

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

Department of Enforcement,

Complainant,

vs.

Sterling Scott Lee
Austin, Texas,

Dennis Todd Lloyd Gordon
Rosenberg, Texas,

Respondents.

DECISION

Complaint No. C06040027

Dated: February 12, 2007

Registered principals and senior officers of member firm permitted unregistered individual to function as a principal of the firm, failed to maintain the accuracy of the firm's membership application, charged retail customers fraudulently excessive markups, and failed to disclose the markups on customer confirmations. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Karen E. Whitaker, Esq., and Leo F. Orenstein, Esq., NASD Department of Enforcement.

For the Respondents: Joel A. Gordon, Esq.

DECISION

Pursuant to NASD Procedural Rule 9311, Sterling Scott Lee ("Lee") and Dennis Todd Lloyd Gordon ("Gordon") appeal a Hearing Panel's December 29, 2005 decision finding that the respondents permitted an unregistered individual to function as a principal of member firm Lloyd Scott and Valenti, Ltd. ("LSVL"), failed to maintain the accuracy of LSVL's membership application, and charged retail customers fraudulently excessive markups that were not disclosed on the confirmations that the customers received. The Hearing Panel barred Lee and Gordon in all capacities for permitting an unregistered, statutorily disqualified individual to function as a principal of LSVL. In light of the bar, the Hearing Panel imposed no additional sanction for

respondents' fraudulently excessive markups, but ordered respondents to pay restitution to LSVL customers of \$22,657 for their markup violations. The Hearing Panel also assessed costs of \$2,779. After a thorough review of the record, we affirm the Hearing Panel's findings and modify sanctions.

I. Background

Gordon entered the securities industry in April 1988 and became associated with LSVL in February 2000. In 1999, Gordon became acquainted with an unregistered individual who was known by several names, including Michael Guss and Michael Syroejine (hereinafter referred to as "Guss"). At that time, Gordon was associated with several member firms as a financial and operations principal ("FINOP"). Guss was never registered in the securities industry. Lee entered the securities industry in January 1989. In May 2000, Lee joined LSVL.

II. Procedural History

NASD's Department of Enforcement ("Enforcement") filed the complaint in this matter in August 2004. A complaint from a former employee of LSVL triggered Enforcement's investigation of Guss's association with LSVL.

Cause one of the complaint alleged and the Hearing Panel found that, between February 2000 and May 2003, Lee and Gordon permitted Guss to function as a principal of LSVL when he was not properly registered and was statutorily disqualified from the industry. The Hearing Panel found that Lee and Gordon allowed Guss to: establish LSVL's policies and procedures, recruit registered representatives for LSVL, negotiate clearing agreements, resolve disputes with LSVL's clearing firms, negotiate Office of Supervisory Jurisdiction ("OSJ") agreements, determine branch office operations, and represent LSVL to issuers on the subject of underwritings. The complaint alleged and the Hearing Panel further found that, during the same period, Gordon and Lee filed 29 amendments to LSVL's Uniform Application for Broker-Dealer Registration ("Form BD"), but failed to disclose Guss's involvement with LSVL. The Hearing Panel concluded that Gordon and Lee's conduct violated Membership and Registration Rule 1021, Conduct Rule 2110, and Article IV, Section 1 and Article V, Section 1 of NASD's By-Laws.

Cause two alleged and the Hearing Panel found that, from June through August 2002, Lee and Gordon executed 31 riskless principal trades in Pacific CMA, Inc. ("PCCM") stock in which they charged LSVL's retail customers fraudulently excessive markups of 12.9% to 54.55%. The complaint alleged and the Hearing Panel also found that Lee and Gordon failed to ensure that the markups were disclosed on customer confirmations. The Hearing Panel found that Lee and Gordon violated Conduct Rules 2110, 2120, 2230, and 2440, IM-2440, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 10b-5 and 10b-10.¹

¹ Enforcement also named LSVL and Guss as respondents. LSVL and Guss settled the matter; NASD censured and fined LSVL and Guss and ordered that they pay restitution to injured customers. Guss also agreed to a bar in all capacities, and LSVL agreed to undertake an

III. Facts

A. Guss's Association with LSVL

Guss immigrated to the United States in 1991 from the former Soviet Union. In 1999, Guss advised Gordon that Elena Sordia ("Sordia"), a lawyer and business associate of his in Russia, was interested in investing in a broker-dealer in the United States and that she had granted Guss legal authority to conduct her business affairs in the United States. Gordon alerted Guss that the owner of member firm Lauren Capital was interested in selling his ownership of the firm. Sordia formed a holding company, Devonshire Forte, Ltd. ("Devonshire"), purchased Lauren Capital, and after receiving NASD approval of the purchase, renamed the firm LSVL. During all times relevant to the complaint, LSVL operated as a \$5,000 broker-dealer.²

Gordon assisted Guss and Sordia in securing NASD approval of Sordia's purchase of Lauren Capital. In February 2000, Gordon became a principal of LSVL and assumed the positions of Chairman and Chief Executive Officer. He also acquired a minority interest (20%) in Devonshire and a position on Devonshire's Board of Directors.

Gordon recruited Lee to join LSVL. In May 2000, Lee became a principal of LSVL and the firm's President and Chief Compliance Officer. Lee also acquired a minority ownership interest (20%) in Devonshire and served on Devonshire's Board.

In 1999, Guss, who held no formal position with Devonshire or LSVL, recruited registered person Jeffrey Chicola ("Chicola") to join LSVL and open a branch office in New York. Guss led Chicola to understand that he (Chicola) would become President of LSVL, Sordia would infuse cash into the New York branch that Chicola would operate, and Chicola would acquire an ownership interest in Devonshire. Chicola's departure from his prior employer, however, was delayed, and Chicola was unable to join LSVL until June 2000. By that time, Lee had already assumed the position of President. In February 2001, Chicola resigned from LSVL.

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ownership change, but instead withdrew its registration. Neither paid restitution to the firm's injured customers.

² Exchange Act Rule 15c3-1 establishes the requirement that broker-dealers maintain a certain ratio of indebtedness to liquid capital. Pursuant to Rule 15c3-1(a)(2)(vi), a broker-dealer that does not receive or hold customer funds or securities and does not carry accounts of or for customers shall maintain a minimum net capital of \$5,000. LSVL was in this category of broker-dealers.

In May 2002, Envision Ventures, Inc. (“Envision”) acquired LSVL from Devonshire. Guss’s spouse, Kathia Santiago (“Santiago”), was the majority owner (60%) of Envision.³ Gordon and Lee were minority owners (20% each) of Envision. Santiago was a former fashion model and had no experience in the securities industry. According to the membership continuance applications that Gordon filed with NASD on behalf of LSVL, Santiago intended to have no direct involvement in the affairs of LSVL. Guss acted as Santiago’s representative with respect to her ownership of Envision, although Guss was not listed on LSVL’s Form BD.

LSVL executed a management agreement, first with Devonshire and then with Envision, pursuant to which the holding company (Devonshire or Envision) covered all of LSVL’s operating expenses and assumed LSVL’s liabilities in exchange for LSVL’s payment of a monthly “management fee” (due on the 15th of each month). In the management agreement, Devonshire/Envision agreed that, if any parent company invoice were to place LSVL into net capital deficiency, the parent company would permanently waive the debt. Sordia (Devonshire) or Santiago (Envision) infused cash into LSVL as necessary to enable the firm to continue operations. Although the parent companies never forgave a monthly liability that LSVL owed to them, Lee and Gordon testified that LSVL never succeeded in generating significant profits above its costs.

All of the individuals associated with LSVL, including those who were registered to conduct LSVL’s securities business, were employed and compensated by the holding company (Devonshire or Envision) and “assigned” by the holding company to work at LSVL. Lee ran the day-to-day operations of LSVL in the firm’s main office in Texas. Gordon worked from his home in Texas. LSVL intended to grow by acquiring other broker-dealer firms throughout the country and transforming them into a series of LSVL OSJs. Guss was particularly interested in developing OSJs in New York and Florida, where he resided.

Between May 2000 and February 2003 (the period of the registration violation alleged in the complaint), Guss was disqualified from registration in the securities industry as a result of a 1996 felony conviction.⁴ Gordon and Lee claim to have been unaware of Guss’s statutory disqualification or his underlying felony conviction. They were aware, however, that Guss refused to register with NASD, he did not want to hold an ownership interest in LSVL or its holding company, and he was not identified on LSVL’s Form BD as a person who controls LSVL’s management or policies.⁵

³ Lee and Gordon resigned their positions on Devonshire’s Board in February 2002 over concerns that Guss and Sordia had been conducting other undisclosed businesses through Devonshire.

⁴ In 1996, Guss pled guilty and was convicted in the United States of money laundering. Guss cooperated with federal prosecutors and testified against members of a Russian organized crime group in exchange for avoiding jail time. As a result of the 1996 conviction, Guss was disqualified from registration. *See* Article III, Section 4(g) of NASD’s By-Laws.

⁵ Guss did not testify at the Hearing Panel hearing in this matter. On June 9, 2003, he testified on the record before NASD staff that, in 2000 or 2001, he advised Lee and Gordon of

B. LSVL's Markups in Retail Sales of PCCM

In 2001, Gordon established an account at LSVL's clearing firm to conduct riskless principal trading. LSVL was not a market maker, but Gordon wanted LSVL "to do as much principal cross-trading as possible (which allows [LSVL] to make a profit as if [it] were a market maker)." LSVL's clearing firm was not immediately amenable to establishing the account, and Gordon represented to the clearing firm that he had "cleared" the type of account with NASD.

Gordon testified that he opened the account at the request of LSVL representative WT. WT identified large shareholders of Bulletin Board securities who were interested in selling all or part of their positions. Once WT identified a willing seller, he submitted the issuer name to Lee for approval. If approved, Lee added the issuer to LSVL's approved product list. WT then searched out purchasers of the securities. The buyers and sellers next opened accounts at LSVL, and WT matched purchases and sales and executed riskless principal transactions through LSVL's riskless principal trading account.

For all trades that LSVL executed in the riskless principal trading account, LSVL bought at the bid and sold at the ask and retained the spread as compensation. Respondents contend that locating purchasers for these riskless principal transactions required significant time and energy and that LSVL was entitled to keep the spread as compensation for the additional work required for these types of sales.⁶

Only Lee and Gordon possessed authority to execute trades in LSVL's riskless principal trading account. In fact, Lee executed all of the trades at issue in this case.

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his criminal conviction. Lee and Gordon denied that Guss had advised them of his conviction prior to NASD's commencement of its investigation in this matter. The Hearing Panel concluded that Lee and Gordon either knew or should have known that Guss was a convicted felon and therefore statutorily disqualified from the securities industry. The only evidence in the record that Guss informed Lee and Gordon of his conviction is Guss's on-the-record testimony. Lee and Gordon's testimony contradict Guss on this point, and no other record evidence supports Guss's version of events. Although we concur that the record supports the Hearing Panel's findings of violation and that Guss was in fact statutorily disqualified, we are not convinced that Lee and Gordon knew or should have known of Guss's criminal conviction. Indeed, the record reflects that Guss agreed not to publicize his cooperation with federal authorities and that he changed his name several times to conceal his identity. Based on the record, we do not conclude that Lee and Gordon knew or should have known of Guss's statutory disqualification.

⁶ On these trades, LSVL paid 75% of the commissions to the registered representative and kept 25% as compensation for the firm.

In April 2002, WT recommended PCCM as a candidate for trading in LSVL's riskless principal trading account.⁷ From June 6 through August 30, 2002, in 31 transactions, LSVL purchased PCCM from customer CYC at the inside bid, charged a commission of approximately 5%, and sold the PCCM stock to another customer at the inside offer. LSVL retained the spread in each trade as compensation, resulting in markups ranging from 12.9% to 54.55%, which LSVL did not disclose on customer confirmations. LSVL was responsible for a substantial percentage of the trading volume in PCCM during the three-month period at issue (approximately 82% in June, 80% in July, and 90% in August).

IV. Discussion

After a thorough review of the record, we affirm the Hearing Panel's findings of violation and hold that Lee and Gordon violated Membership and Registration Rule 1021, Conduct Rules 2110, 2120, 2230, and 2440, IM-2440, Article IV, Section 1 and Article V, Section 1 of NASD's By-Laws, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b-5 and 10b-10.

A. Registration Violations

1. Lee and Gordon Permitted Guss to Act as a Principal of LSVL Without Principal Registration.

Under cause one, we find that Gordon and Lee allowed Guss, a statutorily disqualified individual, to function as an unregistered principal of LSVL over a period of approximately three years.

Article V, Section 1 of NASD's By-Laws states that no member shall permit a person to associate with the member to engage in the investment banking or securities business of the

⁷ The record suggests that WT learned of PCCM from Guss and that Guss and PCCM had agreed that Devonshire/Envision would conduct a "corporate sponsorship campaign" for PCCM. Through Devonshire/Envision, Guss operated a "corporate sponsorship" program whereby Devonshire/Envision contracted with issuers to increase investor awareness of the issuers. Guss attached to a November 2001 email to Gordon and Lee a "generic template" for the contract between Devonshire and issuers. According to the template, Guss agreed to publish the issuer's corporate profile on LSVL's Website and promised to deliver the holding company's "best effort to drive no less than five million investors from its own opt-in database and redirect traffic from major financial Websites to the LSVL's website ..." Additionally, Guss promised that Devonshire would provide copies of the issuer's corporate profile or research report and sales leads to a network of brokers, including LSVL representatives, and "encourage" them to solicit customers to buy the issuer's stock. Guss also offered to provide representatives who contacted LSVL via BrokerHunter.com the email addresses of potential investors who registered with LSVL on its Web site. Guss referred to these email addresses as "free pre-qualified leads." Although PCCM deposited shares of its stock into Guss's account at LSVL as payment for the program, Lee testified that Guss never actually conducted a corporate sponsorship program for PCCM.

member unless the person has satisfied NASD's qualification requirements and is not subject to disqualification.⁸ Membership and Registration Rule 1021 states that all persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with NASD. Rule 1021 defines principal as a person associated with a member who is actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions.⁹ NASD IM-1000-3 states that the failure of any member to register an employee who should be so registered may be conduct inconsistent with just and equitable principles of trade and therefore a violation of Rule 2110. Thus, to sustain the Hearing Panel's findings of violation, we must find that Guss: (1) was an associated person of LSVL; and (2) actively engaged in the management of LSVL's investment banking or securities business (including supervision, solicitation, conduct of business or training).

Lee and Gordon contend that Guss managed Devonshire and Envision only insofar as he was protecting Sordia's investment in Devonshire¹⁰ and Santiago's investment in Envision, but that he did not participate in the management and operation of LSVL. They state that, when he would inadvertently exceed his authority at LSVL, Lee and Gordon would remind him to curtail his activities. They contend that Guss had administrative responsibilities only at LSVL and that he was LSVL's "Webmaster." "A registration determination[, however,] does not depend on the individual's title, but rather on the functions that he or she performs." *NASD Notice to Members* 99-49 (June 1999), 1999 NASD LEXIS 24, at *4.¹¹ The record paints a different picture of Guss's activities at LSVL.

The record contains myriad emails among Guss, Lee and Gordon. In several, Lee or Gordon chastises Guss for overstepping his bounds and inserting himself into the management and operations of LSVL. Other emails, however, suggest that Lee and Gordon actively sought

⁸ NASD Rule 115 states that persons associated with a member shall have the same duties and obligations as members under NASD's rules.

⁹ Article I, Section (dd) of NASD's By-Laws defines "person associated with a member" to include a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing a similar function, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member.

¹⁰ Guss testified on the record that, although Sordia did not compensate him for representing her business interests in the United States, he nonetheless was willing to devote significant amounts of time and energy to developing the profitability of Sordia's investment in Devonshire because he owed Sordia money for unpaid legal fees.

¹¹ *See also Dist. Bus. Conduct Comm. v. American Nat'l Equities, Inc.*, Complaint No. LA-4323, 1991 NASD Discip. LEXIS 86, at *20 (NBCC Nov. 25, 1991) (holding that the definition of "principal" is not limited to those who are involved in day-to-day management of broker-dealer).

Guss's permission and advice on matters related to LSVL's securities and investment business. In fact, Lee and Gordon clearly considered Guss to be their boss. *See Gordon Kerr*, 54 S.E.C. 930, 935 (2000) (holding that, to determine necessity for principal registration, SEC looks at "responsibilities assigned to the associated person by the firm and at the activities the individual actually performed"). In a December 2001 email from Gordon to Lee, Gordon writes:

You are an employee of LSVL which is owned by [Devonshire] . . . I too am an employee, even if I am not paid. We both have bosses . . . As [Sordia's] proxy, we both report to [Guss]. He is our boss and yes, I am yours . . .¹²

Gordon and Lee considered Guss to be an owner of LSVL and treated him accordingly.¹³ In October 2002, Gordon issued an email to the staff of LSVL's Austin, Texas office in which he stated unequivocally that Guss should be treated as their "superior."¹⁴ In a June 2001 series of emails in which Guss encouraged Gordon to devote more time to his LSVL duties and delineated the amount of time that he (Guss) devoted to LSVL, Gordon responded: "If I owned half the firm I am sure my priorities would be different." Lee testified before the Hearing Panel that Guss "represented the shareholders. He was a conduit for [Sordia] and a conduit for his wife [Santiago], and so we respected that."

Lee and Gordon endowed Guss with the authority of a principal and owner of LSVL. Additionally, Guss's individual actions support our finding that he was a principal of LSVL. As indicated below, Guss engaged in managerial activities relating to nearly every aspect of LSVL's business.

a. Guss Participated in Personnel Decisions, Including the Hiring and Firing of LSVL Staff.

Lee and Gordon claim that Guss's participation in LSVL's personnel matters was limited to identifying potential hires from BrokerHunter.com, an Internet resume-posting service for brokers. But emails to and from Guss demonstrate a deeper involvement in personnel issues. They show that he exerted management prerogatives beyond an administrative role by deciding compensation issues and making hiring and firing decisions, conduct that suggests that Guss was acting as a principal of LSVL. *Cf. Douglas Conrad Black*, 51 S.E.C. 791, 794 (1993) (finding that an individual engaged in the supervision of another member of the firm should be registered

¹² Although Lee took issue in his response with Gordon's claim that he (Gordon) was Lee's superior, Lee did not dispute that Guss was his boss.

¹³ In an email exchange in March 2002, Guss described himself as being at respondents' "complete mercy" because they could destroy *his broker-dealer investment* by placing "one phone call to [their] buddies at NASD."

¹⁴ In the same email, Gordon also directed staff to follow Guss's instructions "without fail." Gordon also stated in the email that "[Guss] will not provide . . . instructions related to specific securities, securities related issues, or brokerage related instructions."

as a principal); *Kirk A. Knapp*, 50 S.E.C. 858, 861 (1992) (holding that conduct that included hiring a salesperson for the firm resulted in Knapp's violation of a principal bar).

In a January 2002 email exchange on which Gordon was copied, Lee tells Guss that he received a call from CM, a broker who, after talking with *Guss*, decided to join LSVL. Lee continues: "Anything I should/need to know?" On January 18, Guss replies:

Please get him registered (with pre-hire dated (sic) of 1/15/2002). He will come on board in a couple of weeks and will start an OSJ here in FL. He is a high-growth prospect and we will support him in several ways for a test period of time in a hope that he could add a lot of production.

Later, in another January 2002 email, Guss directs Lee to "proceed full speed ahead with registration for [CM]." Similarly, in a December 2002 email to Gordon on which Lee was copied, Guss writes:

What would it take to set LSVL up to be a commodities dealer? I am interviewing a broker tomorrow who comes from [MS] and would like to deal in commodities. Please advise ASAP.

Two weeks later, Gordon inquired of *Guss* as to the status of the MS hire.¹⁵

The record also is replete with examples of Guss's control of LSVL salaries. Both Gordon and Lee sought salary increases from Guss. In a November 2001 email to Guss that was copied to Gordon, Lee complains: "I am currently way undervalued in my position [as LSVL President]. An additional 30k would help bring me a bit closer to being fairly valued, but I would still be grossly under-compensated for the work I perform." In a June 2001 series of emails, Guss supports awarding VV, an administrative assistant at LSVL, with a salary increase. In a September 2002 email, Guss advises Gordon and Lee that the holding company would withhold a certain dollar amount from the pay of a member of LSVL staff who had made an error that caused a trading loss.

Everyone at LSVL, from Lee, the President, down to VV, an administrative assistant, perceived that Guss was his or her boss. In a January 2002 email to VV, Lee refers to Guss as the "powers that be" and states that Guss had the "power to tell [Lee] to fire people." In a

¹⁵ Guss also established LSVL policy regarding the timing of the firm's hiring of registered representatives. In a January 2002 email, he directed Lee to backdate hire dates. He states:

If you can, all the new hires as long as reasonably possible should go in for the pre-hire as well as NASD?U4 (sic) purposes as of 1/16 or before. It will take some time to figure out with BH. [CM] will be let to work out of the office lent to me in Ft. Lauderdale and we will pick up some of his expenses (still in negotiation). Test period is 3 months and he has to show at least \$15k worth of production.

January 2003 email from Guss to Lee and Gordon, Guss requests that CH, a member of LSVL staff, be requested to resign. Guss writes:

Please ask her to resign effective immediately (if the payments for the brokers for the month of November have all been settled). I would like to hear your suggestions as regards an interim bookkeeping solution for LSVL. I can get us an outsourced bookkeeper (with a FINOP license) at once. Please place an ad for a ser[ies] 7/24 licensed employee. New employee has to take up all the licensed functions that were spread between [CH] and [G]. I will take up as much (sic) unlicensed duties that can be carried out in a long-distance mode as necessary in the meantime.

One day later, Guss sent Lee and Gordon an email containing a draft letter terminating CH's employment at LSVL and bearing Santiago's name.¹⁶

b. Guss Negotiated OSJ Agreements and Established OSJs for LSVL.

Guss impliedly represented to potential new hires that he was a principal of LSVL and negotiated OSJ agreements on behalf of LSVL. *See Dist. Bus. Conduct Comm. v. Bruce L. Pecaro*, Complaint No. C8A960029, 1998 NASD Discip. LEXIS 13, at *20 (NBCC Jan. 7, 1998) (holding that an individual who held himself out in "a manner that would lead an objective observer to infer that he was intimately involved" as a principal in the firm's securities business must register as a principal). Guss endeavored to acquire existing firms to establish LSVL OSJs in New York, California, and Florida. In September 2002, Guss states in an email to Lee and Gordon:

The negotiations here in FL are in the final stage. Attached is the draft of the OSJ agreement. Ironically, at this stage, one of the managers of [RB] who has (sic) originally recruited the crew in question for his firm, is talking to me as follows. If we manage to steal this crew from [RB] (talk about loyalty to the bank-owned firm), he would resign from there himself and switch with his 12 brokers and \$22M under management to LSVL.

In February 2003, Guss copied Lee and Gordon on an email that he sent to the owner of an existing firm regarding a proposed OSJ agreement with the firm. Guss states:

¹⁶ Guss's involvement in personnel issues permeated every level of activity at LSVL. In January 2003, Guss wrote to Lee: "[AW] in Ft. Lauderdale is fired as of today. Please make sure to call ADP and tell them NOT to bill us \$25 for that anymore." Lee's response that same day was "Wow . . . she was short-lived. I took care of ADP last week." Similarly, in February 2003, Guss directed Lee to "terminate [JB]." Guss continued "He called and told me he can't do much for LSVL because he really doesn't have a clue how to start and how to approach things." Lee responded "done."

Attached is the raw draft of the OSJ Agreement . . . My firm, [LSVL] will upgrade its registration with NASD and will become a market maker etc., basically copying all the necessary lines of your current restriction letter so that there is not discontinuation of any of your business . . .

Repeatedly, Guss held himself out to individuals outside of LSVL as a person in a managerial position at the firm.

c. Guss Established Policies and Procedures at LSVL.

Guss participated significantly in establishing policies and procedures at LSVL and interacted extensively with LSVL staff, including on issues related to retail clients. In November 2001, Guss emailed to Lee and Gordon LSVL's "new corporate procedures." These procedures covered numerous topics, including order-flow compensation, collecting LSVL's outstanding debts, and the firm's payout to representatives on house accounts. Guss's November 2001 email states:

[I]n order to facilitate brokers' interest in our corporate sponsorship programs one of the incentives you could give them is participation in the order flow compensation. In order to receive that order flow compensation we would need two things: a flow of orders and a friendly market maker.

Similarly, emails from Guss to Lee and Gordon in February 2002 question why certain securities were on LSVL's approved product list and ask which of LSVL's representatives were selling those securities. In an October 2002 email, Guss directs Lee to release house accounts to representatives in LSVL's OSJs. In a January 2003 email, Guss chastises Lee and Gordon for failing to collect a debt owed to LSVL from a former representative of the firm. He states:

I need to get to the bottom of this and therefore, this way or another, I would have to take over the day-to-day supervision of what's going on in [LSVL's main office's] accounting . . . We need to create a system that works, and that needs to be created NOW, before we completely destroy this firm. Starting tomorrow I would have to get access to all the pertinent information and systems and all the daily accounting and bookkeeping will be done with my direct participation, if not by me personally. I expect that changeover to be completed by the end of the next week.

Guss also emailed the following message to members of LSVL's administrative staff in January 2003:

It has come to our attention that in multiple conversations with the brokers you are making reference to [clearing firm] as the excuse for multiple problems and delays of processing documents . . . For all intents and purposes – [clearing firm] is OUR back office support subcontractor. Unless completely necessary – the reps have no business of knowing what is going on between LSVL and [clearing firm] . . . please note that from now on you are asked to not refer to [clearing firm] in any conversations with the reps, unless completely necessary. In addition

to that, mentioning of [clearing firm] as any type of an excuse for any rep-related problem is expressly prohibited.

In the same month, Guss emailed the following to an LSVL representative in the firm's Florida office:

First of all, now that you have an assistant . . . that we are paying for, I fully expect you to train her and use her for all your miscellaneous business needs. It has come to my attention that you are in what seems to be somewhat excessive communications with the home office . . . Second of all, as I mentioned to you, the printer in the office is for business use only . . . Third of all, now that you have agreed to service the house accounts, attendance in the office during market hours . . . is mandatory . . . and Finally, I would like to see reporting set up so that we are reasonably assured that you and [T] are spending time in the office productively . . . please submit a brief written summary and breakdown of your house accounts service . . .

Guss was involved in every aspect of LSVL's operations from miniscule matters, such as ordering stationery and business cards,¹⁷ to major issues, such as agreements as to order flow and directing office policy. Such conduct supports our finding that Guss acted as a principal. *See Knapp*, 50 S.E.C. at 861 (holding that individual who conducted sales meeting, disseminated memoranda to sales staff, and hired sales personnel must register as a principal); *Samuel A. Sardinia*, 46 S.E.C. 337, 343 (1976) (holding that individual who relinquished titles of director and officer required principal registration nonetheless because he devoted significant time to the affairs of the firm and participated in management decisions).

d. Guss Negotiated Clearing Agreements and Communicated on Behalf of LSVL with Clearing Firms.

Guss regularly communicated on LSVL's behalf with LSVL's clearing firms, implying that he held a managerial position at LSVL. *See L.H. Alton & Co.*, 53 S.E.C. 1118, 1126 n.21 (1999) (finding that fact that respondent held himself out to be a partner is additional evidence of need for principal registration), *aff'd*, *Alton v. SEC*, Fed. Sec. L. Rep. (CCH) ¶91,021 (9th Cir. 2000). In December 2002, Guss complained directly to one of LSVL's clearing firms about difficulty that LSVL had had attempting to open LSVL accounts for Canadian customers. Again in February 2003, Guss corresponded via email directly with LSVL's clearing firm about establishing a new clearing arrangement for LSVL. Guss wrote:

As you may remember a while ago we submitted a proposal of a new clearing agreement to you. Some time ago you wrote to me promising to get back by the end of the next week. That was on 2/12/03, i.e. your response was eagerly

¹⁷ In a July 2002 email to Lee and Gordon, Guss established a "policy for reps' stationary (sic) orders." He directed that "NO stationary (sic) orders should be sent to printers unless and until the proper amounts are credited to [Envision's] bank account."

awaited by 2/21/03. Almost a week later there is still no word from you on that clearing agreement . . .

Indeed, in a March 2003 email, Guss forwarded a clearing agreement that *he* had negotiated on behalf of LSVL to Lee and Gordon for their signatures. We find that Guss routinely held himself out to clearing firms as an officer or principal of LSVL.¹⁸

e. Guss Communicated with LSVL Customers on Securities-Related Issues.

Guss interacted with some of LSVL's clients on account-related issues. Guss helped a German client of LSVL open a new account, and he interceded on behalf of a Russian bank that was an LSVL client to ensure that a trade had been cancelled. In a July 2002 email, Guss states to an administrative person at LSVL:

The customer on [an LSVL on-line trading account] believes that on 07/08 he had \$54,353.38 of equity on his account whereas on 07/09 he had \$54,121.38 – less \$232 – on his account. According to him he had no activity on his account in between those two dates . . . Please look into it and reply to the customer directly . . . [and] copy me . . . as soon as possible.

Similarly, in June 2001, Guss emailed the following to Gordon and Lee:

It seems that we should expect our first [on-line trading] account to come from Germany. Please read below and let me know when this guy's paperwork arrives.

Guss attached the following email from the proposed customer:

Dear [Guss],

As I don't have a fax at home, I have send (sic) all necessary documents . . . via mail (airmail) to you. I think, the forms will arrive at you (sic) within the next days.

Guss reviewed LSVL customer account information at will. In one instance, Guss interceded to enable a foreign client to trade on margin. In a January 2002 email, Guss wrote to a member of LSVL's administrative staff (and copied Lee) as follows:

I really want this client to fund their account first, and then I would casually have them sign and deliver the updated forms. It is OUR fault that the forms were not

¹⁸ Guss similarly represented himself to be an official of LSVL to issuers. In a series of emails in January 2003 between Guss and the representative of an issuer, Guss discussed the possibility of LSVL being included on the cover of the issuer's upcoming registration statement. After communicating directly with the issuer, Guss advised Gordon of the fact and demanded action "ASAP."

up to date on our website and therefore making it too complicated for the customer that has not funded the account is not cool . . . PLEASE, make sure that by 02/01 (when most likely their \$50K will show in the account) they have margin privileges . . . it is EXTREMELY IMPORTANT that by the time the account has been funded and I am ready to send them the updated Margin Agreement . . . we also had a THIRD form to send them, i.e. Day Trading Disclosures.

Lee cautioned Guss that LSVL's allowing a customer to trade on margin before obtaining the necessary paperwork could place the firm at a compliance risk. Guss, however, was undeterred by Lee's warning. Guss's activities on behalf of LSVL clearly crossed over from administrative duties to developing and maintaining the firm's client base. *See Pecaro*, 1998 NASD Discip. LEXIS 13, at *20 (“[Pecaro’s] admitted entertaining of clients seems to at least cross into maintaining, if not expanding, business clientele. Such interaction gives an appearance of being involved in developing and maintaining the [f]irm’s client base.”).

* * * * *

Guss did little to disguise his de facto management and control of LSVL.¹⁹ Numerous emails contained in the record provide consistent support for our findings and are corroborated by the testimony of Chicola and two former members of LSVL staff, CH and VV.²⁰ Taken together, the evidence demonstrates that Guss was an associated person of LSVL and was engaged actively in the management of LSVL's investment banking and securities business and

¹⁹ In a March 2002 email, Guss states to Gordon and Lee:

I am really frustrated that my *very first and largest ever investment in a BD* project has not brought me a penny back yet and I risk to be under very soon. Until recently except for a few grouchy remarks related to spending in Austin you have never heard me complain about it. Do you want to know why? Because I was confident that I have very reliable and motivated partners in the deal and I was confident that together we will pull it off this way or another. (Emphasis added).

In other emails, Guss indicated that, as of June 2000, he had ceased all of his “revenue-generating activities” and had dedicated all of his time to LSVL.

²⁰ We have considered that LSVL terminated CH and VV and that both initiated and settled actions against the firm to recover unpaid overtime pay. While CH and VV's relationships with LSVL may have potentially provided incentive for them to misconstrue the truth, we note that their testimonies were consistent with each other and with the emails contained in evidence. VV denied that she discussed her testimony with CH, and their testimonies regarding business operations at LSVL were consistent with Chicola's version of events. Furthermore, neither CH nor VV appear to have been in a position to benefit monetarily from testifying falsely against respondents.

that Lee and Gordon knowingly permitted Guss to act in a principal capacity without principal registration.

2. Lee and Gordon Failed to Update LSVL's Form BD.

Under cause one, we also find that, by failing to disclose Guss's association with LSVL on the firm's membership application (Form BD), respondents caused the firm's application to be incomplete and inaccurate. Article IV, Section 1 of NASD's By-Laws requires member firms to ensure that membership applications are kept current by the filing of supplemental amendments via electronic process. Lee and Gordon admit that, although they possessed the authority to and, at times, did amend LSVL's Form BD, they never amended it to reflect that Guss held an ownership interest in or otherwise participated in the management of LSVL. Question 9 on the Form BD asks whether any person not identified as a direct or indirect owner controls the management of policies of the applicant. LSVL, through Lee and Gordon, answered "no" and never amended the answer, notwithstanding Guss's active involvement in the management of the firm.

* * * * *

We thus conclude under cause one that Lee and Gordon violated Membership and Registration Rule 1021, Conduct Rule 2110, and Article IV, Section 1 and Article V, Section 1 of NASD's By-Laws.

B. Excessive Markups

Cause two of the complaint alleged and we find that Gordon and Lee caused LSVL to charge fraudulently excessive markups of 12.9% to 54.55% in 31 retail sales of PCCM stock between June 6 and August 30, 2002, and that LSVL failed to disclose the markups in customer confirmations.

1. Lee and Gordon Charged LSVL Customers Excessive Markups.

NASD's rules obligate NASD member firms to deal fairly with customers. Rule 2440 states that member firms shall buy securities from and sell securities to members of the public at prices that are fair, taking into consideration all relevant circumstances. Generally, markups in excess of 5% above the prevailing market price for a security are considered excessive and unfair. IM-2440 (Mark-Up Policy); *NASD Notice to Members 92-16* (Apr. 1992), 1992 NASD LEXIS 47, at *6-7.²¹

We begin our analysis with a determination of the prevailing market price for PCCM stock at the time of the transactions. In cases such as this in which the member firm is not a

²¹ IM-2440 states that it is a violation of Rules 2110 and 2440 for a member firm "to enter into any transaction with a customer in any security at any price not reasonably related to the current market price . . ."

market maker in the securities at issue, the price that the firm pays (i.e., its cost) contemporaneously with retail sales is the best indicator of the prevailing market price. 1992 NASD LEXIS 47, at *25; *see also Daniel R. Lehl*, 51 S.E.C. 1156, 1159 (1994) (holding that a firm that is not a market maker must base its prices on its own contemporaneous cost), *aff'd*, *Lehl v. SEC*, 90 F.3d 1483 (10th Cir. 1996); *LSCO Sec., Inc.*, 50 S.E.C. 518, 519 (1991) (“[W]here a dealer is not a market maker, the best evidence of the current market, absent countervailing evidence, is the dealer’s contemporaneous cost.”).

Furthermore, it is undisputed that LSVL’s sales of PCCM stock to its customers were riskless principal transactions and that LSVL executed the trades through its riskless principal account. “A riskless principal transaction occurs when a dealer, after receiving an order to buy or sell a security from a customer, purchases the security from another person to offset a contemporaneous sale to such customer or sells the security to another person to offset a contemporaneous purchase from such customer.” *Strategic Res. Mgmt., Inc.*, 52 S.E.C. 542, 544 n.8 (1995). “[C]ontemporaneous cost, regardless of countervailing evidence, is the correct basis for calculating markups in a riskless principal transaction.” *R.B. Webster Invs., Inc.*, Exchange Act Rel. No. 35754, 1995 SEC LEXIS 1309, at *8 n.18 (May 23, 1995). Thus, the appropriate method for calculating LSVL’s markups is contemporaneous cost which, in this case, is LSVL’s purchases from customers.

NASD examiner Gene Davis (“Davis”) testified that, for each of the 31 transactions, he matched the riskless principal trades for the sell customers and buy customers.²² In every instance, LSVL paid the selling customer the inside bid price (generally between \$.50 and \$.65 per share) and charged a commission (which generally ranged from approximately \$50 to in excess of \$200 per purchase) and simultaneously sold the same stock to another customer at the inside ask. Davis utilized LSVL’s purchase price as the basis for the prevailing market price and calculated LSVL’s markups as ranging generally from 13% to 55%, which we find to be excessive.²³

²² The 31 transactions in which Gordon and Lee charged LSVL customers excessive markups are detailed in Exhibit A appended to this decision.

²³ Enforcement did not account for the commissions that LSVL charged selling customers in its calculation of markups. Had Enforcement accounted for the commissions, the basis for the computation of prevailing market price would have been less, and LSVL’s markups would have been greater. When NASD relies on retail purchases as a basis for calculating markups not involving riskless principal transactions, NASD may impute a 5% markdown to make the retail purchase price comparable to the inter-dealer purchase price and calculate the markup based on the retail purchase price plus 5% (the imputed markdown). Here, respondents’ sales were riskless principal trades, and Enforcement did not impute a 5% markdown. Enforcement also did not deduct from the purchase price the commission (which generally equaled or exceeded 5%) that LSVL charged each selling customer. Had Enforcement deducted the commissions from LSVL’s cost, LSVL’s markups would have been greater.

Lee and Gordon contend that these trades were not standard riskless principal trades and that, because LSVL had to expend significant time and resources on executing these trades, the firm was entitled to charge markups in excess of 5%. Lee and Gordon failed, however, to introduce evidence to justify the higher markups that LSVL charged. “[I]f a member seeks to charge its customers more than a 5[%] markup or markdown, it must be fully prepared to justify its reasons for the higher markup or markdown with adequate documentation.” *NASD Notice to Members* 92-16, 1992 SEC LEXIS 47, at *7.²⁴

2. LSVL’s Markups Were Fraudulent, and Gordon and Lee Acted with Scienter.

“Markups of more than ten percent over the prevailing market price are evidence of scienter and . . . fraudulent.” *A.S. Goldman & Co., Inc.*, 55 S.E.C. 147, 153-54 (2001); *Adams Sec., Inc.*, 51 S.E.C. 311, 315 (1993). Indeed, using unsubstantiated quotations, as respondents did here, to calculate markups “displays at a minimum reckless indifference to the duty owed to customers.” *Frank L. Palumbo*, 52 S.E.C. 467, 478 (1995) (citing *Orkin v. SEC*, 31 F.3d 1056, 1065 n.12 (11th Cir. 1994)).

Lee and Gordon acted recklessly. Both testified that LSVL relied exclusively on bid and ask quotations in determining the prices charged to customers on the sales of PCCM stock, regardless of LSVL’s actual cost. “NASD and [the] Commission have often cautioned against basing prices on quotations. Particularly in the case of riskless principal transactions, where the trades occur virtually simultaneously with the sale to customers . . .” *First Independence Group, Inc.*, 51 S.E.C. 662, 665 (1993), *aff’d*, *First Independence v. S.E.C.*, 37 F.3d 30 (2d Cir. 1994). Furthermore, Lee and Gordon knew that LSVL was not a market maker and not entitled to the spread. With the riskless principal account, they sought to circumvent acceptable pricing methods and, as Gordon put it, make a profit “as if [LSVL was] a market maker.” We find that Lee and Gordon acted recklessly when they ignored significant Commission and NASD precedent and based LSVL’s prices on unsubstantiated quotations rather than the firm’s contemporaneous cost. *See Id.* at 666 (“Applicants were, at a minimum, reckless in charging their customers markups based on unsubstantiated ask quotations.”); *Sacks Inv. Co., Inc.*, 51 S.E.C. 492, 496 (1993) (finding that respondents were reckless when they charged their customers markups based on unsubstantiated ask quotations); *Adams Sec., Inc.*, 51 S.E.C. at 315

²⁴ Lee and Gordon argue that the Hearing Panel erred in shifting the burden for producing countervailing evidence to them rather than requiring Enforcement to investigate potential countervailing evidence. We do not agree. The best evidence of the current market, where, as here, a broker-dealer is not a market maker, is contemporaneous cost. *LSCO Sec., Inc.*, 49 S.E.C. 1126, 1127-1128 (1989). “The burden is on the *dealer* to establish the contrary.” *Id.* (emphasis added). Once Enforcement produced evidence that LSVL’s cost represented the prevailing market price, the burden shifted to respondents to prove that cost was not a reliable indicator of the prevailing market. *See U.S. Sec. Clearing Corp.*, 52 S.E.C. 92, 99 (1994) (rejecting respondents’ argument that, in order to show that the firm’s markups were excessive, NASD had to present evidence in addition to contemporaneous cost); *Charles Michael West*, 47 S.E.C. 39, 41-42 (1979) (holding that burden shifted to firm to produce countervailing evidence once NASD established contemporaneous cost).

(finding that respondents were reckless in rejecting contemporaneous cost as the basis for the firm's markups).

3. Gordon and Lee Failed to Ensure that LSVL Disclosed its Markups on Customer Confirmations.

NASD Conduct Rule 2230 requires member firms, at the completion of a transaction with a customer, to send the customer a written notification disclosing information about the transaction, including the amount of any commission or other remuneration that the member received from the trade. Exchange Act Rule 10b-10 similarly requires the disclosure to the customer of the firm's compensation.

Gordon and Lee do not deny that LSVL's customer confirmations failed to disclose the firm's compensation on the trades at issue. They contend that the fault lies with LSVL's clearing firm and that they are not responsible. Gordon and Lee, however, were the only two principals responsible for regulatory compliance at LSVL. They received copies of the firm's confirmations and, as responsible principals, should have reviewed them to ensure that they were complete and accurate. Lee and Gordon failed to do so, and they are responsible for the firm's omissive confirmations. See *Dep't of Enforcement v. U.S. Rica Fin., Inc.*, Complaint No. C01000003, 2003 NASD Discip. LEXIS 24, at *15 (NAC Sept. 9, 2003) (holding principal of firm responsible for firm's inaccurate and incomplete customer confirmations).

4. Gordon and Lee Share Responsibility for LSVL's Pricing Violations.

Lee and Gordon share responsibility for LSVL's excessive markups. Lee and Gordon were the only two individuals at LSVL with authority to execute trades in the riskless principal account, and LSVL's supervisory procedures manual listed them as the firm's only compliance principals. Lee does not deny responsibility for LSVL's markups. Indeed, he executed each of the 31 trades at issue on behalf of LSVL, and he readily admitted the firm's policy of buying at the bid price and selling at the ask price for trades in the riskless principal account.

Gordon established LSVL's riskless principal account and was familiar with LSVL's policy of buying at the bid price and simultaneously selling at the ask price. Indeed, in May 2001, Gordon indicated to Lee and Guss in an email that he wanted LSVL to execute as many trades "as possible" in the riskless principal account so that the firm could profit as if it were a market maker. Furthermore, in order to overcome concerns expressed by LSVL's clearing firm that LSVL was not a market maker when Gordon opened the riskless principal account, Gordon assured a representative of the clearing firm that he had already cleared the account with NASD.

"The securities industry contains many participants – all of whom must perform their duties properly if the ultimate goal of fairness to the customer is to be achieved." *Lehl*, 51 S.E.C. at 1160; see also *Robert Bruce Orkin*, 51 S.E.C. 336, 342 (1993) (finding that members of the securities industry cannot "simply rely on organizational structures or formalistic arrangements as a means of abdicating their responsibilities" to monitor pricing), *aff'd*, 31 F.3d 1056 (11th Cir. 1994). We find that Gordon and Lee share responsibility for LSVL's undisclosed, excessive markups.

* * * * *

We therefore affirm the Hearing Panel's findings under cause two that Lee and Gordon charged LSVL customers undisclosed, excessive markups, as indicated on Exhibit A, in contravention of Conduct Rules 2110, 2120, 2230, and 2440, IM-2440, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b-5 and 10b-10.

C. Procedural Arguments

On appeal, respondents raise three procedural arguments. Respondents contend that: (1) NASD erred in accepting into the record emails from Guss and Guss's on-the-record testimony; (2) Enforcement took from respondents during its investigation documents that respondents needed to defend themselves; and (3) respondents were prejudiced by the Hearing Officer's delay in issuing its decision in this matter. We address each argument in turn.

We find no error in the Hearing Panel's admitting into the record emails authored by Guss and Guss's on-the-record testimony, both of which are hearsay evidence. Hearsay evidence is admissible in NASD proceedings, but must be evaluated for its probative value and reliability. *See Kevin Lee Otto*, 54 S.E.C. 847, 854 (2000), *aff'd*, 253 F.3d 960 (7th Cir. 2001). The factors used to assess the reliability of hearsay evidence include: possible bias of the declarant; whether direct testimony is contradictory; the type of hearsay at issue; whether the declarant was available to testify; and whether the hearsay is corroborated. *Id.*

Here, Guss's statements in his on-the-record interview are consistent not only with emails that he authored, but also with emails that Lee, Gordon and other members of LSVL staff wrote. They also are corroborated by VV and CH's testimony and by respondents' own statements that Guss was their "boss." Furthermore, Guss had little reason to implicate Lee and Gordon falsely. Any suggestion in Guss's testimony that Lee and Gordon violated NASD rules by allowing him to act as a principal without registration implicates Guss in the same violation. Thus, if Guss were inclined to accuse Gordon and Lee unjustly of registration violations, he also would be admitting to violations himself. Additionally, Lee and Gordon's direct testimony does not contradict Guss's testimony or the statements that Guss made in his emails. Indeed, our findings in this case are not based on rejecting Lee and Gordon's factual claims as to Guss's actions and finding Guss's testimony more credible. Rather, our findings are based on our interpretation, in accordance with NASD precedent, of rules requiring Guss to register. The parties here differ on the interpretation of what constitutes conduct that requires registration, not on what Guss actually did at LSVL. We therefore reject respondents' argument. *See Dep't of Enforcement v. Belden*, Complaint No. C05010012, 2002 NASD Discip. LEXIS 12, at *20 (NAC Aug. 13, 2002) (upholding admissibility of hearsay evidence for which credibility has been assessed), *aff'd*, *Wendell D. Belden*, Exchange Act Rel. No. 47859, 2003 SEC LEXIS 1154 (May 14, 2003); *Charles D. Tom*, 50 S.E.C. 1142, 1145 (1992) (upholding admissibility of hearsay evidence that is determined to be reliable).

We also reject respondents' second procedural argument. Respondents contend, for the first time in their reply brief on appeal, that Enforcement confiscated during its investigation of the markup allegations all of the documents that respondents needed to defend themselves against the markup allegations. NASD Rule 9251, however, requires Enforcement, during the

pre-hearing period, to make available for inspection and copying by any respondent documents prepared or obtained by NASD staff in connection with the investigation that led to the institution of the proceedings. Nothing in the record of this matter, including the transcripts of the pre-hearing conferences, suggests that respondents were denied the opportunity to inspect and copy documents contained in NASD's files. During the final pre-hearing conference conducted on March 18, 2005, counsel for respondents in fact indicated that there were no additional procedural issues that he intended to raise. We therefore reject this argument.²⁵

We also find no error in the timing of the Hearing Panel's issuance of the decision in this matter. Procedural Rule 9268 provides that, within 60 days after the final date allowed for the filing of proposed findings of fact, conclusions of law, and post-hearing briefs, the Hearing Officer shall *prepare* a written decision. "[T]he rule addresses the timing of the Hearing Officer's *preparation* of a decision (which must then be distributed to other members of the Hearing Panel), and not the *issuance* of the decision." *Daniel Richard Howard*, 55 S.E.C. 1096, 1104 (2002), *aff'd*, 77 Fed. Appx. 2 (1st Cir. 2003). There is no evidence that the Hearing Officer failed to comply with the requirement that she *prepare* the decision timely. The Hearing Panel hearing occurred on March 29, 30 and 31, 2005. Post-hearing briefing ended on May 23, 2005, and the Hearing Panel issued its decision on December 29, 2005.

We reject respondents' arguments of procedural irregularities and unfairness.

V. Sanctions

The Hearing Panel aggregated respondents' registration violations for purposes of sanctions and barred respondents in all capacities for their misconduct under cause one. In light of the bar, the Hearing Panel did not suspend or fine respondents for their markup violations, but ordered that respondents pay restitution to the firm's injured customers in the amount of \$22,657.40, plus interest. The Hearing Panel also assessed costs. We affirm these costs and sanctions, add a bar for respondents' fraudulently excessive markups, and modify the restitution order to reflect more accurately respondents' excessive markups.

For registration violations, NASD's Sanction Guidelines ("Guidelines") recommend a fine of \$2,500 to \$50,000 plus the amount of the respondent's financial gain and a suspension of up to six months. For egregious cases, the Guidelines recommend a suspension of up to two

²⁵ Respondents also contend, in a related footnote in their reply brief, that NASD erred in failing to make available to testify at the Hearing Panel hearing the registered representatives at LSVL who sold PCCM stock. Rule 9252 states that a respondent may request that NASD invoke Rule 8210 to compel the testimony of persons within NASD's jurisdiction at an NASD hearing. The rule requires that respondents file such requests no later than 21 days before the scheduled hearing, describe with specificity the testimony sought, state why the testimony is material, and describe the respondents' efforts to obtain the testimony through other means. Respondents did not comply with Rule 9252 and, in fact, did not complain about the absence of other witnesses until this matter was on appeal to us. We therefore find no error.

years or a bar.²⁶ We concur with the Hearing Panel's finding that respondents' misconduct was egregious. The sanctions we impose therefore are within the range recommended in the applicable Guideline.

“The requirement that a person . . . register as a principal when actively engaged in a firm's securities business is an important one . . . [that] assists in the policing of the securities markets . . . [and] ensures that a person in a position to exercise some degree of control over a firm has a comprehensive knowledge of the securities industry and its related rules and regulations.” *Pecaro*, 1998 NASD Discip. LEXIS 13, at *22. The Guidelines for registration violations recommend that we consider whether the unregistered person had a registration application pending and the nature and extent of the unregistered person's responsibilities. Here, Guss did not have a registration application pending. Guss did, however, exercise significant influence and control over all of the activities of LSVL. Lee and Gordon knew or should have known from email correspondence alone that Guss was intimately involved in nearly every aspect of LSVL's business, from the mundane ordering of supplies to the firm's negotiations with clearing firms and potential OSJs. Lee and Gordon themselves went to Guss for advice and direction on securities-related issues, personnel decisions, and financial matters. They considered Guss to be their boss and warned other LSVL staff that he could terminate them at will.

Respondents' conduct demonstrates a willingness to evade NASD rules that we find disturbing. Respondents knew that Guss did not want to register with NASD, so they attempted in their emails to couch their language in disclaimers about Guss's true function at LSVL. By doing so, they concealed Guss's management of a member firm, circumvented registration requirements, and hampered NASD's regulation of the firm and its principals.²⁷

We also have considered that Lee and Gordon enabled Guss to act in a principal capacity without registration for a period of approximately three years. Finally, although we do not find that respondents knew or reasonably should have known about Guss's statutory disqualification, we note that one consequence of their failure to register Guss is that a statutorily disqualified individual in fact acted as a principal at a member firm. This aggravates the severity of respondents' misconduct. Respondents knew that Guss was assisting in the management of LSVL and that he was not registered, yet they knowingly allowed him to continue in that capacity.²⁸

²⁶ *NASD Sanction Guidelines*, 48 (2006), http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf.

²⁷ Respondents furthered their concealment of Guss's activities by failing to update LSVL's Form BD accurately to reflect Guss's involvement in the management of LSVL.

²⁸ Respondents argue that we should find mitigating their lack of disciplinary history. We disagree. While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating. *See, e.g., Dep't of Enforcement v. Fergus*, Complaint No. C8A990025, 2001 NASD Discip. LEXIS 3, at * 58-59 (NAC May 17, 2001) (holding that the absence of disciplinary history is not considered part of “relevant disciplinary history” under the Guidelines for purposes of reducing sanctions); *Dep't of Enforcement v.*

Respondents continue to contend that their enabling Guss to act in the capacity in which he acted at LSVL was acceptable conduct. In order to disabuse respondents of the notion that their actions represent an acceptable business practice in the securities industry and to protect the investing public from the recurrence of their misconduct, we impose a bar in all capacities. In our view, a lesser sanction will not suffice to provide adequate protection to the investing public.

For pricing violations, the applicable Guideline recommends a fine of \$5,000 to \$100,000, plus restitution. In egregious cases, the Guideline recommends suspending the responsible individual or barring the individual.²⁹ We find that respondents' markup violations were egregious. We bar respondents in all capacities and affirm the Hearing Panel's restitution order, but reduce the restitution amount as indicated below.³⁰ The sanctions that we impose are within the range recommended in the applicable Guideline.

Respondents charged markups in excess of 10% in 31 retail sales over a period of three months. They stood to benefit from their misconduct because LSVL, which they indirectly owned, would profit from the trades. They recklessly disregarded long-standing precedent and allowed the firm to keep the spread as compensation, notwithstanding that the firm was not a market maker and the trades were riskless principal transactions. Respondents further failed to ensure that the firm's confirmations adequately disclosed the firm's remuneration to customers. Confirmation disclosures "[work] to protect investors and combat broker-dealer fraud by ensuring full and fair disclosure to investors . . ." *Hattier, Sanford & Reynoir*, 53 S.E.C. 426, 433 n.16 (1998), *aff'd, Hattier v. SEC*, 163 F.3d 1356 (5th Cir. 1998). Lee and Gordon demonstrated a "marked insensitivity to their obligation to deal fairly with customers" and caused LSVL's customers significant financial harm. *Frank L. Palumbo*, 52 S.E.C. 467, 480 (1995). They "recklessly overcharged their customers, even though they had no justification for basing their prices on . . . quotations." *Id.*

[cont'd]

Balbirer, Complaint No. C07980011, 1999 NASD Discip. LEXIS 29, at *10-11 (NAC Oct. 18, 1999) ("We are not compelled to reward a respondent because he has acted in the manner in which he agreed (and was required) to act when entering this industry . . ."). A respondent should not be rewarded because he may have previously acted appropriately as a registered person. Indeed, the Commission has consistently rejected arguments that a lack of a disciplinary record is a factor mitigating the sanction of a bar. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1165-66 n.15 (2002); *Ronald H. V. Justiss*, 52 S.E.C. 746, 750 (1996).

²⁹ *See Guidelines*, at 95.

³⁰ The Hearing Panel found that respondents engaged in serious misconduct by charging undisclosed, fraudulently excessive markups, but did not impose, in light of the bar for respondents' registration violations, sanctions other than a restitution order.

In the face of overwhelming legal authority that directs non-market makers to calculate markups based on actual cost, not quotations, and additional case law that indicates that markups in riskless principal trades must always be calculated based on cost, respondents continue to contend that they acted appropriately. Respondents do not appreciate that LSVL was not entitled to collect markups of 12.9% to 54.55% from the firm's customers. In our view, a bar is necessary to protect the investing public and to deter future violations, and a lesser sanction will not suffice.

We affirm the Hearing Panel's order of restitution, which also is consistent with NASD's Guidelines,³¹ but reduce the restitution amount to \$20,832.40.³² The Hearing Panel ordered that respondents pay to the firm's customers restitution of the firm's markups in excess of 10%, as indicated on Exhibit A attached hereto. Although we do not agree that markups as high as 10% generally are justified for riskless principal transactions, we have determined to affirm the Hearing Panel and order restitution of the firm's markups in excess of 10%.³³

VI. Conclusion

We affirm the Hearing Panel's findings that Lee and Gordon violated Membership and Registration Rule 1021, Conduct Rule 2110, and Article IV, Section 1 and Article V, Section 1 of NASD's By-Laws by permitting an unregistered individual to function as a principal of member firm LSVL for a period of three years and failing to update the firm's Form BD. We also affirm the Hearing Panel's findings that Lee and Gordon charged fraudulently excessive, undisclosed markups in 31 retail sales of PCCM stock, in contravention of Conduct Rules 2110, 2120, 2230, and 2440, IM-2440, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b-5 and 10b-10.

We find that respondents' registration violations were egregious, and we bar respondents in all capacities. We also find that respondents' markup violations were egregious, and we bar respondents in all capacities and order that they pay injured customers restitution of \$20,832.40 (joint and several), plus interest from the date of the violative sales, calculated at the rate established for the underpayment of federal income tax in Section 6621 of the Internal Revenue Code, 26 U.S.C. 6621(a)(2). Respondents shall pay restitution (joint and several) of markups in

³¹ See *Guidelines*, at 4.

³² Exhibit A to the complaint and Exhibits A and B to the Hearing Panel decision identify eight violative sales in August 2002, but identify purchasing customers for only seven of the sales. We therefore reduce the Hearing Panel's restitution order by \$1,825, the amount of the sale for which a purchasing customer is not identified.

³³ The record indicates that NASD ordered LSVL and Guss to pay restitution in connection with their settlement of the allegations against them in this matter. Respondents may be given credit for and reduce their restitution amount by restitution amounts that respondents prove that LSVL or Guss actually paid to injured customers identified on Exhibit A to this decision.

excess of 10% in the amounts and to the customers identified on Exhibit A attached to this decision. We also affirm the Hearing Panel's assessment of costs of \$2,779.³⁴

Thus, Lee and Gordon are barred in all capacities, ordered to pay restitution of \$20,832.40 plus interest, and assessed Hearing Panel costs of \$2,779. The bars imposed in this decision are effective immediately upon issuance of the decision.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith, Vice President and Deputy
Corporate Secretary

³⁴ We also have considered and reject without discussion all other arguments advanced by the parties.

Exhibit A (Page 1 of 4)

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<u>Customer Initials</u> (This List Corresponds to Contra Customers on Trading Analysis Chart)	<u>Customer Name</u>	<u>Restitution Amount</u>
RAA	Ralph A. Armendariz	\$155.00
		\$224.00
FAB	Francis A. Brady	\$455.00
JPB	James P. Brandenburg	\$1,725.00
DB	Dinald Brenkus	\$934.60
FWB	Fred W. Bryant	\$1,210.00
NC	Nick Como	\$330.00
MLC	Martin L. Corcoran	\$850.00
PD	Paul Delic	\$255.00
		\$1,192.00
RLF	Robert L. Fenner	\$260.00
DF	Duwayne Fenolio	\$2,725.00
JYF	Jeremy Fikac	\$47.00
JDF	Jerod Fikac	\$103.00
DHG	David H. Geary	\$1,360.00
		\$850.00
		\$592.00
MG	Marcel Goldfarb	\$145.00
RRG	Ronald R. Grieb	\$55.00
		\$255.00
FMH	Frederick M. Hackett IRA	\$420.00
REL	Robert E. Longo	\$115.00
KSM	Kenneth S. Millerd	\$145.00
SR	Stanley Randall	\$534.80
RAS	Robert A. Sanderson	\$2,160.00
CS	Christopher Soriano	\$305.00
KS	Ken Subala	\$443.00
IUV	Ishaq U. Vakil	\$2,487.00
RW	Rick Woodwyk	\$80.00
EW	Emmett Wright	\$420.00
Total Restitution Due :		\$20,832.40

Exhibit A

Disciplinary Proceeding (Page 2 of 4) No. C06040027

ENFORCEMENT'S ANALYSIS OF EQUITY PRINCIPAL TRANSACTIONS IN PACIFIC CMA, INC.

June 2002

Account #		Customer	Trade Date	Entry Time	Exec Buy (B) Time	Buy (S) Qty	Description	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Account #	Contra Customer (Riskless Prin.)	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Iter-Deal Customer Bid	Ask	Markup (not incl comm)	Markup Percent (not incl comm)	Sell Commission Percent	Buy Commission Percent	Total MU/ MD incl Comm	Markup Profit	Commission Profit (Buy + Sell)	Total Profit	10% Markup	Greater of 10% MU or \$200	Amt in Excess 10% or \$200	
1	954-10193-12	CYC	6/6/2002	15:54:00		S 1,500	PCCM	\$0.600	\$55.00	845.00	900.00	954-10220-19	RW	1,500	\$0.750	\$0.000	1,125.00	1,125.00		0.15	25.00%	6.11%	0.00%	31.11%	\$225.00	\$55.00	\$280.00	\$90.00	\$200.00	\$80.00	
2	954-10193-12	CYC	6/7/2002	14:29:00		S 1,600	PCCM	\$0.550	\$50.00	830.00	880.00	954-10221-18	NC	1,600	\$0.850	\$0.000	1,360.00	1,360.00		0.30	54.55%	5.68%	0.00%	60.23%	\$480.00	\$50.00	\$530.00	\$88.00	\$200.00	\$330.00	
3	954-10193-12	CYC	6/7/2002	14:34:00		S 5,000	PCCM	\$0.550	\$135.00	2,615.00	2,750.00	954-10204-19	DHG	5,000	\$0.850	\$0.000	4,250.00	4,250.00		0.30	54.55%	4.91%	0.00%	59.45%	\$1,500.00	\$135.00	\$1,635.00	\$275.00	\$275.00	\$1,360.00	
4	954-10193-12	CYC	6/10/2002	16:03:00		S 2,000	PCCM	\$0.550	\$55.00	1,045.00	1,100.00	954-08989-14	FAB	2,000	\$0.850	\$0.000	1,700.00	1,700.00		0.30	54.55%	5.00%	0.00%	59.55%	\$600.00	\$55.00	\$655.00	\$110.00	\$200.00	\$455.00	
5	954-10193-12	CYC	6/12/2002	14:41:00		S 5,500	PCCM	\$0.600	\$165.00	3,135.00	3,300.00	954-08743-11	FWB	5,500	\$0.850	\$0.000	4,675.00	4,675.00		0.25	41.67%	5.00%	0.00%	46.67%	\$1,375.00	\$165.00	\$1,540.00	\$330.00	\$330.00	\$1,210.00	
6	954-10193-12	CYC	6/17/2002	12:28:00		S 2,200	PCCM	\$0.600	\$65.00	1,255.00	1,320.00	954-09067-17	CS	2,200	\$0.800	\$0.000	1,760.00	1,760.00		0.20	33.33%	4.92%	0.00%	38.26%	\$440.00	\$65.00	\$505.00	\$132.00	\$200.00	\$305.00	
7	954-10193-12	CYC	6/19/2002	10:27:00		S 1,500	PCCM	\$0.600	\$45.00	855.00	900.00	954-08742-12	MG	1,500	\$0.800	\$0.000	1,200.00	1,200.00		0.20	33.33%	5.00%	0.00%	38.33%	\$300.00	\$45.00	\$345.00	\$90.00	\$200.00	\$145.00	
8	954-10193-12	CYC	6/19/2002	10:30:00		S 5,000	PCCM	\$0.600	\$150.00	2,850.00	3,000.00	954-10226-13	MLC	5,000	\$0.800	\$0.000	4,000.00	4,000.00		0.20	33.33%	5.00%	0.00%	38.33%	\$1,000.00	\$150.00	\$1,150.00	\$300.00	\$300.00	\$850.00	
9	954-10193-12	CYC	6/19/2002	15:46:00		S 5,000	PCCM	\$0.600	\$150.00	2,850.00	3,000.00	954-10204-19	DHG	5,000	\$0.800	\$0.000	4,000.00	4,000.00		0.20	33.33%	5.00%	0.00%	38.33%	\$1,000.00	\$150.00	\$1,150.00	\$300.00	\$300.00	\$850.00	
10	954-10193-12	CYC	6/20/2002	12:33:00		S 2,700	PCCM	\$0.600	\$80.00	1,540.00	1,620.00	954-37243-15	FMH	2,700	\$0.800	\$0.000	2,160.00	2,160.00		0.20	33.33%	4.94%	0.00%	38.27%	\$540.00	\$80.00	\$620.00	\$162.00	\$200.00	\$420.00	
11	954-10193-12	CYC	6/20/2002	12:33:00		S 1,075	PCCM	\$0.600	\$32.00	613.00	645.00	954-09152-13	JYF	1,075	\$0.800	\$0.000	860.00	860.00		0.20	33.33%	4.96%	0.00%	38.29%	\$215.00	\$32.00	\$247.00	\$64.50	\$200.00	\$47.00	
12	954-10193-12	CYC	6/20/2002	12:33:00		S 1,325	PCCM	\$0.600	\$38.00	757.00	795.00	954-09151-14	JDF	1,325	\$0.800	\$0.000	1,060.00	1,060.00		0.20	33.33%	4.78%	0.00%	38.11%	\$265.00	\$38.00	\$303.00	\$79.50	\$200.00	\$103.00	
13	954-10193-12	CYC	6/25/2002	10:55:00		S 1,000	PCCM	\$0.550	\$55.00	495.00	550.00	954-10229-10	RRG	1,000	\$0.750	\$0.000	750.00	750.00		0.20	36.36%	10.00%	0.00%	46.36%	\$200.00	\$55.00	\$255.00	\$55.00	\$200.00	\$55.00	
14	954-10193-12	CYC	6/25/2002	11:28:00		S 10,000	PCCM	\$0.550	\$275.00	5,225.00	5,500.00	954-10218-13	JPB	10,000	\$0.750	\$0.000	7,500.00	7,500.00		0.20	36.36%	5.00%	0.00%	41.36%	\$2,000.00	\$275.00	\$2,275.00	\$550.00	\$550.00	\$1,725.00	
15	954-10193-12	CYC	6/25/2002	11:28:00		S 2,000	PCCM	\$0.550	\$55.00	1,045.00	1,100.00	954-10229-10	RRG	2,000	\$0.750	\$0.000	1,500.00	1,500.00		0.20	36.36%	5.00%	0.00%	41.36%	\$400.00	\$55.00	\$455.00	\$110.00	\$200.00	\$255.00	
16	954-10193-12	CYC	6/25/2002	11:42:00		S 2,000	PCCM	\$0.550	\$60.00	1,040.00	1,100.00	954-10213-18	RLF	2,000	\$0.750	\$0.000	1,500.00	1,500.00		0.20	36.36%	5.45%	0.00%	41.82%	\$400.00	\$60.00	\$460.00	\$110.00	\$200.00	\$260.00	
17	954-10193-12	CYC	6/25/2002	15:01:00		S 2,000	PCCM	\$0.550	\$55.00	1,045.00	1,100.00	954-10196-19	PD	2,000	\$0.750	\$0.000	1,500.00	1,500.00		0.20	36.36%	5.00%	0.00%	41.36%	\$400.00	\$55.00	\$455.00	\$110.00	\$200.00	\$255.00	
18	954-10193-12	CYC	6/25/2002	15:01:00		S 1,500	PCCM	\$0.550	\$45.00	780.00	825.00	954-09378-11	KSM	1,500	\$0.750	\$0.000	1,125.00	1,125.00		0.20	36.36%	5.45%	0.00%	41.82%	\$300.00	\$45.00	\$345.00	\$82.50	\$200.00	\$145.00	
MONTHLY TOTAL																										\$11,640.00	\$1,565.00	\$13,205.00		\$4,355.00	\$8,850.00

Exhibit A

Disciplinary Proceeding (Page 3 of 4) No. C06040027

ENFORCEMENT'S ANALYSIS OF EQUITY PRINCIPAL TRANSACTIONS IN PACIFIC CMA, INC.

July 2002

Trans	Account #	Customer	Trade Date	Entry Time	Exec Buy (B) Time	Sell (S)	Qty	Description	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Account #	Contra Customer (Riskless Prin.)	Qty.	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Iter-Deal Bid Ask	Markup (not incl comm)	Markup Percent (not incl comm)	Sell Commission Percent	Buy Commission Percent	Total MU/ MD incl Comm	Markup Profit	Commission Profit (Buy + Sell)	Total Profit	10% Markup	Greater of 10% MU or \$200	Amt in Excess 10% or \$200
1	954-10193-12	CYC	7/10/2002	13:26:00		S	10,000	PCCM	\$0.550	\$275.00	5,225.00	5,500.00	954-10225-14	DF	10,000	\$0.850	\$0.000	8,500.00	8,500.00		0.30	54.55%	5.00%	0.00%	59.55%	\$3,000.00	\$275.00	\$3,275.00	\$550.00	\$550.00	\$2,725.00
2	954-10193-12	CYC	7/12/2002	14:39:00		S	2,500	PCCM	\$0.620	\$68.00	1,482.00	1,550.00	954-10235-12	KS	2,500	\$0.850	\$0.000	2,125.00	2,125.00		0.23	37.10%	4.39%	0.00%	41.48%	\$575.00	\$68.00	\$643.00	\$155.00	\$200.00	\$443.00
3	954-10193-12	CYC	7/15/2002	15:36:00		S	12,500	PCCM	\$0.620	\$387.00	7,363.00	7,750.00	954-10227-12	IUV	12,500	\$0.850	\$0.000	10,625.00	10,625.00		0.23	37.10%	4.99%	0.00%	42.09%	\$2,875.00	\$387.00	\$3,262.00	\$775.00	\$775.00	\$2,487.00
4	954-10193-12	CYC	7/18/2002	15:30:00		S	4,700	PCCM	\$0.620	\$145.00	2,769.00	2,914.00	954-10242-13	DB	4,700	\$0.850	\$0.000	3,995.00	3,995.00		0.23	37.10%	4.98%	0.00%	42.07%	\$1,081.00	\$145.00	\$1,226.00	\$291.40	\$291.40	\$934.60
5	954-10193-12	CYC	7/31/2002	15:32:00		S	3,200	PCCM	\$0.620	\$99.00	1,885.00	1,984.00	954-37331-18	RAA	3,200	\$0.700	\$0.000	2,240.00	2,240.00		0.08	12.90%	4.99%	0.00%	17.89%	\$256.00	\$99.00	\$355.00	\$198.40	\$200.00	\$155.00
MONTHLY TOTAL																									\$7,787.00	\$974.00	\$8,761.00		\$2,016.40	\$6,744.60	

Exhibit A
Disciplinary Proceeding (Page 4 of 4) No. C06040027

ENFORCEMENT'S ANALYSIS OF EQUITY PRINCIPAL TRANSACTIONS IN PACIFIC CMA, INC.

August 2002

Trans	Account #	Customer	Trade Date	Entry Time	Exec Time	Buy (S)	Qty.	Description	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Account #	Contra Customer (Riskless Prin.)	Qty.	Unit Price (Reported)	Commission	Net to Cust.	Gross to Customer	Inter-Dealer Bid	Ask	Markup (not incl comm)	Markup Percent (not incl comm)	Sell Commission Percent	Buy Commission Percent	Total MU/MD incl Comm	Markup Profit	Commission Profit (Buy + Sell)	Total Profit	10% Markup	Greater of 10% MU or \$200	Amt in Excess of 10% or \$200																										
1	954-10193-12	CYC	8/15/2002	15:02:00		S	2,000	PCCM	\$0.620	\$60.00	1,180.00	1,240.00	954-10331-15	EW	2,000	\$0.900	\$0.000	1,800.00	1,800.00			0.28	45.16%	4.84%	0.00%	50.00%	\$560.00	\$60.00	\$620.00	\$124.00	\$200.00	\$420.00																										
2	954-10193-12	CYC	8/16/2002	15:49:00		S	1,300	PCCM	\$0.620	\$60.00	746.00	806.00	954-37331-18	RAA	1,300	\$0.900	\$0.000	1,170.00	1,170.00			0.28	45.16%	7.44%	0.00%	52.61%	\$364.00	\$60.00	\$424.00	\$80.60	\$200.00	\$224.00																										
3	954-10193-12	CYC	8/26/2002	15:47:00		S	8,000	PCCM	\$0.620	\$248.00	4,712.00	4,960.00	954-10196-19	PD	8,000	\$0.800	\$0.000	6,400.00	6,400.00			0.18	29.03%	5.00%	0.00%	34.03%	\$1,440.00	\$248.00	\$1,688.00	\$496.00	\$496.00	\$1,192.00																										
4	954-10193-12	CYC	8/27/2002	11:51:00		S	1,500	PCCM	\$0.620	\$45.00	885.00	930.00	954-10250-12	REL	1,500	\$0.800	\$0.000	1,200.00	1,200.00			0.18	29.03%	4.84%	0.00%	33.87%	\$270.00	\$45.00	\$315.00	\$93.00	\$200.00	\$115.00																										
5	954-10193-12	CYC	8/27/2002	13:19:00		S	4,000	PCCM	\$0.620	\$120.00	2,360.00	2,480.00	954-10204-19	DHG	4,000	\$0.800	\$0.000	3,200.00	3,200.00			0.18	29.03%	4.84%	0.00%	33.87%	\$720.00	\$120.00	\$840.00	\$248.00	\$248.00	\$592.00																										
6	954-10193-12	CYC	8/27/2002	15:39:00		S	15,000	PCCM	\$0.620	\$390.00	8,910.00	9,300.00	954-10347-17	RAS	15,000	\$0.800	\$0.000	12,000.00	12,000.00			0.18	29.03%	4.19%	0.00%	33.23%	\$2,700.00	\$390.00	\$3,090.00	\$930.00	\$930.00	\$2,160.00																										
7	954-10193-12	CYC	8/27/2002	16:05:00		S	3,600	PCCM	\$0.620	\$110.00	2,122.00	2,232.00	954-10214-17	SR	3,600	\$0.800	\$0.000	2,880.00	2,880.00			0.18	29.03%	4.93%	0.00%	33.96%	\$648.00	\$110.00	\$758.00	\$223.20	\$223.20	\$534.80																										
8	954-10193-12	CYC	8/30/2002	9:52:00		S	12,500	PCCM	\$0.620	\$350.00	7,400.00	7,750.00	954-10350-11		12,500	\$0.800	\$0.000	10,000.00	10,000.00			0.18	29.03%	4.52%	0.00%	33.55%	\$2,250.00	\$350.00	\$2,600.00	\$775.00	\$775.00	\$1,825.00																										
MONTHLY TOTAL																										\$8,952.00	\$1,383.00	\$10,335.00																									\$3,272.20	\$7,062.80				
GRAND TOTAL							133,700																																																		\$32,301.00	\$22,657.40