

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN C. RICHMOND
(CRD No. 3240261),

Respondent.

Disciplinary Proceeding
No. C05050012

DEFAULT DECISION

Hearing Officer - SW

Dated: August 22, 2005

Respondent (1) failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and (2) engaged in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110. Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, the Hearing Officer did not impose sanctions for the private securities violations.

Appearances

Laura Leigh Blackston, Esq., Regional Counsel, New Orleans, LA, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance for Stephen C. Richmond.

DECISION

I. Procedural Background

The NASD Department of Enforcement ("Enforcement") effectively filed its Complaint in this disciplinary proceeding on March 30, 2005,¹ alleging that Respondent Stephen C. Richmond ("Respondent"): (i) participated in the sale of securities (i.e., the sale of limited partnership interests to two customers) without providing prior written

¹ Enforcement mailed the Complaint on March 30, 2005, which was received by the Office of Hearing Officers on April 4, 2005. Effective September 11, 2000, NASD Procedural Rule 9135(a) was amended to clarify that complaints are deemed timely filed if they are mailed to the Office of Hearing Officers within the two-year jurisdictional period. See NASD Notice to Members, 00-56 (2000).

notice to his employer, Aura Financial Services, Inc. ("Aura Financial"), in violation of NASD Conduct Rules 3040 and 2110; and (ii) failed to respond to two requests for information issued pursuant to NASD Procedural Rule 8210, in violation of Rules 8210 and 2110.

Respondent failed to answer the Complaint. On June 22, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the declaration of Laura Leigh Blackston, Regional Counsel in NASD's New Orleans office, and by five exhibits.² On July 28, 2005, Enforcement supplemented its Motion.³ For the reasons set forth below, Enforcement's Motion as supplemented is granted.

II. Respondent's Default

On March 30, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via first class mail and certified mail, at Respondent's address of record in NASD's Central Registration Depository ("CRD address").⁴ (DECL at ¶ 16; DX-2; DX-3). Respondent did not file an answer to the Complaint. (DECL at ¶ 18).

Thereafter, on April 28, 2005, Enforcement sent a Second Notice of Complaint and the Complaint, via first class mail and certified mail, to Respondent at his CRD address. (DECL at ¶ 17; DX-5). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 18).

Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. Accordingly, the Hearing Officer finds that

² Hereinafter, the statements in the Blackston Declaration will be designated as "DECL at ¶" and Enforcement's exhibits will be designated as "DX-" with the appropriate page number.

³ Hereinafter, the statements in the Supplemental Declaration will be designated as "SUPP DECL at ¶."

⁴ Respondent's CRD address is [REDACTED] (DX-1, p. 1).

Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered as a general securities representative on August 18, 1999. (DX-1, p. 3; DECL at ¶ 5). From January 25, 2002 to April 2, 2003, Respondent was similarly registered with NASD member firm Aura Financial. (DX-1, p. 2; DECL at ¶ 5). On April 2, 2003, Aura Financial filed a Form U-5 terminating Respondent's registration. (DX-2; DECL at ¶ 6). Respondent is not employed currently in the securities industry. (DX-1, p. 2; DECL at ¶ 7).

Article V, Section 4 of the NASD's By-Laws creates a two-year period of retained jurisdiction over former registered persons, covering misconduct occurring before their registration terminated and failures to provide information requested during the period of retained jurisdiction.

Enforcement filed the Complaint on March 30, 2005, within two years of the date that Respondent's registration was terminated. The Complaint alleges misconduct that occurred while Respondent was registered through Aura Financial, as well as failures to respond to requests for information issued during the period of retained jurisdiction.

NASD thus has jurisdiction over this proceeding.

B. Respondent Participated in the Offer and Sale of Limited Partnership Interests Without Providing Prior Written Notice to Aura Financial

Count one of the Complaint, attached to this Default Decision as Exhibit A, alleges that on June 7, 2002 and September 9, 2002, while associated with Aura

Financial, Respondent participated in the sale of \$68,000 of limited partnerships interests of Futera Advantage Fund, L.P. ("Futera Fund") to customer JG, and \$10,400 of limited partnership interests of Hedgers Advantage Fund, L.P. ("Hedgers Fund") to customer RC, respectively, without providing to Aura Financial prior written notice of the proposed transactions and Respondent's role therein. (Complaint at ¶¶ 2-12).

Futera Fund was a Delaware limited partnership created to achieve capital appreciation through the trading of options on securities, and on the underlying securities themselves. (Complaint at ¶ 5). Futera Fund's general partner, Futera Trading Group, Inc. ("Futera Trading"), selected Tivoli Asset Management, LLC ("Tivoli Management") as the fund's trading manager. (SUPP DECL at ¶ 5). Although Tivoli Management was the sole party responsible for the investment decisions of the Futera Fund, the limited partners were entitled to 70% of the allocation of the fund's net profits. (Complaint at ¶¶ 6-7).

Hedgers Fund was a Delaware limited partnership created to achieve high total returns by engaging in the purchase and sale of securities, as well as writing options in various combinations and ratios to create a profitable range of values. (Complaint at ¶¶ 8-9; SUPP DECL at ¶ 7). Mr. Andrew Tivoli, the general partner and manager of the Hedgers Fund, was the only person authorized to purchase and sell securities for the fund, although the profits of the fund were to be allocated on pro-rata basis to the limited partners in proportion to their capital balances. (Complaint at ¶¶ 9-11; SUPP DECL at ¶ 8).

Enforcement submitted additional information with its Motion showing that Respondent had an ownership interest in Futera Trading, the general partner of Futera

Fund, and was entitled to receive management fees and a percentage of Futera Fund's profits.⁵ (DECL at ¶ 11.A; SUPP DECL at ¶ 5). Customer JG and customer RC executed declarations stating that Respondent solicited and sold them the investments in the Futera and Hedgers Funds, respectively. (DECL at ¶ 11.D). Aura Financial's director of compliance wrote NASD that Respondent failed to provide written notification to Aura Financial of his intention to solicit and sell investments in the Futera and Hedgers Funds. (DECL at ¶ 11.C).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count one of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

NASD Conduct Rule 3040 requires that an associated person who intends to participate in a private securities transaction, prior to the transaction, must "provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction"⁶

The limited partnership interests of Futera Fund and Hedgers Fund are "securities" within the meaning of Section 3(a)(10) of the Securities Exchange Act of 1934 because they are "investment contracts." In SEC v. W.J. Howey Co.,⁷ the United States Supreme Court held that there is an investment contract, and, hence, a security,

⁵ Respondent did not have an ownership interest in the Hedgers Fund. (SUPP DECL at ¶ 9).

⁶ In addition, Rule 3040 provides that, if the transaction is for compensation, the member firm must approve or disapprove of the proposed transaction in writing. If the member approves a person's participation in the proposed transaction, the transaction must be recorded on the books and records of the member and the member must supervise the person's participation in the transaction.

⁷ 328 U.S. 293, 298-99, 301 (1946).

when a person invests money in a common enterprise and expects profits to be derived solely from the efforts of the promoter or third party. A limited partnership interest in the Futera Fund or the Hedgers Fund is a security because it involves a common enterprise with profits that are derived from the efforts of persons other than the limited partners who are passive investors.⁸

Respondent's solicitation of customers JG and RC to invest in the Futera Fund and the Hedgers Fund, respectively, was sufficient to trigger the requirement that he notify Aura Financial in writing. A failure to provide prior notice of an intent to participate in the solicitation of securities constitutes a violation of Conduct Rule 3040.⁹ A violation of Conduct Rule 3040 is also a violation of Conduct Rule 2110's requirement to "observe high standards of commercial honor and just and equitable principles of trade."¹⁰

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent participated in the sale of the limited partnership interests of Futera Fund and Hedgers Fund to customers JG and RC, respectively, without providing prior written notice of the transactions to Aura Financial and thereby violated NASD Conduct Rules 3040 and 2110.

C. Respondent Failed to Respond to Requests for Information

Count two of the Complaint alleges that the NASD staff sent Respondent three

⁸ See, e.g., Jeanne Piaubert, S.A. v. Sefrioui, No. 97056131, 2000 U.S. App. LEXIS 2462, **11, 12 (9th Cir. 2000) (a limited partnership interest is generally a security because, by definition, it involves an investment in a common enterprise with profits to come solely from the effort of others) (quoting SEC v. Murphy, 626 F.2d 633, 640-41 (9th Cir. 1980)).

⁹ See Stephen J. Gluckman, 1999 SEC LEXIS 1395, at **14-15 (July 20, 1999).

¹⁰ District Bus. Conduct Comm. v. Norman M. Merz, No. C8A960094, 1998 NASD Discip. LEXIS 40 (NAC Nov. 11, 1998).

requests for information, pursuant to NASD Procedural Rule 8210, on June 25, 2004, July 12, 2004, and July 26, 2004, concerning the allegations of count one of the Complaint. (Complaint at ¶ 13; Exhibit A to the Complaint). The requests for information were sent to Respondent at his CRD address. (Id.). To date, Respondent has not responded to any of the Rule 8210 requests. (Complaint at ¶ 14).

With its Motion, Enforcement submitted the additional information that the NASD staff sent the Rule 8210 requests for information to Respondent as a consequence of NASD's special review of Aura Financial's Florida office. (DECL at ¶ 8).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count two of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

Procedural Rule 8210(a)(1) gives NASD the authority to require persons associated with a member to report "orally, or in writing, . . . with respect to any matter involved in the investigation." The obligation to answer such requests continues for two years from the termination of a representative's registration. This Rule provides a means for NASD to carry out its regulatory functions in the absence of subpoena power. It is a "key element in the NASD's efforts to police its members"; failure to respond subverts the NASD's ability to perform its regulatory responsibilities.¹¹

The Hearing Officer finds that Respondent had constructive notice of the Rule 8210 requests because they were mailed to his CRD address, and finds further that he violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the three requests for information.

¹¹ Richard J. Rouse, 51 SEC 581 (1993); John J. Malach, 51 SEC 618 (1993).

IV. Sanctions

A. Respondent Failed to Respond to NASD Requests for Information

For failing to respond to the NASD staff's requests for information, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹² The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent from associating — with any member firm in any capacity for failing to respond to the three requests for information issued pursuant to NASD Procedural Rule 8210.

B. No Sanction for the Private Securities Transactions Violation

Because the Hearing Officer barred Respondent for his failure to respond to the Rule 8210 requests, no separate sanction will be imposed for the private securities transactions in violation of NASD Conduct Rules 3040 and 2110.¹³

V. Order

Respondent Stephen C. Richmond is barred from associating with any NASD member firm in any capacity for failing to respond to NASD requests for information issued pursuant to Rule 8210, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bar shall become effective on the date this Decision becomes

¹² NASD Sanction Guidelines, p. 35 (2005).

¹³ See Dep't of Enforcement v. Jeffrey B. Hodde, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002) (explaining that a bar is the standard sanction for a respondent's failure to respond to information requests and holding that it is therefore redundant to impose an additional sanction, such as a suspension, for a violation of another NASD rule).

the final disciplinary action of NASD.

Sharon Witherspoon

Sharon Witherspoon

Hearing Officer

Date: Washington, DC

August 22, 2005

Copies to:

Stephen C. Richmond (via Federal Express and first class mail)

Laura Leigh Blackston, Esq. (via electronic and first class mail)

Andrew A. Favret, Esq. (via electronic and first class mail)

Rory C. Flynn, Esq. (via electronic and first class mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

**Stephen C. Richmond, General Securities
Representative
[CRD No. 3240261],**

Respondent

Disciplinary Proceeding
No. C05050012

Hearing Officer: ____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Stephen C. Richmond ("Richmond") became registered with NASD in August 18, 1999 while associated with former member firm Krieger Financial Services, Inc. During all time periods relevant to this complaint, Richmond was associated with Aura Financial Services, Inc. ("Aura"), a member of NASD, as a General Securities Representative. Aura filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Richmond on April 2, 2003. Richmond is not currently associated with a member firm of NASD. Although Richmond is not currently registered, he remains subject to the jurisdiction of NASD until April 1, 2005, pursuant to Article V, Section 4 of the NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

**FIRST CAUSE OF COMPLAINT
NASD Conduct Rules 2110 and 3040, Private Securities Transactions,
Against Respondent Richmond**

2. During the period from June 7, 2002 through September 9, 2002, Richmond participated in private securities transactions without providing prior written notice to Aura, the member firm with which he was associated.
3. Specifically, Richmond solicited two customers to purchase limited partnership interests in Futera Advantage Fund, L. P. and Hedgers Advantage Fund, L.P., in the aggregate amount of \$78,400:

<u>Purchaser</u>	<u>Date of Purchase</u>	<u>Amount</u>
JG	6/7/02	\$68,000
RC	9/9/02	\$10,400

4. The Futera Advantage Fund, L.P. subscription agreement described the investment sold by Richmond to JG as a limited partnership interest in Futera Advantage Fund, L.P. ("the Futera Fund").
5. The Private Placement Memorandum ("PPM") for the Futera Fund described it as "a Delaware limited partnership developed with the objective of achieving capital appreciation over the long term through the trading of options and securities, and on the underlying securities themselves."

6. The sole party responsible for the investment decisions of the Futera Fund was a limited liability corporation called Tivoli Asset Management, LLC.
7. According to the PPM, the general partner of the Futera Fund and limited partners share net profits on a pro-rata basis allocation of 70% to the limited partners and 30% to the general partner.
8. The Hedgers Advantage Fund, L.P. subscription agreement described the investment sold by Richmond to RC as a limited partnership interest in The Hedgers Advantage Fund, L.P. ("the Hedgers Fund").
9. The PPM for the Hedgers Fund described it as a Delaware limited partnership developed with the objective of achieving high total returns while reducing risk of writing options in various combinations and ratios to create a profitable range of values that a particular equity or index can close at option expiration.
10. According to the Hedgers Fund PPM, the General Partner and Fund Manager is the only entity/individual with authority to engage in the purchase and sale of securities in order to achieve profits for the Hedgers Fund. The subscription documents nowhere contemplate that limited partners will make investment decisions for the Hedgers Fund.
11. The General Partner and limited partners of the Hedgers Fund share profits on a pro-rata basis allocation of 80% to all of the partners in proportion to their book capital balances. Losses are to be allocated to the General Partner and limited partners' capital accounts in proportion to their book capital balances.

Complaint
Case No. C05050012
Stephen C. Richmond
Page No. 4

12. Richmond failed to provide prior written notice to Aura of his sale of limited partnership interests in the Futera Fund or the Hedgers Fund.
12. By virtue of the conduct described in paragraphs 2 and 3 above, Richmond violated NASD Conduct Rules 2110 and 3040.

SECOND CAUSE OF COMPLAINT
NASD Conduct Rule 2110 and Procedural Rule 8210,
Failure To Respond to Requests for Information, Against Respondent Richmond

13. By letters dated June 25, 2004, July 12, 2004 and July 26, 2004, the NASD District staff requested that Richmond provide certain information to the staff concerning the activities described in the First Cause of Complaint. These requests for information were sent pursuant to, and in accordance with, the provisions of Procedural Rule 8210, all as more fully detailed on Exhibit "A," attached hereto.
14. Richmond failed to respond to the above requests.
15. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Richmond.

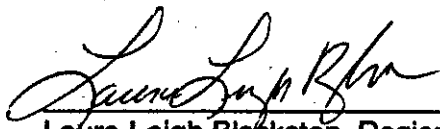
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Richmond committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Richmond in accordance with NASD Rule 8310;
- C. An order requiring Richmond to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

March 30, 2005
Date


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**Complaint
Case No. C05050012
Stephen C. Richmond
Page No. 6**

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