FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK B. BELOYAN
(CRD No. 1392748),

and

TRADESPOT MARKETS INC.
(FORMERLY KNOWN AS BELOYAN INVESTMENT SECURITIES, INC.)
(CRD No. 29683),

Respondents.

Disciplinary Proceeding
No. 2005001988201

Hearing Officer – RSH

AMENDED Hearing Panel Decision[1]
August 6, 2010

The Respondents violated Conduct Rules 2210 and 2110 by recommending the purchase of securities in e-mails that were unbalanced, misleading, and omitted material facts, and Conduct Rules 2315 and 2110 by recommending to customers an OTC equity without reviewing current financial statements for the issuer. For violating Rule 2210, the Respondents were fined, jointly and severally, $10,000, and Beloyan was suspended from associating with any member firm in any capacity for ten business days. For violating Rule 2315, the Respondents were fined, jointly and severally, $3,500.

Appearances

For Complainant: Robin W. Sardegna, Senior Litigation Counsel, and David R. Sonnenberg, Head of Litigation, FINRA, DEPARTMENT OF ENFORCEMENT, Washington, D.C.

[1] This Amended Decision is issued to correct the Hearing Panel's findings regarding the Respondents' violations of Rules 2315 and 2110 set forth in Part III.B at pages 15 and 16. There is no change in the sanctions assessed against the Respondents.

For Respondents: Alan M. Wolper and Jeremy S. Hyndman, LOCKE LORD BISSELL & LIDDELL LLP, Atlanta, GA

DECISION

I. PROCEDURAL HISTORY[2]

On November 2, 2009, the FINRA Department of Enforcement filed an Amended Complaint[3] with the Office of Hearing Officers. The First Cause of Action alleged that Respondents Mark B. Beloyan ("Beloyan") and Tradespot Markets, Inc. ("Tradespot") (f/k/a Beloyan Investment Securities, Inc. ("BIS")) violated Rules 2210(d) and 2110 by distributing e-mails that were unbalanced, misleading, and that omitted material facts in connection with recommendations that customers and prospective customers purchase securities. The Second Cause of Action alleged that the Respondents violated Rules 2315(a) and 2110 by recommending to customers an over-the-counter ("OTC") equity security without reviewing current financial statements for the security issuer. The Respondents filed their Answer to the Amended Complaint on November 12, 2009.[4]

The hearing was held on January 12 and 13, 2010, in Boca Raton, FL before a Hearing Panel composed of the Hearing Officer and two current members of FINRA's District 7 Committee. Enforcement called two witnesses: Beloyan and Richard Waldrop, a FINRA litigation paralegal. The Respondents called Beloyan and four of the Respondents' customers as witnesses—BF, MF, AC, and MW. The Hearing Panel accepted into evidence 24 exhibits (including the sworn declarations of three BIS customers) submitted by Enforcement, eight

[2] As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules that were in effect at the time of the Respondents' alleged misconduct and cited in the Complaint as the basis for the charges against them.
[3] Enforcement filed the original Complaint on February 2, 2009.
[4] The Respondents filed their Answer to the original Complaint on April 7, 2009.

exhibits submitted by the Respondents, and one jointly submitted exhibit containing the parties' stipulations.[5] Both parties submitted post-hearing briefs, with the final submissions filed on March 1, 2010.

Based upon a review of the entire record, the Hearing Panel makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

A. Respondents

Beloyan is currently registered with FINRA through Tradespot as a General Securities Representative, General Securities Principal, and Financial and Operations Principal. He was first registered with NASD/FINRA in July 1985, and has held Series 7, 24, 27 and 63 licenses since 2005. Beloyan founded BIS in 1992. Between December 1, 2004, and September 30, 2005, he served as the firm's president, chief compliance officer, owner, and sole producing registered representative.[6] During 2004 and 2005, all customers of BIS were customers of Beloyan.[7]

In June 2008, BIS changed its name to Tradespot. Tradespot is located in Davie, FL. It has been a registered broker-dealer and NASD/FINRA member firm since 1992.[8]

B. Beloyan Sent Four E-mails to Over 100 Firm Customers

Between February and September 2005, Beloyan sent, to more than 100 existing and prospective customers of BIS, a series of four e-mails in which he recommended the purchase of

[5] In this decision, "Tr." refers to the transcript of the hearing; "CX" to Enforcement's exhibits; "RX" to Respondents' exhibits; and "JX-1" to the parties' stipulations.
[6] JX-1, ¶ 6; Tr. 38:12-15.
[7] JX-1, ¶ 20.
[8] JX-1, ¶ 8.

Solucorp Industries, Ltd. ("SLUP") stock. The fourth e-mail also recommended the purchase of Global Music International, Inc. ("GMUS") stock.[9]

1. February 1, 2005 E-mail

On February 1, 2005, Beloyan sent an e-mail to more than 100 recipients, the majority of whom were existing customers of BIS. The subject line of the e-mail was "SLUP." The e-mail contained an embedded Wall Street Journal article entitled, "U.S. Expands List of Cancer Causes, Adding 17 Agents." The only text in the e-mail, besides the article, stated: "The article appeared today in the Wall Street Journal. I would recommend that you consider buying more shares at this level."[10]

2. June 8, 2005 E-mail

On June 8, 2005, Beloyan sent an e-mail to more than 100 recipients, the majority of whom were existing BIS customers. The subject of the e-mail was "SLUP." The entire e-mail read: "I have been buying SLUP and I would encourage you to add to your position. Call me for details. thanks (*sic*)."[11]

3. August 5, 2005 E-mail

On August 5, 2005, Beloyan sent another e-mail with the subject line "SLUP" to more than 100 recipients, the majority of whom were existing BIS customers. The only text in the e-mail read: "Just a note to let you know that everything is OK with SLUP. At these levels you might want to consider putting a bid around 1.50 to 1.55 and see if you can buy more stock. As some of you know we are in the final stages of what I believe is the summer dulldrums (*sic)* and things should start to pick up shortly. I have had many conversations with the company and corporately things are fine. I believe that in the near term (between now and after Labor Day)

[9] JX-1, ¶ 1; Tr. 42:9-43:11; CX-1-4.
[10] JX-1, ¶ 1; CX-1; Tr. 40-41.
[11] JX-1, ¶ 1; CX-2; Tr. 41.

the stock price should start to go back up. Please feel free to call with any questions. thanks (*sic*).[12]

4. September 13, 2005 E-mail

On September 13, 2005, Beloyan sent a fourth e-mail to more than 100 recipients, the majority of whom were existing BIS customers. The only text in the e-mail read: "I want to pass along some of my opinions regarding some of the stocks we own. I believe that we will see a move higher in SLUP going in to the fourth quarter. At current levels-$2.10 I feel that it is a great buy. Based on past press releases I believe that the company has really grown and is making significant headway in their business and technology. Regarding GMUS, the stock doesn't trade much yet. I feel that at the current levels-$3.50 it is a great buy going into the 4th quarter as the client base should start to increase dramatically. If you have anything to invest at this point I would consider both of these stocks. Please feel free to call with any questions. Thanks."[13]

C. The Four E-Mails Failed to Disclose Facts and Information

None of the four e-mails Beloyan sent disclosed the following facts about SLUP, GMUS, or Beloyan's SLUP transactions.

1. SLUP

In 2005, SLUP, a Canadian corporation, was principally engaged in environmental remediation. The company developed and licensed products used to clean up heavy metal contamination in the environment. Its stock was traded in the OTC market and quoted in the Pink Sheets.[14] In December 1999, the Securities and Exchange Commission ("SEC") brought a civil injunctive action against SLUP and certain of its officers and directors, including its

[12] JX-1, ¶ 1; CX-3; Tr. 41-42.
[13] CX-4; JX-1, ¶ 1; Tr. 42.
[14] JX-1, ¶ 10.

founder, Joseph Kemprowski, and its former president, Peter Mantia. SLUP and its officers and directors were accused of violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, by issuing false and misleading press releases, shareholder letters, and annual reports and by making false filings with the SEC.[15]

On March 12, 2003, the U.S. District Court for the Southern District of New York entered an order accepting SLUP's offer to settle the charges against it.[16] On October 8, 2003, following a six-day trial, Kemprowski, Mantia and others were found liable for the charged violations. As part of the sanctions imposed by the court, Kemprowski and Mantia were barred from serving as officers or directors of any company having its securities registered under the Securities Act or required to file reports under the Exchange Act.[17]

In late 1999, SLUP ceased filing financial statements with the SEC, and it deregistered its securities in September 2003.[18] SLUP did not issue its 2002, 2003 or 2004 financial statements until March 2007.[19]

2. GMUS

GMUS was incorporated in July 2004. During 2004 and 2005, GMUS was a development stage company doing business as Independent Music Network and IMNTV. According to GMUS' Form 10-QSB for the period ending March 31, 2005, the company webcasted music video programming of unsigned artists and bands.[20] GMUS stated that since its inception it had 1) earned no revenue, 2) incurred over $100,000 in net losses, and 3)

[15] JX-1, ¶ 11; CX-5, p. 1; CX-6; Tr. 71, 73; CX-25, pp. 15-16, 34.
[16] JX-1, ¶ 11.
[17] CX-8.
[18] JX-1, ¶¶ 13, 14; CX-12.
[19] CX-25, pp. 51-53.
[20] JX-1, ¶ 15; CX-17, p. 7.

developed a working capital deficiency in excess of $1.3 million. GMUS also stated that "[t]hese factors raise substantial doubt about the Company's ability to continue as a going concern."[21]

3. Beloyan's Representations Regarding his SLUP Transactions

In his second e-mail, sent June 8, 2005, Beloyan stated, "I have been buying SLUP, and I would encourage you to add to your position."[22] In fact, Beloyan had not bought SLUP stock since March 2005, and had sold 1,000 shares the day before sending the e-mail. Moreover, during the two and a half months before the June 8 e-mail, he had sold more than 80,000 shares of SLUP out of his personal account, generating over $150,000.[23] And two days later, Beloyan sold another 20,000 shares.[24] Despite these sales, Beloyan still held more than 1 million shares of SLUP, and clearly would have profited from a higher stock price.[25]

Beloyan claimed that although he said "I have been buying SLUP," he meant that he had been buying SLUP for his customers, and not in his personal account. At least one of his customers believed the plain meaning of his words; JR stated in his declaration that he thought Beloyan was buying SLUP for himself and would have wanted to know why Beloyan was selling while recommending that his customers buy the stock.[26] While three of Beloyan's customers testified that they understood the e-mail to mean that Beloyan was buying SLUP for his customers,[27] another customer testified that he thought Beloyan was buying SLUP for the

[21] CX-17, p. 9.
[22] CX-2.
[23] Tr. 45:1-18; RX-4, pp. 6-10.
[24] RX-4, p. 10.
[25] Tr. 52:23-25, 54:9-13.
[26] CX-22, p. 2.
[27] Tr. 349-350, 380-381, 465.

firm.[28] The Hearing Panel finds that a reasonable person could interpret the plain meaning of Beloyan's words to mean that Beloyan was buying SLUP for himself.

At the time he drafted and distributed the four e-mails described above, Beloyan was aware of the SEC's action against SLUP.[29] He knew that, despite the court's officer and director bar against Kemprowski and Mantia, both men continued to work at SLUP.[30] He also knew that SLUP had deregistered its securities and had not filed any financial statements with the SEC since the late 1990's.[31] Beloyan also knew each of the facts described above about GMUS when he sent the September 13, 2005 e-mail recommending the purchase of GMUS stock.[32] Despite knowing all of these facts, Beloyan did not disclose any of them in any of the four e-mails he sent.[33]

Before sending out the e-mails recommending SLUP stock, neither Beloyan nor anyone else acting on behalf of BIS reviewed then-current SLUP financial statements.[34] By virtue of his positions with BIS, Beloyan was responsible for ensuring that all firm communications with customers were compliant with NASD/FINRA rules.[35] During the period these four e-mails were sent, Beloyan took at least 15 solicited orders for the purchase of SLUP.[36] MF testified that he purchased SLUP shortly after receiving the third of these e-mails, and that he based his purchase in part on the e-mail.[37]

D. Beloyan Made Some Disclosures to Some Customers by E-mail and Orally

[28] Tr. 485-486.
[29] JX-1, ¶ 12.
[30] Tr. 68-71.
[31] Tr. 94; CX-25, p. 53.
[32] Tr. 101-102.
[33] CX-1-4.
[34] Tr. 110, 158, 440-441; CX-25, pp 53-54.
[35] JX-1, ¶ 7.
[36] JX-1, ¶¶ 7-19; Tr. 107-108; CX-19.
[37] Tr. 398:13-16.

With respect to SLUP, the parties stipulated that the four BIS customers who testified at the hearing (BF, MF, AC, and MW), and the three BIS customers who submitted declarations (JO, PP, and JR), received 19 e-mails disclosing that SLUP had settled an action with the SEC, and referring the customers to the SEC's website for details.[38] Beloyan testified that he also told all of his customers about SLUP's settlement with the SEC, that the allegations in that case involved inappropriate press releases and auditing problems, and that the two corporate officers were alleged to have committed misconduct but continued to work at the company.[39]

Beloyan testified that he did not provide comprehensive investing services to his clients. Instead, he was a "speculation high-growth broker," and invested a small portion of their investible assets.[40] BF testified that he knew his investments with Beloyan were "very speculative."[41] Similarly, AC testified, "All of my transactions with [Beloyan] have always been speculative. I have other holdings that I have mutual funds with other brokerages and I own real estate and I have a quite varied portfolio. So [Beloyan] is strictly speculative."[42] All four customers agreed that Beloyan had disclosed information about SLUP's SEC action as well as the risks involved with investing in SLUP and GMUS.[43]

The customer declarations submitted by Enforcement corroborated Beloyan's and the live witnesses' testimony in many respects. JR acknowledged that he knew SLUP was losing money, had not filed financial statements with the SEC for years, had been sued by the SEC and settled the case, and he knew investing in SLUP involved significant risk.[44] JO stated, "Mr. Beloyan

[38] Tr. 322:9-324:1; RX-1, pp. 64, 70, 78, 94, 97, 111, 113, 128, 131, 134, 137, 141, 144, 152, 155, 158, 161, 164, 172.
[39] Tr. 255:1-256:17, 259:8-23, 421:1-422:13.
[40] Tr. 202:1-15.
[41] Tr. 335:17-23.
[42] Tr. 458:16-21.
[43] Tr. 336:21-24, 356:20-357:12, 377:6-23, 389:7-390:17, 462:20-463:8, 467:5-468:12, 483:2-484:8.
[44] CX-22, pp. 2-3.

and I had numerous conversations about SLUP. From those conversations, I knew that SLUP was losing money."[45]

Nevertheless, these customers each declared that Beloyan had not told them several facts that "they would have wanted to know before purchasing SLUP stock." All three declarants stated under oath that Beloyan never told them that 1) he was selling SLUP stock; 2) SLUP and its officers had been sued by the SEC for, among other things, issuing false press releases; 3) two of those executives had been found liable for fraud and had been barred from serving as officers or directors of public companies; and 4) those executives nevertheless continued to work for SLUP.[46] Beloyan admitted at the hearing that only those customers who called him for additional information received more detailed disclosures about SLUP.[47]

III. CONCLUSIONS OF LAW

A. The Respondents Violated Rules 2210 and 2110

Rule 2210(d)(1)(A) states, in part, that all member communications with the public "must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security." It further states that "no member may omit any material fact…if the omission, in light of the context of the material presented, would cause the communication to be misleading." Rule 2210(d)(1)(B) prohibits members from making false or misleading statements or claims in any communications with the public.

The parties have stipulated that the four e-mails that are the subject of this case constitute correspondence within the meaning of Rule 2210(a)(3), as defined in Rule 2211(a)(1).[48] As

[45] CX-20, p. 2.
[46] CX-20, 21, 22.
[47] Tr. 169-170.
[48] JX-1, ¶ 4.

such, they are "communications with the public" under Rule 2210(a), and must comply with the content standards set forth in Rule 2210(d)(1).

Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." Under Rule 0115, associated persons have the same duties and obligations as FINRA members.[49] Therefore, Rule 2210 and 2110 apply equally to persons associated with those members.[50]

The Respondents do not dispute that Beloyan sent the e-mails, but they claim that Beloyan made adequate disclosure of all material facts relating to SLUP and GMUS in other e-mails he sent to customers as well as in oral conversations. They argue that the four e-mails at issue should be assessed in the context of those other communications for compliance with Rule 2210. The Hearing Panel was not persuaded by their argument.

The Respondents did not prove that all of the recipients of the e-mails at issue were informed by other means of the material facts that were omitted from the e-mails. Even if they had provided such evidence, however, numerous cases have held that a communication—whether advertising or sales literature—is properly analyzed for compliance with Rule 2210 by looking only within the four corners of that communication.[51]

The Respondents also argued that correspondence should be exempted from this "four-corners" analysis. There is no basis in Rule 2210 or the law for such an exemption. On the

[49] *Daniel D. Manoff*, 2002 SEC LEXIS 2684, at *2, n.1 (Oct. 23, 2002) .
[50] *Dep't. of Enforcement v. Foran*, 2000 NASD Discip. LEXIS 8, at *13, n.13 (N.A.C. Sept. 1, 2000).
[51] *See, e.g., Pacific On-Line Trading & Sec., Inc.* 2003 SEC LEXIS 2164, at *15 (Sept. 10, 2003) (advertisements must stand on their own when judged for content under Rule 2210(d); risk disclaimers and statement made at seminars did not cure deficiencies in the advertisements); *Sheen Fin. Res., Inc.*, 52 SEC 185, 190-191 (Mar. 13, 1995) (a defendant's prior warning at a seminar of potential risks involved with the investment, as well as detailed subsequent explanations, did not fulfill the company's responsibility to include warnings within the advertisements in question); *Dep't of Enforcement v. Aleshire*, 2002 NASD Discip. LEXIS 43, at *14 (June 12, 2002) (advertisements and sales literature are judged solely from within "the context of material provided in the advertisement or sales literature itself"; subsequent oral disclosure, no matter how detailed, cannot cure deficiencies in the communications at issue).

contrary, Rule 2210 was explicitly amended in 2003 to make correspondence subject to the same content standards as sales literature.[52] In addition, the National Adjudicatory Council ("NAC") has recently found that trade confirmations, as "communications with the public," must comply with the content standards of Rule 2210(d).[53] For these reasons, the Hearing Panel finds that the "four corners" of the e-mails at issue in this case must meet the content standards of Rule 2210, without regard to other e-mails or communications.

1. The E-mails Omitted Material Facts and Failed to Present a Fair and Balanced Presentation of SLUP and GMUS, and were Misleading

In recommending SLUP in the four e-mails he sent to BIS customers, Beloyan failed to disclose numerous material facts. He failed to disclose 1) that SLUP was losing money, 2) that SLUP had ceased filing financial statements six years earlier, 3) that SLUP had been sued by the SEC for fraud and settled the case, and 4) that two of its senior officers had been found liable for fraud and barred from serving as officers or directors, but were still working for the company.

Each of these omitted facts was material and should have been disclosed. As the U.S. Supreme Court stated in *Basic, Inc. v. Levinson,* a fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making a decision to buy or sell a security.[54] The facts relating to SLUP's financial condition were clearly material.[55]

It was also material that SLUP and several of its key officers were sued by the SEC for fraud for issuing false press releases, because Beloyan based his recommendations of SLUP in large part on the company's press releases and conversations with management.[56] Moreover, illegal conduct by a recommended company or its employees is considered material because a

[52] SEC Rel. No. 47820, 2003 SEC LEXIS 1155, at *10 (May 9, 2003).
[53] *Dep't. of Enforcement v. Nicolas*, 2008 FINRA Discip. LEXIS 9, at *69 (N.A.C. Mar. 12, 2008).
[54] 485 U.S. 224, 232 (1988).
[55] *See, e.g., SEC v. Murphy,* 626 F.2d 633, 653 (9th Cir. 1980); *Dep't. of Enforcement v. Golub,* 2000 NASD Discip. LEXIS 14, at *21 (N.A.C. Nov. 17, 2000).
[56] CX-3, 4; CX-25, p. 61; CX-29, pp. 16-17.

reasonable investor might prefer to invest otherwise had that conduct been disclosed.[57] Reasonable investors would likely think twice about investing in a company that employs persons who were barred from serving as officers or directors by a federal district court because of their fraud. In this case, the conduct of Kemprowski and Mantia was also material because Beloyan spoke to them when he wanted information about the company.[58]

In his second e-mail, Beloyan also made the false statement that he was buying SLUP stock, when he had actually been selling it for several months. At least one of Beloyan's customers, JR, said he would have wanted to know why Beloyan was selling SLUP while recommending that his customers buy the stock, and that the information would have been important to his decision whether to purchase SLUP.

With respect to GMUS, Beloyan failed to disclose that, since its inception, the company had 1) earned no money or revenue, 2) suffered more than $100,000 in net losses, and 3) developed a working capital deficiency in excess of $1.3 million. Beloyan also failed to disclose that GMUS's management had expressed doubts in an SEC filing about the company's ability to continue as a going concern. These were clearly material facts that Beloyan should have disclosed to potential investors in the email he sent recommending the purchase of GMUS.[59]

By failing to disclose so many material facts, the e-mails failed to present a fair and balanced presentation in connection with Beloyan's recommendations of SLUP and GMUS, and were misleading.

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[57] *See Roeder v. Alpha Industries, Inc.*, 814 F.2d 22, 25 (1st Cir. 1987).
[58] Tr. 71, 73.
[59] *See, e.g., Dep't of Enforcement v. Donner Corp. et al.*, 2006 NASD Discip. LEXIS 4, at *22 (N.A.C. Mar. 9, 2006) (failure to disclose auditor's going concern opinion the most glaring material omission); *Dep't. of Enforcement v. Jann*, 1998 NASD Discip. LEXIS 78, at *14 (June 30, 1998) (auditor's going concern opinion a material fact).

2. None of the Four E-mails Presented a Sound Basis for Evaluating the Facts Regarding SLUP and GMUS

None of the e-mails presented a sound basis for evaluating the facts regarding SLUP and GMUS. The February 1st e-mail contained nothing more than Beloyan's recommendation that his customers add to their positions and an unrelated news article that did not even mention SLUP. Beloyan's recommendation of SLUP in the June 8th e-mail was supported by nothing more than his false statement that he was buying SLUP stock. The August 5th e-mail provided only speculation and opinion, including two unsupported statements that Beloyan expected SLUP's price to rise shortly. His opinion that things were "fine" with SLUP was apparently based on "conversations with the company," but provided no additional detail regarding the nature or extent of those conversations. As in the others, in the fourth e-mail, sent on September 13th, Beloyan recommended the purchase of SLUP and included unsupported opinion that SLUP's price would go up in the fourth quarter, and was "a great buy" at current price levels. Beloyan said that, based on "past press releases," he believed that SLUP was making "significant headway in their business and technology."

In the September 13th e-mail, Beloyan also recommended the purchase of GMUS, and, similar to his recommendation of SLUP, gave his unsupported opinion that GMUS was "a great buy" and that GMUS' client base should start to increase dramatically.

None of these e-mails provided the recipients with adequate, sound bases on which to evaluate Beloyan's recommendation of SLUP and GMUS.[60] As discussed above, the e-mails were also misleading and failed to provide a fair and balanced presentation of SLUP and GMUS.

[60] *See, e.g., Dep't of Enforcement v. Reynolds*, 2001 NASD Discip. LEXIS 17 (N.A.C. June 25, 2001) (finding a single page advertisement describing the recommended security as "a stock whose time has come," along with a research report strongly recommending that investors aggressively accumulate shares, to constitute an inadequate basis under Rule 2210).

For these reasons, the Respondents violated Rule 2210. A violation of Rule 2210 also violates Rule 2110.[61]

B. The Respondents Violated Rules 2315 and 2110

Rule 2315(a) provides that no member or person associated with a member may recommend that a customer purchase or sell short any equity security not listed on NASDAQ or a national or regional securities exchange without first reviewing current financial statements of the issuer. For foreign private issuers, such as SLUP,[62] the Rule defines "current financial statements" as: 1) a balance sheet not older than 18 months before the date of the recommendation, 2) a statement of profit and loss for the 12 months preceding the date of the balance sheet, and 3) publicly available financial statements and other financial reports filed with the issuer's principal financial or securities regulatory authority, including the SEC, during the 12 months preceding the recommendation.[63]

Enforcement proved by a preponderance of the evidence that neither Beloyan nor anyone else at BIS reviewed "current financial statements" for SLUP before recommending the company's stock in three of the four e-mails at issue (June 8, 2005, August 5, 2005, and September 13, 2005). The Respondents claimed that Beloyan reviewed balance sheets and income statements of EPS Environmental, Inc. ("EPS"), the sole operating subsidiary of SLUP, before recommending SLUP. The Hearing Panel did not find Beloyan's claim credible. However, even if he had reviewed such statements, such a review would not satisfy Rule 2315's requirement that he review current financial statements of the *issuer* of the stock he was recommending, *i.e.,* SLUP.

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[61] *Dep't. of Enforcement v. Rogala,* 2005 NASD Discip. LEXIS 44, at *20, n.15 (N.A.C. Oct. 11, 2005) (citing *Pacific On-Line Trading & Sec., Inc.*, 2003 SEC LEXIS 2164, at *13 (Sept. 10, 2003).

[62] Enforcement assumed that SLUP qualified as a foreign private issuer under SEC Rule 3b-4, and the Respondents did not dispute this assumption.

[63] Rule 2315(b)(1)(B)(i), (ii), & (iv).

The Hearing Panel finds that the Respondents failed to conduct a review of current financial statements of SLUP before recommending the purchase of SLUP stock in the three specified e-mails. They therefore violated Rules 2315 and 2110.[64]

IV. Sanctions

In determining sanctions, the Hearing Panel considered the FINRA Sanction Guidelines ("Guidelines") [65] as well as the Guidelines' Principal Considerations in Determining Sanctions ("Principal Considerations").[66]

A. Violation of Rules 2210 and 2110

For failures to comply with rule standards and the use of misleading communications, in violation of Rule 2210, the Guidelines recommend a fine of between $1,000 and $20,000. The Guidelines also direct adjudicators to consider whether the violative communications were widely distributed. In egregious cases, the Guidelines recommend suspending the responsible person for up to sixty days.[67]

The Hearing Panel found that the Respondents' violation of the content standards of Rule 2110 was egregious. The four offending e-mails were sent to over 100 customers and prospective customers of BIS, and failed to disclose numerous material facts about the two companies whose stock Beloyan was recommending. The e-mails lacked any basis for his recommendations and failed to present a fair and balanced presentation of the risks and benefits of investing in SLUP and GMUS. At least some of Beloyan's customers might not have purchased SLUP stock had they been aware of the omitted facts. The Hearing Panel found

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[64] "Violations of any NASD Conduct Rule also constitute a violation of NASD Conduct Rule 2110." *Dep't. of Enforcement v. Duma*, 2005 NASD Discip. LEXIS 46, at *3, n.1 (N.A.C. Oct. 27, 2005) (citing *Stephen J. Gluckman*, 54 SEC 175, 185, 1999 SEC LEXIS 1395, at *22 (Jul. 20, 1999)).
[65] FINRA Sanction Guidelines (2007), www.finra.org/sanctionguidelines.
[66] *Id.* at 6-7.
[67] *Id.* at 84.

especially troubling the e-mail in which Beloyan stated he was buying SLUP when he had actually been selling the stock. His conduct was either intentional or reckless, an aggravating fact under the Principal Considerations.[68]

Beloyan's testimony at the hearing showed that he does not fully comprehend the requirements of the FINRA rules he is accused of violating. Furthermore, he was completely unremorseful; he denied that he had done anything wrong, and merely allowed that he "could have done things better." The Hearing Panel concluded that Beloyan was either unaware of his obligations under Rule 2210, or he chose to ignore them.

For their violation of Rules 2210 and 2110, the Hearing Panel found that the Respondents should be fined, jointly and severally, $10,000. In addition, Beloyan is suspended from associating with any member firm in any capacity for 10 business days.

B. Violation of Rules 2315 and 2110

There are no express Guidelines for violations of Rule 2315. Because the Rule was intended to supplement existing requirements that brokers have a reasonable basis for making their recommendations, hearing panels have looked to the Guidelines for making unsuitable recommendations, in violation of Rules 2110 and 2310.[69] Those Guidelines recommend fines of between $2,500 and $75,000. For failing to review current financial statements of SLUP before recommending the company's stock, in violation of Rule 2315, the Hearing Panel fines the Respondents, jointly and severally, $3,500.

V. ORDER

For violating Rules 2210 and 2110, Mark B. Beloyan and Tradespot Markets, Inc. are fined, jointly and severally, $10,000. In addition, Beloyan is suspended from associating with

[68] No. 13, FINRA Sanction Guidelines at 7.
[69] *See SEC Order Approving Proposed Rule Change*, 2002 SEC LEXIS 2156, at *3-4, n.8 (Aug. 19, 2002); *Dep't. of Market Reg. v. Giarmoleo*, 2008 FINRA Discip. LEXIS 15, at *34 (Apr. 30, 2008).

any member firm in any capacity for ten business days. For violating Rules 2315 and 2110, the Respondents are fined, jointly and severally, $3,500. The Respondents are also ordered to pay costs in the amount of $3868.55, which includes a $750 administrative fee and the cost of the hearing transcript. The fines and costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. If this decision becomes FINRA's final disciplinary action, the suspension shall begin on October 4, 2010, and end at the close of business on October 15, 2010.[70]

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Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to:

Tradespot Markets, Inc. (*via first class mail)*
Mark B. Beloyan (*via overnight courier and first class mail)*
Alan M. Wolper, Esq. *(via electronic and first class mail)*
Jeremy S. Hyndman, Esq. *(via electronic and first class mail)*
Robin W. Sardegna, Esq. *(via electronic and first class mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*

[70] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.