

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DUPONT SECURITIES GROUP INC.
(BD No. 42305),

and

DAVID W. PARSONS
(CRD No. 2963654),

Respondents.

Disciplinary Proceeding
No. CAF040068

Hearing Officer – SNB

DEFAULT DECISION

September 28, 2005

For violating Section 10(b) of the Exchange Act, SEC Rule 10b-5, and Conduct Rules 2110 and 2120 in connection with approval of a fraudulent press release, and for violating Conduct Rule 2110 in connection with the sale of unregistered securities, Respondent Parsons is barred from associating with any NASD member in any capacity. In light of the bar, no other sanctions are imposed on Parsons for his violations of Rule 2110 and IM-1000-1 in connection with his unauthorized practice of law. For violating Conduct Rule 2110 in connection with the sale of unregistered securities, Respondent Dupont is expelled as an NASD member.

The record was insufficient to establish that Respondent Parsons violated Procedural Rule 8210, Conduct Rule 2110 and IM-1000 based upon his assertion of the attorney-client privilege, and accordingly, that charge is dismissed.

Appearances

Philip J. Berkowitz, Esq., Gregory R. Firehock, Esq., David L. Fenimore, Esq., Rory C. Flynn, Esq., of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by Respondents.

DECISION

I. Background

On August 30, 2004, the Department of Enforcement ("Enforcement") filed a Complaint in this proceeding. On January 13, 2005, Enforcement filed an Amended Complaint ("Complaint"), attached to this Decision as Exhibit A. The Complaint alleges that Respondents Dupont Securities Group Inc. ("Dupont") and David W. Parsons ("Parsons") (collectively, "Respondents") participated in three unregistered offerings of the common stock of Dupont's publicly traded parent company, Dupont Direct Financial Holdings, Inc. ("DIRX"), in violation of Section 5 of the Securities Act of 1933, ("Section 5") and by virtue of this, Respondents violated NASD Rule 2110. The Complaint also alleges that Parsons reviewed and approved a false press release regarding DIRX, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rules 2110 and 2120. Finally, the Complaint alleges that Parsons engaged in the unauthorized practice of law, and in that regard, violated Rules IM-1000-1, 2110, and 8210. On November 1, 2004, Respondents filed an Answer.

II. Respondents' Default

Counsel represented respondents until April 14, 2005, the due date for Respondent's Opposition to Enforcement's Motion for Partial Summary Disposition. Rather than filing an Opposition, Respondents' Counsel filed a Notice of Withdrawal, citing the fact that Counsel had been unable to adequately communicate with Respondents. Following this, the Hearing Officer set a Pre-Hearing Conference for April 18, 2005, to determine whether Respondents intended to oppose Enforcement's Motion. Respondents failed to appear at the Pre-Hearing Conference. In response, the Hearing Officer issued an order requiring Respondents to show cause, by April 25, 2005, why they should not be held in default. Respondents failed to respond. Accordingly, on

April 29, 2005, the Hearing Officer issued an Order of Default against Respondents. On May 23, 2005, Enforcement filed a Motion for Entry of Default Decision. For the reasons set forth below, the Motion is granted.¹

III. Jurisdiction

A. Parsons

Parsons first registered with the NASD as a General Securities Representative in April 1998. From 1999 to September 2004, Parsons served as President, Director, Chief Legal Officer/General Counsel, and Chief Compliance Officer of Dupont. In September 2004, Parsons was suspended from association with any NASD member for violating NASD Procedural Rule 9553, for failure to pay fees and costs in connection with an arbitration proceeding. He was later also suspended for failure to comply with an award issued in another arbitration proceeding. Parsons remains under suspension. NASD has jurisdiction to bring this proceeding because Parsons was registered with NASD when the Complaint was filed. Additionally, insofar as Parson's registration may be deemed to have terminated de facto when Dupont was expelled from NASD membership in July 2004, NASD has jurisdiction because the Complaint charges him with misconduct while he was registered and the Complaint was filed within two years of his last registration.

B. Dupont

Dupont became a member of NASD in 1996. In July 2004, Dupont was expelled from NASD membership for failure to pay a fine in a matter previously settled with NASD. NASD

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

has jurisdiction over Dupont because the Complaint was filed within two years of Dupont's expulsion.

IV. Violations

A. Sales of Unregistered Securities – Dupont and Parsons

The Complaint alleges that Respondents engaged in three separate instances of unlawful sales of unregistered shares of DIRX, the publicly traded parent company of Dupont, in violation of Section 5 of the Securities Act of 1933 ("Section 5"), and by doing so, Respondents violated Conduct Rule 2110. Section 5 prohibits the offer or sale of any security, unless there is a registration statement in effect as to that security, or there is an exemption available for that securities transaction. *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 859 (S.D.N.Y. 1997), *aff'd* 159 F.3d 1348 (2d Cir. 1998). To prove that Respondents violated Section 5, Enforcement must establish that no registration statement was in effect or filed as to the securities and a person, directly or indirectly, sold or offered to sell the securities. Enforcement must also show that the sale was made through the use of interstate facilities or the mails. This requirement is broadly construed to include even tangential mailings and intrastate telephone calls. *Id.* at 861. The allegations of the Complaint satisfy these requirements.

The Complaint alleges three separate sales of unregistered shares of DIRX in violation of Section 5, the "Exchange", the "Block Sale", and the "FAB Capital Sell-off."

1. The Exchange Transaction

In what the Complaint refers to as the "Exchange," on March 22, 2001, DIRX sold 750,000 unregistered shares of its common stock to CHC, a consultant to DIRX, for \$.40 per share (\$301,750). The next day, CHC sold the 750,000 unregistered shares to an Oregon company, CU, for \$.75 per share (\$562,500). Then, Dupont employees contacted their customers

who held registered DIRX stock, and urged them to participate in what they mischaracterized as a “stock split.” These customers executed identical letters of authorization to transfer freely tradable shares of DIRX from their Dupont accounts to CU. Parsons instructed CU to send a letter to DIRX’s transfer agent directing it to transfer CU’s unregistered shares to Dupont customers, who Parsons identified, along with the number of unregistered shares each was to receive. CU followed Parson’s instructions, causing the transfer agent to transfer unregistered shares from CU to the 20 Dupont customers identified by Parsons, in the amounts designated by Parsons. Between May 8, 2001 and June 18, 2001, CU exchanged 462,885 of its unregistered shares for 387,506 registered shares held by 20 of Dupont’s customers. In April 2002, CU sold 248,500 of the DIRX shares it received from Dupont customers into the marketplace at artificially inflated prices.

CU’s disposal of 462,885 restricted shares to Dupont customers in return for value (387,506 unrestricted shares of Dupont) qualifies as a sale of securities under Section 2(a)(3) of the Securities Act, which defines a sale to include “every contract of sale or disposition of a security or interest in a security for value.” The sale was made through the use of interstate facilities or the mails.

Dupont and Parsons participated in the sale of unregistered securities in this transaction. Dupont solicited its customers, falsely characterized the transaction as a “stock split” and caused customers to execute substantially identical letters of authorization to transfer freely tradable shares in exchange for unregistered shares. Parsons drafted the letter instructing DIRX’s transfer agent to transfer 462,885 unregistered shares of Dupont from CU to 20 Dupont customers.

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish, for purposes of this default decision that Respondents Dupont and Parsons participated

in the sale of unregistered DIRX stock in the Exchange transaction, in violation of Section 5 of the Securities Act and by doing so, Dupont and Parsons violated Rule 2110.

2. The Block Sale

In what the Complaint refers to as the "Block Sale," on May 16, 2001, CU placed a limit order to buy 400,000 shares of DIRX through a broker dealer other than Dupont. Then, Dupont solicited and collected 400,000 unregistered shares of DIRX from six of its customers to fill the limit order. These six Dupont customers sold their unregistered DIRX shares to CU on the same day, at substantially below the market price. Four of the customers sold the same number of shares (75,441, purportedly the maximum number of unregistered shares allowed for sale by a single seller during a three month period, after a one year holding period, among other requirements, under Exchange Act Rule 144 ("Rule 144")). The two remaining customers sold just enough together so that the total number of shares precisely matched the limit order of 400,000 shares.

It appears that the Block Sale scheme was designed to make each of the six customers' sales of unregistered DIRX stock appear as if it qualified under the exemption to Section 5 provided by Rule 144. In that regard, Rule 144(e) provides a safe harbor for sales by any one shareholder at or below one percent of the outstanding shares. Shareholders may sell shares up to this one-percent limit every three months. It is Respondent's burden to demonstrate that an exemption from Section 5 is available. *See, e.g. Kevin D. Kunz*, Admin Proc. File No. 3-9960, Exchange Act Release No. 45290, 2002 SEC LEXIS 104, at *26-27 (Jan. 16, 2002). There is no record evidence that any registration exemption applied in this case.

On the contrary, there is record evidence indicating that the Rule 144 exemption was not available in this case. Rule 144(e)(vi) provides that "when two or more affiliates or other

persons agree to act in concert for the purpose of selling securities of an issue," all sales "sold for the account of all such persons during any period of three months shall be aggregated for the purpose of determining the limitation of the amount of securities sold." *See, e.g., Michael Niebur*, Exchange Act Release No. 36620, 52 S.E.C. 546, 550, 1995 LEXIS 3451, at *11, (Dec. 21, 1995). In this case, the Complaint alleges facts indicating that the six shareholders were acting in concert. Among other things, the customers sold their shares on the same day, through the same broker dealer, and at the same price (which was substantially below market price at the time). Moreover, the aggregated sales by these six shareholders precisely match the order to purchase shares. The evidence supports aggregation of the sales for purposes of Rule 144. The aggregated amount – 400,000 shares -- far exceeds the limit under Rule 144, and thus, no exemption was available.

Respondents Dupont and Parsons actively participated in the sale of these unregistered shares. Dupont solicited its customers and collected 400,000 shares of unregistered DIRX stock from six customers, and then coordinated the sale of these shares. Parsons issued legal opinions with respect to each of these six customers, erroneously indicating that the sales fell within the safe harbor provisions of Rule 144, which caused the transfer agent to remove the restrictive legend from the shares. Again, the sales were made through the use of interstate commerce.

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish, for purposes of this default decision, that Respondents Dupont and Parsons participated in the sale of unregistered DIRX stock in the Block Sale transaction, in violation of Section 5 of the Securities Act, and by doing so, Dupont and Parsons violated Rule 2110.

3. The FAB Capital Sell-Off

Finally, in April 2002, FAB Capital (one of the six customers selling shares in the Block Sale) sold 141,084 shares of unregistered DIRX stock from its accounts into the market at artificially high prices. Parsons controlled FAB Capital, along with the then-President of DIRX. At the time of the Block Sale, Parsons issued an opinion letter causing the restrictive legends to be removed from all of the unregistered DIRX shares FAB owned, thereby facilitating FAB's sale of remaining unregistered DIRX shares. Dupont was well aware of the facts and circumstances of the sale, and is responsible for the acts of its employees.

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish for purposes of this default decision that Respondents Dupont and Parsons participated in the sale of unregistered DIRX stock in violation of Section 5 of the Securities Act, and by doing so, they violated Rule 2110.

B. Fraudulent Press Release - Parsons

The Complaint alleges that Parsons reviewed and approved a fraudulent press release designed to artificially increase the stock price of DIRX, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rules 2110 and 2120.

A violation of Section 10(b) of the Exchange Act and Rule 10b-5 requires a showing that Parsons made material misrepresentations or omissions in connection with the purchase or sale of a security, and that he acted with scienter. *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450 (2d Cir. 1996). NASD Conduct Rule 2120, NASD's anti-fraud provision, parallels Rule 10b-5. *Dep't of Enforcement v. Justin E. Apgar*, 2004 NASD Discip. LEXIS 9, at *11 (NAC May 18, 2004). Both are designed to "ensure that sales representatives fulfill their obligation to their customers to be accurate when making statements about securities." *DBCC v. Euripides*, 1997

NASD Discip. LEXIS 45, at *16-17 (July 28, 1997). A violation of NASD Conduct Rule 2120 is also a violation of Conduct Rule 2110. *Id.* at 19.

On March 14, 2002, DIRX issued a press release falsely stating that assets under management in its operating subsidiaries exceeded \$100 million. In fact, neither DIRX nor its operating subsidiaries, separately or together, managed \$100 million in assets. Rather, at least \$80 million was not, in fact, under management at DIRX.² Parsons reviewed and approved this press release.

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). Material facts include those facts that affect the probable future of a company and that may affect the desires of investors to buy, sell, or hold the securities. *See SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992).

Here, the press release overstated DIRX’s assets under management, an important measure of performance for a financial services firm, by 400%. The Hearing Officer finds that reasonable investors would find such a representation relevant to their decision to invest in DIRX, and therefore this misstatement was material.

Parsons acted with scienter. Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). To prove scienter there must be a showing that the respondent acted intentionally or recklessly. *See M.*

² The Complaint also alleged that the press release falsely quoted an employee, and omitted the fact that an affiliate of DIRX, FAB Capital, held a substantial amount of DIRX common stock. However, the Complaint did not provide sufficient detail as to these alleged omissions to enable the Hearing Officer to make a finding as to their materiality.

Rimson & Co., Inc., Initial Decision Release No. 106, 1997 SEC LEXIS 486, at *95 (Feb. 25, 1997); *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994), 1994 U.S. App. LEXIS 3326 at *14 (1994). 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). Parsons was General Counsel and Corporate Secretary of DIRX, and he served on the Board of Directors of DIRX. Parsons was also President, Director, and General Counsel of Dupont, DIRX's principal operating subsidiary. As such, he knew, or was reckless in not knowing, that the press release dramatically overstated DIRX's assets under management. It can be inferred from Parson's conduct that he intended to deceive investors in DIRX.

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish for purposes of this default decision that Parsons violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rules 2110 and 2120.

C. Conduct Associated with the Unauthorized Practice of Law - Parsons

The Complaint alleges that Parsons engaged in violative conduct in connection with his unauthorized practice of law in three respects. First, Parsons practiced law when he was not authorized to do so. Second, Parsons falsely stated in Forms U-4 that his authorization to practice law had never been revoked or suspended.³ Finally, Parsons refused to answer questions based on the assertion of attorney client privilege in reliance on his role as attorney, at a time that he was not licensed to practice law.

³ Enforcement's motion for partial summary disposition provides additional detail with respect to these first two allegations.

1. Unauthorized Practice of Law - Rule 2110

Parsons was admitted to practice law in Maryland in 1979 and in the District of Columbia the following year. However, the District of Columbia suspended his license in 1991 when he failed to pay bar dues. Similarly, in April 1997, the Maryland Court of Appeals entered and served Parsons with an order "decertifying him" from practicing law in Maryland, for failure to pay bar dues. From this time on, Parsons did not have a license to practice law in any jurisdiction.

Despite this, Parsons continued to hold himself out as a lawyer in good standing. In that regard, from his disqualification in Maryland in 1997 forward, Parsons held himself out as an attorney, acting as General Counsel for Dupont and DIRX, among other companies, and in that regard, he drafted written legal opinions, and served as an attorney in securities industry arbitrations, SEC administrative proceedings, and federal court litigation.

Rule 2110 requires members to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. Rule 2110 is not limited to securities related business conduct. Rather, it covers any unethical business-related conduct. *DOE v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *16-18 (NAC June 2, 2000); *Vail v. SEC*, 101 F. 3d 37, 39 (5th Cir. 1996) (per curiam).

Parson's falsely held himself out as a lawyer in good standing in, among other things, proceedings before the SEC and the courts, as well as NASD arbitrations, and through the issuance of legal opinions that transfer agents relied upon in removing restrictive legends, which was clearly unethical. Accordingly, the record is sufficient to establish, for purposes of this default decision, that Parsons violated Rule 2110.

2. Misrepresentations on Forms U-4 – Rule 2110 and IM-1000

The Complaint alleges Parsons violated Rule IM-1000-1 and Rule 2110 when he willfully misrepresented that his authorization to act as an attorney had never been revoked or suspended in Forms U-4. In particular, Parsons answered “no” in response to Question 23F in 18 Forms U-4, from 1999 to 2004, which asked: “Has your authorization to act as an attorney...ever been revoked or suspended?”⁴

IM-1000-1 provides: “The filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”

The accuracy of disclosures on a Form U4 “is critical to the effectiveness” of a self-regulatory organization’s ability to screen and monitor the professionals within the securities industry. *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996); *see also Daniel Richard Howard*, Exchange Act Release No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) (“The candor and forthrightness of applicants is critical to the effectiveness of this screening process.”).

Department of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Discip. LEXIS 8 at * 32 (NAC May 13, 2004), *aff’d*, Exch. Act. Release No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), *petition for review filed*, No. 05-8006 (D.C. Cir. Mar.14, 2005).

Enforcement further alleges that Respondent’s false disclosures on his Form U-4 were willful. Willfulness is not required to establish a violation of Rule 2110, but Article III, Section

⁴ In an earlier version of the Form U-4, filed on October 15, 1997, Parsons answered “no” in response to Question 22E(6), which asked: “Has any other Federal regulatory agency or any state regulatory agency or foreign financial regulatory authority ever... (6) revoked or suspended your license as an attorney...?” Parsons argues that because his “licenses” were never “revoked,” he answered correctly. However, the Hearing Officer finds that this is not a reasonable reading of the U-4 question. NASD disclosure rules should be “construed not technically and restrictively, but flexibly to effectuate [their] remedial purposes.” *SEC v. Zanford*, 535 U.S. 813, 819 (2002)(quoting *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151(1972) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963)).

4(f) of NASD's By-Laws provides that a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with an NASD member, or who has omitted to disclose any material fact which is required to be disclosed in such an application, is subject to a "disqualification." For this purpose, it is sufficient to establish willfulness if Respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper." Christopher LaPorte, Exch. Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997). In this case, Respondent knew or reasonably should have known that his authorization to practice law had been suspended. Accordingly, the Hearing Officer finds that Respondent's failure to update the Form U-4 was willful.

The record is therefore sufficient to establish, for purposes of this default decision, that Respondent willfully violated Rule 2110 and IM 1000-1.

3. Assertion of Attorney Client Privilege – Rule 8210

The Complaint alleges that, during sworn testimony to the NASD, Parsons unlawfully refused to answer certain questions based on assertions of attorney-client privilege at a time when he was not licensed to practice law, in violation of Rules 8210 and 2110.

The purpose of the attorney-client privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Upjohn Co. v United States*, 449 U.S. 383, 389, 66 L. Ed. 2d 584, 101 S.Ct. 677 (1981). It exists to protect "not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Id.* at 389-91. The privilege extends to confidential communications between an individual and a person he or she *reasonably believes*

to be his or her attorney, even if the attorney ultimately elects not to represent the client, and even if the attorney is not a member of the bar. *See Wylie v. Marley Co.*, 891 F.2d 1463, 1471 (10th Cir. 1989); *U.S. v. Mullen*, 776 F.Supp. 620, 621 (D. Mass. 1991).

Enforcement argues that a corporation cannot assert the “reasonable belief” doctrine, because a corporation, unlike an individual, could be expected to ascertain whether an attorney in its employ was licensed, citing *Financial Tech. Int’l Inc., v. Smith*, No. 99 Civ. 9351, 2000 U.S. Dist LEXIS 18220, at *19-20 (S.D.N.Y. Dec. 18, 2000). However, the facts of this case are distinguishable, because, unlike the attorney in *Smith* who was never authorized to practice law, Parsons was authorized to practice law when he began employment with Dupont. Moreover, there is insufficient evidence in the record of this default proceeding to determine whether the privilege was asserted on behalf of a corporation or an individual. Under these circumstances, and considering the other violations found and the sanctions that are imposed for those violations, the Hearing Officer concludes that it is neither prudent nor necessary to find that Parsons violated Rule 8210 by asserting the attorney-client privilege, and accordingly, that claim is dismissed.

V. Sanctions

For sales of unregistered securities, the NASD Sanction Guidelines (“Guidelines”) recommend a fine of \$2,500 to \$50,000, and consideration of a 10-day to two-year suspension, or, in egregious cases, a suspension of up to two years or a bar or expulsion. *NASD Sanction Guidelines* at p. 26 (2005 ed.). Similarly, for misrepresentations, the Guidelines recommend a bar in egregious cases. *Id.* at 93. The Hearing Officer finds that Respondents’ conduct was egregious, and accordingly, Dupont is expelled for the sales of unregistered securities, and

Parsons is barred for both unregistered securities sales and misrepresentations in the press release.

In reaching this determination, with respect to the sales of unregistered shares, the Hearing Officer considered that Respondents engaged in a number of activities to actively circumvent applicable requirements in order to facilitate the sale of unregistered securities, including making legal representations to cause the removal of restrictive legends as well as identifying and contacting buyers and sellers. With respect to the misrepresentation in the press release, Parsons so grossly overstated the amount of assets under Dupont's management that the misrepresentation was clearly intentional. In addition, the misrepresentation was widely disseminated, potentially harming numerous investors.

Moreover, Respondents have not accepted responsibility for their misconduct, nor have they taken corrective action or made voluntary restitution to the investors who purchased DIRX stock that was either unregistered or that was inflated in price by the fraudulent press release. Respondents' conduct was clearly intentional. Parsons is a law school graduate who had been in the industry for 19 years, during which time he worked for both the NASD and SEC, and his actions belie any claim that he was merely negligent. Moreover, Dupont has prior disciplinary history. In 2004, Dupont executed a letter of Acceptance, Waiver, and Consent ("AWC") in order to settle charges that it violated Rules 6130(b), 3010, and 2110, but failed to comply with the terms of the AWC and was expelled from NASD membership in July 2004. In addition, Dupont is currently in violation of NASD rules for failing to pay two arbitration awards. There is no evidence of any mitigating circumstances that would justify a lesser sanction for the violations. Accordingly, Respondent Parsons is barred and Respondent Dupont is expelled.

In light of the bar for violations of Section 5 of the Securities Act and Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and Rule 2110, no other sanctions will be imposed on Parsons for his violations of Rule 2110 and IM-1000-1.

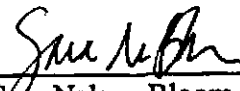
VI. Conclusion

For violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and Rules 2110 and 2120, Respondent Parsons is barred from associating with any NASD member in any capacity, and Respondent Dupont is expelled from NASD membership. In light of the bar, no other sanctions are imposed on Parsons for his violations of Rule 2110 and IM-1000-1.

The charge that Respondent Parsons violated Rule 8210 by refusing to answer questions based upon his assertion of the attorney-client privilege is dismissed.

This bar and expulsion shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to:

Dupont Securities Group, Inc. (via overnight and first class mail)
David Wayne Parsons (via overnight and first class mail)
Philip J. Berkowitz, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

NASD, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DUPONT SECURITIES GROUP INC (BD # 42305) and
DAVID W. PARSONS (CRD # 2963654),

Respondents.

Disciplinary Proceeding
No. CAF040068 . .

Hearing Officer -- ____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In May and June 2001 and April 2002, Dupont Securities Group, Inc., ("DSGI"), an NASD member firm, and David W. Parsons, president, director, chief legal officer, and chief compliance officer of DSGI, engaged in unlawful sales of unregistered shares of the common stock of Dupont Direct Financial Holdings, Inc. ("DIRX"), the publicly traded parent company of DSGI. These sales violated Section 5 of the Securities Act, and DSGI and Parsons, by virtue of their participation in the unregistered sales violated NASD Conduct Rule 2110.

2. Parsons also aided and abetted DIRX's dissemination of materially false and misleading press releases while he knew or was reckless in not knowing the releases were false. The false press releases artificially inflated the price of DIRX stock, allowing a company Parsons controlled and others affiliated with DIRX to sell DIRX shares into the public market for a profit. By engaging in this conduct, Parsons violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder and NASD Conduct Rules 2120 and 2110.

3. Parsons acted as chief legal officer of DSGI and other NASD member broker dealers and provided purported legal advice to them without being licensed to practice law. In filings with NASD, Parsons misrepresented that his license to practice law was never suspended, and in sworn testimony in an NASD investigation, he avoided answering questions based on unfounded assertions of attorney-client privilege. By engaging in this conduct, Parsons violated NASD Rules IM-1000-1, 2110, and 8210.

RESPONDENTS

4. **Dupont Securities Group Inc.** DSGI was first registered with NASD in 1996. In November 1999, Parsons and others took control of DSGI. DSGI was acquired by DIRX, a public shell company, in January 2000, and in May 2000 NASD approved the transaction. In July 2004, DSGI was expelled from NASD membership for failure to pay a fine in a matter previously settled with NASD. DIRX is the sole shareholder of DSGI. DIRX common stock has been publicly traded in the over-the-counter market since March 2000, although the shares at issue in this complaint were unregistered and restricted. DIRX is controlled by Wavecount Inc. from which DIRX acquired DSGI, and which continues to hold approximately 5.8 million DIRX shares. At all times relevant, Parsons was an owner of Wavecount.

5. **David W. Parsons**, age 51, was first registered with NASD in April 1998. Parsons received his law degree from Georgetown University School of Law in 1979. Parsons was admitted to the Maryland bar in 1979 and decertified for failure to pay dues in April 1997. He was admitted to the District of Columbia Bar in November of 1980, but suspended in 1991 for non-payment of dues. He has not been an active member of any bar since April 1997. Parsons is, and since 1999 has been president, director, chief legal officer, chief compliance officer and a registered principal of DSGI. Beginning in September 1999 and continuing to the

present, Parsons has partially owned DIRX by virtue of his ownership interest in Wavecount, and has been a director, secretary and the general counsel of DIRX. Additionally, since 2001, Parsons has been an officer and registered principal of two other broker dealers, both of which are owned or controlled by DIRX: Native American Securities, Inc., where he holds and has held the position of chief compliance officer and legal officer and American International Securities, Inc., where he holds and has held the position of director of compliance. Parsons has been registered as a General Securities Representative (NASD license Series 7) since April 1998 and as a General Securities Principal (Series 24) since May 1998. He has no disciplinary history.

OTHER INDIVIDUALS AND ENTITIES

6. **CHC.** CHC is a New York corporation, engaged in the business of providing financial consulting services. It was hired as a consultant to DIRX.

7. **CU.** CU is an Oregon corporation, engaged in business as a medical services merchandiser.

8. **FAB Capital.** FAB was a German holding company for financial services companies. The company's mailing address was the home address of David Parsons. Both David Parsons and the then-President of DIRX controlled the finances of FAB.

THE FIRST UNREGISTERED SALE OF DIRX COMMON STOCK: THE EXCHANGE

9. On March 22, 2001, DIRX sold 750,000 unregistered shares of its common stock to CHC at \$0.40 per share (\$301,750). The next day, March 23, 2001 CHC sold the 750,000 unregistered shares to CU for \$562,500 (\$0.75 per share). DSGI employees gathered names of DSGI customers who held DIRX stock and typed up a list of customers to be contacted. DSGI employees thereafter solicited DSGI customers to participate in a "stock split."

10. Between May 8, 2001 and June 18, 2001 CU exchanged 462,885 shares of the unregistered stock it had purchased from CHC for 387,506 registered DIRX shares held by 20 DSGI customers (the "Exchange").

11. DSGI arranged to have the 20 customers execute identical letters of authorization prepared by DSGI. Pursuant to those letters of authorization, DSGI transferred the customers' freely-tradable shares of DIRX from the DSGI accounts to CU.

12. Parsons instructed CU to send a letter to DIRX's transfer agent directing the transfer agent to transfer CU's unregistered shares to the DSGI customers who Parsons identified along with the number of unregistered shares each was to receive. CU followed Parsons' instructions, causing the transfer agent to transfer 462,885 unregistered shares from CU to the 20 DSGI customers identified by Parsons in the amounts designated by Parsons.

13. In April 2002, CU sold 248,500 of the DIRX shares it obtained in the Exchange into the marketplace at artificially inflated prices.

THE SECOND UNREGISTERED SALE OF DIRX COMMON STOCK: THE BLOCK SALE

14. On May 16, 2001, the principal of CU placed a limit order for 400,000 shares of DIRX common stock through an account at a broker dealer other than DSGI.

15. DSGI solicited its customers and collected 400,000 shares of unregistered DIRX common stock from six DSGI customers to fill the limit order.

16. The six DSGI customers sold their unregistered shares to the principal of CU on the same day, with four of the six customers selling the same number of shares (75,441, purportedly one percent, the exact number of shares allowed for sale by a single seller under Exchange Act Rule 144) and two selling just enough together so that the total number of shares

precisely matched the limit order of 400,000 DIRX shares. The six customers sold their shares for the same price, which was substantially below the market price at the time.

17. All of the shares sold by the six customers were unregistered and, until the sale, had carried legends indicating the sale of the securities was restricted.

18. Parsons participated in and caused the sale of these unregistered shares by issuing legal opinions with respect to each of the six customers indicating that the sales by that customer fell within the safe harbor provisions of Exchange Act Rule 144. Parsons' opinion letter, in turn, caused the transfer agent to remove the restrictive legend from the shares. Parsons was not at the time, nor had he been since 1997, licensed to practice law. Parsons knew, should have known or was reckless in not knowing that the sale of shares through the Block Sale was in fact inconsistent with the provisions of Rule 144 and constituted a sale of unregistered securities.

19. FAB Capital was one of the six DSGI customers who acted in concert to sell their DIRX common stock to the principal of CU in the Block Sale. FAB Capital sold 75,441 unregistered shares of DIRX to the principal of CU that, like the shares of the other five customers, had been stripped of their restricted legends by virtue of Parsons' actions.

20. Parsons, along with the then-President of DIRX, controlled FAB Capital and the FAB Capital account from which the unregistered DIRX shares were sold to the principal of CU. Parsons, without basis, caused the restrictive legends to be removed from all of the unregistered DIRX shares FAB owned, not just the 75,441 shares sold in the Block Sale. This allowed FAB to sell its remaining DIRX position in April 2002 at prices artificially inflated through the manipulative acts of Parsons and others. Parsons, along with the then-President of DIRX also controlled FAB.

FRAUD

21. From March through April 2002, DIRX and others acting on its behalf issued false and misleading press releases and public statements designed to artificially increase the stock price of DIRX.

22. On March 14, 2002, DIRX issued a press release falsely stating that assets under management in its operating subsidiaries exceeded \$100 million. In fact, neither DIRX nor its operating subsidiaries, separately or together, managed \$100 million in assets. Of the purported \$100 million, at least \$80 million was not, in fact, under management at DIRX. The press release falsely quoted a DSGI employee. Also, the press release failed to disclose that an affiliate of DIRX, FAB Capital, held a substantial amount of DIRX common stock.

23. On March 15, 2002, the then-President of DIRX appeared on a web cast paid for by DIRX and repeated the false claim that DIRX's assets under management totaled more than \$100 million. The same day, DIRX caused the false press release to be posted on another website.

24. Following the dissemination of these false and misleading statements, DIRX's trading volume and stock price rose dramatically. By April 1, 2002, trading volume increased to a high of over 650,000 shares per day (with DSGI handling the highest customer sales volume), compared to a daily average of 10,200 shares during the week before the first false press release. On April 1, 2002, the price of DIRX common stock climbed to \$1.16, compared to an average of \$0.85 per share the week before the first false press release. The next day, April 2, 2002, the stock reached a high of \$1.26 per share.

25. Another website published a "strong buy" "research" report repeating that DIRX had \$100 million under management and projecting a price target of \$4.00. That "research" was

distributed by spam e-mails on at least April 5 and April 12, 2002 and yet another web site published virtually identical "research" in April 2002. On April 8, 2002 DIRX issued a press release stating that DIRX had added another \$20 million to assets under advisement, for a total of \$120 million under management. On April 12, 2002, the website that earlier hosted the then-president of DIRX reiterated that DIRX had added another \$20 million to assets now under management. On April 19, 2002, DIRX issued another press release stating that DIRX had added another \$14.7 million in assets under advisement, so that it now had \$135 million in assets under management.

26. These press releases were false and misleading because neither DIRX nor any of its subsidiaries managed assets in those amounts. These press releases also failed to disclose that Parsons was selling DIRX shares through FAB Capital, an affiliate of DIRX.

27. Between April 1 and April 23, 2002, FAB Capital, with Parsons' knowledge and permission, sold its entire position of approximately 141,084 shares for \$164,708 (average \$1.17 per share). FAB failed to file a Form 144 in connection with its sales.

28. CU through three separate accounts (including its account at DSGI) sold 248,500 DIRX shares that had been received from DSGI customers in the Exchange and Block sales for \$279,994 (average \$1.12 per share) between April 1 and April 29, 2002.

29. CHC sold 116,300 shares of DIRX stock from its accounts at DSGI and another broker dealer for \$131,657 (average \$1.13 per share) between March 28, 2002 and April 29, 2002.

30. The then-president of DIRX's brother sold 15,160 shares of DIRX from his account at DSGI for \$16,088 (average \$1.06 per share) between April 1, 2002 and April 29, 2002.

31. The then-president of DIRX's mother sold 15,000 shares of DIRX from her account at DSGI for \$17,010 (average \$1.13 per share) between April 1, 2002 and April 16, 2002.

32. By the end of April 2002, the share price declined to \$0.96, and continued steadily declined thereafter, to \$0.50 by June 5, 2002.

**THE THIRD UNREGISTERED SALE OF DIRX COMMON STOCK: THE FAB CAPITAL
SELL-OFF**

33. In April 2002, FAB Capital sold 141,084 shares of unregistered, restricted DIRX stock from its accounts into the market at artificially high prices.

34. The 141,084 shares did not have the restricted securities legend because Parsons had the legends improperly removed in May 2001 as part of the Block Sale. FAB failed to file a Form 144 in connection with its sales.

35. When FAB Capital sold the DIRX shares in April 2002, Parsons and the then-President of DIRX controlled FAB Capital and the FAB Capital account used in the transactions.

36. According to Parsons, the proceeds of the sale were invested in a company called Diabetex as part of a joint investment with DIRX.

**FIRST CLAIM
(SALES OF UNREGISTERED SECURITIES)**

37. The allegations of paragraph 1 through 20 and 33 through 36 are repeated and realleged herein.

38. There was no registration statement filed or in effect pursuant to the Securities Act of 1933 with respect to the sales of DIRX common stock alleged in paragraphs 10, 16 and 33, nor was there any exemption from the registration requirements of the Securities Act of 1933 applicable to them. These sales therefore constituted illegal sales of unregistered securities.

39. By participating in the sales as alleged above, DSGI and Parsons failed to comply with Section 5 of the Securities Act of 1933 and thereby violated NASD Conduct Rule 2110.

**SECOND CLAIM
(FRAUD)**

40. The allegations in paragraphs 1 through 39 are repeated and realleged herein.

41. Parsons reviewed the press release issued March 14, 2002 that falsely claimed that DIRX or its operating subsidiaries managed assets of \$100 million. This and subsequent press releases and communications were materially false and misleading because at least \$80 million, in fact, were not assets under management by DIRX or any of its operating subsidiaries. Parsons knew or was reckless in not knowing that the press release and other public communications were false and misleading, but he allowed the false and misleading information to be disseminated to the public. Parsons therefore substantially assisted DIRX's dissemination to the public of false and misleading material information in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. By doing so, Parsons violated Rule 10b-5 and NASD Conduct Rules 2120 and 2110.

42. The issuance of false and misleading press releases and other conduct described above were intended to, and did in fact, artificially inflate the price of DIRX common stock, thereby defrauding investors. By virtue of its conduct, DSGI violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and NASD Conduct Rules 2120 and 2110. Parsons provided substantial assistance to the scheme to artificially inflate the price of DIRX's common stock and thereby aided and abetted DSGI's violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and, by doing so, Parsons violated NASD Conduct Rules 2120 and 2110.

43. Parsons knew of and permitted the sale of DIRX stock held by FAB Capital in April 2002 without disclosing adequate and accurate information regarding assets under management by DIRX or its subsidiaries, and, by doing so, he violated Rule 10b-5 and NASD Conduct Rules 2120 and 2110.

THIRD CLAIM
(VIOLATIONS OF RULES IM-1000-1, 2110, AND 8210 RESULTING
FROM UNAUTHORIZED PRACTICE OF LAW)

44. The allegations in paragraphs 1 through 20 and 33 through 36 are repeated and realleged herein.

45. Parsons willfully misrepresented in answering Question 14F of his Uniform Application for Securities Industry Registration or Transfer (Form U4) filed with NASD that his authorization to act as an attorney had never been revoked or suspended. In fact, as alleged above, Parsons' licenses to practice law had by April 1997 been suspended. By providing false answers on Form U4, Parsons violated NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

46. Parsons, as the legal officer of DIRX and each broker dealer subsidiary of DIRX including DSGL, provided legal advice to those and other entities with respect to securities transactions after his license to practice law had been suspended when he was not licensed to practice law. This conduct violated NASD Conduct Rule 2110.

47. During sworn testimony to NASD, Parsons refused to answer a number of questions based on assertions of attorney-client privilege that were false because he could not lawfully assert such a privilege because he was not licensed to practice law in any state. This conduct violated NASD Conduct Rules 8210 and 2110.

PRAYER

WHEREFORE, the Complainant respectfully requests an order imposing fitting sanctions upon the respondents in accordance with NASD Procedural Rule 8310, including disgorgement, and all other appropriate relief.

Dated: August 30, 2004



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