

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—E.D.N.Y.: Broker-dealer and former representative charged with violating Regulation Best Interest, (Oct 17, 2024)

By R. Jason Howard, J.D.

Former registered representative engaged in excessive trading in eight customer accounts and the broker-dealer failed to supervise his actions.

The SEC has filed charges against a former registered representative at New York-based broker-dealer PHX Financial, Inc., and has announced settled charges against PHX for violations of Regulation Best Interest and fraud for the former representative's excessive trading in customer accounts ([SEC v. Cabalar](#), No. 1:24-cv-07274 (E.D.N.Y. filed Oct. 16, 2024)); ([In the Matter of PHX Financial, Inc.](#), Securities Exchange Act Release No. 101361 (Oct. 16, 2024)).

PHX representative. According to the [press release](#), from January 2019 to October 2021, the former representative of PHX recommended a short-term, high-volume investment strategy to eight of PHX's retail customers "without a reasonable basis to believe that the strategy would be profitable," and failed to disclose that the commissions and fees charged would likely result in the customers losing money. The complaint details the commissions and fees and explains that PHX customers suffered aggregate losses exceeding \$1 million in their PHX brokerage accounts with the former representative and PHX receiving over \$400,000 in commissions and fees from the excessive trading.

Violations. The former representative was charged with violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as well as Regulation Best Interest, Exchange Act Rule 15l-1.

Relief sought. For the violations, the SEC is seeking permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties.

PHX. Separately, the SEC [announced](#) settled charges against PHX for violating Regulation Best Interest through the actions of its former representative.

Violations. The SEC found that as a result of the former representative's conduct, PHX violated Regulation Best Interest's Care Obligation and Regulation Best Interest's Compliance Obligation. The SEC also found that PHX failed to "establish, maintain, and enforce policies reasonably designed to address and prevent violations of Regulation Best Interest." In addition, the SEC found that from January 2019 until June 2020, PHX failed to reasonably supervise the former representative.

Penalties. Without admitting or denying the SEC's findings, PHX was censured and agreed to cease and desist from future violations. In addition, PHX will pay disgorgement of \$142,995, prejudgment interest of \$24,993, and a civil penalty of \$180,000.

The case is [No. 1:24-cv-07274](#).

The release is [No. 34-101361](#).

Attorneys: Christopher John Dunnigan for the SEC.

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