

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

[REDACTED]

[REDACTED]

and

NEFTALI MERCEDES
(CRD No. 3201827),

Respondents.

Disciplinary Proceeding
No. 2008011743303

Hearing Officer – MAD

DEFAULT DECISION

November 16, 2012

For willfully violating Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, NASD Conduct Rules 2120 and 2110, and FINRA Conduct Rules 2020 and 2010, by making material misrepresentations and omissions in the sale of securities, as described in the First Cause of Action, Respondent Mercedes is barred from associating with any member firm. Respondent Mercedes is also ordered to pay restitution, plus interest, to the affected customers. The Second Cause of Action, pled in the alternative, alleging negligent misrepresentations and omissions in connection with the sale of securities, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, is dismissed.

Appearances

Frank Mazzairelli, Senior Counsel, Robin W. Sardegna, Senior Litigation Counsel, and Gary Lisker, Senior Counsel, Rockville, Maryland, for the Department of Enforcement.

No appearance by or for Respondent Neftali Mercedes.

DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

The Department of Enforcement filed the Complaint in this disciplinary proceeding asserting two causes of action against Respondent Neftali Mercedes in connection with his sale of securities: (i) intentional misrepresentations and omissions, and (ii) as an alternative cause of action, negligent misrepresentations and omissions.¹ The First Cause of Action charges that Mercedes violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 10b-5, NASD Conduct Rule 2120 and FINRA Conduct Rule 2020,² which prohibit fraudulent and deceptive practices in connection with the offer, purchase, or sale of a security.³ Specifically, the Complaint alleges that, between August 2008 and April 2009, while associated with [REDACTED] Mercedes made false and misleading statements and omissions to prospective investors in connection with the sale of investments, in the form of notes, issued by Six Diamond Resorts, International (“SDRI”). The alleged misstatements and omissions related to: SDRI’s business operations, the status of its construction projects, and its financial condition. The Second Cause of Action, pled in the alternative, charges that Mercedes violated NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, by making negligent misrepresentations and omissions in connection with the sale of the SDRI private placements.

¹ Enforcement filed the Complaint on May 31, 2012. The Complaint also named [REDACTED] and [REDACTED] as respondents. A hearing will be held on the charges against Respondents [REDACTED] and [REDACTED] on April 15-19, 2013.

² Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules.

³ The Complaint also charges that, by violating NASD Conduct Rule 2120 and FINRA Conduct Rule 2020, Mercedes violated NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.

Enforcement properly served Mercedes with a copy of the Complaint, Notice of Complaint, and Second Notice of Complaint. Enforcement served Mercedes with the Complaint and Notice of Complaint on May 31, 2012, by certified mail sent to Mercedes' residential address recorded in the Central Registration Depository ("CRD").⁴ Mercedes did not file an Answer within the time specified in the Notice of Complaint. Enforcement then served Mercedes with a copy of the Complaint and Second Notice of Complaint on June 29, 2012, by first-class and certified mail sent to his CRD address. Mercedes failed to file an Answer to the Complaint. Mercedes also failed to appear for the Initial Pre-Hearing Conference on July 17, 2012.⁵

On August 17, 2012, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion"). The motion is supported by the Declaration of Frank Mazzealli and five exhibits.

For the reasons discussed below, the Hearing Officer finds that Mercedes violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, NASD Conduct Rules 2120 and 2110, and FINRA Conduct Rules 2020 and 2010.

II. FINDINGS OF FACT

The following findings of fact are based on the allegations in the attached Complaint and the declaration and exhibits filed with Enforcement's Default Motion.⁶

⁴ Enforcement also mailed the Complaint and Notices to Mercedes at another address that it located through an internet search.

⁵ On July 2, 2012, the Office of Hearing Officers sent Mercedes notice of the Initial Pre-Hearing Conference by first-class mail to his CRD address.

⁶ Counsel's declaration is cited herein as "Decl. ¶ ____." The exhibits are referenced as "CX- ____." At the direction of the Hearing Officer, Enforcement filed a supplemental declaration on September 21, 2012, providing evidentiary support for the allegation in the Complaint that the transactions referenced in the Complaint were effected through the use of instrumentalities of interstate commerce. The supplemental declaration is cited as "Supp. Decl. ¶ ____." The factual allegations in the Complaint are deemed admitted due to Mercedes' default pursuant to FINRA Code of Procedure Rule 9215(f).

A. Neftali Mercedes

Mercedes entered the securities industry in December 1998 and thereafter worked at several firms before he joined ██████ in July 2007. Mercedes was associated with ██████ from July 2007 until June 15, 2009, and registered with FINRA as a General Securities Representative and General Securities Principal. From June 15, 2009, until June 1, 2010, he was registered with FINRA through his association with another FINRA member firm. Mercedes is no longer associated with a FINRA member firm.⁷

B. SDRI's Private Placement Offerings

SDRI is a Cayman Islands corporation formed in March 2006.⁸ SDRI's business plan was to develop real estate for tourism and retirement destinations in Panama.⁹ In furtherance of its business plan, SDRI generated over \$9.9 million through a private placement of securities in April 2007. However, by August 2008, SDRI had not begun any construction projects and was seeking additional financing.¹⁰

In an attempt to raise additional capital for SDRI, between August 2008 and April 2009, ██████ participated in private placements of "bridge loan" investments in the form of notes.¹¹

From August through October 2008, ██████ offered investors the opportunity to invest in SDRI by purchasing notes evidencing indebtedness incurred in connection with a 2008 bridge loan (the "First Bridge Loan"). The notes were to be repaid in April 2009 with 8% interest.¹² Approximately fifty ██████ customers invested over \$2.2 million.¹³

⁷ CX-1.

⁸ Compl. ¶ 9.

⁹ *Id.* ¶ 12.

¹⁰ *Id.*

¹¹ *Id.* ¶¶ 13, 15, 16.

¹² *Id.* ¶ 13.

¹³ *Id.*

As of January 2009, SDRI had not broken ground on any construction projects but was again seeking additional financing.¹⁴ That month, SDRI issued additional notes to three more [REDACTED] customers in connection with another bridge loan (the “Second Bridge Loan”), raising approximately \$200,000 for SDRI.¹⁵ The rights of the purchasers of these notes, which were also payable in April 2009 at 8% interest, were subordinate to the rights of the First Bridge Loan note holders.¹⁶

Beginning in February 2009, [REDACTED] offered additional notes in connection with another bridge loan (the “Third Bridge Loan”) to SDRI.¹⁷ Approximately seventeen [REDACTED] customers participated, investing over \$780,000. The notes offered 8% interest, payable by December 31, 2009, plus “bonus” payments equal to 50% of the investment (25% of which would be payable in March 2010 and the other 25% in June 2010).¹⁸ One of the stated purposes of the Third Bridge Loan was to repay the Second Bridge Loan note holders, despite the fact that their rights were subordinated to those of the First Bridge Loan note holders.¹⁹

C. Mercedes’ Misstatements and Omissions in Connection with SDRI’s Offerings

Mercedes recommended and sold SDRI notes related to the First and Third Bridge Loans.²⁰ In doing so, he made misstatements and omissions to three customers.

Regarding the notes associated with the First Bridge Loan, Mercedes made the following material misrepresentations to customers TLE and TG. He told TLE that: (1) a majority of the condominium units SDRI was to construct had been pre-sold to a British soccer team; and (2)

¹⁴ *Id.* ¶ 14.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 16.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 11.

SDRI was going public “very soon.”²¹ Mercedes told TG that the SDRI investment had no risk whatsoever.²² He encouraged TG to make the investment notwithstanding the fact that TG told Mercedes that he could not afford the investment and would have to take out a loan to cover it.²³

Mercedes did not have any basis for making these statements to his customers.²⁴ When Mercedes made these statements to TLE and TG, SDRI had not broken ground on any construction projects.²⁵ In fact, Mercedes had visited the SDRI property in Panama during the late summer or early fall of 2007, and described it as nothing more than a “raw plot of land.”²⁶ Based on Mercedes’ recommendations, TLE invested \$25,000, and TG invested \$22,500, in August 2008.²⁷

In April 2009, when recommending notes issued in connection with the Third Bridge Loan to customer LS, Mercedes made three misstatements and one omission. Mercedes misrepresented that: (1) the investment had no risk, and LS’s capital would be completely safe; (2) SDRI was breaking ground on an 18-hole golf course; and (3) SDRI had successfully developed other properties.²⁸ At the time Mercedes recommended the investment to LS, SDRI had not broken ground on the golf course or any other construction project.²⁹ Mercedes also omitted an important fact: none of the First Bridge Loan note holders had been repaid.³⁰ Based on Mercedes’ recommendation, LS invested \$50,000 in April 2009.³¹

²¹ *Id.* ¶ 13.

²² *Id.*

²³ *Id.*

²⁴ *Id.* ¶ 14.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* ¶ 13.

²⁸ *Id.* ¶ 17.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Throughout this period, Mercedes did not attempt to verify the information about SDRI that he conveyed to his customers.³² Neither TLE, TG, nor LS has received any money back from the SDRI investments.³³

III. CONCLUSIONS OF LAW

A. FINRA has Jurisdiction

Article V, Section 4 of FINRA's By-Laws provides that FINRA may bring a disciplinary proceeding against a formerly registered person for two years after his registration terminated. Mercedes' last FINRA registration terminated on June 24, 2010, and Enforcement filed the Complaint on May 31, 2012. In addition, the Complaint alleges misconduct that occurred while Mercedes was associated with [REDACTED]. Accordingly, FINRA has jurisdiction of this proceeding.

B. The SDRI Investments were Securities

The SDRI investments, in the form of notes, were securities. That is so because the investments fall within the definition of "security" in Section 2(a)(1) of the Securities Act of 1933³⁴ and Section 3(a)(10) of the Exchange Act³⁵ as "any note," and they are not excluded from that definition under the Supreme Court's "family resemblance" test set forth in *Reves v. Ernst & Young*.³⁶

The Supreme Court devised the family resemblance test in *Reves* to "distinguish, on the basis of all of the circumstances surrounding the transactions, notes issued in an investment context (which are 'securities') from notes issued in a commercial or consumer context (which

³² *Id.* ¶ 19.

³³ *Id.* ¶ 18. In fact, none of the investors who participated in the First or Third Bridge Loans have received any money back. *Id.* Mercedes earned \$59,590 in gross commissions from his customers' SDRI private placement investments. *Id.*

³⁴ 15 U.S.C. § 77b(a)(1).

³⁵ 15 U.S.C. § 78c(a)(10).

³⁶ *Reves v. Ernst & Young*, 494 U.S. 56, 63-65 (1990).

are not).”³⁷ The four factors identified by the Court were: (1) the motivations of the seller and buyer of the note — “[i]f the seller’s purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a ‘security’”; (2) the plan of distribution — notes that are “offered and sold to a broad segment of the public” are likely to be “securities”; (3) the reasonable expectations of the investing public — if notes are characterized as “investments” they are likely to be “securities”; and (4) “whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary.”³⁸

At the outset, the SDRI notes do not resemble any of the instruments that the Court recognized as being exempt from the definition of a security. In addition, the four factors considered in *Reves* do not suggest that the SDRI notes should be added to the list of excluded financial instruments. Mercedes sold the notes to raise money to conduct SDRI’s business, which was developing real estate for tourism and retirement destinations in Panama.³⁹ In addition, the SDRI notes were distributed broadly. While the Complaint addresses Mercedes’ misrepresentations and omissions to three note holders, [REDACTED] through its registered representatives, sold the notes to approximately 70 customers.⁴⁰ The customers’ reasonable expectations also suggest that the notes should be categorized as securities.⁴¹ A reasonable investor giving funds to SDRI and receiving a guaranteed rate of return of 8 percent would consider that the notes were investments. Indeed, Mercedes often referred to the notes as bonds

³⁷ *Reves*, 494 U.S. at 62-63.

³⁸ *Id.* at 66-69.

³⁹ *See Id.* at 66 (explaining that an instrument is likely a security when the seller’s purpose is to raise operational capital).

⁴⁰ *See Stoiber*, 161 F.3d at 750; *Robin Bruce McNabb*, 54 S.E.C. 917, 919, 923 (2000) (citing *Trust Co. v. N.N.P., Inc.*, 104 F.3d 1478, 1489 (5th Cir. 1997) (“A debt instrument may be distributed to but one investor, yet still be a security.”)), *aff’d sub nom., McNabb v. S.E.C.*, 298 F.3d 1126 (9th Cir. 2002).

⁴¹ *Stoiber*, 161 F.3d at 751 (citing *Reves*, 494 U.S. at 68-69).

thus reinforcing the perception of the notes as securities.⁴² Finally, there is no regulatory scheme providing an adequate substitute for the protection of the federal securities laws applicable to these instruments.⁴³ Indeed, the record makes clear that the SDRI note holders needed the protection of the federal securities laws because SDRI defaulted on the notes.

For all of the above reasons, the Hearing Officer finds that the SDRI investments, in the form of notes, were securities.

C. Mercedes Made Fraudulent Misrepresentations and Omissions

“The [SEC’s] and NASD’s [and FINRA’s] anti-fraud rules are designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities.”⁴⁴ A finding of a violation requires a showing that a person acting with scienter misrepresented or omitted material facts in connection with securities transactions.⁴⁵ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.⁴⁶ Scienter is the “intent to deceive, manipulate or defraud.”⁴⁷ Scienter may be established by a showing of recklessness that involves an “extreme departure from the standards

⁴² Compl. ¶¶ 13, 17.

⁴³ See *Reves*, 494 U.S. at 71-72.

⁴⁴ *Dep’t of Enforcement v. Donner Corp. Int’l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (N.A.C. Mar. 9, 2006) (quoting *District Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *16-17 (N.B.C.C. July 28, 1997)).

⁴⁵ *Donner Corp. Int’l*, 2006 NASD Discip. LEXIS 4, at *50. In addition, violations of Section 10(b) and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. See, e.g., *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, the requirement of interstate commerce is satisfied, *inter alia*, because Mercedes recommended the SDRI investments through interstate telephone calls, as well as through electronic mail. Supp. Decl. ¶ 4. In addition, Mercedes mailed the SDRI private placement memoranda and loan paperwork from [REDACTED] New York office to the customers’ residences in Minnesota and Texas. *Id.* ¶ 5.

⁴⁶ *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988).

⁴⁷ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

of ordinary care, ... which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”⁴⁸

The allegations in the Complaint are sufficient to show that Mercedes misrepresented and omitted material facts in connection with the sale of the SDRI notes to TLE, TG, and LS. Mercedes’ misleading statements and omissions concerned the risks associated with an investment in speculative securities and the financial condition of SDRI, the issuer. Such omissions have consistently been found to be material.⁴⁹ Even assuming that Mercedes relied on ████████ or SDRI for the information he provided to his customers, registered representatives have a duty to corroborate information received, and cannot simply ignore their duty to investigate.⁵⁰ The Hearing Officer finds that Mercedes misled TLE, TG, and LS by failing to disclose SDRI’s negative financial condition and performance, which were facts material to the purchasers’ investment decisions.⁵¹

⁴⁸ *The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977))).

⁴⁹ See *Dep’t of Enforcement v. Faber*, No. CAF010009, 2003 NASD Discip. LEXIS 3, at *21-22 (N.A.C. May 7, 2003) (stating “[respondent’s] omissions regarding [the issuer] were misleading because he failed to disclose adverse information about [the issuer] at the same time that he was pitching the stock as a money-making opportunity”); *Dep’t of Enforcement v. Gebhart*, No. C02020057, 2005 NASD Discip. LEXIS 40, at *40-41 (N.A.C. May 24, 2005) (“[m]isrepresentations and omissions concerning the financial condition of the issuer and the risks associated with an investment” are material); *Dep’t of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at *29 (N.A.C. June 25, 2001) (holding that a reasonable investor would consider significant information pertaining to an issuer’s financial condition and profitability); *Dep’t of Enforcement v. Cipriano*, No. C07050029, 2007 NASD Discip. LEXIS 23, at *27-29 (N.A.C. July 26, 2007) (finding that information not disclosed, including fact that issuer had never made a profit, was in need of additional capital to continue its operations, its liabilities substantially exceeded its tangible assets, and was a “speculative and risky security,” was material in that “[t]here is little doubt that in connection with a decision to invest in [issuer], a reasonable investor would consider all of this information to have altered the total mix of the information available”).

⁵⁰ See *SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) (“registered representatives have certain duties that they cannot avoid by reliance on either their employer or an issuer”); *Donald T. Sheldon*, 51 S.E.C. 59, 71 (1992), *aff’d*, 45 F.3d 1515 (11th Cir. 1995) (material misstatements and omission by registered representatives are not excused by a representative’s reliance on information from his broker or dealer).

⁵¹ See *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) (finding information relating to financial condition, solvency, and profitability material); *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *24-25 (Mar. 19, 2003) (finding misrepresentations and omissions related to undisclosed financial commitments material); *Hasho*, 784 F. Supp. 1059, 1106, 1109 (finding that failure to disclose negative financial and performance information violated the antifraud provisions).

The Complaint further alleges facts sufficient to show that Mercedes acted with scienter. Given the magnitude of risk involved in investing in SDRI, Mercedes must have been aware that his failure to disclose these risks, as well as his affirmative misrepresentations about them, presented a danger of misleading his customers.⁵² None of the information available to Mercedes supported the information he gave his customers. In short, Mercedes defrauded TLE, TG, and LS, and abdicated his responsibilities as a securities professional in the process.⁵³

Mercedes' misrepresentations were willful. Under the securities laws, willfulness means that Mercedes voluntarily committed the act that constituted the violation.⁵⁴ Willfulness does not require proof of intent to violate the laws or rules.⁵⁵ The finding that Mercedes acted with scienter supports a finding that his violations were willful.

Accordingly, the Hearing Officer finds that Mercedes violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, NASD Conduct Rules 2120 and 2110, and FINRA Conduct Rules 2020 and 2010, as alleged in the First Cause of Action. In light of this finding, the Second Cause of Action, alleging negligent misrepresentations and omissions in connection with the sale of securities, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, is dismissed.

IV. SANCTIONS

For intentional or reckless material omissions of material fact, the FINRA Sanction Guidelines ("Guidelines") provide for fines ranging from \$10,000 to \$100,000, suspension for a

⁵² See *Rockies Fund*, 428 F.3d at 1093.

⁵³ See *Dan King Brainard*, Exchange Act Release No. 20408, 1983 SEC LEXIS 293, at *13 (Nov. 22, 1983) (footnotes omitted).

⁵⁴ *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *13 n.11 (N.A.C. Aug. 19, 2010); *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

⁵⁵ *Id.*

period of ten business days to two years, and, in an egregious case, a bar.⁵⁶ The Guidelines do not include specific principal considerations for those violations; rather, they direct the adjudicator's attention to the general Principal Considerations for Determining Sanctions.⁵⁷ As discussed above, Mercedes made fraudulent statements to his customers and withheld material information about SDRI's financial condition. These misrepresentations and omissions were egregious. His misconduct was likely intentional, but at the very least was reckless.⁵⁸ In addition, his misconduct, which occurred over several months,⁵⁹ enabled Mercedes to profit financially while his customers lost their investments.⁶⁰ There is no evidence that Mercedes made any attempt to pay restitution to the affected customers or otherwise remedy his misconduct.⁶¹

Enforcement recommends that Mercedes be barred and pay restitution to the affected customers. The Hearing Officer finds that the facts and circumstances of this case warrant a bar. Accordingly, Mercedes is barred from associating with any FINRA member in any capacity. In addition, Mercedes is ordered to pay restitution to: (1) TLE in the amount of \$25,000; (2) TG in the amount of \$22,500; and (3) LS in the amount of \$50,000. All restitution payments shall be paid to the customers with interest from the date of their investments, until paid in full.

V. ORDER

For willfully violating Section 10(b), Exchange Act Rule 10b-5, NASD Conduct Rules 2120 and 2110, and FINRA Conduct Rules 2020 and 2010, by making material misrepresentations and omissions in the sale of securities, as described in the First Cause of Action, Respondent Neftali Mercedes is barred from associating with any FINRA member firm in any capacity. In addition, Mercedes is ordered to pay restitution to: (1) TLE in the principal

⁵⁶ FINRA Sanction Guidelines at 88 (2011).

⁵⁷ *Id.*

⁵⁸ Guidelines at 7 (Principal Consideration No. 13).

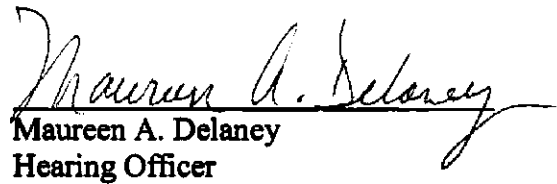
⁵⁹ *Id.* at 6 (Principal Consideration No. 9).

⁶⁰ *Id.* at 6-7 (Principal Considerations Nos. 11 and 17).

⁶¹ *Id.* (Principal Consideration No. 4).

amount of \$25,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from August 2008, until paid; (2) TG in the principal amount of \$22,500, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from August 2008, until paid; and (3) LS in the principal amount of \$50,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from April 2009, until paid.⁶² The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

In light of the finding of liability on the First Cause of Action, the Second Cause of Action, alleging negligent misrepresentations and omissions in connection with the sale of securities, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, is dismissed.


Maureen A. Delaney
Hearing Officer

Copies to: Neftali Mercedes (*via overnight courier and first-class mail*)
David Schrader, Esq. (*via electronic and first-class mail*)
R.W. Sardegna, Esq. (*via electronic and first-class mail*)
Frank Mazzearelli, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁶² 26 U.S.C. § 6621(a)(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. Customers TLE, TG, and LS are identified in the addendum to this decision, which is served only on the parties.