

**NASD
OFFICE OF HEARING OFFICERS**

**DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,**

V.

**IMRAN NASIM SHAMS,
CRD No. 2648646,**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. EAF0301040003**

**HEARING OFFICER:
DAVID M. FITZGERALD**

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

DATE: JUNE 21, 2006

INTRODUCTION

Disciplinary Proceeding No. EAF0301040003 was filed on December 28, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Imran Nasim Shams ("Respondent" or "Shams") submitted an Offer of Settlement ("Offer") to Complainant on June 13, 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. This Offer is submitted to resolve this proceeding and is made without admitting or denying the allegations of the Complaint. It is also submitted upon the condition that NASD shall not institute or entertain, at any time, any further proceeding as to Respondent based on the allegations of the Complaint, and upon further condition that it will not be used in this

proceeding, in any other proceeding, or otherwise, unless it is accepted by the National
Adjudicatory Council ("NAC") Review Subcommittee, pursuant to NASD Rule 9270.

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

Shams entered the securities business in 1996 when he became associated with H&R
Block Financial Advisors ("HRBFA") as a municipal securities representative (Series 52). He
became a general securities representative (Series 7) in January 1996 and then became a general
securities sales supervisor upon completion of the Series 9 and 10 in May 2000. Shams was
associated with HRBFA from July 1995 until April 2004, when he left the securities industry.
Although Shams has not been associated with any NASD member since April 2004, NASD
retains jurisdiction over him pursuant to Art. 5, § 4 of the NASD By-Laws as the conduct that
serves as the basis for this action commenced prior to his termination from a member firm and
this action was filed within two years after the effective date of his termination from HRBFA.

Shams does not have any relevant disciplinary history.

FINDINGS AND CONCLUSIONS

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

I. Shams Recruits the Market Timing Brokers to HRBFA

In the summer of 2002, Shams, as branch office manager for the Orlando, Florida office of H&R Block Financial Advisors, Inc. (“HRBFA”), and other members of HRBFA’s management, facilitated the hiring of John Schaedel and Anthony Truman (collectively, “the brokers”).

The brokers proposed to open numerous accounts for hedge funds to market time mutual funds through HRBFA’s fee-based accounts. “Market timing” is the practice of short-term buying and selling of mutual fund shares to exploit inefficiencies in mutual fund pricing. The share price of a mutual fund is determined by the “net asset value” or NAV of the fund. The NAV is typically calculated once per day from the closing price of the securities in the fund’s portfolio at 4:00 p.m. E.S.T. This method for determining NAV provides market timers the opportunity to engage in arbitrage based upon market information not reflected in that day’s net asset value. To do this, market timers typically buy and sell shares in mutual funds on a short-term basis, realizing quick gains and then retreating to the previous market position. Market timing can harm mutual fund shareholders because it can dilute the value of their shares, by, among other things, requiring the fund to keep a larger percentage of highly liquid assets to cover the redemptions, or by increasing the transaction costs for the fund. Long-term fund investors may ultimately bear the burden of paying these costs.

At the time HRBFA recruited them, the brokers had the opportunity to open accounts for hedge funds to market time mutual funds, but the firm where they worked placed restrictions on turnover in its fee-based account, effectively prohibiting such accounts from being used to market time.

During the recruitment process, the brokers explained to management, which included

Shams, that they hoped to open accounts for a number of hedge funds that could invest \$30 to \$40 million in assets. The brokers further explained to Shams that their clients would aggressively trade or market time mutual funds through their accounts at HRBFA.

The brokers were attracted to HRBFA because the firm offered fee-based accounts, called Wealth Management Accounts (WMAs), through which customers could engage in unlimited trading while paying a quarterly fee, rather than a commission on each trade. Moreover, through HRBFA's WMAs, clients had access to a roster of mutual funds that they could trade without incurring any load. The brokers understood that HRBFA did not have any system in place, such as a limitation on turnover ratios, to inhibit frequent trading or market timing through WMAs.

II. The Brokers' Clients Open Fee-Based Accounts at HRBFA with Shams' Approval

The brokers began working at HRBFA in late September 2002 and began opening accounts for HC and CC soon thereafter. The brokers opened six HRBFA accounts for HC and four HRBFA accounts for CC. Shams approved the opening of each account. Through these accounts, HC and CC market timed funds available through the WMA program. The brokers, and, on occasion, Shams, executed these transactions.

The brokers and Shams engaged in this activity despite the fact that they knew or should have known WMAs were not intended for entities primarily interested in market timing mutual funds. HC and CC had to agree to the terms of the WMA Client Guide and Investors Account Agreement when they opened each of their accounts. That agreement explicitly stated that WMAs were not designed for market timers: "You understand that the program is designed for investors not primarily interested in purchasing eligible mutual funds or UITs or trading in such investment company shares based on market timing."

III. HC, CC, and Several Other Clients Commence Market Timing Mutual Funds, and Shams and the Brokers Receive Numerous Communications from Funds Blocking or Rejecting Market Timing Transactions

As disclosed in many mutual fund prospectuses, mutual fund families review trading in their funds to detect market timers. Once a fund family discovers a market timer, it may take a number of steps to prevent further market timing. Typically, fund families send out communications via a letter or e-mail (“restriction letters”) to broker-dealers blocking or restricting an account from further market timing in the families’ funds. They may also reject a trade because of market timing. Fund families may also block brokers or entire branches from effecting market timing transactions.

Certain of the funds that were market timed indicated in their prospectus or statements of additional information that they restricted or discouraged market timing. For example, the following language appeared in certain of the funds’ disclosure documents:

- “[The fund] does not permit excessive short-term trading, market-timing, or other abusive trading practices in our Funds.”
- “[The funds] do not permit market timing or other excessive trading practices.”
- “The Funds are not intended for market-timing or excessive trading.”
- “[T]o discourage excessive exchange activity that could result in additional expenses and lower returns for the Funds, the Funds may restrict or refuse exchanges from market timers. You may be considered a market timer if you completed more than one exchange within a 3-month period, or seem to be following a timing pattern.”

Certain other funds placed specific limits on the number of transactions that could be done in a particular period of time. Several of these funds indicated that, in determining whether those limits were exceeded, they would consider trading done in multiple accounts under common ownership or control.

Shams and the brokers were aware of the restrictions funds placed on market timing

through their review of prospectuses and other sources of information.

Shams and the brokers were also aware of the funds' attempts to restrict or reject their clients' market timing activity because they received communications from funds trying to block or reject their clients' market timing activity. The majority of these communications, either letters or e-mail, were sent to the firm and then forwarded directly to Shams and the brokers. By the time HC's and CC's accounts were shut down in July 2003, the brokers had received 89 communications from various fund families restricting or rejecting HC's accounts and 51 communications from various fund families restricting or rejecting CC's two commonly-owned accounts. Of these communications, 103 (or 74%) were forwarded directly to Shams.

In restricting or rejecting their clients' market timing transactions, mutual fund companies put Shams and the brokers on notice that market timing may harm fund shareholders, that the funds discouraged market timing, and that the fund was restricting the account, client, or broker from engaging in future market timing activities. For example, mutual fund restriction letters sent to HRBFA, which were forwarded to Shams, included the following warnings:

- "Due to excessive trading/market timing in the [funds] listed below, we are placing a stop on these accounts and no more trading will be allowed (except redemptions). Do not allow these individuals to trade the [funds] indicated below in the future."
- "The recent transactions have brought to our attention what appears to be a pattern of market timing in [the funds]. However, as indicated in the fund's prospectus, frequent short-term trading in [the funds] is strongly discouraged. This type of activity could lead to an increase in fund management costs, cause needless volatility and adversely affect all shareholders. In the best interests of our long-term shareholders, we will restrict additional activity in the following BINS as of December 3, 2002. Please also note that any activity of this type in the future will not be accepted by the fund."
- "This letter is in regard to the frequent exchanges that are being executed by H&R Block brokers in various accounts at [the fund]. As indicated in our prospectuses, [the fund] has reserved the right to refuse purchase transactions in certain

situations. The frequency of transactions executed by these brokers violates these policies. The activities in the accounts under these brokers' control have been determined to be detrimental to one or more Funds and harmful to our shareholders. The purpose of this letter is to invite these brokers to remove these assets that they have with [the fund]."

- "Over the past few months, we have closely monitored the effects of market timing and short-term trading within our family of funds. We have determined that these activities, if not properly addressed, may hinder our ability to achieve desirable long-term investments results for our shareholders; therefore, we can no longer accommodate these activities."

When the account-specific restrictions were ineffective, funds resorted to other, more sweeping restrictions. The restriction letters sent to Shams and the brokers included the following:

- "We have identified one of your customer's that held [the fund] as a Market Timer. The position was held in account number [A]. The shares (80,845.77) were first purchased in the fund on 12/20/02 and then sold on 1/8/03 Please let them know that [t]hey are banned from trading in all of the [funds], as we do not permit market timing. Let me know if you have and questions, and if anything can be done pro-actively on your side to prohibit future trading from Market Timers, it would be greatly appreciated."
- "This letter is in regard to your recent telephone conversation with our Service Representative on December 11, 2002. Per Fremont Funds a stop 3 has been placed on the above referenced account due to Market Timers. The stop prevents any account activity from occurring."
- "[The fund's] policy is any trade in excess of one round trip or exchange per 3 month period is considered market timing. Yesterday, I informed you that [Truman] had been engaging in excessive activity and was flagged as a market timer. The two accounts above show a similar pattern of activity, therefore immediate stops are being placed on the accounts and only a full redemption will be allowed. The account under [Schaedel] completed one round trip between 4/29 and 5/19 and initiated another purchase on 5/22. Stops are being placed on this account as well. Both reps are now flagged as market timers and future purchases may be immediately stopped if market timing is suspected."

Shams was aware that funds discouraged or restricted market timing. In November 2002, Shams was forwarded an e-mail from a mutual fund restricting one of Truman's accounts from

further market timing activity. In an e-mail that Shams received, the mutual fund stated that market timing was an “unwelcome” and “potentially costly activity” and that the mutual fund was adopting a stricter, no-tolerance policy. As a result, the fund restricted Truman’s account because it had bought shares in the mutual fund and exchanged them within a couple of days. The fund warned, “If Mr. Truman simply decides to open a new account and continues to demonstrate short term trading practices, the next step will be to place a block on his rep number.”

In responding to this e-mail, Shams acknowledged that the market timing activity engaged in by HC and the brokers’ other clients was improper. He stated the fund

is not going to allow that in the future, that quick of an exchange [sic]. . . [S]ome mutual fund companies don’t like market timing clients because it disrupts the fund’s management. I have spoken to some mutual fund companies on my own and it is a normal practice for them not to allow this kind of transaction.

Nevertheless, Shams took no action to monitor the brokers’ accounts, oversee their trading, or restrict them from engaging in further market timing activities. In fact, approximately one week later, Shams was forwarded another e-mail from the same fund regarding another account owned by HC. This e-mail put HRBFA and Shams on notice that the entire branch may be restricted from trading in the funds: “No future purchases will be allowed. Also, any further market timing activity from this branch will result in a restriction being placed on the entire branch for ALL [of the fund’s] products.”

IV. With Shams’ Knowledge and/or Assistance, the Brokers Assisted HC and Other Clients in Evading Fund Restrictions

The brokers opened 19 accounts for seven clients that engaged in market timing. Customer HC opened more accounts with the brokers than any of their other market timing customers, engaged in more market timing transactions than any of their other customers, and

profited more from market timing mutual funds at HRBFA.

The brokers opened six accounts for HC, and Shams approved the opening of each account. Shams was also aware that HC opened an account with HRBFA in New York City.

These accounts were purportedly opened for separate legal entities by HC, but Shams knew or should have known that these six accounts had common beneficial owners. In October 2002, the brokers, with Shams' approval, opened four accounts for HC (Accounts D, W, F, and H) for two different limited partnerships: one partnership was the beneficial owner for accounts D and W and another partnership was the beneficial owner for accounts F and H. As described more fully below, HC opened two additional accounts in May 2003 (Account NS and NU) after accounts D, W, F, and H had been restricted from market timing various mutual funds. Account NS had the same beneficial owner as accounts H and F; account NU had the same beneficial owner as accounts D and W.

Shortly after opening the HC accounts, Shams began receiving letters from fund companies rejecting HC's market timing transactions or blocking HC's accounts from further market timing transactions.

Thereafter, the brokers, with Shams' knowledge, established a system to monitor the trading of HC and their other market timing clients, advised HC when it was close to or had exceeded certain fund's prospectus trading limits, and advised HC on what funds to trade. The brokers used a chart to track investments by HC and their other market timing clients against fund prospectus trading limits. Shams knew the brokers tracked their clients' trading against prospectus limits and advised their clients to stop trading in certain funds in which the clients had reached or exceeded prospectus limits or had otherwise been restricted.

The brokers, with Shams' assistance, also facilitated HC's evasion of fund restrictions by

using related accounts to continue market timing restricted funds, by opening new accounts to market time mutual funds that had restricted its existing accounts, and by changing the broker-of-record for certain of these accounts.

Through these successful efforts to hide HC's identity, HC was able to continue market timing when a fund had prohibited it from doing so and executed transactions beyond the limits placed by the fund families. In all, HC executed 69 round trips in violation of fund restrictions.

The HRBFA Compliance Department closed down HC's accounts on July 11, 2003. During the period in which HC's accounts were open, Shams knew about and facilitated HC's activities. On July 28, 2003, after all 19 of the brokers' market timing accounts had been shut down, Truman sent an e-mail to the regional director with copies to Shams and the district sales manager. He admitted that many of their accounts had been restricted from market timing mutual funds, that he and Schaedel had advised clients with regard to market timing trading, and that when accounts were shut down he and Schaedel would assist their clients in shifting market timing trades to other related accounts.

The brokers engaged in other attempts to facilitate their client's market timing after the accounts were closed, which Shams either knew or should have known about as branch office manager. For example, Truman suggested using an omnibus trading platform as a means to hide the market timing by their clients. In an e-mail dated July 28, 2003 he stated, "In an omnibus trading platform all orders into a fund are grouped together so the fund family does not know specifically who placed the trade."

Shams was aware that Schaedel and Truman made a request, at their customers' behest, to an HRBFA Product Manager to add mutual funds to the roster of those offered through the WMA program, and the firm agreed.

V. HC Evaded Fund Restrictions by Trading in Related Accounts

HC used the related accounts it opened in October 2002 to engage in more market timing than it would have, had it just opened one account for each beneficial owner. As noted above, Accounts D and W had the same beneficial owner and Accounts F and H had the same beneficial owner. When Account D received restriction notices from certain funds, Account W traded in the funds thereafter; when Account F was restricted, Account H traded in the restricted funds.

VI. HC Opened New Accounts to Evade Fund Restrictions

By May 2003, HC had fewer funds to market time through its HRBFA accounts because many of the funds had blocked Accounts D, W, F, and H from engaging in further market timing. To maintain HC's ability to market time, the brokers, with the knowledge and assistance of Shams, opened two new accounts – Account NU and Account NS – for HC. Neither the brokers nor Shams disclosed to the mutual funds that had restricted D, W, F, and H of the relationship between those accounts and Accounts NU and NS.

Customer HC funded Account NS with two cash transfers of \$1.8 million and \$1.9 million from Accounts F and H, respectively. Shams approved the opening of Account NS and approved the journaling of funds from Accounts F and H to Account NS. Account NU was funded by money transferred by wire from the same bank account that funded Accounts D and W. Shams approved the opening of account NU and signed the form acknowledging the wire transfers.

The brokers executed trades in Accounts NS and NU in funds that had previously restricted Accounts D, W, F, and H. They executed 34 round trips in Account NS in funds that had previously restricted either Account F and/or Account H, and executed seven round trips in Account NU in funds that had previously restricted Account D and/or Account W. For example,

a mutual fund restricted Accounts F and H on May 16, 2003. Account NS began market timing that mutual fund on June 4, 2003 and executed six round trips by the end of June. Another mutual fund restricted Account F and H on April 29, 2003 and Account NS began market timing that mutual fund on June 4, 2003. Another mutual fund restricted Account H on June 24, 2003, and Account NS executed five round trips in that fund beginning on June 26, 2003. Similarly, a mutual fund restricted accounts D and W on May 16, 2003 and Account NU began market timing that fund on June 4, 2003. Through this trading, Customer HC made \$112,882 in profits in Account NS and \$26,702 in Account NU. Shams took no steps to prevent the brokers from submitting mutual fund orders in NS and NU for funds that had previously blocked trading in D, W, F, and H.

VII. With Shams' Knowledge and/or Assistance, the Brokers Assist Customer CC to Evade Fund Restrictions

Customer CC opened Account CCG in October 2002 and began immediately market timing mutual funds through the brokers in that account. Several mutual funds began restricting the CCG account or rejecting trades because of its market timing activities.

Customer CC evaded these restrictions and rejections by opening another account that had the same beneficial owner as account CCG. In March 2003, customer CC opened Account J and began market timing some of the same funds that had restricted its CCG account.

Shams provided assistance to customer CC in evading fund restrictions in the same manner as the assistance provided to customer HC. Most, if not all, of the techniques used to monitor trading, track investments, and facilitate evasion of fund restrictions by using related accounts were also used for accounts held by customer CC. All told, Customer CC executed 12 round trips in Accounts CCG and J in violation of the funds' legitimate restrictions. It earned

\$55,318 on those trades. Shams took no steps to prevent the brokers from submitting mutual fund orders in Account J for funds that had previously blocked trading in Account CCG.

VIII. With Shams' Knowledge and/or Assistance, the Brokers Take Other Action to Assist Clients in Avoiding Fund Restrictions

Schaedel and Truman were partners. They each had separate broker numbers at HRBFA, but evenly divided the fees and commissions generated by the accounts under each number regardless of which broker the account was under. In April 2003, Schaedel e-mailed Shams requesting that the firm issue new broker numbers to him and Truman. The new numbers were not issued.

Later in April, Schaedel requested Shams change the broker-of-record for HC's accounts, and accounts of their other market timing clients, from him to Truman and vice versa. Shams approved the transfers and they occurred on April 24. Thereafter, certain of these accounts market timed in the same funds they had market timed before the transfers, without the funds restricting such activity.

In June 2003, Schaedel e-mailed Shams suggesting an "experiment" to change the broker-of-record for Account JB (which recently had been opened by Customer M) from Schaedel to "OR," which referred to the Orlando branch's house account. The e-mail stated: "I would like to try an experiment. What are the chances of putting [Account JB] into rep OR??"

Schaedel hoped changing the broker of record for Account JB to the "house account" would improve the chance that Account JB would not receive fund-restriction notices blocking market timing trades. Shams approved the broker-number transfer knowing that Schaedel was attempting to prevent mutual funds from shutting down trading in the JB account. On June 23, 2003, Account JB was transferred to the "house account" number – [REDACTED] This scheme

apparently failed. On June 26, 2003 orders totaling approximately \$160,000 were placed under [REDACTED] in account JB in a fund that had previously rejected orders in account JB placed by Truman. The order placed under [REDACTED] was rejected as well.

IX. Shams Violated NASD Conduct Rules

By engaging in the conduct described above, Shams substantially and knowingly assisted the brokers in facilitating their clients' efforts to avoid fund restrictions on their market timing activities. Moreover, Shams also directly facilitated those efforts. Shams accordingly failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

As the manager of the Orlando branch office Shams failed in his supervisory duties as well. Shams knew the brokers received numerous restriction letters seeking to halt their clients' market timing activities. Moreover, Shams approved changing the broker-of-record for certain of the brokers' accounts and approved moving Account JB to the Orlando house account number. Shams knew the brokers tracked their clients' trading and advised them on which funds to market time. Moreover, Shams failed to adequately respond on a timely basis to the red flags regarding the brokers' efforts to assist their clients' deceptive activity. Shams accordingly failed to supervise the activities of the brokers and violated NASD Conduct Rules 3010 and 2110.

Based upon 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

Pay a fine in the amount of \$10,000; and

be suspended from association with any NASD member in any capacity for 60 days, followed immediately by a suspension from associating with any member firm in any supervisory capacity for 90 days.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 60 days all-capacities suspension described 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 remaining 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

A handwritten signature in black ink, appearing to read 'R. B. Sherman', is written over a horizontal line.

Roger B. Sherman
Senior Vice President
NASD Department of Enforcement
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