



No Parking: NASD Clamps Down On Registration Violations

By Kevin Burke of Fortune Magazine

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"Parking" a Series 7 license at a broker/dealer when you're not performing any brokerage functions for the firm has been a longstanding -- though illegal -- practice on Wall Street. Firms have used under-the-table agreements as a way of retaining and attracting new talent by promising to keep erstwhile reps registered when they are no longer acting in an actual registered rep capacity. And while this illegal sponsorship has been an open secret for years, regulators have vowed to put a stop to it. This may have a direct impact on those who have turned fee-only advisor but have been parking their Series 7s.

(Many a new investment advisor rep who has made the transition to a fee-only RIA doesn't want to let his Series 7 lapse, despite the fact that he no longer intends to act as a broker. "I've earned it, why let it expire?" is the thinking.)

On Monday, the NASD slapped four Fidelity-affiliated b/ds with a \$3.75 million fine -- the largest registration-related fine in history -- for violations that included improperly maintaining NASD licenses, lax oversight and email-retention miscues. The fine comes just six weeks after Fidelity said it would pay \$42 million to settle claims that its traders accepted lavish gifts from brokers seeking their business.

(For more on this story, please read: "NASD, NYSE Propose Stiffer Rule on Entertainment Spending" and "Ah, the Good Ol' Days".)

The enforcement action is part of a larger (and more infamous) investigation into Fidelity's gift and entertainment practices, according to NASD officials. "This is an outgrowth of the gifts and entertainment probe," says Katherine Malfa, vice president and counsel in NASD's enforcement division. "The scope of this case is broader than any case we've seen related to [license parking]. We're looking at this issue more closely now, so there's potential exposure for individuals."

According to the settlement, NASD found that Fidelity Distributors Corporation, the principal underwriter for the Fidelity family of mutual funds, permitted certain employees hired by the investment advisor FMR Co. to park licenses they held prior to joining Fidelity despite not performing a brokerage role. In addition, the four Fidelity b/ds maintained registrations for 1,100 individuals who did not perform jobs for which an NASD license is required. By parking these licenses, Fidelity enabled them to rejoin a brokerage firm without having to retake the exam, which is required for those who are unregistered for two or more years.

The NASD also found that the four b/ds failed to assign registered supervisors to oversee the adherence to NASD compliance rules of 1,000 registered individuals. Under NASD rule 1031, firms cannot maintain a license if the person is no longer active in the firm's investment banking or securities business, no longer a rep or where the sole purpose is to avoid the exam requirement. The rule does permit, however, persons who perform legal, compliance, audit, back-office or sales assistant duties to be licensed. This can be a gray area when it comes research analysts and traders who are intimately involved in the sale of investments. Although buy-side traders -- like in Fidelity's case -- often have a hard time justifying staying licensed.

For reps who are too lazy or believe they shouldn't have to retake the Series 7, it should come as a wake-up call, according to one securities attorney. "It means beware," says **Richard Roth**, a securities attorney and president of **The Roth Law Firm** in New York. "If you're a licensed broker, you better be sure you're doing Series 7 business." Another securities attorney who spoke on background says the Fidelity action will change how firms view the risk/reward calculus of parking licenses. He believes that other large firms will quietly let parked licenses expire.

As for those reps who have gone the independent route and have registered with the

SEC but still want to keep their Series 7, they must be careful not to run afoul of regulators. It's a lot harder to hang a license as an unaffiliated broker because it's much more obvious, attorneys say. Many RIAs lack securities licenses in order to keep a more "pure" advisory role -- some have let them expire and many never had them in the first place. Being dually licensed is more of a hassle for RIAs than anything else. And for the firms that do allow an RIA to hang his license, they do so either because they stand to gain business or as a personal favor, attorneys say. But attorneys believe this practice poses even greater risk in light of the Fidelity case.

"RIAs who do have active brokerage licenses need to keep those licenses at an independent b/d who must supervise all of their business and, hence, often take a cut of the fees, even on fee-accounts business," says Chip Roame, managing principal of consulting firm Tiburon Strategic Advisors. "If IBs are parking licenses of RIAs who are no longer doing any commission business, they should refuse to do so." Schwab took a stance against this a long time ago, and that was the right thing to do, he says. Ultimately, the real crux of this issue is the laziness of individuals who don't want to retake the Series 7 exam if their license lapses, Roame says.

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