

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Francis Smookler, Jr. (CRD No. 2712672),

Respondent.

Disciplinary Proceeding
No. 2016048490901

Hearing Officer: RES

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: September 8, 2017

INTRODUCTION

Disciplinary Proceeding No. 2016048490901 was filed on January 6, 2017, and amended pursuant to an Amended Complaint filed January 20, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Francis Smookler, Jr. submitted an Offer of Settlement (Offer) to Complainant dated September 7, 2017. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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

Respondent first became registered as a General Securities Representative ("GSR") in July 1996 through a FINRA member firm. From December 1996 through March 2015, Respondent was registered as a GSR through approximately ten FINRA member firms. On March 27, 2015, Respondent became registered as a GSR through an association with Legend. In April 2016, Respondent terminated from Legend and became registered as a GSR through another member firm until January 27, 2017, when his registration with FINRA was also terminated.

In September 2002, Respondent entered into a Letter of Acceptance Waiver and Consent through which he consented to the entry of findings that he participated in private securities transactions and outside business activities without providing his member firm with prior written notice. Respondent was suspended for three months in all capacities, ordered to disgorge, jointly and severally, \$250,150 in consulting fees, and fined \$5,000.

Respondent is not currently associated with a FINRA member firm. Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, namely, January 27, 2017; and (2) the Complaint charges him 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:¹

From April 2015 through July 2015 (the “Relevant Period”), Respondent and Christopher Clark (Clark), while registered with FINRA through their association with Legend, , intentionally caused the falsification of Legend’s books and records, by causing Clark to be misidentified as the broker of record for four orders in the accounts of two customers at Legend. As a result, Respondent and Clark caused Legend to maintain inaccurate books and records, and they violated FINRA Rules 4511 and 2010.

SOLE CAUSE OF ACTION Falsification of Firm Books and Records (FINRA Rules 4511 and 2010)

On March 27, 2015, Respondent and Clark joined Legend. In early April 2015, a number of Respondent’s customer accounts from his prior firm were transferred to Legend, including the accounts of Customer No. 1 and Customer No. 2. During the Relevant Period, Respondent was the broker responsible for Customer No. 1’s and Customer No. 2’s accounts.

Throughout the time that Respondent was associated with Legend, he was not registered to transact business as a broker-dealer or agent of a broker-dealer in certain states, including the states where Customer No. 1 and Customer No. 2 resided.

On or about April 2, 2015, Clark became registered to transact business as a broker-dealer or agent of a broker-dealer in both of the states where Customer No. 1 and Customer No. 2 resided.

¹ The findings herein are pursuant to Respondent Francis Smookler’s Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

From April 7, 2015 through July 13, 2015, Respondent solicited or placed four trades in the accounts of Legend customers Customer No. 1 and Customer No. 2. Respondent and Clark caused those trades to be incorrectly recorded on Legend's order memoranda, trade confirmations, commission statements, and account statements as trades solicited or placed by Clark.

Clark paid Respondent a portion of the commissions that were generated by the trades.

Respondent was aware that Clark was falsely listed as the broker responsible for the foregoing trades on the order memoranda, trade confirmations, commission statements, and account statements for Customer No. 1 and Customer No. 2.

Respondent intended for Legend's books and records to contain these false representations.

FINRA Rule 4511(a) requires FINRA member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

It is a violation of FINRA Rule 2010 for an associated person to cause the falsification of the books and records of a FINRA member firm in violation of FINRA Rule 4511(a).

During the Relevant Period, Respondent and Clark caused Legend's books and records, including the order memoranda, trade confirmations, commission statements, and account statements, to falsely state that Clark was the registered representative responsible for the

accounts of Customer No. 1 and Customer No. 2 and that Clark placed all of the securities transactions in the accounts of Customer No. 1 and Customer No. 2.

By virtue of the foregoing conduct, Respondent caused Legend to maintain inaccurate books and records and violated FINRA Rules 4511 and 2010.

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 all capacities for a period of 30 business days; and

Fined in the amount of \$5,000.

The fine shall be due and payable either immediately upon re-association with a member firm following the 30 business day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

Samuel Z. Barkin (KH)

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