

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Andrew J. Patton, Respondent
General Securities Representative
[CRD No. 2428998]

Respondent.

Disciplinary Proceeding
No. C05050003

Hearing Officer: RSH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 9, 2006

INTRODUCTION

Disciplinary Proceeding No. C05050003 was filed on February 1, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Andrew J. Patton submitted an Offer of Settlement ("Offer") to Complainant on May 12, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented for the purpose of this proceeding only, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, to the entry of findings of facts and violations consistent with the allegations of the Complaint, and to the imposition of the

sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Andrew J. Patton entered the securities industry on December 15, 1993 as a General Securities Representative of UBS Financial Services, a member of NASD. Andrew J. Patton, during all periods mentioned herein, was associated with member firm Wells Fargo Brokerage Services, L.L.C., and was registered with NASD under Article V of the By-Laws as a General Securities Representative. Patton is currently associated with another member firm.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. This case arises from Patton's sale of long-term callable certificates of deposit ("CDs"). These callable CDs allowed the issuer, not the purchaser, to redeem the CD after a specified period of time. Typically, the issuer could redeem the CD on each anniversary date of the purchase. Issuers tend to exercise the call option when interest rates fall. When the issuer calls a CD, the issuer returns the principal amount invested to the customer, and the customer keeps any accrued interest.
2. If a customer wished to redeem a callable CD prior to maturity or call by the issuer, the customer's only option was to sell the CD on the secondary market. The price paid to the customer in the secondary market was contingent on supply and demand and prevailing

interest rates. This presented a significant risk for customers who needed the funds prior to maturity. In 1997 and 1998, many CDs were called because interest rates were declining. But later, when interest rates were increasing, the banks did not call the CDs. In many instances, during 1999 through 2000, secondary market transactions occurred at prices well below the original face amount of the CD.

3. During the period from on or about March 1999 through on or about September 2000, in order to induce their purchases, Patton made material misrepresentations of fact in selling long-term callable CDs to customers.
4. Patton falsely represented to customers PM, BM, and CM that the customers could redeem the callable CDs with a penalty of $\frac{1}{2}$ to 1% of the principal after the customers held the CDs for one year. Patton's specific representations are set forth in paragraphs 9-11.
5. Patton's representations were false, because the market value bore no relation to the penalties quoted by Patton.
6. If a customer wished to redeem a callable CD prior to maturity or call by the issuer, the customer's only option was to sell the CD on the secondary market.
7. Because interest rates were rising at the time PM, BM, and CM redeemed their CDs, the customers suffered losses far in excess of the $\frac{1}{2}$ to 1% redemption penalty quoted by Patton.
8. On or about April 23, 1999, Patton recommended and sold to CM a LaSalle National Bank Step-Down CD with a maturity date in 2019 in the amount of \$100,000. Patton misrepresented that CM could redeem the CD in one year and recover the entire principal amount, less a penalty of $\frac{1}{2}$ of 1%. CM, in fact, suffered losses of 15% when he sold the CD on the open market.

9. Also on or about April 23, 1999, Patton recommended and sold PM a LaSalle National Bank Step-Down CD with a maturity date in 2019 in the amount of \$100,000. On or about June 9, 1999, Patton recommended and sold PM the same product in the amount of \$100,000. Patton misrepresented that PM could redeem these two CDs after one year with a minimal penalty of 1%. PM, in fact, suffered losses of 11% and 16% on the two CDs when she sold them on the secondary market.
10. On or about September 10, 1999, Patton recommended and sold BM a European American Bank Step-Down CD with a maturity date in 2014 in the amount of \$100,000. On or about June 14, 1999, Patton recommended and sold BM a second CD, a LaSalle National Bank Step-Down 8.25% CD with a maturity date of 2019 in the amount of \$100,000. Patton misrepresented to BM that BM could redeem these two CDs after one year and recover the entire principal amount, less a penalty of $\frac{1}{2}$ of 1%. Instead, BM suffered losses of 11% and 5% when he sold the CDs on the open market.
11. On or about July 20, 1999, Patton exercised the death-put feature of a brokered CD held in an estate account whose beneficiary was SC.
12. The estate account was not eligible for exercise of the death-put feature, because the account did not hold the CD at the time of the account owner's death.
13. Prior to the exercise of the death-put feature, the CD was held by another customer, JF, who wished to redeem the CD for the principal amount less a penalty of $\frac{1}{2}$ of 1%.
14. The CD was not eligible for redemption at 99.5% of its face value. Instead, due to prevailing market prices, the highest percentage at which the CD could be sold was 89.625%.

15. Rather than cause a loss to the customer JF or the firm, Patton decided to inappropriately exercise the death-put feature of the CD and cause the issuer to bear the loss.
16. The CD provided for redemption of the certificate at face value in the event the holder of the CD died before the maturity date.
17. For an estate to properly exercise the death-put, the deceased customer must have been the holder of the certificate at the time of death.
18. Patton sold the CD from JF to the estate account of SC for 99.5% of the face amount.
19. After transferring the CD to the estate account, Patton submitted a death certificate from the previously deceased customer and collected the face value of the CD plus interest from the issuer.
20. Exercise of the death-put feature was invalid under the terms of the certificate of deposit, because the account did not hold the CD at the time of the account owner's death.
21. Such acts, practices, and conduct described in paragraphs 1 through 20 hereinabove constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Patton, as alleged in the First and Second Cause of Complaint.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

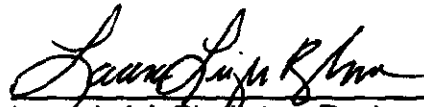
It is ordered that Andrew J. Patton be suspended for 30 business-days from association with any NASD member in any capacity and that he pay a monetary fine in the amount of \$10,000.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), A bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority



Laura Leigh Blackston, Regional Counsel
NASD, District No. 5
1100 Poydras Street, Suite 850
New Orleans, Louisiana 70163-0802
Phone: 504/522-6527
FAX: 504/522-4077