BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of	
Department of Enforcement,	DECISION
Complainant,	Complaint No. C07050050
vs.	
Stephen P. Dunbar Atlanta, GA,	Dated: May 20, 2008
Respondent.	

Respondent provided false account summaries to two customers, made unsuitable recommendations, and exercised discretion without written authority. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro se

Decision

Pursuant to NASD Rule 9311(a), Stephen P. Dunbar ("Dunbar") appeals from an August 10, 2006 Hearing Panel decision. The Hearing Panel found that Dunbar: (1) engaged in unsuitable trading in customer accounts, in violation of NASD Rules 2310 and 2110; (2) provided customers with false and misleading account summaries, in violation of NASD Rule 2110; and (3) exercised discretion over customer accounts without written authority in violation of NASD Rules 2510 and 2110. For providing customers with false and misleading account summaries, the Hearing Panel barred Dunbar. In light of the bar, the Hearing Panel did not impose additional sanctions for Dunbar's other violations. After a complete review of the record, we affirm the Hearing Panel's findings. We also affirm the bar imposed for Dunbar's false account summaries, and impose an additional bar for his suitability violations.[1]

[1] As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory

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I. Background

Dunbar first became registered with a member firm in March 1990. From April 2000 until May 2002, when Dunbar is alleged to have engaged in violations, he was registered with Register & Akers Investments, Inc. ("Register & Akers") as a general securities representative. He is not currently registered with any member firm.

II. Facts

A. The Ps Open Accounts with Dunbar and Follow Him to Register & Akers

Dunbar first met GP and HP (together, "the Ps") in 1991 through a mutual friend and subsequently socialized with them on a regular basis. At the time, the Ps were in their mid-20s, married, and earning modest incomes. The Ps opened with Dunbar two $2,000 retirement accounts, the first accounts they had ever opened with a broker. Several times in subsequent years, Dunbar switched firms, and the Ps transferred their accounts so that Dunbar could continue to service their accounts. When Dunbar joined Register & Akers in May 2000, the Ps transferred their accounts there, opening two individual accounts, a jointly-owned account, and two individual retirement accounts. This proceeding concerns only the two individual accounts, which were the Ps' largest accounts.

B. The Ps' Financial Situation and Needs

When the Ps followed Dunbar to Register & Akers in 2000, the Ps were in their mid-30s, and their assets and income were substantially greater compared to when they had first met Dunbar in 1991 and opened their brokerage accounts. In early 2001, GP's base salary was $200,000, and he earned a $960,000 bonus for his performance in the 2000 calendar year. By March 2001, the Ps had more than $2.7 million invested in their two individual accounts, combined. Dunbar testified that GP also had a significant equity interest in his employer potentially worth $20 million.

GP testified that the Ps' two individual accounts held their "life savings" and was "money I never wanted to lose." HP testified that the money in the individual accounts was for the Ps' retirement, including an early retirement for GP. Both GP and HP also claimed that they wanted "conservative" investments. In support of this claim, GP testified that when he received his first sizeable bonus in early 2001, he considered working with another broker but did not do so because he thought the Ps' investing strategy was conservative and simple.

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Authority ("FINRA"). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD.

But despite such testimony, the preponderance of the evidence demonstrates that the Ps had tolerance for a moderate amount of risk. GP testified that he and Dunbar agreed to allocate the assets in the individual accounts by investing two-thirds in bonds and one-third in equities, which could include mutual funds and "small blue chip stocks." Furthermore, during the relevant time period, the Ps withdrew $165,000 from their individual accounts, indicating that such accounts were not purely for retirement purposes. Moreover, during the two years leading up to the relevant period, the Ps engaged in a limited amount of risky investment activity. Specifically, in 1998 and 1999, the Ps engaged in some short-term trading in small cap securities.[2] In addition, in 1998 GP invested, and lost, $50,000 in a private placement.[3]

The Ps' tolerance for risk, however, did not include margin trading. Although the Ps signed agreements that opened their individual accounts as margin accounts, both GP and HP testified that they had neither approved, nor would have approved, the use of margin.[4]

In addition to their general financial situation and needs, in December 2001, the Ps provided Dunbar with specific instructions concerning how to handle two of GP's bonus checks, which totaled $1.474 million. Both GP and HP testified that they informed Dunbar that they planned to use this money to pay off their mortgage and instructed him to "hold the money off to the side" in a money market account. In the December 20, 2001 cover letter transmitting such checks to Dunbar, HP wrote that the Ps would need Dunbar "to wire almost one million" to their mortgage company when they returned from a vacation.

C. Dunbar's Discretion

Although the Hearing Panel rejected as not credible Dunbar's testimony that the Ps gave him "open-ended discretion" to trade the Ps' accounts, the Hearing Panel found that the Ps did,

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[2] In 1998 and 1999, the Ps engaged in short-term trading in 16 equity positions with an average investment of $22,329. Dunbar highlighted two examples. On December 15, 1998, the Ps bought $114,000 in Mindspring stock, and two days later sold it at a gain of $5,246.02. On March 31, 1999, the Ps invested $29,875 in a security (symbol: AXNT) and sold it on April 7, 1999, at a loss of $20,810.

[3] GP testified that he chose to invest in the private placement because the chief executive officer of a "top customer" solicited him to invest, and others in his industry were investing. Dunbar testified that, prior to investing in the private placement, GP asked him about it. GP originally wanted to invest $100,000, but Dunbar advised against investing such a large amount because of the high probability that GP would lose his entire investment.

[4] The copies of the Ps' account opening documents in the record indicate that the Ps' investment objective was "growth (return emphasis)." We do not place any reliance on these documents, however, because they are unsigned by the customers.

in fact, orally authorize Dunbar to trade their accounts with a certain amount of discretion.[5] The record supports this finding. Specifically, GP indicated that the Ps' overall strategy was to allocate two-thirds of their accounts in bonds, and one-third in equities. GP's testimony also suggested that he had provided Dunbar discretion to select bonds, provided that they were consistent with a "laddering" strategy. HP testified that "we trusted [Dunbar]."

Although the Ps gave Dunbar prior oral authorization to exercise some discretion, they did not give prior *written* authorization. The Ps also did not give Dunbar discretion to engage in margin trading. And as explained above, the Ps did not give Dunbar discretion to trade the $1.474 million in bonus checks that the Ps provided to him in December 2001.

D. Trading Activity

In May 2000, when the Ps transferred their accounts to Register & Akers, the Ps' individual accounts mostly held high rated municipal bonds, some mutual funds, and a few equity positions. And just prior to the relevant period, the Ps' accounts continued to hold these same types of investments, and there was very little account activity.[6]

During the relevant period of March 2001 until April 2002, however, the nature of the trading activity changed dramatically. There is no dispute that, during this time period, Dunbar directed the trading in the Ps' accounts. In GP's account, Dunbar effected 69 stock purchases and 65 stock sales. From March 2001 to March 2002, the annualized turnover ratio in GP's account was 6.2, and the annualized cost-to-equity ratio was 8.3 percent.[7] GP realized trading losses totaling $1,383,361. Such losses were amplified by the fact that, from June 2001 until April 2002, GP's account maintained a margin debit balance, which reached a high level of $3,365,781 in January 2002. At least two of the individual positions that Dunbar established in single stocks exceeded $1 million.

Between June 2001 and April 2002, the trading activity in HP's account also increased dramatically. Dunbar effected in HP's account 36 stock purchases and 36 stock sales. From June 2001 to March 2002, the annualized turnover ratio in HP's account was 6.3, and the

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[5] The Hearing Panel also rejected as not credible GP's testimony that, in August 2001, he specifically gave Dunbar discretion to invest up to $200,000 of his assets in stocks, with a loss limit of $50,000.

[6] As of March 31, 2001, only 26 percent of the assets in the Ps' accounts, combined, were invested in stocks or mutual funds.

[7] Unlike the cost-to-equity ratios that Enforcement calculated, the cost-to-equity ratios that we use in this opinion are annualized. From March 2001 to March 2002, the average equity in GP's account was $1,641,877, Dunbar purchased $11,074,262 in equities, and he generated $147,630 in expenses, including margin interest. Dunbar testified that the stock trades were done at "extremely high discount rates."

annualized cost-to-equity ratio was 9.6 percent.[8] HP realized trading losses totaling $120,505, which, like the losses GP realized, were amplified by the use of margin. HP's account maintained a margin debit balance from August 2001 to April 2002, reaching a high point of $590,711 in March 2002. According to Dunbar and George Register ("Mr. Register"), president of Register & Akers, the deterioration in the value of the Ps' accounts led to a number of margin calls during the relevant period.

As for the $1.474 million that the Ps instructed Dunbar in late December 2001 to hold "off to the side," Dunbar deposited that money into GP's individual account. The large deposit did not result in a cash balance, but instead reduced the margin debit balance from $2,625,850 to $1,152,100. Dunbar then proceeded, between late December 2001 and January 18, 2002, to engage in heavy trading activity, selling more than $1.16 million in stocks, and purchasing approximately $2.4 million in stocks. On or before January 22, 2002, the Ps requested to withdraw nearly $1 million from GP's account to pay off their mortgage, as they had informed Dunbar they would. In order to provide these funds, Dunbar had to liquidate several equity positions in GP's account.

E. False Account Summaries

At some point prior to when the Ps transferred their accounts to Register & Akers, GP asked Dunbar to provide to him one-page account summaries. GP made this request because, due to his extremely demanding travel schedule, he wanted a "simple" summary of his account status "that [he] could understand." GP testified that he received these account summaries "on a regular basis, mostly quarterly," and "relied" on them. After Dunbar moved to Register & Akers, Dunbar continued to provide the account summaries to the Ps, but did not request approval from Register & Akers to do so. GP's understanding was that all account summaries he received from Dunbar represented the actual status of the Ps' accounts.

In August 2001, Dunbar presented to GP a summary that presented a grossly false picture of the Ps' accounts. Although it correctly reflected certain long-term positions in equities and mutual funds that the Ps held, it omitted $1,935,027 in short-term positions in equities that the Ps also held. The summary also falsely represented that GP's and HP's accounts maintained, respectively, cash balances of $276,268 and $66,216. In fact, GP's account had a margin debit balance of more than $1.7 million, and HP's account maintained only a $5,113 cash balance. In December 2001 and March 2002, Dunbar presented two additional false summaries to the Ps that contained similar omissions and misrepresentations.[9]

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[8] From June 2001 to March 2002, the average equity in HP's account was $466,455. Dunbar purchased $2,457,048 in equities in HP's account, and the expenses were $37,181, including margin interest.

[9] The December 2001 summary: (1) omitted $2,565,010 in short-term equities held in the Ps' individual accounts; and (2) falsely represented that GP's and HP's accounts maintained, respectively, cash balances of $200,000 and $50,000, when, in fact, GP's and HP's accounts had, respectively, margin debit balances of more than $2.4 million and $443,532. The March 2002

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F. Dunbar Discloses Losses in the Ps' Accounts

On April 12, 2002, Dunbar met with the Ps to discuss their accounts. GP testified that, at that meeting, Dunbar disclosed that "[t]hings aren't going well" and "I've lost a million-and-a-half dollars." GP was outraged and shocked. According to HP, Dunbar apologized, stated that "he got in over his head," and admitted that he had prepared false account summaries, claiming that they were intended to show "what I thought the account should be." Dunbar also asked if he could continue servicing the accounts, asserting that "he could . . . make the money back." The Ps refused to let Dunbar do so, and they transferred all assets out of the accounts. In an attempt to learn what had happened, on April 15, 2002, the Ps, their attorney, and their accountant met with Mr. Register. Subsequently, the Ps filed an arbitration action against Dunbar and Register & Akers, and reached a settlement. The Ps received $1,050,000, of which Dunbar paid $5,000.

At the hearing in this proceeding, Dunbar admitted that "it is obvious to me that the accounts were handled way too aggressively. I was desperately trying to make the accounts money in a market downturn of which I had never experienced before."

III. Procedural History

On June 27, 2005, the Department of Enforcement ("Enforcement") brought a three-cause complaint against Dunbar concerning conduct that occurred between March 2001 and April 2002. Cause one alleged that Dunbar engaged in a course of unsuitable trading in the Ps' accounts by: (1) exceeding the scope of discretionary authority that was purportedly provided in August 2001;[10] (2) incurring unauthorized and excessive margin debts; (3) investing in unduly concentrated equity positions; and (4) engaging in excessive trading. Cause two alleged that Dunbar provided to the Ps false and misleading account summaries. Cause three alleged that Dunbar exercised discretion without written authority and engaged in unauthorized trading.[11] Dunbar filed an answer that generally denied the allegations, but that admitted that he exercised discretion in the Ps' accounts without having written discretionary authority.

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summary: (1) omitted $1,859,306 in short-term equities held in the Ps' accounts; and (2) falsely represented that GP's and HP's accounts maintained, respectively, cash balances of $620,000 and $50,000, when in fact GP's and HP's accounts had, respectively, margin debit balances of more than $2.2 million and $537,695.

[10] The only allegation in cause one that concerned exceeding the scope of discretionary authority was that Dunbar exceeded discretionary authority, purportedly provided to him in August 2001, to invest up to $200,000 of the Ps' assets in stocks, with a loss limit of $50,000.

[11] With respect to the allegation of unauthorized trading, cause three specifically alleged that the Ps had not provided any discretion until August 2001, and that all trades Dunbar effected before August 2001, and all trades after August 2001 that exceeded $200,000, were unauthorized.

The Hearing Panel held a one-day hearing. Among the 20 exhibits that Enforcement offered was a transcript of testimony provided by Dunbar, and taken by Register & Akers, on April 17, 2002. Dunbar objected to this transcript on the grounds that it was unduly prejudicial. The Hearing Panel sustained Dunbar's objection, and excluded the transcript from evidence.

On August 10, 2006, the Hearing Panel issued a decision. With respect to cause one, the Hearing Panel found that Dunbar engaged in unsuitable trading in customer accounts by incurring unauthorized and excessive margin debts, investing in unduly concentrated equity positions, and engaging in excessive trading, in violation of NASD Rules 2310 and 2110. The Hearing Panel rejected, however, Enforcement's theory that Dunbar also engaged in unsuitable trading by exceeding the scope of discretionary authority, allegedly provided in August 2001, to invest up to $200,000 of the Ps' assets in stocks, with a loss limit of $50,000. The Hearing Panel found that Enforcement failed to prove that there was such a specific grant of discretion. With respect to cause two, the Hearing Panel found that Dunbar provided customers with false and misleading account summaries, in violation of NASD Rule 2110. As for cause three, the Hearing Panel found that Dunbar exercised discretion over customer accounts without written authority, in violation of NASD Rules 2510 and 2110. The Hearing Panel rejected, however, Enforcement's allegations that Dunbar engaged in unauthorized trading because such allegations were "tied to the unproven allegation that discretion was only granted in August 2001."

For providing customers with false and misleading account summaries, the Hearing Panel barred Dunbar. In light of the bar, the Hearing Panel did not impose additional sanctions for Dunbar's other violations. Nonetheless, the Hearing Panel indicated that "an upward departure from the one year suspension guideline would be justified" for Dunbar's unsuitable trading, and that "the maximum sanctions . . . in the Guidelines would be warranted" for Dunbar's exercising discretion without written authorization. This appeal followed.

IV. Discussion

A. False and Misleading Account Summaries

The Hearing Panel found that Dunbar created false and misleading account summaries, in violation of NASD Rule 2110. We affirm the Hearing Panel's findings.

As we recently held, creating a document that misrepresents the true state of a customer's account "is the antithesis of a registered representative's [duty to uphold] high standards of commercial honor." *Dep't of Enforcement v. Abbondante*, Complaint No. C10020090, 2005 NASD Discip. LEXIS 43, at *31-32 (NASD NAC Apr. 5, 2005), *aff'd*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23 (2006), *petition denied*, 209 Fed. Appx. 6 (2nd Cir. 2006) (unpublished) (citing *Dist. Bus. Conduct Comm. v. Mangan*, Complaint No. C10960162, 1998 NASD Discip. LEXIS 33, at *16 (NASD NAC July 29, 1998)). It is undisputed that Dunbar created three account summaries that presented a false and misleading picture of the status of the Ps' accounts. The summaries grossly misrepresented the cash balances in the accounts, failed to disclose substantial margin debit balances, and failed to disclose substantial positions that Dunbar had established in various stocks.

On appeal, Dunbar admits that the nature of the summaries "changed" in August 2001, but he claims that he did not deceive the Ps with them. Dunbar maintains that he prepared the summaries to "gauge my performance," considering that the nature of the trading activity had "changed dramatically." In support of this, Dunbar asserts that he prepared the summaries "for my own use" and gave them to the Ps only when he was meeting with them "face to face." Dunbar also argues that the Ps knew about the account activity from a variety of sources, including formal account statements, confirmations, and "many" discussions with Dunbar that covered the substantial losses incurred.[12] Dunbar further contends that he could not have reasonably expected to deceive GP with false account summaries, given that GP was "a sophisticated, experienced, Ivy League educated executive," had "millions" in his accounts, and purportedly brought all account statements with him to meetings.

The preponderance of the evidence, however, demonstrates that Dunbar intentionally gave the Ps false and misleading summaries that deceived them. Contrary to his claim that the summaries were for his "own use," the Ps requested the summaries and Dunbar gave three of them to the Ps at their request. The account summaries did not purport to reflect anything other than actual account activity. The context in which Dunbar used the false summaries—beginning immediately after Ps' accounts began deteriorating dramatically,[13] and continuing when Dunbar was engaging in highly risky and unsuitable trading—raises additional suspicion. Moreover, Dunbar neither asked permission to use the summaries, nor filed the summaries that he provided to the Ps in the firm's correspondence files, as his firm's policies required him to do. These circumstances cause us to doubt Dunbar's claim that he delivered the account summaries in good faith. Furthermore, contrary to Dunbar's assertion that the Ps were not misled by the summaries, the Hearing Panel credited GP's testimony that he was honestly shocked to learn about the extent of the losses in April 2002. Dunbar has not pointed to substantial evidence that would warrant disturbing that credibility determination.[14]

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[12] Dunbar also asserts that he provided to the Ps other documents in August 2001 and January 2002, one of which showed all "closed transactions year to date" and "a substantial loss," and the other of which summarized all trading conducted in 2000, including a "gain/loss summary." No documents in the record, however, corroborate Dunbar's assertions.

[13] From March 1, 2001, to August 1, 2001, GP's portfolio decreased in value from $2,130,568 to $1,875,231, and HP's portfolio dropped from $703,020 to $623,464.

[14] Formal account statements, which contained accurate account information, were mailed to the Ps. GP testified that he never read those formal account statements, but the Hearing Panel did not credit that testimony. Indeed, GP's claim in this regard is unlikely, considering that he was a highly successful, well-paid executive who held a significant portion of his assets in the accounts. Nevertheless, it was also reasonable for the Hearing Panel to credit the Ps' testimony that they were misled by the false account summaries that Dunbar prepared. Historically, the account summaries were an important source of information for the Ps, and nothing suggests that they ever wanted to stop receiving accurate summaries. The Ps had a long-term business relationship with Dunbar and trusted him. Moreover, the account summaries did not purport to

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For these reasons, we find that Dunbar prepared and gave to the Ps false and misleading account summaries. Accordingly, Dunbar violated NASD Rule 2110.

B. Unsuitable Trading

The Hearing Panel found that Dunbar engaged in unsuitable trading in the Ps' accounts, in violation of NASD Rules 2310 and 2110. We affirm the Hearing Panel's findings.

NASD Rule 2310(a) requires that "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."[15] As the Commission has explained, the suitability rule requires that a broker's recommendations "be consistent with his customer's best interests."[16] *Belden*, 2003 SEC LEXIS 1154, at *11; *Larry Ira Klein*, 52 S.E.C. 1030, 1037 (1996). As explained below, Dunbar violated the suitability rule by making recommendations that—in a dramatic departure from the nature of the Ps' previous trading activity in their accounts—combined a high volume of trades, significant concentrations of the Ps' accounts in single stocks, and a level of margin trading that was far too risky for the Ps' investment objectives. *Cf. Clinton Hugh Holland*, 52 S.E.C. 562, 565 (1995) (finding "overall change" in customer's portfolio from primarily debt to securities with substantial risks to be "particularly troubling" aspect of unsuitable recommendations), *petition denied*, 105 F.3d 665 (9th Cir. 1997).

One way in which the suitability rule can be violated is through "[r]ecommending excessive activity in a customer's account." *Jack H. Stein*, Exchange Act Rel. No. 47335, 2003 SEC LEXIS 338, at *7 (Feb. 10, 2003). Excessive trading "occurs when a securities professional has control over trading in an account and the level of activity in that account is inconsistent with

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reflect anything other than accurate information, and Dunbar admitted that he had not clearly informed the Ps that the purpose of the summaries had changed.

[15] Dunbar's use of discretion, whether pursuant to a written agreement or pursuant to an oral grant, results in a recommendation under the suitability rule. "Transactions that were not specifically authorized by a client but were executed on the client's behalf are considered to have been implicitly recommended within the meaning of the NASD rules." *Rafael Pinchas*, 54 S.E.C. 331, 341 n.22 (1999) (*citing Paul C. Kettler*, 51 S.E.C. 30, 32 n.11 (1992)).

[16] Pursuant to NASD Rule 0115(a), rules such as NASD Rule 2310 that are applicable to "members" are also applicable to persons associated with a member. In addition, a violation of the suitability rule is also a violation of NASD Rule 2110. *Wendell D. Belden*, Exchange Act Rel. No. 47859, 2003 SEC LEXIS 1154, at *14 (May 14, 2003). NASD Rule 2110 requires the observance of "high standards of commercial honor and just and equitable principles of trade."

the customer's objectives and financial situation." *Rafael Pinchas*, 54 S.E.C. 331, 337 (1999). Both prongs of this standard are met here.

As for the first prong, the record demonstrates that Dunbar had control over the Ps' accounts. Dunbar was given a certain amount of oral discretionary authority to trade the accounts, and he admitted that he traded the accounts as if he had open-ended discretion. This is enough to demonstrate that Dunbar had "control over trading" in the Ps' accounts. *See Peter C. Bucchieri*, 52 S.E.C. 800, 804-05 (1996) ("Employing the discretionary authority conferred on him . . . he exercised full control over all trading activity.").

As for the second prong, whether the level of activity in an account is inconsistent with the customer's objectives and financial situation "does not rest on any magical per annum percentage." *Id.* at 805 (internal quotation omitted). Nevertheless, there are a number of factors that may be pertinent, including the turnover rate, the cost-to-equity ratio, and the number and frequency of trades. *See Harry Gliksman*, 54 S.E.C. 471, 477 (1999), *aff'd*, 24 Fed. Appx. 702 (9th Cir. 2001). A pattern of in-and-out trading, or of holding securities for short periods of time, are other indicia of excessive trading. *See John M. Reynolds*, 50 S.E.C. 805, 808 n.12 (1991).

The turnover rates for the Ps' accounts are strongly indicative of excessive trading.[17] "The annual turnover rate is the number of times during a year that securities in an account are replaced by new securities." *J. Stephen Stout*, 54 S.E.C. 888, 910 n.50 (2000). Annualized turnover rates between three and five "have triggered liability for excessive trading, and it has been generally recognized that an annual turnover rate of greater than six evidences excessive trading." *Stein*, 2003 SEC LEXIS 338, at *16 (footnotes omitted). The annualized turnover rate was 6.2 in GP's account from March 2001 through March 2002, and 6.3 in HP's account from June 2001 through March 2002.[18]

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[17] The method used in this opinion for calculating the turnover ratio is the "modified Looper formula," which divides the total cost of purchases over the relevant time period by the average monthly equity. *See Dist. Bus. Conduct Comm. v. Gliksman*, Complaint No. C02960039, 1999 NASD Discip. LEXIS 12, at *25 n.17 (NASD NAC Mar. 31, 1999), *aff'd*, 54 S.E.C. 471 (1999); *Stein*, 2003 SEC LEXIS 338, at *16 n.26. This calculation is then annualized to produce an annual turnover ratio. *See Michael T. Studer*, Exchange Act Rel. No. 50543, 2004 SEC LEXIS 2347, at *13-14 n.21 (Oct. 14, 2004), *appeal dismissed*, No. 04-6646-ag, 2008 U.S. App. LEXIS 837 (2d Cir. Feb. 1, 2008).

[18] The turnover rate that we have used for HP's account (6.3 annualized) is lower than the amount that Enforcement calculated and that the Hearing Panel used (7.4 annualized). Based on our calculations, Enforcement miscalculated the "average equity" calculation for HP's account, which affects both the turnover ratio and cost-to-equity ratio. To calculate the average monthly equity requires adding the month-end equity for each month under consideration, and dividing that cumulative total by the number of months under consideration. By our calculations, the average monthly equity in HP's account from June 2001 through March 2002 was $466,455, which is higher than Enforcement's calculation of $398,798. Using our average equity figures,

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Dunbar's treatment of GP's two bonus checks totaling more than $1.4 million further tips the scales toward a finding that the level of Dunbar's trading was excessive. The Ps explained that they planned to use such funds to pay off their mortgage, and asked Dunbar in December 2001 to hold such funds off "to the side." Dunbar's subsequent recommendations, however, were contrary to the Ps' objectives to preserve these funds. Dunbar deposited the funds into GP's account, which already had a significant margin debit balance, and then proceeded to engage in heavy trading in GP's account. When, in mid-January 2002, the Ps asked for $1 million of their funds back, there was no cash balance in GP's account, and Dunbar had to liquidate several equity positions in order to transfer the money that the Ps had requested.[19]

At the same time that Dunbar was trading the account at excessive levels, he effected transactions resulting in several high concentrations of investments in either a single stock or a limited number of single stocks. *See James B. Chase*, Exchange Act Rel. No. 47476, 2003 SEC LEXIS 566, at *13 (Mar. 10, 2003) (finding that an undue concentration amounted to a violation of the suitability rule). For example:

- As of October 17, 2001, Dunbar had built a 45,000-share position in GP's account in Mercury Interactive Corp., purchased for $1,635,810. As of the end of October 2001, that position was worth $1,071,900. This single position constituted 33 percent of the assets held in GP's portfolio.

- As of January 15, 2002, Dunbar had built a 40,000-share position in GP's account in Verisign, Inc., purchased for $1,440,712. As of the end of January 2002, GP had reduced that position to 30,000 shares, which was worth $925,800. Moreover, GP still maintained a 25,000-share position in GP's account in Mercury Interactive Corp. valued at $952,500. These two investments totaled $1,878,300, which constituted 36.4 percent of the assets in GP's account.

- As of February 6, 2002, Dunbar had built a 150,000-share position in GP's account in Worldcom, Inc., purchased for $1,449,030. As of the end of February 2002, GP's position in Worldcom, Inc., was worth $1,128,000. This single position constituted 33 percent of the assets in GP's account.

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the turnover rate in HP's account was 6.3 annualized. Even using our revised figures, however, the turnover rate was high enough to indicate excessive trading.

[19] Unlike the Hearing Panel, we do not rely on the cost-to-equity ratios to conclude that Dunbar engaged in excessive trading. The annualized cost-to-equity ratios were 8.3 percent for GP's account and 9.6 percent for HP's account, which are borderline for excessive trading. Proof of excessive trading, however, does not require use of the cost-to-equity ratio as the metric. *See Stein*, 2003 SEC LEXIS 338, at *16 (finding excessive trading based on high turnover rate alone).

- As of December 7, 2001, Dunbar had built a 15,000-share position in HP's account in Cryolife, Inc., purchased for $427,507. By the end of December 2001, that position was worth $450,000. This was 45 percent of the assets in HP's account.

As customers who sought to take moderate risk, the Ps required greater diversification than this. *Cf. Stein*, 2003 SEC LEXIS 338, at *9-10; *Stephen Thorlief Rangen*, 52 S.E.C. 1304, 1308 (1997); *Holland,* 52 S.E.C. at 566 & n.21.[20]

Adding yet more risk to his recommendations, Dunbar engaged in a substantial amount of margin trading. An investor who purchases stock on margin borrows a percentage of the price of the stock to make the purchase. 12 C.F.R. §§ 220.4, 220.12. Doing so increases risk. "The effect of trading on margin is to leverage any position so that the systematic and unsystematic risks are both greater per dollar of investment." *F.J. Kaufman & Co.*, 50 S.E.C. 164, 165 n.1 (1989) (internal quotations omitted). Furthermore, "margin accounts are at risk to lose more than the amount invested if shares depreciate sufficiently, giving rise to a margin call. If the customer has limited liquid assets available to meet these charges and risks, securities must be liquidated to cover them." *Chase*, 2003 SEC LEXIS 566, at *14 (footnotes omitted); *see also David A. Gingras*, 50 S.E.C. 1286, 1288-89 (1992) (finding that the impropriety of recommended trading strategy was exacerbated by the use of margin trading); *Charles W. Eye*, 50 S.E.C. 655, 658 (1991) (same); *Rangen*, 52 S.E.C. at 1307-08 (stating that margin puts the customer "at risk to lose more than the amount invested").

Beginning in June 2001, and lasting month after month throughout the relevant period, Dunbar maintained in GP's account a large margin debit balance and no cash balance. That margin debit balance grew to a high level of $3,365,781 in January 2002. Between June 2001 and April 2002, GP paid $100,450 in margin interest. Likewise, Dunbar maintained in HP's account a margin debit balance from August 2001 to April 2002. That margin debit balance reached a high level of $590,711 in March 2002. Between July 2001 and April 2002, HP's account paid over $19,000 in margin interest. The risks posed by Dunbar's margin trading were especially acute at the times when Dunbar effected undue concentrations in single stocks at values that approached or even exceeded the total equity in the account. *Cf. Raghavan Sathianathan*, Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572, at *25-26 (Nov. 8, 2006) (holding that margin purchases collateralized by a highly speculative security for an unsophisticated, wealthy customer who was seeking "moderate growth" and "preservation of capital" were unsuitable because they "added an additional source of volatility to the portfolio"), *appeal filed*, No. 07-1002 (D.C. Cir. Jan. 3, 2007).

In his defense, Dunbar argues that the Ps were not conservative or unsophisticated investors, simply wanted to "make . . . money," and knew about the trading activity in their

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[20] The Hearing Panel also found that Dunbar invested in excessive concentrations of technology stocks. We reverse this finding. The complaint contained no allegations that Dunbar built an undue concentration in a specific market segment.

accounts. We reject Dunbar's arguments. Dunbar's volatile mix of excessive trading, overly-concentrated equity positions, and extended use of margin was unsuitable for the Ps. The Ps were wealthy and sophisticated enough to expose their accounts to some risk if they wanted to, but the record supports the Hearing Panel's finding that the Ps sought only moderate risk, not speculation.[21] And contrary to Dunbar's argument that the Ps were aware of and comfortable with the activity in their accounts, the preponderance of the evidence demonstrates that the Ps were *not* aware of the trading activity or their declining account values because Dunbar misled them with false account summaries.

In sum, by combining excessive trading, undue concentrations in single stocks, and significant margin trading, Dunbar's recommendations were unsuitably risky for the Ps' financial situation and needs. Accordingly, we find that this conduct was in violation of NASD Rules 2310 and 2110.[22]

C. Exercise of Discretion Without Written Authority

The Hearing Panel also found that Dunbar exercised discretion without written authority, but dismissed the allegation that Dunbar engaged in unauthorized trading. We affirm.

NASD Rule 2510(b) provides, in pertinent part, that "[n]o member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member." Dunbar admitted that he exercised discretion in the accounts, failed to obtain written authority from the Ps for doing so, and failed to gain his firm's

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21 GP testified that he sought to allocate no more than one-third of the portfolio in stocks, and the Ps testified that they would not have authorized the use of margin. The Hearing Panel found this testimony to be credible, and the record supports that credibility determination: prior to the relevant period, no more than one-third of the assets in the Ps' accounts were committed to equities, there had been little trading activity, and there was no margin trading.

22 We do not disturb the Hearing Panel's decision to dismiss allegations that Dunbar violated the suitability rule by trading the Ps' portfolio in excess of the discretion that the Ps purportedly provided in August 2001 to trade only $200,000 in equities with a $50,000 loss limit. GP testified that he gave Dunbar such an instruction in August 2001, but the Hearing Panel did not find that to be credible. Although Enforcement has pointed to some evidence in the record that corroborates GP's testimony, such evidence is not substantial enough to warrant overturning the Hearing Panel's credibility determination. *See Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (stating that "[c]redibility determinations by the fact finder are entitled to substantial deference and can be only overcome where the record contains substantial evidence for doing so") (internal quotation marks omitted), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000). We do not address whether Dunbar would have violated the suitability rule merely by exceeding a specific grant of discretionary authority.

approval of the account as a discretionary account. Such admissions establish a violation of NASD Rules 2510(b) and 2110.

Enforcement argues that the Hearing Panel erroneously dismissed the allegation that Dunbar engaged in unauthorized trading after August 2001. In support of its argument, Enforcement notes that GP testified that he gave Dunbar discretion in August 2001 to invest no more than $200,000 of GP's assets in stocks, with a $50,000 limit on losses, and that Dunbar's trading regularly exceeded those parameters. As noted above, however, the Hearing Panel rejected GP's testimony in this regard as not credible, and Enforcement has not pointed to substantial evidence that would cause us to overturn that determination. Accordingly, we affirm the Hearing Panel's decision to dismiss the allegation that Dunbar engaged in unauthorized trading.[23]

V. Sanctions

A. False and Misleading Account Summaries

For falsifying records, the FINRA Sanction Guidelines ("Guidelines") recommend that we consider imposing a fine between $5,000 and $100,000. The Guidelines also indicate that, in cases where mitigating factors exist, we should consider suspending the respondent in any or all capacities for up to two years, but that in egregious cases, we should consider a bar.[24] The Guidelines also direct us to consider (1) the nature of the documents falsified; and (2) whether the respondent had a good faith, but mistaken, belief of express or implied authority.[25] As explained below, Dunbar's preparation of false account summaries was egregious.

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[23] Raising a procedural issue, Dunbar argues that the Hearing Panel's decision was unfairly influenced by Enforcement's proffer of a transcript of testimony that Dunbar provided on April 17, 2002. We reject Dunbar's argument. As Dunbar concedes, the Hearing Panel sustained Dunbar's objection to this transcript and declined to admit it into evidence. Nothing in the Hearing Panel's decision suggests that the Hearing Panel considered the contents of the transcript when reaching its decision. In any event, our de novo review cures whatever prejudice may have resulted. *See Morton Bruce Erenstein*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS 2596, at *27-29 (Nov. 8, 2007) (holding that the NAC's de novo review "mitigate[s] any harm that may have resulted" from Hearing Panel errors); *cf. Robin Bruce McNabb*, 54 S.E.C. 917, 927 n.36 (2000) (holding that SEC's review of record cures any prejudice that may have resulted from FINRA's consideration of unreliable hearsay), *aff'd*, 298 F.3d 1126 (9th Cir. 2002).

[24] *FINRA Sanction Guidelines* 39 (2007), http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf [hereinafter *Guidelines*].

[25] *Id*. (Principal Considerations in Determining Sanctions, Nos. 1 and 2).

As documents that purported to present information about the status of the Ps' accounts, the account summaries that Dunbar gave to the Ps are analogous to account statements. We have previously found that account statements are "critically important" documents. *Dep't of Enforcement v. Bendetsen*, Complaint No. C01010025, 2004 NASD Discip. LEXIS 13, at *19 (NASD NAC Aug. 9, 2004). Indeed, the Ps specifically requested account summaries, and relied on them to stay apprised of the status of their accounts. There is no evidence that Dunbar had authority from either his customers or his firm to create account summaries that reflected something other than the actual status of the accounts.

By preparing three false account summaries between August 2001 and March 2002, Dunbar engaged in a pattern of misconduct over an extended period of time.[26] Dunbar also attempted to conceal his misconduct from his firm and his customers.[27] In this regard, he failed to request his firm's approval to prepare and distribute account summaries and failed to place copies of the account summaries in the firm's correspondence files as he was required to do. Likewise, his repeated use of false account summaries concealed from the Ps that earlier account summaries also were false.

Dunbar's use of the false account summaries injured the Ps.[28] The summaries masked the fact that he was embarking on an unsuitably risky course of trading that led to realized trading losses totaling $1,383,361 in GP's account and $120,595 in HP's account. Although the Ps recovered $1,050,000 of those losses through an arbitration action, the Ps initially incurred a substantial injury and never fully recovered their losses.

We agree with the Hearing Panel that Dunbar intentionally used the false account summaries.[29] Mr. Register testified that Dunbar lied to him about both the status of the Ps' accounts and the Ps' knowledge of the trading activities. That Dunbar lied to his supervisor and concealed his use of the false summaries support a conclusion that he was using the account summaries in bad faith.

Given the egregious nature of Dunbar's violations, and the danger such conduct poses to investors, we find that barring Dunbar is necessary to protect investors. Accordingly, we impose a bar for Dunbar's use of false account summaries.

B. Suitability

In light of the bar imposed, the Hearing Panel did not impose sanctions for Dunbar's suitability violations. The Hearing Panel indicated, however, that the record would support a

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[26] *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

[27] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 10).

[28] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 11).

[29] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

fine of an unspecified amount and a suspension of an unspecified length, but greater than one year. As explained below, we find Dunbar's suitability violations to be egregious, and that a bar is warranted for those violations.

The Guideline for suitability violations recommends that we impose a fine between $2,500 and $75,000. The Guideline further recommends that we consider suspending the respondent in any or all capacities for 10 business days to one year, but imposing a longer suspension of up to two years or a bar in egregious cases.[30]

We are most troubled by the specific nature of Dunbar's suitability violations, and by his actions to cover them up. Dunbar's course of trading—and in particular, his actions to build high concentrations in a single or limited number of stocks and to use an excessive amount of margin—was not just risky, it was extremely risky, and highly unsuitable for his customers. Dunbar compounded the seriousness of his suitability violation by attempting to conceal his misconduct from his customers and from his firm, by using false account summaries and by falsely informing Mr. Register that the Ps were fully aware of the extent of the margin trading.[31]

The record demonstrates several other aggravating factors. Dunbar engaged in his unsuitably risky course of trading for more than 13 months. As such, Dunbar engaged in a pattern of misconduct over an extended period of time.[32]

Dunbar's unsuitable recommendations injured the Ps directly.[33] Dunbar claims that it is mitigating that the Ps' losses were increased due to dramatic market events, including the events of September 11, 2001, "[u]nprecedented corporate fraud," and "[t]he biggest bear market in the history of the NASDAQ market." We disagree. It is fundamental that stock prices are subject to market risk, sometimes severe. It is exactly that kind of risk that made Dunbar's decisions to trade on margin and build up unduly concentrated stock positions unsuitable for the Ps.

Dunbar's suitability violations were reckless at best, and intentional at worst. Considering the high purchase prices for several individual transactions—three of which each exceeded $500,000—Dunbar knew or must have known that he was building up excessive concentrations. Moreover, Dunbar knew that the Ps never expressly gave Dunbar discretion to engage in margin trading. Despite that, Dunbar proceeded to engage in an aggressive amount of margin trading that caused several margin calls.[34]

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[30] *Id.* at 99.

[31] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 10).

[32] *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

[33] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 11).

[34] Indeed, Dunbar admitted that he handled the accounts "way too aggressively" and that "the use of margin did become excessive." Likewise, the Ps' accountant testified that Dunbar acknowledged in a conversation that his trading exceeded the Ps' risk tolerance.

The Hearing Panel noted that Dunbar's suitability violations "were not motivated by personal gain," but were instead "a desperate attempt to recoup losses attributable, in part, to [a] severe market downturn." That may be true, considering that Dunbar did not begin margin trading in earnest until after the value of GP's portfolio began to show noticeable declines. But the Guidelines direct that we consider whether a respondent's misconduct "resulted in the *potential* for respondent's monetary or other gain,"[35] and Dunbar's unsuitable trading clearly carried that potential. From March 2001 to March 2002, Dunbar's trading generated $73,079 in commissions, and Mr. Register testified that Dunbar's payout was 50 percent. The Hearing Panel also found it mitigating that Dunbar "accepted responsibility and deep regret for the unsuitable trading in [the Ps'] accounts." Dunbar, however, has not accepted responsibility. While Dunbar clearly regrets how events unfolded, and offered some concessions that his trading and use of margin were overly aggressive for the Ps' accounts, he continues to dispute that his conduct violated the suitability rule.[36]

For these reasons, we find that Dunbar's unsuitable trading was egregious. Over an extended period of time, Dunbar persisted in an extremely risky series of trades that harmed his customers, while concealing his actions from his customers and his firm. In order to protect investors, we find it necessary to bar Dunbar from associating with any member firm in any capacity. Accordingly, we bar Dunbar for his violations of the suitability rule.

C. Exercising Discretion Without Written Authorization

For Dunbar's exercising discretion without written authority, the Hearing Panel indicated that a $10,000 fine and a 30-business-day suspension would be appropriate, but it did not impose such sanctions in light of the bar. We affirm.

The Guideline for exercising discretion without a customer's written authority recommends that we impose a fine between $2,500 and $10,000. The Guideline further recommends that, in egregious cases, we consider suspending the respondent in any or all capacities for 10 to 30 business days.[37]

Many of the factors that aggravate Dunbar's other violations also aggravate his exercising discretion without written authority. Dunbar engaged in such misconduct for an extended period of time. Dunbar's misconduct also indirectly led to customer harm. In this regard, had Dunbar properly sought written discretionary authority from the customer and approval from his firm to treat the account as a discretionary account, Dunbar's customers may well have rejected giving

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[35] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 17) (emphasis added).

[36] Tellingly, at one point in the hearing, Dunbar seemed to blame the losses on his "dismal" stock trading ability.

[37] *Id.* at 90.

that authority or approved it with more clear parameters, and Dunbar's firm would have been in a better position to monitor Dunbar's activities and ensure that he engaged in only suitable trading.

The relevant Guideline directs that we consider whether a customer's grant of discretion was express or implied.[38] To some extent, Dunbar acted pursuant to an express grant of discretion, but to a large degree, he acted well beyond any discretion provided: Dunbar allocated more than one-third of the Ps' portfolio to stocks, engaged in highly risky, margin trading beyond the customers' risk tolerance, and brazenly ignored his customer's instruction to set aside a bonus check. The extent to which he departed from the express grant of discretion is aggravating.

Considering these facts and circumstances, we agree with the Hearing Panel that a 30-business-day suspension and a $10,000 fine—at the high end of the relevant range—would be an appropriate sanction for Dunbar's exercise of discretion without written authority. In light of the two bars we have imposed for Dunbar's use of false account summaries and his suitability violations, we do not impose such a sanction.

VI. Conclusion

Accordingly, we hold that Dunbar: (1) engaged in unsuitable trading in customer accounts, in violation of NASD Rules 2310 and 2110; (2) provided customers with false and misleading account summaries, in violation of NASD Rule 2110; and (3) exercised discretion over customer accounts without written authority, in violation of NASD Rules 2510 and 2110. For providing customers with false and misleading account summaries, we bar Dunbar from associating with any member firms in any capacity. We impose a separate bar for his violation of the suitability rule. The bars are effective upon service of this decision. In light of the bars, we do not impose additional sanctions for Dunbar's other violations.[39] We also order Dunbar to pay $2,092.50 in costs for the proceedings before the Hearing Panel.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Vice President and Deputy Corporate Secretary

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[38] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 1).

[39] We have considered and reject without discussion all other arguments advanced by respondent and Enforcement.

Marcia E. Asquith
Senior Vice President and Corporate Secretary
(202) 728-8831-Direct
(202) 728-8300-Fax

May 20, 2008

VIA CERTIFIED MAIL:
RETURN RECEIPT REQUESTED/FIRST-CLASS MAIL

Stephen P. Dunbar
2683 Northbrook Drive
Atlanta, GA 30340-4920

Re: Complaint No. C07050050: Stephen P. Dunbar

Dear Mr. Dunbar:

Enclosed is the decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The FINRA Board of Governors did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

In the enclosed decision, the NAC imposed the following sanctions: For providing customers with false and misleading account summaries, the NAC barred you from associating with any member firms in any capacity. Separately, for violations of the suitability rule, the NAC barred you from associating with any member firms in any capacity. The NAC also ordered you to pay $2,092.50 in costs for the proceedings before the Hearing Panel.

Please note that under IM-8310-1 ("Effect of a Suspension, Revocation or Bar"), because the NAC has imposed a bar, effective immediately you are not permitted to associate further with any FINRA member firm in any capacity, including a clerical or ministerial capacity.

Pursuant to Article V, Section 2 of the FINRA By-Laws, if you are currently employed with a member of FINRA, you are required immediately to update your Form U4 to reflect this action.

You are also reminded that the failure to keep FINRA apprised of your most recent address may result in the entry of a default decision against you. Article V, Section 2 of the FINRA By-Laws requires all persons who apply for registration with FINRA to submit a Form U4 and to keep all information on the Form U4 current and accurate. Accordingly, you must keep your member firm informed of your current address.

In addition, FINRA may request information from, or file a formal disciplinary action against, persons who are no longer registered with a FINRA member for at least two years after their termination from association with a member. See Article V, Sections 3 and 4 of FINRA's By-Laws. Requests for information and disciplinary complaints issued by FINRA during this two-year period will be mailed to such persons at their last known address as reflected in FINRA's records. Such individuals are deemed to have received correspondence sent to the last known address, whether or not the individuals have actually received them. Thus, individuals who are no longer associated with a FINRA member firm and who have failed to update their addresses during the two years after they end their association are subject to the entry of default decisions against them. See Notice to Members 97-31. Letters notifying FINRA of such address changes should be sent to:

CRD
P.O. Box 9495
Gaithersburg, MD 20898-9401

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the SEC within 30 days of your receipt of this decision. A copy of this application must be sent to the FINRA Office of General Counsel for Regulatory Policy and Oversight, as must copies of all documents filed with the SEC. Any documents provided to the SEC via facsimile or overnight mail should also be provided to FINRA by similar means.

The address of the SEC is:

The Office of the Secretary
Securities and Exchange Commission
101 F Street, N.E.
Mail Stop 9303 – Room 9404
Washington, D.C. 20549

The address of FINRA is:

Attn: Michael J. Garawski
Office of General Counsel
Regulatory Policy and Oversight
FINRA
1735 K Street, N.W.
Washington, D.C. 20006

If you file an application for review with the SEC, the application must identify the FINRA case number and state the basis for your appeal. You must include an address where you may be served and a phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

The filing with the SEC of an application for review shall stay the effectiveness of any sanction except a bar or expulsion. Thus, the bar imposed by the NAC in the enclosed decision will not be stayed pending appeal to the SEC, unless the SEC orders a stay. Additionally, orders in the enclosed NAC decision to pay fines and costs will be stayed pending appeal.

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) 551-5400.

If you do not appeal this NAC decision to the SEC and the decision orders you to pay fines or costs, you may pay these amounts after the 30-day period for appeal to the SEC has passed. Any fines and costs assessed should be paid (via regular mail) to FINRA, P.O. Box 7777-W8820, Philadelphia, PA 19175-8820 or (via overnight delivery) to FINRA, W8820-c/o Mellon Bank, Room 3490, 701 Market Street, Philadelphia, PA 19106.

Very truly yours,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

cc: Leo Orenstein, Esq.