

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

WILLIAM A. MALLOY
(CRD No. 1492864),

Respondent.

Disciplinary Proceeding
No. ELI2004008101

Hearing Officer – RSH

DEFAULT DECISION

October 11, 2006

Respondent violated NASD Conduct Rules 3050(c) and 2110 by making trades in a securities account without notifying his member firm; Conduct Rules 2330(f) and 2110 by sharing in the profits of a customer's account; Conduct Rules 2120, 2310(a) and 2110 by trading excessively in customer accounts; Conduct Rule 2110 by settling a customer complaint away from his member firm; and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information. For the excessive trading and failure to respond, Respondent is barred from associating with any NASD member in any capacity. Respondent is also ordered to pay restitution in the amount of \$278,072.59 to the customers in whose accounts he traded excessively. In light of the bars, no additional sanctions are imposed for Respondent's other violations.

Appearances

Vaishali Shetty, Regional Counsel, David Jaffe, Regional Chief Counsel, Jericho, NY
(Rory C. Flynn, Of Counsel, Washington, DC, Roger D. Hogoboom, Of Counsel, Denver, CO)
for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

Complainant Department of Enforcement filed a Complaint (attached to this Decision as Exhibit A) on May 16, 2006, alleging that Respondent William A. Malloy, while employed by

Delta Asset Management, LLC (“Delta”), violated NASD Conduct Rules 3050(c) and 2110 by making trades in a securities account at Datek Online Financial Services, LLC (“Datek”) without notifying Delta, Conduct Rules 2330(f) and 2110 by sharing in the profits of a customer’s account, Conduct Rules 2120, 2310(a) and 2110 by trading excessively in customer accounts, Conduct Rule 2110 by settling a customer complaint away from his member firm, and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information.

Respondent did not file an Answer to the Complaint. On June 16, 2006, Enforcement sent Respondent a Second Notice of Complaint and a copy of the Complaint, to which Respondent failed to respond.

On August 1, 2006, Complainant filed a Motion for Entry of Default Decision, which was supported by the Declaration of Vaishali S. Shetty and nineteen exhibits. Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Complainant’s motion is granted.¹

II. Jurisdiction

The Complaint alleges, and the Respondent’s CRD record shows, that Respondent first became registered as a General Securities Representative (“GSR”) of an NASD member firm on May 17, 1986. Respondent was registered with Delta during three periods of time: (a) from October 6, 2000 through October 26, 2001; (b) from November 10, 2001 through June 17, 2003; and (c) from July 14, 2003 through September 29, 2004.² On September 29, 2004, Delta filed a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) to terminate Respondent’s registration. The Form U-5 indicated that Respondent was terminated by Delta for

¹ The factual determinations in this decision are based on the allegations in the attached Complaint, which are deemed admitted, as well as the additional materials filed by Complainant with its motion.

² Complainant’s Default Exhibit (“CX”)-I.

causing an unsecured debit at the firm that resulted in the firm being under net capital and closing.³ Respondent is not currently registered with an NASD member firm; however, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's Bylaws, because (1) the Complaint was filed within two years following the termination of Respondent's employment and registration with Delta and (2) the Complaint charges him with misconduct committed while he was associated with an NASD member firm and with failing to respond to NASD requests for information made during the two-year period following his termination from Delta.

III. Respondent's Default

Complainant sent the Complaint and Notice of Complaint ("First Notice") to Respondent on May 15, 2006, by first-class and certified mail to the most recent address listed in the Central Registration Depository ("CRD Address"). The certified mailing of the First Notice sent to the CRD Address was returned by the United States Postal Service ("USPS") to the Staff bearing the notations, "Return to Sender" and "Unclaimed." The first class mailing of the First Notice sent to the CRD Address was not returned.⁴

On June 16, 2006, Complainant sent the Complaint and Second Notice of Complaint ("Second Notice") by first class and certified mail to Respondent's CRD. Neither the certified mailing nor the first class mailing was returned.⁵

The Second Notice of Complaint required Respondent to submit an answer to the Complaint by July 3, 2006. To date, Respondent has failed to answer or otherwise respond to the

³ CX-1.

⁴ Shetty Decl., ¶¶ 8-10; CX-2.3.

⁵ Shetty Decl., ¶¶ 11-12; CX-4.

Complaint.⁶ On July 31, 2006, Complainant sent the Motion for Entry of Default Decision by certified and first class mail to Respondent's CRD Address.

Complainant served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Procedural Rule 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

IV. Findings of Fact and Conclusions of Law

A. Failing to Give Notice of Trading in an Account at a Member Firm

The First Cause of the Complaint alleges that Respondent violated Conduct Rules 3050(c) and 2110. On or about October 23, 2001, customer JB opened an online account at Datek. Pursuant to a Limited Power of Attorney, Respondent was given and exercised discretion to trade for JB's account. From on or about October 31, 2001 through on or about December 19, 2001, Respondent purchased and sold securities for JB's online account at Datek, without notifying either Delta or Datek that he was associated with Delta.⁷

NASD Conduct Rule 3050(c) requires that an associated person, "prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with another member." Rule 3050(c) applies to accounts over which an associated person has discretionary authority.⁸ The Complaint alleges that Respondent did not notify Delta or Datek that he was trading in the Datek account.

⁶ Shetty Decl., ¶¶ 13-14.

⁷ Respondent's first period of registration through Delta ended on October 26, 2001; however, he became registered again through Delta on November 10, 2001.

⁸ See, Notice to Members 83-17.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this proceeding, that Respondent violated Conduct Rule 3050(c). It is a well-established rule that a violation of one NASD rule also constitutes a violation of Rule 2110, which provides that, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."⁹ The Hearing Officer therefore finds that Respondent violated Rules 3050(c) and 2110.¹⁰

B. Improperly Sharing in Customer Accounts

The Second Cause of the Complaint alleges that as payment for trading in JB's Datek account, Respondent entered into an agreement with JB to receive ten percent of the profits generated in the account. While he was registered through Delta, Respondent accepted approximately \$3,161 as a portion of the profit from trading in JB's account at Datek. Respondent did not make any financial contribution to JB's Datek account. Respondent did not inform Delta of this compensation, and he did not obtain prior written authorization from Delta to share in the account.

NASD Conduct Rule 2330(f) prohibits an associated person from sharing in the profits or losses in a customer account carried by a member firm unless the associated person: (1) obtains prior written authorization from the member employing the associated person, (2) obtains prior written authorization from the customer and (3) shares in the profits or losses only in direct proportion to the financial contribution he makes to the account. While Respondent obtained prior written permission from JB to share in the account's profits, he did not obtain authorization from Delta, and he did not make any financial contribution to the account.

⁹ See, e.g., *E. Magnus Oppenheim & Co., Inc.*, Exchange Act Release No. 51479, 2005 SEC LEXIS 764, at *7 (Apr. 6, 2005); *Jim Newcomb*, Exchange Act Release No. 44945, 2001 SEC LEXIS 2172, at n1; *Stephen J. Gluckman*, Securities Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

¹⁰ See, *Dep't. of Enforcement v. Guang Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8 (NAC May 13, 2004).

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this proceeding, that Respondent violated Conduct Rule 2330(f) and thereby, Rule 2110.¹¹

C. Excessive Trading and Churning

The Third Cause of the Complaint alleges that Respondent violated Conduct Rules 2310, 2120 and 2110 by trading excessively in customers PB and JB's accounts at Delta. As alleged in the Complaint, in January 2002, Respondent opened two accounts for PB and JB—accounts [REDACTED] ("Account [REDACTED]") and [REDACTED] ("Account [REDACTED]"). The accounts were opened with approximately \$150,000 each. At least a portion of the funds for the trading in Accounts [REDACTED] and [REDACTED] came from a mortgage that Mr. and Mrs. B took out on their home.

At the time they opened their accounts at Delta, PB was 64 and JB was 65. Their investment objectives were "Income" and "Long-Term Growth with Safety." Their Delta new account forms indicate that they had no prior investment experience.¹² PB and JB completed Limited Trading Authorization forms for both accounts, giving Respondent authority to make purchases and sales in the accounts. Respondent made all of the trades for the accounts.

The Complaint alleges that from January 2002 through March 2002, Respondent's trading in Account [REDACTED] generated approximately \$43,594 in commissions, the annualized turnover rate was 1,703 and the annualized cost-to-equity ratio was 264%. During the same period, the trading in Account [REDACTED] generated approximately \$41,237 in commissions, the annualized turnover rate was 1,598 and the annualized cost-to-equity ratio was 250%. The Complaint alleges that the level of trading activity in Accounts [REDACTED] and [REDACTED] was inconsistent with PB's and JB's investment objectives and financial situation.

¹¹ See, *Dep't. of Enforcement v. John Audifferen*, No. C10030095, 2005 NASD Discip. LEXIS 27 (OHO Mar. 14, 2005).

¹² CX-11.

NASD Conduct Rule 2310(a) requires that, in recommending to a customer the purchase, sale or exchange of any security, an associated person must have reasonable grounds for believing that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and his financial situation and needs. The SEC has stated that “excessive trading, by itself, can violate NASD suitability standards by representing an unsuitable frequency of trading.”¹³ Excessive trading occurs when a broker has control over an account and the level of activity in the account is inconsistent with the customer’s objectives and financial situation.¹⁴

Where a third element is present—that the broker acted with the intent to defraud or with reckless disregard for the client’s interests, *i.e.*, *scienter*—the misconduct also amounts to churning.¹⁵ Churning constitutes a violation of NASD Conduct Rule 2120, which provides, “No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”¹⁶

Complainant’s allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent had control over PB’s and JB’s accounts and engaged in a level of trading that was inconsistent with their investment objectives. There is no definitive turnover rate that establishes excessive trading; however, a turnover rate of six generally indicates that excessive trading has occurred.¹⁷ Here, the turnover rates of 1,703 and 1,598 clearly exceed that standard. The cost-equity ratios of 264% and 250% mean that the stocks in PB’s and JB’s accounts would have had to increase by those amounts before the

¹³ *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 SEC LEXIS 1754 at *22 (September 1, 1999).

¹⁴ *Id.* at *11-12.

¹⁵ *J. Stephen Stout*, Exchange Act Release No. 43410, 2000 SEC LEXIS 2119, *51 (Oct. 4, 2000).

¹⁶ *Rafael Pinchas*, 1999 SEC LEXIS 1754, at *2 n. 1.

¹⁷ *Daniel Richard Howard*, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *8 (July 26, 2002); *see Peter C. Bucchieri*, 52 S.E.C. 800, 805, 1996 SEC LEXIS 1331 (May 14, 1996) (“While there is no clear line of demarcation, courts and commentators have suggested that an annual turnover rate of six reflects excessive trading.”).

accounts would have been profitable. Between the two accounts, PB and JB lost \$278,072.59 during the two months Respondent traded their accounts.¹⁸

The totality of the circumstances indicates that Respondent acted intentionally or recklessly in pursuing his trading strategy. Respondent should have appreciated the deleterious effects such trading would have on PB's and JB's accounts. The trading appears to have been done to generate commissions at the expense of customers who mistakenly placed their trust in Respondent.¹⁹

Respondent violated Conduct Rules 2310 and 2110 by trading excessively in customer accounts. In addition, because Respondent acted with *scienter*, his conduct constituted churning and also violated Conduct Rule 2120.

D. Settling a Customer Complaint Away from Member Firm

The Fourth Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 by settling a complaint away from Delta. The Complaint alleges that, upon learning of the losses in Delta Accounts ■■■ and ■■■ PB complained to Respondent. Respondent settled the complaint by agreeing to repay PB and JB a total of \$400,000 through ten monthly payments of \$40,000. This amount included their investment of \$300,000 plus \$100,000 expected interest. Respondent wired a total of \$6,000 from his personal bank account to JB's bank account, but failed to make any other payments. Respondent took all of these actions to settle the complaint without the knowledge or consent of Delta. "[S]ettling a customer loss or complaint without the knowledge or authorization of the employer firm is a serious offense. In order to discharge their supervisory obligations adequately, member firms must be aware of all business-related contact and communications between their registered representatives and customers, particularly with

¹⁸ CX-19.

¹⁹ See, *Fundamental Portfolio Advisors, Inc.*, Initial Decisions Release No. 180, 2001 SEC LEXIS 156, *56 (Jan. 29, 2001) (*scienter* established by effecting investments that ignored risks that representative must have been aware of).

respect to customer complaints.”²⁰ Settling customer complaints away from a member firm violates Rule 2110.²¹

Complainant’s allegations, which are deemed admitted, are sufficient to establish that Respondent settled a customer complaint away from his member firm, thereby violating Conduct Rule 2110.

E. Failure to Respond to NASD Requests for Information

The Fifth Cause of the Complaint alleges that Respondent failed to respond to NASD requests for information and documents concerning his alleged inability to pay an arbitration award. The Complaint alleged that on September 24, 2004, an arbitration panel rendered an award in favor of a customer against Respondent in the amount of \$167,000, plus interest. On November 17, 2004, NASD commenced a proceeding pursuant to Procedural Rule 9554 seeking to suspend Respondent’s registration based on his failure to satisfy the arbitration award. On January 10, 2005, this proceeding was dismissed without prejudice based on Respondent’s demonstrated inability to pay the arbitration award. Later that year, NASD sought more current information from Respondent concerning his ability to pay the arbitration award.

Pursuant to Procedural Rule 8210, on October 4, 2005, Complainant sent Respondent a request for information concerning his ability to pay the arbitration award (“8210 Request”). The request was sent by first class and certified mail to Respondent’s CRD Address. Respondent failed to respond to this 8210 Request.²²

On November 18, 2005, NASD sent Respondent a second 8210 request for financial information by overnight mail to Respondent’s CRD Address. On December 2, 2005, NASD

²⁰ *Dist. Bus. Conduct Comm. No. 10 v. DiAngelo*, No. C10960003, 1996 NASD Discip. LEXIS 34, *5-6 (NBCC Oct. 16, 1996).

²¹ *Id.*

²² Shetty Decl. at ¶ 35.

received a partial response to this second request. Missing from Respondent's response were documents pertaining to two of his bank accounts.²³

On December 13, 2005, NASD sent Respondent a third 8210 Request specifically requesting the missing bank documents. This request was sent by first class and certified mail to Respondent's CRD Address. Respondent failed to respond to this third request.²⁴

On January 18, 2006, NASD sent Respondent a fourth 8210 Request again asking for Respondent's outstanding bank documents. This fourth 8210 Request was sent by first class and certified mail to Respondent's CRD Address. Respondent failed to respond to this fourth request.²⁵

Pursuant to Rule 8210, because the 8210 Requests were sent to Respondent's CRD Address, he is deemed to have received them. NASD Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.²⁶

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent failed to respond in any manner to Complainant's requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.²⁷

²³ Shetty Decl. at ¶ 36.

²⁴ Shetty Decl. at ¶ 37.

²⁵ Shetty Decl. at ¶ 38.

²⁶ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16; *Dep't of Complainant v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003), *aff'd*, 2004 NASD Discip. LEXIS 7 (NAC May 11, 2004) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

²⁷ *Dep't of Complainant v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (September 14, 1998).

V. Sanctions

For failing to respond in any manner to NASD staff requests for information issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.²⁸ Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, Respondent will be barred for this violation.

For excessive trading, the NASD Sanction Guidelines recommend a fine of \$5,000-\$75,000, and in egregious cases, a suspension of up to two years or a bar.²⁹ The conduct was particularly egregious here, where Respondent churned the accounts of two older, inexperienced customers whose investment objectives were “income” and “long-term growth.” For this conduct, Respondent is barred. The trading analyses show that based on the trading in the accounts, PB and JB would have had to earn annual returns of approximately 264% and 250% in each account in order to cover the cost of trading. Because of Respondent’s conduct, PB and JB lost \$278,072.59.³⁰ Respondent is ordered to pay that amount to PB and JB as restitution.

The remaining three violations would merit a fine and suspensions under the Sanction Guidelines. Because Respondent is barred for failing to respond to 8210 requests and for churning, additional sanctions would be redundant and serve no purpose.

VI. Conclusion

Respondent William A. Malloy violated Conduct Rules 3050 and 2110 by failing to give notice of trading in a securities account at a member firm, Conduct Rules 2330 and 2110 by sharing in customer accounts, Conduct Rules 2120, 2310(a) and 2110 by trading excessively in customer accounts, Conduct Rule 2110 by settling a customer complaint away from his member

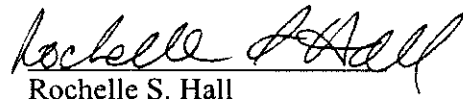
²⁸ NASD Sanction Guidelines at 35 (2006 ed.).

²⁹ NASD Sanction Guidelines at 82 (2006 ed.).

³⁰ CX-19.

firm, and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information. For the excessive trading and failure to respond, he is barred from associating with any NASD member in any capacity. Respondent is also ordered to pay restitution in the amount of \$278,072.59 to the customers in whose accounts he traded excessively. In light of the bars, no additional sanctions are imposed for the remaining violations. The bars will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.


Rochelle S. Hall
Hearing Officer

Copies to: William A. Malloy (*via overnight and first class mail*)
Vaishali S. Shetty, Esq. (*electronically and via first class mail*)
David Jaffe, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)
Mark Dauer, Esq. (*via first class mail*)

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

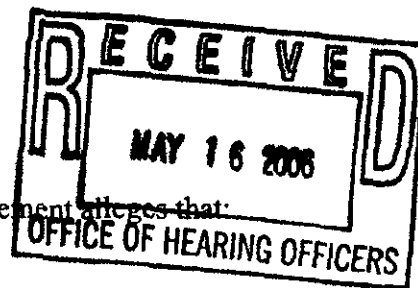
v.

WILLIAM A. MALLOY
(CRD No. 1492864),

Respondent.

**Disciplinary Proceeding
No. ELI2004008101**

Hearing Officer -



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

JURISDICTION

1. Respondent William A. Malloy ("Respondent") first became registered with NASD, as a General Securities Representative ("GSR"), on approximately May 17, 1986.
2. Respondent was registered with Delta Asset Management, LLC ("Delta") during three periods of time: (a) from on or about October 6, 2000 through on or about October 26, 2001; (b) from on or about November 10, 2001 through on or about June 17, 2003; and, (c) from on or about July 14, 2003 through on or about September 29, 2004.
3. On September 29, 2004, Delta filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Respondent.
4. Respondent is not currently associated with an NASD member firm. However, NASD retains jurisdiction pursuant to Article V, Section 4 of the NASD's By-Laws.

FIRST CAUSE OF COMPLAINT
Transactions for or by Associated Persons
(Violation of NASD Conduct Rules 3050(c) and 2110)

5. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
6. On or about October 23, 2001, customer JB opened an account at member firm, Datek Online Financial Services LLC ("Datek"). Pursuant to a Limited Power of Attorney, Respondent was given and exercised the discretion to trade for the account.
7. From on or about October 31, 2001 through on or about December 19, 2001, Respondent purchased and sold securities for the online account of JB at Datek.
8. During the periods that he was associated with Delta, Respondent engaged in the above-referenced activities without providing written notification to Delta and Datek that he was associated with the other member firm.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3050(c) and 2110.

SECOND CAUSE OF COMPLAINT
Sharing in Accounts
(Violation of NASD Conduct Rules 2330(f) and 2110)

9. Paragraphs 1 through 8 are re-alleged and incorporated herein by reference.
10. As payment for his trading of JB's Datek account, Malloy entered into an agreement with JB to receive a portion of the profits generated in the account. Under the terms of the agreement, Malloy received ten percent of the profits from the Datek account.
11. On or about December 14, 2001, Malloy accepted \$1651.76 as a portion of the profit from trading in JB's account at Datek.

12. On or about January 4, 2002, Malloy accepted \$1509.00 as a portion of the profit from trading in JB's account at Datek.
13. Malloy did not obtain prior written authorization from Delta to accept such compensation and Malloy did not make any financial contribution to JB's Datek account.
14. By receiving the approximately \$3,160.76 from customer JB, Respondent directly, or indirectly, impermissibly shared in the profits of JB's Datek account.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2330(f) and 2110.

THIRD CAUSE OF COMPLAINT

Excessive Trading/Churning

(Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; NASD Conduct Rules 2110, 2120 and 2310(a))

15. Paragraphs 1 through 14 are re-alleged and incorporated herein by reference.
16. In or about January 2002, customers PB and JB opened accounts [REDACTED] ("Account [REDACTED]") and [REDACTED] ("Account [REDACTED]") at Delta. The accounts were each opened with approximately \$150,000.
17. At least a portion of the funds for the trading in Accounts [REDACTED] and [REDACTED] was comprised of money from a mortgage that PB and JB took out on their home.
18. At the time that they opened the Delta accounts, PB and JB were, respectively, 64 years old and 65 years old. Their estimated combined income was between \$100,000 and \$250,000 and estimated net worth between \$150,000 and \$999,999. Their investment objectives were "Income," and "Long term growth with safety."

19. For both accounts, PB and JB completed Limited Trading Authorization forms pursuant to which they gave Respondent authority to make purchases and sales in the accounts. Respondent had trading authority over both accounts and made all the trades for the accounts.
20. From January 2002 through March 2002, the trading in Account ■ generated approximately \$43,594.01 in commissions. During that same period, the trading in Account ■ generated approximately \$41,236.78 in commissions.
21. By the end of March 2002, the balance in Account ■ was approximately \$15,837.25 and the balance in Account ■ was approximately \$15,038.65.
22. For the period of approximately January through March 2002, for Account ■ the cost-to-equity ratio, which is calculated by dividing the total of all transaction costs incurred in an account by the average equity in the account, was 264% annualized.
23. The turnover rate in an account measures the number of times during a given period that the securities in the account are replaced by new securities, and is calculated by dividing the total cost of purchases by the average equity in the account. The annualized turnover rate for Account ■ was 1703.
24. For the period of approximately January through March 2002, for Account 233, the cost-to-equity ratio was 250% annualized. The annualized turnover rate for the account was 1598.
25. The level of activity in Accounts ■ and ■ was inconsistent with PB's and JB's objectives and financial situation.

26. By virtue of this conduct, Respondent, by the use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.

By reason of the foregoing, Respondent violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Conduct Rules 2110, 2120 and 2310(a).

FOURTH CAUSE OF COMPLAINT
Settling Customer Complaint Away From Member Firm
(NASD Conduct Rule 2110)

27. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.

28. Upon learning of the losses in the Delta accounts, Accounts ■■■ and ■■■ customer PB complained to Respondent.

29. After PB complained to Respondent, Respondent settled the complaint by the following actions: (i) on or about June 26, 2002, Respondent wired \$5,000 from his personal bank account to customer JB's bank account; (ii) on or about July 28, 2003, Respondent wired \$1,000 from his personal bank account to customer JB's bank account; and, (iii) agreed to repay PB and JB a total of \$400,000 through monthly payments of \$40,000. This amount included the \$300,000 investment plus the \$100,000 in expected interest income from the investment.

30. Respondent failed to make any payments pursuant to his agreement to pay \$400,000 to PB and JB.

31. Respondent took all of these actions to settle PB's and JB's complaint without the knowledge or consent of Delta.

By reason of the foregoing, in each and every action he took to settle PB's and JB's complaint, Respondent violated NASD Conduct Rule 2110.

FIFTH CAUSE OF COMPLAINT

Failure to Respond

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

32. Paragraphs 1 through 31 are re-alleged and incorporated herein by reference.

33. On September 24, 2004, an arbitration panel rendered an award in NASD

Arbitration Case No. 03-07133 against Respondent in the amount of

\$167,000.00, plus interest. The arbitration case, brought by customer

Longmead Properties, LTD., alleged various improper activities, including

unauthorized trading, churning and fraud by Respondent in connection with

trading in an account at Delta.

34. On November 17, 2004, NASD commenced a proceeding pursuant to NASD

Procedural Rule 9554 seeking to suspend Respondent's registration based on his

failure to satisfy the arbitration award. On January 10, 2005, this proceeding

was dismissed without prejudice based on Respondent's demonstrated inability

to pay the arbitration award.

35. In connection with Respondent's stated inability to pay, NASD staff in District

2 (the "Staff") sought more current information from Respondent, pursuant to

NASD Procedural Rule 8210, through requests for information to ascertain whether Respondent was now able to satisfy the arbitration award.

The First Request

36. On or about October 4, 2005, the Staff forwarded to Respondent, a request pursuant to NASD Procedural Rule 8210, to determine Respondent's current financial status and his ability to pay the arbitration award (the "First Request").
37. The request was sent by certified and regular first class mail to 3030 Marblebrook Drive, Matthews, North Carolina 28105, which is Respondent's current residential address as reflected on the Central Registration Depository ("CRD Address").
38. A response to the First Request was due on or before October 31, 2005. Respondent failed to respond.

The Second Request

39. On or about November 18, 2005, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a second request that Respondent provide financial information (the "Second Request").
40. The Staff sent the Second Request by certified and regular first class mail to the CRD Address.
41. A response to the Second Request was due on or before December 2, 2005. On December 2, 2005, the Staff received a partial response to the Second Request which failed to include documents pertaining to two of Respondent's bank accounts.

The Third Request

42. On or about December 13, 2005, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a third request that Respondent provide the missing bank documents (the "Third Request").
43. The Staff sent the Third Request by certified and regular first class mail to the CRD Address.
44. A response to the Third Request was due on or before January 12, 2006. Respondent failed to respond.

The Fourth Request

45. On or about January 18, 2006, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a fourth request again asking that Respondent provide the missing bank documents (the "Fourth Request").
46. The Staff sent the Fourth Request by certified and regular first class mail to the CRD Address.
47. A response to the Fourth Request was due on or before February 6, 2006. Respondent failed to respond.

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 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 proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: May 15, 2006

Vaishali S. Shetty

Vaishali S. Shetty, Regional Counsel
David Jaffe, Regional Chief Counsel
NASD Department of Enforcement
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