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How to Avoid Losing Your Securities License

The protection of customer information is one of the hallmarks of the financial industry. Based upon the recent increase in FINRA Letters of Acceptance, Waiver, and Consent ("AWC") related to the taking and use of customer information by financial advisors changing firms, legal advice regarding such transitions, and the taking of customer information is particularly relevant.

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Over the past few months, we have noticed a marked increase in AWCs related to the wrongful taking and using of customer information. The FINRA Department of Enforcement is taking a hardline approach in its enforcement of the SEC's Rule on Privacy of Consumer Financial Information (Regulation S-P), which prohibits financial institutions from disclosing nonpublic personal information about a customer.

FINRA routinely investigates allegations of wrongdoing by registered representatives and member firms. When FINRA determines that it has enough evidence to bring a formal disciplinary action, it will give a registered representative or member firm the opportunity to enter into an AWC or to instead, participate in a litigated proceeding. Even when the disciplinary action is resolved through an AWC, it usually results in an agreed upon fine, suspension, and more often than not, both.

For example, on November 12, 2020, a registered representative was suspended from association with any FINRA member firm for five months and fined $5,000 after he allegedly printed a list of 500 customer names and account values, and subsequently sold a portion of that list to another registered representative. The violation occurred in 2012 when the registered representative was planning to resign from J.P. Morgan, but the advisor was punished eight years later (AWC No. 2019062357402).

On September 28, 2020, a registered representative was suspended for 15 business days and fined $5,000 after it was alleged that the registered representative sent 161 unencrypted emails to his personal email account. 146 of those emails contained customer Quarterly Performance Reports, which were marked "SENSITIVE CLIENT INFORMATION INSIDE." Another email contained a chart of customer names, assets, and the commissions generated by each customer. The penalized registered representative held onto these emails after he resigned from Merrill Lynch.

On September 9, 2020, a registered representative was suspended for 10 business days and fined $2,500 after FINRA enforcement found that he printed a list of 300 customers which included social security numbers and birth dates and shared that information with his new firm (AWC No. 2019062346201).

It is important to note that the common factor in all of the instances listed above was that the registered representatives acted without the consent of the customers. While the text of Reg. S-P applies directly to member firms, FINRA has made it clear that causing a member firm to violate Reg. S-P by taking customer information without consent can and will result in punishment to the registered representative who engages in such conduct.

Our team at Shumaker has extensive experience in assisting financial advisors throughout the entire FINRA investigation process, from responding to initial inquiry letters and on the record interviews, through to final determination. The advice of an experienced attorney can be very beneficial and provide you with peace of mind. If you find yourself in the middle of a FINRA investigation, don't hesitate to contact us.

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