

Stephen Kohn

From: [Redacted] @finra.org>
Sent: Wednesday, July 26, 2017 1:57 PM
To: Stephen Kohn
Cc: [Redacted]
Subject: RE: Richard S. Botkin - CRD #15711729

Dear Stephen:

I read with interest your email regarding the recent FINRA settlement involving Richard Botkin. I have reviewed the settlement between FINRA's Department of Enforcement and Mr. Botkin, the Letter of Acceptance, Waiver, and Consent, accepted by FINRA on June 30, 2017.

You explained that—based on your review of the settlement—the conduct involved is a violation of FINRA's rule prohibiting private securities transactions, which was NASD Rule 3040 until September 2015, and is now FINRA Rule 3280. Your concern is with the sanction agreed to, which you strongly believe is excessive in this case.

You asked if the NAC could call this settlement for review. Here are the terms of the settlement and FINRA rules that are relevant to this question. On page 5 of the Letter of Acceptance, Waiver, and Consent, Mr. Botkin certifies that he has agreed to the provisions of the settlement voluntarily. The settlement also shows that Mr. Botkin was represented by an attorney, who also reviewed and signed the settlement. The settlement contains a waiver of Mr. Botkin's right to have a complaint issued that would set forth the allegations against him. Mr. Botkin waived the right to defend against those allegations at a hearing. And Mr. Botkin also waived any appeal to the NAC. Instead, the settlement resolved the issues between the Department of Enforcement and Mr. Botkin and avoided litigation of the matter. Under the terms of the settlement, the two parties resolved this matter definitively. The settlement does not provide for further review of its terms by the NAC.

Moreover, the waivers in the settlement are consistent with FINRA's rule regarding settlements. When an associated person, such as Mr. Botkin, accepts the same terms that FINRA has agreed to in a Letter of Acceptance, Waiver, and Consent, the settlement becomes "final" and serves as the final decision in the matter. *See* FINRA Rule 9216(a)(4). This settlement, like most, was accepted by the Office of Disciplinary Affairs, which makes the settlement final. *See* FINRA Rule 9216(a)(3). Although the NAC has the authority to call for review a Hearing Panel decision that is not final, it does not have the ability to call for review a settlement that has been accepted by the Office of Disciplinary Affairs and is final. *See* FINRA Rule 9312(a) (ability of NAC or the NAC's Review Subcommittee to call for review a Hearing Panel disciplinary decision within 45 days of it being issued).

In your email, you asked several factual questions about the events described in the settlement, including what was Mr. Botkin's state of mind, and his personal activities. Although I have read the five pages of the settlement, I do not know the answers to these questions. FINRA's settlements ordinarily contain a brief summary of the facts related to the violation. Mr. Botkin's settlement follows this pattern, but leaves unanswered the questions you raise.

Nevertheless, you have reached out to me as your point of contact and I will relay to FINRA Enforcement the concerns raised in your email. I appreciate your interest in FINRA's disciplinary process and look forward to seeing you at the next NAC meeting.