

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HSIN-CHIN HSU
(CRD No. 1655196)

Respondent.

Disciplinary Proceeding
No. 2008015805401

Hearing Officer – RSH

DEFAULT DECISION

June 2, 2011

The Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Rules 2120 and 2110 by transferring profitable trades from customer accounts to accounts of the Respondent's family members, without the customers' authorization. To facilitate the transfer of the trades, the Respondent forged managers' signatures on firm forms, thereby violating Rule 2110. For these violations, the Respondent was barred from associating with any FINRA member in any capacity.

Appearances

David L. Friedman, Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Hsin-Chin Hsu ("Hsu") after his member firm, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch" or "Firm"), filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that the Firm had terminated him. Merrill Lynch disclosed that it terminated Hsu "after the firm concluded that he had violated firm policy by moving securities from clients' accounts to

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another client's account in several instances without the clients' consent." As a result of its investigation, Enforcement filed the Complaint.¹

In its Complaint, Enforcement charged that Hsu, while a registered representative with Merrill Lynch, fraudulently transferred profitable trades that were originally billed to the accounts of seven of his customers, into the accounts of his ex-wife and sister. Hsu effected these transfers by submitting forged trade correction forms, which he used to transfer the profitable trades, to the Firm's wire room. The Complaint alleges that Hsu's conduct violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, as well as Conduct Rules 2120 and 2110.²

Enforcement filed the Complaint with the Office of Hearing Officers on December 31, 2010. The Respondent did not answer or otherwise respond to the Complaint. Consequently, on March 29, 2011, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of David Friedman and six exhibits. The Respondent did not reply to the motion.³

II. Jurisdiction

Hsu became registered with FINRA in February 1987 as a General Securities Representative of Merrill Lynch. He was registered with Merrill Lynch until his termination on October 21, 2008. From November 18, 2008 through January 21, 2011, Hsu was employed with another FINRA member firm.⁴

¹ Declaration of David Friedman ("Friedman Decl."), ¶¶ 6, 9.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See Regulatory Notice 08-57. In the new Rules, Conduct Rule 2110 was renumbered to 2010, but the new rule is substantially identical to its predecessor. With respect to this decision, unless otherwise noted, the other relevant FINRA Rules are identical to the corresponding NASD Rules.

³ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the declaration and exhibits filed by Enforcement.

⁴ Friedman Decl., ¶¶ 5-7; CX-1, CX-2.

Although Hsu is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his registration with a FINRA member firm and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm.⁵

III. Respondent's Default

On December 31, 2010, Enforcement sent the Notice of Complaint and Complaint to the Respondent by first-class and certified mail (return receipt requested) at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address"). Enforcement received the certified delivery receipt showing that the mailing had been signed for on January 6, 2011. The mailing sent by first-class mail was not returned. Hsu did not respond to the Complaint by January 28, 2011, the deadline specified in the Notice of Complaint.⁶

On February 9, 2011, Enforcement sent the Second Notice of Complaint and Complaint by first-class and certified mail to the Respondent at his CRD Address. Enforcement received the certified delivery receipt showing that the mailing had been signed for on February 12, 2011. The Respondent did not respond to the Complaint by February 27, 2011, the deadline specified in the Second Notice of Complaint.⁷

To date, Hsu has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint. By failing to answer the Complaint, Hsu defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the

⁵ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁶ Friedman Decl., ¶¶ 25, 26; CX-3, CX-4.

⁷ Friedman Decl., ¶¶ 28-30; CX-5, CX-6.

Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

IV. Violations

A. Fraudulent Scheme

In the First and Second Causes of Action of its Complaint, Enforcement charged that between April and August 2008 (the "relevant period"), Hsu, while a registered representative with Merrill Lynch, fraudulently transferred 25 profitable trades ("25 Profitable Trades") that were originally billed to the accounts of seven of his customers, to the accounts of his ex-wife and sister. Hsu effected these transfers by submitting trade correction forms ("Trade Correction Forms") to the Firm's wire room. Hsu forged approximately 10 of the 25 Trade Correction Forms used to transfer the 25 Profitable Trades by placing photocopies of the signatures of Firm managers on the forms without the managers' knowledge or approval. Hsu then submitted the forms, with the photocopied signatures, to the wire room for processing. All of the 25 Profitable Trades that Hsu moved to his ex-wife and sister's accounts were profitable when he caused the transfers to be made. By moving 23 trades from the customers' accounts to his ex-wife's account, Hsu transferred approximately \$47,118 of the customers' profits to his ex-wife. By moving two trades from the customers' accounts to his sister's account, Hsu transferred approximately \$2,625 of the customers' profits to his sister.

Merrill Lynch became aware of Hsu's transfer of profitable trades and related forgeries during October, 2008. After an investigation, the Firm terminated Hsu and is in the process of making restitution to the affected customers.

Exchange Act Rule 10b-5(1), promulgated under Section 10(b) of the Exchange Act, states that "It shall be unlawful for any person" in connection with the purchase or

sale of any security, "[t]o employ any device, scheme, or artifice to defraud." Exchange Act Rule 10b-5(3) states that "It shall be unlawful for any person," in connection with the purchase or sale of any security, "[t]o engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

Conduct Rule 2120 states that "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

It is well-settled that an improper post-execution allocation of trades is a violation of federal securities laws. "By its very nature, [a] cherry-picking scheme operate[s] as a fraud ... which is prohibited under [Rule] 10b-5(a) and (c)."⁸ In addition, the failure to disclose to customers the existence and operation of an unfair trade allocation scheme constitutes a material omission in violation of Rule 10b-5(b).⁹

Through the activities described above, Hsu transferred profitable trades from the accounts of seven customers into the accounts of his ex-wife and his sister. By transferring the profitable trades, Hsu engaged in fraudulent and deceptive practices and employed a scheme to defraud his customers. He did not tell his customers about the scheme. The facts alleged in the Complaint establish, for purposes of this Default Decision, that, by engaging in the described conduct, Hsu violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, as well as Conduct Rule 2120.

The Complaint charged Hsu with a separate violation of Rule 2110 for the conduct described above. Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."

⁸ *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275 at 1303, 2007 U.S. Dist. LEXIS 97024, at **70 (S.D. Fl. 2007) (fraudulent post-execution allocation scheme violated Section 10(b) of the Exchange Act and Rule 10b-5).

⁹ *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275 at 1305.

Hsu caused the fraudulent transfer of the 25 Profitable Trades from the accounts of seven customers into the accounts of his ex-wife and his sister. The facts alleged in the Complaint establish, for purposes of this Default Decision, that Hsu engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade and thereby violated Conduct Rule 2110.

B. Forgery

The Third Cause of Action charges Hsu with forgery, in violation of Conduct Rule 2110. Forgery is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor to which FINRA holds registered individuals. It is well-established that forgery violates Rule 2110.¹⁰

As described above, Hsu forged the signatures of Firm managers on Trade Correction Forms by photocopying those signatures onto the forms without the knowledge or permission of the managers. The facts alleged in the Complaint establish, for purposes of this Default Decision, that Respondent committed forgery and thereby violated Rule 2110.

V. Sanctions

A. Fraudulent Scheme

The FINRA Sanction Guidelines ("Guidelines") for intentional or reckless misrepresentations or material omissions of fact recommend a fine of \$10,000 to \$100,000 and a suspension of up to 2 years. In egregious cases, the Guidelines call for consideration of a bar.¹¹ Hsu failed to disclose to his customers that he was transferring profitable trades out of their accounts and into the accounts of his ex-wife and sister. That information would clearly have been material to the customers. Hsu's forgery of the

¹⁰ Donald M. Bickerstaff, Exchange Act. Rel. No. 35607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

¹¹ FINRA Sanction Guidelines, 90 (2011 ed.).

Trade Corrections Forms is evidence that his conduct was intentional. Considering the large number of transactions, the numerous customers, and the substantial dollar amounts involved, as well as the lack of mitigating evidence, the Hearing Officer finds that Hsu's conduct is egregious. Hsu will therefore be barred from associating with any FINRA member firm in any capacity.¹²

B. Forgery

For forgery, the Guidelines direct adjudicators to consider imposing a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. The principal considerations in determining sanctions include: (i) the nature of the documents forged, and (ii) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.¹³

In this case, there do not appear to be any mitigating factors. The documents forged were important forms to authorize and cause transfers of customer trades, and therefore, their profits, to other accounts. There is no evidence that Respondent had any belief that he had authority to place managers' signatures on the forms. This is an egregious case, and Hsu is barred for his conduct.

VI. Order

For transferring profitable trades from customer accounts to accounts of the Respondent's family members, without the customers' authorization, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Rules 2120 and 2110, Hsu is barred from associating with any FINRA member firm in any capacity. For forging Firm forms to facilitate the transfers, in violation of Rule 2110, Hsu is barred from associating with any FINRA member in any capacity.

¹² Merrill Lynch is reimbursing Hsu's customers for their losses; therefore, restitution is not ordered.

¹³ *FINRA Sanction Guidelines* 37.

The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Rochelle S. Hall", written over a horizontal line.

Rochelle S. Hall
Hearing Officer

Copies to: Hsin-Chin Hsu (*via overnight and first-class mail*)
David L. Friedman, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Hsin-Chin Hsu
(CRD No. 1655196),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008015805401

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While a registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch" or "the Firm"), Hsin-Chin Hsu fraudulently transferred 25 profitable trades (the "25 Profitable Trades") that were originally billed to the accounts of seven of his customers into the accounts of his ex-wife and sister, resulting in profits to his ex-wife's account of approximately \$47,118. and profits to his sister's account of approximately \$2,625. In addition, Hsu forged three of his managers' signatures on approximately 10 trade correction forms to transfer 10 of the 25 Profitable Trades

2. By transferring the 25 Profitable Trades to the accounts of his ex-wife and sister Hsu violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, as well as NASD Conduct Rules 2120 and 2110. In addition, by forging the signatures of three of his managers, Hsu violated NASD Rule 2110.

RESPONDENT AND JURISDICTION

3. Hsu began his employment with Merrill Lynch in February 1987 and remained there until his termination on October 21, 2008. While at Merrill Lynch, Hsu worked as a registered representative and held Series 7 and 63 licenses. On or about November 20, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration reporting that "Mr. Hsu was terminated after the firm concluded that he had violated firm policy by moving securities from clients' accounts to another client's account in several instances without the clients' consent". Respondent is currently employed by a FINRA member firm in a registered representative capacity and holds Series 7 and 63 licenses.

FACTS

4. Between April and August 2008 (the "relevant period"), Hsu, while a registered representative with Merrill Lynch, serviced the accounts of customers ST, JT, CL, WI, NW, FT, and SC.

5. During the relevant period, Hsu transferred the 25 Profitable Trades that were originally billed to the accounts of customers ST, JT, CL, WI, NW, FT, and SC, into the accounts of either his ex-wife or his sister.

6. Hsu caused 23 of the 25 Profitable Trades to be transferred into the account of his ex-wife, CC, and two of the trades to be transferred into the account of his sister, JC. A schedule listing, among other things, the date of the initial trade, the trade correction date, the securities involved, and the accounts, is attached as Exhibit A. Hsu effected these fraudulent transfers by submitting trade correction forms known as Non-Market Error Trade Correction forms (the "Trade Correction Forms") to the Firm's wire room.

7. At Merrill Lynch during this time period, trade correction forms were required to be reviewed and signed by a manager prior to being processed.

8. Hsu forged approximately 10 of the 25 Trade Correction Forms used to transfer the 25 Profitable Trades by placing photocopies of the signatures of Firm managers JK, KM and KS on the forms without their knowledge or approval. Hsu then submitted those forms, with the photocopied signatures, to the wire room for processing.

9. All of the 25 Profitable Trades that Hsu moved to his ex-wife and sister's accounts were profitable at the time Hsu caused the trade corrections to be made. By moving 23 trades from the customers' accounts to his ex-wife's account, Hsu transferred approximately \$47,118 in profits that belonged to those customers to his ex-wife. By moving two trades from the customers' accounts to his sister's account, Hsu transferred approximately \$2,625 in profits that belonged to those customers to his sister.

10. Merrill Lynch became aware of Hsu's transfer of profitable trades and related forgeries during October, 2008. After an investigation, the Firm terminated Hsu and is in the process of making restitution to the affected customers.

**FIRST CAUSE OF ACTION
SECTION 10(b) OF THE EXCHANGE ACT, AND RULE 10b-5 THEREUNDER,
NASD CONDUCT RULES 2120 AND 2110**

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.

12. Exchange Act Rule 10b-5(1), promulgated under Section 10(b) of the Exchange Act, states that "It shall be unlawful for any person" in connection with the purchase or sale of any security, "[t]o employ any device, scheme, or artifice to defraud." Exchange Act Rule 10b-

5(3) states that "It shall be unlawful for any person," in connection with the purchase or sale of any security, "[t]o engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

13. NASD Conduct Rule 2120 states that "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

14. Through the activities described above, Hsu transferred profitable trades from the accounts of customers ST, JT, CL, WI, NW, FT, and SC into the accounts of his ex-wife and his sister. Hsu thereby engaged in fraudulent and deceptive practices and employed a scheme to defraud.

15. By engaging in this conduct, Hsu violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, as well as NASD Conduct Rules 2120 and 2110.

**SECOND CAUSE OF ACTION
CONDUCT INCONSISTENT WITH JUST AND EQUITABLE PRINCIPLES OF TRADE,
NASD CONDUCT RULE 2110**

16. The Department realleges and incorporates by reference paragraphs 1 through 15 above.

17. NASD Conduct Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."

18. As described above, Hsu caused the transfer of the 25 Profitable Trades from the accounts of customers ST, JT, CL, WI, NW, FT, and SC into the accounts of his ex-wife and his

sister. Hsu thereby engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade and violated NASD Rule 2110.

**THIRD CAUSE OF ACTION
Forgery
NASD Conduct Rule 2110**

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

20. NASD Conduct Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."

21. As described above, Hsu forged the signatures of managers JK, KM and KS on the Firm Trade Correction Forms by photocopying those signatures onto the forms without the knowledge of JK, KM or KS.

22. Hsu thereby engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

RELIEF REQUESTED

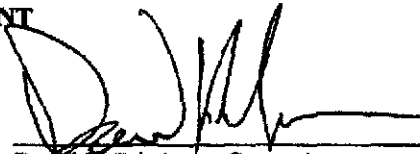
WHEREFORE, the Department respectfully requests that the panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

Date:

12/31/10



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