, as of the date of the filing of this Complaint, the Central Registration Depository identifies the Westport Property as Eller’s current address.

Eller had actual notice of, or should have known of, or was willfully blind to the 2012 Tax Lien as of April 2012.

On June 3, 2013, the IRS sent Eller a letter scheduling an appointment for June 24, 2013. On June 24, 2013, the IRS sent Eller a second letter scheduling an appointment for July 10, 2013 to discuss his 2011 and 2012 tax returns. Eller contacted the IRS via telephone on June 25, 2013, to discuss, among other things, the 2012 Tax Lien.

Registered representatives are required to disclose unsatisfied judgments in their Form U4. Specifically, Question 14M on the Form U4 asks registered representatives to answer whether they have any unsatisfied liens or judgments.

Although Eller was required to amend his Form U4 within 30 days of his receiving notice of the filing of the 2012 Tax Lien, Eller did not disclose the 2012 Tax Lien to Wells Fargo or file an amended Form U4 disclosing its existence.

On August 14, 2013, through its own investigation, Wells Fargo learned about the 2012 Tax Lien and asked Eller for additional details. Although Eller had discussed the 2012 Tax Lien with the IRS in June 2013, he falsely stated to the Firm that he learned about the lien in August 2013. Wells Fargo subsequently filed a Form U4 on Eller’s behalf disclosing the existence of

the 2012 Tax Lien on August 16, 2013 -- more than one year after the 2012 Tax Lien was filed by the IRS and more than 30 days after the IRS sent the June 24, 2013 letter.

Eller's failure to timely disclose the 2012 Tax Lien was willful. Eller's association with WTS and the existence of the 2012 Tax Lien were material facts that would have been significant to Wells Fargo.

Moreover, by misrepresenting the date on which his association with WTS ended, Eller prevented Wells Fargo from taking steps to evaluate whether his dual registration was permissible and monitor for any potential conflicts of interest.

By willfully misrepresenting the status of his association with WTS in the January 2013 Form U4, and by willfully failing to timely amend his Form U4 to reflect the 2012 Tax Lien, Eller violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Eller's Outside Business Activities

FINRA Rule 3270 provides that:

No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

On May 7, 2012, Eller formed an executive recruiting company known as Intellectual Property Exchange LLC ("IPX"). Eller incorporated IPX in Connecticut, using his personal address at the Westport Property as IPX's business address. Eller was the sole member of IPX and, as such, obtained both a business identification number from the State of Connecticut and a federal tax payer identification number for IPX, and spent time recruiting potential clients for

IPX. IPX remained registered with the State of Connecticut as an active and ongoing business enterprise until Wells Fargo learned of its existence and Eller dissolved it on October 21, 2013.

From September 2012 to May 2013, Eller was also employed by Investment U, a website publisher of investment-related articles, to write articles focused on technology stocks. Eller received \$250 for each article published on Investment U's website, earning approximately \$5,000 between September 2012 to May 2013.

Eller's Association with Wells Fargo

Eller became employed by Wells Fargo on January 22, 2013, and was approved for his General Securities Representative registration by FINRA on March 18, 2013. Eller ceased his employment with Wells Fargo on October 25, 2013.

Wells Fargo's written supervisory procedures in effect during the Relevant Period also required its employees to complete an outside activity approval request and submit it to a qualified supervisor for approval before engaging in any outside business activity. Wells Fargo's written supervisory procedures prohibited its registered representatives from working for non-affiliated financial services, brokerage or investment advisory firms.

In addition to his ongoing activities with IPX and Investment U, while employed by Wells Fargo, Eller continued to be associated with and conduct proprietary trading on behalf of WTS from January 22, 2013 to April 19, 2013, in violation of Wells Fargo's written supervisory procedures.

Although Eller was aware that he was required to provide prior written notice of outside business activities to his member-firm employer, Eller did not disclose his outside activities with IPX, Investment U or WTS to Wells Fargo, in violation of FINRA Rules 3270 and 2010.

Based on the foregoing, Respondent Eller (i) willfully violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010 by making misrepresentations and omissions on his Form U4 and (ii) violated FINRA Rules 3270 and 2010 by failing to disclose multiple outside business activities to Wells Fargo.

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 suspended from association with any FINRA member in any capacity for nine-months. Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



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