BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of District Business Conduct Committee For District No. 8, Complainant, vs. John A. Chepak White Plains, New York and Pleasantville, New York, Respondent.	DECISION Complaint No. C8B960042 District No. 8 Dated: July 22, 1998

John A. Chepak ("Chepak") has appealed the September 26, 1997 decision of the District Business Conduct Committee for District No. 8 ("DBCC") pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we find that: from December 14, 1990 to April 30, 1991 (the "Review Period"), Chepak, while acting as the Chief Compliance Officer of Thomas James Associates, Inc. ("TJA" or "the Firm"), was responsible for the overall supervision of TJA's trading activities and that he failed to establish, implement, and enforce supervisory procedures reasonably designed to prevent the customers of TJA from being charged $419,490 in unfair and fraudulently excessive mark-ups and mark-downs, and unfair and excessive gross commissions, in Acqua Group, Inc. ("Acqua") common stock and warrants. We find that Chepak's conduct violated Conduct Rules 2110 and 3010.

We order that Chepak be censured, fined $5,000, and required to requalify by examination within 90 days of the date of this decision in all capacities in which he seeks to continue participating in the securities industry. We affirm the assessment of $1,485.75 in DBCC hearing costs and impose $750 in appellate hearing costs.

Background. Chepak entered the securities industry in 1984 as a registered representative. He became a general securities principal in 1987. From July 24, 1990 until early 1992, Chepak was registered with TJA as a general securities representative, general securities principal, government securities representative, and government securities principal. During this time, Chepak was a Vice-President of the Firm and the Firm's Director of Compliance (also referred to as the Firm's Chief Compliance Officer). Chepak is not presently associated with a member firm.

Facts

During Chepak's tenure as TJA's compliance officer, TJA's public customers were overcharged $419,490 during approximately four months of aftermarket trading in Acqua securities. The complaint alleged that Chepak, who participated in the preparation of TJA's supervisory procedures and also had line supervisory responsibilities, failed reasonably to carry out those responsibilities.

The SEC Complaint. By way of background, on March 29, 1990, before Chepak joined TJA, the Securities and Exchange Commission ("SEC") filed a Verified Complaint For Injunctive and Other Relief ("the SEC Complaint") against TJA, two of its principals, its head trader, and its director of sales (the "Defendants") in the United States District Court for the Western District of New York. The SEC Complaint alleged that the Defendants had manipulated the market in 16 offerings underwritten by TJA by dominating and controlling the markets for these stocks through the use of fraudulent and high-pressure sales techniques to create an artificially large demand for these stocks. The SEC Complaint also alleged that TJA had generated large profits by purchasing stocks from its customers at low prices and reselling the securities to its customers prior to the completion of the distribution at prices arbitrarily determined by TJA.

The Court Appointment of Paul J. Yesawich, III ("Yesawich") and Retention of Philip McMorrow ("McMorrow") as Consultants. On April 4, 1990, the Court appointed Yesawich as independent counsel to act as a special agent of the Court. Yesawich was given the authority to review and report on TJA's policies, procedures, and practices and to make recommendations to improve these policies, procedures, and practices. Specifically, Yesawich was given "all powers" necessary and appropriate to: (1) prevent and detect violations of the federal securities laws and the rules and regulations of the appropriate self-regulatory organizations by TJA and its employees; (2) ensure the maintenance of accurate and adequate books and records; and (3) ensure that TJA's system of internal controls was sufficient to provide reasonable assurances that transactions were executed in accordance with applicable securities laws and regulations. After having determined that he needed the technical expertise of someone familiar with securities markets and broker/dealer regulation, Yesawich retained McMorrow as his "oversight consultant."

Chepak's Association With TJA. Also in April 1990, TJA hired Chepak as a consultant to help establish supervisory procedures to be implemented and enforced by TJA's Compliance Department. Chepak testified that Bill Singer ("Singer") (the attorney whose firm represented Chepak in this matter) recruited him initially to act as a consultant for TJA.[1] In June 1990, TJA hired Chepak as the Firm's Director of Compliance. During the Review Period, Chepak was the only registered principal in the Compliance Department.[2]

Yesawich's Submission of New Underwriting Procedures to the Court. On July 3, 1990, Yesawich submitted TJA's new underwriting procedures to the Court together with a proposed Order that would allow TJA to participate in initial and secondary public offerings of Nasdaq-listed companies. Yesawich represented that the Firm was very anxious to underwrite the initial public offering ("IPO") of Dynagen, Inc. ("Dynagen") as soon as possible. Yesawich stated his belief that TJA's compliance procedures were "sufficient" to underwrite the anticipated IPO of a Nasdaq-listed company. Yesawich represented that McMorrow would be "intimately involved in any public offering of securities and, among other things, [would] specifically review trading records, Red Herrings, scripts (if used), and [would] spot-check compliance with these procedures by interviewing customers and reviewing whatever records he believes are appropriate."

Pursuant to the underwriting procedures, Yesawich was to review TJA's IOI (indications of interest) blotters during the time that IOIs were being solicited, and a "representative of the Compliance Department" was to oversee sales practices in

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[1] Chepak sought to have Singer testify at the DBCC hearing as a fact witness regarding the hiring of Chepak and the details of Chepak's employment at TJA and as a character witness. District staff filed a motion to disqualify Singer's firm from representing Chepak if Singer testified. The DBCC hearing panel denied District staff's motion and ruled that Singer would not be permitted to testify. The hearing panel noted that Chepak's attorney -- who was employed by Singer's firm -- had represented that she would be unable to respond to the motion until two days before the hearing. The hearing panel stated that it was unwilling to allow the situation to be unresolved until that time. The panel found that Singer's testimony would be cumulative at best regarding the circumstances of Chepak's employment. The panel also decided not to allow Singer (or anyone else) to act as a character witness. Chepak's counsel did not protest these rulings. We agree that it would have been inappropriate to allow Singer to testify while his firm was acting as Chepak's counsel.

[2] On October 2, 1991, after the Review Period, Yesawich replaced McMorrow with another compliance consultant in response to an expression of SEC concern about McMorrow's independence and neutrality. Early in 1992, TJA hired McMorrow to act as Compliance Director and reassigned Chepak to TJA's Research Department.

branch offices and provide Yesawich with periodic reports. As the effective date of the offering approached, TJA was to meet with Yesawich to discuss the status of the offering and the propriety of further discussions with the issuer in light of all relevant circumstances. Prior to the confirmation date, Yesawich was also to review syndicate allocations and copies of "all sold" wires received. A representative of the Compliance Department would be required to monitor and review each of the first three days' trading blotters in all public offerings "to assure compliance with applicable mark-up policies, paying particular attention to interdealer activity and in-house related activity." Yesawich was also to review these blotters. Chepak was named in this document as the "Compliance Officer."

Chepak's Participation in the Preparation of TJA's New Supervisory Procedures Manual. In September 1990, TJA completed its revised "Home Office Supervisory Procedures Manual." These new procedures were finalized in a document entitled "TJA Associates, Inc., Home Office Supervisory Procedures Manual" dated September 1990 (the "Manual"). Chepak was identified in the Manual as "Vice President, Director of Compliance, General Securities Principal."

The "Introduction" section of the Manual described the functions of the Firm's Compliance Department. The principal function of the Compliance Department was to supervise the books and record-keeping functions and to supervise all sales, trading and investment banking activities. Chepak, or a principal designated by him, was responsible for: all supervision in the Firm; reviewing the firm's business mix; determining that all supervisory personnel were properly qualified; and taking and recommending appropriate action in regard to the Firm's supervisory procedures.

The Manual contained a separate section titled "Underwriting Procedures." Particular responsibilities were assigned to specific individuals. For example, the Compliance Officer was to oversee the first due diligence meeting in every offering and spot-check future meetings. TJA was to maintain a daily blotter of all IOIs, and the Compliance Officer was to review the blotter daily. Each day, Yesawich was to be given copies of daily IOI blotters and a summary blotter after IOIs ceased. The Manual provided that:

> A representative of the Compliance Department will be positioned among the branches of the firm overseeing sales practices during this period. Periodic reports of the monitoring process will be generated by the Compliance Department and provided to the special counsel.

The Compliance Department was also specifically responsible for reviewing the syndicate IOI blotter on a daily basis and reviewing and approving all tombstone advertisements. Yesawich was designated to receive and review copies of the final underwriting summary blotter prior to the confirmation date, including syndicate allocations and copies of "all sold" wires and copies of the first three days' trading blotters. The Manual designated "areas of special counsel review" as: Red Herring; indications of interest; syndication; final allocation; billing; and beginning of trading.[3]

The Acqua Offering. On November 29, 1990, Yesawich asked the Court to allow TJA to underwrite the Acqua IPO. He represented that the offering would be controlled by the Underwriting Procedures that the Court had approved in July. On November 30, 1990, the Court signed an Order giving TJA permission to underwrite the Acqua IPO. The Court issued an Order that stated that TJA could underwrite Acqua so long as the IPO was in strict compliance with Yesawich's July 3, 1990 report and the Underwriting Procedures attached to it. On December 14, 1990, Acqua completed an IPO of 500,000 units at $6 per unit, with TJA acting as managing underwriter. Each unit consisted of two shares of common stock and one redeemable common stock purchase warrant. TJA allocated 24 percent of the offering to an underwriting syndicate and sold the remaining 76 percent to its own customers. Both stock and warrants were traded on The Nasdaq SmallCap Market commencing on December 14, 1990. TJA made a market in the stock and warrants.

It is undisputed that TJA dominated and controlled the aftermarket trading in Acqua stock and warrants during the Review Period. From December 14, 1990 through January 4, 1991, TJA purchased wholesale 173,300 shares of common stock and 73,200 warrants. By December 28, through inventory and retail accounts, TJA controlled 90 percent of the public float in Acqua stock and warrants. From December 18 until April 30, 1991, the end of the Review Period, TJA controlled at least 87 percent of the float in each instrument. Throughout the Review Period, TJA accounted for at least 80 percent of the purchase volume and number of transactions, and between 69 percent and 82 percent of the sale volume and number of transactions.

It is also undisputed that, during the Review Period, TJA executed 1,601 retail trades at unfair prices, with mark-ups and mark-downs ranging from in excess of 5 percent to 28 percent, resulting in excess mark-ups and mark-downs of $419,490. Only 28 of these trades occurred in December 1990; the remaining 1,573 transactions occurred between January 1 and April 30, 1991. Between January and April, the Firm executed 705 unfair mark-ups of common stock and warrants and 868 unfair mark-

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[3] Following submission of the new Underwriting Procedures, Yesawich received the Court's approval for TJA to go forward with the Dynagen offering, which went effective in mid-August 1990. Yesawich reported to the Court on September 13, 1990, that McMorrow had been present on TJA's premises two to three days before the effective date and throughout the first two days of aftermarket trading and that no violative conduct had occurred in connection with the offering. Yesawich also reported that TJA had expanded its Compliance Department from two to five individuals to assist Chepak. With the Court's permission, TJA engaged in a secondary distribution of Sunrise Technologies, Inc. shares in mid-November 1990.

downs of common stock and warrants.[4] These transactions were executed in violation of the NASD's Mark-Up Policy, Conduct Rule IM-2440.

Discussion

The parties have stipulated to the accuracy of the staff's representation of TJA's aftermarket trading in Acqua. We find, as did the DBCC, that TJA dominated and controlled the market in Acqua common stocks and warrants during the Review Period and charged public customers $419,490 in excess mark-ups and mark-downs. The two issues before us are: (1) whether Chepak failed to establish written procedures reasonably designed to prevent TJA's retail customers from being overcharged approximately $400,000 for Acqua common stock and warrants during the Review Period; and (2) whether Chepak failed to carry out his supervisory responsibilities as described in TJA's Manual.

Written Supervisory Procedures. We find that Chepak failed to establish supervisory procedures reasonably designed to ensure that TJA did not dominate and control the market for Acqua securities during the Review Period. We find that the Manual did not adequately address the issue of fair pricing in secondary trading. It is evident from our review of the Manual that the supervisory procedures developed by Yesawich and Chepak focused on the immediate aftermarket and did not even address the issue of domination and control of aftermarket trading after the first three days.

The Manual contains two sections pertaining to the pricing of securities. The first is entitled "Market Making/Trading." This section pertains to the establishment of quotes by TJA as a market maker. This section states that a market maker must enter and maintain quotations that are reasonably related to the prevailing market, and it includes a chart of "maximum allowable spreads," but this section does not discuss the pricing of securities to retail customers.

The second section is entitled "Underwriting," and it pertains to the period immediately before, during, and after a public offering. This section requires the Firm's Compliance Offer to monitor and review each of the first three days' trading blotters in all public offerings to assure compliance with applicable mark-up policies, paying particular attention to inter-dealer activity and in-house related activity. The only reference to pricing securities to retail customers states: "All prices to customers shall be fair and reasonable given the circumstances of the trade and at all times relating to the prevailing market prices." We find that this reference is insufficient to meet the requirements of Conduct Rule 3010.

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[4] The next Court-approved offering went effective on April 10, 1991. It was between December 14, 1990 and April 30, 1991, that TJA controlled and dominated the market in Acqua common stock and warrants.

There is no section in the Manual that specifically addresses the fair pricing of securities in the secondary market or the issue of pricing in a dominated and controlled market. We find that this deficiency in the Manual constitutes a violation of Conduct Rules 2110 and 3010. A firm that conducts a retail business must establish procedures that provide guidelines for the fair pricing of securities. Such procedures appear to be contemplated in the "Introduction" section of the Manual, which lists among the principal functions of the Compliance Department the supervision of all sales activities, but the procedures are not discussed in the Manual.

We also find that Chepak bears responsibility for the omissions in the Manual. Chepak was retained as TJA's Director of Compliance in July 1990. Although he did not have sole responsibility for writing the Manual, it is undisputed that he participated in its development and was responsible for reviewing and revising it to make sure that the supervisory procedures were modified in accordance with the changes in the Firm's business mix. The Manual did not contain procedures regarding retail pricing during the Review Period, when the Firm was engaging in such business. Therefore, we find that Chepak, as a Vice-President and principal of the Firm and its Compliance Officer, violated Conduct Rules 2110 and 3010 as alleged.

Supervision of Trading in Acqua Securities. We also find that Chepak failed to implement and enforce procedures reasonably designed to prevent the Firm's retail customers from being charged unfair and fraudulently excessive mark-ups and mark-downs and unfair and excessive gross commissions in Acqua common stock and warrants, as alleged in the complaint.

Conduct Rule 3010(2) requires the designation of "appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required." The Manual, which governed all of TJA's supervisory procedures during the Review Period, assigned this function to the Compliance Department, of which Chepak was the Director. The Manual stated: "The principal function of the Compliance Department is to supervise . . . all sales, trading and investment banking activities." As Director of Compliance, Chepak had this responsibility.[5] The Manual

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[5] We note that the supervisory structures of many firms do not give line supervisory authority to compliance officers. In the instant matter, because the Manual specifically stated that the compliance department was to supervise all sales, trading, and investment banking activities, Chepak, as the Director of Compliance, had this supervisory responsibility. By assigning Chepak both supervisory and compliance responsibilities, FAS deprived itself of the benefit of two separate and independent reviews, one by a line supervisor whose function it would have been to carry out the supervisory functions designated in the Firm's procedures manual, and the other by a compliance officer, whose function it would have been to review the Firm's operations through normal surveillance activity.

gave Chepak the additional responsibility of "determining that all supervisory personnel are properly qualified."

Notwithstanding that the Manual specifically required the Compliance Department to supervise all sales, trading, and investment banking activities, Chepak purposefully withdrew from any involvement in the supervision of TJA's traders. Chepak contends that McMorrow had instructed him "You concentrate on the sales practice, I'll take care of trading," and that if Chepak failed to accede to this instruction, he would have been acting in contempt of court. We find that Chepak's contention is not substantiated by the language of the Order itself.

Pursuant to the Order, Yesawich was to "have all powers that are necessary and appropriate" to review and report on TJA's policies, procedures, and practices and to make recommendations for improvement thereto. Nowhere does the Court's Order state that Chepak should surrender his supervisory obligations to McMorrow. Chepak admitted in testimony before the DBCC that during his tenure as TJA's Director of Compliance, his practice was to advise McMorrow of any concerns that he had. Thus, we conclude that Chepak's failure even to raise these issues with McMorrow was unreasonable and that to have raised them would not have been tantamount to a failure to implement Court-approved recommendations.[6] Chepak would not have violated the Order if he had suggested to McMorrow, who was not registered with TJA, that Conduct Rule 3010 and the Firm's supervisory procedures required a registered person to supervise sales and trading activities.

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[6] We find that cases cited by Chepak do not support his contention that failure to accede to McMorrow's instructions would have placed him in contempt of court. In <u>SEC v. Data Access Sys., Inc.,</u> [1982-1983 Transfer Binder] Fed. Sec.L. Rep. (CCH) ¶ 99,098, at 95,232-233 (D.N.J. 1983), the court held that specific recommendations made by a special agent appointed by the court were not merely advisory guidelines that the respondents could either adopt or spurn. In the instant matter, there was no question regarding the implementation of the Court-approved underwriting procedures. We do not believe that raising the issue of the Firm's obligation to have a registered person supervise trading activities would be comparable to the respondents' refusal in <u>Data Access</u> to acknowledge that the court could order the implementation of the special agent's recommendations.

The court's holding in <u>In re Matter of Credit Suisse First Boston Corp.</u>, Exchange Act Rel. No. 39595 (Jan. 29, 1998), likewise does not support Chepak's contention that he was powerless to question McMorrow's instructions. In <u>First Boston</u>, the court permitted the respondent to discuss proposed recommendations with the court-appointed consultant and to propose alternatives, notwithstanding that the firm was required to abide by and adopt the consultant's ultimate recommendations.

Further, neither the new underwriting procedures nor the supervisory procedures in the Manual contemplated that McMorrow would assume total responsibility for monitoring the Firm's activities in the aftermarket beyond the first few days of trading. In fact, Yesawich reported to the Court in February 1992 that the underwriting procedures contemplated that "McMorrow would be present in the trading room of TJA's Rochester office, to monitor the trading activity, during the first several days of after-market trading for any IPO underwritten by TJA." Not only was there no indication in the underwriting procedures that Chepak could not also be in the trading room during the immediate aftermarket, the subsequent aftermarket was not even mentioned.[7] We also note that the record does not contain any evidence of written instructions from Yesawich or McMorrow that required Chepak to relinquish his supervisory responsibilities to McMorrow.

The record indicates, in fact, that neither McMorrow nor Chepak supervised TJA's traders after the first few days of the Review Period.[8] McMorrow refused in

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[7] In his February 13, 1992 report to the Court, Yesawich confirmed that the issue of domination and control following an IPO was beyond his expertise. He advised the Court that he had become aware of issues raised by TJA's repurchase of securities in the aftermarket as his investigation became "more sophisticated." Yesawich noted that although TJA syndicated in excess of 20 percent of an IPO to a selling group, "in many cases a substantial amount of those securities return to TJA through its own purchases." Yesawich opined that there was nothing inherently wrong with TJA's purchasing the securities to support the market or to satisfy customer demand, but that if TJA's registered representatives created the demand, "the question of how they sell the issue may be one that needs to be examined further." Yesawich reported:

> The question of whether TJA improperly dominates and controls the market for certain securities in which it makes a market was an issue in the SEC's underlying complaint. While nothing has come to our attention that would suggest that TJA is improperly dominating and controlling the market, this is an issue that continues to be of concern to us.

Yesawich noted that the issue of domination and control appeared to be "indigenous to the business in general" and "not easily resolved." He stated: "While regulatory agencies may have one interpretation of what constitutes domination and control, a broker/dealer may in good faith have a different interpretation." He noted that TJA had hired consultants to study the issue, which he described as "beyond our ability to analyze and comment upon." Yesawich concluded: "It is more appropriately left to a regulatory agency."

[8] We note that the Complainant sought to establish dates on which

testimony before the NASD to take any responsibility for trading or retail sales of Acqua beyond the immediate aftermarket, and there is no evidence in the record that Chepak even tried to assume supervisory responsibility for that period. When asked whether TJA had dominated and controlled the market in Acqua during the Review Period -- December 14, 1990 through April 30, 1991 -- McMorrow stated that he did not think he "would make that representation because I would have to have a basis to make that statement." McMorrow also stated that he had never assembled records or made a statistical study of aftermarket trading in Acqua securities during the remaining days of the Review Period.

In December 1990, McMorrow admitted to having difficulty in determining whether the Firm was complying with the NASD's Mark-Up Policy. In a December 18, 1990 memorandum, McMorrow asked James A. Villa ("Villa"), the President of the Firm, to "[p]lease have the traders indicate somewhere on the trade ticket the inside market, bid and ask, for all Nasdaq transactions done with customers." He stated: "When the markets change, it is almost impossible to determine internally the firm's compliance with the NASD mark up policy." Chepak and Yesawich were copied on this memorandum. This indicates to us that McMorrow was not, in fact, monitoring TJA's compliance with the NASD Mark-Up Policy after the first few days of the aftermarket. Thus, it appears from the record that no one was monitoring whether TJA was dominating and controlling the market in Acqua securities, and no one was examining the fairness of mark-ups in Acqua common stock and warrants beyond the first few days of the Review Period.

Further, Chepak's contention that he had no choice but to follow McMorrow's instructions to "concentrate on sales practices" is irrelevant to whether his other supervisory responsibilities should have led him to discover that TJA was dominating and controlling the market in Acqua securities during the Review Period. Chepak seems not to understand that the key to determining whether a firm is dominating and controlling a market is identification of the source of stock being sold to retail customers. Had Chepak actually supervised the sales practices of TJA's salespersons during the Review Period as he contends McMorrow instructed him to do, he would have seen that the order flow in Acqua securities was coming from the Firm's own customers and not from inter-dealer trades. He would have seen the size of the mark-ups, mark-downs, and commissions. He then could have inquired as to the percentage of the float that was controlled by the Firm.

McMorrow was on TJA's premises by means of McMorrow's reimbursement requests. It was not established, however, that these reimbursement requests were for each date on which McMorrow was on TJA's premises. We not find these reimbursement requests to be probative of McMorrow's lack of involvement in monitoring secondary trading in Acqua securities beyond the first three days of the Review Period.

Chepak should also have been able to ascertain the excessive prices being charged retail customers from his review of documents generated by the Firm in the ordinary course of business. Nowhere in the record does Chepak discuss the results of his review of order tickets, confirmations, account statements, or commission runs. Had Chepak actually reviewed reports that showed gross commission credits to sales representatives, he would have seen that the net percentage of commissions being paid to TJA's salespersons was too high. He then could have ascertained not only that TJA was dominating the market in Acqua securities, but also that the prices charged retail customers were impermissibly based on quotations that were not substantiated by inter-dealer trades, instead of being based on the Firm's contemporaneous costs.[9]

We find that Chepak would have been acting reasonably as an officer of the Firm and its Director of Compliance to discuss supervision of trading and retail sales with McMorrow and Yesawich, to advise them that the Firm would be in contravention of NASD regulations if he abdicated his supervisory responsibilities to an unregistered person, to insist on carrying out his supervisory obligations, and to petition the Court if they refused. We find that Chepak had an obligation to take these steps.

Chepak knew that he was responsible for compliance in a firm with a significant regulatory history of fraud during the preceding four years -- a firm that could only conduct underwritings under the supervision of a federal court. Chepak testified that he accepted the position as a challenge. A significant part of this challenge was to provide supervision that was reasonably designed to achieve compliance with the NASD's Mark-Up Policy. For the reasons stated above, we find that Chepak failed to do so.

<u>Sanctions</u>

The DBCC imposed a censure, $5,000 fine, and requirement that Chepak requalify by examination in all capacities in which he seeks to participate in the securities industry within 90 days of the date of this decision. We affirm those sanctions.

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[9] It is well established that if a firm's traders are operating in a dominated and controlled market, the firm's retail salespersons are obligated to mark up from the firm's contemporaneous cost. <u>In re Alstead, Dempsey & Co.</u>, 47 S.E.C. 1034 (1984) (quotations for obscure securities with limited inter-dealer trading activity may have little value as evidence of the current market and are likely to be subject to negotiation); <u>In re James E. Ryan</u>, 47 S.E.C. 759 (1982), <u>aff'd</u>, 709 F.2d 1518 (9th Cir. 1983) (quotations not a reliable guide to prevailing market price where dealers are consistently able to purchase securities for less).

In determining to affirm the sanctions imposed by the DBCC, we have carefully considered the totality of circumstances under which Chepak operated as TJA's Chief Compliance Officer. Although we recognize that Chepak was operating under unusual circumstances, we do not excuse his failure to supervise the Firm's traders and retail salespersons during the Review Period, which permitted TJA's public customers to be overcharged more than $400,000. Yesawich intended that McMorrow be present in TJA's trading room during the immediate aftermarket of the offerings underwritten by TJA in the months following the Order. Even if Chepak believed that he should stay out of the trading room during the first few days of aftermarket trading, there is no indication in the record that McMorrow continued to observe trading during the remainder of the Review Period. Chepak has no excuse whatsoever for his inaction during that time. Moreover, even if Chepak believed that he should stay out of the trading room, he was not precluded from supervising the Firm's salespersons or reviewing the reports generated by TJA in a way that was reasonably designed to achieve compliance with applicable securities laws and regulations.

Further, although Chepak was not solely responsible for writing the Firm's Manual, he did participate in its preparation and review, and he was responsible for updating it so that it reflected each of the areas in which TJA did business. The lack of supervisory procedures regarding secondary trading was a glaring deficiency. It should have been clear to Chepak that Yesawich did not have sufficient background to address the issue of mark-ups in a dominated and controlled market, and that Yesawich was focusing his attention on TJA's underwriting activities because that was the area in which the misconduct occurred that gave rise to the SEC Complaint and Order. Thus, Chepak was not entitled to rely upon Yesawich's efforts in this area.

We do not find it mitigating that Chepak was not the only individual responsible for the supervisory failures, or that Chepak appeared to have little influence or authority at the firm. If Chepak believed that he could not properly perform his job under the circumstances, he should have resigned. See, e.g., In re George Lockwood Freeland, 51 S.E.C. 389 (1993) (financial and operations principal ("FINOP") responsible for performance of his duties as long as he remained firm's FINOP).

The DBCC concluded that Chepak's conduct was not egregious, especially compared to that of others at the Firm. We, however, have concluded that Chepak's behavior, to the extent that it permitted TJA's salespersons to charge excessive prices for approximately five months, did have serious consequences. On the basis of the facts before us, we find that the sanctions imposed on Chepak by the DBCC are appropriate under the circumstances.

We therefore affirm the censure, $5,000 fine, and requirement to requalify in all capacities in which Chepak seeks to continue participating in the securities industry within 90 days of the date of this decision, or else to cease operating in such capacity until has so requalified. We affirm the assessment of costs of the DBCC proceeding in the amount of $1,485.75, and assess costs of the NAC appeal proceedings in the amount of $750.[10]

On Behalf of the National Adjudicatory Council,

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Joan C. Conley, Corporate Secretary

[10] The recommended sanctions are within those recommended by the NASD Sanction Guideline for supervision.

We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.

Joan C. Conley
Corporate Secretary

Direct: (202) 728-8381
Fax: (202) 728-8894

July 22, 1998

<u>VIA FIRST-CLASS/CERTIFIED RETURN RECEIPT REQUESTED</u>

John A. Chepak
White Plains, New York

John A. Chepak
Pleasantville, New York

Re: <u>Complaint No. C8B960042: John A. Chepak</u>

Dear Mr. Chepak:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is: Office of the Secretary U.S. Securities and Exchange Commission 450 Fifth Street, N.W., Stop 6-9 Washington, D.C. 20549	The address of NASD Regulation is: Office of General Counsel NASD Regulation, Inc. 1735 K Street, N.W. Washington, D.C. 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley
Corporate Secretary

Enclosure

cc: Shelly Goering, Esq. - NASD Regulation, Inc. - District No. 8 (CLE)
Jenice L. Malecki, Esq.