

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24809

This is a summary of a Settlement Agreement entered into at the February 2011 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 prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) offered and sold unregistered securities to clients in violation of sections of the State Securities Act; 2) failed to inform clients that the foreign currency exchange (“FOREX”) trading program investments were securities that were not registered with any state or federal regulatory authority; 3) participated in private securities transactions for compensation without providing written notice to and receiving written authorization from the Firm, in violation of its written procedures and National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) Conduct Rules 3040 and 2110; 4) borrowed \$200,000 from a client in violation of the Firm’s written procedures and NASD Conduct Rules 2370 and 2110; 5) sold a product that the Firm did not have a selling agreement with, in violation of its written procedures; and 6) failed to provide requested information to FINRA in violation of NASD Rule 8210 and NASD Conduct Rule 2110.

II. Findings of Fact

In April 2010, CFP Board received a grievance regarding Respondent’s 2009 State Corporation Commission Order to Cease and Desist, Order for Restitution, of Revocation and Consent to Same (“2009 State Order”) and pending FINRA sanctions. In April 2010, CFP Board opened an investigation into the matters and discovered the following matters during a routine background check: 1) a 2008 FINRA arbitration claim filed by Client A (“2008 Client A Arbitration”); 2) a 2009 FINRA arbitration claim filed by Client B (“2009 Client B Arbitration”); 3) a civil suit filed by Client C in the Superior Court of the State (“Client C Civil Suit”); and 4) a 2008 internal review by Respondent’s employer, Firm.

State Corporation Commission and FINRA Matters

According to the 2010 FINRA Order, Respondent was a registered representative of Firm from November 1999 through April 2008. Respondent also acted as a Certified Public Accountant (“CPA”) during that time. In 2006 and 2007, Respondent introduced clients and friends to a FOREX trading program. Approximately 37 of Respondent’s CPA clients invested in the FOREX trading program, including 17 clients who were also clients of the Firm.

Respondent informed the clients that: 1) he had personally invested in the FOREX trading program and was generating large profits from the investment; 2) there were tax advantages to investing in the FOREX trading program; 3) a FOREX trading program principal would trade client funds on the FOREX markets and that a percentage of the profits generated would be distributed to the clients; and 4) the FOREX trading program principal was a highly skilled and successful trader. In July 2006, Respondent informed one client that the client would receive monthly returns of 5%.

Respondent did not seek written authorization from the Firm to participate in the FOREX trading program, and the Firm was unaware of the transactions. According to the 2009 State Order, Respondent did not inform clients that the FOREX trading program investments were securities, or that the securities were not registered with any state or federal regulatory authority.

The minimum investment in the FOREX trading program was \$100,000. According to the 2010 FINRA Order, the clients typically executed the FOREX trading program application forms at Respondent's office. Respondent also had the clients execute letters instructing the FOREX trading program principal to deposit 1% of the investors' FOREX trading program account assets into Respondent's account on a monthly basis. The investors ultimately invested over \$4.5 million in the FOREX trading program.

According to the 2010 FINRA Order, in May 2007, Respondent became involved with the administration of the FOREX trading program. In July 2007, Respondent emailed the FOREX trading program investors, including the clients, that he would assist in the administration of the FOREX trading program, and informed investors that he was a CFP® professional. In July 2007, Respondent emailed the FOREX trading program investors regarding late payments.

In August 2007, the Securities and Exchange Commission ("SEC") determined that the FOREX trading program was a Ponzi scheme and filed an emergency action against the FOREX trading program, the FOREX trading program principal and others. In March 2008, the Firm initiated an internal review of Respondent's involvement with the FOREX trading program.

According to the 2010 FINRA Order and 2009 State Order, Respondent violated the Firm's written procedures when he: 1) engaged in private securities transactions without providing written notice to, or obtaining written approval from, his firm; and 2) borrowed \$200,000 from a client to invest in the FOREX trading program. Respondent also sold a product that the Firm did not have a selling agreement with, which was prohibited by the Firm's written procedures.

According to the 2009 State Order, the State Securities Commission had grounds to revoke Respondent's registration because he:

- 1) Violated sections of the State Securities Act by offering or selling unregistered securities;
- 2) Engaged in dishonest or unethical practices in the securities industry, as described in Rules of the State Corporations Code, by borrowing money from a client;

- 3) Engaged in dishonest or unethical practices in the securities industry, and as described in Rules of the State Corporations Code, by effecting securities transactions that were not recorded on the records of his broker-dealer at the time of the transaction.

Pursuant to the 2009 State Order, Respondent was ordered to: 1) cease and desist from violating Rules of the State Corporations Code; 2) pay restitution of \$200,000 to the State Securities Commission to be disbursed to clients who invested in the FOREX trading program; and 3) provide a complete accounting of all distributions paid to clients who invested in the FOREX trading program. Pursuant to the 2009 State Order, Respondent's securities registration was revoked in November 2009.

Pursuant to the 2010 FINRA Order, Respondent consented to the entry of findings that he violated:

- 1) NASD Conduct Rules 3040 and 2110 by participating in private securities transactions for compensation through the FOREX trading program, without providing written notice to his employer and without receiving written authorization from his employer;
- 2) NASD Conduct Rules 2370 and 2110 by borrowing \$200,000 from a client without his employer's knowledge or consent; and
- 3) NASD Rule 8210 and NASD Conduct Rule 2110 by failing to provide requested information to FINRA.

Pursuant to the 2010 FINRA Order, Respondent was barred from associating with any FINRA member firm in any capacity, to become effective upon acceptance of the order.

Other Matters

According to Respondent's Central Registration Depository record, the 2008 Client A Arbitration, 2009 Client B Arbitration, and Client C Civil Suit related to the FOREX trading program investments. The 2009 Client B Arbitration was settled in February 2010 for approximately \$101,500. The Client C Civil Suit was settled in September 2009 for \$440,000.

III. Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

Respondent recommended unregistered securities to clients by: 1) informing clients that he was generating large profits from his own investment in the FOREX trading program; 2) informing clients that there were tax advantages to investing in the FOREX trading program; 3) informing clients that the FOREX trading program principal was a highly skilled and successful trader; and 4) informing one client that the client would receive monthly returns of 5%. Respondent failed to inform clients that the FOREX trading program investments were securities that were not registered with any state or federal regulatory authority. Respondent also failed to

inform the Firm of the FOREX trading program transactions or of his involvement in the FOREX trading program administration. By engaging in such conduct, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly made false or misleading statements to clients. Thus, Respondent violated Rule 102.

B. Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) offered and sold unregistered securities to clients in violation of sections of the State Securities Act; 2) participated in private securities transactions for compensation without providing written notice to and receiving written authorization from the Firm, in violation of its written procedures and NASD Conduct Rules 3040 and 2110; 3) borrowed \$200,000 from a client in violation of the Firm's written procedures and NASD Conduct Rules 2370 and 2110; 4) sold a product that the Firm did not have a selling agreement with, in violation of its written procedures; and 5) failed to provide requested information to FINRA in violation of NASD Rule 8210 and NASD Conduct Rule 2110. Thus, Respondent violated Rule 201.

C. Rule 401(a) - In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including, conflict(s) of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity.

Respondent failed to disclose material information relevant to the professional relationship to clients when he failed to inform them that the FOREX trading program investments were securities that were not registered with any state or federal regulatory authority. Thus, Respondent violated Rule 401(a).

D. Rule 406 – Failure to perform professional services with dedication to the lawful objectives of the employer and/or in accordance with the Code of Ethics

Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he: 1) offered and sold unregistered securities to clients in violation of the State Securities Act; 2) participated in private securities transactions for compensation without providing written notice to and receiving written authorization from the Firm, in violation of its written procedures and NASD Conduct Rules 3040 and 2110; 3) borrowed \$200,000 from a client in violation of the Firm's written procedures and NASD Conduct Rules 2370 and 2110; and 4) sold a product that the Firm did not have a selling agreement with, in violation of its written procedures. Thus, Respondent violated Rule 406.

E. Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) offered and sold unregistered securities to clients in violation of sections of the State Securities Act; 2) participated in private securities transactions for compensation without providing written notice to and receiving written authorization from the Firm, in violation of NASD Conduct Rules 3040 and 2110; 3) borrowed \$200,000 from a client in violation of NASD Conduct Rules 2370 and 2110; and 4) failed to provide requested information to FINRA in violation of NASD Rule 8210 and NASD Conduct Rule 2110. Thus, Respondent violated Rule 606(a).

F. Rule 606(b) – In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board

By violating Rules 102, 201, 202, 401(a), 406, 606(a), 607 and 701 of the *Code of Ethics*, as described herein, Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated Rule 606(b).

G. Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.

Respondent engaged in conduct that reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession when he: 1) offered and sold unregistered securities to clients in violation of sections of the State Securities Act; 2) failed to inform clients that the FOREX trading program investments were securities that were not registered with any state or federal regulatory authority; 3) participated in private securities transactions for compensation without providing written notice to and receiving written authorization from the Firm, in violation of its written procedures and NASD Conduct Rules 3040 and 2110; 4) borrowed \$200,000 from a client in violation of the Firm's written procedures and NASD Conduct Rules 2370 and 2110; 5) sold a product that the Firm did not have a selling agreement with, in violation of its written procedures; and 6) failed to provide requested information to FINRA in violation of NASD Rule 8210 and NASD Conduct Rule 2110. Thus, Respondent violated Rule 607.

H. Rule 701 – A CFP Board designee shall provide services diligently.

Respondent failed to provide services diligently when he: 1) offered and sold unregistered securities to clients; 2) failed to inform clients that the securities were not registered with any state or federal regulatory authority; 3) failed to provide written notice to and obtain written authorization from the Firm for the FOREX trading program transactions; 4) sold a product that

his firm did not have a selling agreement with, in violation of its written procedures; and 5) failed to provide requested information to FINRA. Thus, Respondent violated Rule 701.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d), and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"). Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 401(a), 406, 606(a), 606(b), 607 and 701 of the *Code of Ethics*. Article 3(d) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission that is the proper basis for professional suspension. Article 12.6 defines a professional suspension as the suspension or bar as a disciplinary measure by any governmental or industry self-regulatory authority of a license as a registered securities representative. Respondent recommended and sold unregistered securities to clients, engaged in private securities transactions and borrowed funds from a client in violation of the Firm's written procedures, State law and NASD Conduct Rules. FINRA properly barred Respondent's membership as a result of his conduct, thereby providing grounds for discipline pursuant to Article 3(d). Article 3(e) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission which violates the provisions of the *Disciplinary Rules*. Respondent failed to notify CFP Board of his professional suspension within 10 calendar days of the suspension, as required by Article 12.2 of CFP Board's *Disciplinary Rules*, thereby providing grounds for discipline pursuant to Article 3(e).

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent an Order to Revoke Permanently Respondent's right to use the CFP® marks, pursuant to Article 4.4 of the *Disciplinary Rules*.

The Commission considered no mitigating factors.

The Commission considered no aggravating factors.