

requisite notice and used misleading sales literature in connection with the private securities transactions.¹ The Commission determined that Keyes's misconduct warranted significant sanctions and was conduct inconsistent with the duties owed to his customers and his firm. Keyes argued that the sanctions should be reduced because he provided oral notice to his supervisor of the private securities transactions and because his supervisor approved of his conduct. The Commission concluded that Keyes's claim of oral notice to his supervisor was a mitigating factor that warranted consideration, but noted a number of reasons why the degree of mitigation was lessened. The Commission remanded the matter to the NAC to reconsider the sanctions imposed. On remand and after reconsideration, we find the appropriate sanction to be a two-year suspension and a fine of \$88,412, which includes the disgorgement of ill-gotten gains, for the private securities transactions and a six-month suspension and \$15,000 fine for Keyes's use of misleading sales literature.

II. Procedural History

The Department of Enforcement ("Enforcement") filed a two-cause complaint against Keyes on April 5, 2004.² Cause one of the complaint alleged that Keyes participated in the offer and sale of promissory notes that were securities to customers for compensation without providing prior written notice to, and receiving prior written approval from, his employing member firm. Cause two of the complaint alleged that Keyes used misleading and unbalanced sales literature in connection with the promissory note transactions. Keyes generally denied these allegations and argued that mitigating circumstances applied to each of the alleged violations. On November 29, 2004, a Hearing Panel found Keyes liable for the two causes alleged in the complaint. The Hearing Panel barred Keyes in all capacities for the selling away violation. In light of the bar, the Hearing Panel declined to impose a sanction for the sales literature violation, but determined that a six-month suspension and a \$15,000 fine otherwise would be appropriate.

Keyes appealed the Hearing Panel's decision to the NAC. On December 28, 2005, we affirmed the findings and sanctions imposed by the Hearing Panel. Keyes sought the Commission's review of this decision, and on November 8, 2006, the Commission issued a decision sustaining the findings of liability. Regarding sanctions, the Commission rejected most of Keyes's arguments in favor of mitigation. The Commission determined, however, that Keyes had demonstrated "some mitigation" with respect to his argument that he provided oral notice to his immediate supervisor at his firm regarding the private securities transactions and that his

¹ The Commission also sustained NASD's imposition of costs totaling \$3,510.75.

² The complaint also named Ronald Wightman ("Wightman") as a respondent in this matter. NASD alleged that Wightman failed to supervise Keyes at Investors Capital Corp. ("ICC") in violation of Conduct Rules 3010 and 2110. Wightman settled this matter with NASD in August 2004.

supervisor approved of his conduct. The Commission remanded the matter to NASD to reconsider sanctions in light of its opinion.

III. Facts

The Commission sustained the findings that Keyes sold more than \$1.9 million in promissory notes that were securities to 35 customers over an 11-month period without providing written notice to, and receiving prior written approval from, his member firm, in violation of Conduct Rules 3040 and 2110. The Commission further sustained the findings that Keyes used misleading sales literature in connection with the private securities transactions, in violation of Conduct Rules 2210 and 2110. The following facts are pertinent to these findings and to the consideration of appropriate sanctions for these violations.

A. Private Securities Transactions

Wightman recruited Keyes to join ICC in April 2000. Keyes registered with ICC as an investment company products and variable contracts limited representative.³ Wightman was a registered principal for ICC and worked out of ICC's office of supervisory jurisdiction in Salt Lake City, Utah.⁴ Keyes was hired to work out of his own office in California. Wightman was Keyes's supervisor.

In June or July 2000, Larry Lee, a life insurance broker in Salt Lake City, Utah, invited Keyes to meet Wightman in Salt Lake City and to attend a sales presentation given by Dennis Wynn, the founder and president of the Wynn Company ("Wynn"). The purpose of the meeting was to introduce Keyes to the Wynn secured commercial note program ("Wynn notes"). Dennis Wynn described Wynn's business and the Wynn notes during his presentation. Wynn was a Utah corporation engaged in the sale of used automobiles through high interest loans to customers with impaired credit ratings. The automobile loans carried an interest rate of 28-30% and an average term of 24 months.

Wynn used the funds raised through selling the Wynn notes to finance its operations. According to Wynn promotional materials, an investor received from Wynn a promissory note and an Assignment of Payments Agreement, which were purportedly held in escrow by an escrow agent. The Assignment of Payments Agreement secured the Wynn notes. Keyes testified before the Hearing Panel, however, that he believed that the automobiles secured the Wynn notes and that Wynn held the automobiles' titles. The Wynn notes bore a 12-month

³ ICC terminated Keyes in November 2001 for his failure to comply with the firm's policies and procedures.

⁴ ICC's home office was located in Massachusetts.

maturity date and provided an interest rate of 10-12%. At maturity, the investor could liquidate the note, repurchase it, or invest an additional amount.

During that same trip to Salt Lake City, Keyes toured Wynn's headquarters and met with Wightman to establish a plan for Keyes's ICC business. Keyes believed, based on his observations, that Wynn was a viable operation. He testified that he saw a physical structure and staff conducting business. He stated that he saw automobiles for sale, a repair shop with mechanics working on the vehicles, and payment checks received from automobile purchasers. Keyes, however, did not review Wynn's financial statements or the purported escrow agreement, or independently verify the existence of an escrow relationship.

After touring Wynn, Keyes met with Wightman. According to Keyes, Wightman discussed his vision for expanding his sales team's annuity business. Keyes testified that Wightman discussed his plan to convert existing fixed annuity contracts into variable products. Keyes further testified that part of Wightman's plan included rolling the interest that customers earned from the Wynn notes into variable annuities.

Keyes began selling the Wynn notes in January 2001.⁵ From January 2001 through November 2001, Keyes referred 35 customers to Wynn. These customers purchased Wynn notes having a total value of \$1,900,634.70. Wynn paid Keyes \$63,412 for those referrals. ICC required its representatives to disclose all compensated outside business activity in writing to the firm prior to engaging in that activity. Keyes did not do so with respect to his involvement with Wynn.⁶

In a response to an NASD information request, ICC stated that the Wynn notes were unapproved products and that ICC prohibited the sale of all promissory notes. And indeed Keyes conceded that he provided no written notice to, and received no written approval from, any officer, principal, or any other duly authorized person that could act on behalf of ICC in granting an approval for such a request. Keyes testified, however, that Wightman recommended the products to Keyes that he was to sell and that Wightman knew that he was selling the Wynn notes. Keyes stated that Wightman asked him to send all documents to Wightman for review and that Keyes forwarded documentation to Wightman related to the reinvestment of funds from the Wynn notes into variable annuities.

In addition to selling the Wynn notes himself, Keyes also recruited another registered individual to sell the Wynn notes. In a response to an NASD request for information, an ICC registered representative stated that Keyes introduced him to the Wynn note program in 2001 and that he received compensation from Keyes for referring customers who later purchased Wynn

⁵ Wynn filed for bankruptcy in July 2002.

⁶ Keyes taught a preparatory class for the Series 6 examination and continuing education courses. He disclosed that he was a "CE teacher" on ICC's outside business activities form.

notes. The representative stated that he later sold the Wynn notes directly to customers. In Keyes's investigative testimony, he admitted that he discussed selling the Wynn notes with this representative.

B. Misleading Sales Literature

Keyes stipulated that he provided customers with three pieces of sales literature describing various aspects of the Wynn note program in connection with the Wynn note transactions. The three pieces of sales literature consisted of a tri-fold brochure, an informational flyer, and an "investment triangle." Keyes stipulated that Wynn provided him with the tri-fold brochure and the informational flyer and that he prepared the investment triangle. Keyes testified that he discussed with Wightman the use of the investment triangle prior to using it with clients. According to Keyes, Wightman liked the triangle, "thought it was a strong working piece," and never told Keyes that he was prohibited from using the triangle or that he was required to receive ICC's permission to use it.

The tri-fold brochure described the Wynn notes as secured by a "portfolio of automobile contracts with titles held by an escrow agent." It further assured a potential investor of the notes' low risk. The brochure stated "the collateral backing [each] note is carefully managed for safety and security. . . . Note holders have enjoyed solid growth, reliable income, and peace of mind." The brochure also highlighted the Wynn note program as "[s]uitable for IRA's, SEP's and other retirement plans."

The informational flyer included information about Wynn and its business. It also described the Wynn note program and contained a "frequently asked questions" section. The informational flyer listed the salient features of the Wynn notes, including an interest rate of "10% APR" with a 12-month maturity, monthly interest paid to the note holders or compounded within the notes, and collateralization of the notes equal to 150% of the notes' value. The flyer described the collateral securing the notes as consisting of two parts: the loan contracts between the consumer and Wynn and the actual titles to the automobiles. In addition, the flyer stated that an independent escrow agent "monitors" the notes to ensure that the collateral is maintained at 150% of the notes' value.

The investment triangle compared the rate of return and risk of the Wynn notes with other types of investments. At its apex, the triangle listed investment in stocks. The second through fourth tiers of the triangle listed investment in mutual funds, the Wynn notes (listing a rate of return of 10.5%), and annuities, respectively. At its base, the triangle listed bank investments (with a 1.5% rate of return), money market funds (with a 1.85% rate of return), and certificates of deposit (with a 3.75% rate of return).

IV. Discussion

We have considered the complete record in this case and the parties' briefs filed on remand. While we find numerous aggravating factors present in this case, we conclude that Keyes has demonstrated mitigation sufficient to modify our prior determination to bar Keyes.

As discussed below, we instead impose a two-year suspension and a fine of \$88,412 for the private securities transactions. We further find that a six-month suspension and a \$15,000 fine remain the appropriate sanctions for Keyes's use of misleading sales literature. We order that Keyes serve the suspensions consecutively.

A. Private Securities Transactions

The NASD Sanction Guidelines ("Guidelines") for private securities transactions provide that an adjudicator's first step in determining sanctions is to assess the quantitative extent of the transactions.⁷ The Guidelines provide for a fine between \$5,000 and \$50,000 and the imposition of a suspension of one year to a bar when the dollar amount of the sales exceeds \$1 million.⁸ The Guidelines further provide that adjudicators "should increase the recommended fine amount by adding the amount of a respondent's financial benefit."⁹ Keyes sold more than \$1.9 million in Wynn notes to 35 customers over an 11-month period. The Commission determined in its November 8, 2006 decision in this matter that "[t]hese large amounts of unapproved private securities transactions to numerous customers over an extended period warrant substantial sanctions." *Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *15 (Nov. 8, 2006).

In addition to the dollar value of sales, the number of customers involved, and the length of time over which the selling away occurred, the Guidelines also provide that "[t]he presence of one or more mitigating or aggravating factors may either raise or lower the . . . sanctions" and direct us to consider the principal considerations applicable to all violations and 10 additional principal considerations in determining the appropriate sanction.¹⁰ The Commission found that one of these considerations was a mitigating factor and that numerous others were aggravating factors. We discuss these considerations in detail below.

⁷ See *NASD Sanction Guidelines 15* (2006) (Selling Away (Private Securities Transactions)), http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf [hereinafter *Guidelines*].

We note that the NAC's prior decision and the Commission's decision both referenced *NASD Notice to Members 03-65* (Oct. 2003) in the sanctions discussions related to the private securities transactions. The sanctions provisions set forth in *NASD Notice to Members 03-65* have since been incorporated into the Guidelines as cited above.

⁸ *Id.*

⁹ *Id.* n.1.

¹⁰ *Guidelines*, at 15.

The Guidelines direct us to consider whether Keyes provided oral notice of the details of the proposed Wynn note transactions to ICC, and, if so, ICC's oral or written response.¹¹ Keyes contends that Wightman knew of Keyes's participation in the program, instructed that Keyes only communicate with Wightman at ICC, and approved of Keyes's conduct.¹² Keyes therefore argues that we should consider such oral notice and approval as significantly mitigating. The Commission in its decision found that the record was "sufficiently unclear as to the extent of Wightman's involvement in, or approval of" the Wynn note transactions, but nonetheless found that Keyes's claims regarding Wightman's knowledge and approval warranted "some mitigation." *Keyes*, 2006 SEC LEXIS 2631, at *26-27. Accordingly, we find mitigating that Keyes did not deceive Wightman and that Wightman knew of Keyes's involvement in selling the Wynn notes. Central to our finding is the fact that Wightman did not object to Keyes offering the Wynn notes for sale and proposed the use of the notes as part of a business plan to increase annuity business by rolling the interest that customers earned from the Wynn notes into variable annuities. Any encouragement by Wightman to sell the Wynn notes, however, does not serve to reduce Keyes's responsibility to comply with Conduct Rule 3040. *See Charles E. Kautz*, 52 S.E.C. 730, 733, 736 (1996).

As the Commission recognized, several "factors lessen the degree to which Wightman's actions serve to mitigate Keyes's misconduct." *Keyes*, 2006 SEC LEXIS 2631, at *27. First, there is no evidence in the record that indicates that Keyes's oral notice to Wightman contained the specific information required by Conduct Rule 3040. The notice must describe in detail the proposed transactions, including the identification of the investor, the amount of money invested, and the associated person's proposed role in the transactions, and state whether the associated person has received or may receive selling compensation in connection with the transactions. *Anthony H. Barkate*, Exchange Act Rel. No. 49542, 2004 SEC LEXIS 806, at *2 (Apr. 8, 2004), *aff'd*, 125 Fed. Appx. 892 (9th Cir. 2005); *William Louis Morgan*, 51 S.E.C. 622, 627 n.19 (1993). Second, Keyes received selling compensation in the form of finder's fees from Wynn for the transactions. Under Rule 3040(c), Keyes was required to receive written permission from ICC before offering the Wynn notes. It is undisputed that Keyes received no such written

¹¹ *See id.* at 16.

¹² Wightman did not testify at the hearing. Despite Wightman attending the start of the hearing, Keyes declined to call Wightman as a witness.

We disagree with Keyes that the record, or the Commission's decision, unequivocally demonstrates that Wightman directed that Keyes communicate *only* with him. While the record shows that Wightman, as Keyes's supervisor, requested that Keyes communicate with Wightman and send him documentation for review, it does not show that Keyes was precluded from contacting, or communicating with, others at ICC. Indeed, Keyes testified that he had spoken on the telephone with staff from the ICC home office and attended seminars where he had contact with other ICC staff.

permission from ICC. Third, because ICC prohibited the sale of all promissory notes, Keyes's reliance on Wightman is misplaced when Wightman had no authority to approve of Keyes's participation in the sale of an unapproved product. Moreover, Keyes was not qualified to sell the Wynn notes. Keyes was registered solely as an investment company products and variable contracts limited representative. As such, Keyes was qualified to sell only mutual funds, variable annuities, variable life insurance, unit investment trusts, and municipal fund securities and not promissory notes.¹³ Even if Keyes believed that this product was tacitly approved for sale to his clients pursuant to Wightman's business plan, Keyes was not properly licensed to do so. In addition, Rule 3040(c) provides that if a member approves of a representative's participation in a transaction, "the transaction shall be recorded on the books and records of the member." Keyes stipulated that he received the selling compensation from Wynn. There is no evidence, however, that the transactions were recorded on ICC's books and records. Keyes also may not shift his responsibility to Wightman for Keyes's own lack of knowledge or appreciation of Conduct Rule 3040's requirements. *See Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995). Fourth, when Keyes became registered with ICC, the firm informed him of the requirement to disclose all compensated outside business activity to the firm in writing prior to engaging in such activity or receiving such income. Keyes did not disclose his involvement with Wynn in any ICC compliance materials, nor did he update his Uniform Application for Securities Industry Registration or Transfer Form to disclose his business relationship with Wynn. Keyes's disclosure to Wightman does not meet Conduct Rule 3040's requirements or ICC's disclosure policy and does not lessen the subterfuge upon ICC.¹⁴

We find to be aggravating for purposes of sanctions that Keyes's misconduct exposed his customers to substantial harm and benefited him financially.¹⁵ Any customer who had not cashed out before Wynn filed for bankruptcy became an unsecured creditor in the bankruptcy proceedings. For example, two of Keyes's customers who purchased Wynn notes were included among Wynn's 20 largest unsecured claims. The claims of these two customers totaled over

¹³ *See* Membership and Registration Rule 1032(b); *NASD Registrations and Qualifications*, http://www.nasd.com/RegistrationQualifications/BrokerGuidanceResponsibility/Qualifications/NASDW_011099?ssSourceNodeId=759&ssSourceSiteId=5.

¹⁴ Keyes argues that the bar that the NAC imposed previously should be reduced when compared with the sanctions imposed in other NASD disciplinary proceedings involving other associated persons. As the Commission determined in its decision, the appropriate remedial sanction depends on the facts and circumstances of the particular case. *Keyes*, 2006 SEC LEXIS 2631, at *18. We determine that Keyes's misconduct is egregious and warrants a significant sanction. *See id.* at *19 ("Keyes's conduct in selling over \$1.9 million in Wynn notes to thirty-five customers over the course of eleven months, while receiving \$63,412 in selling compensation, is among the more egregious cases of those cited by Keyes.").

¹⁵ *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 11, 17), 16.

\$429,000. The sale of the Wynn notes also resulted in Keyes's sizable monetary gain.¹⁶ Keyes received \$63,412 in selling compensation from Wynn.

We also find that Keyes acted recklessly when he recommended the Wynn notes to customers.¹⁷ Keyes failed to diligently inquire into Wynn's financial condition or to examine the purported escrow agreement or attempt to verify the existence of such an agreement. As the Commission noted, Keyes's lack of inquiry "further supports imposition of serious sanctions." *Keyes*, 2006 SEC LEXIS 2631, at *17-18.

Keyes marketed the Wynn notes to customers as part of an investment plan in which customers would roll the interest earned from the Wynn note and fixed annuities into variable annuities. Keyes thus created the impression that ICC sanctioned the Wynn note sales, which serves to further aggravate his misconduct.¹⁸ ICC, however, prohibited the sale of all promissory notes, and ICC had not authorized offering the Wynn notes as an approved product.

Further aggravating is the fact that Keyes recruited another registered individual to sell the Wynn notes.¹⁹ Initially, Keyes paid this individual for customer referrals of persons interested in purchasing the Wynn notes. This individual later sold the Wynn notes directly to customers.

Keyes failed to recognize the obligations attached to registration as a securities professional and the requirement that he understand and follow NASD rules and his firm's written policies. *Keyes*, 2006 SEC LEXIS 2631, at *26. A violation of Conduct Rule 3040 "deprives investors of a member firm's oversight and due diligence, protections they have a right to expect." *Id.* at *15. Keyes had been an NASD registered person for 15 years who nonetheless engaged in egregious selling away of more than \$1.9 million in Wynn notes to 35 customers. Keyes's sales resulted in customer harm while he profited handsomely. For the finding that Keyes violated Conduct Rules 3040 and 2110, we conclude that Keyes's misconduct warrants a two-year suspension in all capacities and a fine of \$88,412, which includes the requirement that he disgorge his ill-gotten gains of \$63,412.²⁰

¹⁶ See *id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

¹⁷ See *id.* (Principal Considerations in Determining Sanctions, No. 13).

¹⁸ See *Guidelines*, at 15.

¹⁹ See *id.* at 16.

²⁰ In its complaint, Enforcement sought an order requiring Keyes to pay restitution to his customers. We previously determined that an order of restitution would be inappropriate in this case because the record is unclear regarding the customers' quantifiable losses. See, e.g., *Guidelines*, at 4 ("Adjudicators should calculate orders of restitution based on the actual amount

B. Sales Literature

For failing to comply with rule standards or the inadvertent use of misleading communications, the Guidelines suggest a fine of \$1,000 to \$20,000.²¹ If the use of the misleading communications is intentional or reckless, the Guidelines suggest a fine of \$10,000 to \$100,000 and a suspension of the responsible individual for up to two years.²² We find that Keyes's use of the sales literature was, at a minimum, reckless.

The record reflects that Keyes took no steps to ensure the sales literature's accuracy or to have ICC's compliance department review and approve the sales literature. Instead, Keyes disseminated sales literature that failed to address the risks of the Wynn notes and gave investors the false impression that an investment return was certain.

Keyes argues in mitigation that Wightman knew of his use of the Wynn sales literature and thus approved of its use. Irrespective of Wightman's knowledge or understanding of the sales literature, it remained Keyes's obligation as a registered person to use sales literature that was balanced, not misleading, and that complied with NASD rules. *See Kautz*, 52 S.E.C. at 733, 736 (emphasizing that firm approval of violative conduct does not lessen respondent's culpability). Customers were provided no sound basis for evaluating an investment in the Wynn notes and were not informed that the notes were illiquid and carried a high risk of default. Keyes's use of the misleading and unbalanced sales literature further demonstrates his failure to fulfill his obligations to his customers.

For these reasons, we suspend Keyes in all capacities for six months and fine him \$15,000 for his violation of NASD's advertising rules.

[cont'd]

of the loss sustained by a person, member firm or other party, as demonstrated by the evidence.”). With the exception of the two customers who became documented unsecured creditors in the Wynn bankruptcy, the record provides no information regarding customer losses. The Commission concurred in that finding. *Keyes*, 2006 SEC LEXIS 2631, at *16 n.12.

²¹ *Guidelines*, at 84-85 (Communications with the Public—Late Filing; Failing to File; Failing to Comply with Rule Standards or Use of Misleading Communications).

²² *Id.* at 85.

V. Conclusion

Accordingly, for the private securities transactions, we suspend Keyes for two years and fine him \$88,412. For the sales literature violation, we suspend Keyes for six months and fine him \$15,000.²³ We order that Keyes serve the suspensions consecutively.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President
and Corporate Secretary

²³ We also have considered and reject without discussion all other arguments of the parties.

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 nonpayment. 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 nonpayment.

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
(202) 728-8062-Direct
(202) 728-8075-Fax

July 25, 2007

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

Richard A. Ruben, Esq.
5850 Canoga Avenue
Suite 400
Woodland Hills, CA 91367

Re: Complaint No. C02040016: Philippe N. Keyes

Dear Counsel:

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

In the enclosed decision, the NAC imposes the following sanctions: Philippe N. Keyes (“Keyes”) is suspended for two years and fined \$88,412 for engaging in private securities transactions. Keyes is also suspended for six months and fined \$15,000 for the sales literature violation. Keyes shall serve these suspensions consecutively.

The **two and one-half year** suspension imposed by the NAC shall begin with the opening of business on **Monday, September 10, 2007**, and end at the close of business on **Wednesday, March 10, 2010**. Please note that under IM-8310-1 (“Effect of a Suspension, Revocation or Bar”), your client is not permitted to associate with any NASD member firm in any capacity, including a clerical or ministerial capacity, during the period of the suspension. Further, member firms are not permitted to pay or credit any salary, commission, profit or other remuneration that results directly or indirectly from any securities transaction that your client may have earned during the period of suspension.

Pursuant to Article V, Section 2 of NASD’s By-Laws, persons associated with a member firm must immediately update their Form U4 to reflect any disciplinary action taken against them and must keep all information on the Form U4 current and accurate. In addition, NASD may request information from, or file a formal disciplinary action against, persons who are no longer registered with a member for at least two years after their termination from the member. *See* Article V, Sections 3 and 4 of NASD’s By-Laws. Requests for information and disciplinary complaints issued by NASD during this two-year period will be mailed to such persons at their last known address as reflected in NASD’s records. Such individuals are deemed to have received correspondence sent to that address, whether or not the individuals have actually

received them. Thus, individuals who are no longer associated with an NASD member firm and who have failed to update their addresses during the two years after they end their association are subject to the entry of default decisions against them. *See Notice to Members 97-31*. Letters notifying NASD of such address changes should be sent to:

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

This decision may be appealed to the United States Securities and Exchange Commission (“SEC”). To do so, your client must file an application with the SEC within 30 days of your receipt of this decision. A copy of this application must be sent to NASD, Regulatory Policy and Oversight, Office of General Counsel, as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD by similar means.

The address of the SEC is:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F. St., NE
Room 10915, Mail Stop 1090
Washington, DC 20549-1090

The address of NASD:

Attn: Jennifer Brooks, Esq.
Office of General Counsel
Regulatory Policy and Oversight
NASD
1735 K Street, NW
Washington, DC 20006

If your client files an application for review with the SEC, the application must identify the NASD case number and set forth in summary form a brief statement of alleged errors in the NAC decision and supporting reasons therefore. Your client must include an address where he may be served and a phone number where he may be reached during business hours. If his address or phone number changes, he must advise the SEC and NASD. Attorneys must file a notice of appearance.

The filing with the SEC of an application for review shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a NAC decision.

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC.

The phone number of that office is 202-551-5400.

If your client does not appeal this NAC decision to the SEC, he does not need to pay the imposed fines until after the 30-day period for appeal to the SEC has passed. The assessed fines should be paid to NASD, Attention Fines and Costs, P.O. Box 7777-W8820, Philadelphia, PA 19175-8820 or (via overnight delivery) NASD W8820-c/o Mellon Bank, Room 3490, 701 Market Street, Philadelphia, PA 19106.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

cc: Philippe N. Keyes
Jacqueline D. Whelan, Esq.
Rory Flynn, Esq.
Leo F. Orenstein, Esq.

Jennifer C. Brooks Direct: (202) 728-8083
Counsel Fax: (202) 728-8264

July 25, 2007

VIA MESSENGER

Nancy Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915 – Mailstop 1090
Washington, D.C. 20549

RE: C02040016: Philippe N. Keyes

Dear Ms. Morris:

Enclosed is the decision of the National Adjudicatory Council in the above-referenced matter. This decision constitutes final action by NASD with respect to this matter.

Very truly yours,

Jennifer C. Brooks

Enclosure