CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30010

This is a summary of a decision issued following the June 2017 hearings of the Disciplinary and Ethics Commission ("Commission") of Certified Financial Planner Board of Standards, Inc. ("CFP Board"). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) exercised discretion in the clients' accounts without written discretionary authorization from the clients; 2) churned the clients' accounts; 3) exercised discretion in the clients' accounts without written discretionary authorization from the clients; 4) falsely informed a client that the total commissions owed to him and his firm would be the same whether they paid fees based on a percentage of the assets under management or fees based on each transaction executed in the accounts; 5) failed to disclose a regulatory action to State within 30 days; and 6) failed to report this suspension of a professional license to CFP Board within the required 30 calendar days

II. Findings of Fact Relevant to the Commission's Decision

2014 Customer Complaint

In January 2014, 70-year-old KK and her 94-year-old mother, MS, made an oral customer complaint against Respondent concerning four investment accounts. KK and MS were long-term clients of Respondent and his father, who at the time of the hearing was a retired, non-CFP® professional. The accounts in question were titled in the names of KK, MS, the MS Trust and the CS Trust. KK, who held a durable power of attorney for her mother, authorized her son, BK, to act on behalf of herself and her mother.

KK and MS alleged that, from January 2010 through December 2013, Respondent misrepresented the fee structure of their accounts, churned their accounts, and executed unauthorized trades in their accounts. BK further claimed that his mother and grandmother had questioned Respondent about the extremely high trading volume in their accounts on many occasions and that the excessive trading began in 2010. Respondent and his firm charged KK and MS a commission for each transaction executed in their accounts. On one occasion when KK expressed concern about the high trading volume and the resulting commissions, she allegedly asked Respondent if they should change to a fee structure based on the value of the portfolio as opposed to a per transaction fee structure. Respondent allegedly told KK that she should not be concerned because the total commissions would be the same under either fee structure. Respondent disputed this statement by alleging that KK never once said she was concerned about commissions.

BK said that when he confronted Respondent about the above communication to his mother during a January 2014 call, Respondent admitted informing KK that the commissions would be the same under either structure, but said that he had made an error in the calculation and that he wished he could go back in time to change the fee structure. BK calculated that his mother and grandmother paid Respondent and his firm over $320,000 in commissions between 2010 and 2013 under the per transaction fee structure. BK also said that, under a fee structure based on the value of the portfolio, the amount of commissions would have been approximately $60,000. Additionally, BK said that without the significant churning in the account, the fees would have been much less than $60,000.

BK claimed there was evidence of significant churning in both his grandmother and mother's account. According to BK, his grandmother's account, which was valued at $700,000, contained total sales proceeds for 2010, 2011, 2012 and 2013 of approximately $1.25 million, $1.6 million, $1.2 million and $1.3 million respectively. In his mother's account, which was valued at $380,000, total sales proceeds for 2013 was approximately $700,000. The record did not contain any account information to verify these numbers.

The investment advisory agreements MS and KK signed did not give Respondent discretion in their accounts and he was required to obtain authorization for each trade. BK said that over the years, Respondent made only sporadic authorization requests to KK and MS prior to executing trades in the accounts, despite reminders from KK that the accounts were non-discretionary. Although Respondent would update KK on the accounts by email after the trades, he failed to obtain the proper authorization prior to executing them. BK also said that Respondent admitted to this conduct during their January 2014 telephone call.

Respondent admitted to "not formally documenting each trade and strategy discussed in complete emails, letters and notes…," but contends that he had permission regarding all trades. Respondent contends that KK had requested the type of client-advisor relationship they shared and thanked him on many occasions for the close attention he paid to her and her mother's accounts. Respondent also contends that he and KK routinely discussed strategies and recommendations and confirmed all trades in routine meetings, although time and price discussions of the trades did not always occur on the same day the trades were executed. Respondent contends that KK and her family were distorting the relationship due to a profit motive by family members, like BK, who were not associated with the actual trading of the account.

In February 2014, Respondent and KK (on behalf of her mother, herself, the MS Trust and the CS Trust) entered into a confidential settlement agreement and release. Respondent paid the clients a total of $175,000 as a result of the settlement: $117,000 to MS and $58,000 to KK.

2014 Termination

In May 2014, Respondent's firm filed a Form U5 regarding its termination of Respondent due to: "management loss of confidence in the registered representative's willingness to comply with firm's oversight."

2014 Heightened Supervision Plan

In June 2014, Respondent's current employer placed him on a Heightened Supervision Plan ("Plan"). Respondent's Branch Office Manager was responsible for the implementation and monitoring of the Plan. The requirements of the Plan included: (a) documented bi-weekly meetings with the Branch Office Manager to review and discuss transactions in Respondent's active accounts and any unusual activities; (b) reminders regarding the handling of non-discretionary accounts; (c) written pre-approval of all trade corrections from the Branch Office Manager, documentation of Respondent's trade corrections and provision of a copy of the trade correction to the Compliance Department; (d) timely responses from Respondent regarding Compliance or Branch Office Manager inquiries; and (e) reminders of "know your customer/suitability" obligations and provide complete information upon establishing new accounts or update the account record in the event of a change in the client suitability profile.

The Plan also required the following oversight requirements: (a) client-related – participating in at least six client presentations per month and maintain contact with at least five of Respondent's clients every month; (b) supervision of Respondent's activities; (c) ongoing review and supervision of Respondent's approved outside activity; and (d) monitoring of Respondent's training requirements.

The Plan was to remain in effect until Respondent's Financial Industry Regulatory Authority, Inc's ("FINRA" formerly known as the National Association of Securities Dealers or "NASD") inquiry was concluded when Janney's Supervisory Management and the firm would determine whether monitoring should cease or continue for an additional period of time. Any failure by Respondent to satisfactorily complete all elements of the Plan could subject him to additional discipline, including termination. Respondent certified that he completed all his training requirements on July 3, 2014 and he received two General FINRA Certificates for the following courses: (a) Annual Compliance Reminders for Registered Representatives; and (b) Suitability and Know Your Customer Obligations: FINRA Rules 2111 and 2090.

FINRA AWC

In 2014, as a result of the MS and KK complaint, FINRA opened an investigation into Respondent's conduct. Respondent's attorney responded to FINRA's inquiry on behalf of Respondent. Respondent's attorney asserted that KK was aware of all trades, never complained about the accounts to Respondent and wanted Respondent to actively manage the account. Further, Respondent's attorney asserted that on numerous occasions, KK thanked Respondent for the close attention he paid to her and her family's accounts. The record contains several emails between Respondent and KK from 2012 to 2013 that purportedly illustrate the type of relationship they shared.

In response to FINRA's request concerning a detailed explanation of what Respondent understood his regulatory responsibilities to be, Respondent's attorney indicated Respondent understood the importance of strict compliance with FINRA rules and regrets not getting formal documentation in line with the verbal discussions between KK and himself. Respondent's attorney also indicated Respondent understood he is required to follow all FINRA Rules and related laws applicable to the securities industry for any work he performs.

Respondent and FINRA resolved the ongoing FINRA investigation when Respondent, without admitting or denying the findings, entered into an AWC with FINRA in which he consented to a 45 calendar-day suspension from associating with any FINRA member firm and a $10,000 fine. Respondent entered into a payment plan to pay the $10,000 fine. Respondent made an initial payment of $2,500 on July 15, 2015. Respondent was required to pay $1,000 per month until he repaid the remainder of the fine. The record contained evidence that Respondent made the required payments in August and September 2015. The record did not contain any evidence indicating that Respondent made, or failed to make, the remaining payments.

According to the FINRA AWC, at various times from 2010 through 2013, while registered with his former firm, Respondent exercised discretion in four accounts belonging to two clients. Respondent did not have written authorization from the clients and Stifel had not approved and accepted the accounts as discretionary. FINRA determined that, Respondent's conduct violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

On the same day that Respondent signed the FINRA AWC, Respondent's attorney submitted a Corrective Action Statement to FINRA on Respondent's behalf. In the Corrective Action Statement, Respondent undertook to: (a) review relevant sections of his firm's compliance and supervisory manual and the FINRA conduct rules applicable to client orders, recommendations and solicitations; (b) document discussions with clients regarding trades and inform them that he would not execute any trades without same-day calls unless the account is discretionary; (c) consult with managers, supervisors and his compliance and legal departments regarding compliance issues; (d) retain counsel and seek legal guidance in the event there are any questions regarding compliance; and (e) change his policies and practices to better establish, maintain and enforce all applicable laws, rules and regulations.

Respondent did not report the suspension to CFP Board within 30 days of his notification by FINRA that he would be subject to a suspension. CFP Board appears to have discovered the suspension on its own initiative by reviewing the public records of FINRA's disciplinary actions.

2015 State Department of Banking and Insurance Consent Order

The State Department of Banking and Insurance ("State") notified Respondent that they were reviewing the FINRA regulatory action against him. According to State, Respondent failed to disclose the FINRA action to them within 30 days as he was required to do pursuant to State law. Sometime after receiving this correspondence from State, Respondent corresponded with the "NIPR Attachment Warehouse" to file a "Report of Action" in which he disclosed the FINRA Suspension. Respondent's attorney responded to State on Respondent's behalf and said that Respondent's failure to disclose the FINRA suspension was due to an oversight, for which he apologized.

In January 2016, Respondent entered into a consent order with State in which he admitted responsibility for violating the State statute requiring an insurance producer to notify the Commissioner of Banking and Insurance within 30 days of the final disposition of any formal disciplinary proceedings initiated against the producer, or any disciplinary action taken against the producer by FINRA. As a result of State Consent Order, Respondent agreed to a $1,000 fine. The record did not contain any evidence indicating that Respondent paid, or failed to pay, the fine.

2016 Customer Complaint

In January 2013, DA filed a complaint against Respondent and his father. DA said that she previously had a good relationship with Respondent's father and her brother was married to Respondent's sister. DA also said that her risk tolerance was conservative and Respondent's father had invested her accounts accordingly. However, after one of her accounts was transferred to Respondent, he began pressuring her to invest in risky securities, which she mostly declined. DA said that after she transferred her account away from Respondent, she discovered that Respondent had invested her in several securities that were unauthorized and unsuitable. DA demanded reimbursement for the unauthorized transactions.

Respondent's firm denied DA's complaint, stating that she had maintained accounts with Respondent and his father for over a decade and the relationship predated the Respondent's employment with Stifel. Respondent said that in 2002, when DA first opened her accounts, her investment objective was long-term growth, her risk tolerance was moderate and her investment objectives allowed speculation. Respondent contended that their records reflected that DA's investment objective was growth and income, and her risk tolerance was moderately aggressive. Respondent also contended that in May 2012, DA made unsolicited purchases of Facebook, Inc. in each of her Stifel accounts on the same date of the initial public offering. Respondent asserted that this unsolicited purchase belied DA's claim that she is a conservative investor. According to Respondent, DA was in regular contact with Respondent via emails and she received trade confirmations and monthly account statements providing detailed information regarding her investments, but she never complained about any of the investments. Respondent concluded that DA was aware of, approved of and ratified the securities transactions that Respondent executed in her accounts, and therefore, denied her 2013 claim that the purchases were unauthorized or inconsistent with her investment objectives.

Second 2016 Customer Complaint

In August 2015, DA filed another complaint against Respondent and his father alleging that, through their introduction and advice, she invested a total of $20,000 in an illiquid and fraudulent investment product, Investment 1, initially in the amount of $10,000 and later for an additional $10,000. DA claimed that on June 7, 2010, Respondent and his father invited her to their office to discuss "a great opportunity." DA said that when she arrived at the office, Respondent and his father introduced her to two individuals: (a) CL, to whom they referred as a personal friend and client; and (b) JH, the Chief Financial Officer of Investment 1, an upstart and fast-growing company. Respondent and his father offered her the opportunity to invest in Investment 1 before its initial public offering took place. DA also claimed that Respondent and his father assured her that their firm had vetted the company and told her that it was a good investment.

DA also said that she was not a sophisticated investor and had no reason to doubt that Stifel had approved the investment because she met with Respondent, his father and JH at their offices and her correspondence with Respondent was through his firm email accounts. Respondent and his father also informed her that they had personally invested in the company. DA wrote a check for $10,000 and four days later (on June 11, 2010), wrote another check for $10,000 after Respondent and his father informed her that she could purchase more shares, for what she asserted was a total investment of $20,000. DA demanded that Respondent's firm reimburse her total investment of $20,000.

In their response letter to DA's complaint, Respondent's firm disputed DA's assertion that she invested $20,000 in Investment 1 in June 2010. Respondent's firm cited the following in support of its assertion: (a) the Investment 1 Certificate and the contract DA signed with Investment 1 indicated she purchased 31.25 units at a price of $320 per unit totaling $10,000; (b) although DA provided Respondent's firm with copies of two checks in the amount of $10,000, dated June 7 and 10, 2010, the documents she provided did not reference any additional $10,000 investment; (c) in the CEO of Investment 1's email dated November 26, 2014 to DA, he stated that although he had no legal obligations to her concerning Investment 1, he would recommend that she be paid $30,000, which represented three times what she had originally invested in Investment 1, to which DA did not object; and (d) Respondent and his father specifically recall that DA invested $10,000 only in Investment 1 and deny contacting her regarding any additional investment or receiving any checks from her regarding her investment.

Respondent's firm also contended that Respondent recalled that in one of the many conversations he and DA had in 2010 due to their family relationship, he mentioned in passing that he was investing some of his own money in a private investment in Investment 1, but when DA expressed an interest in making a similar investment, he counseled her against doing so because it was a highly speculative and illiquid investment. Respondent contended that he informed DA that the investment was not offered by his firm and that his firm was not recommending the investment in Investment 1, due to its speculative and risky nature. Respondent also contends that contrary to his advice, DA made her own independent decision to invest in Investment 1. Respondent's firm also indicated that Respondent did not receive any compensation from Investment 1 in connection with DA's investment.

On April 16, 2016, DA filed a Statement of Claim with FINRA dispute resolution again Respondent's father and his firm. In the Statement of Claim, DA reiterated many of her claims from the customer complaint she filed in September 2015. DA also addressed Respondent's assertion that she only invested $10,000 by providing document from TD Bank that she asserts clearly showed the two checks were deposited. DA added detail regarding her interaction with Respondent and the CEO of Investment 1, who purported to be the chairman of the board of Investment 1, and further described her efforts to unsuccessfully sell or liquidate her investment. In an undated letter, Respondent's father responded to the Statement of Claim and indicated that he would represent himself. Respondent's father denied the claims and asserted that he and Respondent warned DA about the risks of investing in Investment 1, and that she pursued the opportunity anyway.

On February 17, 2017, DA confirmed that she was dismissing with prejudice all her claims against Respondent, Respondent's father and their firm. According to Respondent's recent BrokerCheck Report, DA and Respondent's firm settled the matter with the firm agreeing to pay her $10,000 in exchange for a full release of her claims. Respondent was not a party to the settlement.

FINRA Cautionary Action Letter

In March 2016, FINRA issued a Cautionary Action Letter to Respondent based on DA's complaint about Respondent's sale of Investment 1 to her. FINRA informed DA that based on their review of her allegations and information developed during their investigation, Respondent participated in a Private Securities Transaction. FINRA determined that the findings of their investigation raised questions about

Respondent's compliance with the requirements of NASD Conduct Rule 3040. FINRA issued the Cautionary Action Letter as a warning against the inappropriate nature of the activity.

III. Commission's Analysis and Conclusions Regarding Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), there are no grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own.

CFP Board's Complaint alleged that Respondent failed to place the interests of KK and MS ahead of his own when he: (a) exercised discretion in the clients' accounts without written discretionary authorization from the clients; and (b) churned the clients' accounts. While the Commission found that Respondent exercised discretion in the client's accounts without written discretionary authority from the clients', and as is discussed later in the order this is a serious violation of CFP Board's rules, the Commission determined that there was insufficient evidence in the record to support a finding that Respondent placed his interests ahead of those of the client when he engaged in this misconduct. While it is possible that such conduct could be a violation of this rule, CFP Board has not plead or provided sufficient facts to prove a violation of this particular rule here. The Commission declines to find that mere occurrence of misconduct involving a client is a violation of a CFP® professional's duty to place a client's interest ahead of his or her own.

Further, CFP Board did not provide sufficient evidence to support its allegation that Respondent churned the accounts. The only evidence presented to support this allegation was the statements made by KK's son in an email to Respondent's firm. CFP Board did not provide account statements, commission payout information or any other evidence that would show the level of trading activity in the account. Thus, Respondent did not violate Rule 1.4 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 3.4 of the *Rules of Conduct*, which provides that a certificant shall clearly identify the assets, if any, over which the certificant will take custody, exercise investment discretion, or exercise supervision.

Article 13.1 of the *Disciplinary Rules* provides that a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline "shall include the suspension, bar or revocation as disciplinary measure by . . . [an] industry self-regulatory organization or professional association."

FINRA is an industry self-regulatory authority. The AWC is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent.

Based on the FINRA AWC, Respondent, a certificant, failed to clearly identify the assets of KK and MS over which he was to exercise investment discretion because he exercised discretion in the clients' accounts without written discretionary authorization from the clients. Thus, Respondent violated Rule 3.4 of the *Rules of Conduct*.

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are no grounds to discipline Respondent for acts or omissions that violate Rule 4.1 of the *Rules of Conduct*, which provides that a certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

CFP Board's Complaint alleged that Respondent, a certificant, failed to treat KK and MS fairly and provide professional services with integrity and objectivity when he falsely informed KK that the total commissions owed to him and his firm would be the same whether they paid fees based on a percentage of the assets under management or fees based on each transaction executed in the accounts. This resulted in the clients paying more than $250,000 in excess fees than they would have paid if they had used a fee structure based on assets under management, thereby enriching Respondent at the expense of his clients.

Based on the evidence in the record, it appears Respondent discussed a fee account with KK, who declined to enter into a fee-based account if she was going to pay when she was not making any trades. While BK alleged this occurred, there is insufficient evidence to support this allegation. CFP Board Counsel admitted as much at the hearing.

The Commission did note, however, that Respondent should have taken greater care to do a comparison between a fee account and a commission account to show the difference between the commission model and the fee model rather than just discussing it orally with the client. In addition, if the client did not want to move to a fee account, Respondent should have taken greater care in documenting the client's decision. Thus, Respondent did not violate Rule 4.1 of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

Based on the AWC and the New Jersey Consent Order, Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services provided to the clients when he: (a) at various times from 2010 through 2013, exercised discretion in four accounts belonging to KK and MS without written authorization from the clients, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010; and (b) participated in a Private Securities Transaction in violation of NASD conduct Rule 3040; and (c) failed to disclose the FINRA regulatory action to State within 30 days in violation State law. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Fifth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Based on the AWC, Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he: (a) he exercised discretion in four accounts belonging to KK and MS without written authorization from the clients in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010; and (b) participated in a Private Securities Transaction in violation of NASD Conduct Rule 3040. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Sixth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics*.

Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of his employer when he: (a) was terminated for violating his firm's policy by exercising discretion in KK and MS's accounts without written authorization from the clients; and (b) recommended to DA an investment that was not approved by his broker-dealer, resulting in a Cautionary Action Letter from FINRA for engaging in a Private Securities Transaction in violation of NASD Rule 3040. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

Seventh Ground for Discipline

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and the AWC constitutes professional discipline. Therefore, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

Eighth Ground for Discipline

Pursuant to Article 3(e) of the *Disciplinary Rules*, there are grounds to discipline Respondent for an act or omission that violates these *Disciplinary Rules* or which violates an order of discipline. Under Article 13.2 of the *Disciplinary Rules*, every CFP® professional who receives a suspension of a professional license must notify CFP Board within 30 calendar days after receiving notification of the suspension. On June 30, 2015, FINRA notified Respondent of the following sanction: A 45-day suspension from association in any capacity with any FINRA member firm. Respondent failed to report this suspension of a professional license to CFP Board within the required 30 calendar days. Therefore, Respondent's omission violates Article 13.2.

IV. Discipline Imposed

The Commission determined that Respondent's conduct violated Rules 3.4, 4.3, 4.4 and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a), 3(d) and 3(e) of the *Disciplinary Rules*. After careful consideration of the evidence in Respondent's matter, the Commission has decided to issue Respondent a suspension of his right to use the CFP® certification for **30 days** pursuant to Article 4.3 of the *Disciplinary Rules*. CFP Board will publish the suspension in a press release and on its website. The publication will include, but not be limited to, the discipline and a description of the facts underlying the discipline.

In arriving at its decision, the Commission consulted *Anonymous Case History* 28574. The Commission also consulted *Sanction Guidelines* 12 (Employer Policies Violation), 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation), 33 (Professional Discipline of More than One Calendar Month and Less than Three Calendar Months). The Commission determined that the most significant Sanction Guideline at issue was 33, which called for a matched suspension of equal length to that imposed by FINRA. Thus, the Commission started with the baseline that it would match the suspension imposed by FINRA.

The Commission then looked to determine if there were any relevant mitigating factors. The Commission cited in mitigation that:

1. Respondent inherited the MS and KK accounts from his father and those clients had grown accustomed to a certain style, away from which Respondent struggled to move the clients;
2. Respondent had no prior disciplinary history;
3. Respondent expressed remorse for his conduct and appeared to understand that he has made mistakes; and
4. Respondent is under heightened supervision with his firm for an indefinite period. The supervision plan involves monitoring all of his transactions so it is unlikely he will commit similar violations in the future.

The Commission placed great weight on the final mitigating factor identified. The Commission thought this negated the need to strictly match the FINRA suspension or go beyond matching the FINRA suspension because Respondent's likelihood of repeating his misconduct was minor.

The Commission considered in aggravation that:

1. Respondent engaged in a pattern of exercising discretion when he did not have written authorization to do so over an extended three-year period;
2. Respondent's firm terminated Respondent due to his conduct; and
3. Respondent sold a client a private security without conducting proper due diligence and obtaining the prior approval of firm.

These factors did not outweigh the significance of the mitigating factors identified above, and in particular the weight of the final mitigating factor. Thus, the Commission determined that it would deviate from matching the FINRA suspension to a 30-day suspension. The Commission determined that the existence of the aggravating factors should warrant the completion by Respondent of 14 hours of remedial education. The 14 hours shall consist of two hours Ethics, six hours in General Financial Planning Principles, and six hours in Investment Planning. Respondent must complete and report the 14 hours of remedial education to CFP Board within one year of the date of this order.