

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C10030076
v.	:	
	:	Hearing Officer - AWH
DAEWOO SECURITIES (AMERICA)	:	
INC.	:	<b>Hearing Panel Decision</b>
101 East 52 <sup>nd</sup> Street, 28 <sup>th</sup> Floor	:	
New York, NY 10022-6018	:	
(BD #30679)	:	
	:	May 19, 2004
HONG GON KIM	:	
28 Howard Park Drive	:	
Tenafly, NJ 07670-2927	:	
(CRD #3080768)	:	
	:	
Respondents.	:	

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**President of firm failed to register as a General Securities Principal, allowed firm to operate without at least two registered principals, and allowed unregistered persons to engage in the securities business. For failure to register as a Principal, firm and individual Respondent each fined \$2,500, and individual Respondent suspended in all capacities for ten business days. For the remaining violations, firm and individual Respondent jointly and severally fined \$7,500.**

Appearances:

Adam Lipnick, Esq., and Peter Bon Viso, Esq., for the Department of Enforcement

Hong Gon Kim *pro se* and for Daewoo Securities (America) Inc.

**DECISION**

**Background**

On September 10, 2003, the Department of Enforcement (“Enforcement”) issued the four-cause Complaint in this proceeding, alleging that Daewoo Securities (America)

Inc., (“Daewoo America” or “the firm”) and Hong Gon Kim (“H. Kim”) violated NASD Membership and Registration Rules that (1) required H. Kim to be registered as a General Securities Principal, and Daewoo America to operate with at least two registered principals, and (2) required Myungsup Kim to be registered as a General Securities Representative, and Moon Kim to be registered as a Financial and Operations Principal (“FINOP”). On October 6, 2003, the Respondents filed their Answer to the Complaint, denying that they had violated any Membership and Registration Rule. After the parties were unsuccessful in their attempts to settle this matter, a hearing was held on April 15, 2004, before a Hearing Panel composed of the Hearing Officer and two current members of the District 10 Committee.

### **Findings of Fact<sup>1</sup>**

Daewoo America, an NASD member since November 1992, is a subsidiary of Daewoo Securities Company, Ltd., of Seoul, South Korea. CX 1. Its primary business involves selling Korean securities to institutional investors (primarily mutual funds) located in the United States; it conducts no retail business. Tr. 27, 54. Hong Gon Kim has been the president of Daewoo America since January 2000. Tr. 28; CX 1. As president, he functioned as the chief executive officer who negotiated sub-leases, supervised employees, and, subject to approval of the parent company, directed the business operations of Daewoo America. Tr. 30, 33, 38, 58. He was also responsible for ensuring that employees of the firm were properly registered. Tr. 50.

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<sup>1</sup> References to Enforcement’s exhibits are designated as CX\_; Respondents’ exhibits, as RX\_; and the transcript of the hearing, as Tr.\_.

### Registration of Principals

From January 2000 to April 2001, Paul Kelly (“Kelly”) was the firm’s FINOP and compliance officer. He was the firm’s only registered principal during that period of time. Tr. 8-9. In 1992, when the firm filed its application to become a member of NASD, it requested that NASD grant it an exemption from the requirement that it have two registered principals until it had more than ten registered persons or the exemption was rescinded. RX 2. However, the request was never granted because Kelly and the then President of the firm were both registered principals. RX 3. Until 1997, the firm operated with two registered principals. Tr. 55-56. After 1997, the firm operated with only one registered principal, Paul Kelly. Tr. 57. Kelly told H. Kim on more than one occasion that the firm was required to operate with two registered principals. Tr. 39-40. However, H. Kim knew from competitors that a firm could operate with only one registered principal if it first received permission from NASD. Tr. 40-41.

Kelly died in April 2001, leaving the firm without a registered principal. Tr. 10, 29. Upon Kelly’s death, H. Kim assumed Kelly’s functions as FINOP and compliance officer. Tr. 62. From the time of Kelly’s death through sometime in March 2004, H. Kim was the firm’s compliance officer. Tr. 62-63. H. Kim acquired his principal registration in May 2001, one month after Kelly’s death, and 15 months after he became president of the firm in January 2000. Tr. 10-11, 29. In June 2001, while the firm had a second request for an exemption from the two-principal requirement pending before NASD, a second employee of Daewoo America obtained his principal registration. The firm currently operates with two general securities principals. Tr. 12.

### Registration of a General Securities Representative

Myungsup Kim had been registered as a General Securities Representative from 1993 to October 1998. CX 7. However, his registration lapsed because he returned to Korea for two years and was not engaged in the securities business in the United States for that period of time. Tr. 17, 51. In November 2001, Myungsup Kim re-applied to NASD for registration as a General Securities Representative through Daewoo America. However, his registration was not approved because his Form U-4 was submitted without a fingerprint card. H. Kim did not check the CRD system to see if Myungsup Kim had been properly registered. Tr. 52. Nevertheless, from November 2001 to August 2002, Myungsup Kim functioned as a General Securities Representative, engaging in selling activities on behalf of Daewoo America and generating over \$150,000 in commissions. Tr. 14-15, 48; CX 5.

### Registration of a FINOP

In 2001, Moon Kim applied to NASD for registration through Daewoo America as a FINOP. CX 8. However, his registration application was not processed because it did not include a fingerprint card. Tr. 19. H. Kim did not check the CRD system to see if Moon Kim had been properly registered. Tr. 52. Nevertheless, from February 2002 through April 2002, while he was not registered, Moon Kim filed the firm's Financial and Operational Combined Uniform Single ("FOCUS") reports that were prepared by outside consultants. Tr. 18, 46; CX 4, RX 6. Moon Kim was also responsible for registering himself and Myungsup Kim with NASD. Tr. 47. He filed the Form U-4s, but failed to submit fingerprint cards for himself and Myungsup Kim. Tr. 47, 67.

## **Discussion and Conclusions**

### Failure to Register as a Principal

Under NASD Membership and Registration Rule 1021(a), any individual who functions in a principal capacity must be registered as such. Rule 1021(b) defines the term “principal” as, among others, an officer or manager of an Office of Supervisory Jurisdiction 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 . . . .” While he was President of Daewoo America, H. Kim’s duties included administrative management of the firm and supervision of its employees, in addition to his sales activities. Tr. 30, 33, 38; Answer to the Complaint, at p. 2. An officer of a firm who is actively engaged in the management of that firm is a “principal.” NASD Notice to Members, 99-49 (1999). Accordingly, from the time he became President of the firm, H. Kim was required to be registered as a principal. By functioning as a principal from January 2000 to May 2001 without being registered as a principal, H. Kim, and Daewoo America through him, violated NASD Membership and Registration Rule 1031(a) and Conduct Rule 2110.<sup>2</sup>

### Failure to Operate with Two Principals

NASD Membership and Registration Rule 1021(e) requires member firms to employ at least two registered principals, absent a waiver of the requirement. Here, no waiver was ever granted. Accordingly, by operating with only one registered principal

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<sup>2</sup> A violation of a Registration Rule is also a violation of Conduct Rule 2110. *William S. Mentis*, Exch. Act Rel. No 37,952, 1996 SEC LEXIS 3192 at \*5 (Nov. 15, 1996).

from January 2000 to April 2001, Daewoo America, through H. Kim, violated Membership and Registration Rule 1021(e) and Conduct Rule 2110.

Allowing Unregistered Persons to Engage in the Securities Business

Membership and Registration Rule 1031(a) requires that all persons engaged in the securities business who function as representatives be registered as such.

Membership and Registration Rule 1021(a) requires that all persons engaged in the securities business who function as principals be registered as principals.

Myungsup Kim functioned as a General Securities Representative with Daewoo America for nine months while he was not registered with NASD. Accordingly, by allowing him to do so, Daewoo America, through H. Kim, violated Membership and Registration Rule 1031(a) and Conduct Rule 2110.

Without being registered with NASD, Moon Kim functioned as a FINOP from February 2002 through April 2002, and filed Form U-4s on behalf of himself and Myungsup Kim. Accordingly, by allowing him to do so, Daewoo America, through H. Kim, violated Membership and Registration Rule 1031(a) and Conduct Rule 2110.

**Sanctions**

For registration violations, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000, and, in the case of an individual, consideration of a suspension for up to six months.<sup>3</sup> NASD SANCTION GUIDELINES, at 52 (2001 ed.). Daewoo America is a small firm, with limited business and no retail customers, and the violations in this case were not intentional. Moreover, the firm voluntarily took subsequent corrective

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<sup>3</sup> In egregious cases, the recommendation is a suspension for up to 30 business days for the firm, and for the individual, a suspension of up to two years or a bar. Enforcement does not suggest, and the Hearing Panel does not find, that this is an egregious case.

measures, prior to the issuance of the Complaint, to avoid recurrence of its misconduct. *See Principal Considerations in Determining Sanctions, Id.*, at 9.

The violations resulted from H. Kim's (1) mistaken belief that, because a competitor was granted a waiver from the two-principal rule, Daewoo America was free to operate with only one principal in view of what he thought was a pending application for such a waiver, and (2) his, and the firm's ignorance of how to submit a fingerprint card with an application for registration. Within a month after Kelly died, H. Kim passed the Series 24 examination and became registered as a principal. One month later, the firm came into compliance with the Registration Rules by having a second principal registered with NASD, and it continues to operate with two principals. After the fingerprint cards were filed, Moon Kim became registered with NASD as a FINOP in April 2002, and Myungsup Kim became registered with NASD as a General Securities Representative in August 2002. In the Fall of 2002, H. Kim and the firm hired a former NASD employee as a consultant on compliance matters. Tr. 74-75. Notwithstanding these mitigating factors, because compliance with NASD registration requirements is fundamentally important, NASD cannot excuse violations from even the smallest firms.

The requirement that a principal be registered as such is vital to the policing of 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." *DBCC v. Pecaro*, No. C8A960029, 1998 NASD Discip. LEXIS 13, at \*22 (NBCC Jan. 7, 1998). Thus, the requirement enhances investor protection. *Id.*

H. Kim saw his role as President of Daewoo America as merely that of a figurehead whose every action was subject to final approval by the parent company. However, he was a listed officer of Daewoo America, and all employees of the firm reported to him. He directed and managed the business of the firm, and he was responsible for the proper registration of those employees who were required to be registered. Even if he believed that the firm should have been granted a waiver from the two-principal requirement, the firm was not granted a waiver, and Kelly told him that the firm was subject to the rule. If, as he contends, his employees did not know how to obtain a fingerprint card, it was his responsibility to determine how to accomplish a task that was essential to the approval of their registrations.

In balancing the need for deterrence and the imposition of sanctions that are remedial, but not punitive, the Hearing Panel will (1) fine the firm and H. Kim each \$2,500, and suspend H. Kim for 10 business days for H. Kim's failure to register as a principal from January 2000 to May 2001, during which time he functioned as a principal in violation of NASD Rules 1021(a) and 2110; (2) fine the firm and H. Kim, jointly and severally, \$2,500 for operating with less than two principals from January 2000 to June 2001, in violation of NASD Rules 1021(e) and 2110; and (3) fine the firm and H. Kim, jointly and severally, \$5,000 for allowing two unregistered persons to engage in the securities business, in violation of Rules 1031(a), 1021(a), and 2110.

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



suspension shall commence at the opening of business on Tuesday, July 6, 2004, and end at the close of business on Monday, July 19, 2004.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

Copies to:  
Via First Class Mail & Facsimile  
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