

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Mark Harper ("Harper")
Registered Representative
CRD # 4148035

DISCIPLINARY PROCEEDING
No. 2007011333401

Respondents.

COMPLAINT

The Department of Enforcement alleges:

RESPONDENTS AND JURISDICTION

1. [REDACTED] has been a registered broker-dealer with FINRA since 1983. Based on [REDACTED] current registration, it is subject to FINRA's jurisdiction, pursuant to Article IV of the Association's By-Laws.

2. Mark Harper became registered with FINRA in 2000. He was a registered representative with [REDACTED] from 2005 until his registration was terminated on or about June 2, 2009. He is not currently registered with a FINRA member. FINRA has

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jurisdiction to file this Complaint pursuant to Article V Section 4 of its By-Laws which provides for a two-year period of retained jurisdiction that commenced prior to the termination of registration.

3. [REDACTED] has been registered with FINRA since 1957. He has been a registered principal with [REDACTED] since 1987 and is currently employed in that capacity. He is also the firm's President, Chief Compliance Officer and majority owner. Based upon [REDACTED] current registration, he is subject to FINRA's jurisdiction, pursuant to Article V Section 4 of the Association's By-Laws.

SUMMARY

4. In 2006, Mark Harper, a registered representative of [REDACTED] effected unsuitable mutual fund "switches" in at least nine accounts belonging to eight members of the public who were customers of [REDACTED] some of whom were either elderly or in retirement. Harper effected 26 to 84 mutual fund trades per account, for a total of 441 mutual fund A-share transactions. In many instances, Harper effected the purchase, sale and repurchase of the same fund. All told, the mutual fund transactions generated mutual fund charges and fees in excess of \$178,000.

5. Most trades that Harper effected in these nine accounts were done on a discretionary basis, although Harper did not have written approval from his customers or his firm to utilize discretion.

6. [REDACTED] acting through Harper's direct supervisor, [REDACTED] the firm's Chief Compliance Officer, President and 95% owner, failed to reasonably supervise Harper and failed to implement adequate procedures and systems to prevent unsuitable mutual fund switching.

7. In addition, [REDACTED] acting through [REDACTED] failed to report to FINRA a settlement with one of Harper's customers, and Harper did not timely report the settlement on his Form U4.

**FIRST CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMERS SR AND BR)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.

9. During the relevant time period, NASD Conduct Rule 2310 required that, before making a recommendation to a customer, a representative "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." IM-2310-2(3) further developed this rule by stating that mutual funds are not generally proper trading vehicles, and stating that trading mutual funds, particularly on a short-term basis, "on its face may raise the question of Rule violation."

10. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 72 purchase or sale transactions in the joint account of 66 year-old SR and 68 year-old BR, members of the public who were [REDACTED] customers, without having reasonable grounds for believing that such transactions were suitable for those customers, in view of the nature of the recommended transactions, and in light of the customers' financial situation, investment objectives, circumstances and needs.

11. The mutual fund transactions that Harper executed in the joint account of SR and BR, a married couple, during 2006, were held in SR and BR's account for an average of just 76.88

days. The trading had an annualized turnover ratio of 3.28 and a cost-equity factor of approximately 13.61%, and included the purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

FEDERATED KAUFMANN FD CL A (KAUAX)

1/17/2006	Buy	8319.468	\$6.01	KAUAX	(\$50,000.00) ¹
4/24/2006	Sell	11419.25	\$6.13	KAUAX	\$70,000.00
5/11/2006	Sell	3656.975	\$6.17	KAUAX	\$22,563.54
6/12/2006	Buy	7246.377	\$5.52	KAUAX	(\$40,000.00)
7/13/2006	Sell	1818.182	\$5.50	KAUAX	\$10,000.00
8/17/2006	Sell	5031.133	\$5.61	KAUAX	\$28,224.66

12. As a result of all of the mutual fund switch transactions effected by Harper, SR and BR were assessed mutual fund charges and fees during 2006 that totaled \$23,372.

13. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**SECOND CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER SR)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

14. The Department realleges and incorporates by reference paragraphs 1 through 13 above.

15. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 84 purchase or sale transactions in the account of 66 year-old SR², a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for SR in

¹ As of January 1, 2006, the account had previously acquired holdings of 6,756.757 shares of Federated Kaufmann.

² This is the second account of SR whose other account was held jointly with BR, as described in the First Cause.

view of the nature of the recommended transactions, and in light of SR's financial situation, investment objectives, circumstances and needs.

16. The mutual fund transactions that Harper executed in SR's account during 2006, were held in SR's account for an average of just 47.79 days. The trading had an annualized turnover ratio of 3.38 and a cost-equity factor of approximately 12.89%, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

CALAMOS INVT TR NEW GROWTH & INCOME FD (CVTRX)

8/7/2006	Buy	1549.907	\$32.26	CVTRX	(\$50,000.00)
9/21/2006	Sell	1549.907	\$31.52	CVTRX	\$48,853.07
10/30/2006	Buy	640.839	\$34.33	CVTRX	(\$22,000.00)
11/7/2006	Sell	640.839	\$32.75	CVTRX	\$22,033.64

17. As a result of all of the mutual fund switch transactions effected by Harper, SR was assessed mutual fund charges and fees in 2006 that totaled \$23,135.

18. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**THIRD CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER MA)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

19. The Department realleges and incorporates by reference paragraphs 1 through 18 above.

20. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 63 purchase or sale transactions in the account of 83 year-old MA, a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for MA, in

view of the nature of the recommended transactions, and in light of MA's financial situation, investment objectives, circumstances and needs.

21. The mutual fund transactions that Harper executed in MA's account during 2006 were held in MA's account for an average of just 58.21 days. The trading had an annualized turnover ratio of 3.94 and a cost-equity factor of approximately 17.92%, and included purchases, sales, and re-purchases of A-shares in the same mutual fund. For instance, Harper effected the following purchases and sales within the same mutual fund:

GOLDMAN SACHS GRWTH & INCOME CL A (GOIAX)

1/23/06	Sell	(54.3040)	\$12.43	GOIAX	\$675.00
2/21/06	Sell	(53.6140)	\$12.59	GOIAX	\$675.00
3/21/06	Sell	(52.8580)	\$12.77	GOIAX	\$675.00
4/18/06	Sell	(3390.8580)	\$12.86	GOIAX	\$43,606.43
8/15/06	Buy	2606.1060	\$13.43	GOIAX	(\$35,000.00)
10/10/06	Sell	(2615.4000)	\$13.07	GOIAX	\$34,183.91

22. As a result of all of the mutual fund switch transactions effected by Harper, MA was assessed mutual fund charges and fees in 2006 that totaled \$27,360.

23. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**FOURTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER EY)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

24. The Department realleges and incorporates by reference paragraphs 1 through 23 above.

25. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 49 purchase or sale transactions in the account of EY, a member of the public who was a [REDACTED] customer, without

having reasonable grounds for believing that such transactions were suitable for EY, in view of the nature of the recommended transactions, and in light of EY's financial situation, investment objectives, circumstances and needs.

26. The mutual fund transactions that Harper executed in EY's account during 2006 were held in EY's account for an average of just 33.32 days. The trading had an annualized turnover ratio of 8.43 and a cost-equity factor of approximately 38.95%, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

GROWTH FUND OF AMERICA CL A (AGTHX)

2/7/2006	Buy	1052.315	\$33.26	AGTHX	(\$35,000.00)
3/6/2006	Sell	473.634	\$31.67	AGTHX	\$15,000.00
5/23/2006	Buy	480.615	\$31.21	AGTHX	(\$15,000.00)
5/23/2006	Buy	152.207	\$32.85	AGTHX	(\$5,000.00)
6/12/2006	Sell	1187.509	\$30.33	AGTHX	\$36,017.15
8/17/2006	Sell	23.994	\$31.79	AGTHX	\$762.77

27. As a result of all of the mutual fund switch transactions effected by Harper, EY was assessed mutual fund charges and fees in 2006 that totaled \$26,935.

28. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**FIFTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER MJ)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

29. The Department realleges and incorporates by reference paragraphs 1 through 28 above.

30. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included a total of approximately 34 purchase or sale

transactions in one of the accounts of MJ, a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for MJ, in view of the nature of the recommended transactions, and in light of MJ's financial situation, investment objectives, circumstances and needs.

31. The mutual fund transactions that Harper executed in MJ's account during 2006, were held in MJ's account for an average of just 99.6 days. The trading had an annualized turnover ratio of 3.38 and a cost-equity factor of approximately 14.81%.

32. As a result of the mutual fund switch transactions described above, MJ was assessed mutual fund charges and fees in MJ's account #1 in 2006 that totaled \$7,567.

33. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**SIXTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER MJ)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

34. The Department realleges and incorporates by reference paragraphs 1 through 33 above.

35. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included a total of approximately 30 purchase or sale transactions in the second (IRA) account of MJ, a member of the public who was a [REDACTED] [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for the customer, in view of the nature of the recommended transactions, and in light of the customer's financial situations, investment objectives, circumstances and needs.

36. The mutual fund transactions that Harper executed in MJ's second (IRA) account during 2006 were held in MJ's second (IRA) account for an average of just 56.09 days. The trading had

an annualized turnover ratio of 2.96 and a cost-equity factor of approximately 15.31%, and included the purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

HARTFORD CAPITAL APPRECIATION CL A (ITHAX)

4/11/2006	Buy	1099.45	\$40.02	ITHAX	(\$44,000.00)
5/23/2006	Sell	677.69	\$36.89	ITHAX	\$25,000.00
6/21/2006	Sell	421.76	\$36.27	ITHAX	\$15,297.24
7/10/2006	Buy	681.013	\$36.71	ITHAX	(\$25,000.00)
8/17/2006	Sell	643.501	\$37.49	ITHAX	\$24,124.85

37. As a result of all of the mutual fund switch transactions effected by Harper, MJ's second (IRA) account was assessed mutual fund charges in 2006 that totaled \$14,297.

38. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**SEVENTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER GM)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

39. The Department realleges and incorporates by reference paragraphs 1 through 38 above.

40. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included a total of approximately 28 purchase or sale transactions in the account of GM, a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for the customer, in view of the nature of the recommended transactions, and in light of the customer's financial situations, investment objectives, circumstances and needs.

41. The mutual fund transactions that Harper executed in GM's account during 2006, were held in GM's account for an average of just 56.12 days. The trading had an annualized turnover ratio of 6.42 and a cost-equity factor of approximately 33.14%, and included the purchases, sales, and re-purchases of A-shares in the same mutual fund. For instance, Harper effected the following purchase, sale and repurchase of the same mutual fund:

AIM EQUITY FUNDS CL A CONSTELLATION FD (CSTGX)

6/16/2006	Buy	624.220	\$24.03	CSTGX	(\$15,000.00)
6/26/2006	Sell	624.220	\$24.09	CSTGX	\$15,037.46
10/31/2006	Buy	425.139	\$27.05	CSTGX	(\$11,500.00)

42. As a result of all of the mutual fund switch transactions effected by Harper, GM was assessed mutual fund charges and fees in 2006 that totaled \$14,088.

43. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**EIGHTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER KP)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

44. The Department realleges and incorporates by reference paragraphs 1 through 43 above.

45. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included a total of approximately 55 purchase or sale transactions in the account of KP, a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for the customer, in view of the nature of the recommended transactions, and in light of the customer's financial situations, investment objectives, circumstances and needs.

46. The mutual fund transactions that Harper executed in KP's account during 2006, were held in KP's account for an average of just 54.51 days. The trading had an annualized turnover ratio of 2.95 and a cost-equity factor of approximately 9.57%, and included the purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

HARTFORD CAPITAL APPRECIATION CL A (ITHAX)

4/5/2006	Buy	1067.747	\$40.74	ITHAX	(\$43,500.00)
5/18/2006	Buy	664.792	\$39.11	ITHAX	(\$26,000.00)
6/7/2006	Sell	821.918	\$36.50	ITHAX	\$30,000.00
6/12/2006	Buy	282.008	\$37.52	ITHAX	(\$10,000.00)
7/10/2006	Sell	1177.146	\$36.71	ITHAX	\$43,213.03

47. As a result of all of the mutual fund switch transactions effected by Harper, KP was assessed mutual fund charges and fees in 2006 that totaled \$27,959.

48. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**NINTH CAUSE OF ACTION
UNSUITABLE MUTUAL FUND SWITCHING
(CUSTOMER JR)
(Violations of NASD Conduct Rules 2110, 2310 and IM-2310-2)**

49. The Department realleges and incorporates by reference paragraphs 1 through 48 above.

50. From approximately January 1, 2006 through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included a total of approximately 26 purchase or sale transactions in the account of JR, a member of the public who was a [REDACTED] customer, without having reasonable grounds for believing that such transactions were suitable for the customer, in view of the nature of the recommended transactions, and in light of the customer's financial situations, investment objectives, circumstances and needs.

51. The mutual fund transactions that Harper executed in JR's account during 2006, were the purchases, sales, and re-purchases of A-shares in the same mutual funds. The mutual funds were held in JR's account for an average of just 91.56 days. The trading had an annualized turnover ratio of 4.85 and a cost-equity factor of approximately 22.85%, included the purchases, sales, and re-purchases of A-shares in the same mutual funds. For instance, Harper effected the following purchases and sales within the same mutual fund:

VAN KAMPEN EQUITY AND INCOME CL A (ACEIX)

2/15/2006	Buy	847.304	9.35	ACEIX	(\$7,922.29)
5/23/2006	Sell	865.427	8.64	ACEIX	\$7,477.29
8/17/2006	Buy	533.618	9.37	ACEIX	(\$5,000.00)
9/21/2006	Sell	536.672	8.95	ACEIX	\$4,803.21

52. As a result of all of the mutual fund switch transactions effected by Harper, JR was assessed mutual fund charges and fees in 2006 that totaled \$13,737.

53. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

**TENTH CAUSE OF ACTION
NASD Conduct Rules 2110 and 2510 by Harper:
Exercise of Discretion Without Written Customer Authorization
or Approval of [REDACTED]**

54. The Department realleges and incorporates by reference paragraphs 1 through 53 above.

55. During the period of approximately January 2006 through December 2006, Harper placed approximately 441 orders to buy and sell the mutual fund positions in the accounts of the customers as described in paragraphs 1 through 53 in Causes One through Nine, without having obtained prior written authorization from the customers and prior written acceptance of the account as discretionary by his employer member firm.

56. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2510 by Harper

57. Based on this conduct, Harper violated NASD Conduct Rules 2110 and 2510.

ELEVENTH CAUSE OF ACTION

Article V Section 2 of NASD and FINRA By-Laws and NASD Conduct Rules 2110 and 3070, and FINRA Rule 2010 by Respondent Member [REDACTED] Acting Through its President [REDACTED] - Failure to Report A Settlement With Customer MA Within 10 Business Days After Completion of the Settlement.

58. The Department realleges and incorporates by reference paragraphs 1 through 57 above.

59. On or about May 31, 2007, [REDACTED] and Harper settled a claim by 83 year-old customer MA for \$23,041.02 in connection with Harper's mutual fund switching in MA's account, as described in the Third Cause of Action herein. [REDACTED] and Harper were parties to the settlement. Harper's settlement was required to be reported to FINRA within 10 business days. [REDACTED] acting through [REDACTED] failed to report the settlement. To date, the settlement has not been reported to FINRA.

60. Based on this conduct, [REDACTED] and [REDACTED] acted in contravention of Article V Section 2 of NASD and FINRA By-Laws and violated NASD Conduct Rules 3070 and 2110 through December 14, 2008, and FINRA Rule 2010 beginning December 15, 2008.

TWELFTH CAUSE OF ACTION

FINRA Membership and Registration Rule IM-1000-1 and Conduct Rule 2110 by Harper - Failure to Timely Amend Form U-4 to Report a Settlement of a Customer Complaint.

61. The Department realleges and incorporates by reference paragraphs 1 through 60 above.

62. On or about May 31, 2007, [REDACTED] and Harper settled a claim by 83 year-old customer MA for \$23,041.02 in connection with Harper's mutual fund switching in MA's account, as described in the Third Cause herein. [REDACTED] and Harper were parties to the settlement.

63. In connection with the settlement of the investment-related customer complaint described herein, Harper failed to timely amend his Uniform Application for Securities Industry Registration or Transfer, Form U4, to disclose the settlement. The amendment was required to be filed within 30 days from when Harper knew or should have known about the settlement, but instead was filed 310 days late, on April 4, 2008.

64. Based on the foregoing, Harper violated FINRA Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

THIRTEENTH CAUSE OF ACTION
NASD Conduct Rules 2110 and 3010
Failure to Supervise to Prevent the Violations Alleged in Cause One through Twelve
Above, by [REDACTED] Acting through [REDACTED]

65. The Department realleges and incorporates by reference paragraphs 1 through 64 above.

66. From at least January 1, 2006 through December 31, 2006, [REDACTED] was the President, Chief Compliance Officer and majority owner of [REDACTED]

67. [REDACTED] was responsible for supervision, including mutual fund trading activity during the relevant period; his responsibilities included supervising Harper's activities; reviewing the Purchase and Sale blotter; and reviewing the daily trading activity in customer accounts.

68. [REDACTED] acting through [REDACTED] failed to adequately and properly supervise Harper who engaged in mutual fund switching activities in the accounts of eight customers as described in the First through Twelfth Causes of this Complaint, in that, among other things:

- a) [REDACTED] failed to monitor and detect the mutual fund trading that Harper engaged in through his handling of nine accounts belonging to eight customers, four of whom are elderly; that included 441 mutual fund transactions during 2006;
- b) [REDACTED] failed to adequately review the trading in customer accounts to determine the appropriateness of the mutual fund transactions;
- c) [REDACTED] failed to contact the customers to determine whether they authorized the transactions in their accounts and understood the impact of the transactions in their accounts;
- d) [REDACTED] failed to obtain and review exception reports for mutual fund trading that were available from [REDACTED] clearing firm; and
- e) [REDACTED] failed to identify red flags and take appropriate corrective action to address the questionable mutual fund trading of A-shares in the accounts in question.

69. During [REDACTED] dereliction of his supervisory duties, Harper engaged in harmful mutual fund switching activities in those eight customers' accounts that generated in excess of \$178,000 in gross commissions, representing more than 50% of [REDACTED] mutual fund commission revenue for all registered representatives.

70. [REDACTED] acting through [REDACTED] failed to adequately supervise to ensure the timely reporting of the Respondents' settlement with 83 year-old MA as described in the Eleventh and Twelfth Causes, as required by NASD Conduct Rule 3070 and FINRA By-Law Article V Section 2.

71. The acts, practice and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 by [REDACTED] and [REDACTED]

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), including monetary sanctions, be imposed;
- B. 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
- C. 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

Date: June 24, 2009



Pamela Shu, Senior Regional Counsel
Mark A. Koerner, Associate Vice President and
Regional Chief Counsel
FINRA Department of Enforcement
55 West Monroe, 27th Floor
Chicago, IL 60603
Phone: (312) 899-4353; Fax: (312) 899-4600
e-mail: pamela.shu@finra.org