

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAN EVAN LANDAU
(CRD No. 2401574),

Respondent.

Disciplinary Proceeding
No. 20080138685

Hearing Officer – LBB

DEFAULT DECISION

November 22, 2011

For unregistered sales of securities, in violation of NASD Conduct Rule 2110, Respondent Dan Evan Landau is suspended from associating with any member firm in any capacity for two years, and fined \$28,116.

Appearances

Scott M. Andersen, Esq. Director, Enforcement Center, Joseph Darcy, Esq., Principal Counsel, and Robert Moreiro, Esq., Senior Counsel, New York, New York, for the Department of Enforcement.

Dan Evan Landau, *pro se*.

DECISION

The Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding on February 25, 2011, asserting three causes of action against Respondent Ron William Howell (“Howell”) and one cause of action against Respondent Dan Evan Landau (“Landau”). The First Cause of Action charges both Respondents with the unregistered sale of securities, in violation of Section 5 of the Securities Act of 1933 (“Securities Act”) and NASD Conduct Rule 2110. The Second and Third Causes of Action charge Howell with supervisory

violations.¹ Both Respondents answered the Complaint, denying that their conduct violated the Securities Act and FINRA's Rules.

Landau failed to appear at the last three pre-hearing conferences and at the hearing, which was held in Los Angeles, California, on September 21-22, 2011. Enforcement moved for a finding that Landau was in default. The Hearing Officer held that Landau had defaulted.² The hearing proceeded with respect to the charges against Howell, and a Hearing Panel decision will be issued with respect to the charges against Howell.

I. Respondent

Landau was first registered with a FINRA member firm in 1993. From October 2002 to December 2005, he was associated with FINRA member firm Finance 500. From August 2006 to July 2009, he was associated with member firm Private Equity Securities, Inc. ("PES" or "Firm"). Landau has not been associated with a member firm since July 2009. CX-17.³

Although Landau was not registered with a FINRA member firm at the time the Complaint was filed, he is subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws, because the Complaint was filed within two years after termination of his last registration, and charges him with violations that occurred while he was registered with a member firm.

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged violations. The applicable rules are available at www.finra.org/rules.

² The Hearing Officer instructed Enforcement that it would not be necessary to file a written default motion, and that the evidence adduced at the hearing would be considered as the evidentiary basis for the default decision with respect to Landau, in lieu of the submission of a declaration supporting a written default motion.

³ The factual determinations in this decision are largely based on the allegations of the attached Complaint. Where evidence was introduced at the hearing that was different from the allegations in the Complaint, or supported facts not alleged in the Complaint, the findings reflect the evidence adduced at the hearing. References to the Complaint are identified as "Complaint ¶ ___." References to the Hearing Exhibits are identified as "CX-___." References to the hearing transcript are identified as "Tr. ___."

II. Landau's Default

Landau answered the Complaint and appeared at three pre-hearing conferences, then ceased to participate in the proceeding as it progressed. Despite receiving proper notice of each pre-hearing conference and the hearing, he failed to appear at pre-hearing conferences on August 31, September 8, and September 13, 2011, and failed to appear at the hearing on September 21-22, 2011.

Due to Landau's failures to attend pre-hearing conferences and his failure to attend the hearing, the Hearing Officer held at the hearing that Landau had defaulted, pursuant to FINRA Procedural Rules 9241 and 9269. Pursuant to Procedural Rule 9269, the allegations of the Complaint are deemed admitted.

III. Landau's Sales of Microbics and Subsurface S-8 Stock

The charge against Landau involves the sale of securities that were distributed to employees and consultants of two related companies, U.S. Microbics, Inc. ("Microbics"), and its majority-owned subsidiary, Subsurface Waste Management of Delaware, Inc. ("Subsurface"), pursuant to employee benefit plans. Both Microbics and Subsurface were microcap companies that had limited operational histories, generated little revenue, were losing money, and were short of funds. Their auditors had recently expressed doubt about the companies' ability to continue as going concerns. The stocks traded on the OTC Bulletin Board. Complaint ¶ 36; CX-76, 81.

Pursuant to a Form S-8 registration, Microbics and Subsurface issued options to four employees or consultants of the companies. Complaint ¶¶ 37, 38, 40. The four recipients were Landau's customers, and held brokerage accounts at PES. Complaint ¶ 39. The four recipients exercised their options, and Landau quickly sold the shares in unsolicited sales to the public. The exercise price was 85% of the price of the shares in the public market. All the sales were cleared through Legent Clearing LLC, located in Nebraska. The vast majority of the proceeds

were used to pay the issuers for the shares received pursuant to the exercise of the options.

Complaint ¶¶ 40, 41; CX-13, 14, 75, 82.

From May to December 2007, Landau sold approximately 30,000,000 shares of Microbics stock. CX-1A, 1B, 8A-8D; Complaint ¶ 43. All Microbics stock was sold prior to receipt, and the funds were journaled to Microbics within a few days after the sales. The proceeds of the sales were \$128,787, with about 90% going to Microbics. The total commissions on the sales were \$6,899. CX-1A, 1B, 8A-8D; Complaint ¶ 43.

From March 12, 2007, to February 4, 2008, Landau sold approximately 119,162,500 shares of Subsurface for the four recipients of S-8 shares of Subsurface. The proceeds of the sales were \$718,819, of which \$644,902, or about 90%, was journaled to a Subsurface account at PES. The total commissions on the sales were \$39,333. CX-1A, 1B, 7A-7D, 12, 31 45; Tr. 45-46, 112, 192.

While making the sales of Microbics and Subsurface, Landau encountered red flags that should have alerted him to the fact that the sales were unregistered offerings. These red flags included: (1) the sales involved a large number of shares of little known, microcap securities; (2) the option price was set at a percentage of the market price at the date of grant; (3) the shares were sold to the public, and the vast majority of the proceeds were journaled back to the issuers; (4) a relatively small amount of the proceeds were received by the S-8 recipients; and (5) the S-8 recipients were related to the issuers. Complaint ¶ 47.

IV. Landau Violated Section 5 of the Securities Act, and therefore NASD Conduct Rule 2110, by Unregistered Securities Sales

Because the S-8 registrations of the distributions of Microbics and Subsurface stock were ineffective, Landau made unregistered securities sales, in violation of Section 5 of the Securities Act, thereby violating NASD Conduct Rule 2110.

A. Elements of a Case Under Section 5 of the Securities Act

Section 5 of the Securities Act provides that, unless a registration statement is in effect or an exemption applies, it is unlawful to sell a security through the use of any means or instrumentality of transportation or communication in interstate commerce or of the mails.⁴ The purpose of the registration requirements is to “protect investors by promoting full disclosure of information thought necessary to informed investment decisions.”⁵ A violation of Section 5 of the Securities Act constitutes a violation of NASD Conduct Rule 2110.⁶

To establish a *prima facie* case of a violation of Section 5, Enforcement must show that: (1) no registration statement was in effect as to the securities; (2) respondent sold the securities; and (3) interstate transportation or communications were used in connection with the sale.⁷ The prohibitions of Section 5 extend to those who engage in significant steps in the distribution process. Anyone who is a “necessary participant” or a “substantial factor” in the unlawful transaction, including a registered representative, violates Section 5.⁸

⁴ 15 U.S.C. § 77e(a) and (c); *see also* *Rodney R. Schoemann*, Exchange Act Rel. No. 9076, 2009 SEC LEXIS 3939, at *20-21 (Oct. 23, 2009); *Jacob Wonsover*, Exchange Act Rel. No. 41123, 1999 SEC LEXIS 430, at *15-16 (Mar. 1, 1999), *aff'd*, 205 F.3d 408 (D.C. Cir. 2000).

⁵ *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953).

⁶ *Alvin W. Gebhart*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 (Jan. 18, 2006), *rev'd and remanded in part on other grounds*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007) (“Further, because we have consistently held that a violation of a Commission or NASD rule or regulation is inconsistent with just and equitable principles of trade, we find that the Gebharts’ sale of the unregistered MHP notes also constitutes a violation of NASD Conduct Rule 2110.”); *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395 (July 20, 1999); *see William H. Gerhauser*, Exchange Act Rel. No. 40639, 1998 SEC LEXIS 2402 (Nov. 4, 1998).

⁷ *Schoemann*, 2009 SEC LEXIS 3939, at *20-21; *Gebhart*, 2006 SEC LEXIS 93, at *53.

⁸ *See SEC v. Calvo*, 378 F.3d at 1211, at 1215 (11th Cir. 2004); *SEC v. Murphy*, 626 F.2d 633, 649-52 (9th Cir. 1980); *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 422 (S.D.N.Y. 2007), *aff'd sub nom. SEC v. Altomare*, 300 Fed. Appx. 70 (2d Cir. 2008) (*per curiam*) (unpublished), *cert. denied*, 129 S. Ct. 2745 (2009); *Owen V. Kane*, Exchange Act Rel. No. 23827, 1986 SEC LEXIS 326, at *11 (Nov. 20, 1986).

B. Resales of Securities Distributed Pursuant to Form S-8 Registration

Form S-8 may be used to register securities distributions “in a compensatory or incentive context,” in connection with employee benefit plans.⁹ “A Form S-8 provides a streamlined method of registering stock issued to compensate employees and consultants, as opposed to the more detailed and prolonged process required to register shares used to raise capital.”¹⁰ A Form S-8 registration is not available as a means of raising capital, where the employees and consultants act as conduits to distribute their shares to the public market, and funnel all or part of the proceeds of the sales back to the issuer.¹¹

The SEC has placed two limitations on the use of the Form S-8. Form S-8 registration cannot be used to register offers or sales of securities to employees or consultants where, (1) “[b]y prearrangement or otherwise, the issuer or promoter controls or directs the resale of the securities in the public markets;” or (2) “[t]he issuer or its affiliates directly or indirectly receive a percentage of the proceeds from such resales.”¹² Even if the initial grant of the S-8 options was genuinely intended as compensation, the Form S-8 registration becomes ineffective when the funds from the resale are transferred to the issuer.¹³

C. Landau Violated NASD Conduct Rule 2110 by Acting as the Broker for Unregistered Sales of Microbics and Subsurface Stock

The Microbics and Subsurface transactions violated both of the SEC’s specific limitations on the use of Form S-8. First, the evidence supports a strong inference that the

⁹ See “Registration of Securities on Form S-8,” Exchange Act Rel. No. 41109, 64 Fed. Reg. 11103 (Mar. 8, 1999); General Instructions to Form S-8, available on SEC website; 17 C.F.R. § 239.16b; *see also*, e.g., *Proposed Rule: Use of Form S-8 and Form 8-K by Shell Companies*, Exchange Act Rel. No. 49566, 2004 SEC LEXIS 827, at *8 (Apr. 15, 2004).

¹⁰ *SEC v. Phan*, 500 F.3d 895, 899 (9th Cir. 2007).

¹¹ See, e.g., *Newbridge Sec. Corp.*, Init. Dec. Rel. No. 380, 2009 SEC LEXIS 2058, at *8 (June 9, 2009); “Registration of Securities on Form S-8,” Exchange Act Rel. No. 41109, 64 Fed. Reg. 11103, 11104 (Mar. 8, 1999).

¹² Registration of Securities on Form S-8, 64 Fed. Reg. 11103, 11106 (Mar. 8, 1999); *SEC v. Phan*, 500 F.3d at 904 (“[W]e hold that an S-8 form cannot be used to register a securities transaction in which the issuer or promoter controls or directs a resale or directly or indirectly receives a percentage of the proceeds.”).

¹³ *Phan*, 500 F.3d at 902-06; *Newbridge Sec. Corp.*, 2009 SEC LEXIS 2058, at *8.

resales were prearranged, and there is no contrary evidence. The four recipients handled the options in the same way, immediately exercising their options, selling the stock, and journaling most of the proceeds to Microbics and Subsurface. The transactions also violated the second limitation on the use of Form S-8 registration established by the SEC. Most of the sales proceeds were journaled to Microbics and Subsurface. Furthermore, the transactions were for the purpose of raising capital. The two issuers were short of funds, and the sales proceeds provided an infusion of cash. The recipients of the options funneled the vast majority of the proceeds of the sales of the stock back to the issuers. Thus, the use of the Form S-8 registration was ineffective as a result of the violation of the limitations imposed by the SEC, and the use of the S-8 shares as a means of raising capital.

Microbics and Subsurface's stock was sold using instrumentalities of transportation or communication in interstate commerce or of the mails. The transactions were cleared through Legent in Omaha, and the stock was sold in unsolicited sales to the public.

Because the Form S-8 registrations were ineffective, all of Landau's sales of Microbics and Subsurface stock were unregistered. Accordingly, the allegations of the Complaint, supported by the evidence adduced at the hearing, are sufficient to establish that Landau violated Section 5 of the Securities Act, and thereby violated NASD Conduct Rule 2110, by engaging in unregistered sales of securities.

II. Sanctions

For the unregistered sale of securities in violation of NASD Conduct Rule 2110, the FINRA Sanction Guidelines ("Guidelines") recommend a fine of \$2,500 to \$50,000. In egregious cases, the Guidelines recommend consideration of a larger fine, and a suspension in any or all capacities for up to two years, or a bar. The relevant principal considerations set forth in the Guideline are: (1) whether the respondent attempted to comply with an exemption from

registration; (2) the share volume and dollar amount of transactions involved; and (3) whether the respondent disregarded “red flags” suggesting the presence of unregistered distribution.¹⁴

There is no evidence that Respondent attempted to comply with an exemption, or to determine that the Form S-8 registration was valid. In fact, the transactions were clearly not permitted by the Form S-8 registrations, and the violations should have been apparent to Landau. The share volume was substantial. Landau sold about 150,000,000 shares of Microbics and Subsurface, for about \$840,000. Landau ignored numerous red flags, discussed above. In addition, Landau knew that the SEC had concerns about very similar sales, which should have caused him to be more diligent in determining whether the transactions were lawful. In November 2005, he testified in an SEC investigation of Finance 500 concerning transactions that were similar to those that are the subject of the Complaint. CX-91. Landau received a Wells notice from the SEC in July 2007 concerning his sales of S-8 shares while at Finance 500. Tr. 42, 48-50; CX-17, 92. On July 6, 2009, he agreed to an SEC order suspending him for six months, based on sales of S-8 stock that were very similar to those charged in the Complaint. CX-19.

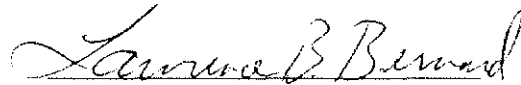
A suspension in the upper range of those recommended by the sanction guidelines is appropriate. The Hearing Officer imposes a suspension of two years in all capacities.

A fine is also appropriate. The total commissions earned by PES for the Microbics and Subsurface transactions were \$46,232. Howell testified that Landau was on a 50% payout. Tr. 112. Thus, Landau received commissions of \$23,116 for the unlawful transactions. An appropriate fine is \$28,116, based on disgorgement of the commissions earned plus an additional \$5,000.

¹⁴ Guidelines at 26.

Conclusion

For unregistered sales of securities in violation of NASD Conduct Rule 2110, Respondent Dan Evan Landau is suspended in all capacities for two years and fined \$28,116. If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on January 16, 2012, and end on the close of business on January 16, 2014. The fine shall be due and payable if and when Landau re-enters the securities industry.


Lawrence B. Bernard
Hearing Officer

Copies to: Dan Evan Landau (*overnight courier and first-class mail*)
Scott M. Andersen, Esq. (*via e-mail and first-class mail*)
Joseph Darcy, Esq. (*via e-mail and first-class mail*)
Robert Moreiro, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

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

Department of Enforcement,

Complainant,

v.

Disciplinary Proceeding
No. 20080138685

Ron William Howell
CRD No. 2895047,

Dan Evan Landau
CRD No. 2401574

Respondents.

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Ron William Howell ("Howell") and Dan Evan Landau ("Landau") violated NASD Conduct Rule 2110 in connection with the sale of approximately 699,499,742 shares of unregistered securities for their customers in so-called employee stock incentive programs ("ESIPs") implemented by three issuers, and occurring during the period March 1, 2007 through February 4, 2008 (the "Relevant Period"). The sales functioned as public offerings of securities, whereby issuers used their employees, consultants and/or advisors as conduits to raise capital through securities offerings without complying with the registration requirements of Section 5 of the Securities Act of 1933 ("Section 5"). Howell and Landau administered the brokerage aspects of the ESIPs and, despite red flags indicating that the shares were being sold through unregistered

offerings, did not perform reasonable due diligence to verify the securities registration status. As a result, Howell and Landau participated in unregistered sales of securities in violation of Section 5. Howell also failed to reasonably supervise the ESIP trading in violation of NASD Rules 3010 and 2110, and failed to establish an adequate supervisory control system in violation of NASD Rules 3012 and 2110, which left Howell to supervise his own registered representative activities.

RESPONDENT & JURISDICTION

Ron William Howell

2. Howell entered the securities industry in 1997, and registered as a general securities representative in September 1997. From August 2006 to July 2010, Howell served as president and majority owner of Private Equity Securities, Inc. ("Private Equity" or the "Firm"), a FINRA regulated broker-dealer that was located in Irvine, California.
3. Howell holds the following securities licenses: Series 3, 4, 6, 7, 24, 27, 28, 30, 31, 53, 55, 63, 65, 86, 87, and 201
4. Howell served as the Firm's Chief Compliance Officer for the Relevant Period.
5. On or about July 10, 2010, a Uniform Termination Notice for Securities Industry Registration ("Form U-5") was filed reporting Howell's voluntary termination from Private Equity.
6. Howell filed a Form BDW for Private Equity on or about July 10, 2010.
7. Howell has not been registered with a FINRA regulated broker-dealer since his employment termination.

8. FINRA retains jurisdiction over Howell pursuant to Article V, Section 4 of FINRA By-Laws because Enforcement filed this complaint within two years of Howell's dissociation with a FINRA regulated broker-dealer.

Dan Evan Landau

9. Landau entered the securities industry in 1993, and registered as a general securities representative in November 1993.
10. Landau holds the following securities licenses: Series 4, 7, 24, 55, 63, and 65.
11. From October 2002 to December 2005, Landau was associated with Broker-Dealer F, a FINRA regulated broker-dealer.
12. From August 2006 to July 2009 and January 2009 to March 2010, Landau was associated with Private Equity as a general securities representative. Landau initially owned a small minority interest in Private Equity.
13. On or about March 17, 2010, Private Equity filed a Form U-5 which reported Landau's voluntary employment termination.
14. Landau has not been registered with a FINRA regulated broker-dealer since his employment termination.
15. FINRA retains jurisdiction over Landau pursuant to Article V, Section 4 of FINRA By-Laws because Enforcement filed this complaint within two years of Landau's dissociation with a FINRA regulated broker-dealer.

First Cause of Action
Sale of Unregistered Securities
(Section 5 and NASD Rule 2110)
(Howell and Landau)

16. The Department re-alleges and incorporates by reference paragraphs 1 through 15.
17. Section 5 prohibits any person from using interstate commerce, directly or indirectly, to sell or offer to sell a security unless a registration statement is in effect as to such security.
18. Issuers that are subject to the reporting requirements of the Securities Exchange Act of 1934 and are current in their filings may use Form S-8 registration statements to register the issuance of securities to their employees, consultants or advisors, to compensate them for the *bona fide* services or to provide incentives. Because of the compensatory purpose and the employees', consultants' and advisors' familiarity with the issuer's business, S-8 disclosure requirements are abbreviated as compared to filings for capital raising purposes.
19. An issuer cannot use Form S-8 to issue shares to employees, consultants or advisors who act as conduits for the sale of securities to the public because the transaction that takes place – the distribution of securities to the public – is not registered.
20. Form S-8 is not available to register offers and sales of securities to employees, consultants or advisors where the issuer or its affiliates directly or indirectly receive a percentage of proceeds from the resale.

Howell's Accounts

21. During the Relevant Period, Howell provided brokerage services for issuer NHI's ESIP.

22. NHI was a microcap company that had limited operational history, generated little revenue and had low priced shares listed on the OTC Bulletin Board.
23. NHI used ESIPs that issued shares to employees, consultants and/or advisors under Form S-8.
24. AD, AH, AP, CD, DR, FH, GC, JF, JG, JM, LB, MG, ML, MM, MS, RC, RCC, RD, RL, RS, and SP were employees, consultants or advisors of NHI and received NHI shares pursuant to a Form S-8 registration (hereinafter the “NHI S-8 Recipients”).
25. The NHI S-8 Recipients were customers of Howell and held brokerage accounts at Private Equity. Howell also was the registered representative for NHI’s customer account at Private Equity.
26. During the Relevant Period, Howell sold on behalf of the NHI S-8 Recipients the shares underlying the options granted while using the underlying shares’ sales proceeds to pay the exercise price.
27. In total, Howell sold approximately 550,287,242 shares of NHI stock and earned approximately \$14,715 in commissions. The proceeds of sale for the NHI transactions were approximately \$272,061, where NHI received approximately \$218,238 and the NHI S-8 Recipients received approximately \$50,522.
28. Howell sold these shares of NHI almost exclusively in unsolicited sales to the public. As the NHI options’ exercise price was calculated to be between approximately 75 and 85% of the sales price, the vast majority of the proceeds were credited to NHI’s account and the remainder, minus brokerage and other fees, were credited to the NHI S-8 Recipients.
29. The manner in which NHI implemented its ESIP program (ie. the high percentage exercise price that was based on the underlying shares’ sales price, the immediate vesting

and the use of a cashless exercise) ensured that the NHI S-8 Recipients' shares were sold to the public and proceeds of the sales were paid to NHI.

30. The sales of NHI shares resulted in millions of shares being sold to the public, which diluted the ownership interests for existing stockholders. As a result, the NHI ESIP program functioned as public offerings to raise capital for NHI, with the NHI S-8 Recipients acting as mere conduits and underwriters.

31. Because Form S-8 cannot be used to raise capital, no registration statements were in effect or filed as to the shares sold to the public. As a result, the shares were sold in unregistered offerings.

32. While making these sales, Howell encountered red flags indicating NHI sales were an unregistered offering. These red flags were: (1) the sales involved a large number of shares of a little known, microcap security; (2) the floating option price was set at a percentage of the market price at the time of exercise; (3) the shares were sold to the public and the vast majority of the proceeds were paid to NHI, (5) a relatively small amount of proceeds were received by the NHI S-8 Recipients, and (6) the NHI S-8 Recipients were related to NHI.

33. The red flags referred to above should have prompted Howell to perform a searching inquiry but Howell did not and he failed to verify that the NHI shares were validly registered or exempt from registration.

34. As Howell participated in the sale of unregistered securities in violation of Section 5, Howell violated NASD Rule 2110.

Landau's Accounts

35. During the Relevant Period, Landau provided brokerage services for the SSM and USMI ESIPs.
36. SSM and USMI were microcap companies that had limited operational histories, generated little revenue and had low priced shares listed on the OTC Bulletin Board. SSM and USMI are located at the same address and have at least one overlapping officer.
37. SSM and USMI used ESIPs that issued shares to employees, consultants and/or advisors under Form S-8.
38. DM, JH, LR, and PS were employees, consultants or advisors of SSM and USMI and received SSM and USMI shares pursuant to a Form S-8 registration (hereinafter the "S-8 Recipients").
39. The S-8 Recipients were customers of Landau and held brokerage accounts at Private Equity. Landau was the registered representative for SSM and USMI's customer accounts at Private Equity.
40. During the Relevant Period, Landau sold on behalf of the S-8 Recipients the shares underlying the options granted while using the underlying shares' sales proceeds to pay the exercise price.
41. Landau sold these shares of SSM and USMI in unsolicited sales to the public. As the options' exercise price was calculated for both SSM and USMI to be approximately 85% of the sales price, the vast majority of the proceeds went to SSM and USMI and the remainder, minus brokerage and other fees, was credited to the S-8 Recipients.
42. The manner in which SSM and USMI implemented their ESIP programs (ie. the high percentage exercise price that was based on the underlying shares' sales price and the use

of a cashless exercise) ensured that the S-8 Recipients' shares were sold to the public and proceeds of the sales were paid to SSM and USMI.

43. Specifically, during the Relevant Period, Landau sold approximately 119,162,500 shares of SSM for the SSM and USMI S-8 Recipients. The proceeds of sale for the SSM transactions were approximately \$706,345, where SSM received approximately \$633,215 and the four S-8 Recipients received approximately \$68,730. Landau earned approximately \$38,625 in commissions from these sales. Also, during the Relevant Period, Landau sold approximately 30,000,000 shares of USMI for the four SSM and USMI S-8 Recipients. The proceeds of sales were approximately \$128,787, where USMI received approximately \$115,332 and the four SSM and USMI Recipients received a total of approximately \$12,054. Landau earned approximately \$6,899 in commissions from the USMI transactions.
44. The sales of SSM and USMI shares resulted in millions of shares being sold to the public, which diluted the ownership interests for existing stockholders.
45. As a result, the SSM and USMI ESIP programs functioned as public offerings to raise capital, with the S-8 Recipients acting as mere conduits and underwriters.
46. Because the Form S-8 cannot be used to raise capital, no registration statements were in effect or filed as to the shares issued under the ESIP programs. As a result, the shares were sold in unregistered offerings.
47. While making these sales, Landau encountered red flags indicating SSM and USMI sales were unregistered offerings. These red flags included: (1) the sales involved a large number of shares of little known, microcap securities; (2) the option price was set at a percentage of the market price at the date of grant; (3) the shares were sold to the public

and the vast majority of proceeds were paid to SSM and USMI, (5) a relatively small amount of proceeds were received by the S-8 Recipients, and (6) the S-8 Recipients were related to the issuers.

48. The red flags referred to above should have prompted Landau to perform a searching inquiry but Landau did not and he failed to verify that the SSM and USMI shares were properly registered or exempt from registration.

49. As Landau participated in the sale of unregistered securities in violation of Section 5, Landau violated NASD Rule 2110.

50. During the Relevant Period, Howell sold approximately 550,287,242 shares of NHI stock.

51. During the Relevant Period, Landau sold approximately 119,162,500 shares of SSM and 30,000,000 shares of USMI.

52. The sales of NHI, SSM and USMI were unregistered, nonexempt sales that constituted an unlawful distribution of securities.

53. By virtue of their conduct in violation of Section 5, Howell and Landau violated NASD Rule 2110.

Second Cause of Action

Failure to Supervise

(NASD Rules 3010 and 2110)

(Howell)

54. The Department re-alleges and incorporates by reference paragraphs 1 through 53.

55. During the Relevant Period, Howell had ultimate supervisory responsibility over, and was the Chief Compliance Officer for, Private Equity's business, and had the responsibility to supervise Landau's sales of SSM and USMI.
56. During the Relevant Period, Howell was aware Landau was under investigation by the U.S. Securities and Exchange Commission for the illegal sale of S-8 stock arising from Landau's employment at Broker-Dealer F. Despite this knowledge, Howell permitted Landau to engage in the sale of S-8 stock when Landau joined Private Equity.
57. Specifically, Howell permitted Landau to sell SSM and USMI to facilitate the brokerage aspects of the ESIPs.
58. Howell failed to implement adequate written supervisory procedures for Private Equity, specifically procedures concerning the sale of S-8 stock and the steps required to be taken as part of a searching inquiry to prevent the unregistered sale of securities.
59. Moreover, Howell failed to reasonably supervise Landau's sale of SSM and USMI in that Howell failed to establish and maintain a system, including written procedures, reasonable under the circumstances to determine whether the sales of S-8 securities, such as SSM and USMI, were properly registered or exempt from registration.
60. As Howell failed to reasonably supervise Landau's sale of S-8 securities, Howell violated NASD Rules 3010 and 2110.

Third Cause of Action

Inadequate Supervisory Control Systems

(Rules 3012 and 2110)

(Howell)

61. The Department re-alleges and incorporates by reference paragraphs 1 through 60

62. From October 2006 to February 2008, Howell was the Private Equity principal designated to establish, maintain and enforce a system of supervisory control policies and procedures pursuant to Rule 3012(a)(1).
63. From October 2006 to February 2008, Howell, on behalf of Private Equity, never designated nor specifically identified a person who was either senior to, or otherwise independent of, Howell for purposes of supervising Howell's registered representative activities in Howell's customer accounts as required by Rule 3012(a)(2)(A)(i). In short, Howell supervised himself.
64. Howell, on behalf of Private Equity, also never delegated reviews of Howell's customer accounts to a principal who was sufficiently knowledgeable of Private Equity's supervisory control procedures as required by Rule 3012(a)(2)(A)(ii).
65. Howell, on behalf of Private Equity, never notified FINRA or NASD that a principal senior to or otherwise independent of Howell was necessary for supervising Howell's customer accounts as required by Rule 3012(a)(2)(A)(iii).
66. Howell, on behalf of Private Equity, never documented in its supervisory control procedures the factors used to determine that Private Equity could not comply with the NASD requirement that a principal senior to, or otherwise independent of, Howell supervise activity in Howell's customer accounts as required by Rule 3012(a)(2)(A)(iv).
67. Howell, on behalf of Private Equity, failed to implement supervisory and control systems and procedures to comply with the requirement that a principal senior to, or otherwise independent of, Howell supervise activities in Howell's customer accounts.
68. By virtue of his conduct, Howell violated NASD Rules 3012 and 2110.

RELIEF REQUESTED

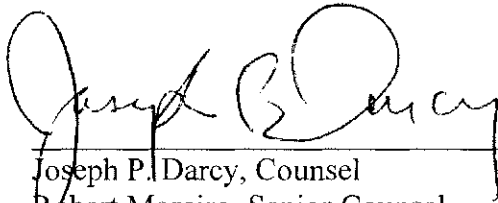
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a),
including monetary sanctions, be imposed; and
- B. order that the Respondents bear such costs of proceeding as are deemed fair and
appropriate under the circumstances in accordance with FINRA Rule 8330.

DEPARTMENT OF ENFORCEMENT

Date: _____

2/25/11



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