

MEMO# 28735

February 13, 2015

FINRA Sanctions Broker-Dealer for Outside Vendor's Coding Error That Impacted Mutual Fund Confirmations

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TO: OPERATIONS MEMBERS No. 7-15
BROKER/DEALER ADVISORY COMMITTEE No. 7-15
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 5-15
SMALL FUNDS MEMBERS No. 5-15
COMPLIANCE MEMBERS No. 6-15
TRANSFER AGENT ADVISORY COMMITTEE No. 8-15 RE: FINRA SANCTIONS BROKER-DEALER
FOR OUTSIDE VENDOR'S CODING ERROR THAT IMPACTED MUTUAL FUND CONFIRMATIONS

A coding error at a vendor to a FINRA member has resulted in the member failing to send out mutual fund confirmations, which resulted in the member violating the rules of FINRA and the SEC. The facts of the case as set forth in FINRA's Letter of Acceptance, Waiver, and Consent are summarized below. [\[1\]](#)

The FINRA member that is the subject of the case engaged in a general securities business through 1,450 branch offices. From January 1, 2004 through March 21, 2013, it failed to deliver confirmation of certain categories of mutual fund transactions "due to coding errors in the computerized system that [the member] had established through an outside vendor to generate and send customer confirmations." [\[2\]](#) The member's relationship with the vendor dated back to January 2004, when the member contracted with the vendor to deliver mutual fund confirmations to the member's customers. The member and the vendor developed and maintained the computerized system to generate and send the necessary confirmations.

In May 2012, a customer notified the member that the customer failed to receive a confirmation. When the member contacted the vendor regarding this issue, it was discovered that the transaction code for certain confirmations had been incorrectly set and, therefore, confirmations were not being generated for certain redemptions. It was also determined through further investigation that thousands of confirmations had not been generated due to system coding errors that dated back to January 2004. Upon discovery of this problem, the member alerted FINRA to it. Subsequent to reporting to FINRA, the member discovered that, as a result of a program enhancement the vendor made on behalf

of another customer, additional mutual fund confirmations of the member had been suppressed. The member then retained a third-party assessment of all the confirmation delivery failures. It was determined that the member failed to deliver confirmations for over 454,000 transactions, which constituted a violation of the confirmation rules of FINRA and the SEC (i.e., FINRA Rule 2232 and SEC Rule 10b-10 under the Securities Exchange Act) as well as of FINRA Rule 2010, which requires all FINRA members to observe high standards of commercial honor and just and equitable principles of trade. [\[3\]](#)

Based on these violations, the member was censured and fined \$375,000. In imposing these sanctions, FINRA considered that the member had: internally investigated the scope of the violations and reported them to FINRA; retained an independent consultant to determine the full magnitude of the violations; and took remedial actions to correct the problem, including hiring an independent consultant to review and test its delivery confirmation system.

Tamara K. Salmon
Associate General Counsel

[Attachment](#)

endnotes

[\[1\]](#) See FINRA Letter of Acceptance, Waiver and Consent regarding Thrivent Investment Management, Inc., (No. 01203373380(2015)) (the “AWC”), which is attached.

[\[2\]](#) AWC at pl. 1.

[\[3\]](#) Because of the time span over which the violations occurred, the member was also cited for violating NASD Rules 2230 for conduct before June 17 2011, when this rule became FINRA Rule 2232, and NASD Rule 2110 for conduct before December 15, 2008, when this rule became FINRA Rule 2010.