BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of	Decision
Department of Enforcement,	Complaint No. C9A000027
Complainant,	December 13, 2001
vs.	
Luther A. Hanson Charlestown, West Virginia,	
Respondent.	

Registered representative engaged in private securities transactions (sale of promissory notes) without providing prior written notice to and obtaining prior written approval from the NASD member firm with which he was associated. Held, findings affirmed and sanctions modified.

We called this matter pursuant to NASD Rule 9312 to review the findings and sanctions and, in particular, to examine the sufficiency of the sanctions of a March 8, 2001 decision of an NASD Regulation, Inc. ("NASD Regulation") Hearing Panel involving respondent Luther A. Hanson ("Hanson"). We affirm the Hearing Panel's findings that Hanson engaged in private securities transactions without providing prior written notification to and obtaining prior written approval from his employer, in violation of Conduct Rules 3040 and 2110. We modify the Hearing Panel's sanctions, and order that Hanson be fined $79,105.62, to be reduced by any amounts paid in disgorgement of commissions to identified customers within six months of the date of this decision. We modify the Hearing Panel's suspension order by increasing the period that Hanson is suspended from association with any member firm in any capacity from 90 days to six months. We also order that he requalify by examination as a general securities representative within six months of the date of this decision and that he be assessed hearing costs of $1,634.75.

Hanson admits that he engaged in the transactions at issue in this case from February 1998 through March 1999, but he argues that the transactions did not involve a security. We first describe the facts surrounding Hanson's sales. We next address

whether the transactions involved a security, a necessary finding for a Rule 3040 violation.

I. Background

In 1989, Hanson first became registered with the NASD as an investment company variable contract products representative of a member firm. On April 6, 1995, Hanson became registered as a general securities representative of a member firm. As relevant to this complaint, Hanson was registered from January 31, 1997 to May 17, 1999 as a general securities representative of Royal Alliance Associates, Inc. ("Royal Alliance" or "the Firm"). Since May 14, 1999, Hanson has been registered with another member firm as a general securities representative.

Hanson operated two companies throughout the period relevant to the complaint. Since 1980, Hanson has owned and operated L.A. Hanson Accounting Services ("Hanson Accounting"). In 1990, he opened a business called The Estate Planning Group, Inc, which engages in trust and estate planning, sales of insurance products, and provision of educational seminars.

II. The Capital Funding Promissory Notes

In late 1997, Hanson learned of the U.S. Capital Funding, Inc. ("Capital Funding") note program. Capital Funding was in the business of purchasing insured corporate receivables or U.S. government-backed receivables from First Capital Services, Inc. ("First Capital").[1] Capital Funding issued fixed-rate, six-month promissory notes in the minimum amount of $25,000 to obtain the funding to purchase the receivables from First Capital.

From February 1998 through March 1999, Hanson sold Capital Funding promissory notes through The Estate Planning Group and Hanson Accounting. Hanson used a two-page brochure distributed by Capital Funding to market the notes to his customers. All told, Hanson sold $2,636,854 in notes to 33 individuals and received a commission of three percent on the gross amount of each note, for a total of $79,105.62, as set forth in Exhibit A, attached hereto.[2] Hanson estimated that Capital Funding raised approximately $30 million through sales of its promissory notes.

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[1] First Capital had been in the business of financing insured corporate receivables and government-backed receivables since 1992. The Capital Funding advertising brochure claimed that First Capital would only finance corporate receivables that were "underwritten and insured by the Continental Insurance Company." There is no evidence in the record that Continental Insurance Company actually provided this service.

[2] The $2,636,854 in total sales included $1,129,344 in reinvestments or rollovers. Hanson's customers made total initial investments of $1,560,798 in the promissory notes. Hanson testified that approximately 12 of the 33 customers to whom he sold the notes were also customers of Royal Alliance.

The Capital Funding promissory notes bore interest rates of 9.25%, 9.5%, or 9.65%.[3] The Capital Funding sales brochure claimed that it filed Form UCC-1 statements to establish security interests in the receivables that it purchased from First Capital. Additionally, the note represented that Capital Funding would "partially assign to the holder of [the] Note, the security interest . . . in the receivable purchased with the principal sum which assignment shall be evidenced by appropriate UCC filings." There is no evidence in the record that these security interests were perfected or that "partial assignments" were made.

Hanson stated on appeal that Capital Funding defaulted on the promissory notes, which prompted him and other agents who had marketed the notes to hire counsel to pursue collection of the principal and interest owed on the notes on behalf of approximately 100 customers. Hanson further asserted that Capital Funding eventually filed for bankruptcy under Chapter 11 of the Bankruptcy Code and that he and the other agents hired another attorney to represent them in the bankruptcy proceeding on behalf of their customers. Hanson acknowledged at the appeal hearing that no customers had recouped any losses as a result of these proceedings.[4]

III. Discussion

A. Conduct Rule 3040

Conduct Rule 3040 prohibits associated persons from participating in any manner in a securities transaction outside their regular course of employment with a member firm, without providing prior written notice to and receiving prior written approval from the member firm. If the associated person is to receive selling compensation, he must provide his firm written notice describing in detail the proposed transaction. If the firm approves the participation, the firm must record the transaction on its books and records and supervise "as if the transaction were executed on behalf of the member." Rule 3040 serves the important functions of protecting investors from the hazards of unmonitored sales.

Hanson stipulated that he failed to provide prior written notice to Royal Alliance of his sales of the Capital Funding promissory notes. He argued, however, that the notes were not securities. For the reasons discussed below, we find that the notes are securities.

B. The Capital Funding Notes Are Securities

A "security" is defined by the Securities Exchange Act of 1934 ("Exchange Act") as: "any note . . . investment contract . . . or in general, any instrument commonly known

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[3] Agents were able to set the interest rate of a particular note within the 9.25% to 9.65% range by reducing the amount of commission they would receive on a particular note.

[4] There is no evidence in the record that Capital Funding made payments of principal or interest to any of Hanson's customers.

as a 'security' . . . but [does] not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months." Exchange Act Section 3(a)(10). The United States Supreme Court established a four-factor test for determining whether a "note" constitutes a security in Reves v. Ernst & Young, 494 U.S. 56 (1990) ("Reves"). As discussed more fully below, we reject Hanson's argument and agree with the Hearing Panel that the Capital Funding notes are securities.

The Capital Funding investment satisfies the definition of a "note" because it is a "[t]wo party instrument made by the maker and payable to [the] payee [that] is negotiable if signed by the maker and contains an unconditional promise to pay [a] sum certain in money, on demand or at a definite time, to order or bearer. See Black's Law Dictionary 1060 (6th ed. 1990). The "family resemblance" test adopted by the Supreme Court in Reves presumes that a note is a security as defined in Section 3(a)(10) of the Exchange Act unless: (1) it bears a strong resemblance to certain types of notes recognized, based on four factors, as being outside the securities investment market regulated under the securities laws, or (2) it should be added, based on a balancing of the same four factors, to that list of excluded notes.[5]

The presumption that a note is a security is a strong one and is rebutted only when the "two step, four-factor analysis based on all the evidence leads to the conclusion that the note is not a security." Stoiber v. SEC, 161 F.3d 745, 749 (D.C. Cir. 1998) (holding that two of the four Reves factors in that case "strongly favor[ed]" treating notes as securities). This reflects "Congress' intent to define the term 'security' with sufficient breadth to encompass virtually any instrument that might be sold as an investment." Stephen J. Gluckman, Exchange Act Rel. No. 41628, at 5 (Jul. 20, 1999) (citing Trust Co. of Louisiana v. N.N.P., Inc., 104 F.3d 1478, 1489 (5th Cir. 1997), cert. denied, 526 U.S. 1069 (1999)).

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[5] The four factors to be considered when determining whether a note bears a strong resemblance to the types of notes recognized as excluded from the definition of a security are:

> (1) the motivations that would prompt a reasonable seller and buyer to enter into the transaction;
> (2) the plan of distribution of the notes;
> (3) the reasonable expectations of the investing public regarding whether the instruments were securities; and
> (4) the presence of any alternative scheme of regulation or other factor that significantly reduces the risk of the instrument so as to make regulation under the securities laws unnecessary. Reves, 494 U.S. at 66-67.

We first find that the Capital Funding notes do not resemble those notes excluded from the definition of a security.[6] The comparison of the note in question to the notes excluded from the definition of a security is made by considering Reves' four factors, as discussed below.

With respect to the first Reves factor -- the motivations that would prompt a reasonable seller and buyer to enter into the transaction -- there is no dispute that Capital Funding purported to raise working capital for its business of purchasing receivables that were "either obligations of Federal, State, or Municipal Governments, or insured by Continental Insurance Company." The promotional literature issued by Capital Funding advertised the notes as bearing a "high yield," and Hanson admitted that his customers were motivated in part by the rate of interest the notes were expected to generate.[7] Thus, the first Reves factor weighs in favor of finding that the notes are securities.

With respect to the second factor, we examine the "plan of distribution" of the instrument to determine whether there has been "common trading for speculation or investment." Reves, supra, at 66. Reves holds that the offer and sale of an instrument to a "broad segment of the public" establishes the requisite common trading under this factor. Id. at 68.

The Capital Funding notes were sold to a broad segment of the public. Hanson represented in the appeal proceedings that he and approximately 12 other agents had filed legal proceedings against Capital Funding in an effort to recoup losses on behalf of approximately 100 customers. Hanson also represented at the appeal hearing that agents across the United States sold the Capital Funding notes. Further, Hanson did not sell the notes to sophisticated institutions, but sold the notes to individual investors with whom he

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6 Reves identified the following notes as excluded from the definition of securities: notes delivered in consumer financing, notes secured by mortgages on homes, short-term notes secured by liens on small businesses or some of the small businesses' assets, notes evidencing "character" loans from banks, short-term notes secured by an assignment of accounts receivable, notes which simply formalize an open-account debt incurred in the ordinary course of business, and notes evidencing loans by commercial banks for current operations. See Reves, 494 U.S. at 65. The Capital Funding notes do not possess the characteristics of these instruments. With respect to the exclusion for "short-term notes secured by an assignment of accounts receivable," there is no evidence that Capital Funding had assigned its security interest in the receivables that it purportedly purchased or that it had a valid security interest in those receivables, notwithstanding its claims to that effect in the text of the notes.

7 Reves emphasized that "profit" in the context of notes means "a valuable return on an investment, which "undoubtedly includes interest." Reves 494 U.S. at 68 n.4. If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a "security." Id. at 66-67.

had a personal relationship.[8] The solicitation of individual investors rather than sophisticated institutions is another circumstance weighing in favor of a finding of "common trading." Stoiber, 161 F.3d at 751; see also Resolution Trust Corporation v. Stone, 998 F.2d 1534 (10th Cir. 1993). The solicitation of a large number of individual investors strongly suggests the existence of "common trading" and thus militates in favor of a finding that the notes are securities under the second Reves factor.[9] Id.

With respect to the third factor -- the reasonable expectations of the investing public as to whether the instruments were securities -- we find that the investors in the Capital Funding notes reasonably understood that the notes were "investments." The Capital Funding marketing brochure that Hanson gave to his customers characterized the product as an "investment."[10] Further, Hanson sold the notes in the same manner that he marketed other securities investments. Hanson operated The Estate Planning Group and his Royal Alliance business out of the same office space, and he admitted that he promoted the notes to his customers in connection with his estate planning services. He also admitted that there was one telephone line for the two businesses and that callers were told that it was the office of "The Estate Planning Group and Royal Alliance." Hanson's customers could thus reasonably conclude that Hanson was promoting securities investments to them. Indeed, Hanson testified that approximately 12 out of the 33 individuals who invested in the notes were his Royal Alliance customers. Thus, the third Reves factor weighs in favor of the finding that the notes are securities.

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[8] The fact that the individuals who bought the notes from Hanson may have been family members and friends of Hanson does not mean that the notes were not publicly distributed. As the Securities and Exchange Commission ("Commission") has previously stated:

> It is not unusual . . . for investors to have a social relationship with a registered representative. The existence of a social relationship does not mean, however, that such an investor would not be entitled to the same protections that a stranger to the offeror would receive in an offering under the federal securities laws.

Gerald James Stoiber, 53 S.E.C. 171, 179 (1997).

[9] Capital Funding marketed the notes by suggesting that there would be a trading market in the instruments. Notwithstanding the representation in the note that the "Borrower's obligation under [the] note may not be assumed by any entity without the proper written consent of the Lender," Capital Funding touted the notes in its market brochure as providing "handsome returns, rock-solid safety, and liquidity." (Emphasis added.)

[10] The marketing brochure represented that "[c]ommon sense will tell you this investment is an ideal combination of handsome returns, rock-solid safety, and liquidity." (Emphasis added.)

The fourth Reves factor looks to the presence of any alternative scheme of regulation or other scenario that significantly reduces the risk of the instrument so as to make regulation under the securities laws unnecessary. Here, there is no risk-reducing factor to suggest that these instruments are not securities. The fact that Capital Funding left an array of unpaid customers after defaulting on the notes and filing for bankruptcy is completely inconsistent with the notion that regulation of these notes under the securities laws is unnecessary. In addition, although Hanson argued that there was no need for the protection provided by the securities laws because of the insured and securitized structure of the promissory notes, there was no evidence of the existence of any insurance protection, which in any event was limited to the underlying collateral and not the notes issued by Capital Funding. Moreover, there was no evidence that any security interest was perfected in any accounts receivable, or that any specific note was collateralized by any specific accounts receivable. Thus, the fourth factor weighs in favor of finding that the notes are securities.

We find that based on the above four factors, the note does not resemble one of the enumerated types of notes excluded from the definition of a security. We also find that under the second step of the analysis -- whether the note should be added to the list of excluded notes, based on a balancing of the same four factors -- the four factors weigh heavily against the creation of a new category of note outside the protection of the federal securities laws. Accordingly, we find that the Capital Funding notes are securities.[11]

The final issue that we examine is whether the notes are not securities because they were short term, meaning that they had a maturity of less than nine months. Section 3(a)(10) of the Exchange Act provides an exclusion from the definition of a "security" for any notes that have a maturity at the time of issuance not exceeding nine months.

Here, the record demonstrates that a majority of Hanson's customers had, in fact, notes with a one-year maturity. Accordingly, under Reves, the exclusion does not apply.[12]

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[11] In the proceedings below, Hanson's attorney argued that the notes at issue resembled two of the excluded categories -- short-term notes secured by a lien on a small business or some of its assets or short-term notes secured by an assignment of accounts receivable -- or that the notes bore a sufficient family resemblance to those categories that they should be added as a new category of excluded notes. We reject these arguments. There is no evidence that the notes were secured by a lien on a small business. As to the argument that the notes were short-term notes secured by an assignment of accounts receivable, there is nothing in the record evidencing the existence of any security interests or assignments.

[12] Moreover, we also conclude that the notes are securities because they do not fit within the commercial paper exclusion to the definition of a security. The Ninth Circuit has held that "[t]he mere fact that a note has a maturity of less than nine months does not take the case out of [the Securities Acts], unless the note fits the general notion of 'commercial paper.'" S.E.C. v. R.G. Reynolds Enterprises, Inc., 952 F.2d 1125, 1132 (9th

Accordingly, we affirm the Hearing Panel's finding that the Capital Funding notes are securities.

C. Hanson Failed to Provide Notice of Private Securities Transactions

Hanson participated in the private sale of securities through his sales of the Capital Funding notes to 33 customers, and he admitted that he failed to provide Royal Alliance with prior written notice of the transactions or to receive prior written approval from Royal Alliance, in violation of Rule 3040.[13] Accordingly, we affirm the Hearing Panel's finding that Hanson violated Rule 3040 as alleged in the complaint and further find that his conduct constituted violations of Rule 2110, which requires the observance of high standards of commercial honor and just and equitable principles of trade.

III. Sanctions

The Hearing Panel ordered Hanson to disgorge $79,105.62 in commissions to his customers and stated that, to the extent Hanson provided proof that particular customers had recouped their investment, the commissions relating to such customers should be converted to a fine to be paid to the NASD. The Hearing Panel also suspended Hanson in all capacities for 90 days and required him to requalify as a general securities representative within six months.

Hanson argues on appeal that he is unable to pay any monetary sanctions because of his financial condition. In determining an appropriate monetary sanction, we have considered the financial statements submitted by Hanson in the course of his appeal. Based on the financial information in the record, we conclude that Hanson has not met

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Cir. 1991) (quoting Zeller v. Bogue Electric Manufacturing Corp., 476 F.2d 795, 800 (2d Cir.), cert. denied, 414 U.S. 908 (1973)). Assuming, arguendo, that the Capital Funding notes were short term, we conclude that they do not qualify as commercial paper. As opposed to commercial paper, which is purchased and sold between institutions, the Capital Funding notes were sold in a large-scale offering to unsophisticated members of the public. See R.G. Reynolds, 952 F.2d at 1132 (finding that the exclusion was meant to apply to "short term paper of the type available for discount at a Federal Reserve bank and of a type which rarely is bought by private investors.")

[13] Hanson's sales of Capital Funding notes came to the attention of Royal Alliance's regional supervisor, who contacted Hanson's immediate supervisor, Robert Capito ("Capito"), to determine whether Hanson had advised Capito about his involvement in the note program. Capito testified that he was unaware of Hanson's involvement in the note program. Royal Alliance eventually terminated Hanson for his sales of the Capital Funding notes.

his burden of establishing an inability to pay monetary sanctions in the amount of the commissions that he earned on the violative transactions.[14]

We note that the NASD Sanction Guideline ("Guideline") for private securities transaction violations recommends a fine in the range of $5,000 to $50,000 and a suspension for up to two years.[15] The Guideline recommends a bar in egregious cases. Although we consider Hanson's misconduct to be serious, we do not believe that it merits a bar.

In assessing sanctions, we considered that the Hearing Panel and the National Adjudicatory Council ("NAC") Subcommittee that heard this case on appeal were impressed by Hanson's contrition. Hanson admitted during the appeal proceeding that he had "made a mistake in judgment, a huge error," and he represented in both the proceeding below and at the appeal hearing that he was pursuing legal action against the issuer on behalf of his customers, most of whom were friends and family members. While these circumstances do not excuse Hanson's misconduct, we have considered them with respect to sanctions.

Hanson argued that he attempted to give Capito, who was his immediate supervisor, oral notice[16] of his sales of the promissory notes when Capito audited Hanson's office in 1998.[17] According to Hanson, he briefly mentioned the Capital Funding notes to Capito and then showed him the marketing brochure, at which Capito glanced. Hanson claimed that he and Capito were then interrupted by Hanson's staff and never returned to the subject. Capito testified that he knew about Hanson's accounting and estate planning work because Hanson had listed those activities on the firm's outside business activities form, but that Hanson had not mentioned the sale of any promissory notes to him during the audit. Even if we credit Hanson's version of the events, we do not consider his brief remark to his supervisor about the Capital Funding note program as

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[14] The financial information that Hanson provided at the direction of the NAC Subcommittee in the course of his appeal shows that his assets exceed his liabilities. Although Hanson argued that his assets were encumbered, he failed to meet his burden of showing that he was not in fact able to satisfy the monetary sanction.

[15] See Guidelines (1998 ed.) at 15 (Selling Away).

[16] While oral notice provides no defense to Hanson's misconduct, it is listed as a principal consideration in determining sanctions under the private securities transactions Guideline.

[17] Hanson was located in a branch office that Capito audited in June and December of 1998. It is unclear from the record whether Hanson's purported conversation with Capito about the notes occurred during Capito's June or December 1998 visit. In any event, even if the alleged conversation with Capito had occurred in June 1998, any oral notice would have been after the fact, because Hanson started selling the notes in February 1998.

tantamount to explicit oral notice to the Firm of his involvement with the sale of the Capital Funding notes, nor do we consider it a mitigating factor.

Hanson also argued that he had relied on his attorney's advice that the Capital Funding notes were not securities. The evidence that Hanson offered, however, does not meet our requirements for mitigating sanctions based on reliance on advice of counsel. Under the Guidelines, the test used for determining whether reliance on counsel may mitigate sanctions is "[w]hether the respondent demonstrated reasonable reliance on competent legal or accounting advice."[18] Hanson has failed to meet this requirement. The record is devoid of evidence on several points that would be relevant to this determination, including: the facts disclosed to the attorney, the formality of the opinion requested, the existence of an attorney-client relationship, the experience or expertise of the attorney, the details of the opinion given, and the circumstances under which the opinion was requested. Based on the facts before us,[19] we do not credit Hanson's advice of counsel claim and we do not consider it a mitigating factor.

An employee's duty to inform his or her firm of private securities transactions under Rule 3040 serves an important regulatory purpose. It protects investors from the hazards of unmonitored, unsupervised sales, while protecting member firms from exposure to loss and litigation from dissatisfied customers. The violations at issue undermined the ability of Royal Alliance to supervise Hanson's activities properly and could have been prevented had the Firm been given appropriate prior written notification.[20] We note that Hanson engaged in the misconduct over an approximately 13-month period and that the misconduct resulted in injury to the investing public.[21] Further, we consider Hanson's sale of notes to a number of his employer firm's customers to be an aggravating factor, a principal consideration set forth in the relevant Guideline.

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[18] See Guidelines, Principal Considerations No. 7, at 8 (1998 ed.).

[19] We also note that one reason why Hanson did not meet his burden on this issue is that his attorney's advice was oral. Although an attorney's written advice is not essential for claiming that advice of counsel should mitigate sanctions, here Hanson's description of his attorney's oral advice lacked the level of detail that would convince us to credit his reliance as reasonable.

[20] Hanson had listed his accounting and estate planning businesses (Hanson Accounting and The Estate Planning Group, respectively) on the outside business activities form, but he did not include any information about the Capital Funding note program.

[21] Hanson testified at the proceedings below that only three of the 33 customers had recouped their investments, but he did not provide any documentary evidence in support of that statement. At the appeal hearing, Hanson represented that none of the customers had received any reimbursement from the issuer.

On the basis of these considerations, including all factors in mitigation and aggravation, we modify the Hearing Panel's decision to suspend Hanson for 90 days from associating with any member firm in all capacities and increase his suspension to six months. We have determined that a longer period of suspension is necessary in light of the following facts: (1) that Hanson engaged in the misconduct for an extensive period; (2) that Hanson sold a large dollar amount of promissory notes; and (3) that Hanson sold the notes to customers of his employer firm. We modify the monetary sanctions imposed by the Hearing Panel and order that Hanson be fined $79,105.62, provided that the fine shall be reduced by any amounts paid in disgorgement to Hanson's customers (as identified on Exhibit A) within six months of the date of this decision.[22] All proof of payment of the disgorged commissions to customers must be submitted to staff of NASD Regulation District Office No. 9 within six months of the date of this decision.[23] We sustain the Hearing Panel's decision to require Hanson to requalify as a general securities representative and order that he do so within six months from the date of this decision. Hanson is assessed $1,634.75 in hearing costs for the proceedings below.

Accordingly, we impose the following sanctions on Hanson: a six-month suspension from associating with any member firm in any capacity; a fine of $79,105.62, to be reduced by any amounts paid in disgorgement of commissions to Hanson's customers (as identified on Exhibit A) within six months of the date of this decision (all proof of payment of the disgorged commissions to customers to be submitted to staff of NASD Regulation District Office No. 9 within six months of the date of this decision); a

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[22] We note that the NAC Subcommittee that heard this matter on review specifically requested that Hanson provide documentation of the expenses that he had incurred on behalf of his customers in connection with his legal efforts to recoup their losses. Although subsequent to the appeal hearing Hanson provided the NAC Subcommittee with a written list of purported legal expenses, he did not provide the requested documentation of such expenses. Thus, we do not consider any of those expenses as an offset (as suggested by the Department of Enforcement during the appeal hearing) against the amount of commissions that Hanson must pay as monetary sanctions. We have further concluded that, because the record does not contain any documentary information about the legal proceedings in which Hanson claims he is involved on behalf of his customers, there is no basis for us to find a sufficient nexus between that proceeding and this matter to justify any offset against Hanson's commissions.

[23] We note that although the fine is higher than the $50,000 maximum recommended by the Guideline for private securities transactions, it is justified because it includes Hanson's financial benefit. As set forth in General Principle No. 6 of the Guidelines, at 7 (1998 ed.), the recommended fine amount may be increased by adding the amount of a respondent's financial benefit.

requirement to requalify as a general securities representative within six months from the date of this decision; and hearing costs of $1,634.75.[24]

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney, Senior Vice President and Corporate Secretary

[24] 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 therein.

Pursuant to NASD Procedural Rule 8320, any member that 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.