

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASON LYNN DIPAOLO
(CRD No. 2648836),

Respondent.

DISCIPLINARY PROCEEDING
No. 2018057274302

COMPLAINT

The Department of Enforcement alleges as follows:

SUMMARY

1. From March 2015 to March 2017 (the “relevant period”), Jason Lynn DiPaola, while associated with FINRA member firm Chardan Capital Markets, LLC (“Chardan” or the “Firm”), exercised discretion and controlled the trading in his mother’s brokerage account which she held at Firm A, another broker-dealer. DiPaola was required to disclose this account to Chardan but failed to do so.

2. Although DiPaola had his own brokerage accounts at Firm A, he purchased and sold millions of shares of various stocks in his mother’s undisclosed account, sometimes trading in the same stock on the same day in both his mother’s account and in one of his own brokerage accounts.

3. One of the stocks that DiPaola most frequently purchased and sold in his mother’s account at Firm A was the common stock of Advanced Medical Isotope Corporation (“AMIC”).

AMIC's common stock traded under the ticker "ADMD" and was listed on OTC Pink, the most speculative of the three OTC stock tiers.

4. During the relevant period, DiPaola, acting with control and discretion over his mother's account at Firm A, purchased and sold tens of millions of shares of ADMD in his mother's account.

5. On October 7, 2016, AMIC engaged Chardan to provide advice on an investor relations program, to introduce AMIC to potential investors, and to perform other mutually agreed upon services. Following this engagement, through March 31, 2017, DiPaola sold millions of shares of ADMD in his mother's account at Firm A, and he also purchased hundreds of thousands of ADMD shares in this undisclosed account.

6. Not only did DiPaola fail to disclose his mother's account at Firm A to Chardan, but he failed to inform Firm A that he was exercising discretion and control over the trading in this account while he was an associated person of a broker-dealer (Chardan).

7. As a result of the foregoing, DiPaola violated NASD Rule 3050(c) and FINRA Rule 2010.

8. DiPaola also submitted false and misleading employee compliance questionnaire and certification forms to Chardan on or about May 21, 2016 and November 9, 2016. In these false and misleading forms, DiPaola failed to disclose the existence of his mother's account at Firm A when he was asked to identify all securities accounts which he controlled. As a result of the foregoing, DiPaola violated FINRA Rule 2010.

9. DiPaola also failed to appear and to provide testimony that FINRA requested pursuant to FINRA Rule 8210 on two separate occasions, namely, on April 5, 2021 and April 15, 2021. As a result, DiPaola violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

10. DiPaola entered the securities industry in 1995 when he first became associated with a NASD member firm. From 1995 through June 2013, DiPaola was registered with FINRA (or with the NASD) through his association with nine different member firms as a General Securities Representative (“GSR”).

11. DiPaola was then registered with FINRA through Chardan as a GSR from May 29, 2013 to May 7, 2019.

12. In a Form U5 Uniform Termination Notice for Securities Industry Registration that Chardan filed on May 7, 2019, Chardan reported DiPaola’s termination. The Form U5 stated: “In an On The Record interview with FINRA Staff, Mr. DiPaola admitted that for a period of time he entered orders for the purchase and sale of securities in his mother’s account held away from Chardan without having obtained written discretionary authority or disclosing this arrangement to Chardan, in violation of both FINRA rules and Chardan’s internal policy.”

13. Although DiPaola 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 May 7, 2019, which was the effective date of termination of DiPaola’s registration with FINRA; and (ii) the Complaint in the First and Second Causes of Action charges DiPaola with misconduct committed while he was registered with FINRA, and the Complaint in the Third Cause of Action charges DiPaola with failing to appear for on-the-record testimony during the two-year period after the date on which DiPaola ceased to be registered or associated with a FINRA member.

FACTS

I. DIPAOLA FAILED TO DISCLOSE TO CHARDAN, AND TO FIRM A, HIS TRADING IN AN ACCOUNT AT FIRM A, WHICH HE CONTROLLED

A. DiPaola's Role at Chardan and His Trading in Shares of ADMD and Other Stocks in His Mother's Account at Firm A

14. DiPaola worked in a branch office of Chardan located at 150 East 58th Street, New York, New York. He worked in a Chardan capital markets division called the Special Equities Group.

15. DiPaola had the title of Senior Vice President – Institutional Sales and Trading for the Special Equities Group. DiPaola's role within the Special Equities Group primarily was to meet with executives of publicly traded companies seeking to raise capital to see if investments in these companies might be suitable for Chardan's institutional customers, and, if so, to pass that information to the top executives within the Special Equities Group.

16. Contemporaneously with his work at Chardan, DiPaola also was an active trader of securities, not only in his personal brokerage accounts, but in a brokerage account that he helped his mother open at Firm A in 2013. DiPaola exercised discretion and controlled the trading in his mother's account at Firm A.

17. During the relevant period, DiPaola entered more than 2,000 purchase and sell orders in his mother's account at Firm A in numerous different securities, which led to more than 1,000 executed purchase and sale orders in her account during this period.

18. One of the stocks that DiPaola traded most frequently in his mother's account at Firm A was ADMD. During the relevant period, DiPaola purchased and sold tens of millions of shares of ADMD in his mother's account.

19. DiPaola often purchased and sold ADMD shares (or entered orders to purchase and sell ADMD shares) in one of his two accounts at Firm A and in his mother's account at Firm A.

20. For example, on December 16, 2015, DiPaola placed a GTC ("good 'til cancelled") limit order in his mother's account to sell 250,000 shares of ADMD at \$.0024. The next day, while his sell limit order was pending in his mother's account, DiPaola entered a limit order in his own account to buy the same amount of ADMD shares at the same price, namely, DiPaola entered an order to buy 250,000 shares at \$.0024. DiPaola's buy order in his own account was immediately executed, and the 250,000 shares crossed between DiPaola's account and his mother's account at Firm A.

21. By September 30, 2015, DiPaola held and controlled more than 101 million shares of ADMD in one of his two accounts at Firm A, and he controlled more than 4 million shares of ADMD in his undisclosed mother's account at Firm A. By March 8, 2016, DiPaola held and controlled more than 103 million shares of ADMD in one of his accounts at Firm A, and he controlled more than 29 million shares of ADMD in his undisclosed mother's account at Firm A.

22. From March 2015 to March 2017, while he actively traded in ADMD shares in his mother's account at Firm A, DiPaola was a large shareholder of ADMD based on his own holdings of ADMD shares in his own account at Firm A.

23. AMIC was a late stage development company with a long history of de minimis revenues and large annual losses. For the year ended December 31, 2016, AMIC reported revenues of \$8,108, an operating loss of \$4,436,470, and a net loss for the year of \$9,854,895. AMIC also reported that it had an accumulated deficit of \$57,869,440 as of December 31, 2016.

24. Since at least the summer of 2015, DiPaola communicated and worked closely with AMIC, trying to raise capital, and by early 2016, on strategic planning matters—including a promotional campaign that commenced in March 2016—to generate investor interest in AMIC.

25. On October 7, 2016, Chardan entered a written financial advisory agreement with AMIC. The agreement provided, among other things, that Chardan would advise on an investor relations program, introduce AMIC to potential investors, and perform other mutually agreed upon services.

26. ADMD consistently traded below a penny a share from March 2015 to October 7, 2016. On October 10, 2016, ADMD had a 100-to-1 reverse stock split and, after that, traded above a penny a share.

27. Following AMIC's engagement of Chardan on October 7, 2016, DiPaola—without having disclosed to Chardan the existence of his mother's account at Firm A and his discretionary trading in (and control of) his mother's account—purchased hundreds of thousands of shares of ADMD in his mother's account between October 10, 2016 and March 31, 2017 and, during the same period, sold several million shares of ADMD in his mother's account.

B. DiPaola's Failure to Disclose to Chardan His Mother's Account at Firm A and His Discretionary Trading in That Account

28. During the relevant period, Chardan required its employees to ensure that the Firm's compliance department received duplicate account statements from the broker-dealers carrying any brokerage accounts the employees held away from the Firm.

29. Pursuant to Chardan's written supervisory procedures, employee-related accounts that were subject to review by the Firm included (i) any accounts held by individuals related to Chardan employees where the Chardan employee had control over the account, and (ii) any

accounts in which a Chardan employee had a beneficial interest or the authority to make investment decisions.

30. DiPaola helped his mother set up her account online at Firm A in 2013, and he knew both the username and password for the account. He continually accessed her online account at Firm A.

31. During at least the relevant period, DiPaola had no written power of attorney or written discretionary authority over his mother's account at Firm A. However, he routinely exercised discretion when he placed orders and trades in ADMD and other stocks in his mother's account, without first discussing these orders and trades with his mother on the same day as the trades, or without discussing these orders and trades with his mother at all before the trades were made.

32. During the relevant period, DiPaola failed to disclose to Chardan the existence of his mother's account at Firm A, over which DiPaola had control. DiPaola actively traded in his mother's account, including buying and selling tens of millions of shares of ADMD, as well as buying and selling shares of other stocks. DiPaola also failed to ask Firm A to provide Chardan with duplicate account statements for his mother's account.

33. DiPaola first notified Chardan of his mother's account at Firm A in August 2017, when DiPaola was added as a co-owner of that account.

C. DiPaola's Failure to Disclose to Firm A DiPaola's Discretionary Trading in His Mother's Account and Associated Person Status

34. During the relevant period, DiPaola also failed to disclose to Firm A that he exercised discretion in his mother's account and his status as an associated person with Chardan.

35. DiPaola first notified Firm A of DiPaola's involvement in his mother's account and of his status as an associated person of Chardan in August 2017, when DiPaola was added as a co-owner of that account on Firm A's records.

II. DIPAOLA'S FALSE AND MISLEADING CHARDAN EMPLOYEE QUESTIONNAIRES/CERTIFICATIONS

36. During the relevant period, DiPaola was aware of his obligation under FINRA rules to inform Chardan (his employing firm) that he controlled and had discretionary authority in an account at another broker-dealer.

37. In May 2016, DiPaola signed Chardan's Annual Questionnaire/Certification Year 2015 Outside Business Activities, Conflicts of Interest and Disclosure Certification (the "2015 Questionnaire/Certification").

38. In November 2016, DiPaola signed Chardan's Annual Questionnaire/Certification Year 2016 Outside Business Activities, Conflicts of Interest and Disclosure Certification (the "2016 Questionnaire/Certification").

39. Both the 2015 Questionnaire/Certification and the 2016 Questionnaire/Certification asked the following Question 2: "Do you currently maintain an Employee . . . accounts away from [Chardan]? No: ___ Yes: If yes: please list firm(s), account name(s) and number(s)..." The Questionnaire defined an "Employee account" as "any securities account in which the employee of the Firm has a direct or indirect interest including a financial or fiduciary interest, or which the employee controls."

40. On or about May 21, 2016, DiPaola completed and signed the 2015 Questionnaire/Certification. In response to Question 2, DiPaola answered "Yes" and identified his outside brokerage accounts in his own name at Firm A and another broker-dealer.

41. On or about November 9, 2016, DiPaola completed and signed the 2016 Questionnaire/Certification. In response to Question 2, DiPaola answered “Yes” and identified his outside brokerage accounts in his own name at Firm A and at two other broker-dealers.

42. DiPaola’s responses to Question 2 in his 2015 and 2016 questionnaires on or about May 21, 2016 and November 19, 2016 were false and misleading. In his responses to these questionnaires, DiPaola never identified his mother’s account in response to Question 2 even though he maintained discretionary authority in her account and controlled the trading.

III. DIPAOLA FAILED TO APPEAR FOR ON-THE-RECORD TESTIMONY

43. During the course of its investigation of DiPaola’s conduct, Enforcement had taken his on-the-record (“OTR”) testimony in April 2019 and July 2019.

44. In March 2021 and April 2021, Enforcement on three occasions noticed the OTR testimony of DiPaola. Among the topics about which Enforcement wanted to obtain testimony from DiPaola in March and April 2021 were the following: (i) the nature and extent of DiPaola’s communications and activities with AMIC, including email communications and telephone communications; (ii) DiPaola’s trading of ADMD shares in his mother’s account at Firm A and in his own account at Firm A, as well as DiPaola’s entering of hundreds of buy limit orders and sell limit orders in ADMD shares in his mother’s account at Firm A and in his own account at Firm A; and (iii) the extent to which DiPaola’s trading in ADMD shares in his mother’s account and his account at Firm A were related to his activities in connection with AMIC and/or his possession of possible material non-public information concerning AMIC’s activities.

45. On March 11, 2021, FINRA staff sent a letter to DiPaola, through his counsel, pursuant to FINRA Rule 8210, requesting that DiPaola appear and provide testimony by videoconference, commencing at 9:30 a.m., on March 26, 2021 (the “First Testimony Request”).

FINRA staff sent the First Testimony Request to DiPaola's counsel via first class mail, certified mail, and email.

46. The First Testimony Request enclosed a document titled "Supplemental Information for Testimony Requests Pursuant to FINRA Rule 8210," which stated, in relevant part: "Refusing to appear for testimony . . . constitutes a violation of FINRA Rule 8210 and may expose you to sanctions, including a permanent bar from the securities industry."

47. On March 19, 2021, in response to the First Testimony Request, DiPaola's counsel advised Enforcement by email that DiPaola "is not available on the date and I am getting other dates from him." On March 19, 2021, in response, Enforcement advised DiPaola's counsel by email that Enforcement was willing to consider three alternative dates (March 31, April 1 or 2, 2021) and asked his counsel to advise which alternative date worked.

48. On March 20, 2021, DiPaola's counsel replied by email that he was unavailable on the three alternative dates and that "I will get back to you with dates later in April." However, DiPaola's counsel did not get back to Enforcement with any dates.

49. Accordingly, on March 24, 2021, Enforcement requested that counsel advise Enforcement that day of dates in early April 2021 that he and DiPaola were available for DiPaola's OTR or Enforcement would have no choice but to issue a notice setting a new date. On March 24, 2021, in response, DiPaola's counsel stated "I am not available this week to get dates. I will get back to you next week." However, counsel never did propose any dates.

50. On March 26, 2019, FINRA staff sent a letter to DiPaola, through his counsel, pursuant to FINRA Rule 8210, requesting that DiPaola appear and provide testimony by videoconference, commencing at 9:30 a.m. on April 5, 2021 (the "Second Testimony Request").

FINRA staff sent the Second Testimony Request to DiPaola's counsel via first class mail, certified mail, and email.

51. In the Second Testimony Request, Enforcement advised DiPaola: "If you fail to appear on the date scheduled for your testimony – April 5, 2021, and do not obtain an agreement to reschedule your testimony, FINRA may commence against you an expedited or formal disciplinary proceeding that could lead to sanctions, including a bar from associating with any FINRA member in all capacities, suspension, censure and/or fine."

52. The Second Testimony Request enclosed a copy of the First Testimony Request and the document enclosed therein titled "Supplemental Information for Testimony Requests Pursuant to FINRA Rule 8210," which stated, in relevant part: "Refusing to appear for testimony . . . constitutes a violation of FINRA Rule 8210 and may expose you to sanctions, including a permanent bar from the securities industry."

53. On April 1, 2021 and April 2, 2021, Enforcement and DiPaola's counsel exchanged a series of emails on the subject of DiPaola's April 5, 2021 OTR. On the morning of April 1, 2021, Enforcement emailed DiPaola's counsel to confirm that Mr. DiPaola would be appearing for his OTR on April 5, 2021, as scheduled. In another email, sent by Enforcement to DiPaola's counsel on the afternoon of April 1, 2021, Enforcement pointed out that DiPaola's counsel had never proposed any alternative dates for DiPaola's OTR and stated that FINRA staff intended to proceed with DiPaola's testimony on April 5, 2021, as noticed, and should DiPaola fail to appear, Enforcement would send out another OTR notice.

54. On April 2, 2021, DiPaola's counsel wrote an email to Enforcement asking Enforcement to confirm that Enforcement's earlier-issued Wells Notice to DiPaola would not be withdrawn "pending the OTR" of DiPaola. Enforcement replied shortly thereafter in an email to

DiPaola's counsel on April 2, 2021 that Enforcement did not intend to withdraw the Wells Notice.

55. DiPaola did not appear and provide testimony on April 5, 2021.

56. On the morning of April 5, 2021, shortly after the on-the-record examination was scheduled to commence pursuant to the Second Testimony Request, Enforcement telephoned DiPaola's counsel (calling his cell phone and New York and New Jersey office numbers) and left a voicemail message, but never received any reply.

57. On April 5, 2021, FINRA staff sent a letter to DiPaola, through his counsel, pursuant to FINRA Rule 8210, requesting that DiPaola appear and provide testimony by videoconference, commencing at 9:30 a.m. on April 15, 2021 (the "Third Testimony Request"). FINRA staff sent the Third Testimony Request to DiPaola's counsel via first class mail, certified mail, and email.

58. In the Third Testimony Request, Enforcement advised DiPaola: "If you fail to appear on the date scheduled for your testimony – April 15, 2021, and do not obtain an agreement to reschedule your testimony, FINRA may commence against you an expedited or formal disciplinary proceeding that could lead to sanctions, including a bar from associating with any FINRA member in all capacities, suspension, censure and/or fine."

59. The Third Testimony Request enclosed a copy of the First Testimony Request and Second Testimony Request and the document enclosed therein titled "Supplemental Information for Testimony Requests Pursuant to FINRA Rule 8210," which stated, in relevant part: "Refusing to appear for testimony . . . constitutes a violation of FINRA Rule 8210 and may expose you to sanctions, including a permanent bar from the securities industry."

60. The first class mailing of the Third Testimony Request was not returned to FINRA.

61. On the morning of April 14, 2021, Enforcement emailed DiPaola's counsel asking for him to advise whether DiPaola would be attending his OTR scheduled for the April 15, 2021, but received no response.

62. DiPaola did not appear and provide testimony on April 15, 2021.

63. On April 15, 2021, shortly after the on-the-record testimony was scheduled to commence, Enforcement telephoned DiPaola's counsel (calling his cell phone number) and left a voicemail message, but never received any reply.

FIRST CAUSE OF ACTION
Failure to Disclose Outside Brokerage Account
(Violation of NASD Rule 3050(c) and FINRA Rule 2010)

64. Enforcement re-alleges and incorporates by reference paragraphs 1 through 63, above, as if set forth in full here.

65. NASD Rule 3050—which was in effect through April 2, 2017 and was superseded by FINRA Rule 3210 effective April 3, 2017—provided in paragraph (c) of that Rule: “A person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated.” Paragraph (e) of former NASD Rule 3050 provided that paragraph (c) of the Rule shall apply “to an account or order in which an associated person has a financial interest or with respect to which such person has discretionary authority.”

66. A violation of NASD Rule 3050(c) also constitutes a violation of FINRA Rule 2010.

67. Pursuant to NASD Rule 3050(c), DiPaola was required to notify Chardan in writing of the existence of his mother's account at Firm A because he had discretionary authority in her account. He actively traded her account and repeatedly exercised discretion in her account throughout the relevant period. DiPaola, however, never notified Chardan, in writing or otherwise, of his mother's account at Firm A during the relevant period.

68. Pursuant to NASD Rule 3050(c), DiPaola also was required to notify Firm A in writing of the fact that DiPaola maintained discretionary authority in his mother's account at Firm A while he was an associated person of a broker-dealer. DiPaola, however, never informed Firm A that he maintained discretion authority in his mother's account at Firm A or that he was an associated person with Chardan at the time he maintained discretionary authority in his mother's account during the relevant period.

69. By virtue of the foregoing conduct, DiPaola violated NASD Rule 3050(c) and FINRA Rule 2010.

SECOND CAUSE OF ACTION
False and Misleading Employee Questionnaires/Certifications
(Violation of FINRA Rule 2010)

70. Enforcement re-alleges and incorporates by reference paragraphs 1 through 69, above, as if set forth in full here.

71. Both the 2015 Questionnaire/Certification and the 2016 Questionnaire/Certification contained the following Question 2: "Do you currently maintain an Employee . . . accounts away from [Chardan]? No: ___ Yes: ___ If yes: please list firm(s), account name(s) and number(s)..." The Questionnaires defined an "Employee account" as "any

securities account in which the employee of the Firm has a direct or indirect interest including a financial or fiduciary interest, or which the employee controls.”

72. From March 2015 to March 2017, DiPaola controlled the trading in his mother’s account at Firm A and, consequently, he was required to disclose his mother’s account at Firm A to Chardan in response to Question 2 in the 2015 Questionnaire/Certification and to the 2016 Questionnaire/Certification.

73. On or about May 26, 2016, when he completed and signed the 2015 Questionnaire/Certification, DiPaola failed to disclose his mother’s account at Firm A (over which DiPaola acted with discretion and had control of the trading).

74. On or about November 9, 2016, when he completed and signed the 2016 Questionnaire/Certification, DiPaola failed to disclose his mother’s account at Firm A (over which DiPaola acted with discretion and had control of the trading).

75. By virtue of the foregoing, DiPaola violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
Failure to Appear for On-the-Record Testimony
(Violation of FINRA Rules 8210 and 2010)

76. Enforcement re-alleges and incorporates by reference paragraphs 1 through 75, above, as if set forth in full here.

77. FINRA Rule 8210(a)(1) requires a “member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff ... with respect to any matter involved in the investigation, complaint, examination, or proceeding” FINRA Rule 8210(c) similarly provides that “[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”

78. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”

79. DiPaola’s failure to appear and provide OTR testimony requested pursuant to FINRA Rule 8210 on April 5, 2021 and April 15, 2021 impeded FINRA’s investigation and deprived it of material information in DiPaola’s possession. Specifically, DiPaola’s failure to provide testimony prevented FINRA from asking DiPaola about (i) the nature and extent of DiPaola’s contacts, communications and activities with AMIC, including email communications and telephone communications; (ii) DiPaola’s trading of ADMD shares in his mother’s account at Firm A and in his own account at Firm A, as well as DiPaola’s entering of hundreds of buy limit orders and sell limit orders in ADMD shares in his mother’s account at Firm A and in his own account at Firm A; and (iii) the extent to which DiPaola’s trading in ADMD shares in his mother’s account and his account at Firm A were related to his activities in connection with AMIC and/or his possession of possible material non-public information concerning AMIC’s activities.

80. By failing to appear and provide testimony requested pursuant to FINRA Rule 8210 on two occasions, DiPaola violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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 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 3, 2021



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