

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILIPPE DESAINT
(CRD No. 4292420),

Respondent.

Disciplinary Proceeding
No. E102004090301

DEFAULT DECISION

Hearing Officer – SW

Dated: September 6, 2006

Respondent was barred for (i) violating NASD Conduct Rules 2110 and 3110, by falsifying documents and causing his employer to fail to keep accurate books and records, and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210, by failing to respond to requests for information issued by the NASD staff pursuant to Rule 8210.

Appearances

Soo H. Im, Esq., Regional Counsel, New York, NY, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Philippe DeSaint.

DECISION

I. Background

On April 21, 2006, the NASD Department of Enforcement (“Enforcement”) filed the attached two-count Complaint against Respondent Philippe DeSaint (“Respondent”), alleging that: (i) he falsified documents and caused his employer to fail to preserve accurate books and records, in violation of NASD Conduct Rules 2110 and 3110; and (ii) he failed to respond to requests for information issued pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On July 17, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Soo H. Im, Esq., Regional Counsel in NASD's New York, NY office, and 32 exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On April 20, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent, via first-class and certified mail, at his address of record in NASD's Central Registration Depository ("CRD address"), and at two other addresses obtained by NASD during the investigative phase of this matter (the "6th Avenue address," and the "French address").² (CX-3; DECL at ¶¶ 9-10). Respondent did not file an Answer. (DECL at ¶ 17). On May 19, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first-class and certified mail, at his CRD address and the French address.³ (CX-9; DECL at ¶ 18). Respondent again did not file an Answer. (DECL at ¶ 23).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address, the 6th Avenue address, and the French address.⁴ Accordingly, the Hearing Officer finds that Respondent received effective

¹ Hereinafter, the statements in the Complaint will be designated as "Complaint at ¶;" the statements in the Im Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-1). During the investigatory phase of this matter, the NASD staff obtained two other addresses for Respondent: (1) [REDACTED] ("6th Avenue address"); and (2) [REDACTED] ("French address"). (CX-4, DECL at ¶ 10).

³ NASD had reason to believe that the 6th Avenue address was no longer current because the April 20, 2006 certified mailing sent to the 6th Avenue address was returned, marked "Back to Sender Unknown at This Address." (CX-4; CX-7).

⁴ See Dep't of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On December 22, 2000, Respondent became employed at NASD member firm BNP Paribas Securities Corp. ("BNP"), as a general securities representative. (CX-1, p. 4). Respondent was associated with BNP until July 16, 2004, when BNP filed a Form U-5.⁶ (CX-2). Respondent is not currently associated with any NASD member firm. (CX-1, p. 4).

Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after his association with BNP was terminated, and (2) the Complaint charges him with misconduct while he was associated with an NASD member, and failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Falsification of Documents and Failure to Preserve Accurate Books and Records

Count one of the Complaint alleges that Respondent violated NASD Conduct Rules 2110 and 3110 because his actions prevented BNP from making and preserving accurate communications received and sent by BNP relating to its business as required by SEC Rule 17a-4. (Complaint at ¶¶ 11-19). In particular, the Complaint alleges that Respondent, while head of US investment grade convertible bonds arbitrage at BNP, purchased, from May 6, 2003 to October 2003, allotments of a convertible bond issued by Deutsche Bank with a stated

⁵ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269(a) and NASD Notice to Members 99-77.

⁶ The Form U-5 termination comment states that Respondent was terminated because he "provided prices inconsistent with external sources for [a] convertible bond position and modified data resulting in the masking of market risk exposure for multiple futures positions." (CX-1, p. 4; CX-2, p. 1).

maturity date of May 1, 2012, totaling a face amount of \$57,000,000 (“convertible bonds”). (Complaint at ¶¶ 5, 7; CX-13, p. 1). From September 30, 2003 to May 18, 2004, Respondent intentionally provided to BNP’s Market Risk department⁷ prices for the convertible bonds that were inconsistent with external sources. (Complaint at ¶ 9; CX-13, pp. 3-5). To do so, Respondent on several occasions had price quotes for the convertible bonds sent directly to him from other brokerage companies via email; Respondent then altered the emails and/or attachments thereto to change the price quotes on the convertible bonds, and forwarded the altered emails to BNP’s Market Risk department. (Complaint at ¶ 13).

For example, in March 2004, an investment banker sent Respondent an email at his Bloomberg email address with an attachment that identified the current bid price for the convertible bonds as \$153.63 and the current asking price as \$154.13. (Complaint at ¶ 14). Respondent then forwarded the email and attachment from his Bloomberg email address to his BNP email address, and then forwarded it from his BNP email address to BNP’s Market Risk department. (Complaint at ¶ 15). However, when the attachment arrived at the Market Risk department, the bid price for the convertible bonds had been marked up to \$336.25 and the asking price had been marked up to \$337. (*Id.*).

The Complaint alleges that Respondent engaged in this conduct in an effort to hide the excess market risk created by Respondent’s losses accumulated from selling 10-year Treasury Note futures. (Complaint at ¶¶ 9, 12).

NASD Conduct Rule 3110 requires each member to make and preserve books, accounts, records, memoranda, and correspondence in conformity with applicable rules, including SEC Rules 17a-3 and 17a-4, which require that broker-dealers make and keep certain records.

⁷ BNP’s Market Risk department was the unit responsible for independently verifying positions at BNP. (Complaint at ¶ 9).

Specifically, SEC Rule 17a-4 provides that every broker or dealer shall preserve the books and records created pursuant to SEC Rule 17a-3 for a specified period of time, e.g., six years for certain records and two years for certain other records. The obligation to make and keep records carries the implication that those records must be accurate.⁸ Here, the Complaint alleges that Respondent falsified emails and attachments regarding the price of the convertible bonds, which were records covered by SEC Rule 17a-4(b)(4), resulting in BNP making and preserving inaccurate communications.

The allegations in the first cause of the Complaint, and the evidence submitted by Enforcement, are deemed sufficient to establish that Respondent violated and NASD Conduct Rules 2110 and 3110 by falsifying documents and thereby causing BNP to fail to preserve accurate books and records in compliance with SEC Rule 17a-4.

C. Failure to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to two letters from the NASD staff requesting information regarding, among other things, his termination from BNP. (Complaint at ¶¶ 21-47). Specifically, on December 8, 2004, the NASD staff sent a first request for information to Respondent at his CRD address and four other addresses obtained during the investigation, pursuant to NASD Procedural Rule 8210, via first-class and certified mail.⁹ (Complaint at ¶¶ 21, 22).

On December 27, 2004, the NASD staff sent a second request for information to Respondent at his CRD address and the four other addresses obtained during the investigation,

⁸ Stephen M. Sohmer, Exchange Act Rel. No. 49,052, 2004 SEC LEXIS 41, at *24 (Jan. 12, 2004) (“[t]he requirement that records be kept entails that those records must be true and accurate”) (citation omitted); James F. Novak, Exchange Act Rel. No. 19,660, 1983 SEC LEXIS 2023, at *12 (Apr. 8, 1983) (“[t]he requirement that records be kept embodies the requirement that such records be true and correct”) (citation omitted).

⁹ The four other addresses obtained by the NASD staff through an Equifax search are:

via first-class and certified mail, pursuant to NASD Procedural Rule 8210. (Complaint at ¶ 35). Respondent failed to provide any information in response to either of the requests for information. (Complaint at ¶ 47). Pursuant to Rule 8210(d), Respondent is deemed to have received the Rule 8210 requests, which were sent to his CRD address and the other addresses.

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts the NASD's ability to perform its regulatory responsibilities.¹⁰

The allegations in the second cause of the Complaint, and the evidence submitted by Enforcement, are sufficient to establish that Respondent violated NASD Procedural Rule 8210 and thereby violated NASD Conduct Rule 2110, by failing to respond to the NASD staff's requests for information.¹¹

IV. Sanctions

A. Falsification of Records

The NASD Sanctions Guidelines ("Guidelines") for Recordkeeping Violations suggest a fine of \$1,000 to \$10,000, and in egregious cases, a fine of \$10,000 to \$100,000.¹² The Guidelines also suggest that the adjudicator consider suspending the responsible party in any or all capacities for up to 30 business days. In egregious cases, a suspension (of up to two years) or a bar may be appropriate.¹³ In determining the appropriate sanctions under the Guidelines, an

¹⁰ See, e.g., Richard J. Rouse, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹¹ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹² NASD Sanction Guidelines, p. 30 (2006).

¹³ Id.

adjudicator is to consider the nature and materiality of the inaccurate or missing information.¹⁴ Enforcement recommended a bar.¹⁵

In this case, there are no mitigating factors. Respondent accumulated substantial losses as result of Treasury note futures transactions, which caused Respondent to exceed his market risk limit. Respondent intentionally and repeatedly falsified the prices of the convertible bonds over a period of several months to hide that he had exceeded his market risk limit. The Hearing Officer finds that Respondent's violation of NASD Conduct Rules 2110 and 3110 by intentionally falsifying documents and thereby causing BNP to fail to preserve accurate books and records was egregious and warrants a bar.

B. Failure to Respond to Rule 8210 Request for Information

For failing to respond to two requests for information, Enforcement recommended that Respondent be barred. The Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹⁶ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent for failing to respond to the two requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

V. Order

Respondent Philippe DeSaint is barred from associating with any NASD member firm in any capacity for (i) violating NASD Conduct Rules 2110 and 3110 by falsifying documents and

¹⁴ Id.

¹⁵ Enforcement suggested that the Guideline for Forgery and/or Falsification of Records was also relevant. The Guideline for Forgery and/or Falsification of Records recommends a fine of \$5,000 to \$100,000, and a suspension of up to two years when mitigation exists, or, in egregious cases, a bar. (Id. at 39).

¹⁶ Id. at 35.

causing BNP to fail to keep accurate books and records, and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two requests for information. The bars will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 6, 2006

Copies to:
Philippe DeSaint (via FedEx and first class mail)
Soo H. Im, Esq. (via electronic and first class mail)
David M. Jaffe, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)

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No. E102004090301

Hearing Officer

COMPLAINT

Upon information and belief, the Department of Enforcement alleges that:

JURISDICTION

1. Respondent Philippe DeSaint ("Respondent") first became registered with NASD as a General Securities Representative (GSR) on December 22, 2000 through his association with BNP Paribas Securities Corp. (BD No. 15794) ("BNP"). Subsequently, he became registered as an Equity Trader on January 2, 2003 through the same firm.
2. On July 16, 2004, BNP electronically filed with NASD a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent. The Form U-5 indicated that Respondent's last day of employment at BNP was July 7, 2004 and that he had been terminated by the firm for providing "prices inconsistent with external sources for one convertible bond position and modi[fying] data resulting in the masking of market risk exposure for multiple futures positions." Since that date, Respondent has not been associated with any NASD member firm.
3. Currently, Respondent is not registered or associated with any member firm. However, NASD retains jurisdiction over Respondent pursuant to Article V, Section 4 of its By-Laws.

SUMMARY OR BACKGROUND

4. Paragraphs 1 through 3 are re-alleged and incorporated herein by reference.
5. Respondent was the Head of US Investment Grade Convertible Bonds arbitrage at BNP and the senior trader for the investment grade convertible bond trading activity conducted in New York.
6. CS, another registered person, was his assistant.
7. From May 6, 2003 to October 2003, Respondent purchased allotments of a convertible bond issued with a stated maturity date of May 1, 2012, totaling a face amount of \$57,000,000 (the "Convertible Bond").
8. The Convertible Bond was purchased for the account of BNP's Paris affiliate, BNP Paribas Arbitrage SNC ("Paribas SNC").
9. From September 30, 2003 to May 18, 2004, Respondent intentionally provided prices inconsistent with external sources for the Convertible Bond to BNP's Market Risk Department ("Market Risk"), the unit responsible for independently verifying positions at BNP. Concurrently, Respondent began selling 10-year Treasury Note futures that caused him to exceed his market risk limit. As substantial losses accumulated as a result of the 10-year Treasury Note futures, Respondent continued mispricing the Convertible Bond and modified data, to hide the excess market risk.

FIRST CAUSE OF COMPLAINT

**(Falsification of Documents and Failure to Preserve Accurate Books and Records)
(Violations of NASD Conduct Rules 2110 and 3110)**

10. Paragraphs 1 through 9 are re-alleged and incorporated herein by reference.
11. From May 6, 2003 to October 2003, Respondent purchased allotments of the Convertible Bond.

12. To mask losses he incurred from an unrelated transaction in 10-year Treasury Note futures, Respondent continued mispricing the Convertible Bond, and modified data, to hide the excess market risk limit.
13. Respondent developed a method for breaching the firm's process of independently pricing positions at month-end. In connection with the Convertible Bond, on several occasions he did this by obtaining price quotes directly from brokers (from other companies) through e-mail, altering the e-mails and/or attachments thereto, and forwarding the e-mails to BNP's Market Risk.
14. By way of example, in March 2004 Respondent received an e-mail from an investment bank dated March 31, 2004 at his Bloomberg address [REDACTED]. The subject line referenced the Convertible Bond. The e-mail contained an attachment that identified, among other bond prices, the bond price for the Convertible Bond. According to the attachment, the current bid price for the Convertible Bond was 153.63 and the current asking price was 154.13.
15. Respondent forwarded this e-mail from his Bloomberg address to his BNP address [REDACTED]. From his BNP address, Respondent then sent an e-mail to Market Risk with an attachment containing prices for convertible bonds. However, in this attachment, the Convertible Bond had a current bid price of 336.25 and an asking price of 337.
16. On another occasion, Respondent sent an e-mail from his BNP address [REDACTED] to Market Risk. The e-mail contained an attachment apparently received from an investment bank identifying prices for convertible bonds. The attachment stated that the current bid price of the Convertible

Bond was 336.875 and the current asking price was 337.375, an erroneous figure, according to BNP.

17. By way of further example, CS received an e-mail from another brokerage firm dated March 31, 2004. The e-mail text listed various prices for convertible bonds; however, it did not contain a price for the Convertible Bond (Deutsche Bk LUX/USA Interactive 0% 01May 2012 (144A) – Tranche A). CS forwarded this e-mail to Respondent at his Bloomberg address [REDACTED] who then sent it to his BNP address [REDACTED]. The subject line referenced, “Fwd: 03/31 MONTH END INDICATIONS.”
18. Respondent then forwarded this e-mail from his BNP address to Market Risk. The subject line referenced, “Fwd: 03/31 MONTH-END INDICATIONS.” Unlike the original e-mail received by CS and forwarded to Respondent, the text of this e-mail contained a price for the Convertible Bond.
19. Respondent’s act in falsifying the price of the Convertible Bond prevented BNP from making and preserving accurate communications received and sent by BNP relating to its business, as required by Securities Exchange Act Rule 17a-4.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2110 and 3110.

SECOND CAUSE OF COMPLAINT

(Failure to Respond)

(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

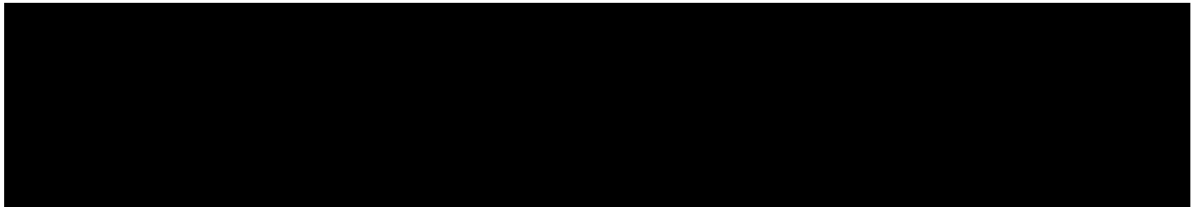
20. Paragraphs 1 through 19 are re-alleged and incorporated herein by reference.

December 8, 2004 Letter

21. By letter dated December 8, 2004, the Staff that Respondent provide information concerning, among other things, his termination from BNP. The letter was sent by

certified mail, return receipt requested and regular mail to Respondent's current residential address as reflected in the records of the NASD Central Registration Depository, [REDACTED] (the "CRD Address").

22. The December 8, 2004 letter was also sent by certified mail, return receipt requested and regular mail to the following additional addresses obtained from the Staff's Equifax search:



23. The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by December 22, 2004.

Mailing to the CRD Address

24. The certified mailing to the CRD Address was returned to the Staff with the designation, "Returned to Sender." The return receipt card was also unsigned.
25. The regular mailing was returned to the Staff with the designation, "Attempted Not Known."

Mailing to the Broadway Address

26. The certified mailing to the Broadway Address was returned to the Staff with the designation, "Return to Sender Other."
27. The regular mailing was not returned to the Staff.

Mailing to the 57th St. Address

28. The certified mailing to the 57th St. Address was returned to the Staff with the designations, "Returned to Sender" and "Attempted Not Known at Such Number, Refused." The return receipt card was also unsigned.
29. The regular mailing was returned to the Staff with a designation, "Return to Sender Moved Fwdg.Ord. Expired."

Mailing to the Avenue of the Americas Address

30. The certified mailing to the Avenue of the Americas Address was also returned to the Staff with the designation, "Returned to Sender Addressee Unknown." The return receipt card was also unsigned.
31. The regular mailing was not returned to the Staff.

Mailing to the 7th Avenue Address

32. The certified mailing to the 7th Avenue Address was returned to the Staff. The return receipt card was returned with the signature of Jamell Jones.
33. The regular mailing was not returned to the Staff.
34. The Staff did not receive a response from Respondent to the December 8, 2004 letter.

December 27, 2004 Letter

35. By letter dated December 27, 2004, the Staff once again requested that Respondent provide information concerning, among other things, his termination from BNP. The letter was sent via certified mail, return receipt requested and regular mail to the CRD Address; the Broadway Address; the 57th St. Address; the Avenue of the Americas Address; and the 7th Avenue Address.

36. This request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by January 11, 2005. The letter also stated that the failure to comply with the request could subject Respondent to disciplinary action.

Mailing to the CRD Address

37. The certified mailing to the CRD Address was returned to the Staff with the designation, "Return to Sender No such Number/Street." The return receipt card was also unsigned.
38. The regular mailing was returned to the Staff with the designation, "Returned to Sender."

Mailing to the Broadway Address

39. The certified mailing to the Broadway Address was returned to the Staff with the designation, "Return to Sender Attempted Not Known." The return receipt card was also unsigned.
40. The regular mailing was returned to the Staff with the designation, "Return to Sender Attempted – Not Known Unable to Forward."

Mailing to the 57th St. Address

41. The certified mailing to the 57th St. Address was returned to the Staff with the designation, "Returned to Sender Attempted Not Known." The return receipt card was also unsigned.
42. The regular mailing was returned to the Staff with designations, "Not at this Address," and "Return to Sender."

Mailing to the Avenue of the Americas Address

43. The certified mailing to the Avenue of the Americas Address was also returned to the Staff with the designation, "Returned to Sender, Attempted, Not Known." The return receipt card was also unsigned.

44. The regular mailing was returned to the Staff with the designation, "Return to Sender Moved. Fwdg. Ord. Expired."

Mailing to the 7th Avenue Address

45. The certified mailing to the 7th Avenue Address was returned to the Staff. The return receipt card was returned with the signature of Jamell Jones.
46. The regular mailing to the 7th Avenue Address was returned to the Staff with the designation, "Return to Sender."
47. The Staff did not receive a response from Respondent to the December 27, 2004 letter. By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

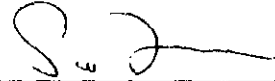
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- C. An order requiring Respondent 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 proceedings as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: April 20, 2006



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