

NASD

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Cantella & Co., Inc.
BD No. 13905

Respondent.

Disciplinary Proceeding
No. E112004003101

Hearing Officer - SW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 9, 2007

INTRODUCTION

Disciplinary Proceeding No. E1120040031 was filed on August 2, 2006, by the Department of Enforcement of NASD ("Complainant"). Respondent Cantella & Co., Inc. ("Cantella") submitted an Offer of Settlement ("Offer") to Complainant on February 2, 2007. 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

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Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Cantella first became a member of NASD on or about August 26, 1983. During all times relevant to this proceeding, Cantella was a registered broker/dealer and member of NASD.

FINDINGS AND CONCLUSIONS

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

**Failure to File Amendments to Forms U4 and U5 in a Timely Manner
In Contravention of Article V, Sections 2(c) and 3(b), of NASD By-Laws
Violation of NASD Conduct Rule 2110**

Article V, Section 2(a), of NASD's By-Laws provides that application for registration with NASD by any person shall be made by a process established by NASD and on a prescribed form signed by the applicant. Section 2(c) provides that every application for registration (Form U4) filed with the NASD shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment. The filing must be made within ten days, however, if the amendment involves disclosure of a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934.

Article V, Section 3(a), of NASD's By-Laws requires that, not later than 30 days following the termination of a registered person, the member shall give notice of the termination of such association to NASD. Such notice is provided on a Form U5. Article V, Section 3(b), of NASD's By-Laws provides that, in the event a member learns of facts or circumstances causing any information set forth in a Form U5 filed with NASD to become inaccurate or incomplete, the member must notify NASD, within 30 days thereafter, of those facts or circumstances by means of an amendment to that termination notice.

From September 1, 2002 through March 31, 2005 (the "relevant period"), Cantella failed to amend six Forms U4/U5 and filed thirty-five Forms U4/U5 late. Based on the foregoing, Cantella acted in contravention of Article V, Sections 2(c) and 3(b), of NASD By-Laws and therefore violated NASD Conduct Rule 2110.

**Failure to Report, Late Reporting and Inaccurate Reporting of Customer Complaints
Violation of NASD Conduct Rules 3070 and 2110**

NASD Rule 3070 requires brokerage firms to report to NASD events of regulatory significance within ten days of the underlying event. The rule enumerates ten types of occurrences that trigger this reporting obligation. Such events include, but are not limited to, situations where a member, or a person associated with the member: has been charged or pleaded guilty to a felony charge; is the subject of a written customer complaint involving allegations of theft or forgery; or has been the subject of any claim for damages by a customer, broker, or dealer that is settled for an amount exceeding \$15,000. Rule 3070 also requires that members provide statistical and summary information regarding customer complaints in such detail, as NASD shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the firm. This rule assists NASD in monitoring on a real-time basis the ongoing compliance of member firms and associated persons with applicable securities laws and regulations.

During the relevant period, the firm failed to report twenty-five customer complaints, filed nine customer complaints late, failed to properly code nine customer complaints, and failed to disclose the disputed amount in one customer complaint. Based on the foregoing, Cantella violated NASD Conduct Rules 3070 and 2110.

Failure to Retain Electronic Communications
Violation of Rule 17a-4 of the Securities Exchange Act of 1934 and NASD Conduct Rules
3110 and 2110

Rule 17a-4, promulgated under the Securities Exchange Act of 1934 ("Exchange Act"), requires that brokerage firms maintain and preserve, for a period of not less than 3 years, electronic communications relating to the firm's business as a broker-dealer. From September 1, 2002 through December 13, 2004, Cantella's branch office, Providence Partners, used an independent e-mail server to maintain and preserve e-mail communications that was not linked to Cantella's e-mail server. Cantella failed to back-up, or otherwise preserve, all e-mails from that branch office. As a result, Cantella did not maintain and preserve all e-mail communications as required by Exchange Act Rule 17a-4. Based upon the foregoing, Cantella violated Exchange Act Rule 17a-4 and NASD Conduct Rules 3110 and 2110.

TRACE Reporting
Violation of NASD Systems and Programs Rule 6230 and NASD Conduct Rule 2110

Member firms must report transactions in corporate bonds to NASD's Trade Reporting and Compliance Engine ("TRACE"). NASD Systems and Programs Rule 6220 provides that such mandatory participation obligates members to submit transaction reports in TRACE eligible securities in conformity with the Rule 6200 Series. In 2004, NASD Systems and Programs Rule 6230(a) required members to report TRACE-eligible transactions within 45 minutes of the time of execution. From February 19, 2004 through April 19, 2004, Cantella reported eleven TRACE-eligible transactions late, failed to include the appropriate modifier on five of those late transactions, and incorrectly reported the yield for the eleven late TRACE-eligible transactions. Based on the foregoing, Cantella violated NASD Systems and Programs Rule 6230 and NASD Conduct Rule 2110.

**Failure to Have Written Supervisory Procedures
Violation of NASD Conduct Rules 3010 and 2110**

NASD Conduct Rule 3010(b)(1) requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages. From at least September 1, 2002 through at least April 30, 2004, Cantella did not have any written supervisory procedures relating to TRACE reporting. Based on the foregoing, Cantella violated NASD Conduct Rules 3010 and 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 censured and fined \$65,000. In addition, Respondent shall comply with the following undertakings within the time periods specified below (unless otherwise extended by NASD staff):

1. Respondent shall undertake to review its procedures regarding the preservation of electronic mail communications for compliance with NASD rules and the federal securities laws and regulations. Within 180 calendar days of the issuance of this Order, an officer of Respondent will certify to NASD in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning the preservation of electronic mail communications.
2. Within 90 days of the issuance of this Order (unless otherwise extended by NASD staff), Respondent shall certify in writing to NASD that it has reviewed

its systems and procedures for complying with the reporting obligations set forth in NASD Conduct Rule 3070 and Article V, Sections 2(c), 3(a) and 3(b), of the NASD By-Laws and has established systems and procedures reasonably designed to achieve compliance with those requirements.

3. The certifications, along with the firm's written procedures, must be submitted to NASD's Boston District Office staff. Although NASD staff may review the submitted procedures, said review shall in no way constitute an approval of those procedures. The failure of NASD staff to alert Respondent to any deficiencies in the written procedures shall not preclude NASD from instituting a subsequent disciplinary action as a result of deficiencies in those procedures.

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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