

Advisor Tripped Up By "Authorized" Discretion

By [Alan J. Foxman](#) November 10, 2015, 10:46 a.m. EST 3 Min Read

I have a client who travels for extended periods of time overseas. Because of that, the client authorized me to make whatever trades I thought were appropriate. He basically gave me discretion. Apparently, when he returned from his most recent trip, he had a question about one of the trades and called the office. I wasn't in and he spoke with my manager. Despite my having a signed authorization from the client, my manager told me I wasn't authorized to take discretion. My manager and his supervisors are now considering firing me! Oh, and the account made money as well. I don't understand this?

Unfortunately, this is more of an internal issue with your broker-dealer than a FINRA issue, although FINRA is likely to get involved if you get fired. It seems that, pursuant to your firm's policy, commission-based brokerage accounts such as this customer's were not allowed to be traded on a discretionary basis. Even with the customer's written authorization, your firm did not accept discretionary accounts. I hate to be the bearer of bad news, but I would anticipate that your firm will likely terminate you. If they do, FINRA will probably investigate, as the firm is likely to list it as an "involuntary" termination and/or note that you were under an internal review at the time of termination. Either mark will result in a FINRA review and a possible fine and suspension.

While updating my brokerage firm's Form BD to provide a disclosure regarding one of our owners, I realized that this particular owner is not listed anywhere on the form. He's not an officer of the company, but he is a member of the board of directors of the holding company that owns the firm, and is a 20% owner of the holding company. The holding company has control, and, through its board of directors, it makes decisions for the firm. Additionally, during the new member application process, FINRA requested that I list this individual on Form NMA, and required him to take the Series 24. Should he be listed on the Form BD, and, if so, where?

There are three possible places where an individual with an ownership interest in a brokerage firm would appear on the Form BD. The first would be Schedule A, which requires disclosure of any direct owners with 5% or more interest, as well as certain executive officers. Since the individual is not a direct owner, he would not be listed here.

The second place would be Schedule B, which requires listing the indirect owners with a 25% or more interest in the firm (or someone who has the right to vote 25% or more of voting stock of the firm). As he only has a 20% interest, he would not appear here.

Item 9 of the Form BD, however, asks if any persons not named in Item 1, Schedules A or B, directly or indirectly "control the management or policies of the applicant through agreement or otherwise" or "wholly or partially finance the business of the application."

"Control" is defined in the Form BD as "the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner, or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company." Based on that definition, I believe you would answer "yes" to question 9, as it would appear that the individual has "the power to direct or cause the direction of the management or policies" of the firm, "whether through ownership of securities, by contract, or otherwise."

Additionally, the fact that FINRA wanted him listed on the NMA and wanted him to take the 24 – a "principal" exam – leads me to lean towards listing him. On balance, listing him, even if you don't have to, is better than not listing him and finding out that you should have.