

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,
v.

COLIN P. COLLEA
(CRD No. 1519299)

Respondents.

Disciplinary Proceeding
No. C05050026

Hearing Officer – SNB

DEFAULT DECISION

January 3, 2006

Respondent is fined \$25,000 and suspended for two years from associating with any NASD member in any capacity, for making misrepresentations of fact to customers in connection with offers and sales of brokered callable certificates of deposit, in violation of Rule 2110.

Appearances

Karen Whitaker, Esq. Regional Counsel, NASD, Dallas, TX, and Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On May 6, 2005, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Colin P. Collea (“Respondent”) violated NASD Conduct Rule 2110 by making material misstatements of fact in connection with offers and sales of brokered callable certificates of deposit (“CCDs”). On November 7, 2005, Enforcement filed a Motion for Entry of Default

Decision, supported by the declaration of Karen E. Whitaker, Esq. and three exhibits.

Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on May 20, 2005, by first class and certified mail to his last known residential address listed in the Central Registration Depository (the "CRD address"). Respondent did not file an Answer to the Complaint. In the same manner, on June 21, 2005, Enforcement sent the Complaint and Second Notice of Complaint to the same address and an alternative address. Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent has been in the securities industry since June 1986. He was registered with U.S. Bancorp Investments, Inc., (USBFI) from May 1995 to March 2000. Thereafter, he registered with two other NASD member firms before leaving the securities industry in June 2003.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

Complaint charges Respondent with misconduct while he was associated, and (2) the Complaint was filed within two years of his association with an NASD member firm.

IV. Violation

The Complaint alleges that from February 1998 to September 1999, Respondent made material misstatements of fact in connection with offers and sales of CCDs to at least 29 customers. Specifically, Respondent falsely told certain customers, among other things, that the CCDs were one-year investments that could be renewed at the same rate or a lower rate, and that they were redeemable without penalty or that the penalty would only be six months of interest. However, in reality, the CCDs generally did not mature for 15 to 20 years, and if a customer wanted to liquidate his or her investment prior to that, it could only be sold in the secondary market, at a potentially significant loss to principal.

NASD Conduct Rule 2110 requires registered representatives to observe "high standards of commercial honor" and "just and equitable principles of trade." Misrepresentations that mislead customers violate Conduct Rule 2110. *See, In re Ramiro Jose Sugranes*, Exchange Act Release No. 35311, 1995 SEC LEXIS 234 (Feb. 1, 1995) (misrepresentations in connection with sale of certificates of deposit to make the investments more attractive to customers).² Proof of scienter is not required to prove a misrepresentation violation under Conduct Rule 2110. *DBCC v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *18 (NBCC July 28, 1997).

Here, Respondent misrepresented to customers the maturity dates and the secondary market risk of the CCDs. These misrepresentations would clearly be material to his customers.³

² Rule 2110 applies to all business related misconduct, regardless of whether the misconduct involved securities. *See Dept. of Enforcement v. James S. Davenport*, No. C05010017, (NAC May 6, 2003).

³ The standard for materiality requires consideration of "whether the reasonable investor would consider a fact important" in making an investment decision, or whether disclosure would "significantly alter ... the 'total mix' of information made available." *Martin R. Kaiden*, Exchange Act Release No. 41,629, 1999 SEC LEXIS 1396, at *18 n.25 (July 20, 1999); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 by making material misstatements of fact in connection with offers and sales of CCDs.

V. Sanctions

The NASD Sanction Guidelines (“Guidelines”) for misrepresentations provide for a suspension of 10 days to two years, and a fine of \$10,000 to \$100,000 where the misrepresentation is intentional or reckless. *NASD Sanction Guidelines* at p. 93 (2005 ed.). Respondent’s misrepresentations to 29 customers regarding the term and liquidity of the CCDs over a period of more than a year were, at a minimum, reckless.⁴ Enforcement requested a \$25,000 fine and a two-year suspension. The Hearing Officer believes that, given the seriousness of Respondent’s conduct, these sanctions are appropriate. Moreover, they are consistent with the sanctions imposed in a recent case with similar facts. *Enforcement v. Thomas A. Timberlake*, No. C07010099 (OHO May 27, 2003).

Therefore, Respondent is fined \$25,000 and suspended for two years from associating with any NASD member in any capacity. The fine shall be payable upon Respondent’s re-association with an NASD member.

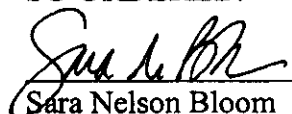
VI. Conclusion

For Respondent’s material misrepresentations of fact in violation of Rule 2110, he is fined \$25,000 and suspended for two years from associating with any NASD member in any capacity. If this decision becomes NASD’s final disciplinary action, the suspension shall begin

⁴ Recklessness is evident when the conduct “presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990), cert. denied, 499 U.S. 976 (1991).

February 2, 2006, and end on February 2, 2008, and the fine shall be payable upon Respondent's re-association with an NASD member.

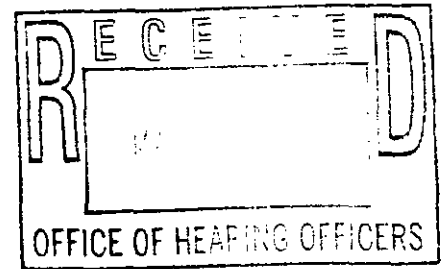
SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: January 3, 2006

cc: Colin P. Collea (*via overnight and first class mail*)
Karen E. Whitaker, Esq. (*via facsimile and first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

**NASD
OFFICE OF HEARING OFFICERS**



Department of Enforcement,
Complainant,

v.

James A. Swanke
CRD No. 2228901

Colin P. Collea
CRD No. 1519299

Respondents.

Disciplinary Proceeding
No. C05050026

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

JURISDICTION

1. Respondent James A. Swanke ("Swanke") entered the securities industry in March 1992, when he associated with an NASD member firm. He registered with NASD member firm U.S. Bancorp Investments, Inc. ("USBI") from February 1995 to February 2000. He was associated with two other member firms before registering with his current member firm, ING Financial Partners, Inc., where he currently serves as a registered representative. During his career in the securities industry, Swanke obtained Series 7, 10 and 63 securities licenses. NASD has jurisdiction to file this complaint against Swanke pursuant to Article V, Section 2 of NASD By-Laws.
2. Respondent Colin P. Collea ("Collea") entered the securities industry in June 1986, when he registered with an NASD member firm. He associated with several other NASD member firms before registering with USBI from May 1995 to March 2000. Thereafter, Collea registered with two other NASD member firms before leaving the securities industry in June

2003. During his career in the securities industry, Collea obtained Series 6, 7 and 63 securities licenses. NASD has jurisdiction to file this complaint against Collea pursuant to Article V, Section 4 of NASD By-Laws.

BACKGROUND

3. During the period from at least January 1998 through approximately December 2000, USBI and its representatives offered and sold brokered Callable Certificates of Deposit ("CCDs") to the public. During the relevant time period, USBI's traders purchased large blocks of DTC-eligible CCDs into USBI's inventory account at a price typically one percent below par. The traders then broke the blocks up into smaller denominations for sale to customers. Once broken into smaller denominations, USBI's fixed-income trading desk in Minneapolis, Minnesota offered the product to USBI's brokers, who were typically located in bank branch locations. In most cases, when the trading desk purchased CCDs, the traders sent "inventory sheets" which summarized current holdings and key characteristics (the rate and features) of the CCDs to USBI's brokers nationwide via facsimile.
4. USBI marketed the CCDs to customers primarily through referrals from US Bank employees. When customers sought information about traditional CDs from US Bank, they were referred to the USBI broker located in the branch for information regarding higher-yielding CCDs.
5. The terms of the CCDs were usually for extended maturities of 15 or 20 years. These products typically offered customers a higher interest rate for the first year, and the rate "stepped down" to a lower rate (usually 1% to 2% lower) for the remaining term. The CCDs varied in terms of how often they paid interest; there was a monthly payout on some CCDs, and a semi-annual payout on others. The CCDs also offered a death put redemption clause, which meant that in the event the CCD holder died, the CCD was redeemable for its

full (par) value by the heirs of the deceased. Most of the CCDs were callable by the issuing institutions after a one-year period, and then for every six months thereafter. The CCDs were FDIC-insured up to \$100,000 per institution.

6. A customer could redeem his or her CCD prior to maturity only by selling the CCD in the secondary market maintained by USBI. The price that the customer received at the time of liquidation could be significantly less than the customer's original principal.
7. In 1998, the issuing banks called many of the previously issued CCDs because interest rates were declining. However, issuing banks ceased calling CCDs in early 1999, when interest rates began to rise.

FIRST CAUSE OF COMPLAINT

Respondent Swanke Made Material Misstatements of Facts in Connection with His Offers and Sales of Brokered Callable Certificates of Deposit

(Violations of NASD Conduct Rule 2110)

8. Paragraph number 1 is realleged and incorporated herein by reference.
9. During the period from approximately April 1998 through March 1999, Swanke offered and sold CCDs to at least thirty-one customers. He made numerous material misrepresentations in connection with those offers and sales.
10. Specifically, during certain oral sales presentations, Swanke:
 - falsely told certain customers that they were purchasing one-year CCDs, when in reality the CCDs were for much longer terms, generally 15 to 20 years;
 - falsely told certain customers that the CCDs were a one or two year investment that could be renewed at the same or lower rate in six month or one year intervals;

- falsely told certain customers that the CCDs *would* be called by the issuing bank within a one to two year period of time when, in fact, calling the CCDs was at the sole discretion of the issuing banks;
 - falsely told certain customers that they should ignore the maturity date that would be noted on upcoming statements because the CCDs could be redeemed at anytime; and
 - falsely assured certain customers that their CCDs were FDIC insured when, in fact, the customers had deposits in excess of \$100,000 with the same institution and FDIC insurance did not apply to amounts in excess of \$100,000.
11. Upon receiving calls from certain customers concerned about extended maturity dates subsequent to their transactions, Swanke falsely assured the customers that they could receive full value for their CCDs upon redemption and to ignore the maturity date listed on their confirmations.
12. Upon certain customers' request to redeem their CD approximately one year after purchase, Swanke falsely informed the customers that he had already reinvested their funds for an additional six months at the same or lower rate when, in fact, the customers' funds remained invested in the long-term instrument.
13. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by James A. Swanke.

SECOND CAUSE OF COMPLAINT

Respondent Collea Made Material Misstatements of Facts in Connection with His Offers and Sales of Brokered Callable Certificates of Deposit

14. Paragraph number 2 is realleged and incorporated herein by reference.

15. During the period from approximately February 1998 to September 1999, Collea offered and sold at least twenty-nine CCDs to customers. He made numerous material misrepresentations in connection with those offers and sales.
16. Specifically, during certain oral sales presentations, Collea
 - falsely told certain customers that the CCDs were a one-year investment that could be renewed at the same rate or a lower rate, when in reality the CCDs were for much longer terms, generally 15 to 20 years;
 - falsely told certain customers that they could redeem their CCDs without penalty or that the penalty would only be six months of interest when, in fact, in order to obtain a return of principal prior to either maturity or the issuing bank's calling the CCDs, customers had to sell their investment on the secondary market at a potentially significant loss to principal
 - falsely told certain customers that they could redeem their CCDs for full value in one year or some other time period that was shorter than the actual maturity.
17. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Colin P. Collea.

PRAYER FOR RELIEF

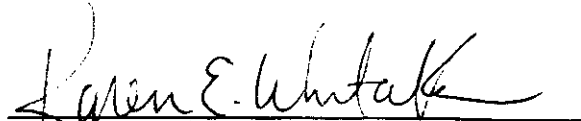
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondents in accordance with NASD Rule 8310.
- C. An order requiring Respondents 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.

Formal Complaint
James A. Swanke and Colin P. Collea

May 20, 2005
Date


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