

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

TIMOTHY BEHANY,
CRD No. 2878998;

EDWARD M. VANGROUW,
CRD No. 1032559;

[REDACTED]

-AND-

DAVID JOSEPH COTTAM,
CRD No. 2716994,

RESPONDENTS.

DISCIPLINARY PROCEEDING
No. E9B2003026301

HEARING OFFICER HEIFETZ

ORDER ACCEPTING OFFER
OF SETTLEMENT

Date: September 21, 2006

INTRODUCTION

Disciplinary Proceeding No. E9B2003026301 filed by it on was filed on February 14, 2006 by the Department of Enforcement of NASD ("Complainant"). Respondent David Joseph Cottam submitted an Offer of Settlement ("Offer") to Complainant on September 15, 2006.

Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of *Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.*

BACKGROUND

Respondent David Joseph Cottam ("Cottam") became registered with NASD as a General Securities Representative ("Series 7") on or about April 11, 1996. Cottam was registered with Citigroup from on or about December 17, 2001 until on or about June 3, 2005 when he was permitted to resign because he "did not comply with firm policy regarding syndicate trading." Cottam is not presently associated with a member firm

FINDINGS AND CONCLUSIONS

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

Summary

1. A Contingent Deferred Sales Charge ("CDSC") is the sales charge that mutual fund companies impose on investors who sell/redeem their Class B shares within a certain period after purchase. The amount of the CDSC depends upon, among other things, the number of years since the initial purchase and the terms offered by the specific mutual fund company. CDSCs may sometimes be waived for customers. Certain of the mutual fund prospectuses provided that, in order to obtain a disability waiver for a customer, the broker obtain and/or submit documentation to support the claim or, at minimum, determine that the customer is disabled.
2. In 1999, Citigroup issued a Compliance Memo to its branch managers, regional directors and divisional directors advising that CDSC waivers could not be granted without compliance with the mutual fund prospectuses.
3. During the relevant time period, Citigroup employed an electronic order entry system that permitted registered representatives to waive CDSCs for mutual fund redemptions. This was a multi-step process, and, therefore, waivers were unlikely to be the result of a mistake.
4. As detailed below, Cottam improperly obtained CDSC waivers for at least 11 non-disabled customers by falsely claiming that they were disabled.

Misrepresentation and Creating False Books and Records
NASD Conduct Rules 2110 and 3110

5. From in or about March 2002 through in or about June 2002, Cottam obtained improper CDSC waivers for 11 customers in connection with 44 mutual fund redemptions, as more fully described in Schedule A attached hereto and incorporated herein by reference, by falsely representing, on Citigroup's electronic order entry system, that those customers were disabled, when, in fact, they were not.
6. As a result, several mutual fund companies were deprived of fees to which they were otherwise entitled.
7. Moreover, Cottam's actions caused Citigroup's books and records relating to the 44 redemptions to contain false and misleading information regarding the disability status of the customers and their entitlement to a CDSC waiver.
8. As a result of this conduct, Cottam violated NASD Conduct Rules 2110 and 3110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

- Suspended from association with any NASD member firm in any capacity for eighteen months; and
- Fined in the amount of \$5,000. The fine shall be due and payable either

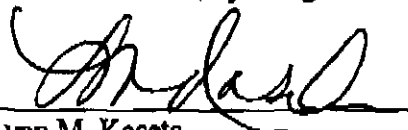
immediately upon reassociation with a member firm following the eighteen-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

SO ORDERED.

NASD

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



Lynn M. Kaseta
Regional Counsel
NASD Department of Enforcement
581 Main Street
7th Floor
Woodbridge, NJ 07095
Office: 732-596-2079
Fax: 202-721-6558