

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

PATRICK ANTHONY POTOPOWICZ
(CRD No. 1217511),

Respondent.

Disciplinary Proceeding
No. 2006004960901

Hearing Officer – MC

DEFAULT DECISION

July 6, 2009

The Respondent is barred from associating with any FINRA member firm in any capacity, and ordered to pay restitution to a customer in the amount of \$2,976.43, plus interest, for engaging in unauthorized trading, in violation of Conduct Rule 2110, and IM-2310-2. Respondent is further ordered to pay restitution to the same customer in the amount of \$23,299.95, plus interest, for engaging in excessive trading and unsuitable recommendations, in violation of Conduct Rules 2110 and 2310, and IM-2310-2.

Appearances:

Noel C. Downey, Principal Regional Attorney, Woodbridge, NJ, for the Department of Enforcement.

No appearance by or for Respondent Patrick Anthony Potopowicz.

DECISION

I. Introduction

On January 5, 2009, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed the attached Complaint in this disciplinary proceeding. The First Cause of Action in the Complaint alleges that Respondent Patrick Anthony Potopowicz (“Respondent” or “Potopowicz”), from March 2003 through January 2005, while associated with FINRA member firm Brookstreet Securities Corporation (“Brookstreet”), violated Conduct Rules 2110 and 2310, and IM-2310-2, by engaging in excessive trading and

unsuitable transactions for a customer, RP. The Second Cause of Action in the Complaint alleges that Potopowicz, during the same period, violated Conduct Rule 2110, and IM-2310-2, by engaging in 11 unauthorized trades in RP's account.¹

Enforcement served Potopowicz with the Complaint. Potopowicz failed to file an acceptable Answer and subsequently failed to appear at a telephonic hearing to show cause why he should not be deemed in default for failing to file an acceptable answer. Potopowicz did not appear at the show cause hearing.

Consequently, on April 22, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion"), supported by the Declaration of Noel C. Downey, Principal Regional Attorney in FINRA's Woodbridge, NJ, District Office, and nine exhibits.² Potopowicz did not file a response to the Default Motion.

For the reasons set forth below, the Default Motion is granted.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Potopowicz first became registered with FINRA through a member firm as a General Securities Representative on March 27, 1989.³ From January 16, 2003, through December 31, 2005, the period relevant to this disciplinary proceeding, Respondent was registered as a General

¹ On December 15, 2008, the first phase of the new consolidated FINRA Rules, resulting from the consolidation of NASD with the member regulation and enforcement functions of NYSE Regulation, went into effect. *See* Regulatory Notice 08-57 (Oct. 2008). This Default Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX ___" with the appropriate exhibit and page numbers; the Declaration of Noel C. Downey will be referred to as the "Downey Declaration" or "Decl." with citation to specific paragraphs therein.

³ Decl. ¶ 5.

Securities Representative and as a Municipal Securities Representative with Brookstreet.⁴ From February 22, 2006, to December 16, 2008, Potopowicz was registered with another FINRA member firm.⁵ Potopowicz has not been associated with a FINRA member firm since December 15, 2008. Nonetheless, because the misconduct alleged in the Complaint occurred while he was associated with a FINRA member firm, and the filing of the Complaint occurred less than two years after his last association with a member firm, Potopowicz remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

B. Respondent's Default

Enforcement properly complied with the requirements of Procedural Rule 9134(b)(1) by serving Potopowicz with the Complaint and Notice of Complaint at his last known residential address recorded in FINRA's Central Registration Depository (the "CRD address").

Enforcement mailed the Complaint and First Notice of Complaint to Respondent's CRD address on January 5, 2009, by first-class and certified mail. The first-class envelope was not returned, but the certified return receipt was returned, bearing the signature "Tanya Shah" and dated January 7, 2009.⁶ Enforcement mailed the Complaint and Second Notice of Complaint on February 3, 2009, also by first-class and certified mail, to Potopowicz's CRD address. As before, the first-class envelope was not returned. The certified return receipt was returned, this time bearing the signature "S.B. Patel" and dated February 5, 2009.⁷

On February 19, 2009, Enforcement received Respondent's "Notice of Acceptance and Answer to Complaint." The document contained a copy of the Complaint and Notice of

⁴ Decl. ¶ 6; CX-1, p. 4.

⁵ CX-1, p. 3.

⁶ Decl. ¶ 10.

⁷ Decl. ¶ 11.

Complaint Enforcement had originally served on Respondent on February 3, 2009, demonstrating that Respondent received actual notice of the Complaint.⁸ The document, however, failed to meet the requirements of Procedural Rule 9215(b) because it did not “specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint.” Instead, the document contained incomprehensible pages with headings such as “Schedule A. DEFAULT UNDER PUBLIC POLICY,” “VERIFIED AFFIDAVIT OF FACTS,” with sections styled “Acceptance of Settlement,” “Offers and Claims,” “Denial of Assumptions” and “Commercial Affidavit Oath and Verification.” None of the contents of the document were relevant to the Complaint.

The Hearing Officer rejected Respondent’s filing by order dated February 25, 2009, and directed Respondent to file an Answer complying with the requirements of Rule 9215(b) by March 11, 2009. On March 11, 2009, the Office of Hearing Officers received a second filing from Respondent, styled “Notice of Dishonor in Commerce,” including sections titled “Notice and Opportunity to Cure” and “Affidavit of Non-Response,” similar in style and content to Respondent’s previous filing. This filing was also deficient as an Answer to the Complaint and was therefore rejected by the Hearing Officer for its failure to meet the basic requirements of Procedural Rule 9215(b).

Consequently, on March 12, 2009, the Hearing Officer issued an Order to Show Cause directing Potopowicz to appear for a telephonic hearing on March 23, 2009, at 10:00 a.m., to show cause why he should not be deemed in default for his failure to file an acceptable Answer. Respondent failed to appear at the hearing.⁹

⁸ Decl. ¶ 12.

⁹ Dec. ¶¶ 17-18.

Potopowicz defaulted by failing to answer the Complaint¹⁰ and by failing to appear at the hearing to show cause why he should not be deemed in default. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

C. Violations

1. Potopowicz Violated Conduct Rules 2110 and 2310, and IM-2310-2, by Trading Excessively in a Customer Account and Making Unsuitable Recommendations

RP and LP were a couple in their late 50's when they were Respondent's customers at Brookstreet during the period relevant to this disciplinary proceeding. RP had retired early because of a medical condition. RP worked at an office supply store to supplement his pension, and LP was unemployed, receiving no pension or salary. Their annual income, as reflected in their account records, was in the range of \$50,000 - \$100,000, and their net worth, exclusive of their home, was in the range of \$100,000 - \$500,000. Their investment objectives, listed on Individual Retirement Account ("IRA") Applications in their accounts, were "preservation of capital," "income," and "capital appreciation." Their risk tolerance was "moderate," and their investment horizon was "intermediate." Although their IRA applications indicated that they had some investment experience prior to working with Potopowicz, that experience was limited to investing in mutual funds through their IRA's. They relied on Potopowicz to provide investment recommendations and deferred to his judgment in almost all instances.¹¹

In February 2003, RP's account had a value of approximately \$121,930; LP's account was valued at approximately \$8,060. From March 2003 through January 2005, Potopowicz recommended to RP, and effected in his account, approximately 111 transactions in mutual fund

¹⁰ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹¹ Decl. ¶¶ 24(a)-(g).

Class B shares and individual stocks, consisting primarily of precious metal stocks. During this time, RP incurred approximately \$18,940.97 in Contingent Deferred Sales Charges. Potopowicz recommended and effected the transactions in RP's account without having reasonable grounds to believe they were suitable for RP in view of the size and frequency of the transactions, the transaction costs incurred, and considering RP's and LP's financial situation, investment objectives, and needs. The transactions were excessive in number, with an annualized turnover ratio of approximately 5.0,¹² and an annualized cost-to-equity ratio, converted to a percentage, of approximately 19%.¹³ Potopowicz engaged in short-term "in and out" trading in RP's account, with an average holding period of 61 days for the mutual fund Class B shares and approximately 56 days for the stocks.¹⁴ Potopowicz's trading resulted in losses for RP of approximately \$23,299.95, or approximately 20.6% of the account's average equity, and substantial commissions, of approximately \$23,363.64, for Potopowicz.¹⁵

These actions by Potopowicz, as alleged in the First Cause of the Complaint, and supported by the Downey Declaration and exhibits, are sufficient to establish, for the purposes of this Default Decision, that Potopowicz violated Conduct Rules 2110 and 2310, and IM-2310-1,

¹² The SEC has found that in cases involving accounts with conservative objectives or seeking income, very low turnover ratios are sufficient to prove excessive trading. See, e.g., *Richard N. Cea*, Exchange Act Rel. No. 8862 (Aug. 6, 1969) (annualized turnover ratios of 0.77 and 1.96 were excessive in accounts with conservative objectives); *Samuel B. Franklin & Co.*, Exchange Act Rel. No. 7407 (Sept. 3, 1964) (annualized turnover ratios of 1.68 and 2.93 were excessive in accounts seeking income).

¹³ A cost-to-equity ratio is the percentage of return on a customer's average net equity needed to pay commissions and other account expenses, or the amount an account must earn in order to break even. A cost-to-equity ratio of more than 12% has been found to be an indicator of excessive trading. *Thomas F. Bandyk*, Exchange Act Rel. No. 35415, 1995 SEC LEXIS 481 (Feb. 24, 1995).

¹⁴ "In and out" trading occurs when stocks are purchased repeatedly and then sold after relatively short holding periods, and can provide a basis for finding excessive trading. See *Costello v. Oppenheimer & Co.*, 711 F.2d 1361, 1369 n. 9 (7th Cir. 1983).

¹⁵ Decl. ¶¶ 24(h)-(k).

by excessively trading in RP's account, and by making unsuitable recommendations to RP in connection with the excessive trades.

2. Potopowicz Violated Conduct Rule 2110, and IM-2310-1, by Engaging in Unauthorized Transactions

On July 12, 2004, RP and LP directed Potopowicz by e-mail to cease making any transactions in their accounts without first consulting with them. Potopowicz responded by persuading RP to rescind the instruction so that Potopowicz could trade without first consulting with him. On December 31, 2004, LP contacted Potopowicz, on RP's behalf, and told Potopowicz not to trade in RP's account without first consulting with either LP or RP. Nonetheless, Potopowicz engaged in five unauthorized trades in RP's account from January 4 through January 10, 2005, purchasing stock for a total cost of more than \$21,461, and making stock sales totaling more than \$63,880. On January 10, 2005, LP, authorized by RP, informed Potopowicz by e-mail that she and RP were moving their accounts to another firm, and directed Potopowicz to engage in no further activity in their accounts. Despite this directive, Potopowicz, from January 11 through January 19, 2005, transacted five stock sales for more than \$80,363, and one stock purchase for more than \$30,535, in RP's account. Potopowicz never received discretionary authority in RP's account in January 2005, and the account had not been accepted as discretionary by Brookstreet.¹⁶ The 11 unauthorized trades executed by Potopowicz in RP's account in January 2005 caused a loss of approximately \$2,976.43.¹⁷

Potopowicz's unauthorized trading in RP's account, as alleged in the Second Cause of the Complaint, and supported by the Downey Declaration and exhibits, are sufficient to establish, for

¹⁶ Decl. ¶¶ 26(a)-(d).

¹⁷ Decl. ¶ 26(e).

the purposes of this Default Decision, that Respondent violated Conduct Rule 2110, and IM-2310-1.

D. Sanctions

1. Excessive Trading and Unsuitable Recommendations

For Potopowicz's excessive trading and unsuitable recommendations, Enforcement recommends imposing a suspension in all capacities from association with any FINRA member firm for a period of six months, a fine of \$10,000, and an order of restitution to RP in the amount of \$23,299.95, plus interest.

The Sanction Guidelines recommend, for excessive trading, a fine ranging from \$5,000 to \$75,000, and a suspension for a period of ten business days to one year; in egregious cases, the Guidelines recommend a suspension in all capacities for up to two years or a bar.¹⁸ Relevant Principal Considerations in the Sanction Guidelines include: whether a respondent accepts responsibility for his actions; whether the unsuitable trading was effected over an extended period of time; whether the trading activity was reckless conduct; and the number, size and character of the transactions.¹⁹

In the record of this case, there is no evidence that Potopowicz has accepted responsibility for his excessive trading and unsuitable recommendations to RP. The period of excessive trading was more than a year, lasting from March 2003 through January 2005. Considering RP's investment objectives and financial situation, the number of trades, time span and the nature of the misconduct, Potopowicz's misconduct was at the very least reckless, if not intentional.

¹⁸ *FINRA Sanction Guidelines*, p. 82 (2007).

¹⁹ *Id.*, pp. 6-7.

Taking all of these factors into consideration, Enforcement's recommendations of a six month suspension, a \$10,000 fine, and an order to pay restitution, are reasonable. In light of the sanctions imposed below for Potopowicz's unauthorized trading, however, there is no need to impose a fine or an additional suspension for Potopowicz's excessive trading and unsuitable recommendations. The imposition of an order requiring Respondent to pay restitution to customer RP is, however, warranted in this case.

2. Unauthorized Trading

Enforcement argues that Potopowicz's unauthorized trades in this case were egregious and that a bar is therefore the appropriate sanction. Enforcement also urges that Potopowicz be ordered to pay restitution to compensate RP for the losses he suffered as a result of Potopowicz's unauthorized trades.

The Sanction Guidelines recommend a fine from \$5,000 to \$75,000, and a suspension of ten business days to a year for engaging in unauthorized transactions. For egregious cases, the Guidelines suggest consideration of a suspension of up to two years or a bar.²⁰

The two Principal Considerations enumerated by the Guidelines are: (a) whether respondent misunderstood his authority; and (b) whether the unauthorized trading was egregious. Categories of egregious unauthorized trading include: (i) quantitatively egregious trading, consisting of trading rendered egregious by the sheer number of unauthorized trades executed; (ii) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, or trading that causes significant customer loss; and (iii) qualitatively egregious unauthorized trading, as measured by the strength of the evidence and the respondent's motives (i.e., bad faith vs. reasonable misunderstanding).

²⁰ *Sanction Guidelines*, *supra* at p. 103.

In this case, Potopowicz's 11 unauthorized trades in RP's account, judged solely on the number of trades, could, but would not necessarily, be deemed egregious. In their full context, however, the 11 unauthorized trades, clearly acquire the character of egregious conduct. There was no reasonable basis for Potopowicz to have had a good faith but mistaken belief that he had authority to effect the trades. LP instructed Potopowicz on December 31, 2004, that he was to consult with her or with RP before effecting any additional trades.²¹ In direct disregard of those instructions, Potopowicz effected five trades for which he had no authority and about which he did not consult RP or LP. Then, after receiving an e-mail from LP on January 10, 2005, ordering him to cease all activity in RP's account, Potopowicz again violated his obligation to follow his customers' instructions and executed an additional six trades from January 11 through 19, 2005.

The SEC has recently emphasized the seriousness of engaging in unauthorized trading in a customer's account:

An associated person is "responsible for obtaining his [or her] customer's consent prior to purchasing a security for the customer's account." As we have held, "[u]nauthorized trades are a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade." Such misconduct goes "to the heart of the trustworthiness of a securities professional," and "is a fundamental betrayal of the duty owed by a sales[person] to his [or her] customers."²²

Considering the particular facts of Potopowicz's misconduct here, and recognizing that although sanctions should be remedial, they must be designed to deter future misconduct on the part of the Respondent specifically, and others in the securities industry generally, Enforcement's recommendations for a bar and an order for restitution to RP are appropriate.

²¹ It is an additional aggravating fact that RP and LP had previously given the same instruction, but Potopowicz persuaded RP to reverse the instruction and to give Potopowicz oral discretionary authority.

²² *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2009), *citations omitted*.

III. Order

Respondent Patrick Anthony Potopowicz is barred from association with any FINRA member firm in all capacities for effecting unauthorized trades in the account of his customer, RP, in violation of Conduct Rule 2110, and IM-2310-2, as alleged in the Second Cause of the Complaint. In addition, Potopowicz is ordered to pay restitution to RP in the amount of \$2,976.43, plus interest, accruing from January 19, 2005, until paid, for losses suffered by RP as a result of Potopowicz's unauthorized trading. Furthermore, Potopowicz is ordered to pay restitution to RP in the amount of \$23,299.95, plus interest, accruing from January 19, 2005, until paid, for losses suffered by RP resulting from Potopowicz's excessive trading and unsuitable recommendations, in violation of Conduct Rules 2110 and 2310, and IM-2310-2, as alleged in the First Cause of the Complaint.²³

The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

July 6, 2009

Copies to:

Patrick A. Potopowicz (via FedEx and first-class mail)
Noel C. Downey, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

²³ Interest shall be paid at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(b)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Customer RP is identified in the Addendum to this Decision. The Addendum is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

PATRICK ANTHONY POTOPOWICZ (CRD No.
1217511),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006004960901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From March 2003 through January 2005, Patrick Anthony Potopowicz engaged in excessive and unsuitable trading in the account of customer RP, resulting in significant commission income for Potopowicz and losses for his customer. In addition, from January 4, 2005 to January 19, 2005, Potopowicz entered 11 unauthorized transactions in RP's account. This conduct violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

RESPONDENT AND JURISDICTION

2. Potopowicz first became registered with FINRA through a member firm on March 27, 1989 as a General Securities Representative (Series 7). Thereafter,

from August 2001 through November 2002, Potopowicz was registered in that capacity through another member firm.

3. From January 16, 2003 through December 31, 2005, he was registered as a General Securities Representative and as a Municipal Securities Representative (Series 52) with Brookstreet Securities Corporation. From February 22, 2006 to December 15, 2008, Potopowicz was registered through another member firm.
4. Potopowicz has not been associated with a member firm since December 15, 2008. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Potopowicz for the purposes of this Complaint in that the misconduct alleged herein occurred while he was associated with a member firm, and that the filing of this Complaint occurred within two years of his last association with a member firm.

FIRST CAUSE OF ACTION

Excessive Trading/Unsuitable Transactions (NASD Conduct Rules 2310 and 2110 and IM-2310-2)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. In October 2002, RP and his wife LP first became Potopowicz's brokerage customers at a member firm (Firm #1). At that time, RP and LP were 58 and 57 years old, respectively. RP had retired early due to a medical condition. In an effort to supplement his pension, RP was working full-time at an office supply store. LP was not employed outside of her home and received no pension or salary.

7. After resigning from Firm #1, Potopowicz joined another member firm (Firm #2) in January 2003. RP and LP moved their accounts to Firm #2 in February 2003.
8. The initial value of RP's Firm #2 account was approximately \$121,930 and the initial value of LP's account was approximately \$8,060. The New Account Forms completed in opening RP's and LP's accounts reflected an annual income of "\$50,000 - \$100,000," a net worth (excluding home) of "\$100,000 - \$500,000" and a Liquid Net Worth of "\$100,000 - \$500,000."
9. The IRA Applications completed in opening RP's and LP's accounts listed the investment objectives as "preservation of capital," "income" and "capital appreciation." The IRA Applications also indicated the "risk tolerance" as "moderate" and the "investment time horizon" as "intermediate." Further, RP's IRA Application indicated that he had an income of "\$50,001 - \$100,000" (representing a joint annual income with LP), an estimated net worth (excluding home) of "\$100,001 - \$500,000" and investable assets (including cash and securities) as "\$100,001 - \$500,000." In addition, RP's and LP's IRA Applications indicated that each had investment experience.
10. RP's and LP's investment experience prior to working with Potopowicz, however, was limited to investing in mutual funds through their IRAs. Prior to using Potopowicz as a broker, RP and LP had no experience investing in individual stocks.
11. Due to their age, RP's medical condition, and their reliance upon their investments to provide for their retirement financial needs, RP and LP did not want to incur significant risks in their accounts.

12. RP relied upon and routinely followed Potopowicz's investment recommendations and deferred to his investment recommendations in almost all instances. Accordingly, Potopowicz effectively controlled RP's account.
13. From March 2003 through January 2005, Potopowicz recommended to RP and effected or caused to be effected in the account approximately 111 transactions in mutual fund Class B shares and individual stocks (primarily precious metal stocks) as more fully detailed in Exhibit A attached to this Complaint and incorporated herein by reference. During this time period, RP incurred approximately \$18,940.97 in Contingent Deferred Sales Charges in connection with Potopowicz's sales of his mutual fund Class B shares. The 56 purchases set forth on Exhibit A cost approximately \$1,090,249.05, while the average monthly equity in RP's account during this time period was approximately \$112,950.25.
14. Potopowicz recommended and effected the transactions in RP's account, as detailed on Exhibit A, without having reasonable grounds for believing that such transactions were suitable for RP in view of the size and frequency of the transactions, the transaction costs incurred, the concentration in precious metal stocks, and in light of the customer's financial situation, investment objectives and needs. The transactions were excessive in number and, at times, RP's account was unsuitably concentrated in high-risk precious metal stocks.
15. The transactions referred to in paragraph 13 above resulted in an annualized turnover ratio of approximately 5.0 and an annualized cost-to-equity ratio (converted to a percentage) of approximately 18.9%. Accordingly, during this time period, RP's account would have had to earn at least an annual 18.9% return

just to break even. The annualized commission-to-equity ratio (converted to a percentage) during this period was 10.7%.

16. The short-term in and out trading in RP's account, wherein the average holding period was approximately 61 days for the mutual fund Class B shares and approximately 56 days for the stocks, resulted in losses for RP and substantial commissions for Potopowicz. From March 2003 through January 2005, customer RP paid approximately \$23,363.64 in commissions. During that same period, the account lost approximately \$23,299.95, or approximately 20.6% of its average equity.
17. By recommending excessive and unsuitable transactions, Potopowicz violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

SECOND CAUSE OF ACTION

Unauthorized Trading (NASD Conduct Rule 2110 and IM-2310-2)

18. The Department realleges and incorporates by reference paragraphs 1-17 above.
19. On July 12, 2004, RP and LP sent an e-mail to Potopowicz, wherein they instructed him to stop making further transactions in their accounts without first consulting with them. After receiving the e-mail, Potopowicz contacted RP and persuaded him to let him continue trading in RP's account without first contacting RP or LP. Following this conversation, Potopowicz resumed trading in RP's account.
20. On December 31, 2005, LP telephoned Potopowicz and, speaking on behalf of RP and herself, she instructed Potopowicz not to trade in RP's account without first speaking with her or RP. Despite these instructions, Potopowicz entered the

following unauthorized trades in RP's account:

Date	Purchase or Sold	Name of Security	Symbol	Amount per share	# of Shares	Total Cost
01/04/2005	S	PetroKazakhstan	PKZ	\$35.30	500	\$17,545.33
01/06/2005	P	Goldcorp Inc.	GG	\$13.85	1,000	\$13,734.25
01/07/2005	S	Harmony Gold ADR	HMY	\$9.44	1,000	\$9,390.42
01/07/2005	P	Top Tankers	TOPT	\$15.05	500	\$7,726.80
01/10/2005	S	Transcanado Corp	TRP	\$24.73	1,500	\$36,944.47

21. At 6:35 p.m. on January 10, 2005, LP, with RP's authorization, informed Potopowicz by e-mail that she and her husband had decided to move their accounts from Firm #2. In the e-mail, she also instructed Potopowicz to immediately cease all activity in the couple's accounts. Despite these instructions, Potopowicz entered the following unauthorized trades in RP's account:

Date	Purchase or Sold	Name of Security	Symbol	Amount per share	# of Shares	Total Cost
01/11/2005	S	Top Tankers	TOPT	\$14.53	500	\$7,069.29
01/11/2005	S	Goldcorp Inc.	GG	\$13.89	1,000	\$13,543.72
01/11/2005	S	Harmony Gold ADR	HMY	\$9.31	2,000	\$18,137.30
01/11/2005	S	Stillwater Mining Co.	SWC	\$10.46	1,000	\$10,164.76
01/11/2005	P	Knightsbridge Tank	VLCCF	\$30.00	1,000	\$30,535.55
01/19/2005	S	Knightsbridge Tank	VLCCF	\$32.00	1,000	\$31,450.18

22. RP had not given Potopowicz discretionary authorization over his account in January 2005, and the account had not been accepted as discretionary by Firm #2.

23. By entering unauthorized transactions in RP's account, Potopowicz violated NASD Conduct Rule 2110 and IM-2310-2.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: January 5, 2009


Noel C. Downey, Principal Regional Attorney
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EXHIBIT "A" - TRADES IN RP'S ACCOUNT FROM 2/20/03 THROUGH 1/20/05											
Trade Date	Settlement	B/S	Description	Symbol	Price	Quantity	Principal	CDSC's	Comm.	Fees	Net Total
2/26/2003	3/3/2003	S	Federated Fund Class B	FGOBX	\$9.21	2,280.13	\$21,000.00	\$1,092.04	\$30.00		\$19,877.96
2/26/2003	3/3/2003	S	Blackrock Fund Class B	BLDBX	\$10.25	1,191.40	\$12,211.91	\$549.00	\$30.00		\$11,632.91
2/26/2003	3/3/2003	B	Evergreen Fund Class B	EKWBX	\$19.85	1,561.71	\$31,000		\$30.00		(\$31,030)
5/15/2003	5/20/2003	S	Federated Fund Class B	FGOBX	\$9.22	5,097.61	\$47,000.00	\$2,479.42		\$30.00	\$44,490.58
5/16/2003	5/21/2003	B	Scudder Gold Fund CL B	SGDBX	\$11.31	3,978.78	\$45,000		\$20.00		(\$45,020)
5/16/2003	5/22/2003	S	Federated Income Fund B	FGOBX	\$9.23	4,785.42	\$44,169.49			\$25.00	\$44,144.49
5/16/2003	5/22/2003	B	Federated Intn'l Bond Fund	FTBBX	\$11.14	3,964.94	\$44,169.49				(\$44,169.49)
6/19/2003	6/24/2003	S	Federated Intn'l Bond Fund	FTBBX	\$11.32	3,964.94	\$44,883.18	\$2,371.42		\$30.00	\$42,481.76
6/24/2003	6/27/2003	B	Scudder Gold Fund CL B	SGDBX	\$11.71	1,733.56	\$20,300		\$30.00		(\$20,330)
6/24/2003	6/27/2003	B	Evergreen Fund Class B	EKWBX	\$20.95	1,050.11	\$22,000			\$30.00	(\$22,030)
7/31/2003	8/5/2003	S	Scudder Gold Fund CL B	SGDBX	\$13.17	5,712.34	\$75,231.53	\$2,612.00	\$30.00		\$72,589.53
7/29/2003	8/1/2003	S	Evergreen Fund Class B	EKWBX	\$22.53	2,611.83	\$58,844.57	\$2,650.00		\$30.00	\$56,164.57
7/31/2003	8/5/2003	S	Blackrock Fund Class B	BLDBX	\$10.17	2.12	\$21.58			\$18.00	\$3.58
8/11/2003	8/14/2003	B	StateSt. Fund Global	SSGPX	\$24.30	2,057.61	\$50,000		\$30.00		(\$50,030)
8/8/2003	8/13/2008	B	Pimco Gov't Fund	PFGBX	\$10.73	4,659.83	\$50,000			\$30.00	(\$50,030)
9/3/2003	9/8/2003	S	Pimco Gov't Fund	PFGBX	\$10.46	4,665.57	\$48,801.89	\$2,437.09		\$30.00	\$46,334.80
9/9/2003	9/12/2003	B	Coeur Alene Mines Corp	CDE	\$3.60	2,000	\$7,200.00		\$200.00	\$4.25	(\$7,404.25)
9/10/2003	9/11/2003	B	Gabelli Gold Fund B	GLDBX	\$15.26	1,638.27	\$25,000		\$30.00		(\$25,030)
9/10/2003	9/15/2003	B	Scudder Gold Fund CL B	SGDBX	\$16.91	1,478.41	\$25,000		\$30.00		(\$25,030)
9/10/2003	9/15/2003	B	Harmony Gold ADR	HMV	\$15.18	1,000	\$15,180.00		\$360.72	\$4.25	(\$15,544.97)
9/22/2003	9/25/2003	B	Berna Gold Corp.	BGO	\$2.47	700.00	\$1,729.00		\$175.00	\$4.25	(\$1,908.25)
10/17/2003	10/20/2003	S	Gabelli Gold Fund B	GLDBX	\$15.56	1,638.27	\$25,491.48	\$1,250.00	\$30.00		\$24,211.48
10/24/2003	10/29/2003	B	Durban Roodeport ADR	DROOY	\$2.81	5,000	\$14,050		\$607.94	\$4.25	(\$14,662.19)
10/23/2003	10/28/2003	B	Berna Gold Corp.	BGO	\$3.35	2,300	\$7,705.00		\$335.52	\$4.25	(\$8,044.77)
11/5/2003	11/10/2003	S	Scudder Gold Fund CL B	SGDBX	\$20.94	1,478.41	\$30,958.01	\$1,000.00	\$30.00		\$29,928.01
11/4/2003	11/7/2003	B	Agnico Mines Ltd.	AEM	\$10.60	1,500	\$15,900.00		\$300.00	\$4.25	(\$16,204.25)
11/13/2003	11/18/2003	S	Harmony Gold ADR	HMV	\$15.13	300	\$4,539.00		\$30.00	\$4.47	\$4,504.53
11/10/2003	11/14/2003	B	Agnico Mines Ltd.	AEM	\$10.71	1,500	\$16,065.00		\$300.00	\$4.25	(\$16,369.25)
11/13/2003	11/18/2003	S	Harmony Gold ADR	HMV	\$15.12	400	\$6,048.00		\$40.00	\$0.29	\$6,007.71
11/17/2003	11/20/2003	B	Durban Roodeport ADR	DROOY	\$2.56	400	\$1,027.60		\$20.00	\$4.25	(\$1,051.85)
11/17/2003	11/20/2003	B	Durban Roodeport ADR	DROOY	\$2.57	4,600	\$11,822		\$230.00		(\$12,052.00)
11/17/2003	11/20/2003	S	StateSt. Fund Global	SSGPX	\$27.81	2,057.61	\$57,222.22	\$2,500.00	\$30.00		\$54,692.22

11/19/2003	11/18/2003	S	Bema Gold Corp.	BGO	\$3.48	3,000.00	\$10,440.00			\$154.74	\$10,285.26
11/20/2003	11/24/2003	B	Gold Fields Ltd.	GFI	\$13.48	1,500	\$20,220.00		\$600.00	\$4.25	(\$20,824.25)
11/21/2003	11/25/2003	B	Gold Fields Ltd.	GFI	\$13.49	1,500	\$20,235.00		\$450.00	\$4.25	(\$20,689.25)
11/22/2003	11/26/2003	B	Wheaton Minerals Ltd.	WHT	\$2.78	10,000	\$27,800.00		\$1,000.00	\$4.25	(\$28,804.25)
11/23/2003	12/2/2003	S	Durban Roodeport ADR	DROOY	\$2.74	10,000	\$27,400.00		\$500.00	\$5.54	\$26,894.46
11/24/2003	12/5/2003	S	Wheaton Minerals Ltd.	WHT	\$3.23	10,000	\$32,300.00		\$1,000.00	\$5.77	\$31,294.23
11/25/2003	12/5/2003	S	Agnico Mines Ltd.	AEM	\$12.04	1,100	\$13,244.00		\$165.00	\$4.88	\$13,074.12
11/26/2003	12/5/2003	S	Agnico Mines Ltd.	AEM	\$12.03	1,900	\$22,857.00		\$285.00	\$1.07	\$22,570.93
11/27/2003	12/12/2003	B	Durban Roodeport ADR	DROOY	\$2.59	20,000	\$51,800.00		\$1,000.00	\$4.25	(\$51,804.25)
11/28/2003	12/12/2003	B	Kimriss Gold Corp.	KGC	\$8.67	5,000	\$43,389.00		\$1,000.00	\$4.25	(\$44,393.25)
11/29/2003	12/29/2003	S	Durban Roodeport ADR	DROOY	\$2.75	20,000	\$55,090.00		\$600.00	\$6.83	\$55,083.17
11/30/2003	12/31/2003	B	Wheaton Minerals Ltd.	WHT	\$2.98	10,000	\$29,875.00		\$500.00	\$4.25	(\$29,879.25)
12/1/2004	1/22/2004	B	Miramir Mining Corp.	MNG	\$2.34	5,000	\$11,700.00		\$300.00	\$4.25	(\$12,004.25)
12/2/2004	1/23/2004	B	Yamana Gold	AUY	\$2.45	5,000	\$12,250.00		\$500.00	\$4.25	(\$12,754.25)
12/3/2004	2/18/2004	S	Wheaton Minerals Ltd.	WHT	\$2.89	10,000	\$28,900.00		\$200.00	\$5.61	\$28,694.39
12/4/2004	2/19/2004	S	Yamana Gold	AUY	\$2.55	2,300	\$5,865.00		\$161.00	\$0.28	\$5,703.72
12/5/2004	2/19/2004	B	Hecla Mining Co.	HL	\$7.96	5,000	\$39,800.00		\$350.00	\$4.25	(\$40,154.25)
12/6/2004	2/19/2004	S	Yamana Gold	AUY	\$2.69	100	\$269.00		\$7.00	\$4.27	\$257.73
12/7/2004	2/19/2004	S	Yamana Gold	AUY	\$2.60	600	\$1,560.00		\$42.00	\$0.08	\$1,517.92
12/8/2004	2/19/2004	S	Yamana Gold	AUY	\$2.65	2,000	\$5,300.00		\$140.00	\$0.25	\$5,159.75
12/9/2004	3/19/2004	S	Miramir Mining Corp.	MNG	\$1.77	5,000	\$8,850.00		\$50.00	\$4.60	\$8,795.40
12/10/2004	3/24/2004	S	Hecla Mining Co.	HL	\$8.05	3,000	\$24,150.00		\$100.00	\$5.20	\$24,044.80
12/11/2004	3/25/2004	B	Meridian Gold Inc.	MDG	\$11.88	2,000	\$23,760.00		\$220.00	\$4.25	(\$23,984.25)
12/12/2004	4/30/2004	B	Golden Star Res. Ltd.	GSS	\$5.43	2,000	\$10,860.00		\$300.00	\$4.25	(\$11,164.25)
12/13/2004	5/18/2004	S	Meridian Gold Inc.	MDG	\$10.97	2,000	\$21,940.00		\$60.00	\$4.77	\$21,875.23
12/14/2004	5/26/2004	B	Golden Star Res. Ltd.	GSS	\$5.03	1,000	\$5,030.00		\$120.00	\$4.25	(\$5,154.25)
12/15/2004	5/26/2004	B	Hecla Mining Co.	HL	\$6.01	1,000	\$6,010.00		\$120.00	\$4.25	(\$6,134.25)
12/16/2004	5/28/2004	B	Gold Fields Ltd.	GFI	\$11.37	1,000	\$11,370.00		\$200.00	\$4.25	(\$11,574.25)
12/17/2004	6/7/2004	S	Hecla Mining Co.	HL	\$6.14	1,500	\$9,210.00		\$75.00	\$4.47	\$9,130.53
12/18/2004	6/15/2004	B	Gold Fields Ltd.	GFI	\$10.44	700	\$7,308.00		\$150.00	\$4.25	(\$7,462.25)
12/19/2004	7/9/2004	S	Golden Star Res. Ltd.	GSS	\$4.90	300	\$1,470.00		\$15.00	\$4.29	\$1,450.71
12/20/2004	7/9/2004	S	Golden Star Res. Ltd.	GSS	\$4.89	1,200	\$5,868.00		\$60.00	\$0.16	\$5,807.84
12/21/2004	7/14/2004	S	Golden Star Res. Ltd.	GSS	\$4.99	1,500	\$7,485.00		\$75.00	\$4.43	\$7,405.57
12/22/2004	7/14/2004	S	Gold Fields Ltd.	GFI	\$10.37	700	\$7,259.00		\$35.00	\$4.42	\$7,219.58
12/23/2004	7/14/2004	S	Hecla Mining Co.	HL	\$6.13	1,500	\$9,195.00		\$75.00	\$4.47	\$9,115.53
12/24/2004	7/15/2004	B	Energy Partners Ltd.	EPL	\$15.76	1,000	\$15,760.00		\$332.40	\$4.25	(\$16,096.65)
12/25/2004	7/15/2004	B	KCS Energy	KCS	\$14.37	1,000	\$14,370.00		\$313.83	\$4.25	(\$14,688.08)

8/11/2004	8/16/2004	S	Kinross Gold Corp.	KGC	\$5.16	2,000	\$10,320.00	\$4.50	\$10,275.50
8/11/2004	8/16/2004	S	Kinross Gold Corp.	KGC	\$5.15	3,000	\$15,450.00	\$0.37	\$15,389.63
9/24/2004	9/29/2004	S	Energy partners Ltd.	EPL	\$16.13	1,000	\$16,135.00	\$4.64	\$16,030.36
9/24/2004	9/29/2004	B	Goldcorp Inc.	GG	\$13.14	2,000	\$26,280.00	\$4.25	(\$26,584.25)
9/27/2004	9/30/2004	S	KCS Energy	KCS	\$14.43	1,000	\$14,430.00	\$4.60	\$14,375.40
9/29/2004	10/4/2004	B	Harmony Gold ADR	HMY	\$13.17	2,000	\$26,340.00	\$4.25	(\$26,644.25)
9/30/2004	10/5/2004	S	Gold Fields Ltd.	GFI	\$13.52	4,000	\$54,092.00	\$5.53	\$53,375.82
10/8/2004	10/14/2004	B	Coeur Alene Mines Corp	CDE	\$4.68	3,000	\$14,040.00	\$4.25	(\$14,344.25)
10/12/2004	10/15/2004	B	Goldcorp Inc.	GG	\$13.46	1,000	\$13,460.00	\$4.25	(\$13,698.88)
10/12/2004	10/15/2005	B	Coeur Alene Mines Corp	CDE	\$4.48	2,000	\$8,960.00	\$4.25	(\$9,164.25)
10/21/2004	10/26/2004	S	Goldcorp Inc.	GG	\$14.00	3,000	\$42,000.00	\$5.24	\$41,694.76
10/25/2004	10/28/2004	B	Harmony Gold ADR	HMY	\$12.26	1,000	\$12,260.00	\$4.25	(\$12,486.40)
10/26/2004	10/29/2004	B	Stillwater Mining Co.	SWC	\$12.67	1,000	\$12,678.00	\$4.25	(\$12,941.10)
10/27/2004	11/1/2004	S	Coeur Alene Mines Corp	CDE	\$4.90	5,000	\$24,500.00	\$4.83	\$24,245.17
11/8/2004	11/12/2004	B	Golden Star Res. Ltd.	GSS	\$4.02	3,000	\$12,060.00	\$4.25	(\$12,364.25)
11/8/2004	11/12/2004	B	Western Gas Inc.	WGR	\$27.32	500	\$13,660.00	\$4.25	(\$13,952.90)
11/9/2004	11/15/2004	B	Randgold Ltd.	GOLD	\$12.10	1,000	\$12,100.00	\$4.25	(\$12,340.49)
11/9/2004	11/15/2004	B	Golden Star Res. Ltd.	GSS	\$4.25	2,000	\$8,500.00	\$4.25	(\$8,704.25)
11/9/2004	11/15/2004	B	Stillwater Mining Co.	SWC	\$11.54	1,000	\$11,540.00	\$4.25	(\$11,694.25)
11/23/2004	11/29/2004	S	Stillwater Mining Co.	SWC	\$11.56	1,000	\$11,565.00	\$4.53	\$11,510.47
11/23/2004	11/29/2004	S	Randgold Ltd.	GOLD	\$12.19	1,000	\$12,190.00	\$4.55	\$12,135.45
11/30/2004	12/3/2004	B	National Fuel	NFG	\$28.14	500	\$14,070.00	\$4.25	(\$14,295.30)
11/30/2004	12/3/2004	S	Golden Star Res. Ltd.	GSS	\$4.26	5,000	\$21,300.00	\$4.75	\$21,195.25
12/7/2004	12/10/2004	B	Harmony Gold ADR	HMY	\$9.75	3,000	\$29,250.00	\$4.25	(\$29,554.25)
12/7/2004	12/10/2004	B	Transcanado Copr.	TRP	\$23.85	500	\$11,928.00	\$4.25	(\$12,129.45)
12/7/2004	12/10/2004	S	Western Gas Inc.	WGR	\$28.67	500	\$14,335.00	\$4.59	\$14,280.41
12/21/2004	12/27/2004	B	Transcanado Copr.	TRP	\$24.57	500	\$12,286.00	\$4.25	(\$12,491.44)
12/22/2004	12/28/2004	S	National Fuel	NFG	\$28.69	500	\$14,345.00	\$4.59	\$14,265.41
12/27/2004	12/30/2004	S	Harmony Gold ADR	HMY	\$9.17	3,000	\$27,510.00	\$4.90	\$27,415.10
12/22/2004	12/28/2004	B	Transcanado Copr.	TRP	\$24.19	500	\$12,097.00	\$4.25	(\$12,300.33)
12/28/2004	12/31/2004	B	PetroKazakhstan	PKZ	\$33.60	500	\$16,800.00	\$4.25	(\$17,055.71)
1/4/2005	1/7/2005	S	PetroKazakhstan	PKZ	\$35.30	500	\$17,650.00	\$4.67	\$17,545.33
1/6/2005	1/11/2005	B	Goldcorp Inc.	GG	\$13.58	1,000	\$13,580.00	\$4.25	(\$13,734.25)
1/7/2005	1/12/2005	S	Harmony Gold ADR	HMY	\$9.44	1,000	\$9,445.00	\$4.58	\$9,390.42
1/7/2005	1/12/2005	B	Top Tankers	TOPT	\$15.05	500	\$7,525.00	\$4.25	(\$7,726.80)
1/10/2005	1/13/2005	S	Transcanado Copr.	TRP	\$24.73	1,500	\$37,099.95	\$5.48	\$36,944.47
1/11/2005	1/14/2005	B	Knightsbridge Tank	VLCCF	\$30.00	1,000	\$30,000.00	\$4.25	(\$30,535.55)

1/11/2005	1/14/2005	S	Top Tankers	TOPT	\$14.53	500	\$7,267.50		\$193.72	\$4.49	\$7,069.29
1/11/2005	1/14/2005	S	Goldcorp Inc.	GG	\$13.89	1,000	\$13,890.00		\$341.57	\$4.71	\$13,543.72
1/11/2005	1/14/2005	S	Harmony Gold ADR	HMY	\$9.31	2,000	\$18,620.00		\$477.81	\$4.89	\$18,137.30
1/11/2005	1/14/2005	S	Stillwater Mining Co.	SWC	\$10.46	1,000	\$10,460.00		\$290.63	\$4.61	\$10,164.76
1/19/2005	1/24/2005	S	Knightbridge Tank	VLCCF	\$32.00	1,000	\$32,000.00		\$544.50	\$5.32	\$31,450.18