

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VMR CAPITAL MARKETS US  
(CRD No. 38755),  
Los Angeles, CA,

and

TODD M. FICETO  
(CRD No. 1927084),  
Malibu, CA,

Respondents.

Disciplinary Proceeding  
No. C02020055

Hearing Officer—Andrew H. Perkins

**HEARING PANEL DECISION**

September 24, 2003

**Respondents violated NASD Conduct Rules 3010 and 2110 by failing reasonably to supervise a registered representative who engaged in excessive and unsuitable trading in three customer accounts. The Respondents are jointly and severally fined \$25,000, and Ficeto is suspended in all supervisory capacities for 15 business days.**

**Appearances**

For the Department of Enforcement: Sylvia M. Scott, Regional Counsel, and Cynthia A. Kittle, Regional Counsel, NASD, Los Angeles, CA; Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel.

For Respondents: Erwin J. Shustak, SHUSTAK JALIL & HELLER, San Diego, CA.

## DECISION

### I. INTRODUCTION

The Department of Enforcement (“Department”) charged VMR Capital Markets US (“VMR” or the “Firm”) and its president, Todd M. Ficeto (“Ficeto”), with failing reasonably to supervise Kert L. St. John (“St. John”), a registered representative at VMR, in violation of NASD Conduct Rules 2110 and 3010. The Complaint alleges that, between September 2000 and January 2001, St. John engaged in unsuitable and excessive trading in three customer accounts.

The Respondents filed an Answer denying the charges and requesting a hearing. The hearing<sup>1</sup> was held in Los Angeles, California, on June 24 and 25, 2003, before a Hearing Panel composed of the Hearing Officer and a current District 2 Committee member.<sup>2</sup>

### II. FINDINGS OF FACT

#### A. The Respondents

VMR, a general securities broker-dealer previously known as Century City Securities, has been an NASD member since about March 1996.<sup>3</sup> It is jointly owned by Ficeto and VMR Germany, a German company. The Firm has never had more than about 10 registered employees at any one time,<sup>4</sup> and at the time relevant to this proceeding, it had approximately 6–10 registered

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<sup>1</sup> The hearing transcript is referred to as “Tr.”; the Department’s exhibits as “C”; and the Respondents’ exhibits as “R.”

<sup>2</sup> The third hearing panelist withdrew due to a potential conflict on June 20, 2003, four days before the hearing. Pursuant to NASD Code of Procedure Rule 9234(a), the Deputy Chief Hearing Officer, acting in the absence of the Chief Hearing Officer, determined not to appoint a replacement. The Respondents requested to proceed with two panelists rather than delay the hearing to locate a replacement panelist.

<sup>3</sup> Stipulations (“Stip.”) ¶ 1.

<sup>4</sup> Tr. 422–23.

representatives in one office.<sup>5</sup> In 2000 and 2001, an overwhelming portion of VMR's revenue came from institutional rather than retail business.<sup>6</sup>

Ficeto is registered as a General Securities Representative, a General Securities Principal, and an Equity Trader, and he has been president of VMR since its inception.<sup>7</sup> He also has been VMR's chief compliance officer during the relevant period.<sup>8</sup> In 2000 and 2001, Ficeto oversaw all of the Firm's compliance and supervisory functions, and he monitored the registered representatives' daily activities.<sup>9</sup>

## **B. St. John's Trading**

St. John joined VMR in September 2000 as a General Securities Representative.<sup>10</sup> Before joining VMR, he was associated with CUNA Brokerage Services, Inc. ("CUNA") in Yuma, Arizona.<sup>11</sup> At CUNA, St. John rarely traded equities; he worked mostly with mutual funds, annuities, and other life insurance products.<sup>12</sup>

When St. John joined VMR, he brought several accounts with him from CUNA, including RC's, ES's, and JB's accounts. Each of these three accounts had been invested primarily in mutual funds before St. John transferred them to VMR. Once the transfers were complete, St. John liquidated most of their mutual fund holdings and began actively trading technology and

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<sup>5</sup> *Id.*

<sup>6</sup> Tr. 147.

<sup>7</sup> Stip. ¶ 2.

<sup>8</sup> Tr. 419–20.

<sup>9</sup> *Id.* at 420–21.

<sup>10</sup> Stip. ¶ 3.

<sup>11</sup> Tr. 71; R-6; C-27.

<sup>12</sup> Tr. 187–88.

speculative securities, which were unsuitable for these investors.<sup>13</sup> During the investigation of St. John's trading, he admitted that he made the decisions regarding these trades.<sup>14</sup> The specifics of these three customer accounts are discussed below.

**(a) JB's Account**

The account documentation NASD staff obtained from CUNA indicates that in January 2000, when JB opened her account at CUNA, she was 79 years old and retired.<sup>15</sup> She disclosed that her annual income was \$6,000 from social security and interest and that her investment objectives were income and short-term growth. She further indicated that she had a low risk tolerance and minimal investment experience.<sup>16</sup> Her CUNA account statements reflect that most of the activity in her account was the purchase of mutual funds.<sup>17</sup>

JB opened a new account at VMR on August 30, 2000. The VMR New Account Form, which Ficeto signed, corresponds to the information on her CUNA account records.<sup>18</sup> Once again, JB indicated that she had little or no investment experience and a low risk tolerance. Her investment objectives were income and safety of principal.<sup>19</sup> She reported an annual income of \$20,000 and a total net worth of \$130,000.

Despite JB's age, lack of investment experience, limited income and resources, and desire for conservative investments, St. John embarked on an aggressive trading pattern in her account.

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<sup>13</sup> Tr. 112–13, 452, 456–57, 461; C–10 through C–13.

<sup>14</sup> Tr. 114–15.

<sup>15</sup> C–9, at 3.

<sup>16</sup> *Id.*

<sup>17</sup> Tr. 72; C–9.

<sup>18</sup> C–4, at 1.

<sup>19</sup> *Id.*

The analysis prepared by NASD staff reflects that St. John engaged in 55 trades between October 5, 2000 and January 30, 2001.<sup>20</sup> On these trades, some of which involved speculative securities, St. John earned commissions totaling \$8,840.<sup>21</sup>

On July 11, 2001, JB filed a complaint through NASD's website, alleging that she had not authorized St. John's trading in her account.<sup>22</sup> Her complaint triggered NASD's investigation that led to the filing of the Complaint in this proceeding.

**(b) RC's Account**

RC's account documentation similarly reflected a conservative investment profile. RC's CUNA New Account Application indicates that she was 80 years old and retired when she opened the account in May 2000.<sup>23</sup> She disclosed that her annual income was \$20,000 from a pension, social security, and interest.<sup>24</sup> RC listed her investment objectives as income and long-term growth. She further indicated that she had a moderate risk tolerance and minimal investment experience.<sup>25</sup>

RC opened a new account at VMR on August 30, 2000. The VMR New Account Form, which Ficeto signed, corresponds to the information on her CUNA account records.<sup>26</sup> RC indicated that she had little investment experience and a moderate risk tolerance. Her investment

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<sup>20</sup> C-11.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> C-3, at 3.

<sup>23</sup> C-9, at 101.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> C-6, at 1.

objectives were income and growth.<sup>27</sup> She reported an annual income of \$30,000 and a total net worth of \$400,000.<sup>28</sup>

Despite RC's age, limited investment experience and income, and desire for conservative investments, St. John engaged in unsuitable and excessive trading in her account at VMR. The analysis prepared by NASD staff reflects that St. John engaged in 97 trades between September 2000 and January 30, 2001.<sup>29</sup> On these trades, some of which involved speculative securities, St. John earned commissions totaling \$18,383.75<sup>30</sup>

**(c) ES's Account**

Although ES was younger than JB and RC, her investment profile on the account documentation at CUNA and VMR reflected a similar conservative profile. ES's CUNA New Account Application indicates that she was 47 years old when she opened the account in February 1999.<sup>31</sup> She disclosed that she was employed and that her annual income was between \$50,000 and \$100,000.<sup>32</sup> She listed her investment objective as long-term growth and her risk tolerance as moderate.<sup>33</sup> She disclosed a net worth of between \$100,000 and \$500,000.<sup>34</sup>

ES opened a new account at VMR on August 30, 2000. The New Account Form, which Ficeto signed, indicates that she had moderate investment experience and risk tolerance.<sup>35</sup> She

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> C-13, at 1-3.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> C-9, at 25.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> C-8, at 1.

listed her investment objective as growth, and she reported annual income of \$60,000 and a total net worth of \$250,000.<sup>36</sup>

As St. John did with the other two accounts, once ES's assets were transferred to VMR, he engaged in excessive and unsuitable trading in her account. Between September 2000 and January 30, 2001, St. John effected 101 trades in her account, for which he earned commissions totaling \$19,933.86.<sup>37</sup>

Ficeto admitted that he knew by early November 2000 that there was both a suitability and excessive trading problem with these accounts.<sup>38</sup> Ficeto saw St. John's order tickets, and he knew that most of St. John's commissions were coming from the trades in these accounts.<sup>39</sup> Moreover, Ficeto realized that St. John's orders accounted for roughly 90% of the retail orders for the entire Firm.<sup>40</sup>

### **C. VMR's Supervisory Structure and Responsibility for St. John's Supervision**

Ficeto's contends that he was not responsible for St. John's supervision. Ficeto claims that he hired David Ludwig ("Ludwig") on August 7, 2000, as a "branch manager," at which time he became St. John's supervisor. Thus, the threshold issue is whether Ficeto reasonably and effectively delegated supervisory responsibility for St. John to Ludwig. To resolve this issue, it is necessary to examine VMR's supervisory structure and Ludwig's assigned responsibilities.

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<sup>36</sup> *Id.*

<sup>37</sup> C-15, at 1-3.

<sup>38</sup> Tr. 461.

<sup>39</sup> C-19, at 38-39.

<sup>40</sup> *Id.* at 37-38.

Immediately before St. John joined VMR, Jose Abadin (“Abadin”) was responsible for supervising VMR’s registered representatives.<sup>41</sup> Abadin had been hired in 1997 to supervise the registered representatives who joined VMR with him.<sup>42</sup> Abadin’s duties included approving new accounts and conducting suitability reviews of order tickets.<sup>43</sup> Abadin, however, testified that, about May or June 2000, he transitioned to the institutional side of the business and gave up his retail supervisory responsibilities. Abadin stated that he ceased supervising the sales staff between May and June and that he was no longer a supervisor by the time St. John joined VMR.<sup>44</sup> Ficeto likewise testified that Abadin was VMR’s sales manager until May or June 2000, at which time he transitioned to institutional trading.<sup>45</sup> Ficeto testified that during Abadin’s transition, he and Ficeto shared responsibility for supervising the registered representatives.<sup>46</sup>

In or about June 2000, Ficeto decided to retain PB, a consultant and recruiter with specialized knowledge of the securities industry, to assist him with finding a replacement for Abadin. Ficeto planned to expand VMR’s retail business by adding registered representatives. Ficeto hired PB to assist his expansion plans. Under the terms of PB’s consulting agreement, she was to assist in the acquisition of an “experienced Office Principal/Sales manager” and “assist in the recruitment of experienced Registered Representatives.”<sup>47</sup> PB testified that Ficeto wanted her to help him “locate a good, solid manager that could manage the office operations and manage the

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<sup>41</sup> Tr. 310, 424–25.

<sup>42</sup> *Id.* at 279.

<sup>43</sup> *Id.* at 389, 399, 425.

<sup>44</sup> *Id.* at 279, 281–82.

<sup>45</sup> *Id.* at 425.

<sup>46</sup> *Id.*

<sup>47</sup> R–3, at 1.



advisors, compliance, sales, the whole bit, and not do any selling. He or she would be strictly a branch manager.”<sup>48</sup>

One of the people PB contacted about the position was Ludwig, who had been registered as a General Securities Representative since 1990.<sup>49</sup> Ludwig had a financial planning background; he had been associated with banks and life insurance companies.<sup>50</sup> PB knew of Ludwig from her experience in the banking industry and from her daughter who had been his sales assistant at Great Western Bank.<sup>51</sup> Although PB knew that Ludwig had very limited experience selling stocks and that he had not qualified as a General Securities Principal (Series 24), she nevertheless thought that he could grow into the job. Ludwig was unemployed, and PB presented the VMR position as a “great opportunity to grow a sales force.”<sup>52</sup> PB described the position as a sales position and told Ludwig that his duties would include educating the registered representatives on financial planning.<sup>53</sup> PB convinced Ludwig to meet with Ficeto the next day, which he did.

Ludwig testified that Ficeto explained that the Firm primarily was an “investment banking” office and that he wanted to hire someone to work with the retail group.<sup>54</sup> Ludwig became intrigued with the prospect and agreed to meet with Ficeto again.<sup>55</sup> The second meeting was a

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<sup>48</sup> Tr. 356.

<sup>49</sup> C-20.

<sup>50</sup> *Id.*; Tr. 312.

<sup>51</sup> Tr. 166, 361.

<sup>52</sup> *Id.* 163, 165.

<sup>53</sup> *Id.* at 166-68.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 169, 171.

luncheon meeting at which Ficeto again spent most of the time talking about his expansion plans.<sup>56</sup> Ficeto then offered Ludwig the position, which Ludwig accepted. They agreed on Ludwig's salary and title: Vice President of Sales.<sup>57</sup> Ludwig was to report directly to Ficeto.<sup>58</sup> According to Ludwig, Ficeto did not discuss Ludwig assuming any compliance responsibilities.<sup>59</sup>

Ficeto and Ludwig have divergent views of Ludwig's position and responsibilities at VMR. Relying on the job title in Ludwig's employment agreement and VMR's Written Supervisory Procedures ("WSPs"), Ficeto asserts that Ludwig assumed complete responsibility for supervision of the retail sales staff when he joined VMR on August 7, 2000. Pointing first to the employment agreement, Ficeto notes that it designates Ludwig as "Branch Manager."<sup>60</sup> Ficeto argues that a branch manager naturally has supervisory responsibility for the registered representatives in his office, which Ludwig should have understood.<sup>61</sup> Ludwig on the other hand testified that he paid no attention to the branch manager title because the term meant something far different to him from his banking experience. In his experience, a bank branch manager functioned as a "sales manager," handling customer issues, employee schedules, and product promotions.<sup>62</sup> To him, the title did not designate compliance responsibilities.

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<sup>56</sup> *Id.* at 171, 173.

<sup>57</sup> *Id.* at 172, 174.

<sup>58</sup> *Id.* at 172.

<sup>59</sup> *Id.* at 174.

<sup>60</sup> C-21.

<sup>61</sup> Ficeto's reliance on Ludwig's title is undercut by Ficeto's own use of that title when he signed the new account forms for JB, ES, and RC. Although he used the title, Ficeto conceded that he did not consider himself to be the Branch Manager and that he used the term loosely. (Tr. 449.)

<sup>62</sup> Tr. 175-76.

Ludwig's August 7, 2000, employment agreement sheds no light on this disagreement; the agreement neither describes Ludwig's duties nor otherwise defines the term "Branch Manager." Indeed, the Respondents' expert witness, David Semak ("Semak"), testified that the Firm lacked any documentation reflecting Ludwig's responsibilities and performance.<sup>63</sup>

The WSPs<sup>64</sup> likewise do not resolve the disputed testimony about Ludwig's supervisory responsibilities; the WSPs are unreliable and ambiguous. Although the WSPs list Ludwig as the "Branch Manager," they also inaccurately state that he was a licensed principal in August 2000 when he was not.<sup>65</sup> Moreover, the WSPs designate Abadin as the supervisor of trading, market making,<sup>66</sup> and retail in August 2000;<sup>67</sup> but he testified that he had surrendered all retail supervisory responsibility by that date. David Banerjee ("Banerjee"), the Firm's Financial and Operations Principal and author of the WSPs, did not have an adequate explanation for these discrepancies. Instead, he pointed out that he relied on Abadin to assure the WSPs' accuracy.<sup>68</sup>

VMR's missing and inaccurate records reflect a poorly organized and implemented supervisory system, which is borne out by Carroll Wilson's ("Wilson") testimony. Wilson was a registered representative at VMR from September 1998 until June 2001 who actively traded speculative securities for his clients.<sup>69</sup> He testified about VMR's supervisory structure and Ludwig's responsibilities. Generally, Wilson testified that there was not much of a compliance

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<sup>63</sup> *Id.* at 510.

<sup>64</sup> C-18.

<sup>65</sup> C-18, at 22.

<sup>66</sup> Abadin testified the he never supervised trading and market making. (Tr. 282.)

<sup>67</sup> C-18, at 22.

<sup>68</sup> Tr. 403-04.

<sup>69</sup> *Id.* at 304-05.

program at VMR. Specifically, he testified: at first he did not know who was the Firm's compliance officer;<sup>70</sup> he was not given a copy of the Firm's WSPs;<sup>71</sup> he did not have a supervisor after Abadin transferred to institutional sales;<sup>72</sup> order tickets did not get a compliance or suitability review;<sup>73</sup> he was never asked to fill out an active account questionnaire,<sup>74</sup> as was required by the WSPs; and no one reviewed his correspondence.<sup>75</sup> As to Ludwig's role, Wilson testified that Ludwig was hired as a retail sales manager because Abadin did not want the job and Ficeto wanted to expand the Firm.<sup>76</sup> According to Wilson, Ludwig was hired to recruit more quality brokers, manage the sales staff, and assure the brokers were productive.<sup>77</sup> Wilson further testified that Ludwig did not review his trades for compliance issues. In essence, Wilson corroborated Ludwig's testimony that Ficeto wanted Ludwig to concentrate on increasing production from the retail sales group, not to assume compliance responsibility for the registered representatives.

Banerjee also testified that Abadin's supervisory responsibilities were not transferred to Ludwig when he joined VMR.<sup>78</sup> Banerjee unequivocally stated that he continued to look to Ficeto and Abadin, the Firm's registered principals, for such things as suitability review of orders.<sup>79</sup> Banerjee understood that Ficeto hired Ludwig to assist Abadin and that Ludwig was responsible

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<sup>70</sup> *Id.* at 308–09.

<sup>71</sup> *Id.* at 307.

<sup>72</sup> *Id.* at 310.

<sup>73</sup> *Id.* at 310–11, 314.

<sup>74</sup> *Id.* at 317.

<sup>75</sup> *Id.* at 343.

<sup>76</sup> *Id.* at 311.

<sup>77</sup> *Id.* at 313–14.

<sup>78</sup> *Id.* at 390.

<sup>79</sup> *Id.* at 399.

for operational issues, not compliance.<sup>80</sup> Consistent with this understanding, Banerjee said that he never spoke to Ludwig about compliance matters.<sup>81</sup>

In summary, the Hearing Panel concludes that Ficeto did not delegate reasonably and effectively his supervisory responsibility of St. John. In fact, there is no reliable testimony or documentation supporting Ficeto's contention that he delegated St. John's supervision to Ludwig. Ficeto points to no training or other discussion where he explained to Ludwig that he was to have this supervisory responsibility. Nor did Ficeto instruct Abadin to manage Ludwig's integration into VMR's supervisory structure. Abadin testified that he did not train Ludwig and, in fact, had little contact with him once he joined the Firm.<sup>82</sup> Accordingly, the Hearing Panel finds that Ficeto remained responsible for St. John's supervision.

However, for the sake of argument, even if the Hearing Panel accepted Ficeto's claim that he delegated retail supervisory responsibility to Ludwig effective August 7, 2000, NASD Rule 1021 would have allowed Ludwig to function as a supervisor for only 90 days, or until November 6, 2000, in the absence of a registered principal qualification. Ludwig's CRD record shows that he did not pass his Series 24 examination until January 23, 2001. Thus, for at least 78 days, Ludwig was legally unable to function as a supervisor of VMR's registered representatives or to supervise the retail stock trading activities in which St. John and his three clients engaged.

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<sup>80</sup> *Id.* at 391.

<sup>81</sup> *Id.* at 392.

<sup>82</sup> *Id.* at 284, 289.

Consequently, for those 78 days at a minimum, Ficeto was the supervisor of VMR's retail sales activities.

### III. CONCLUSIONS OF LAW

The Department charged that Ficeto and the Firm violated NASD Conduct Rule 3010 by failing reasonably to supervise St. John's trading activities in JB's, ES's, and RC's accounts. Rule 3010 requires that NASD members "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of [NASD]. Final responsibility for proper supervision shall rest with the member." Where the member is a corporation, "the president ... is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient."<sup>83</sup> The standard of "reasonableness" is determined based on the particular circumstances of each case.<sup>84</sup> The burden is on the Department to show that the respondent's conduct was not reasonable.<sup>85</sup>

Here, as found above, Ficeto did not reasonably and effectively delegate his supervisory responsibilities to Ludwig. Moreover, Ficeto did not give Ludwig supervisory authority over St. John. For example, Ludwig did not have the authority to fire St. John, and there is no evidence that Ludwig had the authority to take any other disciplinary action to assure St. John's

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<sup>83</sup> *William H. Gerhauser, Sr.*, 53 S.E.C. 933, 940-41 (Nov. 4, 1998).

<sup>84</sup> *See, e.g., Christopher Benz*, 52 S.E.C. 1280 (1997).

<sup>85</sup> *District Bus. Conduct Comm. v. Lobb*, 2000 NASD Discip. LEXIS 11, at \*16 (N.A.C. Apr. 6, 2000) (citations omitted).

compliance with the Firm's WSPs. Thus, even if the Hearing Panel were to assume that Ficeto hired Ludwig to supervise the retail registered representatives, Ficeto did not give him the necessary authority to enable him to carry out that responsibility. Consequently, the Hearing Panel finds that Ficeto was St. John's supervisor at the time he made the unsuitable trades in JB's, ES's, and RC's accounts.<sup>86</sup>

The second question is whether Ficeto supervised St. John reasonably. The Hearing Panel finds he did not. Although VMR and Ficeto had not implemented supervisory procedures to monitor active accounts, Ficeto nevertheless learned by late October 2000 that St. John's trading activity in JB's, ES's, and RC's accounts was excessive and unsuitable, yet he did little to curtail it.<sup>87</sup> Ficeto did question St. John about his activity, but he then accepted St. John's unverified assurances that the customers approved of his activity. He also asked Ludwig to speak to St. John, but Ficeto made no effort to follow up with St. John or Ludwig. The Hearing Panel finds that such a restricted response was unreasonable under the facts and circumstances of this case.<sup>88</sup> St. John's trading activity did not drop off until February 2001.<sup>89</sup>

#### **IV. SANCTIONS**

The NASD Sanction Guidelines ("Guidelines") for "Failure to Supervise" recommend a fine of \$5,000 to \$50,000, plus the amount of any financial gain. In addition, they recommend a

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<sup>86</sup> The Hearing Panel did not address whether others at VMR also had supervisory responsibility over St. John for some activities.

<sup>87</sup> Tr. 447, 452, 461.

<sup>88</sup> *Cf. e.g., Michael H. Hume*, 52 S.E.C. 243 (1995) (supervisor violated Conduct Rule 3010 where he relied solely on the broker's unverified representations that excessive trading in a customer's account was consistent with the customer's objectives).

<sup>89</sup> Tr. 106-08. The Department did not include St. John's trading activity after January 2001 in its commission analysis.

suspension of the responsible individual in all supervisory capacities for up to 30 business days, and in egregious cases, a longer suspension of up to two years in any or all capacities, or a bar. The “Failure to Supervise” Guidelines list specific considerations in setting sanctions for those violations, including whether the respondent “ignored ‘red flag’ warnings that should have resulted in additional supervisory scrutiny,” and the “[n]ature, extent, size, and character of the underlying misconduct.”<sup>90</sup>

The Hearing Panel considers VMR’s and Ficeto’s supervisory failures to be serious. Although the evidence shows that Ficeto hired Ludwig to take over the development and supervision of the retail sales staff, Ficeto failed reasonably and effectively to delegate his supervisory responsibilities to Ludwig. In essence, Ficeto left Ludwig to learn VMR’s policies, procedures, and systems on his own. Ficeto did not delineate clearly Ludwig’s responsibilities, and Ficeto failed to instruct Abadin, the former retail sales supervisor, to provide Ludwig with any assistance. In addition, although the WSPs generally provided for adequate tools to supervise the Firm’s retail activities, Ficeto failed to implement key required procedures. Most significantly, Ficeto never implemented procedures to detect and monitor active accounts. Ficeto also failed to utilize those tools he did have available, such as the exception reports supplied by VMR’s clearing firm.

On the other hand, the Hearing Panel also took into consideration the following factors. First, Ficeto voluntarily shut down the Firm’s retail operations in response to the problems St. John caused. VMR no longer has a retail sales force or any retail business. Second, the Hearing Panel credits Ficeto with cooperating with NASD during its investigation and with his expression

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<sup>90</sup> Guidelines 108.



of remorse. And, third, the Hearing Panel notes that the Respondents have no disciplinary history, which might require enhanced sanctions.<sup>91</sup>

Balancing the foregoing factors, the Hearing Panel determined that the following sanctions are appropriately remedial in this case: VMR and Ficeto shall be fined jointly and severally \$25,000, and Ficeto shall be suspended in all supervisory capacities for 15 business days.<sup>92</sup>

## **V. ORDER**

Therefore, having considered all the evidence,<sup>93</sup> the Hearing Panel orders that VMR and Ficeto are jointly and severally fined \$25,000, and Ficeto is suspended in all supervisory capacities for 15 business days.

In addition, the Respondents, jointly and severally, shall pay the costs of this proceeding in the total amount of \$2,548.69, which include an administrative fee of \$750 and hearing transcript costs of \$1,798.69.

These sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of the NASD; except, if this Decision becomes the final disciplinary action of the NASD, Ficeto's suspension shall commence with the

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<sup>91</sup> See Principal Consideration No. 1, Guidelines 9, and General Principle No. 2, Guidelines 3 (directing Hearing Panels to consider relevant disciplinary history under NASD's system of progressive discipline). The lack of disciplinary history itself, however, is not a mitigating factor. See *Department of Enforcement v. U.S. Rica Financial, Inc.*, No. C01000003, 2003 NASD Discip. LEXIS 24, \*44-45 (N.A.C. Sept. 9, 2003)

<sup>92</sup> The Department did not request specific sanctions. Because VMR is no longer engaged in retail sales, the Hearing Panel did not consider limiting VMR's activities in the future, as suggested in the Sanction Guidelines. (See Guidelines 108.)

<sup>93</sup> The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

opening of business on November 17, 2003, and end at the close of business on December 5, 2003.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

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