

## NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LACY M. WALTHALL, III  
(CRD No. 713269),  
1209 Chilmark Avenue  
Wake Forest, NC 27587,

Respondent.

Disciplinary Proceeding  
No. C07040048

Hearing Officer—Andrew H. Perkins

### HEARING PANEL DECISION

October 19, 2004

**The Respondent is fined \$35,000 and suspended for one year from associating with any member firm in any capacity for participating in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110, and engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, without giving prior written notice to his employing member firm. In addition, the Respondent is required to requalify by examination before he re-enters the securities industry.**

### Appearances

Gene Carasick, Atlanta, GA; Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel, for the Department of Enforcement.

John M. Fedders, Washington, DC, for the Respondents.

### DECISION

#### I. INTRODUCTION

On May 17, 2004, the Department of Enforcement (the “Department”) filed a two-cause Complaint against the Respondent Lacy M. Walthall, III (“Walthall” or the “Respondent”), alleging that he participated in outside business activities and in private securities transactions while associated with an NASD member firm without providing prior written notice to, or obtaining prior written permission from, the firm.

On June 9, 2004, the Respondent filed his Answer and requested a hearing. The hearing was held in Washington, DC, on July 22, 2004, before a hearing panel composed of the undersigned Hearing Officer, a member of NASD's District 7 Committee, and a member of NASD's District 9 Committee.<sup>1</sup>

## **II. FINDINGS OF FACT**

Walthall worked in the securities industry for 23 years. For most of his career, he concentrated on the sale of insurance and variable contracts products to individuals in the Mid-Atlantic region of the United States. Walthall's office was in North Carolina.

In 1992, RS, Chief Executive Officer of CIP, the parent of CPI Capital, solicited Walthall to get his insurance underwriting business.<sup>2</sup> Walthall gave RS a difficult case, which RS handled well. As a result, Walthall started placing all of his life insurance underwriting business with CIP.<sup>3</sup>

At the time, Walthall was registered with NASD through another broker-dealer. However, when CPI Capital became a broker-dealer, Walthall switched his registration to CPI Capital. Walthall was registered as a General Securities Representative through CPI Capital from September 1998 until August 1, 2002.<sup>4</sup> While associated with CPI Capital, 90%–95% of Walthall's business was life insurance. Although he was registered as a General Securities Representative, Walthall never sold stocks, bonds, or other individual securities.<sup>5</sup>

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<sup>1</sup> The Hearing Panel heard testimony from four witnesses, including the Respondent, and received 24 exhibits the Parties offered jointly. In addition, on July 12, 2004, the Parties filed Stipulations, covering many of the salient facts.

<sup>2</sup> Tr. at 102.

<sup>3</sup> *Id.* at 103.

<sup>4</sup> Stip. ¶ 1.

<sup>5</sup> Tr. at 104.

Over the years, Walthall developed a good working relationship with RS despite the fact that Walthall kept his office in North Carolina and RS was located in New Jersey.<sup>6</sup> Walthall reported to RS and regularly consulted with him about insurance underwriting issues.<sup>7</sup> In addition, Walthall and RS became good friends. They and their wives traveled together as couples and entertained each other in their homes.<sup>8</sup>

**A. Walthall's Involvement with Unitech**

In late 1998, Walthall began to learn about a start-up company called Unitech, LLC, located in Hampton, VA. Unitech was founded by WL and WS; WS was a client of Walthall's. WL had developed a water-based electrically conductive coating and a resin-based polymer coating designed to resist high temperatures.<sup>9</sup> Unitech had identified potential applications and markets for these products, but had not obtained the necessary funding to begin operations.<sup>10</sup> As Walthall learned more about Unitech, he became excited about its prospects.

In late 1999, he began to tell RS about the company, and by early 2000, Walthall suggested that they get involved with finding the funding Unitech needed to begin operations.<sup>11</sup>

By April 25, 2000, Walthall had decided that he would like to become involved with Unitech. Walthall sent an email encouraging RS to approve Walthall's involvement with Unitech and stating that he would not consider exploring other options until he had exhausted every

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<sup>6</sup> *Id.* at 104–06.

<sup>7</sup> *Id.* at 105, 157.

<sup>8</sup> *Id.* at 105–06.

<sup>9</sup> *See* Ex. 13 at 9–10.

<sup>10</sup> Tr. at 110.

<sup>11</sup> *Id.* at 111–12.

possibility with RS.<sup>12</sup> RS responded the same morning by email stating that he had already spoken to another broker-dealer of similar size to CPI Capital, which advised that it is always looking for such deals. RS went on to say that if the second broker-dealer reported in a similar fashion, he anticipated that CPI Capital would support Walthall's participation.<sup>13</sup> RS also asked Walthall to forward Unitech's business plan and any other supporting documentation as soon as possible so that CPI Capital could begin its due diligence process.

Two days later, RS sent Walthall an email that stated that RS had spoken to two more broker-dealers that advised against participation in such private placements because of their potential to put the firm out of business if the firm had to repay the amount raised if there was a problem with the private placement.<sup>14</sup> Although the potential risk scared RS, he nevertheless told Walthall that CPI Capital might still proceed with three caveats. First, CPI Capital would need sufficient time to consider the deal and determine the cost to perform the necessary due diligence. Second, CPI Capital would require an indemnification from Walthall. Third, CPI Capital would like to have the last opportunity to participate after it saw any proposals from other broker-dealers or venture capital firms. By doing so, RS felt he would be in a better position to determine what the deal was worth and to decide if the potential reward justified the risk.<sup>15</sup>

Over the ensuing month, Walthall began working with Unitech. On May 25, 2000, Walthall sent an email to WS and WL, with a copy to RS, in which Walthall stated that for the

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<sup>12</sup> Ex. 3, at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Ex. 4.

<sup>15</sup> *Id.*

next 60 days he intended to devote 90% of his time to the Unitech project.<sup>16</sup> Walthall hoped to begin collecting funds for Unitech by mid-July, 2000. Further, to finalize Unitech's business plan, Walthall proposed that RS accompany him to meet with Unitech's founders on June 13, 2000.

RS accepted Walthall's proposal. They spent a day and a half in Norfolk, Virginia, speaking to WS and WL and touring Unitech's proposed plant.<sup>17</sup> RS and Walthall also met with representatives from NASA and Newport News Shipbuilding, both of which had an interest in Unitech's products.<sup>18</sup>

RS came away from his meeting with Unitech enthused about its products but concerned about the company. RS concluded that Unitech was an immature opportunity. It did not have a final business plan, employees, or an office.<sup>19</sup> Nevertheless, RS approved Walthall's request to participate in the Unitech private placement because he did not want to lose Walthall.<sup>20</sup> On June 15, 2000, RS sent Walthall a memorandum confirming that Walthall could proceed and outlining proposed terms for CPI Capital's participation in the transaction.<sup>21</sup> RS proposed that they finalize the terms of their agreement at an upcoming meeting scheduled for June 22, 2000, in Washington, DC.<sup>22</sup> Walthall saw the memorandum as a "green light" to proceed with Unitech.<sup>23</sup>

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<sup>16</sup> Ex. 6.

<sup>17</sup> Tr. at 36–37.

<sup>18</sup> *Id.* at 37. (Newport News Shipbuilding is erroneously referred to as the Norfolk shipyard in the hearing transcript.)

<sup>19</sup> *Id.* at 38–39.

<sup>20</sup> *Id.* at 29.

<sup>21</sup> Ex. 7.

<sup>22</sup> *Id.*

<sup>23</sup> Tr. 119.

However, on June 20, 2000, CPI Capital reversed its position. RS sent Walthall an email stating that CPI Capital did not want to participate at all in the Unitech venture because of its lack of management and a clear business plan.<sup>24</sup> RS also expressed CPI Capital's concern that they did not have the necessary expertise and resources to undertake the private placement.

Disappointed with CPI Capital's change of position, Walthall requested an explanation. RS responded by email on June 20, 2000.<sup>25</sup> He stated that he and his partners had underestimated the amount of time and money required to complete the financing. At bottom, the partners at CPI Capital did not want to incur the expenses associated with the proposed private placement.<sup>26</sup> As an alternative, RS made the following suggestion:

Maybe what you should do with the cash you would have spent financing this deal is offer to buy in now so that they have the cash to run the company with. Then help them find the right [venture capital] firm to come in and manage the deal. You would probably have a much better chance of making a big hit with that scenario and much less exposure to risk.<sup>27</sup>

RS testified that he later told Walthall that Walthall could not participate in the Unitech private placement.<sup>28</sup> Walthall disputes RS's account of their conversations and states that he called RS several weeks after he received the email reversing CPI Capital's decision to participate in the Unitech offering and asked RS for his advice on how to proceed with Unitech.<sup>29</sup> According to Walthall, RS advised Walthall to proceed with his involvement in Unitech, which advice RS said was "off the record." Based on his long-standing friendship with RS, Walthall

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<sup>24</sup> Ex. 9.

<sup>25</sup> Ex. 8.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Tr. at 46.

<sup>29</sup> *Id.* at 122.

interpreted RS's off-the-record advice to constitute oral permission to continue his involvement with Unitech.<sup>30</sup> Walthall further testified that he would have surrendered his securities license if he had not been permitted to proceed because he was resolute in his desire to work with Unitech.<sup>31</sup>

After his conversation with RS, Walthall decided to move forward with Unitech. He proceeded to wrap up his financial planning practice.<sup>32</sup> He closed his Internet site, stopped soliciting new business, and stopped sending insurance applications to CPI Capital.<sup>33</sup> In addition, Walthall informed his clients that he was joining Unitech and that he would not be continuing with his insurance and financial planning business.<sup>34</sup> Walthall's income reflects this change. He went from making more than \$460,000 in 2000 to just under \$108,000 in 2001.<sup>35</sup> In 2002, his income fell to less than \$29,000.<sup>36</sup> RS confirmed the dramatic drop in Walthall's income and production after 2000.<sup>37</sup>

In stark contrast to the relationship that existed between RS and Walthall before June 2000, after Walthall decided to join Unitech, RS and Walthall rarely spoke. Similarly, CPI Capital's Chief Compliance Officer testified that he rarely interacted with Walthall after June 20, 2000.<sup>38</sup> CPI Capital held only two compliance meetings with Walthall between 2000 and 2002,

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<sup>30</sup> *Id.* at 160–61.

<sup>31</sup> *Id.* at 161.

<sup>32</sup> *Id.* at 124.

<sup>33</sup> *Id.* 124–25.

<sup>34</sup> *Id.*

<sup>35</sup> Ex. 19.

<sup>36</sup> *Id.*

<sup>37</sup> Tr. at 50–51.

<sup>38</sup> *Id.* at 79–80.

one on October 2, 2000, and the second on October 12, 2001.<sup>39</sup> At the second compliance meeting, CPI Capital asked Walthall if he wanted to sell his book of business since he was getting out of the life insurance business.<sup>40</sup> But Walthall did not entertain the offer. CPI Capital's Chief Compliance Officer testified that Walthall had "decided to do something else."<sup>41</sup>

On September 20, 2000, Walthall became Unitech's Chief Executive Officer.<sup>42</sup> He also purchased a 20% interest in the company.<sup>43</sup>

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<sup>39</sup> *Id.* at 91.

<sup>40</sup> *Id.* at 80.

<sup>41</sup> *Id.*

<sup>42</sup> Ex. 12.

<sup>43</sup> Tr. at 128.



In connection with his employment, Walthall assisted in drafting Unitech's business plan<sup>44</sup> and private placement documents.<sup>45</sup> In addition, Walthall solicited ten of his financial planning and insurance customers to invest in Unitech.<sup>46</sup> Although these investors had accounts with CPI Capital, Walthall did not use the firm's name in connection with the private placement. Walthall also did not receive a commission on the transactions.<sup>47</sup> The offering closed in October 2000 in compliance with applicable securities laws. The offering caused no customer harm.

Unitech's private placement was successful. The company is operating, and Walthall remains its Chief Executive Officer.<sup>48</sup>

## **B. Walthall's Termination by CPI Capital**

Jay O'Connell ("O'Connell"), a compliance officer with CPI Capital, testified that on July 29, 2002, he discovered that Walthall was Unitech's Chief Executive Officer.<sup>49</sup> At the time, O'Connell was preparing for a scheduled audit of Walthall's office. In connection with his preparation, O'Connell tried to review Walthall's Internet site, but he discovered that it was no longer operational.<sup>50</sup> Therefore, he conducted an Internet search that produced several references to Walthall as Unitech's Chief Executive Officer.<sup>51</sup> Upon discovery of this information, O'Connell sent Walthall an email asking him to complete an outside business activity form

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<sup>44</sup> Ex. 13.

<sup>45</sup> Ex. 14.

<sup>46</sup> Ex. 15. The investors Walthall referred invested a total of \$1,450,000.

<sup>47</sup> Tr. at 136, 141.

<sup>48</sup> Ex. 23 and Ex. 24.

<sup>49</sup> Tr. at 90-91.

<sup>50</sup> O'Connell testified that he last reviewed Walthall's Internet site in 2000. (Tr. at 97.)

<sup>51</sup> Ex. 11.

because O'Connell could not locate one on file with CPI Capital.<sup>52</sup> O'Connell also confirmed the details for his upcoming visit that was set for August 21, 2002.

After O'Connell sent the foregoing email, he performed further research into Walthall's involvement with Unitech. O'Connell discovered that Walthall had been Unitech's Chief Executive Officer since at least January 2001. Accordingly, after consulting with RS to confirm that he had no knowledge of Walthall's employment with Unitech, on August 2, 2002, O'Connell sent Walthall a termination letter.<sup>53</sup> The letter stated that Walthall was being terminated for participating in an outside business activity with Unitech without having provided CPI Capital the written notice required under NASD Conduct Rule 3030. Walthall's termination was made effective August 1, 2002, and he has not been registered with NASD or associated with an NASD member since that date.<sup>54</sup>

### **III. JURISDICTION**

NASD has jurisdiction under NASD By-Laws, Article V, Section 4. The Complaint is based upon conduct that commenced while Walthall was registered with NASD as a General Securities Representative, and the Department filed the Complaint within two years after his registration terminated.

### **IV. CONCLUSIONS OF LAW**

#### **A. Outside Business Activities**

NASD Conduct Rule 3030 prohibits all persons associated with a member firm in any capacity from accepting employment or compensation from any other person because of business

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<sup>52</sup> *Id.* There also were no documents on file from Walthall stating that he was not engaged in any outside business activity. (Tr. at 95.)

<sup>53</sup> Ex. 10.

activity outside the scope of the employment relationship with a member firm unless they provide prompt written notice of the activity to the member firm. NASD adopted Rule 3030 to prevent harm to the investing public and to limit member firms' entanglements in legal difficulties that can result from unsupervised outside business activities, which may be unrelated to the securities industry.<sup>55</sup> In light of these important protective goals, engaging in unreported outside business activities is considered a serious violation.

Walthall admits that he did not provide written notice to CPI Capital before he became Unitech's Chief Executive Officer in September 2000. To the contrary, Walthall contends that he erroneously relied on RS's oral "off-the-record" advice to proceed with Unitech. But, as he forthrightly acknowledged both before and at the hearing, he cannot avoid liability for violation of Rule 3030 by pointing to his conversations with RS. Accordingly, the Hearing Panel finds that Walthall violated NASD Conduct Rules 2110 and 3030 by accepting employment from Unitech without first providing CPI Capital with written notice of his intended outside business activity.<sup>56</sup>

## **B. Private Securities Transactions**

NASD Conduct Rule 3040 requires that an associated person who intends to participate in a private securities transaction, prior to the transaction, must "provide written notice to the member with which he is associated describing in detail the proposed transaction and the

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<sup>54</sup> Ex. 1.

<sup>55</sup> See Notice to Members 88-86, 1988 NASD LEXIS 207 (Nov. 1988). See also, e.g., *District Bus. Conduct Comm. v. Micah C. Douglas*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at \*18 (N.A.C. Sept. 19, 1995). Rule 3030 requires disclosure of all outside business activity, not just securities-related activity. (*District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at \*96 (N.B.C.C. Oct. 31, 1997)).

<sup>56</sup> Conduct Rule 2110 requires adherence to high standards of commercial honor and equitable principles of trade. "Conduct that violates other NASD rules ... is by its very nature inconsistent with high standards of commercial honor and equitable principles of trade." (*Chris Dinh Hartley*, Exchange Act Release No. 50,031, 2004 SEC LEXIS 1507, at \*9-10 (July 16, 2004) (citations omitted).)

person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction ....” Further, if the transaction is for compensation, the member firm must approve or disapprove of the proposed transaction in writing. If the member approves, it must record the transaction on its books and records and supervise the person’s participation in the transaction as if the transaction were executed on behalf of the member firm.

Rule 3040 protects both the investing public and NASD member firms. On the one hand, the Rule ensures that member firms adequately supervise the suitability and due diligence responsibilities of their associated persons and protects investors from being misled as to employing firms’ sponsorship of transactions that are conducted away from the firms. On the other hand, the Rule serves to protect employers against investor claims arising from associated persons’ private securities transactions.<sup>57</sup> To achieve these purposes, the reach of Rule 3040 is construed broadly, encompassing the activities of associated persons who participate in any manner in a transaction.<sup>58</sup>

Here, the evidence shows that Walthall participated in the Unitech private placement. Moreover, the evidence tended to show that he was compensated indirectly from the proceeds of the private placement. Unitech did not have other funds available to pay his salary. Unitech’s business plan stated that the company would not reach a break-even point for the first year after the close of the private placement.<sup>59</sup> Thus, Walthall’s salary during the start-up phase must be

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<sup>57</sup> *Department of Enforcement v. Carcaterra*, No. C10000165, NASD Discip. LEXIS 39, at \*8–9 (N.A.C. Dec. 13, 2001).

<sup>58</sup> *See Stephen J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at \*17 (July 20, 1999).

<sup>59</sup> Ex. 13, at 21.

considered “selling compensation” under Rule 3040.<sup>60</sup> Accordingly, the Hearing Panel finds that Walthall violated NASD Conduct Rules 2110 and 3040.

## V. SANCTIONS

For Rule 3040 violations, Selling Away, NASD's Sanction Guidelines ("Guidelines") recommend a fine ranging from \$ 5,000 to \$ 50,000, and suggest that the adjudicator increase the fine amount by adding the amount of the respondent's financial benefit.<sup>61</sup> The Guidelines also suggest, where the subject sales exceed \$1 million, a suspension of twelve months to a bar, a period that can be increased or decreased based on aggravating or mitigating factors.<sup>62</sup>

For Rule 3030 violations, Outside Business Activities, the Guidelines recommend a fine ranging from \$ 2,500 to \$50,000, and suggest that the adjudicator increase the fine amount by adding the amount of the respondent's financial benefit.<sup>63</sup> The Guidelines also suggest that the adjudicator may bar the individual depending on the circumstances of the case.<sup>64</sup>

Under the circumstances of this case, the Hearing Panel finds that a bar is not necessary to protect the investing public. Rather, for both violations, the Hearing Panel will impose a \$35,000 fine and a one-year suspension. The Hearing Panel also will require Walthall to requalify by examination before again associating with a member firm.

In determining the appropriate remedial sanctions, the Hearing Panel considered the Principle Considerations in Determining Sanctions that apply to Conduct Rules 3030 and 3040

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<sup>60</sup> *Department of Enforcement v. Van Dyk*, No. C3B020013, 2004 NASD Discip. LEXIS 12, at \*18 (N.A.C. Aug. 9, 2004).

<sup>61</sup> NASD Sanction Guidelines 17 (2004 ed.).

<sup>62</sup> *Id.*

<sup>63</sup> Guidelines 16.

<sup>64</sup> *Id.*

violations in addition to the dollar amount of sales. An overarching consideration is the fact that Walthall closed his financial planning business, and informed all of his customers that he was going to work full time for Unitech. For all practical purposes, Walthall had withdrawn from the securities industry although he improperly remained registered through CPI Capital. Thus, many of the concerns addressed by Conduct Rules 3030 and 3040 are not present in this case. Walthall did not attempt to create the impression that CPI Capital sanctioned the Unitech private placement, nor did he use CPI Capital's facilities, name, or goodwill in connection with his activities on behalf of Unitech. All of the printed materials associated with the private placement correctly identified Walthall as Unitech's Chief Executive Officer, and Unitech's Internet site correctly identified Walthall as an officer of the company. There is no evidence that Walthall recruited other registered representatives to sell the Unitech private placement or that the private placement violated any securities laws or regulations, and there were no investor losses or complaints. There also is no evidence of indirect harm to investors or CPI Capital.

The Hearing Panel further finds that Walthall did not intentionally mislead CPI Capital about his work with Unitech or otherwise conceal his activities. Walthall properly sought and obtained CPI Capital's permission to begin work on the Unitech private placement. Walthall and RS thereafter started their due diligence review of Unitech's business by meeting with Unitech's founders on June 13, 2000. On June 15, 2000, Walthall received written confirmation from CPI Capital that he could pursue private equity financing for Unitech. However, five days later, CPI Capital backed out of the deal. At this point, Walthall told RS that he was adamant in his desire to stay involved with Unitech. RS testified that Walthall expressed his intent to be involved with

Unitech “in one way, shape, or form.”<sup>65</sup> In response, RS offered suggestions to Walthall on how he could continue to help Unitech. RS did not tell Walthall that he was prohibited from helping Unitech. Walthall characterized RS’s advice as “off-the-record” permission to stay involved with Unitech while remaining registered through CPI Capital. RS, on the other hand, testified that he only meant to suggest that Unitech consider venture capital financing before it sought to raise funds from other investors.<sup>66</sup> Accordingly, RS testified that he was surprised to learn in July 2002 that Walthall had joined Unitech shortly after their conversations in June 2000.

The Hearing Panel credits Walthall’s testimony over RS’s. All of the uncontradicted evidence supports Walthall’s version of events. Walthall had told RS that he was going to continue with Unitech, and RS knew that Walthall left the insurance business. Walthall’s income fell dramatically after June 2000, and he stopped opening new business with CPI Capital. In 2001, CPI Capital even approached Walthall about selling his book of business. Furthermore, the Hearing Panel does not find it credible that RS would have ignored the significant shift in his relationship with Walthall after June 2000. RS and Walthall had been friends, yet RS had no explanation for Walthall’s significant change in behavior. Not only did Walthall discontinue doing new business with CPI Capital, but he also ceased all other contact with RS. In sum, the Hearing Panel concludes that RS gave Walthall at least tacit approval to continue working with Unitech even though CPI Capital had decided not to participate in the private placement. Moreover, the evidence supports the conclusion that Walthall did not attempt to conceal his activities with Unitech.

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<sup>65</sup> Tr. at 43.

<sup>66</sup> *Id.* at 44.

Notwithstanding the foregoing, the Hearing Panel notes that violations of Conduct Rules 3030 and 3040 are serious, and the foregoing factors do not excuse Walthall's misconduct. Thus, considerable sanctions are warranted as a general deterrence to others.<sup>67</sup> However, under these unique circumstances, the Hearing Panel finds that a sanction significantly above the lower range recommended by the Guidelines would be punitive. The Hearing Panel finds no likelihood that Walthall would repeat this conduct if he were to re-enter the securities industry.<sup>68</sup> Accordingly, the Hearing Panel will impose a \$35,000 fine and a one-year suspension and order that Walthall requalify by examination before he re-enters the securities industry.<sup>69</sup>

## **VI. ORDER**

Lacy M. Walthall, III, is fined \$35,000 and suspended for one-year from associating with any member firm in any capacity. In addition, Walthall is required to requalify as a General Securities Representative (Series 7) before he re-enters the securities industry.<sup>70</sup> Walthall also is ordered to pay costs in the amount of \$1,840.25, including an administrative fee of \$750 and hearing transcript costs of \$1,090.25.

These sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of the NASD, except that, if this Decision becomes the final disciplinary action of NASD, the suspension shall commence at the

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<sup>67</sup> Guidelines 4 (General Principles Applicable to all Sanction Determinations No. 1).

<sup>68</sup> "Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct." (Guidelines 4 (General Principles Applicable to all Sanction Determinations No. 3)).

<sup>69</sup> The Hearing Panel did not impose separate sanctions for each violation because the Panel finds that the violations under the two Causes of Complaint were part of a common course of conduct. (*See Department of Enforcement v. Josephthal & Co., Inc.*, No. C3A990071, 2001 NASD Discip. LEXIS 15, at \*86 (N.A.C. May 15, 2001).)

<sup>70</sup> The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.



opening of business on December 20, 2004, and end at the close of business on December 19, 2005.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

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