NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION Complainant, v. MARSHALL J. FIELD (CRD No. 834787), Respondent.	Disciplinary Proceeding No. CMS040202 Hearing Officer – AWH **HEARING PANEL DECISION** May 15, 2006

Registered representative and principal barred from associating with any member firm in any capacity and ordered to offer rescission, and pay restitution, to customers for fraudulent sales practices, in violation of MSRB Rules G-17 and G-25, and Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. Respondent also assessed costs.

Appearances:

Timothy B. Nagy, Esq., Peter D. Santori, Esq., and James J. Nixon, Esq., for the Department of Market Regulation

Marshall J. Field, *pro se*

DECISION

Introduction

On January 26, 2005, the Department of Market Regulation issued a Complaint against Marshall J. Field ("Field" or "Respondent"), alleging that he (1) made material misrepresentations and omissions in connection with the purchase and sale by public customers of municipal bonds and certificates of participation; (2) executed unauthorized transactions in the accounts of those public customers; and (3) guaranteed one customer against a loss in connection with purchases of municipal bonds for three accounts. On

February 21, 2005, Respondent filed an Answer, denying the allegations in the Complaint, and requested a hearing. On June 14, 2005, Market Regulation moved to amend the Complaint to consolidate the causes of action into a single cause and to allege similar conduct with respect to two additional customers. That motion was granted on July 15, 2005, and on August 5, 2005, Respondent filed his Answer to the Amended Complaint, again denying the allegations against him. A hearing was held on October 31-November 3, 2005, in Los Angeles, California, before an Extended Hearing Panel composed of the Hearing Officer, a former member of the District 2 Committee, and a former member of the District 3 Committee. The parties filed post-hearing briefs on January 24, 2006.

Findings of Fact[1]

Respondent

Marshall J. Field has been a municipal securities broker for more than 20 years, specializing in high-yield municipal bonds, particularly California non-rated municipal bonds. In 1998, he founded and was majority owner of now-defunct American National Municipal Corporation ("ANMC"), an NASD member firm. At all times relevant to the Complaint, he was registered through ANMC as a General Securities Representative and Principal, as well as a Municipal Securities Representative and Principal. Field was the account representative for each of the eleven customers identified in the Amended Complaint, and was the sole person responsible for determining the price and quantity of

[1] References to the Department of Market Regulation's exhibits are designated as CX_; Respondent's exhibits, as R_; the transcript of the hearing, as Tr. _; and to exhibits of prior testimony, as exhibit number, transcript pages and lines.

bonds purchased by those customers, and for executing municipal bonds transactions for those customers at ANMC.[2]

The Bond Recommendations

Field recommended eight special, limited obligation bonds to his customers. The bonds were not backed by the full faith and credit or the taxing authority of the State of California or any public agency. Instead, they were payable solely from the anticipated revenues that were described in their respective indentures. As more fully detailed below, Field described the bonds to his customers as safe and secure investments. He neither informed his customers that the bonds were special, limited obligations, nor disclosed the risks associated with their purchase. Moreover, he refused or otherwise failed to furnish his customers with official statements or prospectuses that described the bonds.[3]

The Complaint alleges that Field made material misrepresentations and omissions in connection with the sale of the following bonds:

1. Chimney Rock Community Association Certificates of Participation 1999 Series B ("Chimney Rock");
2. Legends Golf Club Community Association Lease Revenue Bonds 2000 Series A ("Legends Golf");
3. Rancho Lucerne Valley Public Financing Authority Revenue Bonds 1998 Series A ("Rancho Lucerne");
4. Roddy Ranch Public Financing Authority Revenue Bonds 1998 Series B ("Roddy Ranch");

[2] Amended Complaint; Answer to Amended Complaint; CX-41; Tr. 533-35.
[3] CX-43-50 (Official Statements).

5. Sierra Foothills Public Financing Authority Certificates of Participation 1998 Series A ("Sierra Foothills PFA 1998");
6. Sierra Foothills Public Utility District Certificates of Participation 1999 Series A ("Sierra Foothills PUD 1999");
7. Sierra Foothills Public Utility District Revenue Bonds 2000 Series A ("Sierra Foothills PUD 2000 Series A"); and
8. Sierra Foothills Public Utility District Certificates of Participation 2000 Series B ("Sierra Foothills PUD 2000 Series B").

The Designated Risk Factors

Each official statement explicitly cautioned that an investment in the subject bond involved substantial risks that were delineated under the heading "Bond/Certificate Owner's Risk Factors" ("designated risk factors").[4] Among those designated risk factors that Field did not disclose to his customers, were the following:

1. an investment in the bond was speculative and involved substantial risks, including the potential loss of an investor's entire investment;
2. the anticipated revenues may be insufficient to pay the principal and/or interest;
3. the liens securing the security property were subordinate to other encumbrances, including liens of prior bond issuances, and the proceeds from a foreclosure on the secured property may be insufficient to repay the bond;
4. the underlying project was dependent on a developer/consultant with limited operating history and no independent sources of revenues, and, where

[4] CX-43 pp. 53-65, CX-44 pp. 72-88, CX-45 pp. 55-67, CX-46 pp. 66-79, CX-47 pp. 76-92, CX-48 pp. 52-65, CX-49 pp. 49-61, CX-50 pp. 51-72.

applicable, the developer and/or consultant was involved in certain legal matters;

5. the offering was subject to a remarketing agreement that negatively affected the funding of the interest account, and the failure to cover any shortfall from the sale of remarketed bonds could have a materially adverse impact on the development of the project and the ability to repay the bonds; and
6. there was a potential loss of the bond's tax-exempt status.

The Underwriter

The managing underwriter for each bond was Pacific Genesis Group, Inc. ("Pacific Genesis"). One of the principals of Pacific Genesis was David Fitzgerald. Field had a business relationship with Fitzgerald that began prior to the issue date of the bonds that are the subject of this proceeding. Fitzgerald personally urged Field to pitch bonds underwritten by Pacific Genesis. For example, on February 19, 1997, Fitzgerald wrote to Field, under the subject "Mo' Money. Mo' Money":

> Just for you I created a $5MM 2/15/05 maturity yielding 8%.
>
> * * *
>
> Stop waiting for people to call you. Work that big, fat black book of yours. You already sold $2.5 MM of this very issue.
>
> Remember -- $5 MM in trades delivers $150,000 in gross commissions by next Friday! That should pay for any outstanding bills. . . .[5]

On November 12, 1997, the State of California filed a complaint against Pacific Genesis, Fitzgerald, and another principal of Pacific Genesis, alleging state securities law violations arising out of seven municipal securities offerings associated with developments in California. The Complaint alleged, among other things, that the written

[5] R-LD-1, p. 16.

and oral representations from the defendants to investors contained false and misleading statements and omitted to state material facts. On February 17, 1999, the Pacific Genesis defendants settled the matter, agreeing to the issuance of a five-year Desist and Refrain Order by the California Commissioner of Corporations. On March 17, 2000, the Commissioner of Corporations filed a motion seeking the entry of a permanent injunction and civil money penalties against the Pacific Genesis defendants for allegedly violating the settlement agreement.[6]

The motion for a permanent injunction was denied. However, in late December 2000, the SEC filed a complaint in a federal district court against Pacific Genesis and Fitzgerald, alleging violations of the federal securities laws in acting as the underwriter for bond offerings used to finance a development project known as the Rancho Lucerne Master Planned Community.[7] The Complaint alleged that, despite the underwriting of more than $70 million in tax-exempt municipal bonds to finance the Rancho Lucerne Master Planned Community, not a single road had been paved, no homes were built, and not a single residential lot was sold to a homebuilder. It also alleged that the defendants misrepresented or omitted material facts in the offering documents concerning the value of the land used as security for the bonds, the status of the project, and the likelihood that the bonds would be repaid from the revenues of the project.

On February 14, 2001, the United States District Court for the Northern District of California found that Fitzgerald and Pacific Genesis made material misrepresentations

[6] CX-43, pp. 68-69, CX-44, pp. 91-92, CX-45, pp. 67-68.

[7] The Department of Market Regulation filed an unopposed request that the Extended Hearing Panel take official notice of the SEC civil action in *SEC v. David E. Fitzgerald, Pacific Genesis Group, Inc*., No. C 00-4802 CRB, 2001 U.S. Dist. LEXIS 3509 (N.D. Cal. Feb. 14, 2001). The Extended Hearing Panel grants the request, and makes findings of fact consistent with the adjudicated facts in that case. The Complaint in the civil action alleged violations of the antifraud provisions of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.

and omissions of fact in violation of the federal securities laws. Although a permanent injunction was entered, as of February 13, 2001, the litigation remained pending as to the SEC's claims for disgorgement and penalties for the ninth offering and all claims regarding the underwriting of the eight previous offerings for Rancho Lucerne. All of the bonds have gone into default.[8]

Field testified that his general practice was not to discuss with his customers the suit against Pacific Genesis and Fitzgerald, the Desist and Refrain Order, or the SEC's federal district court action, unless the customer specifically asked about those matters after they had reviewed the official statements.[9] As noted above, none of the customers received an official statement for any of the bond issues.

The Customers

1. Customer MP

MP, 41 years-old, is a manager and senior loan processor of a mortgage company. After seeing Field's advertisement on television in 1993, she called him, and, at his recommendation, bought a tax-free municipal bond. In January 1999, Field called her and recommended a "different kind of municipal bond." He described it as a very safe government municipal bond, with an eight percent coupon, maturing in ten years. MP was interested in investing for her children's education, and thought that the bond Field was recommending was like a savings bond or a certificate of deposit.[10]

On January 13, 1999, Field purchased for MP a $25,000 par value Roddy Ranch bond, a special, limited obligation bond not backed by the full faith and credit of the

[8] Tr. 380.
[9] Tr. 557-62.
[10] Tr. 77-80.

taxing authority.[11] In June 2000, Field recommended, and MP agreed to, the exchange of the Roddy Ranch bond for a Legends Golf bond, a special, limited obligation bond paying nine percent and maturing in ten years.[12] In making both recommendations, Field did not disclose the special, limited nature of the bonds, or any of the designated risk factors. He failed to provide MP with official statements for the bonds. He also failed to inform MP, when he recommended the bond exchange, that Pacific Genesis was the underwriter of each bond, and that the official statement for the Legends Golf bond noted that Pacific Genesis and two of its principals (1) were the subject of a complaint by the State of California, alleging violations of the securities laws, arising out of municipal securities offerings; (2) settled the matter with the issuance of a Desist and Refrain Order; and (3) were the subject of a motion by the State of California seeking a permanent injunction and civil money penalties for violation of the settlement agreement. The Legends Golf bond defaulted in 2001, and MP had, at the time of the hearing, an unrealized loss of $24,641.50.[13]

2. Customer MB

MB, 66 years old, is a former housing specialist for a state agency. In 1997, he saw Field advertising on television "double tax free" municipal bonds, and later had a phone conversation with Field who solicited the purchase of municipal bonds. After a number of phone conversations, MB opened an account with Field who encouraged MB to buy a Rancho Lucerne bond. MB rejected the Rancho Lucerne bond because there was "no security, and it [was] unrated." In April 1999, Field again recommended the purchase of a Rancho Lucerne bond, and, again, MB rejected the suggestion. However,

[11] CX-22, p. 1.
[12] CX-22, pp. 2-3.
[13] Tr. 81-85, 88-93; CX-54.

after repeated solicitations from Field and one of his associates to purchase various municipal bonds, MB purchased what turned out to be a $25,000 Rancho Lucerne bond.[14] When MB realized that he had bought a bond that he had previously rejected, he called Field, telling him that he had made a mistake and that he wanted his money back. Rather than returning MB's money, Field exchanged the Rancho Lucerne bond for a Chimney Rock bond, assuring MB that the Chimney Rock bond was secure.[15]

Field failed to provide MB with an official statement for either the Rancho Lucerne or the Chimney Rock bond. He did not disclose to MB the special, limited nature of the bonds, or any material adverse information, including the designated risk factors. Moreover, he failed to disclose the existence of the State of California complaint against Pacific Genesis and Fitzgerald, or the Desist and Refrain Order against them. Field also failed to disclose that, as described in the Rancho Lucerne Official Statement, the State of California complaint alleged that Pacific Genesis and Fitzgerald made written and oral representations to prospective investors that contained "false and misleading statements" and omitted "material facts."[16]

MB had planned to use the investment in municipal bonds to pay for the education of his children, and he told Field and his associate that he "cannot afford to take any risk at all." The value of the Chimney Rock bond at the time of the hearing was $50.00.[17]

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[14] Tr. 202-11. MB was under the impression that he was purchasing one of the other bonds Field was recommending and wrote on the check simply that it was for a "Municipal Bond Investment." CX-2.
[15] Tr. 216-18.
[16] Tr. 206, 211, 217; CX-43, CX-45. In 1997, MB received a prospectus on Rancho Lucerne from Field; however, that document related to the 1997 series bonds, not to the one that was purchased in 1999. Tr. 204-06.
[17] Tr. 205, 220. MB's calculated unrealized loss was $25,429.28. CX-54.

3. Customer PM

PM, 70 years-old, and her husband opened an account with Field after seeing him on television discussing tax-free bonds. They had no experience investing in municipal bonds. On November 1, 1999, Field recommended, and PM purchased, $100,000 par value of Sierra Foothills PUD 1999 Series A bonds. Field told PM that the bonds were public utility bonds that "had to be paid first" and she "couldn't lose on that." Field did not disclose the special, limited nature of the bonds or any material adverse information, including the designated risk factors. Moreover, Field did not provide PM with a copy of the official statement for the bonds which, among other things, disclosed the State of California's complaint against Pacific Genesis and Fitzgerald.[18]

On December 6, 2000, Field executed an unauthorized bond swap in PM's account, exchanging $50,000 par value of Roddy Ranch bonds[19] for $50,000 par value of Sierra Foothills PUD 2000 Series B bonds. PM was not aware of the transactions until she saw the confirmations and reviewed her monthly account statement. After repeated phone calls from PM, Field reversed the transactions two months later.[20]

PM realized a loss of $2,516.05 as a result of the unauthorized bond swap, and she has an unrealized loss of $73,122.06 as a result of the Sierra Foothills PUD 1999 Series A purchase.[21]

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[18] Tr. 251-57; CX-20, p. 1, CX-47, pp. 92-93. PM testified at the hearing that she did not receive an official statement for the Sierra Foothills bonds: "No, not on Sierra Foothills." Tr. 254. She testified at an SEC investigation that she received a "thick book" from Field, but she did not identify the security to which it referred. R-30, p. 56.

[19] PM had purchased these bonds from Field less than 17 months before the swap. CX-53.

[20] Tr. 258-59; CX-20, pp. 2-4.

[21] CX-53, CX-54.

4. Customer RL

RL, 69 years-old, is a former engineering consultant.[22] Field first contacted RL via telephone in 1999. On July 23, 1999, RL purchased $100,000 par value of Rancho Lucerne bonds, based on Field's assurance that they were safe, secure, and liquid. Field, however, did not disclose the special, limited nature of the bonds or any material adverse information, including designated risk factors. Field also failed to provide RL with a copy of the official statement despite RL's repeated requests.[23]

On April 5, 2000, without RL's authorization, Field swapped RL's Rancho Lucerne bonds for an equivalent amount of Desert Springs 1999 Series A bonds.[24] When he received confirmations of the swap, RL confronted Field, who claimed that the swap was a mistake.[25] On June 14 and 16, 2000, Field reversed the April transactions by effecting two additional bond swaps resulting in the sale of a total of $100,000 par value Desert Springs bonds and the purchase of a total of $100,000 par value Rancho Lucerne bonds.[26]

On July 25 and 26, 2000, less than four months after the initial unauthorized transaction, Field engaged in a series of unauthorized bond swaps resulting in the sale of

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[22] CX-18, pp. 3. Customer RL was unable to testify at the hearing due to his medical condition. The transcript of RL's sworn investigative testimony was admitted as CX-18.
[23] CX-16, CX-18, pp. 11-13, 19, 29.
[24] CX-16, pp. 2-3. Field asserted that a withdrawal from RL's account in July 2000 suggested that the transactions were authorized. Tr. 513-14. However, the funds that were withdrawn represented the balance of a $3,750 interest payment of July 17, 2000, and not the proceeds of the bond swaps as Field claimed. R-RL-9.
[25] CX-18, pp. 21, 22, 24, 25. The Hearing Panel does not credit Field's assertion that RL described the trade as a mistake. Tr. 513. RL's testimony was consistent with other customers who testified that Field effected unauthorized transactions. RL asserted that Field is the one who described the trade as a mistake: "In my opinion, these are not mistakes though. I think these are just transactions where [Field] goes ahead and makes a commission for buying and selling; in other words, there is nothing in it for me. All it is just a piece of paper that he goes ahead and sends me and tells me it is a mistake. Sure it is a mistake, but for whose benefit?" CX-18, p. 26.
[26] CX-16, pp. 4-7.

the $100,000 par value Rancho Lucerne bonds and the purchase of $100,000 par value Chimney Rock 1999 Series B bonds.[27] After RL complained, Field eventually executed additional bond swaps to return RL to his original $100,000 position in Rancho Lucerne bonds.[28]

RL realized a loss of $14,237.22 on the July 2000 bond swaps. He has an unrealized loss of $72,114.25 on the purchase of Rancho Lucerne bonds.[29]

5. Customer CS

CS, 81 years-old, is the owner and manager of several rental properties.[30] CS contacted Field after viewing one of his television segments and opened an account on behalf of her daughter, NR, in October 1999. Following Field's recommendations, CS purchased $10,000 par value of Sierra Foothills PFA 1998 bonds on October 18, 1999, for NR's account.[31]

Field and others in his office told CS that the bonds were safe, that the project included construction of a hospital, housing for hospital employees, and roads, and a swimming pool that was already completed. Field did not disclose the special, limited nature of the bonds or any material adverse information, including designated risk factors.[32] He did not provide CS a copy of the official statement for the bonds which disclosed the State of California complaint against Pacific Genesis and Fitzgerald.[33]

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[27] CX-16, pp. 8-11.
[28] CX-18, pp. 25. The final swaps were not executed until February and March of 2001. CX-16, pp. 12-15.
[29] CX-53, CX-54. Contrary to Field's assertions, RL had no reason to engage in the swaps for tax purposes. In fact, the IRS notified RL of delinquent taxes that were due as a result of Field's unauthorized transactions. CX-18, p. 12.
[30] CX-34, p. 3. CS was unable to testify at the hearing due to her medical condition. The transcript of CS's sworn investigative testimony was admitted as CX-34.
[31] CX-29, CX 30.
[32] CX-34, pp. 8, 14, 21, 24.
[33] CX-34, p. 14, CX 47, pp. 92-93.

In November and December 2001, Field and others in his office recommended that CS purchase Sierra Foothills PUD 1999 bonds.[34] Field, however, failed to disclose to CS that the Sierra Foothills bonds previously purchased on behalf of NR were in default and the issuer was not capable of making regular interest payments. He again failed to disclose the special, limited nature of the bonds or any material adverse information, including designated risk factors.[35] Field offered to refund her principal if she was not satisfied with her investment.[36] After receiving the guarantee, CS opened three investment accounts (for herself and LF and JR, her granddaughters), and, on December 6 and 11, 2001, purchased a total of $40,000 par value Sierra Foothills PUD 1999 bonds for the three accounts.[37]

Shortly after the December 2001 purchases, CS learned that the bonds she had purchased for NR in October 1999 were in default.[38] CS confronted Field and sought a refund of her December 2001 investment.[39] On January 30, 2002, as a follow-up to their conversation that morning, she wrote to Field, demanding a full refund. She wrote: "You agreed to refund the purchase price when I purchased these bonds if requested. In our conversation this morning you stated that you would do this as soon as possible."[40] Field then sold the $40,000 par value Sierra Foothills PUD 1999 bonds in four transactions

[34] CX-34, p. 8.
[35] CX-34, pp. 11, 21. CS received a "catalog" after her purchases in 2001, but Field requested that she return it to him. *Id.* at 14. The "catalog" appears to have been ANMC's desk copy of the official statement for the Jensen Ranch Master Plan Community. Field acknowledged that the document was inadvertently sent to CS, and he requested its return. R-47; Tr. 514-15.
[36] CX-34, pp. 9-10. Although, in this instance, CS did not speak directly with Field, he was "in the background" telling others in his office what to say. *Id.*
[37] CX-31, CX-32.
[38] CX-34, pp. 9, 11.
[39] CX-33, CX-34, p. 10.
[40] R-45, p. 2; CX-33.

between February 20 and August 22, 2002.[41] CS realized a loss of $420 on her purchase, and NR has an unrealized loss of $7,457.30 on her bonds.[42]

6. Customer TL

TL, 60 years-old, is a vice president of an advanced technology company. He and his wife opened an account with Field in 1999 after seeing one of Field's television advertisements.[43] Field executed four transactions in their account, three that were authorized and involved Sierra Foothills bonds, and one that was not authorized and involved Roddy Ranch. In soliciting TL to purchase the three Sierra Foothills bonds, Field did not disclose the special, limited nature of the bonds or any material adverse information, including designated risk factors.[44] Moreover, although TL requested them, Field did not provide copies of the official statements for the Sierra Foothills bonds prior to, or at the time of, TL's purchases.[45]

TL's initial transaction with Field was on November 30, 1999, when he purchased $50,000 par value of Sierra Foothills PUD 1999 bonds. In recommending the purchase, Field represented that the bonds were a "good investment," and that the underlying security was worth more than the bonds. He also falsely claimed that the bonds were affiliated with Southern California Edison.[46]

The second Sierra Foothills transaction occurred in September 2000 when Field recommended the purchase of $50,000 par value of Sierra Foothills PUD 2000 Series A bonds. Field told TL that his principal would be protected by the value of the land, and

[41] CX-32.
[42] CX-53, CX-54.
[43] Tr. 17-18.
[44] CX-50, p. 76; Tr. 21-24, 28-31.
[45] Tr. 21-23, 28. In response to TL's requests for documents or a prospectus, Field advised him that it was not his responsibility to provide them. Tr. 64-65.
[46] CX-13, p. 1; Tr. 20-22.

that there would be no risk at all in the purchase of the bonds. TL agreed to the transaction.[47]

On April 18, 2001, without TL's knowledge or authorization, Field appropriated approximately $7,290 of interest income to execute the purchase of $10,000 par value Roddy Ranch bonds in TL's account.[48] TL only became aware of the transaction when he received a confirmation. He immediately contacted Field, who asserted that the bond was a good investment. TL demanded the return of his money, and, on May 7, 2001, Field sold the bond and returned TL's money.[49]

The third Sierra Foothills transaction took place sometime after September 11, 2001, when Field recommended the purchase of Sierra Foothills PUD 2000 Series B bonds. Field advised TL that the bonds were available at a discount because the owner needed cash, and they were "a good buy." TL agreed that they would be a good buy because, although he had not gotten interest on his other Sierra Foothills bonds, Field told him that the interest on this issue was guaranteed because it was in an escrow account. TL had become aware that Pacific Genesis was involved in several lawsuits, and he was leery about Pacific Genesis's affiliation with the bonds that he owned. As a result he asked Field if Pacific Genesis was involved with this Sierra Foothills issue. Field falsely

[47] CX-13, p. 2; Tr. 23.
[48] CX-13, p. 3. TL intended to use the interest payment to pay a tax bill. Tr. 62. Field claimed that the unauthorized transaction in TL's account was related to a prior order to purchase $55,000 par value Roddy Ranch bonds. Tr. 430-31. The Extended Hearing Panel does not credit the only evidence offered in support of Field's assertion, which is a self-serving, single-page printout from Field's clearing firm, containing Field's handwritten notes. R-TL-6. During cross-examination, TL testified that Field solicited his purchase of the bonds in February 2001, but that he could not afford to make such a large purchase. Tr. 61-62. TL's testimony was credible and consistent with the reversal of the transaction only 14 business days later.
[49] CX-14, p. 3; Tr. 24-25.

said that Pacific Genesis was not.[50] Within a few weeks of TL's purchase, the bonds defaulted.[51]

As a result of the purchases, TL realized a loss of $1,852.95, and has an unrealized loss of $72,662.72.[52]

7. Customer DL

DL is a 57 year-old self-employed psychotherapist who had no prior experience investing in municipal bonds. She contacted Field via telephone after seeing one of his television advertisements, and, thereafter, relied on Field for advice in purchasing municipal bonds.[53] Field recommended the Sierra Foothills bonds to DL as a "very safe investment." When she learned that the bonds were not rated, she questioned Field, who told her that the lack of a rating was not a concern, and that a rating was an unnecessary "administrative expense." Field assured her that the underlying security had more than enough value to cover the bonds, and she would get her principal back plus interest.[54]

In recommending the bonds, Field did not disclose their special, limited nature or any material adverse information, including the designated risk factors. He did not provide DL with a copy of the official statement for the bonds, although she requested information about the issuer of the bonds. Field told her that such information was not available.[55]

On November 17, 2000, DL purchased $30,000 par value of Sierra Foothills PUD 1999 Series A bonds.[56] Although Field recommended that she invest $50,000, DL

[50] CX-13, p. 4; Tr. 25-28, 38-39.
[51] Tr. 31. The bonds defaulted on October 15, 2001. CX-52.
[52] CX-53, CX-54.
[53] Tr. 401-03.
[54] Tr. 403-04.
[55] Tr. 403, 405-09.
[56] CX-11.

invested only $30,000, based on her limited savings.[57] At the time of the hearing, DL had an unrealized loss of $22,466.08 on her purchase of the bonds.[58]

8. Customer LD

LD, 62 years old, is a long-term substitute teacher who had no experience purchasing individual municipal bonds. After seeing one of Field's television segments, LD and his elderly aunt opened a joint account with Field in 1994. LD and his wife opened an investment account with Field at ANMC in 1999.[59]

Field recommended that LD purchase Sierra Foothills PUD 2000 Series A bonds and Sierra Foothills PUD 2000 Series B bonds on multiple occasions.[60] In soliciting the purchase of those bonds, Field represented that they "paid like clockwork;" were a "very safe investment;" were "safe and secure;" and were "good as gold."[61] Following Field's advice, LD purchased the bonds on six separate occasions.

In February 2001, LD purchased $10,000 par value of Roddy Ranch bonds on Field's recommendation. A year later, in February 2002, Field persuaded him to exchange his aggregate $60,000 par value Sierra Foothills PUD 2000 Series B bonds, which defaulted in October 2001, for $120,000 par value of Roddy Ranch.[62]

When he recommended both Sierra Foothills bonds and the Roddy Ranch bonds, Field failed to provide LD with copies of the official statements, and failed to disclose the special, limited nature of the bonds or any material adverse information, including the designated risk factors.[63] Moreover, in soliciting purchases of those bonds after

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[57] Tr. 404.
[58] CX-54.
[59] Tr. 281, 284, 286-87.
[60] CX-8, pp. 1-2, 5-8; Tr. 290, 297, 327.
[61] CX-9, p. 1, 3, 9; Tr. 290, 297-98, 321-22.
[62] CX-8, pp. 3, 9-10; Tr. 302.
[63] Tr. 293-96, 299-302, 307, 329-32, 336-37.

December 2000, Field failed to disclose to LD the SEC's successful suit against Pacific Genesis alleging that Pacific Genesis and its president had made material misrepresentations and omissions concerning a municipal bond offering.[64]

LD, whose yearly income never exceeded $43,000, sold all of his hard assets, including a boat and two classic cars, to purchase bonds that Field recommended.[65] LD realized a loss of $32,400.50 on the sale of $90,000 par value Sierra Foothills bonds, and he has an unrealized loss of $38,181.44 on the remaining Sierra Foothills and Roddy Ranch bonds.[66]

9. Customer BB

BB, 67 years old, is semi-retired and the former owner of an insurance agency. After seeing one of Field's television advertisements in 1998, she opened an account with Field because she wanted to receive tax-free income in anticipation of retirement.[67] When she opened her account, BB told Field that she wanted to limit her risk, and did not want to invest more than $10,000 in a single bond. She repeated this instruction to both Field and his associate on numerous occasions. On January 4, 2001, BB sent a facsimile

[64] Tr. 303-06, 331. Field offered exhibits R-LD-12 and R-LD-13 as evidence of his disclosure to LD of the SEC's action against Pacific Genesis. Tr. 526-28. However, the Extended Hearing Panel does not find those exhibits to be probative. R-LD-13 purports to be a supplemental disclosure statement, dated February 5, 2001, which is prior to the District Court's February 14, 2001, decision finding that Pacific Genesis and Fitzgerald made material misrepresentations and omissions. It is clearly marked "Draft," and "confidential." Moreover, the draft is addressed to prospective investors of the Desert Tortoise Public Financing Authority's revenue bonds and the Municipal Securities Information Repositories, not to investors in Sierra Foothills or Roddy Ranch. R-LD-12 includes a copy of a FedEx label with a ship date of February 8, 2001, also prior to the District Court's decision. Aside from Field's contentions, there is no proof of the contents of the FedEx package. The Extended Hearing Panel credits LD's testimony that he did not receive the draft disclosure statement. Tr. 358-59. His testimony is internally consistent, as well as consistent with the other, unrelated customers who also denied, in the face of purported shipping labels, that they received what Field alleged that he had sent to them.

[65] Tr. 293, 325-27.

[66] CX-53, CX-54.

[67] Tr. 228-30.

to Field's associate, care of Field, reiterating her instruction to limit the amount invested in any one bond.[68]

On May 4, 2001, Field executed an unauthorized sale of $10,000 par value Sierra Foothills PUD 2000 Series A bonds in exchange for the unauthorized purchase of $10,000 par value Sierra Foothills PUD 2000 Series B bonds.[69] As a result of that exchange, BB owned $20,000 par value of Sierra Foothills PUD 2000 Series B bonds, contrary to her specific oral and written instructions.[70] BB confronted Field when she became aware of the unauthorized transactions and instructed Field to sell her bonds. Field did not execute the order to sell. [71]

BB realized a loss of $191.33 on the bond exchange, and has an unrealized loss of $7,264.00 on the bonds she still holds.[72]

10. Customer BR

BR, 83 years old, is a former registered nurse. She opened an account with Field after seeing him on television. She had no experience investing in municipal bonds and told Field that she did not know anything about them. BR opened an account with Field, in part, because, when she learned that a municipality guaranteed municipal bonds, she thought the bonds sounded very safe.[73]

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[68] CX-4; Tr. 232-33, 235-37.
[69] CX-5, pp. 1-2; Tr. 241. Field acknowledged that he executed the transactions. Tr. 535.
[70] CX-6.
[71] Tr. 242-44. BB was in a hospital and unaware of the unauthorized transactions until, upon being released from the hospital in September 2001, she began organizing her records. Tr. 240-41. She explained that, between May and September 2001, she only reviewed the total account balance on her monthly account statements, and the account balance had not changed. Tr. 240-41, 244.
[72] CX-53, CX-54.
[73] Tr. 161-62.

On October 3, 2001, BR spoke to Field regarding a notice that she had a $400 account debit.[74] In that conversation, BR authorized Field to sell a bond to satisfy the debit, but she specifically instructed him not to sell a bond with an early maturity date.[75] Her contemporaneously written notes reflect her instruction to Field: "Only sell one bond to pay the 'deficit' of $400! Don't buy anything before asking me. Send me the balance (cash) because I need the money, not the bonds!!"[76]

On October 19, 2001, Field sold $10,000 par value of Burbank California Waste Disposal Series A bonds with a May 1, 2003, maturity date and a "AAA" rating.[77] He did so even though BR had at least five other bonds in her account with longer maturity dates.[78] Moreover, rather than send BR the proceeds as she instructed, Field used the money to effect an unauthorized purchase of $20,000 par value Sierra Foothills PUD 2000 Series B bonds that were unrated and had an October 15, 2005, maturity date.[79] BR was unaware of the transactions until she saw the confirmations, at which time she told Field to sell the bonds and send her the proceeds.[80]

A month later, on November 15, 2001, Field executed an unauthorized bond swap involving the sale of $10,000 par value California Desert PFA bonds and the purchase of $10,000 par value Sierra Foothills PFA 1998 bonds.[81] BR learned of the swap when she received the confirmations, at which time she told Field to cancel the purchase and send

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[74] CX-24, CX-25, p. 4. BR was shocked to learn of an outstanding balance, and she never received a satisfactory explanation for the debit. Tr. 163-64.
[75] Field did not inform BR that she would be receiving interest payments in two weeks that would more than satisfy the debit. Tr. 455-56; CX-27, p.4.
[76] CX-25, p. 4.
[77] CX-26, p. 1.
[78] CX-27, pp. 1-2.
[79] CX-26, p. 2. The proceeds from the sale of the Burbank bonds were adequate to cover the purchase price of the Sierra Foothills bonds.
[80] Tr. 167-68. BR's written notes on the confirmations corroborate her testimony that she told Field to sell the Sierra Foothills bonds purchased on October 19 and send her the cash. CX-26, pp. 1-2. Her notes also state: "I did not authorize purchase of any security with a maturity date of 2005! Too long!" CX-26, p. 2.
[81] CX-26, pp. 3-4.

her the money.[82] BR transferred her account and the bonds that were purchased without her authorization to UBS Financial Services, Inc., where the bonds were sold in June 2003.[83] BR realized a loss of $10,885.36 upon their sale.[84]

11. Customer MS

MS, 80 years-old, is a widow and a former employee of a state agency. In February 1996, Field contacted MS via telephone and solicited MS to open an account.[85] MS was interested in purchasing bonds through Field because Field:

> gave a real tremendous pitch and he said that his bonds had definite safety and security . . .[that] he did very careful due diligence and none of the bonds that he ever sold were in default and that nobody who ever purchased bonds from him lost any money and he familiarized himself with the project itself.[86]

One of MS's investments with Field was a May 2000 purchase of $10,000 par value Falcon's Lair bonds.[87] In October 2002, Field advised MS to sell the bond, misrepresenting that: (i) the bond was in trouble; (ii) the project had not gotten off the ground, and (iii) the project was running out of money and would soon be worthless.[88] Field also told MS that the project was under water.[89] Field then advised MS to swap her

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[82] Tr. 168-70. BR's contemporaneous notes on the confirmations show that she did not agree to the transactions. They reference a November 20, 2001, telephone conversation in which BR advised Field to cancel the purchase and send her the cash. CX-26, pp. 3-4. Although Field only offered portions of his telephone records reflecting incoming calls, the records show that BR called Field's office three times in the afternoon of November 20, 2001, and once again in the morning of November 21, 2001. R-BR-4.
[83] CX-28, p. 2.
[84] CX-53.
[85] Tr. 125-26, 151.
[86] Tr. 126-27.
[87] CX-53, p. 10.
[88] Tr. 129.
[89] Tr. 130. Although he denied it at hearing, Field previously admitted under oath that he told MS the project property was under water. Tr. 540. The project property was not physically under water. Tr. 539. However, MS thought Field meant that it was physically under water, and she questioned how he could say so in the face of drought conditions in Texas where the project was located. Tr. 130.

Falcon's Lair bond for a Sierra Foothills bond with a nine percent interest rate.[90] In doing so, Field misrepresented that the Sierra Foothills bond would pay off at par value in mid-2003.[91] Field never discussed the underwriter of the bonds with MS, nor did he ever send her an official statement for the bonds he purchased for her.[92]

Based on Field's recommendation, MS authorized the exchange of her Falcon's Lair bonds for a Sierra Foothills bond on the condition that the Sierra Foothills bond had a nine percent interest rate.[93] However, rather than exchange the Falcon's Lair bond for a Sierra Foothills bond, Field sold the Falcon's Lair and purchased a Jensen Ranch bond with an eight percent interest rate.[94] MS learned of the unauthorized transactions upon receipt of her confirmations.[95]

Later, in a heated discussion with Field, MS threatened to contact the appropriate regulatory agency if Field did not provide her with a Sierra Foothills bond with a nine percent interest rate or return her Falcon's Lair bonds.[96] Field then exchanged the Jensen Ranch bonds for Falcon's Lair bonds on October 31, 2002.[97]

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[90] Tr. 129.
[91] Tr. 145-46. The Sierra Foothills nine percent bond matured in 2005. CX-50.
[92] Tr. 134-35.
[93] Tr. 131.
[94] CX-36.
[95] Tr. 131-32. MS did not discuss with Field any exchange for Jensen Ranch bonds. She was not interested in a Jensen Ranch bond which she considered to be "inferior" because it paid only eight percent interest. Tr. 132-33. Asked whether Field claimed the swap for the Jensen Ranch bond had been a mistake, MS replied, "No . . . he didn't reuse that one." Tr. 160.
[96] Tr. 133-34.
[97] CX-38, p. 6. Although the Department of Market Regulation alleges that MS realized a loss of $5,646.50 on the sale of the Falcon's Lair bond, it does not allege fraud in the initial purchase of that bond, nor does it show (1) how any action by Field caused the drop in price at the time the bond was exchanged, or (2) what MS did with the bond after Field reversed the exchange for the Jensen Ranch bond. As a result, the Extended Hearing Panel is unable to determine the extent to which MS may have incurred any realized or unrealized loss on the Falcon's Lair bond.

Discussion

I. Misrepresentations and Omissions of Material Fact

SEC Rule 10b-5, promulgated to effectuate Section 10(b) of the Securities Exchange Act,[98] makes it unlawful: (a) to employ any device, scheme or artifice to defraud; (b) to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.[99] To establish a violation of Rule 10b-5, the Department of Market Regulation must also prove that a respondent acted with scienter,[100] that is, "a mental state embracing intent to deceive, manipulate, or defraud."[101] Recklessness is sufficient to prove scienter.[102]

A violation of Rule 10b-5(b) is established when, in connection with the purchase or sale of a security, a misrepresentation or omission of a material fact is made with the requisite intent to deceive, manipulate, or defraud.[103] The test for materiality is "whether the reasonable investor would consider a fact important" in making an investment decision, or whether disclosure would "significantly alter . . . the 'total mix' of

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[98] Section 10(b) of the Exchange Act forbids any person from "using or employing, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe . . . ." 15 U.S.C. § 78j (2005).
[99] 17 C.F.R. 240.10b-5 (2005).
[100] *Dane S. Faber*, Exchange Act Release No. 49,216, 2004 SEC LEXIS 277, at **13-14 (Feb. 10, 2004).
[101] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).
[102] *See M. Rimson & Co., Inc.*, 1997 SEC LEXIS 486, at *95 (Feb. 25, 1997). Recklessness has been defined as highly unreasonable conduct involving not merely simple or excusable negligence but an extreme departure from the standards of ordinary care. *See Market Regulation Committee v. Michael B. Jawitz*, No. CMS960238, 1999 NASD Discip. LEXIS 24, at **19-20 (NAC July 9, 1999) (citing *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990), *cert. denied*, 499 U.S. 976 (1991)), *aff'd*, *Michael B. Jawitz*, Exchange Act Release No. 44,357, 2001 SEC LEXIS 1042 (May 29, 2001).
[103] *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996); *DBCC v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *18 (NBCC July 28, 1997). Any statement that is reasonably calculated to influence the average investor satisfies the "in connection with" requirement of Rule 10b-5. *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992) (citing *Superintendent of Ins. v. Bankers Life and Casualty Co.*, 404 U.S. 6, 12 (1971)).

information made available."[104] Material facts include, among other things, (1) the speculative nature of a security and the risks associated with it;[105] (2) adverse information that is known or readily ascertainable;[106] and (3) a complete description of a municipal security.[107]

MSRB Rule G-17 states: "In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." Rule G-17, the MSRB's fair dealing rule, encompasses two general principals. First, the rule imposes a duty on dealers and their associated persons not to engage in deceptive, dishonest, or unfair practices – essentially an antifraud prohibition. Second, the rule imposes a duty to deal fairly. As part of the obligation to deal fairly, a dealer or associated person has an affirmative duty to disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[108]

The Extended Hearing Panel concludes that Field engaged in a pattern and practice of making misrepresentations and omissions of material fact to his customers in recommending the purchase and sale of municipal bonds. The testimony of the 11 customers, who had no relationship to each other, was consistent and wholly convincing.

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[104] *Martin R. Kaiden,* Exchange Act Release No. 41,629, 1999 SEC LEXIS 1396, at *18 n. 25 (July 20, 1999); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Material facts include the probable future of an issuer and other facts that may affect the desires of investors to buy, sell, or hold the securities. *Hasho*, 784 F. Supp. at 1108.

[105] *See, e.g., SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980); *Hanly v. SEC*, 415 F.2d 589, 595-597 (2d Cir. 1969); *Hasho*, 784 F. Supp. at 1109; *Department of Enforcement v. Golub*, No. C10990024, 2000 NASD Discip. LEXIS 14, at *21 n. 14 (NAC Nov. 17, 2000).

[106] *See Lester Kuznetz*, Exchange Act Release No. 23,525, 1986 SEC LEXIS 1001, at n.3 (Aug. 12, 1986) (*citing, e.g.*, *Richard J. Buck & Co.*, 43 S.E.C. 998, 1005-1006 (1968), *aff'd sub nom*; *Hanly v. SEC,* 415 F.2d 589 (2d Cir. 1969)).

[107] Rule G-17 Interpretation – Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *available at* http://ww1.msrb.org/msrb1/rules/notg17.htm.

[108] Rule G-17 Interpretation – Disclosure of Material Fact, March 20, 2002, *Id.*

None received an official statement in connection with a bond purchase at issue in this proceeding. None received information on the risks of purchasing the bonds Field recommended, including the designated risk factors detailed in the official statements. None received information on the underwriter of the bonds, including the negative information about the State of California's and the SEC's actions against the underwriter, which were detailed in the official statements. None received information that disclosed the nature of the bonds as special, limited obligations that were not backed by the full faith and credit or the taxing power of a municipality or other governmental body. Moreover, Field misrepresented that the bonds were very safe, they were issued by a public utility, and the customers' principal was secure. He also misrepresented that the underlying security was worth more than the value of the bonds, and that the interest was guaranteed and held in escrow.

The Extended Hearing Panel also concludes that Field made his misrepresentations and omissions of material fact with scienter. Prior to selling the bonds to the customers, he had personally known, and had a business relationship with, the underwriter. He read all of the official statements and understood that the information contained in them was material.[109] As a result, he knew all of the designated risk factors, and he knew about the actions of the State of California and the SEC against Pacific Genesis and Fitzgerald. Nevertheless, he failed to disclose that information to his customers; failed to send them official statements, even when they were requested; denied that such information was available; asserted that it was the responsibility of the bond trustee to supply such information; and, when asked by one customer, denied that Pacific Genesis was involved in the bond issue that Field recommended he buy. In

[109] Tr. 490, 495, 511.

making those misrepresentations and omissions to induce customers to purchase bonds, his actions were more than reckless; they were intentional. Accordingly, by intentionally making misrepresentations and omissions of material fact in connection with his sale of bonds to public customers, Field violated Section 10(b) of the Securities Exchange Act, SEC Rule 10b-5, and MSRB Rule G-17.

II. Unauthorized Transactions

Unauthorized trading in a customer's account constitutes fraud if it is accompanied by deceptive conduct.[110] Unauthorized trading is illegal and violates Rule 10b-5(c) when accompanied with "deception, misrepresentation or nondisclosure."[111] Such unauthorized trading also violates MSRB Rule G-17.[112]

Field executed eight unauthorized transactions, most involving both an unauthorized purchase and an unauthorized sale, in the accounts of six different customers. In each case, the customer complained to Field upon discovery of the unauthorized transaction. Most of the unauthorized transactions were eventually reversed. However, in one case, Field failed to follow the customer's instruction to sell her bonds, and, in another, rather than sending the proceeds of a sale to the customer, he used the proceeds to purchase another bond. In any event, the reversals do not excuse the misconduct. By executing the unauthorized transactions, while deceiving customers about the nature of the bonds and the reason for the unauthorized transactions, Field violated SEC Rule 10b-5(c) and MSRB Rule G-17.

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[110] *J.W. Barclay*, Admin. Proc. File No. 3-10765, 2003 SEC LEXIS 2529, **33-34 (Oct. 23, 2003).
[111] *Hasho*, 784 F. Supp. at 1110.
[112] The practice of knowingly issuing confirmations of sales to customers who have not placed orders to purchase bonds is a deceptive, dishonest, and unfair practice. *See* Interpretive Letter Regarding Rule G-17, March 3, 1981, *available at* http://ww1.msrb.org/msrb1/rules/notg17.htm.

III. Guaranteeing Against Loss

MSRB Rule G-25(b) provides that no broker, dealer, or municipal securities dealer shall guarantee or offer to guarantee a customer against loss in a transaction in municipal securities with or for a customer. Field violated Rule G-25(b) when he, along with others in his office who were under his guidance, guaranteed CS that he would return her money if, for any reason, she did not want the bonds he recommended she purchase. After CS bought the bonds, which totaled $40,000, Field honored the guarantee and reversed the transactions.

Sanctions

The violations all arise out of a common underlying cause − a pattern and practice of fraudulently inducing customers to purchase municipal bonds by making similar material misstatements and omissions, effecting unauthorized transactions in the customers' accounts, and guaranteeing a purchase against loss. Accordingly, the Extended Hearing Panel aggregates the misconduct for purposes of imposing severe sanctions.[113]

The NASD Sanction Guidelines for (1) intentional misrepresentations or material omissions of fact, (2) unauthorized transactions, and (3) guaranteeing a customer against loss all recommend a bar in egregious cases.[114] The Extended Hearing Panel finds Field's misconduct to be egregious, and that a bar is the appropriate sanction.

Through the media, Field extolled the safety and security of municipal bonds. After customers responded to his advertising, he continued to tout the bonds' generous interest that supposedly had been placed in escrow, the purported safety of the investors'

[113] *See Dep't of Enforcement v. J. Alexander Securities, Inc., et al.*, No. CAF010021, 2004 NASD Discip. LEXIS 16, at *69 (NAC Aug. 16, 2004).
[114] NASD SANCTION GUIDELINES, at 93, 103, 91 (2006 ed.).

principal and the value of the underlying property, and his claim of extensive due diligence on the underlying projects. Field targeted unsophisticated, vulnerable, often elderly customers who relied on him for investment advice. Rather than recommend safe and reliable investments, he induced them, by misrepresentations and omissions of material fact, as well as a guarantee against loss, to invest in speculative municipal bonds that were underwritten by a firm and its principals who had been accused by state and federal regulatory authorities of securities fraud.

Field's unauthorized transactions were both quantitatively and qualitatively egregious.[115] Field executed seven of the eight unauthorized transactions over a period of 17 months. Many contravened the explicit instructions of the customers, and all but one customer incurred monetary losses on Field's "swaps" of their bonds. Overall, 11 customers were defrauded over a period of three years, realizing losses of more than $68,000, and sustaining unrealized losses of more than $422,000.

Field has not accepted responsibility for his misconduct. Rather, he has alleged that each of the customers gave false testimony at the hearing. However, the Extended Hearing Panel concludes that it was the customers who were credible, and not Field. Their testimony was candid, unrehearsed, and consistent. When cross-examined by Field, they were insistent that their direct testimony was accurate. While it is true that some of the more elderly customers may have been mistaken as to certain minutia, their testimony was clear on material elements, and often corroborated by written notes or letters that were created contemporaneously with the purchases and sales of the bonds. Field's evidence of telephone logs and express mail receipts showed only that unspecified

[115] *See, e.g.*, *Dept. of Enforcement v. Ragofsky*, No. C10000086, 2001 NASD Discip. LEXIS 19 (Jan. 13, 2001) (ten trades in five accounts over the course of approximately 18 months was both quantitatively and qualitatively egregious).

conversations took place and unspecified documents were sent to customers. However, the logs prove nothing about the content of conversations he, or others in his office, may have had with customers. They certainly do not tend to show that he discussed the risks of investing in the bonds with the customers. Similarly, the express receipts do not tend to prove that official statements, or any other particular documents, were sent to them.

In view of the seriousness of the violations, the Extended Hearing Panel believes that to remediate the misconduct and to protect the investing public, Field should be barred from associating with any member firm in any capacity. The Sanction Guidelines also provide that, where appropriate to remediate misconduct, adjudicators should order restitution and/or rescission.[116] Here, restitution is appropriate for those customers who have suffered a quantifiable loss as a result of Field's misconduct. In addition, for those customers who have not sold their bonds, the Extended Hearing Panel will order Field to offer them rescission, that is, to offer to repurchase their bonds at the original purchase price. Finally, Field will be assessed costs of $5,213.79, consisting of a $750 administrative fee and a $4,463.79 transcript fee.

Conclusion

For fraudulent sales practices, in violation of MSRB Rules G-17 and G-25, and Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934 and SEC Rule 10b-5, Marshall J. Field is (1) barred from associating with any member firm in any capacity; (2) ordered to offer rescission by repurchasing, at the original purchase price, the municipal bonds he sold to, and which are still held by, customers MP, MB, PM, RL, CS/NR, TL, DL, LD, and BB; (3) ordered to pay restitution to the following customers in

[116] SANCTION GUIDELINES, at 4.

the amounts shown below, plus interest at the rate specified by 26 U.S.C. § 6621(a)(2), calculated from each customer's date of purchase until paid:

MP, $551.95 plus interest from January 13, 1999
PM, $2,516.05 plus interest from June 22, 1999
RL, $14,237.22 plus interest from April 5, 2000
CS, $420.00 plus interest from December 6, 2001
TL, $1,852.95 plus interest from April 18, 2001
LD, $32,400.50 plus interest from February 27, 2001
BB, $191.33 plus interest from September 25, 2000
BR, $10,885.36 plus interest from October 19, 2001;

and, (4) assessed costs in the total amount of $4,463.79.

The sanctions shall become effective on a date determined by NASD, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of NASD, except that, if this Decision becomes the final disciplinary action of NASD, the bar shall become effective immediately.

SO ORDERED.

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Alan W. Heifetz
Hearing Officer
For the Extended Hearing Panel

Copies to:

Via First Class Mail, Facsimile & Overnight Courier
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