

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

Department of Enforcement,

Complainant,

vs.

Jim Newcomb
Fort Collins, CO,

Respondent.

DECISION

Complaint No. C3A990050

Dated: November 16, 2000

Registered representative engaged in private securities transactions for "selling compensation" without giving his employer proper prior written notice and without receiving prior written permission. Held, Hearing Panel's findings and sanctions affirmed in part and modified in part.

Respondent Jim Newcomb ("Newcomb") appealed the January 13, 2000 decision of a Hearing Panel pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we affirm the Hearing Panel's findings that Newcomb engaged in private securities transactions for "selling compensation" without giving his employer proper prior written notice and without receiving prior written permission. We order that Newcomb be fined \$32,000 and suspended from association with any member of the NASD in any capacity for two years.

Background

Newcomb first entered the securities business in 1985. From November 1993 through January 20, 1999, he was employed as a general securities representative by Princor Financial Services, Inc. ("Princor"), a member of the NASD. Princor terminated Newcomb on January 20, 1999, and Newcomb has since been employed by another member firm.

Facts

Newcomb and the Department of Enforcement ("Enforcement") entered into a Joint Stipulation of Facts ("Joint Stipulation"), and many of the facts are therefore undisputed. This matter involves Newcomb's participation in private securities transactions from June 1997 until December 1998 through a corporation called Balanced Assets, Inc. ("Balanced Assets"), which Newcomb owned with his wife.

Before January 1998, Princor's Compliance Manual did not distinguish between outside business activities covered by NASD Conduct Rule 3030 and private securities transactions covered by NASD Conduct Rule 3040. At that time, Princor required its representatives who engaged in outside business activities to provide prior written notice that described the proposed activity in detail and stated whether the representative would receive selling compensation in connection with the activity. A representative's amendment of his or her NASD Uniform Application for Securities Industry Registration and Transfer Form ("Form U-4") satisfied Princor's written notice requirement.

Prior to establishing Balanced Assets, Newcomb engaged in several business activities outside the scope of his employment with Princor. Accordingly, Newcomb notified Princor prior to engaging in each activity by filing an amendment to his Form U-4. On July 25, 1995, for instance, Newcomb amended his Form U-4 to notify Princor that he would act as a "Certified Financial Planner" by "[i]mplementing financial plans for a fee based advisory service" outside his normal business activities at Princor. Similarly, on May 12, 1997, Newcomb again amended his Form U-4 to notify Princor that in addition to his professional activities at Princor, he would engage in the "[e]valuation and monitoring of [real estate] holdings."

Princor never expressly approved any of Newcomb's outside business activities. In November 1996, however, Princor copied Newcomb on a letter, which Princor wrote to NASD Compliance in response to an apparent inquiry as to whether Newcomb's activities should be recorded in Princor's books. In that response letter, Princor wrote that Newcomb's activity "falls within Rule 3030 [governing outside business transactions]" as his activity was "limited merely to making recommendations as a financial planner He in no way participates in the execution of the plan or of the various securities transactions which may take place in execution of the plan."

In June 1997, Newcomb filed another Form U-4 amendment, which notified Princor of his involvement in Balanced Assets. Newcomb wrote that the nature of his business through Balanced Assets would be "[f]inancial advising through a corp. rather than a sole proprietorship." He notified Princor that he would act as the president and that his role would be to "[e]valuate investments and transfers." As with the earlier Form U-4 amendments, Newcomb did not receive a response from Princor.

Balanced Assets' business was in fact quite different from what Newcomb had represented to Princor. From June 1997 through December 1998, Balanced Assets sold promissory notes to 48 customers—some of whom were Princor customers—and used the proceeds to lend money to a factoring company, which in turn purchased short-term accounts receivable from growing businesses in

need of immediate cash. Balanced Assets generated revenue from a 16 to 18 percent gross return on the loans to the factoring company. In 1998, Balanced Assets paid Newcomb a \$12,000 salary from profits on the interest from the loans.

During his testimony before the Hearing Panel, Newcomb admitted that the June 1997 Form U-4 amendment "did not describe exactly what I ended up doing." He testified that he determined that Balanced Assets would engage in the business of selling promissory notes and lending the proceeds to a factoring company "[s]ometime in June of '97." He said that selling the notes and lending the proceeds was a possibility when he filed his June 1997 Form U-4 amendment, but that he had not been certain of it when he filed that amendment.

Unlike the other Form U-4 amendments that Newcomb filed, the June 1997 Form U-4 amendment was undated. A letter from a Princor compliance officer to Newcomb, however, acknowledged that Princor had approved this amendment sometime in June 1997. Balanced Assets sold its first promissory note for \$30,000 on June 5, 1997. Newcomb said that he did not believe that it was necessary to correct the June 1997 amendment after he began selling the notes because "it was like I don't think Princor cares what I am doing anyway."

In January 1998, Princor issued a revised compliance manual (the "Revised Manual") that distinguished between outside business activities and private securities transactions. The Revised Manual required a registered representative who became involved in a "business deal or raised capital for any entity" to "contact Princor Compliance to discuss the situation." The Revised Manual expressly stated that the representative was required to notify the compliance department before he or she "discusse[d], solicit[ed], or participate[d] in any securities transaction that [was] not transacted directly through Princor." The Revised Manual also stated that if Princor approved these transactions, it would inform the representative of its approval in writing. Newcomb signed an acknowledgment that he had received and read the Revised Manual.

Newcomb testified that he recalled receiving the Revised Manual and that he "wasn't sure" if the revised instructions for private securities transactions applied to Balanced Assets. He stated that he "eventually talked to an attorney," who told him that Balanced Assets' promissory notes were securities and required registration with the Securities and Exchange Commission (the "Commission"). He stated that he did not believe that he needed to update his June 1997 amendment and request written approval because he had already notified Princor about Balanced Assets in June 1997 and Princor had approved it.

Newcomb finally amended his Form U-4 again in September 1998. By that time, he personally had solicited the sale of 90 promissory notes for a total of more than \$700,000. Newcomb continued selling promissory notes after the September 1998 amendment until December 31, 1998, raising a total of almost \$1 million. Newcomb testified that he filed the September 1998 Form U-4 amendment after

he had filed a Form D with the Commission on September 10, 1998.¹ Newcomb signed the Form D as Balanced Assets' president.

Newcomb's September 1998 Form U-4 amendment described Balanced Assets' business as "[l]oaning funds to a factoring company." He wrote that Balanced Assets was involved in "[r]aising funds, monitoring transactions and margins to generate an income to the issuer (Balanced Assets) and the originating lenders. No commissions or fees are incurred or paid." As was the case with the earlier amendments, Newcomb did not receive a response from Princor. Newcomb testified that Princor's silence did not surprise him, as Princor had always given tacit approval in the past. He testified that he asked his supervisor about Princor's lack of response, and he was told that they could "just let sleeping dogs lie."

Newcomb continued to sell promissory notes through Balanced Assets until December 1998, when Princor discovered Balanced Assets' activities during a routine audit. Princor asked Newcomb for details about Balanced Assets, and Princor terminated Newcomb for cause in January 1999 after discovering the nature of Balanced Assets' business.

The Hearing Panel and NAC Proceedings

The NASD began its investigation after receiving Newcomb's NASD Uniform Termination Notice for Securities Industry Registration Form ("Form U-5") from Princor. On January 13, 2000, after a hearing, the Hearing Panel issued a decision finding that Newcomb had violated Conduct Rules 3040 and 2110. The Hearing Panel suspended Newcomb for 90 days and imposed a \$32,000 fine. The Hearing Panel's finding that Newcomb violated Conduct Rules 3040 and 2110 was based on the following: (1) the June 1997 Form U-4 amendment was misleading in that it did not accurately describe Balanced Assets' business; (2) the September 1998 Form U-4 amendment, although more descriptive, did not explain that Newcomb was involved in private securities transactions; (3) Newcomb received "selling compensation"; and (4) even after he determined that the notes were securities, he continued to sell them without receiving any written approval from Princor.

On February 7, 2000, Newcomb filed a timely appeal of the Hearing Panel's decision. On March 21, 2000, Newcomb moved to introduce additional evidence pursuant to Procedural Rule 9346 and moved for an extension of time within which to file his brief.² Specifically, Newcomb requested the

¹ Companies that sell securities in reliance on the Regulation D exemption from the registration provisions of the Securities Act of 1933 must file a Form D with the Commission as notice of such sale.

² Pursuant to Procedural Rule 9346(b) of the NASD Code of Procedure, a party may move for leave to introduce additional evidence by motion filed not later than 30 days after service of such party's notice of appeal. The motion must describe each item of proposed evidence, show that there was good cause for failing to introduce it below, and demonstrate why the evidence is material to the proceeding.

opportunity to obtain evidence of his supervisor's conversations with Princor's compliance department—evidence that neither party knew existed before the hearing.³

A subcommittee of the National Adjudicatory Council ("NAC") (the "Subcommittee") granted the motion in order to give Newcomb a fair opportunity to obtain all possible material evidence from Princor.⁴ Accordingly, the Subcommittee directed the Enforcement attorney to issue a document request order to Princor pursuant to NASD Rule 8210.

On June 5, 2000, Newcomb filed both his opening brief and a motion to adduce additional evidence, only one item of which had been obtained through the Rule 8210 request. Two of the documents that Newcomb sought to adduce corroborated Newcomb's supervisor's testimony that he had discussed Balanced Assets' activities with Princor's compliance department. The earliest of these documents, however, is dated September 23, 1998, and it was submitted to Princor's compliance department with Newcomb's September 1998 Form U-4 amendment. Because these documents do not establish that the supervisor spoke with the compliance department earlier than the filing of the September 1998 amendment, we find that they are not material to the issue of notice in this case. Newcomb also sought to introduce his supervisor's central registration depository ("CRD") form, which shows that the supervisor is still employed by Princor. Although the Hearing Panel mistakenly believed that the supervisor was no longer employed by Princor, we do not find that this mistaken belief was the reason that the Hearing Panel discounted his testimony. We therefore do not find this evidence material. The other documents that Newcomb sought to introduce included copies of Form U-4 updates and a notification of outside business activities, dated December 9, 1998, and other documents that were part of the record.

After reviewing the additional evidence, the Subcommittee determined that these documents either were immaterial to the issue of whether Newcomb violated Conduct Rule 3040 or were cumulative, and the Subcommittee therefore did not consider the evidence in reaching its determination.

Discussion

Conduct Rule 3040 prohibits registered representatives from participating in private securities transactions, which are defined as securities transactions outside the regular course of employment with a member firm, absent prior written notice to the member firm. If the representative will receive "selling compensation," the representative must receive prior written permission from the member firm. If the promissory notes that Balanced Assets issued were "securities" pursuant to Section 3(a)(10) of the Securities and Exchange Act of 1934 (the "Exchange Act") and if the \$12,000 that Newcomb received

³ Newcomb's supervisor testified to the Hearing Panel that, unknown to either party, he had discussed Balanced Assets' activities with Princor's compliance department early in 1998.

⁴ Because of the possibility that Princor's files contained material evidence about which neither party had previously known, the Subcommittee granted the motion, even though it was not filed timely.

from Balanced Assets was "selling compensation," then we must determine whether Newcomb violated Conduct Rule 3040 by failing to give Princor proper written notice and by failing to receive written authorization from Princor. We have reviewed the record, the arguments, and the well-established case law, and we affirm the Hearing Panel's finding that the promissory notes were "securities" and that Newcomb violated Conduct Rules 3040 and 2110 by engaging in private securities transactions without giving Princor proper written notice of Balanced Assets' business activities and without receiving prior written permission from Princor.

The Notes Were "Securities". Under Section 3(a)(10) of the Exchange Act, a security is defined as any one of a long list of financial instruments, beginning with "any note." Courts, however, have not interpreted Section 3(a)(10) to cover literally "any note." In Reves v. Ernst & Young, 494 U.S. 56 (1990), the Supreme Court of the United States held that the intent of Congress in drafting the Exchange Act "was to regulate investments, in whatever form they are made and by whatever name they are called." Id. at 61. Thus, Congress did not necessarily mean "any note," but rather only those notes that it deemed to be investments in need of regulation.

The Supreme Court in Reves developed the "family resemblance" test, under which every note is presumed to be a security, unless it bears a strong resemblance to one of several types of expressly enumerated financial instruments.⁵ The Commission has interpreted Reves "to exclude from the definition of security only certain types of notes which are issued in a purely commercial or consumer context." In re Darrell Jay Williams, Exchange Act Rel. No. 30886 (July 6, 1992) (quoting In re William F. Wuerch, Exchange Act Rel. No. 30083 (Dec. 16, 1991)). Thus, notes that are sold to customers as an investment are not the types of notes excluded from the Exchange Act's definition under Reves. In re Darrell Jay Williams, supra.

If a note is not sufficiently similar to one of the statutorily enumerated securities, we must then use a four-factor test to determine whether the instrument is of a type that should be added to the list. The following four factors must be considered: (1) the motivations that would prompt a reasonable seller and buyer to enter into the transaction; (2) the instrument's plan of distribution, to determine whether this was an instrument in which there is common trading for speculation or investment; (3) whether the investing public would reasonably expect the instrument to be considered a security; and (4) whether some factor, such as the existence of another regulatory scheme, significantly reduces the risk of the instrument, thereby rendering the application of the Securities Acts unnecessary.

⁵ The types of notes that are excluded from the definition of "security" are the following: a note delivered in consumer financing, a note secured by a mortgage on a home, a short-term note secured by a lien on a small business or some of its assets, a note evidencing a "character" loan to a bank customer, a short-term note secured by an assignment of accounts receivable, a note that simply formalizes an open-account debt incurred in the ordinary course of business, or a note evidencing a loan by a commercial bank for current operations. Reves v. Ernst & Young, 494 U.S. at 65.

Newcomb conceded that the notes were securities when he filed the Form D with the Commission in September 1998, when he filed his Answer to the Complaint, and at the hearing before the Hearing Panel. Furthermore, Newcomb's testimony and the documentary evidence make clear that both Newcomb and the purchasers understood the notes to be investments, not commercial or consumer loans. A Reves analysis is therefore not necessary.

"Written Notice" of the Private Securities Transactions. Having established that the promissory notes were "securities," we must now determine whether Newcomb violated Rules 3040 and 2110 when he participated in their sale through Balanced Assets. Rule 3040 requires associated persons to provide their employers with written notice of private securities transactions. This notice must be furnished before the transactions take place. Furthermore, the Commission has held that the notice must describe the transaction "in detail," which requires at a minimum the identification of the investor and the amount of money invested. In re William Louis Morgan, 51 S.E.C. 622, 627, n.19 (1993). Moreover, if the associated person receives "selling compensation" for these transactions, the associated person must receive written permission from the firm before he or she engages in these transactions.

Newcomb argues that he gave Princor written notice of Balanced Assets' activities in the June 1997 amendment to his Form U-4. In the June 1997 amendment, Newcomb represented that through Balanced Assets he would "evaluate investments and transfers" and engage in "financial advising." As early as June 5, 1997, however, Newcomb began selling promissory notes through Balanced Assets to members of the public, including Princor customers. He used the proceeds to lend money to a factoring company, from which Balanced Assets collected generous interest payments. Balanced Assets paid Newcomb \$12,000 from these profits in 1998. Over a 14-month period, Newcomb sold 90 promissory notes for a total of more than \$700,000.

During his testimony before the Hearing Panel, Newcomb admitted that the June 1997 amendment "did not describe exactly what I ended up doing." He also admitted that he knew when he filed his June 1997 amendment that Balanced Assets might engage in the business of selling promissory notes and making loans to a factoring company. He testified, however, that "it did not occur" to him to amend his Form U-4 after Balanced Assets began selling the notes.

Newcomb's June 1997 amendment not only failed to describe "in detail" the nature of Balanced Assets' proposed transactions; it was inaccurate. In re William Louis Morgan, *supra*. It did not indicate that Balanced Assets would engage in any securities transactions. It also did not mention that Balanced Assets would make loans to a factoring company or that Newcomb would receive compensation from Balanced Assets' profits from the factoring company loans.

Because Princor was unable to discern the nature of Balanced Assets' business from the June 1997 amendment, we find that the June 1997 amendment did not satisfy the notice requirement under Rule 3040. See In re Gordon Wesley Sodorff, Exchange Act Rel. No. 31134 (Sept. 2, 1992) (Rule 3040 requires that representative give sufficient information to enable the firm to evaluate the proposed transaction, and anything short of a complete description does not satisfy the requirements of the rule). Newcomb's failure to give proper notice to Princor constitutes a violation of Rule 3040.

Newcomb argued that he complied with Princor's written procedures, which he now realizes were not comprehensive enough to encompass all that is required under NASD Rule 3040.⁶ Although we recognize that Princor's failure to distinguish between outside business activities and private securities transactions rendered its procedures deficient before January 1998, we nonetheless find that Princor's failure to have written procedures that were co-extensive with the requirements of Rule 3040 does not excuse Newcomb from his failure to comply with NASD rules. Indeed, as a registered representative, he is responsible for knowing and abiding by NASD rules and regulations. See In re Peter K. Lloyd, Exchange Act Rel. No. 31625 (Dec. 21, 1992) (representative charged with knowledge of NASD rules governing private securities transactions even though his firm's compliance manual did not require prior written notice); see also In re Klaus Langheinrich, Exchange Act Rel. No. 34107 (May 25, 1994) (representative's lack of familiarity with NASD rule governing private securities transactions did not excuse his violation of that rule); Carter v. SEC, 726 F.2d 472, 473-74 (9th Cir. 1983) (court of appeals rejected representatives' defense that they were unaware of NASD rules regarding private securities transactions, stating "[a]s employees, [the representatives] are assumed as a matter of law to have read and have knowledge of these rules and requirements"); In re Gilbert M. Hair, Exchange Act Rel. No. 32187 (Apr. 21, 1993) (same).

Newcomb also argued that his supervisor's alleged discussion with Princor's compliance department in 1998 about Balanced Assets' activities constituted notice to Princor that should at least be a mitigating factor under Rule 3040. The Hearing Panel, however, found that the supervisor's testimony was vague, and it therefore did not give the testimony substantial weight. We accept the Hearing Panel's determination. See, e.g., In re Jonathan Garrett Ornstein, 51 S.E.C. 135, 137 (1992) (citing Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951)) (credibility determinations of an initial fact-finder are entitled to considerable weight and deference, since they are based on hearing the witnesses' testimony and observing their demeanor).

We also note that Newcomb was not even aware of his supervisor's alleged discussion with Princor's compliance department, so he could not have relied on the discussion as notice by Newcomb to Princor. Thus, even if Newcomb's supervisor discussed Balanced Assets with Princor's compliance department prior to September 1998, the June 1997 amendment was still the only written notice that Newcomb had given to Princor of Balanced Assets' activities. As discussed above, the June 1997 amendment was misleading and did not satisfy Rule 3040.

⁶ Newcomb's failure to amend his Form U-4 in January 1998 after receiving Princor's Revised Manual undercuts this argument. The Revised Manual required representatives to inform Princor of private securities transactions in writing and, if "selling compensation" was involved, to receive written permission from Princor before participating in any securities transactions away from Princor. Newcomb testified that after receiving the Revised Manual he "wasn't sure" whether the new provisions applied to Balanced Assets' activity. He testified that he did not believe an amendment was required in any event because Princor had already approved his June 1997 amendment. As previously discussed, however, the June 1997 amendment was deficient.

We also find that Newcomb's September 1998 Form U-4 amendment did not serve as notice of Balanced Assets' securities transactions for purposes of Rule 3040. Although the September 1998 amendment provided a more accurate description of the business, it failed to disclose that Newcomb was selling notes, which he had acknowledged were securities, to members of the public, including Princor customers. In any event, Rule 3040 expressly requires representatives to give written notice before they engage in private securities transactions. Newcomb filed the September 1998 Form U-4 amendment 14 months after he had sold a total of 90 notes for more than \$700,000. Therefore, even if the September 1998 amendment had been sufficiently descriptive, it was filed too late and would not have satisfied Rule 3040.

Written Permission from Princor. Rule 3040 requires that the representative obtain written permission from the firm if he or she will receive "selling compensation" from the private securities transactions. "Selling compensation" is defined as "any compensation paid directly or indirectly from whatever source in connection with or as a result of the ... sale of a security" It has been construed broadly to include "any item of value." In re William Louis Morgan, supra.

We affirm the Hearing Panel's finding that the \$12,000 that Newcomb received from Balanced Assets in 1998 constituted "selling compensation" for purposes of Rule 3040. Balanced Assets used the proceeds from the sale of the notes to make loans. Balanced Assets generated profits from the interest that it made on the loans, and Newcomb's salary was paid from these profits. Newcomb's compensation was therefore a result of the sale of the notes. Because Newcomb received "selling compensation," he was required to obtain written permission from Princor before he engaged in the sale of the notes. Newcomb did not receive anything in writing from Princor regarding the sale of notes by Balanced Assets.

Newcomb argues that Princor's compliance manual did not contain a complete definition of "selling compensation." He also testified that Princor had never responded to Form U-4 amendments he had filed in the past, and he was therefore not surprised when he did not hear from Princor's compliance department after filing his September 1998 Form U-4 amendment. Again, regardless of Princor's deficient internal written procedures and Princor's practice of not responding to written notices of outside business activities (as opposed to private securities transactions), Newcomb was charged with knowledge and understanding of NASD rules, and he was required to abide by them. See Carter v. SEC, supra.

We therefore affirm the Hearing Panel's finding that Newcomb violated Rules 3040 and 2110 by engaging in private securities transactions for "selling compensation" without giving his employer proper written notice and without receiving written approval from his employer.⁷

⁷ The NASD's finding that Newcomb violated Rule 2110 "is in accord with our long-standing and judicially-recognized policy that a violation of another Commission (continued . . .) or NASD rule, including Conduct Rule 3040, constitutes a violation of Conduct Rule 2110." In re Stephen J. Gluckman, Exchange Act Rel. No. 41628 (July 20, 1999).

Sanctions

The Hearing Panel ordered that Newcomb be fined \$32,000, which includes a base fine of \$20,000 plus the \$12,000 he received from Balanced Assets, and suspended from association with any member firm in any capacity for a period of 90 days. Newcomb requested that we eliminate the suspension, eliminate the finding of a Conduct Rule 2110 violation, and reduce the fine. We do not find any facts that would warrant modification. In fact, we find that Newcomb's actions were sufficiently egregious to warrant an increase in the suspension. We therefore affirm the fine of \$20,000 plus the \$12,000 he received from Balanced Assets, and we increase the suspension from association with any member firm in any capacity from 90 days to two years.

The 1998 edition of the NASD Sanction Guideline ("Guideline") for private securities transaction violations recommends a fine in the range of \$5,000 to \$50,000 and a suspension in any or all capacities for up to two years or a bar, in more serious cases.⁸ The sanctions we impose do not seem unreasonable in light of the nature of the violation. An employee's duty to inform his or her firm of private securities transactions serves a very important regulatory purpose. It protects the firm from exposure to both loss and litigation from dissatisfied customers, and it protects customers from the dangers of unsupervised investment activity.

We agree with the Hearing Panel that Newcomb should have shown greater diligence in disclosing Balanced Assets' activities to the firm. We likely would have treated Newcomb's request for guidance from his supervisor regarding compliance with the private securities transaction rule as mitigating, but Newcomb waited 14 months before he accurately described the nature of Balanced Assets' business, and even then, his description was still inadequate. Indeed, he submitted an inaccurate description of Balanced Assets' business, and he did not amend the Form U-4 until September 1998, after he had sold more than \$700,000 worth of notes. Furthermore, we do not find any discussion that Newcomb may have had with his supervisor about Balanced Assets to be oral notice to Princor. Newcomb testified that he was not aware that his supervisor had spoken with Princor's compliance department about Balanced Assets, and Newcomb therefore could not have relied upon such a discussion in discharging his obligations under Conduct Rule 3040. Moreover, we do not believe that it was reasonable for Newcomb to "let sleeping dogs lie" after he received no written notice in response to his September 1998 Form U-4 amendment. By the time that Newcomb submitted the September 1998 Form U-4 amendment, he knew that he was engaging in private securities transactions. He also knew at this time that private securities transactions were treated differently than outside business activities under Princor's Revised Manual.

⁸ See Guideline (1998 ed.) at 15 (Selling Away).

Consequently, Newcomb is fined \$32,000, suspended from association with any member of the NASD in any capacity for two years, and assessed Hearing Panel costs in the amount of \$1,797.25.⁹

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Senior Vice President
and Corporate Secretary

⁹ We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein. The sanctions that we have imposed are consistent with applicable NASD Sanction Guidelines ("Guidelines"). See Guidelines (1998 ed.) at 15 (Selling Away).

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.