

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**DAVID A. NAGLER
(CRD No. 1190128)**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2005003406001**

HEARING OFFICER: DAVID M. FITZGERALD

ORDER ACCEPTING OFFER OF SETTLEMENT

INTRODUCTION

Disciplinary Proceeding No. 2005003406001 was filed on March 6, 2007, by the Department of Enforcement ("Complainant"). Respondent David A. Nagler submitted an Offer of Settlement ("Offer") to Complainant on July 31, 2007. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other

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proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent Nagler first became registered as a General Securities Representative with a member of NASD on or about July 24, 1986. He was subsequently registered with other member firms, before becoming registered with Smith Barney, a division of Citigroup Global Markets, Inc. (Smith Barney) on or about April 5, 2002. He was associated with Smith Barney until on or about November 3, 2005, as a General Securities Representative and a General Securities Sales Supervisor. On or about November 29, 2005, Smith Barney filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Nagler.

On or about December 6, 2005, Nagler became registered with Morgan Stanley DW, Inc. as a General Securities Representative and a General Securities Sales Supervisor. On or about December 8, 2006, Morgan Stanley filed a Form U-5 on behalf of Nagler.

Nagler has not currently registered or associated with any other member firm since December 2006. However, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Nagler for purposes of the Complaint, attached hereto and made a part hereof (Complaint).

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings of fact as alleged in the attached Complaint be entered.¹ Based on the allegations in the Complaint, Respondent violated NASD Rules 2370 and 2110, as alleged more fully in the Complaint.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be suspended for twenty (20) business days from association with any member firm in any capacity and fined \$10,000. The fine shall be due and payable either immediately upon reassociation with a member firm following the twenty (20) business day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. The sanctions imposed herein shall be effective on a date set by FINRA staff.

¹ Except that the following dates as alleged in the Complaint should be amended as follows: i) date listed in paragraph 14 is December 6, 2006 -- it should read December 6, 2005; ii) date listed in the first sentence of Paragraph 16 is November 22, 2006 -- it should read November 22, 2005.

SO ORDERED.

August 8, 2007

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read 'Helen Barnhill', is written over a horizontal line. To the left of the signature, there is a small, stylized mark that looks like a checkmark or the letter 'f'.

Helen Barnhill, Regional Counsel
FINRA Department of Enforcement
370 17th St, Suite 2900
Denver, CO 80202
(303) 446-3111; Fax: (303) 446-3145

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

DISCIPLINARY PROCEEDING
NO. 2005003406001

v.

DAVID A. NAGLER
(CRD NO. 1190128),

RESPONDENT.

COMPLAINT

The Department of Enforcement alleges:

1. Respondent David A. Nagler (Nagler) first became registered as a General Securities Representative with a member of NASD on or about July 24, 1986. He was subsequently registered with other member firms, before becoming registered with Smith Barney, a division of Citigroup Global Markets, Inc. (Smith Barney) on or about April 5, 2002. He was associated with Smith Barney until on or about November 3, 2005, as a General Securities Representative and a General Securities Sales Supervisor. On or about November 29, 2005, Smith Barney filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Nagler. The Form U-5 disclosed that Nagler had been permitted to resign for a violation of company policy. The violation referenced in the Form U-5 was the borrowing of funds from a customer of Smith Barney.

2. On or about December 6, 2005, Nagler became registered with Morgan Stanley DW, Inc. as a General Securities Representative and a General Securities Sales Supervisor. On or about December 8, 2006, Morgan Stanley filed a Form U-5 on behalf of Nagler. The Form

U-5 stated that Nagler had been discharged for failing to disclose information Morgan Stanley believed he should have disclosed to the firm concerning the circumstances of his departure from his previous employer, Smith Barney.

3. Nagler is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF ACTION
Borrowing From A Customer
(Conduct Rules 2370, 2110)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. On or about September 16, 2005, while associated with Smith Barney in a registered capacity, Nagler borrowed funds in the amount of \$3,000 from TV, a customer of Smith Barney for whom Nagler was the assigned registered representative.

6. Nagler sent TV a letter dated September 16, 2005 thanking her for the \$3,000 loan and indicating he would repay the loan in early October. No interest rate was specified in the letter. There was no other document evidencing the loan.

7. Smith Barney's written procedures prohibited its registered employees from borrowing or lending money from or to a client under any circumstances.

8. Nagler did not request or obtain permission from Smith Barney to borrow money from TV.

9. Nagler repaid TV the \$3,000, together with interest of \$17.76 on October 10, 2005.

10. Smith Barney first learned of the loan, on or about October 25, 2005, when it intercepted correspondence from customer TV to Nagler, thanking Nagler for the repayment of the loan.

11. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2370. Such conduct is further inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Nagler.

SECOND CAUSE OF ACTION

Misleading Member Firm Employer about Circumstances of Termination from Prior Employer (Conduct Rule 2110)

12. The Department realleges and incorporates by reference paragraphs 1 through 11 above.

13. As more fully described in paragraph 1 above, Nagler was permitted to resign from Smith Barney for violating a company policy.

14. On or about December 6, 2006, Nagler became associated with Morgan Stanley.

15. During the hiring process, Morgan Stanley asked Nagler to explain what violation of company policy led to his being permitted to resign from Smith Barney. In responding, Nagler failed to disclose to Morgan Stanley that Smith Barney had permitted him to resign following its discovery of his borrowing funds from a Smith Barney customer in direct contravention of a firm policy. Nagler disclosed only that he had violated firm policies that prohibited the solicitation of an existing client of another representative of Smith Barney. He further indicated that other reasons behind his departure were his general interest in moving to

another firm and a dispute between Smith Barney and Nagler relating to whether Smith Barney had reneged on certain assurances it had given to Nagler when he joined Smith Barney.

16. In addition, on November 22, 2006, Nagler sent a letter to Morgan Stanley containing an explanation of issues raised by Nagler's Form U-5 from Smith Barney. In that letter Nagler stated,

I have not yet received my copy of the U-5 from Smith Barney but I gather, as we discussed, that they intend to mark it "Permitted to Resign/Violation of Firm Policy," with no further explanation. My attorney has been in contact with theirs, but so far, they have refused any further elaboration.

In this letter, Nagler implies that Smith Barney had not been forthcoming on the stated grounds for his termination from Smith Barney and that he was unaware of the specific reason for his termination. In fact, this was not the case. On or about November 2, 2005, Nagler had been told by his branch manager that he was being permitted to resign specifically for violating a Smith Barney policy prohibiting borrowing of funds from customers.

17. Nagler misled Morgan Stanley when he failed to advise the firm, during the hiring process, that he had been permitted to resign from Smith Barney for violating the firm's policy prohibiting the borrowing of funds from customers.

18. This conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Nagler.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.

- B. order that Nagler bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: March 6, 2007

Helen Barnhill
Helen Barnhill, Regional Counsel
Lewis Taylor Egan, AVP,
Regional Chief Counsel
NASD Department of Enforcement
370 17th St, Suite 2900
Denver, CO 80202
(303) 446-3111; Fax: (303) 446-3145

NASD Regional Director

Joseph M. McCarthy
Vice-President and
Regional Director
NASD, District 3A-Denver
370 17th St., Suite 2900
Denver, Co 80202
(303) 446-3190

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax: (202) 721-8318

Mark P. Dauer, Of Counsel
NASD Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
(504) 522-6527; Fax: (504) 522-4077