

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

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| In the Matter of                                           | <u>DECISION</u>         |
| District Business Conduct Committee<br>For District No. 10 | Complaint No. C10960168 |
| Complainant,                                               | District No. 10         |
| vs.                                                        | Dated: January 27, 1999 |
| Respondent Firm 1,                                         |                         |
| Respondent 2,                                              |                         |
| and                                                        |                         |
| Respondent 3,                                              |                         |
| Respondents.                                               |                         |

The May 14, 1998 decision of the District Business Conduct Committee for District No. 10 ("DBCC") in this matter was appealed by respondents Respondent Firm 1, Respondent 2, and Respondent 3, pursuant to NASD Procedural Rule 9310 and was called for review by the National Adjudicatory Council ("NAC") pursuant to Procedural Rule 9312.<sup>1</sup> After a review of the entire record in this matter, we hold under cause one that Respondent Firm 1, through Respondent 2, violated Article III, Section 1 of the NASD Rules of Fair Practice (now codified as Conduct Rule 2110) and Schedule C, Part I, Section (1)(e) (now codified as Membership and Registration Rule 1011(e)) by conducting a securities business in a new location from on or about September 5, 1995, without prior written permission of District No. 10, in violation of the Firm's Restrictive Agreement. We dismiss cause two, which alleged that Respondent Firm 1, through Respondent 3, violated Article III, Section 1 and Schedule C, Part III, Section (1)(a) (now codified as Membership and Registration Rule 1031) by causing Employee A to conduct a securities business from September 5 through November 13, 1995, without being registered with the Firm in any capacity.<sup>2</sup> We affirm the sanctions imposed by the DBCC,

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<sup>1</sup> The NAC issued the call "to review the findings and sanctions as to all respondents and to determine whether the sanctions were too low for the violations alleged."

<sup>2</sup> The Securities and Exchange Commission approved the renumbering of the provisions of the NASD Manual on January 11, 1996. The complaint in this matter, issued on August 4, 1997,

as to cause one, that Respondent Firm 1 and Respondent 2 be censured and fined \$2,500, jointly and severally, but set aside the sanctions imposed by the DBCC as to cause two.<sup>3</sup> Further, we set aside the assessment of \$300 in costs against the respondents, jointly and severally.

### Background

Respondent Firm 1, located in, New York, became a member of the NASD in 1989.

Respondent 2 first became registered with the NASD on March 25, 1969. Respondent 2 has been continuously registered as a representative of Respondent Firm 1 since December 1988 and is a registered municipal and options principal. Respondent 2 is a 50 percent owner of Respondent Firm 1, and is a Managing Partner of the Firm.

Respondent 3 first became registered with the NASD on June 23, 1981, and on May 8, 1989 became registered as a general securities principal of Respondent Firm 1, where he is currently employed. Respondent 3 is a 50 percent owner of Respondent Firm 1, and is the President and financial and operations principal of the Firm.

### Facts

The two-cause complaint in this matter was issued on August 4, 1997, following a special examination of the Firm initiated by the Firm's written request of October 24, 1995, to modify its Restrictive Agreement.<sup>4</sup>

Cause one alleged, and the DBCC found, that on September 5, 1995, the Firm opened and thereafter operated a branch office, without having given prior written notification to the District and without having received prior written approval from the District as required under the Firm's Restrictive Agreement.<sup>5</sup>

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employed the new numbering system. Inasmuch as there was no change in the language of the referenced rules and the basis for the complaint was clear, we cite to the current versions of the rules charged in the complaint in this decision for purposes of conformance with the proceedings below, even though the violations alleged occurred under the earlier numbering system.

<sup>3</sup> Under cause two, the DBCC had censured Respondent Firm 1 and Respondent 3 and had fined them \$2,500, jointly and severally.

<sup>4</sup> The Restrictive Agreement with District No. 10, executed, in 1994, by Respondent 2 on behalf of the Firm, required among other things that the Firm submit written notification to and obtain written approval from District No. 10 before opening any branch office.

<sup>5</sup> As discussed below, the Firm filed an amended schedule to Form BD with the NASD's Central Registration Depository ("CRD") on September 1, 1995. The Firm thereafter operated the branch

As to cause two, the complaint alleged, and the DBCC found, that on September 5, 1995, Respondent 3 filed, and on September 6, 1995, the NASD received, a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") for Employee A, at that time a registered representative of another member firm, that bore a "yes" answer to Question 22E5. The complaint further alleged, and the DBCC found, that on or about September 15, 1995, Respondent 3 erroneously advised Employee A that he was cleared to act in a registered capacity, and Employee A proceeded to conduct a securities business on behalf of Respondent Firm 1 from that date.

Throughout these proceedings, respondents Respondent Firm 1 and Respondent 2 argued as to cause one that advice from NASD staff superceded and nullified the Restrictive Agreement's requirement of prior written notification and approval. The following evidence was adduced in support of this contention.

Respondent 2 explained that in late October 1995, the Firm was offered an opportunity to take over an existing branch office of its clearing firm. In order to take advantage of this business opportunity, however, it was clear that the Firm would have to act immediately.

Respondents cited a letter from an NASD Staff Supervisor ("Staff Supervisor") dated June 5, 1995, in support of their contention that they had followed the staff's instructions and that the staff in effect agreed to substitute oral notification for the written notification required by the Firm's Restrictive Agreement.<sup>6</sup> Respondent 3 testified that upon deciding to take over the branch office, the Firm followed the instructions in the June 5 letter and placed a call to the NASD on September 1, 1995. The NASD Staff Supervisor and the NASD contact person not being available, Respondent 3 spoke to an NASD Examiner, who advised him to file an amendment to Schedule E of Form BD concerning the branch

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office until it was notified by the District that its written application for permission to open the branch, submitted on October 24, 1995, had been denied on or about November 28, 1995.

<sup>6</sup> Specifically, the respondents cited the following paragraph in the Staff Supervisor's June 5, 1995, letter of introduction:

In addition, as you are probably aware, the National Association of Securities Dealers, Inc., in its continuing efforts to enhance the quality of service to its members, has designated a contact person to help you with any questions, problems, or concerns you may have. Effective May 17, 1995, [NASD contact person's name] was named as the new contact person for your firm. All future correspondence and questions should initially be directed to [the NASD contact person] at [phone number redacted], however in the event that [the NASD contact person] is unavailable when you call, you may leave a message or, if the matter is of some urgency, you may contact me at [phone number redacted]. We ask that you please make a note of these changes and inform all other individuals in your organization who routinely contact the NASD as to the same.

office (which the Firm did that day) and to call the NASD Contact Person after Labor Day.<sup>7</sup> On September 5, 1995, Respondent 3 called the NASD Contact Person. According to Respondent 3, who referred to contemporaneous notes of the conversation, the NASD Contact Person did not say that he did not have to file a written request to amend the Restrictive Agreement, but did say that the written request would have to be heard by the District Committee's Restriction Agreement Subcommittee, which would not meet until October 27, 1995. Describing the urgency of the request, Respondent 3 asked if the Firm could operate the branch office pending NASD approval. Respondent 3 testified that he was told that the Firm could open it as a "non-branch branch" pending formal review and approval.<sup>8</sup> Respondent 3 testified that as a result of this conversation, he considered that the Firm could move ahead with its plans pending formal approval at the end of October, and admitted that the Firm commenced operating the branch within about 10 days of the conversation.

Respondent 3 testified that the NASD Contact Person did not explain what a "non-branch branch" was. Under questioning, Respondent 3 stated with reference to his understanding of his conversation with the NASD Contact Person that he did not recall whether certain restrictions on the activities of the office were necessary in order to satisfy the designation of a "non-branch branch." Respondent 3 did recall that the NASD Contact Person referred him to a specific rule in that regard.<sup>9</sup> Respondent 3 explained that "[o]ur understanding was that, yes, we could go ahead with this thing. And in any case, the NASD Contact Person indicated to us that the Committee to consider this request [to amend the Restrictive Agreement] was not going to meet until the end of October." Respondent 3 also stated that the NASD Contact Person told him to submit a written request to the Committee.

In response, the NASD Contact Person testified that he did not recall having a conversation with Respondent Firm 1 representatives on or about September 5, 1995, but did not deny that the conversation took place. The NASD Contact Person testified that while he was employed by the NASD, he was responsible for reviewing FOCUS reports and handling telephone inquiries concerning Restrictive Agreement amendments from about 200 member firms. The NASD Contact Person also acknowledged that he had discussed the "non-branch branch" concept with member firms after August 1995, but definitely stated that he would not have discussed the concept without directing the member to review the relevant rule closely.

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<sup>7</sup> Telephone company records show that this call took place at 11:52 a.m. and lasted for three minutes and 54 seconds.

<sup>8</sup> Telephone company records show that this call took place at 1:35 p.m. and lasted for six minutes and 24 seconds.

<sup>9</sup> Respondent 3 took contemporaneous notes of the September 5, 1995, conversation. Under his handwritten notation "Open as non branch branch," Respondent 3 added a handwritten reference to "Pg 2118 Art 3 Sec 27 g. 2. All Tkt approved at end of day." Page 2118 of the NASD Manual then in effect was the appropriate citation to Article III, Section 27(g)(2), the regulatory definition of "branch office."

## Discussion

For the following reasons, following our independent, de novo review of the entire record, we affirm the DBCC's findings as to cause one of the complaint, but dismiss the allegations of cause two.

Because the complaint in this matter was issued on August 14, 1997, within 14 days of the effective date of the revised NASD Code of Procedure (that is, August 7, 1997), the respondents were offered the opportunity, in writing, to elect to proceed under the provisions of the revised Code. The record fails to establish that the respondents elected to proceed under the revised Code, and thus the old Code was applicable to the DBCC proceedings.

Four calendar days before the DBCC hearing in this matter, the respondents filed a motion objecting to the late production of staff's exhibits and proposed witness list and requesting as relief the dismissal of the complaint.<sup>10</sup> The respondents represented that they received the staff's exhibits and proposed witness list at 10:10 a.m. on that same day, two business days (excluding Saturday and Sunday) before the scheduled hearing. The respondents renewed their motion at the DBCC hearing four days later.

At the DBCC hearing, the staff acknowledged that it did not have the documents prepared until two days before they were delivered, but argued that the submission was late by only two days, not three, because of an offer to serve the documents at the homes of the respondents, which was declined, rather than at their office. The staff further argued that apart from staff interview transcripts, "99 percent" of the staff's proposed exhibits were documents either generated by the Firm or previously provided to the Firm by the staff.

In response, the respondents stated that of the approximately 35 Exhibits proffered by the staff, they had not previously seen the following: Exhibits 4, 5, 6, 7, 17, 18, 28, 29, 31, 33, and 34. The

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<sup>10</sup> Respondents' motion correctly represented that under Article II, Section 7(a) of the NASD Code of Procedure (old Code), the staff was required to serve on the respondents their proposed hearing exhibits and list of proposed witnesses:

Sec. 7 (a) The Committee staff, or the complainant, if other than a Committee, shall upon request make available to respondents and their counsel any documentary evidence and the names of any witnesses the staff intends to present at the hearing no later than five (5) business days prior to the hearing.

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(c) . . . Notwithstanding paragraphs (a) or (b), the parties may submit any additional evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. . . .

respondents also specifically objected to the proposed testimony of, an NASD Employee A on the grounds of surprise.

Expressing its disappointment as to the untimely delivery of the staff's proposed exhibits, the DBCC hearing panel nevertheless denied the respondents' motion to dismiss the proceedings,<sup>11</sup> but directed that each staff exhibit be dealt with individually, and not admitted until the panel ruled as to it. Ultimately, the DBCC hearing panel admitted over respondents' objections only staff Exhibits 4, 5, 6, 7, 18, and 27, while it excluded from the record staff Exhibits 28, 29, 31, 33, and 34.<sup>12</sup> The DBCC hearing panel received the testimony of the witnesses proffered by the staff (the NASD Contact Person, a former Respondent Firm 1 employee, and NASD Employee A).

The respondents renewed their objections and motion to dismiss in this regard on review, particularly with respect to the DBCC hearing testimony of NASD Employee A.<sup>13</sup>

Like the DBCC hearing panel, we are troubled by the staff's late delivery of its proposed exhibits and witness list. We consider, however, that the DBCC hearing panel's sensitivity to the respondents' concerns was effective in maintaining the fairness of the proceedings below. We note that many of the exhibits proffered by the staff were in fact either authored by the respondents or were previously provided by the staff to the respondents. We ratify the DBCC hearing panel's exhibit-by-exhibit approach, which provided the respondents the opportunity to obtain voir dire of the documents and to focus their objections. We observe that most of the staff exhibits not excluded outright were admitted without objection. Finally, we expressly find that the DBCC hearing panel's exclusion of staff Exhibits 28, 29, 21, 33, and 34 for any purpose was an appropriate response to the respondents' objections and concerns.

We nonetheless dismiss the allegations of cause two, inasmuch as we find that the respondents were provided insufficient notice that NASD Employee A would be testifying at the DBCC hearing. We thus grant the respondents' motion to strike NASD Employee A's testimony before the DBCC.

We reach a different resolution, however, as to cause one. We note that the respondents' Answer admitted the underlying facts under cause one, but raised as a defense the NASD Contact Person purported grant of permission for the Firm to act before obtaining written modification of its Restrictive Agreement. By virtue of the fact that the respondents raised the NASD Contact Person's actions as an affirmative defense and were aware in advance of the likelihood that the NASD Contact Person would be called by the staff, we find that the DBCC hearing panel's admission of his testimony was not unfair. The NASD Contact Person's testimony may be fairly considered to have been in the

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<sup>11</sup> We note that neither the respondents nor the staff requested that the proceedings be continued.

<sup>12</sup> These excluded exhibits apparently consisted of transcripts of investigative testimony.

<sup>13</sup> The respondents did not seek to adduce additional evidence on appeal.

nature of rebuttal to the respondents' case-in-chief.<sup>14</sup> In addition, Respondent Firm 3 and Respondent 2 were aware of the existence and contents of the Firm's Restrictive Agreement, and admitted throughout that they had conducted a securities business at the Great Neck location as alleged in the complaint.

Securities professionals have long been held to compliance with their contractual and regulatory obligations. The Commission has held consistently that a violation of a restrictive agreement constitutes a violation of Conduct Rule 2110 because the NASD places conditions on membership with restrictive agreements in order to protect the investing public. See In re First Choice Securities Corporation, et al., 50 S.E.C. 1167, 1170 (1992); In re Sacks Investment Co., Inc., 51 S.E.C. 492 (1993); In re Osborne, Stern and Co., Inc., 50 S.E.C. 1295 (1992); In re First Guarantor Securities, Inc., et al., 51 S.E.C. 612 (1993), aff'd, First Guarantor Securities, Inc., and Joseph Philip Spallo v. Securities and Exchange Commission, No. 93-3398 (8th Cir. May 18, 1994) (unpublished opinion), 26 F.3d 126 (8th Cir. 1994) (Table). Respondent 2, who executed the Firm's Restrictive Agreement, is held to knowledge of the requirements of that contract, the rules of the NASD, and the law in force at the time of the violation.

We reject the respondents' attempts to shift responsibility for their inattention to the NASD. Contrary to their claim, the Staff Supervisor's letter was not an amendment of the Firm's Restrictive Agreement nor of Schedule C, Part I, Section 3 (now codified, as amended, as Membership and Registration Rule 1017), both of which required amendments to be filed and approved in writing. In seeking to characterize the Staff Supervisor's letter as "conflicting direction" on the part of District No. 10 and as a mandatory substitute for the requirements set forth both in that rule and in the Firm's Restrictive Agreement, Respondent 2 unreasonably read far too much into what was clearly no more than a routine letter of introduction.

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<sup>14</sup> We observe that under Article II, Section 7(c) of the NASD Code of Procedure (Old Code), the DBCC hearing panel was not required to exclude all staff evidence that was produced in an untimely manner, but had discretion to receive relevant testimonial and documentary evidence necessary in the interests of justice to establish a complete record:

(c) . . . Notwithstanding paragraphs [7](a) or (b), the parties may submit any additional evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. . . .

We find that the admission of the NASD Contact Person's and the former employee of Respondent Firm 1's testimony and the documentary evidence supporting cause one was fairly encompassed in the foregoing provision. In addition, the record reflects that the respondents had ample opportunity to examine the NASD Staff Supervisor and the employee of Respondent Firm 1 and have not shown how they might have been prejudiced by the staff's untimely failure to identify them as witnesses. See In re Robert L. Wallace, Exchange Act Rel. No. 40654 (November 10, 1998); In re Kim G. Girdner, 50 S.E.C. 221 (1990).

Similarly, Respondent 2 and the Firm attempt to shift responsibility to the NASD Contact Person. Respondent 3's explanation and his contemporaneous notes of their telephone call demonstrate that the NASD Contact Person mentioned the requirement for written application and approval, and noted the next date for formal consideration of amendments of Restrictive Agreements by the District Committee. Respondent 3's notes and testimony also show that the NASD Contact Person referred Respondent 3 to the appropriate rule (former Article III, Section 27(g)(2)) which, if reviewed and if all applicable regulatory requirements had thereafter been satisfied, might have warranted the operation of the location without branch designation. Respondent 3 testified that he looked at Article III, Section 27 (g)(2),<sup>15</sup> although he admitted that it raised no regulatory concerns for him.

Although it had been referred to the rules, the Firm operated the location in such a way as to preclude reliance on any exceptions to branch registration requirements. Respondent 3 admitted that after the branch commenced operation as part of Respondent Firm 1, he approved the opening of accounts and reviewed trades that were executed there, initially on site throughout the day, and thereafter at the end of the day. The approval of new accounts, order execution, and the review of trades by a registered principal on the premises of the branch office were all activities that required prior registration of the site with the NASD as an Office of Supervisory Jurisdiction ("OSJ") pursuant to then Article III, Section 27(g)(1), and precluded registration of the location as a mere branch office, much less as a "non-branch branch" conforming to exclusions (i), (ii), and (iii) set forth under former Article III, Section 27(g)(2).

It is highly improbable that the nature of the business to be conducted at that location was fully disclosed to the NASD Contact Person during the brief telephone conversation.<sup>16</sup> Even if it had been,

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<sup>15</sup> The following colloquy during oral argument on review dealt with Article III, Section 27 (g)(2):

ATTORNEY-ADVISOR: Did you look at that rule?

[Respondent 3]: I believe I did.

ATTORNEY-ADVISOR: What did that suggest to you, if anything?

[Respondent 3]: It didn't suggest much of anything. I don't recall specifically what was in it or what it said. I'm pretty sure I took a look at it, but I felt that after, you know, after the discussion I had with [the NASD Contact Person], that we could go forward with this thing pending written approval and review by the Restriction Committee on October 29<sup>th</sup> [sic].

<sup>16</sup> While Respondent 3 mentioned in appellate argument that he disclosed in his call to the NASD Contact Person "everything about this branch" including that the location was going to do "electronic trading," neither Respondent 3's notes nor his DBCC hearing testimony establish that he fully disclosed to the NASD Contact Person the business to be conducted in the proposed office:

the respondents' position would not be improved. As previously noted, the respondents had a preexisting duty to make a written request and receive written approval before operating a branch requiring approval as an OSJ, making it unreasonable for them to have acted so precipitously without fully considering the legal consequences of their acts. Similarly, it was unreasonable for the respondents to believe that the requirements of the Restrictive Agreement could be superceded by a brief telephone conversation with a staff member.

In addition, even assuming, arguendo, that the NASD Contact Person had given Respondent 3 erroneous advice, there still would be no basis for excusing the respondents' violation. As the Commission has held, the actions or representations of NASD staff concerning compliance obligations do not bind the NASD. See In re JJFN Servs., Inc., Exchange Act Rel. No. 39343, at 8 (Nov. 21, 1997) (holding that statements made by Nasdaq staff with respect to an application for listing on the automatic quotation system did not bind NASD); In re Peter T. Higgins, 51 S.E.C. 865, 868 n.10 (1993) (stating that erroneous advice from NASD staff did not alter the respondent's obligation to pay an arbitration award). Further, the Commission has emphasized that "a securities dealer cannot shift its compliance responsibility to the NASD. A regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." In re W.N. Whelen & Co., 50 S.E.C. 282, 284 (1990). See also In re Thomas C. Kocherhans, Exchange Act Rel. No. 36556, at 6 (Dec. 6, 1995) ("[w]e have repeatedly held that a respondent cannot shift his or her responsibility for compliance with applicable requirements to . . . the NASD."); In re Lowell H. Listrom & Co., 48 S.E.C. 360, 366 (1985) (same), aff'd, 803 F.2d 938 (8th Cir. 1986); In re Melvin Y. Zucker, 46 S.E.C. 731, 733-34 (1976) (same).

DBCC PANEL MEMBER: I want to ask one question. In your conversation with [the NASD Contact Person] did you make it clear to him what the [redacted] office was going to be doing?

[Respondent 3]: I believe so, yes.

DBCC PANEL MEMBER: What exactly did you tell him the [redacted] office would be doing?

[Respondent 3]: I don't recall precisely what I said to him.

DBCC PANEL MEMBER: To the best of your recollection.

[Respondent 3]: I made notes here. I know I talked to him about the urgency regarding expenses, etc. And I described to him how many people we intend to have there, and that there were NASDAQ machines. I don't know the specifics, because I didn't make notes of that. So I really can't say I said this. But I think he understood.

As to cause two, the complaint alleged, and the DBCC found, that the Firm, through Respondent 3, violated Conduct Rule 2110 by causing Employee A to engage in the securities business of Respondent Firm 1 without being registered with the NASD in any capacity, in contravention of Membership and Registration Rule 1031.<sup>17</sup> We set aside that determination exclusively on the technical grounds discussed above.

### Sanctions

The violation herein sustained resulted from undue haste in attempting to seize a business opportunity. Nonetheless, the respondents knew or should have known of their responsibility to comply with important regulatory requirements.

Having considered all evidence and argument in extenuation and mitigation, we affirm the DBCC's determination under cause one that Respondent 2 be censured and fined \$2,500, jointly and severally with Respondent Firm 1. In arriving at these relatively lenient sanctions, we have considered the applicable NASD Sanction Guidelines for the violations ("Guidelines"). We find that the sanctions are remedial and consistent with the ranges recommended in the Guidelines. We set aside the DBCC's determination under cause two that Respondent 3 be censured and fined \$2,500, jointly and severally with Respondent Firm 1. We also set aside the DBCC's determination that the respondents be assessed \$300 in DBCC hearing costs, jointly and severally.

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<sup>17</sup> Rule 1031 recodified Schedule C, Part III, Section 1(a), which in pertinent part provided that: "All Representatives Must be Registered--All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part III, Section (2) hereof." Part III, Section 2 specified Categories of Representative Registration including, at Section 2(a), that of general securities representative.

As the Commission has stated, "The requirement of NASD approval before a member's employee may engage in dealings with the public serves a significant purpose in the policing of the securities markets and in the protection of the public interest." In re L. B. Securities Corp., 42 S.E.C. 885, 889 (1966). See also In re Ashvin R. Shah, Exchange Act Rel. No. 37954, at 8 (Nov. 15, 1996), aff'd, No. 97-1065 (7th Cir. Nov. 27, 1997) ("The requirement that an associated person be registered before engaging in any securities business provides an important safeguard in protecting public investors. Consequently, strict adherence to the registration requirement is essential."); In re Patricia H. Smith, Exchange Act Rel. No. 35898, at 4 (June 27, 1995) (same); In re First Capital Funding, Inc., 50 S.E.C. 1026, 1029-30 (1992); In re Gary Cohee, 48 S.E.C. 917, 919 (1987); In re Michael Kormos, Exchange Act Rel. No. 35823 (June 8, 1995).

Accordingly, Respondent Firm 1 and Respondent 2 are each censured and fined \$2,500, jointly and severally.<sup>18</sup>

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Corporate Secretary

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<sup>18</sup> 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.