

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Southeast Investments, N.C., Inc. (CRD No. 43035),

and

Frank Harmon Black (CRD No. 22451),

Respondents.

DISCIPLINARY PROCEEDING
No. 2014039285401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Southeast Investments, N.C., Inc. ("SEI"), acting through Frank Harmon Black ("Black") provided false documents to FINRA during an examination, in violation of FINRA Rules 8210, 2010 and 4511; SEI and Black also provided false investigative testimony to FINRA, in violation of FINRA Rules 8210 and 2010.
2. During the time period from March 2010 through May 2015 (hereinafter the "email review period"), SEI, acting through Black, failed to retain electronic business-related correspondence. As a result, SEI willfully violated Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule 17a-4, and also violated NASD Rule 3110 and FINRA Rules 4511 and 2010; and Black violated NASD Rule 3110 and FINRA Rules 4511 and 2010.

3. During the email review period, SEI, acting through Black, failed to establish, maintain and enforce written procedures and a system to supervise the activities of each registered representative, registered principal, and other associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations regarding the preservation of business-related electronic communications and branch inspections, in violation of NASD Rule 3010(a) through (c) and FINRA Rules 3110(a) and (b) and 2010.

RESPONDENTS AND JURISDICTION

4. SEI has been a FINRA member firm since July 1, 1997. At present, the firm has 33 FINRA registered branches, approximately 133 registered representatives and is headquartered in Charlotte, North Carolina. The firm is approved to conduct business in corporate debt and equities, U.S. government securities, mutual funds, municipal debt and bonds, options, time deposits, direct investments, underwriting of corporate securities and variable contracts.
5. Black entered the securities industry in March 1971 when he became associated with a FINRA member firm. From July 1, 1997 to the present, Black has been associated with SEI and registered with FINRA. Black currently serves as SEI's President, CFO, CCO, AMLCO and FINOP. Black owns more than 75% of SEI. Black holds Series 1, 4, 5, 8, 24, 28, 53, 63 and 65 licenses.
6. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over SEI because it currently is a FINRA member and because the Complaint charges SEI with securities-related misconduct while it was a FINRA member.

7. By virtue of his current registration with FINRA, his current association with SEI and because the conduct described herein occurred while registered with SEI, FINRA possesses jurisdiction over Black under Article V of its By-Laws.

BACKGROUND

8. This matter originated out of FINRA's 2012 cycle examination of SEI and a separate statutory disqualification examination of former SEI registered representative CG.¹
9. The onsite portion of the 2012 cycle examination of SEI was conducted at the firm's home office in Charlotte, North Carolina between September 17, 2012 and September 28, 2012.
10. During the onsite visit, SEI, acting through Black, provided FINRA staff with a document entitled "Office Inspections Checklist by Due Date," which lists the completion dates of alleged branch inspections.
11. The onsite visit to CG's non-registered office location in Dayton, Ohio was commenced on October 12, 2012. The basis for the statutory disqualification examination related to an August 11, 2010 Form U4 that SEI had filed for CG commencing his association with the firm. After filing the Form U4, SEI had submitted an MC-400 Application to FINRA on CG's behalf. On September 1, 2011, FINRA issued a Notice, pursuant to FINRA Rule 9523(b), which approved CG's association with the firm subject to SEI's proposed plan of heightened supervision (hereinafter the "Notice"). The proposed supervision plan set forth that DP, a minority owner and principal of SEI, would spend two days per month at CG's non-

¹ A schedule of the initials utilized in the Complaint is attached hereto as Exhibit 1.

registered office location in Dayton, Ohio to ensure that firm procedures were being followed.

12. The main purpose of the onsite visit to CG's non-registered office location was to determine if the firm had been complying with the proposed supervision plan of CG and the Notice.
13. During the onsite visit, CG verbally informed the staff numerous times that DP had not spent two days per month at CG's non-registered office location as required by the Notice. Indeed, CG stated that DP had in fact never visited CG's non-registered office location.
14. Soon after CG had provided this information during the onsite visit, FINRA staff witnessed CG receive a call from Black. CG stepped away from the FINRA staff for a few minutes, and after he returned, CG informed FINRA staff that he wished to change his story. CG then informed FINRA staff that DP had visited his location two days per month since the Notice was issued in September 2011. CG further claimed that he was "old and confused" when he previously represented to the staff that DP had never been to his location.²
15. On March 19, 2013, FINRA took Black's and DP's investigative testimony, wherein the staff questioned both witnesses extensively regarding the firm's system of branch inspections, and in particular, the alleged visits by DP to CG's non-registered office location between the date of the Notice and FINRA staff's onsite visit to CG's non-registered office location.

² CG was barred by FINRA on July 19, 2013.

16. After the aforementioned investigative testimony, Black was aware that FINRA was concerned about the firm's branch inspection process and whether the firm was sufficiently conducting and documenting branch inspections.
17. After completing the onsite visits for the 2012 cycle examination and the statutory disqualification examination, and after the aforementioned depositions of Black and DP, FINRA staff had continued concerns regarding SEI's system of branch inspections and the veracity of documents SEI, acting through Black, provided to FINRA that purport to evidence those branch inspections.
18. Pursuant to FINRA Rule 8210, on April 12, 2013, FINRA requested, among other things, that SEI provide all documentation evidencing branch inspections of the 43 individuals listed on the "Office Inspection Checklist by Due Date" document that had been provided during the September 2012 onsite visit for the cycle examination.
19. In response, on May 16, 2013, SEI, acting through Black, provided FINRA staff with a packet of documents entitled "Southeast Investments, N.C., Inc. Internal Review Files and Forms Checklist." For each checklist, a name of an SEI representative is handwritten on the top right corner to evidence an alleged inspection of that person's location.³

FIRST CAUSE OF ACTION
Providing False Documents to FINRA During an Examination
FINRA Rules 8210, 2010 and 4511
(Against SEI and Black)

20. The Department realleges and incorporates by reference paragraphs one through 19 above.

³ The "Office Inspection Checklist by Due Date" document and the documents produced to FINRA on May 16, 2013 are hereinafter collectively referred to as the "branch inspection documents."

21. On behalf of SEI, Black prepared all of the branch inspection documents.
22. Certain of the branch inspection documents that SEI (acting through Black) provided to FINRA were fabricated and falsely reported branch inspections that had never taken place. Specifically, the branch inspection documents report that Black conducted, among others, the following branch inspections:
- former SEI representative JM's non-registered office location on 7/6/10;
 - former SEI representative RR's non-registered office location on 10/1/10;
 - former SEI representative SR's non-registered office location on 5/11/11;
 - former SEI representative TM's non-registered office location on 8/11/11; and
 - former SEI representative AM's non-registered office location on 7/17/12.
23. Neither Black nor anyone from SEI conducted branch inspections of the aforementioned non-registered office locations on the dates listed above.
24. Contrary to the branch inspection documents, neither Black nor anyone from SEI ever conducted a branch inspection of the above-listed former SEI representatives' non-registered office locations.
25. By fabricating and thereafter providing the false branch inspection documents to FINRA, SEI, acting through Black, violated FINRA Rules 8210, 2010 and 4511.

SECOND CAUSE OF ACTION
Providing False Investigative Testimony
FINRA Rules 8210 and 2010
(Against SEI and Black)

26. The Department realleges and incorporates by reference paragraphs one through 25 above.
27. FINRA staff took Black's investigative testimony for a second time on April 3-4, 2014.
28. Black was sworn under oath and appeared for the testimony pursuant to FINRA's request for his testimony under FINRA Rule 8210.
29. During the testimony, FINRA staff marked the branch inspection documents that SEI and Black had provided to FINRA staff as exhibits and questioned Black about the documents.
30. Black testified that he created the branch inspection documents that had been provided to FINRA.
31. Black also testified that he conducted the above-described branch inspections of the former SEI representatives' non-registered office locations on the dates that are reflected on the branch inspection documents.
32. Black's investigative testimony on the issue was false.
33. Neither Black nor anyone from SEI conducted the branch inspections listed above on the dates indicated on the branch inspection documents.
34. Neither Black nor anyone from SEI ever conducted branch inspections of the former SEI representatives' non-registered office locations.

35. By providing false investigative testimony regarding the alleged branch inspections, SEI and Black violated FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION
Deficient Supervisory System Regarding Branch Inspections
NASD Rule 3010(a) and (c)
(Against SEI and Black)

36. The Department realleges and incorporates by reference paragraphs one through 35 above.
37. NASD Conduct Rule 3010(a) requires members to, among other things, establish, and maintain a system to supervise the types of business in which the firm engages.
38. NASD Rule 3010(c) requires members to, among other things, conduct a review, at least annually, of the business in which the firm engages, which shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations and application rules. Each member shall inspect every office of supervisory jurisdiction and any branch that supervises one or more non-branch location at least annually. The member also shall inspect every branch office that does not supervise one or more non-branch location at least every three years. Last, member firms must inspect non-branch locations on a regular, periodic basis.
39. As set forth above, neither Black nor anyone from SEI conducted the branch inspections of the former SEI representatives' non-registered office locations on the dates reflected on the branch inspection documents.
40. Neither Black nor anyone from SEI ever conducted branch inspections of the aforementioned former SEI representatives' non-registered office locations, even

though all of the former SEI representatives were associated with the firm for several years.

41. Specifically, JM was associated with SEI from October 3, 2005 through December 14, 2012. RR was associated with SEI from October 10, 2007 through October 31, 2011. SR was associated with SEI from March 27, 2007 through June 4, 2012. TM was associated with SEI from December 1, 2004 through October 31, 2005 and again from September 15, 2008 through January 19, 2012. AM was associated with SEI from October 1, 2003 through January 18, 2013.
42. By failing to conduct the aforementioned branch inspections, SEI and Black violated NASD Rule 3010(a) and (c).

FOURTH CAUSE OF ACTION

**Failure to Preserve and Maintain Electronic Records
Willful Violations of Section 17(a) of the Exchange Act and SEC Rule 17a-4; violations of
NASD Rule 3110 and FINRA Rules 4511 and 2010
(Against SEI and Black)**

43. The Department realleges and incorporates by reference paragraphs one through 42 above.
44. During the email review period of more than five years, SEI's written supervisory procedures ("WSPs") relied on an honor system of the firm's employees for the retention of business-related electronic communications.
45. Specifically, SEI's WSPs required that all representatives copy a designated principal from the firm's main office on all electronic communications so that the emails could be retained electronically or printed out and stored upon review.

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46. As part of the firm's process, it permitted registered representatives and branch personnel to utilize any email provider for securities-related correspondence (i.e., Yahoo, AOL, Gmail etc.).
47. During the email review period, the firm relied only on "hard copy" maintenance of email correspondence at the main office, in that all emails received at the main office were printed in hard copy, reviewed and approved by the designated principal.
48. SEI failed to preserve all of its business-related electronic communications during the email review period, as required by SEC Rule 17a-4. Specifically, SEI failed to retain several email communications with FINRA staff and several emails that SEI did maintain did not include attachments that are referenced in the body of the email. Furthermore, SEI and Black knew, or reasonably should have known, that its email system was inadequate because representatives could easily evade the honor system by not copying the home office on business-related electronic communications. In fact, SEI representatives did not copy a designated principal or anyone from SEI's home office on several emails involving securities business. Last, one SEI representative had two email accounts that he used for business purposes which had been deactivated and could not be re-accessed.
49. SEI's failure to preserve all business-related electronic communications not only violated SEC Rule 17a-4, but it also impeded FINRA examinations of SEI. Specifically, it hampered FINRA staff's ability to evaluate the firm's supervisory process as a whole, as well as the full scope of the firm's branch inspection deficiencies and of potentially false branch inspection documents.

50. As a result of the foregoing, SEI willfully violated Section 17(a) of the Exchange Act and SEC Rule 17a-4, and also violated NASD Rule 3110 (from March 2010 through December 4, 2011) and FINRA Rules 4511 (from December 5, 2011 through May 2015) and 2010.

51. As a result of the foregoing, Black violated NASD Rule 3110 (from March 2010 through December 4, 2011) and FINRA Rules 4511 (from December 5, 2011 through May 2015) and 2010.

FIFTH CAUSE OF ACTION
Deficient Supervisory System and Deficient Written Supervisory Procedures
Regarding Preservation and Review of Electronic Communications
NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010
(Against SEI and Black)

52. The Department realleges and incorporates by reference paragraphs one through 51 above.

53. FINRA Rule 3110(a) and (b), formerly NASD Conduct Rule 3010(a) and (b), require members to, among other things, establish, maintain, and enforce WSPs to supervise the types of business in which the firm engages.

54. During the email review period, SEI did not establish, maintain, and enforce WSPs, nor a supervisory system that was reasonably designed to supervise the firm's business-related electronic communications.

55. As set forth above, the firm's supervisory system allowed firm personnel to utilize their own email providers. The WSPs required that firm personnel copy the home office on electronic communications, which would thereafter be reviewed and maintained.

56. During the email review period, SEI operated under an independent contractor model and many of the firm's registered representatives worked out of their residences in various locations around the country.
57. During the email review period, SEI had anywhere between 114 and 133 registered representatives and between seven to 38 FINRA-registered branches.
58. Due to the firm's business model and size, the firm's honor system of relying on brokers to copy the home office on electronic communications was not reasonably designed to supervise the firm's business-related electronic communications.
59. Due to the firm's business model and size, the firm's WSPs regarding electronic communications were not reasonably designed to supervise the firm's business-related electronic communications.
60. SEI, through Black, was warned by the SEC as early as November 2011 that the firm's email retention system was inadequate. The SEC instructed SEI, through Black, to take immediate corrective action to correct the problem.
61. Despite the SEC's warning and the instruction for SEI to take immediate corrective action, the firm failed to change its email system until June 30, 2015, which was after Black and SEI received a *Wells* notice in this matter.
62. As a result of the foregoing, SEI and Black violated NASD Conduct Rule 3010(a) and (b) (from March 2010 through November 30, 2014) and FINRA Rules 3110(a) and (b) (from December 1, 2014 through May 2015) and 2010.

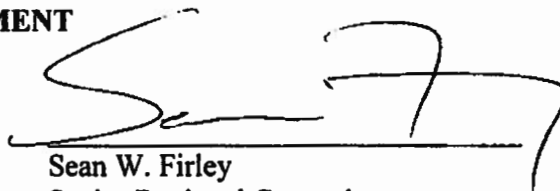
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents 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;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent SEI willfully violated Section 17(a) of the Exchange Act and SEC Rule 17a-4 with respect to the Fourth Cause of Action above.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: September 15, 2015



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EXHIBIT 1

Schedule of Individuals Listed in the Complaint

CG	[REDACTED]
DP	[REDACTED]
JM	[REDACTED]
RR	[REDACTED]
SR	[REDACTED]
TM	[REDACTED]
AM	[REDACTED]