FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION, Complainant, v. ROBERT N. DRAKE, (CRD No. 1213804), Respondent.	Disciplinary Proceeding No. 20060053785-02 Hearing Officer – LOM **HEARING PANEL DECISION** May 3, 2012

Respondent Robert N. Drake, who was Chief Compliance Officer of his firm and the designated principal responsible for supervising corporate bond transactions, violated NASD Rules 3010 and 2110 by: (i) failing to prevent the firm from charging customers excessive and unfair markups and markdowns on 30 corporate bond transactions; and (ii) failing to establish, maintain and enforce reasonable written supervisory procedures for ensuring the timely and accurate reporting of the firm's corporate bond transactions to the Trade Reporting and Compliance Engine ("TRACE"). For these violations in the aggregate, Respondent is barred from association with any FINRA registered firm in any supervisory capacity.

Appearances

Laurie A. Doherty, Counsel, and James J. Nixon, Chief Litigation Counsel, FINRA Department of Market Regulation, Rockville, MD, for Complainant.

Robert N. Drake was *pro se*.

HEARING PANEL DECISION

I. INTRODUCTION

FINRA's Department of Market Regulation ("Market Regulation") alleges two causes of action against the Respondent, Robert N. Drake ("Respondent" or "Drake"), who was the Chief Compliance Officer of his firm, Kuhns Brothers Securities Corporation (the "Firm" or "Kuhns Brothers"), and registered as a general securities principal during the relevant period. Both

causes involve supervisory failures in connection with corporate bond transactions in violation of NASD Rules 3010 and 2110.[1] *First*, Market Regulation alleges that Drake was the person responsible for reviewing the corporate fixed income securities transactions of a registered representative with an extensive disciplinary history, but that from May 2004 through July 2006 he failed to prevent the Firm from charging excessive markups on 30 customer transactions in five different corporate bonds executed by that representative. *Second*, Market Regulation alleges that from 2004 through at least 2008 Drake failed to establish, maintain and implement adequate policies and procedures for monitoring the Firm's reporting of corporate bond transactions to the Trade Reporting and Compliance Engine ("TRACE") reporting system. One result was that the Firm reported no corporate bond trades to TRACE for the entire year of 2004, even though the Firm executed 34 eligible corporate bond transactions in 2004.[2]

A Hearing was held on February 1, 2012, before a three-person panel composed of a FINRA Hearing Officer and two current members of the District 10 Committee. The Department of Market Regulation called two witnesses, a FINRA Department of Market Regulation manager on the Fixed Income Investigations team who had worked on a review of markups at Respondent's Firm and the Respondent. Respondent separately testified on his own behalf.[3]

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[1] The Financial Industry Regulatory Authority, Inc. ("FINRA") is responsible for regulatory oversight of securities firms and associated persons who do business with the public. FINRA was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange ("NYSE"). FINRA is developing a new "Consolidated Rulebook" of FINRA Rules that includes NASD Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, FINRA's procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. FINRA's Rules are available at www.finra.org/Rules.

[2] Compl. ¶¶ 1-3, 5-21. *See also* JX-1 ("Stipulations Of Facts Not In Dispute") at ¶¶ 12-14, 19, 29, 39-45, 55-62.

[3] Hearing Tr. 25, 33, 81, 127-41.

The facts establishing the violations are not in dispute. The Respondent either stipulated to the critical facts[4] or admitted them in testimony at the Hearing. He testified, "I understand that there are sanctions that are necessary here. Very clearly."[5] He argued, however, that any sanction should take into account that he took responsibility for his errors,[6] did not profit from the misconduct,[7] and circumstances had made it difficult for him to perform his supervisory duties.[8] He declared with respect to sanctions, "[W]e are so far apart in what is reasonable."[9]

Although the Hearing Panel believes that Drake is sincerely remorseful, the Hearing Panel nevertheless finds it necessary to bar Respondent from association with any FINRA member firm in a supervisory capacity in order to accomplish the remedial goals set forth in the FINRA Sanction Guidelines and protect the investing public. The Hearing Panel believes that Drake is not suited to fulfill supervisory duties and would present a danger to the investing public if he were permitted to take such a position again.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINRA Has Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because Respondent is still registered with his FINRA member Firm and the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm.

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[4] JX-1 ("Stipulations Of Facts Not In Dispute").

[5] Hearing Tr. 133. *See also* Hearing Tr. 137 (Drake: "The exhibits have been presented fairly. They represent what was provided.").

[6] Hearing Tr. 127, 130-31, 133.

[7] Hearing Tr. 158, 161.

[8] Hearing Tr. 130, 136.

[9] Hearing Tr. 133.

B. Respondent's Employment History

Respondent Robert N. Drake has been in the securities industry since 1983 and has a history of supervisory failures. He worked as a compliance officer and registered principal at three FINRA members from 1993 through most of 2000. FINRA and two states disciplined Drake for supervisory failures during that period. In 1997, the State of South Carolina imposed a five-year bar on him for a failure to supervise, and for the same conduct the State of Indiana jointly and severally fined him and the firm for which he was then working $7,500. In December 2000 FINRA suspended him for two years for permitting statutorily disqualified individuals to associate with the firm then employing him, failing to report consent agreements with various states to FINRA, and failing to report customer complaints to FINRA.[10]

C. Respondent's Failure To Supervise Bond Transactions

In July 2003, after serving the two-year suspension imposed by FINRA, Drake became registered as a general securities principal and was designated the Chief Compliance Officer of Kuhns Brothers. He was responsible for supervisory decisions regarding issues raised by salesmen and had the authority to discipline them.[11] At that time, Kuhns Brothers was a small firm with four employees that focused on investment banking and did no bond business.[12]

In September 2003, Robert Quincy Brown ("Brown") became a registered representative with the Firm. Brown specialized in fixed income securities, a new line of business for Kuhns Brothers. He was brought in by John Starr, who had recently bought an interest in the Firm and become the new president of the Firm. Drake was responsible for supervising Brown's daily

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[10] Hearing Tr. 84-94; JX-1 ¶¶ 1-7.

[11] JX-1 ¶¶ 12-14; Hearing Tr. 100-102.

[12] Hearing Tr. 94-95; JX-1 ¶ 10.

transactions and was Brown's primary contact with the Firm. Brown worked out of his home in Jacksonville, Florida, while Drake was in the Firm's office in Connecticut.[13]

Brown had an extensive disciplinary history. In 1984, NASD took disciplinary action against Brown for unauthorized trading in four customer accounts. In 1991, after a merits hearing, the Securities and Exchange Commission ("SEC") suspended Brown for six months for willfully violating and aiding and abetting violations of the antifraud provisions of the federal securities laws in connection with the sale of municipal bonds to customers. Prior to joining Kuhns Brothers, Brown also had been subject to disciplinary actions by six states (Michigan, Florida, Virginia, Illinois, Maryland, and North Carolina).[14]

Drake knew about Brown's disciplinary history because he was responsible for filing Brown's Form U4 and for conducting a background check on Brown. Most state securities regulators took the position that they would not approve Brown's registration due to his regulatory disclosures in his CRD record. To obtain an Order of Conditional Registration for Brown in the State of Georgia, Drake represented to the State that he would provide heightened supervision of Brown. Georgia issued an order requiring Drake to subject Brown to additional supervision.[15]

Drake testified that Brown's disciplinary history raised red flags.[16] He admitted that in his view an action for unauthorized trading should have disqualified Brown from employment at

[13] Hearing Tr. 109 ; JX-1 ¶¶ 16, 17, 19-21; Compl. ¶ 5.

[14] Hearing Tr. 52-61; CX-5 (CRD Record For Robert Quincy Brown and SEC Decision Dated 12/18/91), CX-6 (Form U4 for Robert Quincy Brown Produced by Kuhns Brothers), JX-1¶¶ 22-25. Missouri also had denied Brown's request for registration in 1996. JX-1 ¶ 25; Hearing Tr. 55.

[15] Hearing Tr. 52-61, 109-114, 157; JX-1 ¶¶ 16-18, 22-34; CX-6 (print-out of Form U4 for Robert Quincy Brown dated August 26, 2003, in connection with Brown's registration with Kuhns Brothers); CX-9 (order of conditional registration for Brown from the State of Georgia).

[16] Hearing Tr. 111-13.

Kuhns Brothers.[17] But Drake viewed himself as unable to challenge the wishes of the new president of the Firm.[18]

Despite the red flags, Drake did not put in place any special mechanisms for supervising Brown.[19] Drake asserted it was unnecessary with respect to Georgia's requirement because Brown had no accounts in Georgia. He offered the further excuse that "the firm was so small and his activities were so narrow in terms of the scope of his clients and the securities that he was trading, I didn't see that they would gain anything from it anyway."[20]

No one at the Firm reviewed Brown's customer orders before they were executed. Brown did not enter his transactions into the Firm's computer systems where Drake could have seen them in real-time. Rather, Brown communicated from his Florida home by telephone with the Firm's clearing firm and directed the clearing firm as to the details of the transactions, including the markups or markdowns. Drake only received information regarding the trades at his office in Connecticut after the fact from the clearing firm.[21] Drake testified that "Mr. Brown did his trades in a rather unorthodox fashion."[22]

At the time of the 30 bond transactions in issue, the Firm had the same policy for equity and debt. It set a cap of 5% on commissions for equity transactions and a 5% cap on markups for debt transactions.[23]

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[17] Hearing Tr. 111-12.

[18] Hearing Tr. 127-28.

[19] Hearing Tr. 113-14.

[20] *Id.*

[21] Hearing Tr. 63, 103-105; JX-1 ¶¶ 21, 36-39.

[22] Hearing Tr. 103.

[23] Hearing Tr. 115-16. The Firm's policy was in violation of the applicable Rules because it treated debt and equity alike and also treated 5% as though it were a safe harbor. As set forth in FINRA's Rules relating to pricing, discussed below, a mark-up of 5% or even less can be unfair and a violation of the applicable Rules, depending on the circumstances. Furthermore, the Rules indicate that markups on debt securities should be lower than the

A FINRA Manager of the Fixed Income Investigations team testified as to how FINRA became aware of Brown's trading, conducted its analysis, and concluded that excessive markups and markdowns had been charged on 30 bond transactions from May 2004 through July 2006. He explained the evidence summarized in two charts, one showing the amount of the markups or markdowns charged by Kuhns Brothers on the relevant transactions and the other comparing those markups and markdowns to what other firms charged on the same securities in transactions within a month before or a month after. The charts showed a pattern. Kuhns Brothers consistently charged more than other firms charged for the same securities during the same period, usually at least double the markups charged by other firms on similar size transactions and frequently as much as six or seven times the markups charged by other firms in such transactions. The markups charged by Kuhns Brothers were not even close to the markups charged by other firms on the same securities in similar size transactions at any point in the two-month comparison period. [24]

For example, the witness pointed out a Kuhns Brothers transaction in which the markup on 85 Delta Airlines bonds was 8.05% and compared it to 28 transactions by other firms during the month before and month after of about the same size (10 to 100 Delta Airlines bonds). Other firms' markups ranged from .42% to 4.06% on transactions of similar size in the same security. Thus, the Kuhns Brothers markup was double the highest in the market for that size transaction during the two-month period. The charts show that Kuhns Brothers also sold 135 Delta Airlines

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commissions on equity securities. *See* NASD Rule 2440, IM-2440-1, and IM-2440-2. However, Market Regulation has not charged Drake with responsibility for the Firm's policy.

The Firm's policy is relevant here in two regards. First, although excessive markups on certain of the Firm's bond transactions were within that policy, they were nevertheless unfair and excessive, as discussed below. Second, over half the transactions in issue did not even comply with the Firm's own policy, demonstrating the absence of the most minimal pricing review.

[24] Hearing Tr. 29-51; CX-1 (Chart – Markups/Markdowns Charged To Customers) and CX-2 (Chart – Markups/Markdowns analysis).

bonds to another customer on the same day at the identical markup of 8.05%. During the same two-month comparison period, larger transactions in Delta Airlines bonds were sold with even smaller markups. Markups on transactions involving 101 to 500 Delta Airlines bonds ranged from .35% to 3%, far less than Kuhns Brothers charged in its larger transaction. The FINRA Manager who testified pointed out that Kuhns Brothers did not vary the amount of its markup with the size of the transaction, although other firms in the market decreased the markup percentage in larger transactions (to take into account the larger dollar amount of the transaction). For example, on larger transactions involving 501 to 1000 Delta Airlines bonds markups ranged from .05% to 2.82%. The charts also showed that Kuhns Brothers even violated its own 5% cap on markups in over half of the transactions.[25]

Of the 30 bond transactions in issue, Kuhns Brothers charged markups or markdowns of more than 5% in 18 transactions, 5% in four transactions, and between 4%-5% in eight transactions. Kuhns Brothers was not a market maker in any of the five corporate bonds involved in the 30 transactions. Each trade was a "riskless" transaction that involved the virtually simultaneous or same-day purchase and sale of the same face amount of the same bond, with a Kuhns Brothers customer involved in one or both legs of each transaction.[26]

At the time Drake reviewed markups on Brown's bond transactions, he had no information with respect to any extra services or facilities that might have been provided to justify the high prices charged. Drake testified that he did no investigation beyond doing a math calculation of the size of the markup on a particular transaction.[27] His testimony that he did even that much is undercut, however, by the fact that the markups on more than half the bond

[25] CX-1 and CX-2.

[26] JX-1 ¶¶ 41-42.

[27] Hearing Tr. 119.

transactions were higher than the 5% permitted under the Firm's policy. Drake had no explanation for how this happened. He admitted that he never questioned a markup on any transaction executed by Brown.[28]

D. Respondent's Failure To Establish And Implement Procedures For Monitoring TRACE Reporting

Drake admitted that there was no written procedure in place from 2004 to 2008 to check on whether the Firm's TRACE reporting was timely and accurate. He blamed the problem on "boilerplate" procedures that had been purchased from a company that was eventually fired in 2008. Drake also admitted that even though he knew that Brown was executing corporate bond transactions in 2004, Kuhns Brothers submitted no TRACE reports on any bond transactions that year.[29]

E. Applicable Rules

NASD Rule 0115(a) and its currently applicable successor, FINRA Rule 0140, both subject an associated person of a member firm to the "same duties and obligations as a member under the Rules." Article IV, Section 1 of the NASD's By-Laws and, in slightly different language, Article IV, Section 1 of FINRA's current By-Laws both require each applicant for membership to agree to comply with the NASD's By-Laws and Rules.[30]

NASD Rule 3010 deals with supervisory responsibilities. NASD Rule 3010(a) provides that a member firm "shall establish and maintain a system to supervise the activities of each

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[28] Hearing Tr. 141.

[29] Hearing Tr. 123-25.

[30] The violations alleged here extend from 2004 through 2008. As noted in footnote 1, FINRA was formed in July 2007 in a consolidation of the NASD and the regulatory arm of NYSE. The NASD's By-Laws provided that a membership application "shall contain" an "agreement" to comply with the "By-Laws of the NASD" and with the "Rules of the Association," referring by definition to the NASD. NASD Manual (2006), By-Laws, Art. IV, Sec. 1. FINRA's By-Laws contain parallel provisions requiring that a membership application "shall contain" an "agreement" to comply with, among other items, the "By-Laws of the Corporation" (referring by definition to the NASD or any future name of this entity) and with the "Rules of the Corporation." FINRA Manual (2011), By-Laws, Art. IV, Sec. 1.

registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." NASD Rule 3010(a)(5) specifically requires that an appropriately registered representative or principal be assigned to supervise each registered person's activities. NASD Rule 3010(d)(1) specifically requires that a member firm establish "procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions," and further provides that "[e]vidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association [now FINRA] upon request." NASD Rule 3010(b)(1)l provides that a member firm "shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives" and further provides that those written procedures be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD."

NASD Rule 2110 states that "[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade." It is inconsistent with the duties imposed by Rule 2110 to violate other NASD Rules.[31] In particular, a violation of NASD Rule 3010 is also a violation of NASD Rule 2110.[32]

NASD Rule 2440, IM-2440-1, and IM-2440-2 govern pricing, including markups and markdowns on corporate debt. These provisions require that a "fair" price be charged, taking

[31] The Securities and Exchange Commission has consistently held that a violation of an NASD rule or regulation is inconsistent with NASD Rule 2110. *Alvin W. Gebhart,* Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006), *rev'd and remanded in part on other grounds sub. nom Gebhart v. SEC,* 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007). *See also Richard F. Kresge*, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, at *42 (June 29, 2007) ("It is well settled that a violation of a rule promulgated by the Commission or by NASD also violates Conduct Rule 2110.").

[32] *Dep't of Enforcement v. Midas Securities, LLC*, No. 2005000075703, 2011 FINRA Discip. LEXIS 62, at *3 n.2 (NAC Mar. 3, 2011); *Dep't of Enforcement v. Pellegrino*, No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *47 n.31 (NAC Jan. 4, 2008).

into account the type of security, the size of the transaction, the current market price, and other circumstances. NASD Rule 2440 requires members to buy or sell to customers at prices that are "fair" taking into account all the relevant circumstances. Under IM-2440, "it shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security." IM-2440-1(a)(1) specifies that 5% is a guide to what is acceptable as a markup, not a rule. IM-2440-1(a)(4) specifies that a mark-up pattern of 5% or even less may be considered unfair or unreasonable. IM-2440-1(b)(1) states that the markup on a common stock transaction will ordinarily be higher than on a bond transaction of the same size. IM-2440-1(b)(4) states that a markup on a transaction that involves a small amount of money may warrant a higher percentage of markup to cover the expenses of handling.

F. Respondent Violated NASD Rules 3010 and 2110

Drake violated NASD Rule 3010. As a result of Drake's failure to supervise Brown, despite numerous red flags, the Firm charged unfair and excessive markups and markdowns on Brown's 30 bond transactions in violation of NASD Rules and policies relating to markups and markdowns on debt securities. As a result of Drake's failure to establish and implement procedures for monitoring the Firm's TRACE reporting, the Firm failed to report any of the 34 eligible transactions to TRACE in 2004. These violations without question were inconsistent with the high standard of commercial honor and the just and equitable principles of trade required by Rule 2110.

IV. SANCTIONS

A. Imposition Of Unitary Sanction For Violations

The Hearing Panel has determined to impose a single sanction for the violations. FINRA's Sanction Guidelines ("Sanction Guidelines") permit the aggregation of violations

where the misconduct is not fraudulent and arises from a single cause or course of conduct.[33] Drake's violations were not fraudulent. Although Market Regulation alleges two causes of action, the claims involve violations of the same NASD Rules and arise from the same failure to exercise supervisory responsibility and authority.[34]

B. Relevant Sanction Guidelines

The Sanction Guidelines for violations of NASD Rules 3010 and 2110 suggest that an individual be suspended in any supervisory capacity for up to 30 days and fined from $5,000 to $50,000. However, in egregious cases adjudicators may consider up to a two-year suspension in any or all capacities or a bar. The Principal Considerations particularly pertinent in this kind of case include: (i) whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny; (ii) the nature, extent, size and character of the underlying misconduct; and (iii) the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls.[35]

Certain General Principles apply to all sanctions determinations. Adjudicators should always keep in mind the overall purposes of FINRA's disciplinary process and impose remedial sanctions to prevent the recurrence of misconduct, improve overall standards in the industry, and

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[33] FINRA Sanction Guidelines (2011) ("Sanction Guidelines"), General Principals Applicable to All Sanction Determinations ("General Principal") No. 4. FINRA's Sanction Guidelines can be found at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

[34] *Dep't of Enforcement v. Conway*, No. E102003025201, 2010 FINRA Discip. LEXIS 27, *53 n.60 (NAC Oct. 26, 2010) ("The Guidelines permit the 'batching' of violations for purposes of determining sanctions in disciplinary proceedings where the violations result from a single systemic problem or cause."); *Dep't of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, *15 (OHO Oct. 4, 2011) ("Because Respondent's violations 'stem from a single source,' it is appropriate to impose a single, unitary sanction.").

[35] Sanction Guidelines, at 103.

protect the investing public. Generally, recidivists should receive more severe sanctions. Finally, adjudicators should tailor sanctions to the misconduct charged.[36]

C. Sanctions Imposed Here

This is an egregious case. Drake ignored numerous red flags that Brown required additional supervisory scrutiny, and Drake failed to review in any meaningful way Brown's numerous bond transactions over an extended period of time from May 2004 through July 2006. Drake also failed to establish and implement procedures for monitoring TRACE reporting, which led to a failure to report any of 34 eligible transactions to TRACE over the entire year of 2004.

It is an aggravating factor that Drake is a recidivist with a history of prior supervisory failures, even if his prior supervisory failures did not involve excessive markups. In addition, the underlying misconduct that resulted from Drake's supervisory failures in this case (the excessive markups on 30 bond transactions over the course of two years and the failure to report any eligible transactions to TRACE for an entire year) was serious and extensive. The quality and degree of Drake's exercise of his supervisory authority was extremely poor.

While Drake has taken responsibility for his errors, and that is a mitigating factor, it does not demonstrate that he would be able to fulfill a supervisory role effectively in the future. Drake's assertion that circumstances made it difficult for him to perform his supervisory duties and that he could not effectively challenge the president of the firm or require an adjustment to the prices Brown was charging only highlights why Drake is unsuited to be a supervisor. His reluctance to assert any supervisory authority even when it was his responsibility to do so, is at the root of his violations.

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[36] Also pertinent are the Principal Considerations in connection with FINRA's Sanction Guidelines for TRACE reporting failures under FINRA Rules 2010 and 6730. It is an aggravating fact if a respondent fails to report transactions to TRACE for more than a week, but a failure to report for several weeks is egregious.

The Hearing Panel has determined that Drake should be barred from associating with a member firm in any supervisory capacity. This sanction follows the mandate of the Sanction Guidelines to tailor the remedy to the misconduct. Drake's misconduct had to do with poor supervision, and the sanction focuses on preventing harm to the public in the future from poor supervision.[37]

VI. ORDER

Respondent, Robert N. Drake, is barred from associating with any FINRA member firm in any supervisory capacity for his violations of NASD Rules 3010 and 2110. If this decision becomes FINRA's final disciplinary action, the bar shall become effective immediately. The Respondent is also ordered to pay costs in the amount of $2000.15, which includes a $750 administrative fee and the cost of the Hearing transcript. The costs shall become due and payable on a date set by FINRA, but not later than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

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Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies:

Robert N. Drake (via first-class mail, electronic mail and overnight courier)
Laurie A. Doherty, Esq. (via first-class and electronic mail)
James J. Nixon, Esq. (via electronic mail)

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[37] Market Regulation initially sought restitution. However, at the Hearing, Market Regulation indicated that Kuhns Brothers had provided proof that it had already made restitution to the affected customers, making it unnecessary to order restitution here.

The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.