

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Jason Eugene Abruzere,
CRD No. 4121049

Respondent.

Disciplinary Proceeding
No. C9B050020

Hearing Officer Alan W. Heifetz

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 27, 2005

INTRODUCTION

Disciplinary Proceeding No. C9B050020 was filed on March 22, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Jason Eugene Abruzere submitted an Offer of Settlement ("Offer") to Complainant on October 24, 2005. 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, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of

findings 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

Respondent Jason Eugene Abruzere ("Abruzere") became registered with NASD as a General Securities Representative ("Series 7") on or about January 21, 2000. Abruzere was registered with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") from on or about May 1, 2000 until his association with such member was terminated on or about November 15, 2002 as part of a staff reduction. Abruzere was again registered with Merrill Lynch from on or about March 5, 2003 until his association with such member was voluntarily terminated on or about March 23, 2003. Abruzere worked in Merrill Lynch's Financial Advisory Center in Hopewell, New Jersey. Merrill Lynch filed a Form U5 on Abruzere's behalf on or about February 23, 2004, disclosing Abruzere's termination. Abruzere is not presently associated with a member firm.

FINDINGS AND CONCLUSIONS

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

Summary

1. From in or about March 2002 through in or about June 2002, Abruzere made unsuitable mutual fund switches in at least five Merrill Lynch customer accounts. Those transactions, as

more fully described in Schedule A attached hereto and incorporated herein by reference, provided the customers will little or no advantage over their initial holdings and resulted in additional or unnecessary expenses. Each of these transactions, however, generated additional compensation for Abruzere while subjecting the customers to one or more of the following: higher annual expenses (immediately or in the near future); reduced yield and/or returns; a lengthier contingent deferred sales charge (“CDSC”) period; and/or a CDSC charge.

2. With respect to at least four Merrill Lynch customer accounts, Abruzere failed to disclose to the customers, or otherwise afford them, the opportunity to reduce their annual expenses on mutual fund investments by either remaining in the mutual fund shares they had owned for several years or by effecting a free exchange into a comparable fund within the same fund family.
3. With respect to his mutual fund transaction recommendations in at least six Merrill Lynch customer accounts, Abruzere misrepresented and omitted material facts to customers. Abruzere’s misrepresentations and omissions included the following:

- Failing to disclose the name of the fund being recommended and relevant information about the fund such as its investment objectives, investment portfolio, historical income and yield information and expense ratio and sales charges;
- Misrepresenting the type of fund that the customers would be purchasing;
- Failing to disclose the class of mutual fund shares that would be purchased;
- Failing to disclose cost saving options to customers, such as utilizing free exchanges;

- Failing to disclose to customers their options regarding classes of shares and the different costs/expenses associated with each; and
- Misrepresenting to customers who were purchasing Class C shares that there would be “no costs” involved with the investment.

Unsuitable Mutual Fund Switching
NASD Conduct Rules 2110 and 2310 and IM-2310-2(b)(3)

4. From in or about March 2002 through in or about June 2002, Abruzere recommended and effected an unsuitable mutual fund switch transactions in the accounts of at least five Merrill Lynch customers, without having reasonable grounds for believing that such transactions were suitable for them in view of, among other things, the nature of the recommended transactions and the unnecessary costs and/or fees incurred. For example:

A. On or about May 16, 2002, Abruzere recommended that customers EX and CX sell their Class A shares of the Rochester Fund Municipals (RMUNX), a NY long-term municipal bond fund, and purchase an unidentified tax-free, short-term bond fund (see Schedule A, item 1). The customers accepted these recommendations. Abruzere, however, later purchased Class C shares of the Franklin NY Tax-Free Income Fund (FNYIX), a NY long-term municipal bond fund, instead. This transaction was unsuitable because:

- The investment objectives of the Rochester Fund Municipals and the Franklin NY Tax-Free Income Fund were nearly identical, as both were New York municipal long-term bond funds.
- Abruzere never recommended that the customers utilize a free-exchange to switch into, for example, Rochester’s shorter-term NY Tax-Free Income Fund.

- The annual expenses of the Rochester Fund Municipals Class A shares owned by customers EX and CX were approximately .72%. By purchasing the Franklin NY Tax-Free Income Fund Class C shares, the customers were subjected to increased annual expenses of approximately 1.16%.
- In addition, by switching to Class C shares, EX and CX became subject to a one-year CDSC period for any sale of those shares.

B. On or about March 26, 2002, Abruzere recommended that customers IR and MR sell their Liberty Federal Securities Class A shares (CFSAX)¹ and purchase Eaton Vance Government Obligations Class C shares (ECGOX) (see Schedule A, item 2). The customers accepted his recommendation. These transactions were unsuitable because:

- The investment objectives of the two funds were similar as both were government bond funds.
- The annual expenses of the Liberty Federal Securities Class A shares owned by IR and MR were approximately 1.15%. By purchasing the Eaton Vance Government Obligations Class C shares, the customers were subjected to increased annual expenses of approximately 1.97%.
- In addition, by switching to Class C shares, IR and MR became subject to a one-year CDSC period for any sale of those shares.

C. On or about May 3, 2002, Abruzere recommended that customers DD and AD sell their Liberty Strategic Income Class A shares (COSIX)² and Franklin Balance Sheet

¹ The fund name changed from Liberty to Columbia after this purchase.

² The fund name changed from Liberty to Columbia after this purchase.

Investment Class A shares (FRBSX) and purchase shares of an unidentified class of shares in the John Hancock Strategic Income Fund (see Schedule A, item 3). The customers accepted his recommendation. Abruzere purchased Class C shares of the John Hancock Strategic Income Fund (JSTCX). Abruzere, however, also purchased Class C shares in the Merrill Lynch U.S. Government Mortgage Fund (MCFSX), which had not been previously discussed with the customers. These transactions were unsuitable because:

- The investment objectives of the Liberty Strategic Income and John Hancock Strategic Income funds were nearly identical as both are multi-sector bond funds.
 - The annual expenses of the Liberty Strategic Income and Franklin Balance Sheet funds were approximately 1.22% and .96%, respectively. Abruzere, however, purchased Class C shares in the John Hancock Strategic Income and Merrill Lynch U.S. Government Mortgage funds for this account, thereby subjecting the customers to higher annual expenses of 1.57% and 1.63%, respectively.
 - Abruzere purchased Class C shares in the Merrill Lynch U.S. Government Mortgage Fund without prior authorization from DD or AD.
 - In addition, by switching to Class C shares, DD and AD became subject to a one-year CDSC period for any sale of those shares.
 - Abruzere never recommended that the customers utilize a free-exchange to switch into, for example, the Franklin U.S. Government Securities Fund (FKUSX).
- D. On or about June 13, 2002, Abruzere recommended that customer IK sell her Franklin Capital Growth Class A shares (FKREX) and purchase Class C shares of the Merrill Lynch Balanced Capital (MCCPX) and Merrill Lynch U.S. Government Mortgage

(MCFSX) funds (see Schedule A, item 4). Customer IK accepted his recommendation. These transactions were unsuitable because:

- The annual expenses of the Franklin Capital Growth Class A shares owned by customer IK were approximately .92%. By purchasing the Class C shares, IK was subjected to increased annual expenses of approximately 1.62% and 1.57% for the Merrill Lynch Balanced Capital and Merrill Lynch U.S. Government Mortgage funds, respectively.
- In addition, by switching to a Class C fund, IK became subject to a one-year CDSC period for any sale of those shares.
- Abruzere never recommended that IK utilize a free-exchange to switch into, for example, the Franklin U.S. Government Securities Fund (FKUSX).

E. On or about April 3, 2002, Abruzere recommended that customer KC sell her Oppenheimer Growth Class A shares (OPPSX) and purchase Class C shares of the Merrill Lynch Basic Value (MCBAX) and Growth Fund of America (GFACX) funds (see Schedule A, item 5). This transaction was unsuitable because:

1. The annual expenses of the Oppenheimer Growth Class A shares owned by KC were approximately 1.06%. By purchasing the Class C shares, KC was subjected to increased annual expenses of approximately 1.59% and 1.53 % for the Merrill Lynch Basic Value Fund and Growth Fund of America, respectively.
2. In addition, by switching to a Class C fund, KC became subject to a one-year CDSC period for any sale of those shares.
3. Abruzere never recommended that KC utilize a free-exchange to switch into, for example, the Oppenheimer Value Fund (CGRWX).

5. Based on the foregoing, Abruzere violated NASD Conduct Rules 2110 and 2310 and IM-2310-2.

Misrepresentations/Omissions
Violation of NASD Conduct Rule 2110

6. In connection with his mutual fund recommendations in at least six customer accounts, Abruzere made untrue statements of material facts or omitted material facts. To wit, Abruzere misrepresented/omitted some or all of the following material facts with respect to each of the customers:

- Abruzere misrepresented the type of fund that the customers would be purchasing.
- He failed to disclose that a free-exchange was available within the fund family currently owned by the customer.
- He failed to disclose the class of shares that would be purchased.
- He failed to disclose that the customers had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to them the different fees/increased expenses associated with each class of shares.
- He failed to disclose to them that by purchasing Class C shares they would become subject to a one-year CDSC period for any sale of the shares.
- He failed to disclose the name of the fund that the customers were purchasing.
- He failed to disclose other material information about this investment, such as the fund's investment objectives, portfolio, historical income and capital appreciation, as well as its expense ratio and sales charges.

For example:

A. In connection with the mutual fund recommendations to customers EX and CX described above, Abruzere:

- Misrepresented that he would purchase a tax-free short-term bond fund for their account;
- Failed to disclose that a free-exchange was available within the fund family that they currently owned;
- Failed to disclose the name of the fund and the class of mutual fund shares they would be purchasing;
- Failed to disclose that they had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to them the different fees/increased expenses associated with each class of shares;
- Failed to disclose that by purchasing Class C shares they would be subject to a one-year CDSC period for any sale of the shares; and
- With respect to their investment in the Franklin NY Tax-Free Income Fund, failed to disclose other material information about this investment, such as the fund's investment objectives, portfolio, historical income and capital appreciation, as well as its expense ratio and sales charges.

B. In connection with the mutual fund recommendations to customers IR and MR described above, Abruzere:

- Failed to disclose which class of mutual fund shares they would be purchasing;

- Failed to disclose that they had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to them the different fees/increased expenses associated with each class of shares;
- Failed to disclose that by purchasing Class C shares they would be subject to a one-year CDSC period for any sale of the shares; and
- With respect to their investment in the Eaton Vance Government Obligations Fund, failed to disclose other material information about this investment, such as the fund's investment objectives, portfolio, historical income and capital appreciation, as well as its expense ratio and sales charges.

C. In connection with the mutual fund recommendations to customers DD and AD described above, Abuzere:

- Failed to disclose that they would be purchasing Class C shares in the Merrill Lynch U.S. Government Mortgage Fund;
- Failed to disclose that they had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to them the different fees/increased expenses associated with each class of shares;
- Failed to disclose that a free-exchange was available within the fund family that they currently owned;
- Failed to disclose that, by switching to Class C shares, they became subject to a one-year CDSC period for any sale of those shares; and
- With respect to their investment in the Merrill Lynch U.S. Government Mortgage and John Hancock Strategic Income funds, failed to disclose other material information about these investments, such as the investment objectives, portfolio,

historical income and capital appreciation, as well as the expense ratio and sales charges, of each of the funds.

D. In connection with the mutual fund recommendations to customer IK described above, Abruzere:

- Failed to disclose that she had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to her the different fees/increased expenses associated with each class of shares;
- Failed to disclose that a free-exchange was available within the fund family that she currently owned;
- In addition, by switching to a Class C fund, IK became subject to a one-year CDSC period for any sale of those shares; and
- With respect to IK's investment in the Merrill Lynch Balanced Capital and Merrill Lynch U.S. Government Mortgage funds, failed to disclose other material information about these investments, such as the investment objectives, portfolio, historical income and capital appreciation, as well as the expense ratio and sales charges, of each of the funds.

E. In connection with the mutual fund recommendations to customer KC described above, Abruzere:

- Failed to disclose that a free-exchange was available within the fund family that she currently owned;
- Failed to disclose that she had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to her the different fees/increased expenses associated with each class of shares;

- Failed to disclose that by purchasing a Class C shares she would be subject to a CDSC period for any sale of those shares; and
- With respect to KC's investment in the Merrill Lynch Basic Value Fund and Growth Fund of America Class C shares, he failed to disclose other material information about these investments, such as the investment objectives, portfolio, historical income and capital appreciation, as well as the expense ratio and sales charges, of each of the funds.

F. On or about June 20, 2002, Abruzere recommended that customer FH sell her AllianceBernstein Americas Government Income Fund (ANACX)³ and purchase an unidentified short-term bond fund (see Schedule A, item 6). Abruzere purchased Class C shares in the Merrill Lynch U.S. Government Mortgage Fund (MCFSX) for FH's account. In connection with that mutual fund recommendation, Abruzere:

- Failed to disclose the name of the mutual fund or the class of share that he was recommending;
- Failed to disclose that she had the option of purchasing different classes of mutual fund shares (Class A, Class B and Class C), and, therefore, never disclosed to her the different fees/expenses associated with each class of shares; and
- Failed to disclose that by purchasing a Class C shares she would be subject to a CDSC period for any sale of those shares; and
- With respect to FH's investment in the Merrill Lynch U.S. Mortgage Fund, he failed to disclose other material information about this investment, such as the

³ The fund's name changed to AllianceBernstein Americas Government Income Fund after this transaction.

fund's investment objectives, portfolio, historical income and capital appreciation, as well as its expense ratio and sales charges.

7. Based on the foregoing, Abruzere violated NASD Conduct Rule 2110.

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 Respondent be:

- Suspended from associating with any NASD member firm in any capacity for six months; and
- Fined in the amount of \$15,000. The fine shall be due and payable either immediately upon reassociation with a member firm following the six month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-83 10-2(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

A handwritten signature in black ink, appearing to read "Lynn M. Kaseta", written over a horizontal line.

Lynn M. Kaseta
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Schedule A

Jason Abruzere - CRD No. 4121049

Rule Violations: Unsuitable Mutual Fund Switching - NASD Conduct Rules 2310 and 2110 and IM-2310-2(b)(3); and Misrepresentations/Omissions - NASD Conduct Rule 2110

Item	Acct No./ Customer	Fund Name	Share Class	B/S	Trade Dt	Shrs	Trade Amt	Annual Expenses
1	EX & CX	Rochester Fund Municipals	A	Sell	2002-05-16	5,046	\$87,761.94	0.72%
		Franklin NY Tax-Free Income	C	Buy	2002-05-17	7,621	\$87,952.65	1.16%
2	IR & MR	Liberty Federal Securities	A	Sell	2002-03-26	3,293	\$34,181.34	1.15%
		Eaton Vance Gov't Obligations	C	Buy	2002-03-27	4,051	\$34,194.65	1.97%
3	DD & AD	Liberty Strategic Income	A	Sell	2002-05-03	2,221	\$12,526.79	1.22%
		Franklin Balance Sheet	A	Sell	2002-05-03	235	\$10,154.35	0.96%
		ML U.S. Govt Mortgage	C	Buy	2002-05-06	1,013	\$10,144.65	1.57%
		John Hancock Strategic Income	C	Buy	2002-05-06	1,931	\$12,514.65	1.63%
4	IK	Franklin Capital Growth	A	Sell	2002-06-13	1,378	\$12,625.49	0.92%
		ML Balanced Capital	C	Buy	2002-06-17	397	\$9,994.65	1.62%
		ML U.S. Govt Mortgage	C	Buy	2002-06-17	597	\$6,033.65	1.57%
5	KC	Oppenheimer Growth	A	Sell	2002-04-03	966	\$27,502.13	1.06%
		ML Basic Value	C	Buy	2002-04-04	581	\$16,994.65	1.59%
		Growth Fund of America	C	Buy	2002-04-04	519	\$11,784.64	1.53%

Rule Violations: Misrepresentations/Omissions - NASD Conduct Rule 2110

Item	Acct No.	Fund Name	Shr Class	B/S	Trade Dt	Shrs	Trade Amt
6	FH	AllianceBernstein Americas Government Income	C	Sell	2002-06-20	1,078	\$7,267.15
		ML U.S. Govt Mortgage	C	Buy	2002-06-21	717	\$7,259.65