

## MARKETS

# More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities

Many Brokers Migrate Between Firms Expelled By Regulators

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Regulators expelled the first brokerage firm where Kenneth Dwyer sold securities. They did the same to his third, fourth, seventh and eighth. His 10th closed in June after regulators accused it of fraud.

The expelled and defunct firms where Mr. Dwyer worked have left thousands of investors with alleged losses and estimated unpaid claims totaling more than \$85 million, according to court documents and lawyers.

Mr. Dwyer is one of more than 5,000 brokers who were still licensed to sell securities earlier this year after working for one or more firms that regulators expelled between 2005 and 2012, according to an analysis by The Wall Street Journal of a database of more than 550,000 stockbrokers.



The pattern of brokers moving from one problem firm to another, according to a former broker, is sometimes called "cockroaching."

Regulators on Sept. 30 suspended Mr. Dwyer for nine months and fined him \$10,000, for allegations that included excessive trading, filings show. Mr. Dwyer agreed to the sanctions without admitting or denying wrongdoing.

Among customers claiming to be his victims is a

Decatur, Texas, man who says he lost money he made selling his funeral-home business.

FINRA—the financial industry’s self-regulator—expelled 173 firms between 2005 and 2012, according to its published reports. See more about where the brokers ended up.



In an interview before the disciplinary action against him, Mr. Dwyer, 37 years old, declined to comment on the regulatory matter and on claims involving him through his career. About his former employers’ track records, he said: “It’s just unfortunate.”

The Journal’s analysis reveals some of the nationwide migratory patterns of brokers associated with firms having troubled regulatory records. These brokers often remain in the industry after working at firms expelled by regulators, in some cases after the brokers accrued numerous arbitration claims or declared multiple bankruptcies.

Some of these brokers appear to create bonds that bring them together repeatedly at firms that regulators later expelled. Mr. Dwyer, after his first brokerage job in 1998, would cross paths at other firms with contemporaries from his first job; at least one broker from his first firm was with him at his 10th.

The regulator overseeing securities brokers, in most cases, is Wall Street’s self-policing organization: the Financial Industry Regulatory Authority, or Finra. Finra has the authority to expel firms and to suspend brokers, making it illegal under federal law for them to sell securities.

Finra won’t release its complete database of disciplinary records, although it lets anyone check a broker’s disciplinary record online. Brokers are also regulated by states; by filing public-records requests with securities regulators in all 50 states, the Journal compiled

a database of about 88% of the nation's registered brokers.

To identify firms Finra has expelled, the Journal reviewed 105 monthly disciplinary reports the regulator published since 2005. Through the end of 2012, it said it had expelled 173 firms for problems ranging from a firm's failure to pay regulatory fines to fraud involving individual brokers.

At least 5,054 brokers who worked at these defunct firms were still licensed to sell securities earlier this year, the Journal analysis shows. Of those, 610 had worked at more than one firm Finra had expelled.

Most of the more-than-550,000 brokers in the Journal analysis didn't have arbitration claims or other issues that have to be disclosed. And the fact that a broker worked at a firm that regulators later closed doesn't imply the broker is in any way unscrupulous.

"The problem is that the small minority of bad brokers—and brokerage firms—does a tremendous amount of damage," said Denise Voigt Crawford, former securities commissioner of the Texas State Securities Board.

The circumstances of a broker's migration appear significant: On average, a broker who left at least two firms that were eventually expelled and who joined another firm had more than eight times as many arbitration claims and other required disclosures as the industry average, the Journal analysis shows.

Some 58% of those brokers had at least one black mark on their records; nearly 25% had three or more. By contrast, 13% of all brokers the Journal tracked had at least one disclosure.

Finra closely tracks brokers that scatter to new employers after a firm is expelled, said Susan Axelrod, Finra's executive vice president of regulatory operations. "We are watching broker migration with a laser focus."

Finra and the Securities and Exchange Commission impose extra controls, such as a requirement to tape calls to customers, on all but the smallest brokerages if more than a certain proportion of their brokers come from expelled firms.

In addition, Finra has barred 3,616 people from selling securities since 2005, a spokeswoman said.

A spokesman for the SEC, which oversees Finra, declined to comment.

The Journal's analysis identified Mr. Dwyer as a frequent migrator. A look at his records led to a succession of brokerage firms and brokers who moved among them as regulators expelled the firms.

Mr. Dwyer joined his first brokerage, Seaboard Securities Inc. of Florham Park, N.J., in 1998. Finra records show the firm settled one arbitration claim involving him for \$40,000 alleging poor performance on stock recommendations. The records are silent as to whether he admitted wrongdoing.

He left in 2002. Several of his Seaboard contemporaries would work with him years later at several firms.

Finra expelled Seaboard in 2011 for failing to pay fines incurred long after he left. Anthony DiGiovanni Sr., Seaboard's president and majority owner, declined to comment.

Mr. Dwyer job-hopped among firms. His third employer was expelled by regulators in 2004 and his next was expelled in 2005, in both cases after he left. Finra records show an arbitration claim dating back to his time at his fourth and fifth employers was settled in 2006 for \$62,000; the claim alleged excessive commissions and unsuitable investment picks.

In 2005, Mr. Dwyer joined his seventh brokerage, the Farmingville, N.Y., branch of Itradedirect.com Corp., based in Boca Raton, Fla. Finra records show the firm settled a claim involving him for \$64,500 in 2007. The claim alleged excessive commissions.

In January 2010, John Coker of Decatur, Texas, filed a Finra claim against Mr. Dwyer and Itrade, alleging that Mr. Dwyer "churned" his account to generate excessive fees, losing money Mr. Coker made selling the funeral home. Mr. Dwyer declined to comment on the matter.

Mr. Coker's claim went into Finra's arbitration process, which investors must use to settle disputes, instead of courts, under agreements they sign upon opening brokerage accounts.

In April 2010, Mr. Dwyer left Itrade and joined another firm with a cadre of other Itrade brokers, records show, a month before Itrade withdrew from the industry.

In June 2010, Mr. Dwyer filed for bankruptcy, leading the Finra arbitrators to put Mr. Coker's claim against him on indefinite hold, the arbitration documents show. Under

federal bankruptcy law, arbitration claims are stayed if brokers file for bankruptcy.

In March 2011, a Finra arbitration panel awarded Mr. Coker damages and costs totaling about \$446,000 from Itrade related to Mr. Dwyer's alleged conduct.

Mr. Coker says he hasn't received any money from Itrade. "We were never able to collect a judgment," said his lawyer, Allen Williamson. "They just folded up their tent and left."

Finra offers no help to investors pursuing unpaid arbitration awards. It does suspend brokers and firms on a "continuing and regular" basis for not paying awards, said Finra's Ms. Axelrod. She declined to discuss specific cases.

Finra last year suspended 15 firms and 37 individuals for this reason, she said. "While we're not getting the money back, we're ensuring that there are consequences for the failure to pay an award."

In response to a request by the Journal, Finra said \$51 million of arbitration awards granted in 2011 remain unpaid. That is 11% of the total awards that year, compared with the unpaid levels of 4% for 2010 and 2009. Finra declined to provide more-recent data.

In July 2011, more than a year after Itrade closed, Finra expelled it, accusing it of running a "boiler room," or a high-pressure selling outfit, out of its Farmingville office.

Brian Sanders, Itrade's chief compliance officer, said the firm didn't contest Finra's allegations, "which aren't true," because it was already defunct. "Finra portrayed how evil the firm was, how evil I was," he said. "Anybody who knows the facts knows otherwise." Mr. Sanders was among Mr. Dwyer's contemporaries at Mr. Dwyer's first firm.

By the time Finra expelled Itrade, at least 21 of its former employees—including Mr. Dwyer and Mr. Sanders—had been working for over a year at EKN Financial Services Inc. of Melville, N.Y.

EKN was already under regulatory scrutiny. In 2008, the SEC banned the firm's part owner, Anthony Ottimo, from supervising brokers as part of an enforcement action against the firm over alleged fraud. EKN and Mr. Ottimo settled the allegations without admitting or denying wrongdoing.

Mr. Dwyer left EKN in September 2011, eventually landing at his 10th brokerage, John Thomas Financial of New York City.

In 2012, some of his former Itrade colleagues at EKN were migrating again. On Oct. 18, 2012, Finra expelled EKN for what it called "brazen" rule-breaking. It suspended EKN's president and part-owner, Thomas Giugliano, for a year and fined him \$150,000. Mr. Giugliano declined to comment for this story.

Finra barred Mr. Ottimo, the other owner, from the securities industry for life for allegedly violating the ban on acting as a supervisor by continuing as EKN's chief executive officer.

Mr. Ottimo said Finra abused its "unfettered authority" to make unfair and untrue allegations. He denied wrongdoing but said it wasn't worth the legal fees to defend himself.

EKN's expulsion left investor Jaclyn Cedeno chasing an award of about \$319,000 in damages and costs she won against the firm in Finra arbitration in early 2013. In an interview, Ms. Cedeno, of Rawson, Ohio, said the EKN broker—not Mr. Dwyer—told her investing with the firm was "as safe as putting my money under the mattress" and then "gambled away" most of her money. Mr. Ottimo declined to comment on the Cedeno case.

"Pursuing rogue brokers is very difficult," said her lawyer, Peter Silverman. "It takes lots of time and money and then they can just close up shop and walk away."

Finra's Ms. Axelrod said delaying the expulsion of problem brokerages while arbitration claims are resolved could harm investors. "With some of these firms that have engaged in serious misconduct, the worst thing for us to do would be to keep the firm in business," she said.

Some EKN brokers didn't go far to stay in business. In the Long Island office suite where EKN's shingle once hung, at least 16 of its brokers, some tracing back to Itrade, joined Laidlaw & Co. (UK) Ltd., the Journal analysis shows.

Laidlaw acquired EKN's Melville office and contracts with several of its brokers through a licensing agreement with the previous landlord and former EKN broker, Louis Ottimo, Anthony Ottimo's son, said people familiar with the agreement.

The younger Mr. Ottimo lists 14 financial judgments and other disclosures on his regulatory filing, including a continuing Finra investigation into allegations he made misleading disclosures to investors. He left Laidlaw in September, regulatory records show. His lawyer declined to comment.

Laidlaw contends it doesn't have legal liability for Ms. Cedeno's unpaid arbitration award against EKN because it didn't buy the firm and has different ownership and management, said people close to Laidlaw.

Matthew Eitner, Laidlaw's CEO, said in a statement that his firm has "always been committed to a culture of honesty and transparency." Laidlaw vetted each of the "small number" of former EKN brokers it hired and none had outstanding arbitration awards, he said.

Three years after Itrade closed, Finra is still investigating what happened there, said people close to the probe. In February, it notified at least eight former Itrade brokers—seven of whom went on to EKN, including one who later moved to Laidlaw—that it was planning enforcement action against them, regulatory filings show.

Mr. Dwyer left John Thomas Financial in June, the month that firm closed, and hasn't been registered with Finra since then, his regulatory records show.

Finra and the SEC each took enforcement action earlier this year against John Thomas and its CEO, Anastasios "Tommy" Belesis. Among the allegations: defrauding investors in a penny stock. Ira Sorkin, a lawyer for Mr. Belesis, said his client will fight the charges, which he said are "in many respects unfounded."

John Thomas owed \$42.9 million to more than 2,600 customers when it closed, a June regulatory filing shows. That adds to a tally of unpaid claims left by firms where Mr. Dwyer once worked that includes at least \$45 million in estimated claims owed by his second and third employers, both of which filed for bankruptcy.

The claims don't appear to be related to Mr. Dwyer's conduct at the firms.

Another broker who received the enforcement notification from Finra was Adam Sclafani, who was among Mr. Dwyer's contemporaries at his first job and also later at Itrade, EKN and John Thomas. He said he intends to contest Finra's proposed allegations against him, including excessive and unauthorized trading and unsuitable recommendations.

"I'm not going to sit here and tell you that stockbrokers are angels, but these clients knew everything that goes on," Mr. Sclafani said. "I never was involved in any boiler rooms."

## How the Journal Analyzed the Data

Information about the nation's stockbrokers is maintained by a Wall Street self-regulatory organization known as the Financial Industry Regulatory Authority, or Finra. A database maintained by Finra contains a wide array of regulatory information, including work and disciplinary histories.

Because Finra is a private entity, it isn't bound by public records laws and chooses not to publicly release the underlying data contained in its broker database, known as the Central Registration Depository, or CRD. Instead, it allows the public to look up individual brokers and firms on the Internet, based on the CRD data.

However, each broker must also register with local securities regulators in the states in which they practice. These regulators are subject to public records laws and have access to records of brokers registered in their state.

To stitch together a national picture, The Wall Street Journal filed records requests with 50 state regulators, obtaining full or partial data from 21 states. The records—gathered throughout the first half of 2013—contain information about 558,245 individuals, many of whom are registered in multiple states. As of August 2013, Finra said there were 633,622 people registered nationally.

Finra said it doesn't keep a comprehensive list of firms it has expelled from the industry. The Journal combed through 105 monthly reports and found 173 firms the regulator said it had booted from the business between 2005 and 2012. The Journal then paired the list with stockbroker work histories and found thousands of individuals still working who had earlier worked at firms expelled by Finra.

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