

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK HARPER
(CRD No. 4148035),

Respondent.

Disciplinary Proceeding
No. 2007011333401

Hearing Officer – LBB

DEFAULT DECISION

March 2, 2010

Respondent Mark Harper is barred from associating with any FINRA member firm for unsuitable mutual fund switching, in violation of NASD Conduct Rules 2310 and 2110, and IM-2310-2. Respondent is also barred for exercising discretion in customers' accounts without written authorization from the customers or acceptance by his firm, in violation of NASD Conduct Rules 2510 and 2110. In light of the bars, no additional sanction is imposed for late filing of an update to Respondent's Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances

Pamela Shu, Senior Regional Counsel, Chicago, Illinois, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on June 24, 2009, asserting eleven causes of action against Respondent Mark Harper ("Respondent");¹ nine for recommending and engaging in unsuitable mutual fund switching; one for executing discretionary transactions in accounts of eight public customers without their prior

¹ Richard Coskey and Bentley-Lawrence Securities, Inc., originally named as Respondents in this matter, entered into a settlement with FINRA and are no longer parties to this proceeding.

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written approval or acceptance by Respondent's firm; and one for failing to amend his Form U4 to report a settlement with a customer within the time required by NASD's By-Laws.²

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On September 29, 2009, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.³

I. Respondent

From October 20, 2005, to June 2, 2009, Harper was employed by Bentley-Lawrence Securities, Inc., a member of FINRA. He was registered with FINRA through Bentley-Lawrence Securities in November 2005. He is not currently registered or associated with any FINRA member firm. Complaint ¶ 2; Shu Decl. ¶ 5; CX-1.

Pursuant to Article V, Section 4 of FINRA's By-Laws, Respondent was subject to FINRA's jurisdiction at the time the Complaint was filed, and remains subject to FINRA's jurisdiction, because the Complaint was filed within two years after the termination of his registration with a member firm, and the Complaint charges him with violations that occurred while he was registered with a member firm.

² As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD's rules and certain NYSE rules, but it is in the process of establishing a consolidated FINRA rulebook. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD and/or NYSE rules, and in some cases the prior rules were re-numbered and/or revised. See Regulatory Notice No. 08-57, 2008 FINRA LEXIS 50 (Oct. 2008). This decision refers to and relies on the NASD rules that were in effect at the time of Respondent's alleged misconduct as the basis for the charges against him.

³ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion. References to the Declaration Supporting a Motion for the Entry of a Default Decision, signed by Department of Enforcement attorney Pamela Shu, are cited as "Shu Decl. ¶ ____." The exhibits attached to the Declaration are cited as "CX- ____."

II. Respondent's Default

On or about June 24, 2009, Enforcement served Harper with the Complaint and Notice of Complaint by first-class and certified mail, return receipt requested, at his last-known residential address, as reflected in the Central Registration Depository ("CRD"). The first-class mailing was not returned to Enforcement. The certified mailing was returned to Enforcement, stamped "Return to Sender, Unclaimed, Unable to Forward." Shu Decl. ¶ 6; CX-2; CX-3.

On July 27, 2009, Enforcement served Harper with a copy of the Complaint and Second Notice of Complaint at his CRD address, by first-class and certified mail. The first-class mailing was not returned to Enforcement. The certified mailing return receipt was returned to Enforcement, signed by "M_ (illegible) Harper." Shu Decl. ¶ 7; CX-4; CX-5. Enforcement was unable to find any address for Respondent other than his CRD address. Shu Decl. ¶ 9.

Harper has not answered or otherwise responded to the Complaint. By failing to answer or otherwise respond, he defaulted.

III. Harper Violated NASD Conduct Rules 2310 and 2110, and IM-2310-2, by Recommending and Executing Unsuitable Mutual Fund Switches in Customer Accounts

NASD Conduct Rule 2310 requires 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." In IM-2310-2, the Board of Governors made it clear that mutual fund shares "normally ... are not proper trading vehicles" and that trading in mutual fund shares "on its face may raise the question of Rule violation."

A pattern of mutual fund switching is a presumptive violation of NASD Rules.⁴ “A pattern of switches from one fund to another by several customers of a registered representative, where there is no indication of a change in the investment objectives of the customers and where new sales loads are incurred, is not reconcilable with the concept of suitability.’ Where such a pattern is established, it is incumbent upon the registered representative that recommended such switches to demonstrate the unusual circumstances which justified what is a clear departure from the manner in which mutual fund investments are normally made.”⁵

Harper executed unsuitable mutual fund switches in nine accounts belonging to eight customers of his firm. Respondent executed a total of 441 mutual fund A-share transactions in these nine accounts, often with the purchase, sale, and repurchase of the same fund in an account. He also switched customers’ investments between mutual funds that had the same objectives. The customers were unsophisticated investors whose investment experience was limited to stocks and bonds; their objectives were income, growth, and total return; and their investment objectives had not changed. The mutual fund transactions that Harper executed generated charges and fees in excess of \$178,000.⁶ By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.⁷

⁴ *Dep’t of Enforcement v. Respondent*, No. C07010037, 2003 NASD Discip. LEXIS 16, at *22 – *23 (N.A.C. May 13, 2003).

⁵ *Dep’t of Enforcement v. Epstein*, No. C9B040098, 2007 FINRA Discip. LEXIS 18, at *67 (N.A.C. Dec. 20, 2007), *aff’d*, 2009 SEC LEXIS 217 (Jan. 30, 2009), *appeal docketed*, No. 09-1550 (3d Cir. Feb. 24, 2009) (citations omitted).

⁶ Enforcement characterizes the dollar amount both as “charges and fees” and as “commissions.” Shu Decl. ¶ 10, page 12 ¶ 13(i). Whether the amount represents solely commissions, or also includes other fees and charges, the amount is substantial.

⁷ NASD Conduct Rule 2110 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. NASD General Provisions Rule 115 extends the applicability of NASD rules governing members to their associated persons. A violation of an NASD rule or regulation also constitutes a violation of Conduct Rule 2110. *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 – *23 (July 20, 1999).

A. First Cause of Action: Unsuitable Mutual Fund Switches in Joint Account of Customers SR and BR

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, a married couple, without having reasonable grounds to believe that such transactions were suitable for those customers. The mutual fund transactions that Harper executed in the joint account of SR and BR resulted in an average holding period of 76.88 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed during 2006, SR and BR were assessed charges and fees that totaled \$23,372. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

B. Second Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer SR

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 SR's account⁸ without having reasonable grounds to believe that such transactions were suitable for SR. The mutual fund transactions that Harper executed in the account resulted in an average holding period of 47.79 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, SR was assessed charges and fees that totaled \$23,135. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

⁸ This is a second account for SR, whose other account was held jointly with BR, as described in the First Cause of Action.

C. Third Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer MA

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 MA, an 83-year-old widow and retired factory worker, without having reasonable grounds to believe that such transactions were suitable for MA. The mutual fund transactions that Harper executed in MA's account resulted in an average holding period of 58.21 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, MA was assessed charges and fees that totaled \$27,360. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

D. Fourth Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer EY

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 without having reasonable grounds to believe that such transactions were suitable for EY. The mutual fund transactions that Harper executed resulted in an average holding period of 33.32 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, EY was assessed charges and fees that totaled \$26,935. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

E. Fifth Cause of Action: Unsuitable Mutual Fund Switches in Investment Account of Customer MJ

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

an investment account of MJ, without having reasonable grounds to believe that such transactions were suitable for MJ. The mutual fund transactions that Harper executed in MJ's account resulted in an average holding period of 99.6 days. As a result of the mutual fund switch transactions that Harper executed, MJ was assessed charges and fees that totaled \$7,567. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

F. Sixth Cause of Action: Unsuitable Mutual Fund Switches in Retirement Account of Customer MJ

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 a second account of MJ, an IRA account, without having reasonable grounds to believe that such transactions were suitable for MJ. The mutual fund transactions that Harper executed in MJ's IRA account resulted in an average holding period of 56.09 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, MJ's IRA account was assessed charges that totaled \$14,297. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

G. Seventh Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer GM

From approximately January 1, 2006, through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 28 purchase or sale transactions in the account of GM, without having reasonable grounds to believe that such transactions were suitable for the customer. The mutual fund transactions that Harper executed in GM's account during 2006 resulted in an average holding period of 56.12 days, and included purchases, sales,

and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, GM was assessed charges and fees that totaled \$14,088. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

H. Eighth Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer KP

From approximately January 1, 2006, through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 55 purchase or sale transactions in the account of KP, without having reasonable grounds to believe that such transactions were suitable for the customer. The mutual fund transactions that Harper executed in KP's account during 2006 resulted in an average holding period of 54.51 days, and included purchases, sales, and re-purchases of A-shares in the same mutual funds. As a result of the mutual fund switch transactions that Harper executed, KP was assessed charges and fees that totaled \$27,959. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

I. Ninth Cause of Action: Unsuitable Mutual Fund Switches in Account of Customer JR

From approximately January 1, 2006, through December 31, 2006, Harper engaged in a pattern of mutual fund switching that included approximately 26 purchase or sale transactions in the account of JR, without having reasonable grounds to believe that such transactions were suitable for the customer. The mutual fund transactions that Harper executed in JR's account during 2006 included 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 91.56 days. As a result of the mutual fund switch transactions that Harper executed, JR was assessed charges and fees that

totaled \$13,737. By repeatedly executing mutual fund switches, Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2.

IV. Respondent Violated NASD Conduct Rules 2510 and 2110 by Exercising Discretion in Customers' Accounts Without Written Customer Authorization or Acceptance by Respondent's Firm

NASD Conduct Rule 2510(b) provides:

No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

From approximately January 2006 through December 2006, Harper placed approximately 441 orders to buy and sell shares of mutual funds in the accounts of the customers as described in Causes of Action One through Nine, without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his employer member firm. Respondent executed transactions in the customers' accounts without first contacting the customers to discuss the transactions, or to obtain the customers' prior approval of the transactions. Bentley-Lawrence Securities did not permit discretionary trading in customer accounts and did not accept accounts for trading on a discretionary basis. By exercising discretion in customers' accounts without prior written authorization from the customers, and without acceptance by his firm, Respondent violated NASD Conduct Rules 2510 and 2110.

V. Respondent Violated NASD Conduct Rule 2110 and IM-1000-1 by Failing to Amend His Form U4 to Report a Settlement of a Customer Complaint

At the time of Respondent's violation, NASD's By-Laws required that persons who applied for registration with FINRA provide "such ... reasonable information with respect to the

applicant as [FINRA] may require.”⁹ Applicants were required to complete a Form U4 disclosing certain information, and to keep their Forms U4 current. Amendments were required to be filed not more than 30 days after a member learns of facts or circumstances giving rise to the amendment.¹⁰ FINRA uses the Form U4 “to monitor and determine the fitness of securities professionals.”¹¹ Failure to correct a Form U4 that is inaccurate or incomplete so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade.¹²

At the time of Respondent’s violation, Question 14I(2) of Form U4 required registered persons to disclose a settlement for more than \$10,000 of an investment-related, consumer-initiated complaint that alleged that the registered person was involved in one or more sales practice violations. On or about May 31, 2007, Bentley-Lawrence, Inc., Coskey, and Harper settled a claim by customer MA for \$23,041.02 in connection with Harper’s mutual fund switching in MA’s account. Respondent filed an amendment to his Form U4 to disclose the settlement on April 4, 2008, which was 310 days after the time for filing established by the By-Laws.

By failing to file the amendment to his Form U4 within 30 days after he knew or should have known of the settlement of consumer-initiated, investment-related arbitration alleging sales practices violations that was settled for \$10,000 or more, Respondent violated NASD Conduct Rule 2110 and IM-1000-1.

⁹ Article V, Section 2.

¹⁰ Article V, Section 2(c).

¹¹ *Dep’t of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *33 (N.A.C. Feb. 12, 2007), citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996).

¹² See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

VI. Sanctions

A. Sanctions for Unsuitable Mutual Fund Switches

For unsuitable recommendations, the Sanction Guidelines recommend a fine of \$2,500 to \$75,000, and a suspension for a period of 10 business days to one year. In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar. *FINRA Sanction Guidelines* at 99 (2007).

There are several aggravating factors that require a finding that Respondent's conduct was egregious. Respondent committed a large number of violations. He caused substantial financial injury to his customers, and received commissions in connection with his misconduct. All of the injured customers were unsophisticated. There are no mitigating factors. In light of the egregious nature of the violations, a bar is the appropriate sanction.

Because Respondent's former firm has compensated the customers for the losses caused by his unsuitable mutual fund switches, restitution is not ordered.

B. Sanctions for Exercising Discretion Without Customer Authorization or Firm Acceptance

For exercising discretion without a customer's written authorization, the Sanction Guidelines recommend a fine of \$2,500 to \$10,000. The Guidelines recommend consideration of a suspension in any or all capacities for 10 to 30 business days in egregious cases. *Sanction Guidelines* at 90.

Enforcement recommends a bar, which is an appropriate sanction given the egregious nature of Respondent's discretionary trading. There are several aggravating factors. Respondent's discretionary trading lasted for approximately a year; the trading caused substantial injury to customers; the customers were unsophisticated investors; at least one of the

customers was elderly; and Respondent executed the trades without first contacting the customers.

C. Sanctions for Failure to Amend Form U4

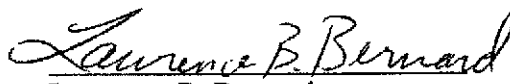
For late filing of Form U4, the Sanction Guidelines recommend a fine of \$2,500 to \$25,000. *Sanction Guidelines* at 73. Enforcement has recommended a fine of \$2,500. Enforcement's recommendation is reasonable. In light of the bar, however, no additional sanction is imposed.

VII. Conclusion

Respondent Mark Harper is barred from associating with any FINRA member firm for unsuitable mutual fund switching, in violation of NASD Conduct Rules 2310 and 2110, and IM-2310-2. Respondent is also barred for exercising discretion in customers' accounts without written authorization from the customers or acceptance by his firm, in violation of NASD Conduct Rules 2510 and 2110. In light of the bars, no additional sanction is imposed for late filing of an update to Respondent's Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Mark F. Harper (*via overnight courier and first-class mail*)
Pamela Shu, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

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

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 [REDACTED] 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 Bentley-Lawrence**

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]

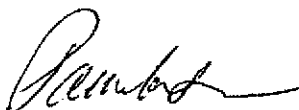
RELIEF REQUESTED

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



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