

**MEMO# 25598**

October 28, 2011

## **SEC Orders FINRA to Cease and Desist from Violating the Recordkeeping Requirements under the 1934 Act**

[25598]

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TO: SEC RULES COMMITTEE No. 92-11

BROKER/DEALER ADVISORY COMMITTEE No. 70-11

COMPLIANCE MEMBERS No. 42-11 RE: SEC ORDERS FINRA TO CEASE AND DESIST FROM VIOLATING THE RECORDKEEPING REQUIREMENTS UNDER THE 1934 ACT

The Securities and Exchange Commission announced yesterday the settlement of an enforcement proceeding that it brought against FINRA. [\[1\]](#) According to the Order, FINRA violated Section 17(a)(1) of the Securities Exchange Act of 1934 and Rule 17a-1 thereunder when the Director of FINRA's Kansas City District Office caused "the alteration of three records of staff meetings just hours before producing them to the Commission inspection staff, making them inaccurate and incomplete." [\[2\]](#) The Order also finds that the "Director's misconduct is the third instance during an eight year period in which a FINRA employee, or an employee of its predecessor, the National Association of Securities Dealers, Inc. ('NASD'), provided altered or misleading documents to the Commission." [\[3\]](#) [Emphasis added.]

The Order states that this latest misconduct, which occurred in August 2008, came to the attention of FINRA through a whistleblower complaint filed with FINRA anonymously in June 2010. This anonymous complaint "alleged that the Director instructed a FINRA employee to alter Staff meeting Minutes before they were burned to a CD and provided to the Commission in connection with an oversight inspection of the District Office." [\[4\]](#) FINRA's Internal Audit staff apparently reported the allegation to FINRA's Audit Committee in July 2010. In September 2010, FINRA notified the Commission's Chicago Regional Office and Division of Enforcement about the Director's conduct. Also in September 2010, the Director tendered his resignation from FINRA.

Based on FINRA's violations of the above provisions of law, FINRA was ordered to cease and desist from committing further violations of Section 17(a) or Rule 17a-1 and it was ordered to comply with undertakings set forth in the Commission's order. These undertakings require FINRA to take certain actions, including the following: [\[5\]](#)

- Providing training to all FINRA employees regarding document integrity issues and emphasizing FINRA’s “zero-tolerance policy regarding the alteration of documents;”
- Addressing the importance of document integrity at a company-wide town hall meeting, annual regulatory meetings, and during Senior Management onsite visits to all district offices;
- Engaging an independent consultant to conduct a comprehensive review of FINRA’s policies and procedures and training relating to document integrity and submit a report containing recommendations to FINRA’s board within three months of the consultant’s engagement;
- Implementing the consultant’s recommendations and reporting to the Commission regarding these activities within nine months of the FINRA Board receiving the consultant’s report; and
- Certifying in writing to the Commission that FINRA has complied with all the undertakings set forth in the Order within sixty days of completion.

The SEC’s sanctions against FINRA did not include any fines or monetary penalties.

FINRA’s website contains a news release about the SEC’s enforcement proceeding. [6] The release, however, only discusses the most recent instance of a FINRA employee altering documents. It does not mention the two previous occurrences (in May 2006 and December 2007) of FINRA employees altering documents provided to the Commission staff.

Tamara K. Salmon  
Senior Associate Counsel

#### endnotes

[1] See In the Matter of Financial Industry Regulatory Authority, Order Institute Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Release No. 34-65643; File No. 3-14605 (October 27, 2011) (the “Order”). A copy of the Commission’s action is available at: <http://www.sec.gov/litigation/admin/2011/34-65643.pdf>.

[2] Order at p. 2.

[3] Ibid. It does not appear from the Order that the SEC commenced enforcement proceedings against FINRA for its two earlier violations, which “came to light” in May 2006 and December 2007.

[4] Order at p. 3.

[5] These undertakings are set forth on pp. 4-6 of the Order.

[6] The news release is available at: <http://www.finra.org/Newsroom/NewsReleases/2011/P124926>. It does not include a link to the Order.

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