

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

NEAL CHARLES MOON, CRD No. 3271716;
AND,
NATALIE E. FOGIEL MOON, CRD No.
5010360,

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2015046926801

COMPLAINT

The Department of Enforcement alleges:

INTRODUCTION

1. From February 2012 to August 2015, Respondent Neal Charles Moon (“Moon”) participated in nine private securities transactions and Natalie E. Fogiel Moon (“Fogiel”), his wife, participated in six private securities transactions in which six customers invested a total of \$2.64 million in three different entities.

2. At the time they participated in these private securities transactions, Moon and Fogiel did not provide their firm, Waddell and Reed (“Waddell” or the “Firm”), with prior written notice of their participation in the private securities transactions. By participating in private securities transactions without providing prior written notice to the Firm, Moon and Fogiel violated NASD Rule 3040 and FINRA Rule 2010.

3. In addition, Moon lied to a Firm investigator when first questioned about his participation in certain private securities transactions. Moon also falsely represented in three annual certifications to the Firm that he had not engaged in any private securities transactions.

By providing false responses to a Firm investigator about his participation in private securities transactions and by making three false representations in annual compliance certifications, Moon violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

A. Neal Charles Moon

4. Moon entered the securities industry in June 1999. From June 1999 to March 2009, he was registered with two different FINRA-member firms.

5. From September 2009 to September 2015, Moon was registered at Waddell as a General Securities Representative. According to the Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Waddell on October 16, 2015, Moon was permitted to resign on September 18, 2015 following his admission that he was involved in the sales of undisclosed private securities transactions. Moon's registration with the Firm ended on October 16, 2015. Moon has not registered with any FINRA regulated firms since he was permitted to resign from Waddell.

6. Although Moon is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with the Firm; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member firm.

B. Natalie E. Fogiel Moon

7. From July 2005 to October 2005 and from June 2010 to October 2010, Fogiel was associated in a non-registered capacity with two FINRA regulated firms.

8. On June 4, 2013, Fogiel became associated with Waddell as an unregistered office manager and sales assistant to Moon. In that capacity, Fogiel, in the performance of her duties as a sales assistant and office manager, spoke with customers, assisted in the opening of customer accounts, sent mail to customers, conducted research and answered questions concerning 401K distributions, explained different Firm platforms, prepared compliance reports and trade blotters for Moon's review, attended customer meetings, processed customer check requests, received customer checks, opened customer mail and managed customer files.

9. On September 19, 2015, Waddell filed a Non-Registered Fingerprint ("NRF") Amendment disclosing that Fogiel was terminated on September 18, 2015.

10. Although Fogiel is no longer associated with a FINRA member, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which she ceased to be associated with a FINRA member; and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member.

FACTUAL ALLEGATIONS

BOXX Technologies

11. BD is a close friend of Moon and Fogiel. BD is the co-founder and a partner of CCP, a private equity firm which invests in lower-middle market companies. In December 2014, Moon had preliminary discussions in person and over the phone with BD about BOXX

Technologies, a privately held company that designed and sold computer systems and work stations for skilled professionals such as engineers, financial analysts and researchers. BD told Moon that CCP intended to acquire BOXX Technologies and was seeking investors.

12. In December 2014, CCP provided Moon with a preliminary due diligence package created by TP, a corporate financial advisory firm, concerning the potential acquisition of BOXX Technologies. Between January and March 2015, Moon had further discussions with BD about the potential acquisition of BOXX Technologies.

13. In March 2015, CCP provided Moon with sales and marketing and due diligence material for the BOXX Technologies acquisition. As per the written material provided to Moon, CCP had entered into a Letter of Intent with BOXX Technologies to purchase 100% of the outstanding stock of the company for \$8.25 million.

14. In April 2015, Moon contacted both customers of the Firm and non-customers and recommended that they invest in the acquisition of BOXX Technologies. In April 2015, CCP requested that Moon collect all funds received from investors in connection with the BOXX Technologies acquisition, and pool them in a single account.

15. On April 24, 2015, Moon and Fogiel formed NMN BOXX Holdings, LLC (“NMN BOXX”), a Texas limited liability company, to pool investor funds received for the BOXX Technologies investment. NMN is a monogram representing “Neal and Natalie Moon”. Fogiel signed the NMN BOXX Holdings, LLC Company Agreement (the “Company Agreement”) as the sole manager and the Company Agreement was effective on April 24, 2015. On the same date, the IRS assigned NMN BOXX an IRS Employer Identification Number (“IRS EIN”).

JB

16. JB is a 72 year-old customer of the Firm.

17. In April 2015, Moon contacted JB by telephone about the opportunity to invest indirectly in BOXX Technologies. In April 2015, Moon recommended the investment in CCP's acquisition of BOXX Technologies to JB and sent her sales and marketing material and the due diligence package for her review.

18. On May 8, 2015, JB signed the NMN BOXX subscription agreement and agreed to purchase \$450,000 of Class B Preferred membership interest units (12% preference and 10% equity) and \$50,000 Class C Preferred Units (8% preference and 65% equity) of NMN BOXX.

19. On May 8, 2015, JB drafted a \$500,000 check drawn from her Waddell checking account made out to NMN BOXX for the investment. JB sent the subscription agreement and \$500,000 check to NMN BOXX at Moon's and Fogiel's home address.

20. On May 15, 2015, Fogiel, in her role as the designated manager of NMN BOXX, accepted JB's NMN BOXX subscription agreement and fully executed the subscription agreement.

NR

21. NR is a 50 year-old customer of the Firm.

22. In April 2015, Moon contacted NR about the opportunity to invest indirectly in BOXX Technologies. Moon met in person with NR to discuss the investment. In April 2015, Moon recommended the investment in BOXX Technologies to NR and provided her with sales and marketing material and the due diligence package for her review.

23. By May 7, 2015, NR signed the NMN BOXX subscription agreement and agreed to purchase \$250,000 of Class B Preferred NMN BOXX membership interest units (12% preference and 10% equity).

24. NR drafted a \$250,000 check, dated May 7, 2015, drawn from her personal checking account and made payable to NMN BOXX, and provided the check for the NMN BOXX investment to Moon.

25. On May 7, 2015, Fogiel, in her role as the designated manager of NMN BOXX, accepted NR's NMN BOXX subscription agreement and fully executed the subscription agreement.

RM

26. RM is 69 years-old and is the trustee of the MF Trust. The MF Trust has been a customer of the Firm since October 2012.

27. In April 2015, Moon contacted RM by telephone about the opportunity to invest in BOXX Technologies. In April 2015, Moon recommended the indirect investment in BOXX Technologies to RM and sent him the sales and marketing material and the due diligence package for his review.

28. On May 8, 2015, RM drafted a \$500,000 check drawn from his personal checking account made out to NMN BOXX for the investment.

29. On May 10, 2015, RM signed the NMN BOXX subscription agreement and provided NMN BOXX, at Moon's and Fogiel's home address, with a \$500,000 check in order to purchase \$500,000 of Class B Preferred NMN BOXX membership interest units (12% preference and 10% equity). RM purchased the investment as an individual and not on behalf of the MF Trust.

30. On May 14, 2015, Fogiel, in her role as the designated manager of NMN BOXX, accepted RM's NMN BOXX subscription agreement and fully executed the subscription agreement.

NFP and RNT

31. The NFP is a limited partnership incorporated in Texas in December 2012 and was a customer of the Firm during the time of the events in question. JN1 and JN2 are brothers. JN1 is the registered agent for the NFP and an officer of the limited liability company that serves as NFP's general partner. JN1 and JN2 are listed as account holders on Firm new account forms dated February 20, 2015.

32. In April 2015, Moon met in person with JN1 about the opportunity to invest in BOXX Technologies. In April 2015, Moon contacted JN2 by telephone about the opportunity to invest in BOXX Technologies. In April 2015, Moon recommended the investment in BOXX Technologies to JN1 and JN2 and provided them with the sales and marketing material and the due diligence package for their review.

33. On May 8, 2015, JN1 signed the NMN BOXX subscription agreement as an NFP partner and agreed to purchase \$500,000 of Class B NMN BOXX Preferred membership interest units (12% preference and 10% equity) on behalf of NFP. On that same day, Fogiel, in her role as the designated manager of NMN BOXX, accepted NFP's NMN BOXX subscription agreement and fully executed the subscription agreement.

34. On May 13, 2015, JN1 drafted a check drawn from an account held at another member firm made out to NMN BOXX for the investment on behalf of NFP (\$500,000) and provided it to NMN BOXX at Moon and Fogiel's home address.

35. The RNT is a trust and was a firm customer in Spring 2015.

36. JN1 and JN2 were the co-trustees for the RNT.

37. On May 8, 2015, JN1 executed an NMN BOXX subscription agreement as an RNT trustee and agreed to purchase \$500,000 of Class C Preferred NMN BOXX membership interest units (8% preference and 65% equity). On that same day, Fogiel, in her role as the designated manager of NMN BOXX, accepted JB's NMN BOXX subscription agreement and fully executed the subscription agreement.

38. On May 13, 2015, JN1 drafted a check drawn from an account held at another member firm made out to NMN BOXX for the \$500,000 investment on behalf of the RNT. JN1 sent the executed subscription agreement and check to NMN BOXX at Moon's and Fogiel's home address.

DFLP

39. The DFLP is a partnership managed by AF who is the president. AF is the father of Fogiel and the father-in-law of Moon. The DFLP did not have a customer account at the Firm.

40. In April 2015, Moon contacted AF about the opportunity to invest in BOXX Technologies. Moon met in person with AF to discuss the investment. In April 2015, Moon recommended the investment in BOXX Technologies to AF and provided him the sales and marketing material and the due diligence package for his review.

41. On May 10, 2015, AF signed the NMN BOXX subscription agreement as president of DFLP and agreed to purchase \$50,000 of Class B Preferred Units (12% preference and 10% equity) and \$50,000 of Class C Preferred Units (8% preference and 65% equity) for a total investment of \$100,000 in NMN BOXX.

42. On May 10, 2015, AF drafted a \$100,000 check drawn from a DFLP bank account made out to NMN BOXX for the investment and provided the check to NMN BOXX at Moon's and Fogiel's home address.

43. On May 10, 2015, Fogiel, in her role as the designated manager of NMN BOXX, accepted NFLP's NMN BOXX subscription agreement and fully executed the subscription agreement.

44. The subscription agreements executed by the six investors stated that the membership units were being offered under an exemption from registration as set forth in Regulation D promulgated under the Securities Act of 1933.

Fogiel Processed the Subscription Agreements and Took a Prominent Role in the Acquisition of the BOXX Technologies Shares for the Customers

45. All of the customer's subscription agreements had a Transfer of Membership Addendum (the "Transfer Addendum"). The Transfer Addendum provided that the NMN BOXX units purchased by the six investors would be converted to the equivalent Class B and Class C units of CCP BOXX Investments, LLC ("CCP BOXX"), a Texas limited liability company. NMN BOXX would send the money collected from the six investors to CCP BOXX, which would use the money to fund the purchase of BOXX Technologies. If CCP BOXX did not purchase BOXX Technologies, the money would be returned to the investors.

46. In total, the customers invested \$2,350,000 for the NMN BOXX membership units which would be transferred to equivalent ownership units of CCP BOXX when BOXX Technologies was purchased.

47. On May 13, 2015, Moon and Fogiel opened the NMN BOXX checking account at F Bank to pool customer funds received for the purchase of BOXX Technologies.

48. By May 18, 2015, Moon and Fogiel had collected \$2,350,000 from the investors and deposited the funds into the NMN BOXX checking account.

49. On May 20, 2015, Fogiel wired \$2,350,000 from the NMN BOXX checking account at F bank to the CCP BOXX bank account at C bank.

50. On May 26, 2015, CCP BOXX closed on its acquisition of BOXX Technologies and the signed copies of the NMN BOXX subscription agreements and the Transfer Addendum were provided to CCP as requested. The investors' shares of NMN BOXX were converted to equivalent CCP BOXX units and were never transferred to any Firm securities accounts.

Moon Lied About the Sale of the BOXX Technologies Units When Questioned

51. The Firm's policies and procedures prohibited registered representatives from participating in private securities transactions not approved in writing by the Firm. At the time of the events in question, Moon and Fogiel were aware or should have been aware of the Firm's prohibition against participating in private securities. Moon and Fogiel never provided the Firm with oral or written notice of their role in the purchase of BOXX Technologies.

52. On August 27, 2015, JG, a Firm OSJ Vice President, interviewed Moon regarding large customer withdrawals from customer accounts. In response, Moon stated that the customers were related and withdrew funds from their Firm accounts did so at the direction of their attorney to pool funds to combat a lawsuit being prepared to challenge the title of a foreign property owned jointly by the customers. The Firm requested all documents in support of these claims made by Moon during the interview.

53. After this call, Moon called JG and admitted that he lied during the interview. Moon confessed that he assisted his customers in pooling their funds for private securities transactions.

Total Operating LLC

54. Total Operating LLC (“Total Operating”) was founded in 2005 and is a limited liability company which constructs and maintains natural gas pipeline infrastructure in Texas. Total Operating also provides auxiliary support and repair for the natural gas industry.

55. In and around September 2012, Moon introduced Firm customer JB to BD to discuss oil rights for property she owned in Pennsylvania.

56. In and around October 2012, BD and CCA Partners (“CCA”), a Dallas based private equity firm, attempted to purchase an equity interest in Total Operating. BD’s role was to raise money from investors to help finance the purchase.

57. Via emails on October 12, 2012 and December 12, 2012, BD provided Moon with documents outlining the proposed purchase of Total Operating. In the December 12th email, BD told Moon he wanted to discuss Moon’s fee for referring JB for this investment. On December 12, 2012, BD told Moon that he wanted to provide Moon with a fee for referring JB to him and BD wanted to offer Moon a percentage of the investment as a referral fee.

58. Moon and BD discussed Total Operating with customer JB. Moon discussed the opportunity to invest in the Total Operating acquisition with JB and provided investment paperwork received from BD to JB. JB, BD and Moon discussed investing in Total Operating and whether the investment should be funded by JB’s family assets, which would also include the assets of JB’s sister.

59. In and around December, 2012, in order to fund the purchase of Total Operating, CCA created T.O. Investments 1 LLC (“TO Investments 1”). Investors purchased shares of TO Investments 1 and, once it was adequately funded, TO Investments 1 would purchase Total Operating.

60. In a T.O. Investment 1 LLC Subscription Agreement first distributed on December 20, 2012 and fully executed on January 13, 2013, JB agreed to invest \$250,000 in T.O. Investments 1 with a purchase price of \$1.00 per membership unit for a total investment of 250,000 membership units.

61. In JB's subscription agreement, Moon was designated as JB's advisor who should receive company performance information and tax returns on her behalf. JB withdrew \$250,000 from her Firm securities account in order to purchase her interest in TO Investments 1.

62. On January 13, 2013, JB's subscription agreement was accepted. In and around February 2013, TO Investments 1 purchased a 60% interest in Total Operating. JB's shares of TO Investments 1 were never transferred to any Firm securities account.

63. Moon never provided the Firm with oral or written notice of his participation in JB's acquisition of 250,000 membership units in TO Investments 1.

Hoffbrau Steaks

64. AF manages and has ownership interests in several restaurants in Texas including franchises of Hoffbrau Steaks.

65. In and around, February 2012, AF sought investors for a new Hoffbrau Steaks restaurant. AF formed CCBRAU, Ltd ("CCBRAU"), a Texas limited partnership, to receive funds from investors for the Hoffbrau Steaks investment. AF wanted to raise \$200,000 by selling private placements in CCBRAU (in \$25,000 investment increments) to accredited investors.

66. Moon assisted AF in obtaining an investment from JB for the restaurant franchise by serving as an intermediary between AF and JB and by forwarding JB CCBRAU investment materials. Moon discussed the investment with JB as well.

67. In a February 24, 2012 email, AF thanked Moon for helping him create CCBRAU and told Moon that he needed JB to complete the paperwork and make funds available for the investment by the following week. AF attached a signature page and a customer questionnaire to the email for JB to execute. Moon forwarded these documents to JB and she executed the documents. JB sent the executed paperwork and a \$25,000 check for one unit of CCBRAU to AF.

68. As per the subscription agreement, all CCBRAU investors were required to reside in Texas. JB did not live in Texas and she resided in Pennsylvania. By the terms of the subscription agreement, JB was not eligible to invest in CCBRAU. CCBRAU sent the Schedule K-1 to JB "C/O" Moon at a Firm Texas office address occupied by Moon at the time of the investment and Moon forwarded the Schedule K-1 to JB after receiving it.

69. In and around December 2012, AF attempted to borrow an additional \$100,000 from the CCBRAU partners. On December 6, 8 and 12, 2012, AF sent a series of emails to Moon and other CCBRAU "partners" about his intention to borrow the \$100,000 from the existing investors and included attachments to the email which provided information regarding the investment.

70. On December 14, 2012, JB executed a promissory note in which she agreed to lend \$15,000 to CCBRAU in exchange for 10% interest payments with a promise by CCBRAU to repay the loan by December 31, 2015. On January 8, 2013, AF sent Moon an email which directed him to make the \$15,000 check for the JB investment payable to CCBRAU. AF also attached to the email two signature pages in support of the loan. On January 10, 2013, JB wrote a \$15,000 check drawn on her Waddell account for payment to CCBRAU and provided it to AF.

71. Moon did not provide the Firm with written or oral notice of his participation in JB's investment in CCBRAU.

Moon Files False Responses to Firm Compliance Questionnaires

72. The Firm required each of its registered representatives annually to attest that, among other things, the representative did not participate in any private securities transaction.

73. Moon completed Firm Compliance Certifications on October 25, 2012, August 5, 2013 and August 15, 2014, in which he falsely affirmed that he had not participated in any private securities transactions.

74. Moon's attestations were false. At the time of the October 25, 2012 attestation, Moon had participated in one private securities transaction: JB's investment in CCBRAU. At the time of August 5, 2013 and August 15, 2014 attestations, Moon had participated in three private securities transactions: two CCBRAU investments and one Total Operating investment.

FIRST CAUSE OF ACTION

**Participating in Private Securities Transactions
(NASD Rule 3040)**

75. The allegations in paragraphs 1-74, above, are re-alleged and incorporated herein.

76. NASD Rule 3040 provided that "prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction"

77. Under Rule 3040, a private securities transaction is “any securities transaction outside the regular course or scope of an associated person’s employment with a member,” regardless of the representative’s receipt of compensation.

78. The six investors’ investments in BOXX Technologies, Total Operating and Hoffbrau Steaks constituted securities transactions, and all were effected outside the scope of Moon’s and Fogiel’s employment.

79. Moon and Fogiel did not provide the Firm with prior written notice of their proposed role in the transactions at issue.

80. By participating in nine private securities transactions in NMN BOXX, TO Operating 1, and CCBRAU without prior written notice to his firm, Moon violated NASD Rule 3040, and as a result thereof violated FINRA Rule 2010.

81. By participating in six private securities transactions in NMN BOXX without prior written notice to her firm, Fogiel violated NASD Rule 3040, and as a result thereof violated FINRA Rule 2010.

82. By virtue of the above conduct, Moon and Fogiel violated NASD Rule 3040 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Providing False Information to his Firm (FINRA Rule 2010)

83. The allegations in paragraphs 1 through 82, above, are re-alleged and incorporated herein.

84. FINRA Rule 2010 requires a “member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.” It is a violation

of FINRA Rule 2010 for registered persons to make false representations to their employing member firm.

85. On August 17, 2015, Moon lied to Firm investigators when he said his customers were withdrawing money from their Firm accounts to contest a lawsuit involving real property owned by them in a foreign country.

86. Moon's representations were false and he admitted to Firm investigators that he lied to them.

87. On October 25, 2012, August 5, 2013 and August 15, 2014, Moon falsely certified to the Firm in annual compliance questionnaires that he had not participated in any private securities transactions.

88. Moon's representations were false.

89. Accordingly, Moon violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Hearing Panel:

- (a) make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- (b) order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- (c) order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA Department of Enforcement

Date: July 8, 2016



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