

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

John C. Correro
Madison, MS,

Respondent.

DECISION

Complaint No. E102004083702

Dated: August 12, 2008

Respondent caused member firm's books and records to contain inaccurate information about certain customers selling Class B and C mutual fund shares by entering sales charge waivers for those customers by erroneously representing that they were disabled. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Julie K. Glynn, Esq., and Mark P. Dauer, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Bruce V. Schewe, Esq., Phelps Dunbar, LLP

Decision

I. Introduction

There are no material facts in dispute in this matter. John C. Correro ("Correro") admits that he entered disability waivers of contingent deferred sales charges ("CDSCs") on behalf of six customers who were, in fact, not disabled, in 23 Class B and C mutual fund redemption transactions from April through November 2003.¹ Rather, the issue before us is how we characterize Correro's misconduct and how we sanction him for it.

¹ A CDSC is a sales charge that mutual fund companies impose on investors who sell or redeem their Class B or C mutual fund shares within a certain period after purchase. The

[Footnote continued on next page]

On July 13, 2007, the Hearing Panel issued a decision finding that Correro violated NASD Rules 2110 and 3110 by obtaining CDSCs for the customers in question by deliberately and falsely claiming that those customers were disabled. The Hearing Panel fined Correro \$5,000, suspended him for one year in all capacities, and ordered him to requalify by examination as a general securities representative.

Correro appealed the Hearing Panel's decision to the National Adjudicatory Council ("NAC") pursuant to NASD Rule 9311. After a complete review of the record, we affirm the Hearing Panel's conclusion that Correro violated NASD Rules 2110 and 3110. Nonetheless, we find sufficient mitigating factors present here to modify the Hearing Panel's sanctions. Accordingly, we eliminate the one-year suspension and requirement to requalify and, instead, increase the fine to \$7,110 and impose a 90-day suspension.

II. Background

A. Correro

Correro entered the securities industry by registering with UBS Financial Services, Inc. ("UBS" or the "Firm") as a general securities representative in 1999. UBS permitted Correro to resign on September 22, 2004, following its internal investigation of false CDSC disability waiver claims made by Correro and others at the Firm. On October 14, 2004, UBS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") to terminate Correro's registration, stating "Mr. Correro was allowed to resign after he entered mutual fund sales orders with inaccurate information concerning disability waivers of contingent deferred sales charges."

On October 5, 2004, Correro accepted an offer from Firm One, where he is currently employed.

At the time of the conduct at issue—April through November 2003 ("the relevant period")—Correro was part of an asset-management "team" led by Albert H. Green ("Green"), a senior broker in UBS's Jackson, Mississippi office. Green and his team members did no commission business—all of their accounts were fee-based management accounts. During the relevant period, Green's team managed approximately \$250 million in assets, of which Correro managed approximately \$65 million. Correro's managed assets generated approximately \$400,000 in fees annually.

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purpose of the CDSC is to reimburse a fund's distributor for commissions paid to dealers at the time the investor purchases the fund shares. The amount of the CDSC varies based on the holding period and the terms offered by the specific mutual fund company.

B. The Investigation of UBS and Corroero

FINRA opened its investigation of Corroero, individually, subsequent to UBS's October 2004 submission of the Form U5 for Corroero. Prior to that, in May or June 2004, FINRA's Department of Enforcement ("Enforcement") had already opened an investigation of UBS's practices in connection with waivers of CDSCs in sales of mutual fund shares by UBS customers.

In its internal investigation, UBS identified and provided information to FINRA regarding 27 financial advisors, or teams of financial advisors, that had entered five or more orders requesting disability waivers of CDSCs that did not appear to be valid. Enforcement did not conduct individual investigations of UBS financial advisors that had obtained CDSC waivers in fewer than five transactions unless one individual order involved shares valued at \$50,000 or more.² Since Corroero requested waivers for six customers in 23 transactions, Enforcement investigated him individually and filed a complaint against him on October 16, 2006.³

III. Facts

During the relevant period, UBS employed an electronic order entry system for mutual fund transactions known as "MFGI." This system, which UBS instituted in June 2001, allowed the Firm's registered representatives to enter mutual fund orders without supervisory approval.⁴ During the relevant period, the MFGI system also permitted registered representatives to claim a waiver of CDSCs without supervisory approval.⁵ In the course of entering an order in the MFGI

² Corroero argued that UBS and Enforcement limited their investigations to registered representatives who had entered questionable CDSC waivers for five or more customers, not five or more transactions. Corroero maintained that he was involved in questionable transactions that involved only five customers because one of his six customers alleged in the complaint was a business entity that was no longer subject to a CDSC on the sales. Thus, Corroero asserts that his actions barely placed him within the range of the investigations. Our review of the record, however, is based on whether Corroero violated FINRA rules, and we conclude that he did.

³ The complaint alleged that Corroero had effected 24 transactions involving questionable CDSC waivers. At the hearing before the Hearing Panel, however, Enforcement corrected the record to reflect only 23 transactions. Six of the 23 transactions did not result in any waived CDSC amount because the sales were on behalf of a business entity that was no longer subject to a CDSC on the funds.

⁴ UBS's registered representatives could also effect mutual fund transactions with paper order tickets, which required supervisor approval for CDSC waivers. The record shows that UBS permitted its branch office managers to determine, for each branch, if registered representatives would use paper order tickets or the MFGI system for transactions.

⁵ In June 2004, UBS updated its MFGI system to require branch manager approval of all requested CDSC waivers.

system to sell mutual fund shares, a registered representative would arrive at an electronic field entitled "CDSC Waiver." The MFGI system default for a CDSC waiver was set to "no." If a registered representative elected to claim a waiver, the MFGI system required him or her to substitute "yes" for "no." The MFGI system would then prompt the registered representative to select a reason for the waiver from a drop-down menu. The available waiver options were death, disability, mandatory distribution, or systematic withdrawal. Orders placed by registered representatives through the MFGI system were electronically transmitted directly to the mutual fund company.

A. Correro's False Entries

1. *Customer RN*

Correro's first false disability waiver entry involved customer RN, who had purchased a small number of B shares of two mutual funds. Correro testified that in early 2003, RN lost his job and told Correro that he desperately needed money for his day-to-day expenses. In two transactions on April 2, 2003, Correro used UBS's MFGI system to sell RN's B shares, generating approximately \$4,850.71 in proceeds. In the two sales orders, Correro elected a CDSC waiver and entered the "disabled" option on the MFGI system, even though he knew that RN was not disabled. As a result, RN received CDSC waivers totaling \$121.83 on the sales.⁶

2. *Customer Mississippi Agriculture Assets*

Correro's second false disability waiver entry was for customer Mississippi Agriculture Assets ("Ag Assets"), which had owned C shares in six mutual funds for more than two and one-half years. Therefore, Ag Assets owed no CDSC because it had held the shares longer than the required minimum period. Nonetheless, in selling Ag Assets' C shares for \$58,579.26 in six transactions on August 13 and September 19, 2003, Correro elected a CDSC waiver and entered "disabled" on the MFGI system even though he knew that Ag Assets, as a corporate entity, could not be disabled and that it did not even owe any CDSC. Correro testified that he was confused by the MFGI system and concerned that if he did not indicate some waiver option, then Ag Assets would be assessed a CDSC in error. There is no estimated CDSC waiver total because Ag Assets did not owe any CDSC on its sales.

3. *Customer LG*

Correro's third inaccurate disability waiver entry was for customer LG, who held B shares in three funds. Correro testified that in August 2003, LG lost his job and asked Correro to sell the assets in LG's account to pay for his day-to-day living expenses. On August 22, October 30, and November 5-6, 2003, Correro entered six mutual fund sales orders for LG through

⁶ Since the specific amount of CDSC waivers could not be precisely calculated, the parties stipulated to amounts based on an estimated three percent of the amount of the sale.

UBS's MFGI system, totaling \$2,500. For each transaction, Correro inaccurately indicated that LG was disabled and sought a CDSC waiver. As a result, LG received CDSC waivers totaling approximately \$64.50 on the sales.

4. *Customer FT*

Correro entered five mutual fund sales orders for customer FT's B shares on October 13 and 30, 2003, totaling \$9,071.34. Correro testified that he was reallocating the funds in FT's account to achieve lower fees and a better portfolio for FT. For each transaction, Correro elected a CDSC waiver and indicated that FT was disabled when Correro knew FT was not disabled. The CDSC waivers for the sales totaled \$323.12.

5. *Customer RD*

On October 21, 2003, Correro entered sales orders through UBS's MFGI system for B shares in two mutual funds for customer RD, totaling \$24,556.47. Correro testified that he was reallocating the funds in RD's account to achieve lower fees and a better portfolio for RD. Correro indicated in each transaction that RD was disabled, and Correro sought a CDSC waiver when Correro knew RD was not disabled. The CDSC waivers on the sales were \$736.96.

6. *Customer RW*

Correro's final questionable transaction involved customer RW. Correro entered two sales orders through UBS's MFGI system for B shares in two mutual funds for RW on November 11, 2003, totaling \$21,590.18. Correro testified that he was reallocating the funds in RW's account to achieve lower fees and a better portfolio for RW. For each transaction, Correro sought a CDSC waiver and wrongly indicated that RW was disabled. As a result, RW received CDSC waivers totaling \$863.61.

* * * * *

For each of the above transactions, Correro testified that he decided on his own to enter the disability waivers—his customers did not ask him to waive fees for them, and Correro did not inform his customers that he had entered the waivers on their behalf. Correro also testified that, during the relevant period, he viewed the CDSC waivers as though he were waiving a commission for himself and did not consider that he was falsifying Firm documents or depriving mutual fund distributors of funds. Correro further stated that he received no personal monetary benefit by entering the waivers. Moreover, Correro testified that he did not speak to any other registered representatives about his entry of false disability waivers, and he was not aware of anybody else at UBS who was engaged in the same activity.

The record also included copies of UBS's instructions and requirements for its MFGI system, and numerous prospectuses from mutual fund companies, which referenced various forms, proofs of disability, notarized statements, or other evidence required to demonstrate that a customer seeking a CDSC disability waiver was disabled as defined by the Internal Revenue Code.

IV. Procedural History

On May 22, 2007, the Hearing Panel held a hearing in New Orleans, Louisiana. On July 13, 2007, the Hearing Panel issued a decision finding Correro liable for violations of NASD Rules 2110 and 3110 and imposing a one-year suspension, a \$5,000 fine, and a requirement to requalify before serving in any registered capacity. Correro appealed the Hearing Panel's decision to the NAC on August 2, 2007.

V. Discussion

After carefully reviewing the record in this matter, we affirm the Hearing Panel's finding that Correro violated NASD Rules 2110 and 3110. Nonetheless, we find mitigating factors in the record, and we therefore modify the Hearing Panel's sanctions to eliminate the one-year suspension and the requirement to requalify. Instead, we impose a \$7,110 fine and a 90-day suspension in all capacities.

A. Correro's Entries of Inapplicable Disability Waivers for Customers Violated NASD Rules 2110 and 3110

Correro admitted that he knowingly obtained CDSC waivers on behalf of five customers—RN, LG, FT, RD, and RW—by falsely claiming that they were disabled on mutual fund sales orders he entered in UBS's MFGI system. None of the five customers was disabled, and none was entitled to the waiver. Additionally, Correro admitted that he made six false entries in UBS's MFGI system in connection with the sale of Class C mutual fund shares for Ag Assets. Although CDSCs were not due upon the sale of Ag Assets' Class C shares, and although Ag Assets was a business entity and not an individual customer, Correro nonetheless claimed a waiver of CDSCs by entering in the MFGI system that Ag Assets was disabled. At the time that Correro made all of these entries, he knew they were false.

NASD Rule 2110 requires FINRA members, in conducting their business, to "observe high standards of commercial honor and just and equitable principles of trade." *Dep't of Enforcement v. Ortiz*, Complaint No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *15 n.14 (FINRA NAC Oct. 10, 2007), *appeal filed*, No. 3-12899 (SEC Nov. 15, 2007). Further, NASD Rule 2110 articulates a "broad ethical principle" to promote the "professionalization of the securities industry." *Timothy L. Burkes*, 51 S.E.C. 356, 360 n.21 (1993), *aff'd mem.*, 29 F.3d 630 (9th Cir. 1994); *Dep't of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NASD NAC June 2, 2000).

NASD Rule 3110(a) requires member firms to "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by Securities Exchange Act of 1934 ["Exchange Act"] Rule 17a-3." In turn, Exchange Act Rule 17a-3 requires member firms to make and keep, inter alia, "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities." 17 C.F.R. § 240.17a-3(a)(6)(i). NASD Rule 0115 makes all

NASD rules, including NASD Rules 2110 and 3110, applicable to both FINRA members and all persons associated with FINRA members.

The Securities and Exchange Commission has found that entering inaccurate information in a member firm's books or records violates both NASD Rule 2110's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and NASD Rule 3110's requirement to keep accurate books and records. *Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005) (finding that entering incorrect information in documents constitutes a violation of NASD Rules 2110 and 3110).

Compliance with recordkeeping rules is essential to the proper functioning of the regulatory process. Indeed, the Commission has stressed the importance of the records that broker-dealers are required to maintain pursuant to the Exchange Act, describing them as the "keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979).

Even if we view the alleged NASD rule violations against Correro separately, however, we find that, with regard to NASD Rule 2110, the evidence here, including Correro's admissions, establishes that he acted unethically in entering false CDSC disability waivers for his customers. *See Dep't of Enforcement v. Taylor*, Complaint No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NASD NAC Feb. 27, 2007) ("[F]alsifying documents is a prime example of misconduct that adversely reflects on a person's ability to comply with regulatory requirements."); *Dep't of Enforcement v. Cuozzo*, Complaint No. C9B050011, 2007 NASD Discip. LEXIS 12, at *32 (NASD NAC Feb. 27, 2007) (finding that submitting false information about customers on variable annuity applications constitutes a "serious breach of the ethical standards inherent in NASD Conduct Rule 2110").

Moreover, Correro's entry of false information on the Firm's MFGI system represents a clear violation of NASD Rule 3110's requirement to keep accurate books and records, and thus also violates NASD Rule 2110. It is a "long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation . . . constitutes a violation of Conduct Rule 2110." *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999); *see also Dep't of Enforcement v. Reynolds*, Complaint No. CAF990018, 2001 NASD Discip. LEXIS 17, at *50 (NASD NAC June 25, 2001) (*quoting Shvarts*, 2000 NASD Discip. LEXIS 6, at *12-13 ("[V]iolations of federal securities laws and NASD Conduct Rules, are viewed as violations of Conduct Rule 2110 without attention to the surrounding circumstances because members of the securities industry are expected and required to abide by the applicable rules and regulations.")).

Even if Correro's goal, as he testified, was to benefit the customers and not enrich himself, it was unethical and improper for Correro to falsify information on the Firm's records to accomplish that goal. Accordingly, we find that Correro violated NASD Rules 2110 and 3110 by knowingly and falsely representing in UBS's books and records that six customers were disabled in order to claim CDSC waivers in 23 mutual fund transactions.

VI. Sanctions

The Hearing Panel fined Corroero \$5,000, suspended him for one year in all capacities, and ordered him to requalify by examination as a general securities representative. We find sufficient mitigating factors present here to modify the Hearing Panel's sanctions. Accordingly, we eliminate the one-year suspension and requirement to requalify and, instead, impose a \$7,110 fine and a 90-day suspension.

In deciding upon an appropriate sanction, we have considered the FINRA Sanction Guidelines' ("Guidelines")⁷ principal considerations and the considerations that are specific to Corroero's misconduct. Moreover, we conclude that the appropriate Guidelines to apply are those for falsification of records.

For falsification of records, the Guidelines recommend the imposition of a fine of \$5,000 to \$100,000 and a suspension in any or all capacities for a period of up to two years, when mitigation is present.⁸ In egregious cases, the Guidelines suggest consideration of a bar.

We first affirm the Hearing Panel's finding that Corroero's misconduct was not egregious for purposes of the falsification of records Guidelines. Our conclusion that Corroero's actions were serious, but not egregious, thus places him at the low end of the sanction range in the falsification Guidelines—a fine of \$5,000 to \$100,000 and consideration of a suspension of up to two years. In view of the following factors in this case that we find mitigating, we determine that a sanction within the lower end of this range—a \$7,110 fine and a 90-day suspension—is sufficient to remediate Corroero's misconduct and protect the investing public.

Like the Hearing Panel, we credit Corroero's testimony that he entered the false disability waiver claims to benefit his customers, two of whom had recently lost their employment, and not for personal gain. In fact, the record shows that Corroero did not talk to his customers about the waivers or attempt to claim credit for the waivers he entered on their behalf and that his misconduct resulted in no monetary gain to him. Moreover, the transactions in question were few—23 transactions for six customers over eight months—Corroero's conduct did not harm any customers, and the injury to the mutual fund distributors, approximately \$2,110, was nominal. *See Dep't of Enforcement v. Schwartz*, Complaint No. E102004083703, slip op. at 7 (FINRA Hearing Panel decision Nov. 16, 2007) (imposing four-month suspension and \$1,000 fine on registered representative for requesting CDSC disability waivers for six customers). We also note that, throughout the proceedings against him, Corroero has consistently offered to reimburse the mutual fund distributors.

⁷ *FINRA Sanction Guidelines* (2007), <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf> [hereinafter *Guidelines*].

⁸ *Guidelines*, at 39 (Forgery and/or Falsification of Records).

Correro also fully cooperated with FINRA and UBS's investigations.⁹ He did not attempt to conceal his actions when he was confronted by UBS management in the summer of 2004 with questions about his entry of disability waivers—an inquiry that led to his resignation from UBS in October 2004. Correro provided on-the-record testimony to FINRA investigators in January 2005, and he voluntarily contacted FINRA staff on two occasions subsequent to that testimony to inquire as to whether he could provide any further information.

The Hearing Panel found an aggravating factor in Correro's arguments below regarding UBS's alleged lack of proper supervision over CDSC waiver requests and stated that this showed Correro's unwillingness to accept full responsibility for his misconduct. In contrast to the Hearing Panel, however, we find that the record shows that Correro is extremely remorseful, has recognized the seriousness of his actions, and does not attempt to excuse his misconduct. We do not find that Correro attempted to avoid or shift responsibility for his actions, and we do not consider it aggravating that Correro's counsel raised arguments about alleged supervisory failures of UBS in an attempt to place Correro's misconduct in context.

In arriving at our choice of sanctions for Correro, we also considered: the testimony of Correro's current supervisor at Firm One regarding Correro's forthrightness in admitting his misconduct and his ability and willingness to conform his conduct to regulatory requirements; the letter from Firm One's general counsel regarding Correro's awareness of his serious errors in judgment; the heightened supervisory procedures that Firm One voluntarily placed on Correro; and Firm One's statement that Correro has fully complied with those procedures.

We did not consider Correro's argument regarding his lack of previous disciplinary history to be a mitigating factor. We have consistently held that "[w]hile the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating." *See Cuzzo*, 2007 NASD Discip. LEXIS 12, at *39. Nor did we consider it mitigating that Correro lost his job with UBS and certain monetary benefits that may have been related thereto. "As a general matter, we give no weight to the fact that a respondent was terminated by a firm when determining the appropriate sanction in a disciplinary case. We consider the disciplinary sanctions we impose to be independent of a firm's decisions to terminate or retain an employee." *Department of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *11 (NASD NAC Dec. 18, 2000).

In conclusion, we find that Correro's misconduct was serious and deserving of a fitting sanction within the lower range of the falsification of records Guidelines. Accordingly, we suspend Correro for 90 days in all capacities and fine him \$7,110, which consists of \$5,000 as

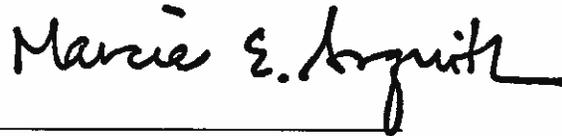
⁹ *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 10 (whether the respondent attempted to conceal his or her misconduct or lull a regulator or a firm into inactivity) and 12 (whether the respondent provided assistance to FINRA in its investigation)).

the starting point in the Guidelines plus \$2,110 for the amount that Corroero's actions cost the mutual fund distributors in CDSC fees.¹⁰

VII. Conclusion

We affirm the Hearing Panel's conclusion that Corroero violated NASD Rules 2110 and 3110. We modify the Hearing Panel's sanction to eliminate the one-year suspension and requirement to requalify and impose on Corroero a \$7,110 fine and a 90-day suspension in all capacities.¹¹ We also order Corroero to pay \$1,972.40 in costs for the proceedings before the Hearing Panel.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

¹⁰ We do not award any restitution here because FINRA's policy is to provide restitution to injured customers whenever possible, not injured member firms. Moreover, the record is unclear as to the identities of the mutual fund distributors who were denied the CDSC fees.

¹¹ We also have considered and reject without discussion all other arguments of the parties. Pursuant to NASD Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.