Intelligent Investing

Love Stinks

Bill Singer, 04.24.09, 12:00 PM ET

The Financial Industry Regulatory Authority, Wall Street's self-regulatory arm, recently settled a disciplinary case against former Cowen & Co. senior research analyst Dhulsini Hermani De Zoysa, who primarily covered companies that produce cardiovascular, orthopedic and wound care devices. Between July 2006 and May 2007, FINRA alleged that in two research reports in 2006 and 2007, De Zoysa cited both a 2005 and a 2006 survey of 8,000 wound care centers; however, no such survey occurred in 2006. Similarly, she published two reports in 2007 that referenced a non-existent first quarter 2007 survey of 155 electrophysiology labs.

On Aug. 2, 2007, Cowen's general counsel informed De Zoysa the firm was investigating the accuracy and content of her research, and she was instructed to retain and not alter any relevant documents or information, including such materials on computer discs, her laptop or other electronic format. Nonetheless, De Zoysa created a 2006 wound care survey questionnaire on her laptop, and then deleted six documents. Cowen terminated her on Aug. 27.

FINRA charged De Zoysa with three counts. First, that her citation in four research reports of non-existent surveys resulted in false, exaggerated, unwarranted or misleading statements. Second, FINRA charged De Zoysa with altering and deleting documents on her laptops in contravention of the general counsel's explicit instructions. As part of the FINRA disciplinary process, De Zoysa settled the charges without admitting or denying the findings, and consented to the imposition of:

* A $10,000 fine.

* A bar from association with any FINRA member in any capacity requiring Series 86 and/or Series 87 (research analyst) registration.

* A suspension from association with any member firm in any capacity for 12 months.

You may have noticed that I only set forth above two of FINRA's three counts against De Zoysa. I left out that third charge just to make things a bit more interesting. You see, FINRA also alleged that from September 2005 through December 2005, De Zoysa had a romantic relationship with the chairman and chief executive officer of a company that she covered. FINRA charged De Zoysa with failing to disclose in 19 published research reports her romantic relationship with an executive of a company in her coverage area, which was an actual, material conflict of interest. Four of the research reports were published during the romantic relationship and 15 thereafter.

Since the adjective "romantic" apparently makes all the difference, it might have been helpful for FINRA to explain where this relationship line is and when it crossed into something constituting a material conflict of interest. Do one-night flings qualify? Is it the second date or more? How about two folks chatting away on a social networking site? Are married couples in a romantic relationship? Are male analysts who have romantic relationships with female CEOs of covered companies also routinely held to this standard? Would the same allegations be made against a gay couple?

Of course, you have to wonder why we snicker about boys being boys when we learn of young males being treated by Wall Street firms or public companies to nights at strip clubs, all-expenses-paid trips to Las Vegas, weekends at the Super Bowl or God knows what else. I just don't sense the same light-hearted frat boy thing with De Zoysa.

Even assuming that you agree with FINRA that a romantic relationship should be disclosed in a research report, how does that reconcile with the charges involving the 15 reports published from February 2006 through July 2007--*after* De Zoysa's romantic relationship ended? What exactly did FINRA want De Zoysa to note in her research reports that ran two to 19 months after she ended her romantic relationship? I mean, seriously, how would this footnote strike you: "In 2005, I had a three-month romantic relationship with the CEO/chairman of XYZ Company, which is covered in this report."

Before you answer that last question, do you know of a more intimate relationship than four guys sharing the private details of their home and professional life every Saturday on the links and then afterward over drinks and lunch at the clubhouse? Would you expect to see this disclosure in a research report: "In 2005, I was part of a regular foursome for three months at the Local Valley Golf Club that included the CEO/chairman of XYZ Company, which is covered in this report."

Bill Singer of BrokeAndBroker.com is a veteran regulatory lawyer, an outspoken critic of ineffective regulation and a staunch advocate for the rights of smaller firms, individual registered persons and defrauded investors. Singer regularly appears as a commentator on television and radio, and is frequently quoted in the press.