

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74354 / February 23, 2015

Admin. Proc. File No. 3-15824

In the Matter of the Application of
STEVEN ROBERT TOMLINSON
For Review of Disciplinary Action Taken By FINRA

ORDER DENYING REQUEST FOR RECONSIDERATION

Steven Robert Tomlinson, a registered representative with Wells Fargo Advisors, LLC, filed a letter, dated January 8, 2015, concerning our December 11, 2014 opinion and order (the "December 11 Order") sustaining FINRA disciplinary action against him.¹ We have construed Tomlinson's letter as a request for reconsideration of the December 11 Order and, for the reasons set forth below, reject the request on two independent grounds: it is untimely and lacks merit.

I. Background

In the December 11 Order, we sustained FINRA's findings that Tomlinson violated just and equitable principles of trade by downloading, without authorization, confidential nonpublic information concerning more than 2,000 customers from his former broker-dealer firm's computer system and sharing that information with Wells Fargo. We also sustained FINRA's sanction of a ninety-day suspension. We stated that Tomlinson's misconduct "implicates quintessential ethical considerations and reflects negatively on his ability to comply with fundamental regulatory requirements."² We further stated that the sanction "reflects the importance of a security professional's obligation to safeguard confidential customer information, and is a measured response to Tomlinson's careless breach of that obligation."³

¹ *Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 WL 6985131 (Dec. 11, 2014).

² *Id.* at *6.

³ *Id.* at *11.

On January 8, 2015, Tomlinson responded by letter to the December 11 Order, complaining that we failed to use our "power" to request information that would have been "beneficial to the decision making process." Specifically, Tomlinson asserted that we failed to request that FINRA provide the written recommendations of two subcommittee members of FINRA's National Adjudicatory Council ("NAC"); that the Corning Credit Union (the "Credit Union") and the National Credit Union Administration ("NCUA") produce information regarding data breaches for the period of January 2008 through September 2013; and that Raymond James Financial Services, Inc. produce a copy of his son's Uniform Transfers to Minors Act account client agreement and the privacy statement in force in November 2008.

II. Analysis

A. Tomlinson's request for reconsideration is untimely.

We have construed Tomlinson's letter as a request for reconsideration and reject his request on two independent grounds: it is untimely and lacks merit. Rule of Practice 470 provides, in relevant part, that a motion for reconsideration "shall be filed within 10 days after service of the order complained of."⁴ Tomlinson was served with a copy of the December 11 Order on December 15, 2014 and received it on December 22, 2014, but his letter was not filed until January 9, 2015, which was beyond the ten-day period provided in Rule 470. As a result, Tomlinson's request for reconsideration of the December 11 Order was untimely.

B. Tomlinson's request for reconsideration lacks merit.

Even if Tomlinson's request for reconsideration had been timely filed, it would be unavailing.⁵ FINRA was not required to provide Tomlinson with written recommendations of NAC subcommittee members because, as we stated in the December 11 Order, "[a] respondent is not entitled to obtain internal [FINRA] staff memoranda."⁶ Moreover, Tomlinson's assertions that we failed to send "requests for information" to FINRA, the Credit Union, the NCUA, and Raymond James were raised for the first time in his request for reconsideration, and therefore were forfeited.⁷ In any event, there is no basis to believe that the information Tomlinson seeks would

⁴ 17 C.F.R. § 201.470.

⁵ We note that reconsideration is intended to be an "exceptional" remedy. *See Johnny Clifton*, Exchange Act Release No. 70639, 2013 WL 5553865, at *1 (Oct. 9, 2013) (denying motions for reconsideration and a stay).

⁶ *Tomlinson*, 2014 WL 6985131, at *8.

⁷ *See KPMG Peat Marwick LLP*, Exchange Act Release No. 44050, 2001 WL 223378, at *1 n.7 (Mar. 8, 2001) (denying request for reconsideration, in part, on grounds that a party is foreclosed from resurrecting an argument that it failed to raise in its appeal to the Commission).

Furthermore, Tomlinson does not point to, nor are we aware of, any rule that allows us to make

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have changed the outcome given, as we found earlier, that Tomlinson "understood the types of customer information that were protected as 'personally identifiable information,' but that . . . he 'carelessly' granted Wells Fargo 'unfettered' access to that information."⁸ As we found, Tomlinson's action was a clear breach of his duty to safeguard clients' information and was done to further "his own financial purpose and benefit."⁹ We further found that "[t]he facts and circumstances of this case fully support a ninety-day suspension."¹⁰

Accordingly, it is ORDERED that the request for reconsideration of the December 11, 2014 opinion and order filed by Steven Robert Tomlinson is hereby denied.

By the Commission.

Brent J. Fields
Secretary

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such a "request for information." *See BFG Sec., Inc.*, Exchange Act Release No. 44627, 2001 WL 865449, at *5 n.24 (July 31, 2001) (denying, as outside the Commission's authority in the proceeding or contrary to the public interest and public policy, applicants' requests, among other things, to order NASD to turn over all internal and other documents pertaining to applicants).

⁸ *Tomlinson*, 2014 WL 6985131, at *6.

⁹ *Id.* at *11.

¹⁰ *Id.*