

NASD

Department of Enforcement,

Complainant,

v.

Gregory F. Summers,
CRD No. 1080556

Respondent.

Disciplinary Proceeding
No. E052003030702

Hearing Officer: DRP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 27, 2006

INTRODUCTION

Disciplinary Proceeding No. E052003030702 was filed on October 20, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Gregory F. Summers submitted an Offer of Settlement ("Offer") to Complainant on June 16, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council Review Subcommittee ("NAC") 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

1. Respondent Gregory F. Summers ("Summers") was initially associated with a member of NASD in November 1982. He became registered as a General Securities Representative in December 1982. From on or about July 30, 1997, until on or about October 30, 2003, he was registered through Jefferies & Company, Inc. ("Jefferies") as a General Securities Representative.
2. On or about October 30, 2003, a Uniform Termination Notice for Securities Industry Registration ("Form U-5") was filed by Jefferies on behalf of Respondent Summers. The form U-5 disclosed that Respondent Summers' registration with Jefferies had been terminated on October 27, 2003.
3. Respondent Summers is not currently registered or associated with any member firm.
4. Respondent Summers has no formal disciplinary history.

FINDINGS AND CONCLUSIONS

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

First Cause of Complaint

[SEC Rule 14e-4 and NASD Conduct Rule 2110, Submission of Short Tender in Partial Tender Offer]

5. At all relevant times, Respondent Summers was employed as a Manager of the International Securities Lending Group in Jefferies' Stock Loan Department. He was responsible for securities lending, borrowing and financing transactions. He was also responsible for

managing certain customer accounts and for trading securities in certain proprietary accounts at Jefferies and at Jefferies International Ltd. ("JIL"), a United Kingdom broker/dealer affiliated with Jefferies.

6. At all relevant times, the Class B common stock ("BF.B") of Brown-Forman Corporation ("Brown-Forman") was listed and traded on the New York Stock Exchange.
7. On February 4, 2003, Brown-Forman announced an offer to purchase up to 6,800,000 shares of BF.B in a modified "Dutch Auction" partial tender offer. Brown-Forman also reserved the right to purchase up to approximately 790,607 additional shares of BF.B, representing 2% of the current outstanding shares. The "Dutch Auction" procedure allowed shareholders to select the price at which they were willing to sell their shares within the range of \$63 to \$73 per share. The deadline for tendering shares under Brown-Forman's tender offer was March 4, 2003.
8. Jefferies' Corporate Actions Department, also known as the Reorganization Department, was responsible for submitting tenders in tender offers on behalf of Jefferies and its customers. On March 4, 2003, in response to the Brown-Forman tender offer, Respondent Summers instructed an employee in the Corporate Actions Department to tender 158,000 shares of BF.B to Brown-Forman at a price of \$69 per share. Jefferies tendered the shares to Brown-Forman in its principal capacity.
9. SEC Rule 14e-4 governs partial tender offers. In relevant part, Rule 14e-4(b)(1) prohibits any person from tendering a security in a partial tender offer for his own account unless at the time of tender he has a net long position, as defined in the Rule, in the subject security equal to or greater than the amount tendered.

10. When Respondent Summers caused Jefferies to tender 158,000 shares to Brown-Forman in response to its tender offer, Jefferies did not have a net long position, as defined in SEC Rule 14e-4, of 158,000 or more shares of BF.B.
11. Based on the foregoing acts, practices and conduct, Respondent Summers violated SEC Rule 14e-4. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Summers.

Second Cause of Complaint

[Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110, Fraudulent Scheme to Conceal Short Tender]

12. On or about February 25, 2003, Respondent Summers opened an account with Jefferies International Ltd. ("JIL"), a United Kingdom broker/dealer affiliated with Jefferies, in the name of ACS, an entity controlled by Summers' father. Respondent Summers was the registered representative responsible for the ACS account at JIL.
13. As of March 5, 2003, there had been no transactions in the ACS account at JIL.
14. On March 5, 2003, Respondent Summers effected two trades in BF.B. His purpose in effecting those trades was to create the false impression that Jefferies, through its affiliate JIL, had a net long position of 158,000 shares of BF.B as of March 4, 2003, the date when Respondent Summers caused Jefferies to tender 158,000 shares of BF.B to Brown-Forman, and thus to conceal Respondent Summers' violation of SEC Rule 14e-4.
15. The trades effected by Respondent Summers were fraudulent. First, they were wash sales, in that they did not involve any actual change in the beneficial ownership of BF.B shares. Second, when he effected the trades, Respondent Summers intended that one or both trades be recorded as if they had taken place at an earlier place in time.

16. On March 5, 2003, Respondent Summers instructed an assistant to contact JIL in London, England, in order to effect two trades of BF.B between JIL in its principal capacity and the ACS account at JIL ("the ACS trades"). In the first trade, ACS would sell short 158,000 shares of BF.B to JIL as of the close of market trading on March 4, 2003. In the second trade, JIL would sell short 158,000 shares of BFB to ACS as of the open of market trading on March 5, 2003. Both trades would be settled on March 6, 2003.
17. As a result of an error or miscommunication, the ACS trades were not effected as Respondent Summers intended. The short sale of 158,000 shares of BF.B from JIL to ACS was recorded at 15:11 on March 5, 2003, at \$69.32 per share. The price for the 158,000 shares was \$10,952,560, plus \$2,370 commission, so the total cost charged to ACS was \$10,954,930. The short sale of 158,000 shares of BF.B from ACS to JIL was recorded at 15:34 on March 5, 2003, at \$69.39 per share. The price for the 158,000 shares was \$10,963,620, less \$2,370 commission, so the net amount credited to ACS was \$10,961,250. The difference between the price charged to ACS for the short sale from JIL and the net amount credited to ACS for its short sale to JIL, \$6,320, was credited to the ACS account at JIL on or about March 17, 2003.
18. The daily trading volume for BF.B for the time period of the ACS trades were as follows:
- | | |
|---------------|------------------|
| March 4, 2003 | 4,938,100 shares |
| March 5, 2003 | 2,218,400 shares |
| March 6, 2003 | 873,100 shares |
19. In effecting the ACS trades, Respondent Summers, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, employed a device, scheme or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; or engaged in acts, practices or a course of business which operated or could operate as a fraud or deceit upon persons, in connection with the purchase or sale of securities.

20. In effecting the ACS trades, Respondent Summers effected transactions in securities by means of a manipulative, deceptive or other fraudulent device or contrivance.
21. Based on the foregoing acts, practices and conduct, Respondent Summers violated Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5 adopted thereunder, and NASD Conduct Rule 2120. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Summers.

Third Cause of Complaint

[NASD Systems and Programs Rule 6440(b) and Conduct Rule 2110, Executing Wash Sales or Matched Trades to Create False Appearance of Activity]

22. In effecting the ACS trades, Respondent Summers executed transactions in BF.B which involved no change in the beneficial ownership thereof, for the purpose of creating or inducing a false appearance of activity in an eligible security, as defined in NASD Systems and Programs Rule 6410(d).
23. In the alternative, in effecting the ACS trades, Respondent Summers entered an order for the purchase of BF.B with the knowledge that an order of substantially the same size, and at substantially the same price, for the sale of BF.B, had been or would be entered by or for the same parties; and he entered an order for the sale of BF.B with the knowledge that an order of substantially the same size, and at substantially the same price, for the purchase of BF.B, had been or would be entered by or for the same parties. He entered those orders for the purpose

of creating or inducing a false appearance of activity in an eligible security, as defined in NASD Systems and Programs Rule 6410(d).

24. Based on the foregoing acts, practices and conduct, Respondent Summers violated NASD Systems and Programs Rule 6440(b). Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Summers.

Fourth Cause of Complaint

[NASD Conduct Rules 3310 and 2110 and IM-3310, Publishing Reports of Non-Bona Fide Securities Transactions]

25. The ACS trades were reported to securities markets in the United Kingdom through TRAX, a trade matching and regulatory reporting system operated by the International Capital Market Association (formerly the International Securities Market Association).
26. By effecting the ACS trades, Respondent Summers caused to be published or circulated a notice or communication which purported to report transactions as a purchase and sale of securities when he did not believe, or had no reasonable basis to believe, that such transactions were bona fide purchases and sales of securities.
27. Based on the foregoing acts, practices and conduct, Respondent Summers violated NASD Conduct Rule 3310 and IM-3310. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Summers.

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

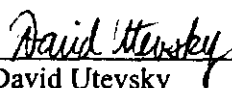
It is ordered that Respondent Gregory F. Summers be suspended from associating with any member of NASD in any capacity for a period of fifteen (15) months and that he be fined \$50,000. The fine shall be due and payable either immediately upon reassociation with a member firm following the fifteen-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event of proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

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



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