NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MORGAN KEEGAN & CO., INC. (CRD No. 4161), RESPONDENT 2, RESPONDENT 3, Respondents.	Disciplinary Proceeding No. CAF040073 Hearing Officer – RSH **Hearing Panel Decision** July 21, 2006

Respondents Morgan Keegan and Respondent 2 violated NASD Conduct Rule 2110 by selling unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933. For this violation, Morgan Keegan was censured and fined $22,300 and Respondent 2 was censured and fined $2,500. Respondent 3 violated NASD Rules 3010 and 2110 by failing to supervise Respondent 2. For this violation, he was issued a letter of caution.

Appearances

Rebecca A. Donnellan, Sherri Evans Harris, Daniel D. McClain, Washington, DC (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel) for the Department of Enforcement.

Joseph D. Edmondson, Jr., Akita N. Adkins, Marc B. Dorfman, Michael D. Wolk, of Foley & Lardner, LLP, for Morgan Keegan & Co., Inc., Respondent 2, and Respondent 3.

DECISION

I. Procedural Background

The Department of Enforcement ("Enforcement") filed a Complaint against Morgan Keegan & Co., Inc. ("Morgan Keegan"), Respondent 2 and Respondent 3 on September 30, 2004. The two-cause Complaint charged that (1) Morgan Keegan and Respondent 2 violated NASD Rule 2110 by selling unregistered securities in violation of

Sections 5(a) and 5(c) of the Securities Act of 1933 ("Section 5"); and (2) Respondent 3 violated Rules 2110 and 3010 by failing to supervise Respondent 2.

Respondents filed an Answer on October 29, 2004 in which they denied the charges and requested a hearing.

The hearing was held on November 29 and 30 and December 1, 2005 in Memphis, Tennessee before a Hearing Panel composed of the Hearing Officer, a current member of NASD's District 5 Committee and a former member of NASD's District 10 Committee. Enforcement called three witnesses: Respondent 2; Beth Ducrest, a Morgan Keegan compliance administrator; and Chae Yi, an NASD investigator.[1] Enforcement also introduced 25 exhibits into evidence.[2] The Respondents called three witnesses: Respondent 2; Respondent 3; and James Ritt, Morgan Keegan's General Counsel and Chief Compliance Officer. The Respondents introduced 19 exhibits into evidence.[3] The parties jointly submitted a Stipulation of Undisputed Facts.[4]

The parties' final post-hearing submissions, which included briefs and proposed findings of fact and conclusions of law, were filed on February 28, 2006.

II. Respondents

Morgan Keegan is a large regional NASD member firm based in Memphis, Tennessee.[5]

Respondent 2 received his General Securities Representative license ("Series 7") in 1986 and his General Sales Supervisory license ("Series 8") in 1998. Between July 1986 and November 1997, Respondent 2 was a registered representative of A.G.

[1] The hearing transcript is referred to as "Tr."
[2] Exhibits CX-1, 3-8, 10-23, 26-29.
[3] Exhibits RX-1, 3, 4, 9, 14, 38, 41-45, 52-59.
[4] The Stipulation of Undisputed Facts is referred to as "Stip."
[5] Stip. 1.

Edwards.[6] Respondent 2 has been a registered representative of Morgan Keegan since 1997. He worked and acted as an assistant branch manager in Morgan Keegan's Rogers, Arkansas office during 2002. As assistant branch manager, Respondent 2 acted as supervisor when the branch manager was out of the office.[7] Prior to serving as an assistant branch manager, Respondent 2 had served as branch manager of the Rogers office.[8] In 2002, Respondent 2 handled approximately 300 accounts, the majority of which were retirement plans and individual retirement accounts invested primarily in mutual funds.[9] In 2002, Respondent 2 had a general knowledge of procedures for handling restricted and control stock, but limited actual experience in dealing with it.[10]

Respondent 3 received his Series 7 license in 1981 and his Series 8 license in 1996. He was the branch manager for Morgan Keegan's Rogers office during 2002. He had supervisory authority over the account activities of the five brokers in the Rogers office and was responsible for supervising Respondent 2. Respondent 3 left the industry in December 2002; however, NASD has jurisdiction over him because he was an associated person at the time of the activities at issue and Enforcement filed the Complaint within two years of Respondent 3's termination of his registration.[11]

III. Findings of Fact

A. Summary

On January 23, 2002, MR, a trustee for the Genesis Trust ("Trust" or "Genesis") opened an account with Respondent 2 in Morgan Keegan's Rogers, Arkansas office.[12]

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[6] Tr. at 144.
[7] Stip. 2; Tr. at 35-36.
[8] Tr. at 172.
[9] Tr. at 36-38.
[10] Tr. at 168-172.
[11] Stip. 3, 4; Tr. at 464-469.
[12] RX-39; Stip. 5.

On January 25, 2002, MR delivered for deposit into Genesis' account a certificate representing 1,375,000 shares of Golf Entertainment, Inc. ("Golf"), a penny stock that was thinly traded on the Over the Counter Bulletin Board ("OTCBB") market.[13] Genesis immediately began selling and transferring the Golf stock. Between January 25, 2002 and May 14, 2002, Genesis sold 865,000 shares into the market and transferred 140,000 shares to other accounts at Morgan Keegan.[14] On May 14, 2002, Genesis deposited an additional 6,375,000 shares of Golf stock into its Morgan Keegan account.[15] Between May 17, 2002 and August 28, 2002, Genesis sold 250,000 shares and transferred 750,000 shares of Golf from its Morgan Keegan account.[16] All told, between January 25, 2002 and August 28, 2002, Genesis sold 1,115,500 shares of Golf and transferred 890,000 shares.[17] Its net proceeds from the sales were $51,001.[18] Morgan Keegan's commissions on the sales were less than $3,800 and of that, Respondent 2 earned less than $1,500.[19]

Enforcement alleges that the Golf shares were not registered, and that by selling and transferring the shares on behalf of Genesis, Morgan Keegan and Respondent 2 violated Section 5, and thereby violated Rule 2110. Enforcement also alleges that Respondent 3 failed to exercise reasonable supervision over Respondent 2.

It is undisputed that all of the Golf stock Genesis sold was unregistered.[20] Nevertheless, sales of the stock would not have violated Section 5 if the stock or transactions in it had been exempt from registration. Respondents had the burden of proof on that issue; however, they failed to satisfy their burden. Morgan Keegan did not

[13] Stip. 8, 68.
[14] Stip. 10.
[15] Stip. 18.
[16] Stip. 23.
[17] Stip. 35, 74; RX-38 at ENF02938-02940.
[18] Stip. 75.
[19] Stip. 32.
[20] Stip. 9, 19.

determine that the transactions qualified for any exemptions from registration before executing the transactions, and the Respondents concede that they are now unable to prove that the transactions qualified for any exemptions.[21]

Therefore, the Hearing Panel concluded that Morgan Keegan and Respondent 2 violated Section 5. The Respondents argued that although they might have violated Section 5, they acted reasonably under the circumstances, and so should not be found to have violated Rule 2110. The Hearing Panel rejected that argument as unsupported by law and concluded that Morgan Keegan and Respondent 2 violated Rule 2110.

In arguing for the imposition of more lenient sanctions than those requested by Enforcement, Respondents argued that their failure to recognize that the Golf stock was unregistered or restricted was reasonable and that there was nothing more they could have done to prevent the release of unregistered securities into the market. After examining the Respondents' actions under all of the circumstances surrounding Genesis' deposits and transactions in Golf stock, the Hearing Panel disagreed with Respondents' assessment of their conduct.

The Hearing Panel also concluded that Respondent 3 failed to exercise reasonable supervision of Respondent 2.

[21] Stip. 37; Respondents' Post Hearing Brief at 2, 3.

B. Chronology of Events

1. The Genesis Trust Opens an Account at Morgan Keegan

On January 23, 2002, MR met with Respondent 2 in Morgan Keegan's Rogers office to open an account for the Genesis Trust.[22] Although Genesis was a new customer, Respondent 2 had heard of MR, a local businessman. Respondent 2 was aware that prior to 2002, MR had met with another broker in Morgan Keegan's Rogers office to discuss the possibility of a public offering of shares in MR's company. Respondent 2 testified that he was familiar with MR's company, and that although Morgan Keegan did not take MR's company public, the proposed transaction gave MR some credibility.[23] In addition, MR told Respondent 2 that he had been referred by one of Respondent 2's former customers, JB. JB had opened an account at Morgan Keegan in March 2001 for the purpose of depositing a stock certificate. JB, in turn, had been referred to Respondent 2 by TA, another Morgan Keegan customer. Both JB and TA had deposited stock in certificate form into their accounts at Morgan Keegan. Respondent 2 was aware that Morgan Keegan's back office had found that JB's certificate was not in good deliverable form and returned it to him.[24] Respondent 2 testified that all of these facts gave him a "comfort level" with MR—he believed that MR and JB knew that Morgan Keegan would catch any irregularities.[25]

Respondent 2 gathered and recorded information from MR on a new account form for Genesis. MR told Respondent 2 that the purpose of Genesis was to "hold securities"

[22] RX-39; Stip. 5.
[23] Tr. at 152-155.
[24] Tr. at 40-42; RX-30 at ENF00930-00937.
[25] Tr. at 201-202.

and that the Genesis beneficiaries were "some businessmen in the area."[26] Respondent 2 completed the new account form for Genesis, and based on MR's responses to questions, noted that Genesis was not an officer, director or 10% shareholder of any public company and that Genesis did not have any other securities accounts.[27] Respondent 2 signed the new account form as the registered representative on January 23. Because Respondent 3 was out of the office, Respondent 2 also signed the new account form as the acting branch manager on January 29.[28] Respondent 2, Respondent 3 and Ritt (Morgan Keegan's chief compliance officer and general counsel) all testified that, at that time, Morgan Keegan allowed assistant branch managers to approve their own accounts when the branch manager was out of the office.[29] In accordance with Morgan Keegan's policy, Respondent 2 required MR to sign a trustee certification, which certified that he had authority to act on behalf of the trust. A second person, CR, was also listed as a trustee, and Respondent 2 called him to verify that he was a trustee and that Genesis was not an affiliate or 10% shareholder of any publicly-traded company.[30]

2. The Genesis Trust Deposits Shares of Golf Entertainment

When MR opened the account for Genesis, he told Respondent 2 that he intended to deposit stock in certificate form so that it could be sold. Initially, MR did not tell Respondent 2 the name of the stock.[31] When he later disclosed that the stock was Golf, MR stated that Genesis had received the shares from the company for "goods and services" rendered to Golf by Genesis. Respondent 2 did not ask whether the stock was

[26] Tr. at 42-44.
[27] RX-39; Tr. at 47-48, 50.
[28] Stip. 5; Tr. at 38.
[29] Tr. at 38, 487-489, 700, 712.
[30] Stip. 7; Tr. at 51-53.
[31] Tr. at 43.

restricted; however, the certificate did not contain a restrictive legend.[32] The 1,375,000 shares of Golf were not registered; [33] however, none of the Respondents appreciated that fact at the time the shares were deposited. At the time Genesis deposited the Golf stock, Morgan Keegan had written policies and procedures in place to prevent and detect the sales of unregistered securities in violation of Section 5, but Respondent 2 did not follow those procedures because it did not occur to him that the Golf stock was unregistered, restricted or control stock.[34]

When MR deposited the Golf stock certificate, Respondent 2 believed that Golf was a "communications company primarily in the business of Spanish language television stations."[35] Respondent 2 looked up Golf on his computerized quotation system and found that the company traded on the OTCBB, and had a bid and ask quotation. MR told Respondent 2 that Golf had over 500 million shares outstanding. Respondent 2 did not try to verify that number.[36] Respondent 2 testified that Golf stock was trading for "six or eight cents a share."[37] He believed 500 million shares outstanding was a reasonable number for a penny stock company; at approximately six to eight cents per share the resulting market capitalization of $40 million seemed consistent with a company that owned several broadcasting entities.[38] Respondent 2 relied on MR's representation that Genesis was not an officer, director or 10% shareholder of Golf.[39]

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[32] Stip. 9; Tr. at 63, 119; CX-20 at ENF03346.
[33] Stip. 9.
[34] Stip. 47; Tr. at 112-119.
[35] Tr. at 66-67.
[36] Stip. 71; Tr. at 64-65.
[37] Tr. at 568.
[38] Tr. at 164-165, 568-569, 581-582.
[39] Tr. at 117-118.

In January 2002, Morgan Keegan's policies and procedures for opening new accounts did not require brokers or branch managers to verify any of the information on the new account form. The branch managers' responsibility in reviewing the form was to ensure "completeness, not truthfulness."[40]

3. Golf's SEC Filings Available in January 2002

At the time MR deposited the Golf stock certificate, Golf's SEC Form 10-Q for the period ended September 30, 2001 was publicly available, having been filed on October 31, 2001.[41] Golf's 10-Q disclosed that there were 5,293,044 shares outstanding as of October 15, 2001, not 500,000,000 as MR had told Respondent 2. Based on the number of outstanding shares cited in the 10-Q, the shares Genesis deposited in its Morgan Keegan account constituted approximately 26% of Golf's total outstanding stock.[42] Golf's 10-Q also disclosed that Golf had been in the business of "brokering businesses within the golf industry via the Internet" before ceasing operations in April 2001. All of these facts contradicted MR's representations to Respondent 2 when he opened the account and deposited the Golf stock.

Also available in January 2002 when MR deposited the Golf stock was a Form 8-K which Golf had filed on January 8, 2002. The 8-K disclosed:

> On December 31, 2001, the Company acquired a significant amount of assets in a non-cash transaction…The Company acquired the assets in exchange for 3,750,000 shares of its common stock in an isolated, exempt transaction. For the purposes of this transaction the stock of the Company was valued at $0.274/share. The assets were acquired from, and the shares issued to The Genesis Trust. There is no material relationship between The Genesis Trust and the registrant or any of its affiliates, any director or officer of the registrant, or any associate of any such director or officer. The shares used to accomplish the acquisition were derived

[40] Tr. at 523, 690.
[41] CX-19.
[42] 1,375,000/5,293,044 = 25.98%

> from the Company treasury and are deemed to be restricted, illiquid shares pursuant to Rule 144 of the Commission.

Attached to Golf's 8-K was the Restricted Stock Purchase Agreement between Golf and The Genesis Trust. The Purchase Agreement clearly stated that the shares purchased by Genesis were not registered and were restricted and that certificates evidencing the shares were to bear a restrictive legend.[43] 3,750,000 constitutes approximately 71% of the outstanding shares of Golf stock disclosed in its 10-Q.[44]

Respondent 2 did not look for Golf's SEC filings and did not contact Morgan Keegan's compliance department when MR deposited the Golf stock.[45] Ritt testified that it would have been a "prudent step" for Respondent 2 to have called the compliance department when the Golf shares were first deposited.[46] Similarly, Beth Ducrest, the compliance administrator Respondent 2 eventually contacted, testified that under Morgan Keegan policies and procedures it would have been prudent for Respondent 2 to have contacted her before the sales of Golf stock, "since it was such a large certificate deposited into the account."[47]

4. Sales and Transfers of Golf Stock from the Genesis Account

Respondent 2's office sent Genesis' Golf certificate to Morgan Keegan's home office in Memphis, Tennessee.[48] Respondent 2 and Ducrest testified that, according to Morgan Keegan's regular practice, the certificate would have been presented to the Depository Trust Corporation ("DTC"). Golf's transfer agent, American Stock Transfer ("AST") would have reissued the stock to DTC in "street name." Because restricted

[43] Stip. 40, 41; CX-5.
[44] 3,750,000/5,293,044 = 71%.
[45] Tr. at 67, 75, 702.
[46] Tr. at 702.
[47] Tr. at 243-244.
[48] Tr. at 211.

stock may not be held in street name, but must be held in certificate form, the fact that AST permitted the shares to be converted from certificate form to street name led Respondents to believe that the shares were not restricted. Respondent 2 expected that if the shares were restricted or otherwise not in good delivery, Morgan Keegan's back office would have brought this to his attention, as it had in other cases.[49] Before executing the transactions in the Genesis account, Morgan Keegan did not attempt to determine that Genesis's sales and transfers of Golf stock qualified for any exemption from registration because it was not aware that the shares were unregistered.[50]

From January 25, 2002 through April 19, 2002, the Genesis trust sold, in twelve separate transactions, 332,000 shares of Golf stock from its Morgan Keegan account to the market. During that time it also transferred 40,000 shares of Golf to three other accounts at Morgan Keegan, two of which had been opened by Respondent 2.[51] Respondent 2 took most of these orders and transmitted them to Morgan Keegan's sales desk for execution, so he was aware that Genesis transferred Golf stock to other Morgan Keegan accounts.[52]

5. Inquiry by Morgan Keegan's Compliance Department

On April 19, 2002, after Morgan Keegan had already executed twelve sales and three transfers of Golf stock from Genesis' account, Respondent 2 contacted Beth Ducrest in Morgan Keegan's compliance department. Respondent 2 testified that he contacted the compliance department because Genesis had placed large limit orders to sell Golf stock. Respondent 2 asked Ducrest if there was "anything to be concerned

[49] Tr. at 42, 232-233.
[50] Stip. 37.
[51] CX-4, CX-20.
[52] Tr. at 77-86.

about," given the large number of Golf shares owned by Genesis and the size of the transactions.[53] Respondent 2 did not tell Ducrest anything about Genesis as an entity, how long Genesis had owned the Golf shares, or that Genesis had acquired the shares directly from Golf in exchange for goods and services. He also did not tell Ducrest that MR had told him that Golf had 500 million shares outstanding. They did not discuss whether Genesis might be a control person of Golf or whether the shares might be restricted.[54]

Ducrest recalled that Respondent 2 told her only that Genesis held a large position in Golf. He wanted to know if there was "any problem with the stock being traded" and he "just wanted to double check to make sure everything was okay."[55] She told him that "at that point [she] would pretty much pick up the ball and do the research." Ducrest testified that she "probably" asked Respondent 2 standard questions about the affiliation between Genesis and Golf and that Respondent 2 did not tell her that they were affiliates.[56] She apparently did not ask him any other significant questions.[57] Ducrest told Respondent 2 not to conduct any more trades until she had time to research the matter.[58]

Ducrest undertook to review the Genesis transactions for only two issues: whether the Golf stock was restricted[59] and whether Genesis was a Golf affiliate or control

[53] Stip. 14; Tr. at 95-103, 109.
[54] Tr. at 110-111.
[55] Tr. at 228, 231
[56] Tr. at 232.
[57] Tr. at 228-232.
[58] Tr. at 230.
[59] Restricted securities are obtained "directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction …not involving any public offering." Rule 144(a)(3)(i).

person.[60] Ducrest testified that she looked at Morgan Keegan's computer system and confirmed that the DTC held the stock in street name. This indicated to her that "there was no legend on the stock [and]…no stops from the transfer agent." She said that answered her question about whether the stock was restricted. In her experience, even if the legend was missing for some reason, the transfer agent has a permanent record of the restriction on its computer system and will send a rejected stock certificate back to the brokerage firm with an explanation of why the stock is restricted.[61] Ducrest said the fact that AST is a large, reputable transfer agent with which she has significant dealings gave her confidence that the shares were being properly handled.[62] Ducrest testified that by the time she was researching the Golf stock in the Genesis account, the stock had already been transferred to street name. Therefore, she did not have the original certificate number and she was unable to contact AST to have it investigate whether the shares were in fact unrestricted.[63] In response to questioning from a member of the Hearing Panel, however, Ducrest admitted that the certificate was microfilmed and the certificate number would have been available on microfiche.[64]

To determine whether Genesis was a control person or affiliate of Golf, Ducrest reviewed page 2 of Golf's most recent Form 10-K, which had been filed on April 15, 2002. It disclosed that Golf had 9,043,004 shares outstanding.[65] She calculated that Genesis' original 1,375,000 shares constituted approximately 16% of Golf's outstanding

[60] Stip. 15; Tr. at 244, 246. Whether Genesis was an affiliate or control person of Golf was significant because a control person, such as an officer, director or controlling shareholder is considered an affiliate of an issuer. An affiliate of an issuer is treated as an issuer when there is a distribution of securities. *SEC v. Cavanaugh*, 155 F.3d 129, 134 (2d Cir. 1998) (interpreting Section 5 and Rule 144).
[61] Tr. at 232-233.
[62] Tr. at 279-280.
[63] Tr. at 293-294.
[64] Tr. at 304-305.
[65] CX-8 at ENF05929; Tr. at 234-235.

shares.[66] Ducrest did not review any other portion of Golf's 10-K.[67] If she had, she would have read, among other things, the following information:

> Approximately 11.05 million shares of our common stock were issuable or were issued and outstanding as of April 1, 2002. Of these shares, 3.75 million were issued or became issuable in the period of December 31, 2002 through January 20, 2002 in connection with the acquisition of various items of equipment, the rights to acquire a broadcast TV license, etc. We believe that all of these 3.75 million shares (the "Genesis block") are "restricted securities" as that term is defined in Rule 144 promulgated under the Act...Some of our restricted shares, but not the Genesis block, have been outstanding for over one year and thus have been eligible for sale under Rule 144. We believe that only a comparatively small number of these shares have thus far been sold.[68]

Not having read this portion of Golf's 10-K, Ducrest did not see that Golf had clearly disclosed that the "Genesis block" of Golf stock was restricted.

Ducrest also failed to read Golf's 8-K, discussed above. She testified that she normally would have searched for proxy statements to look for officers and directors; however, she could not say "definitely" that she had done so for Golf. Ducrest testified that after calculating that Genesis owned 16% of Golf, she "believed" she checked to see whether Genesis had filed a Form 13-D, as is required for shareholders holding more than 5% of the stock. It had not. Asked if it concerned her that Genesis had apparently not made a 13-D filing, Ducrest testified that, "under normal situations," she would have thought about it and "[t]hat has in the past been a flag." In this particular situation, however, she did not recall if she thought about Genesis' failure to file a 13-D.[69]

Because she had determined that Genesis owned 16% of Golf's outstanding shares, on April 19, 2002, Ducrest called Golf's general counsel, John Dodge, to ask if

[66] CX-11; Tr. at 235-236.
[67] Tr. at 237.
[68] CX-8 at ENF05963-ENF05964; Tr. at 237-238.
[69] Tr. at 241-242.

the shares owned by Genesis were restricted or control stock. Dodge told her that he did not consider the shares owned by Genesis to be restricted or control securities. She also asked whether Dodge considered Genesis to be an affiliate of Golf and he told her that he did not. Ducrest did not ask for any explanation or support for Dodge's opinion. When Ducrest asked whether the fact that Genesis owned 16% of Golf made it a control person, Dodge told her that he still did not think so, but he would "think about it and call [her] right back if he changed his mind."[70] Ducrest testified that she considered Dodge to be the final source in determining whether the stock was restricted and whether Genesis was an affiliate or control person of Golf.[71] Dodge did not call her back, so on or about April 19, 2002, Ducrest called Respondent 2 and told him that the Golf shares in Genesis' account were not restricted and were freely tradable.[72] She did not tell Respondent 2 that Genesis owned more than 10% of Golf's outstanding shares.[73] The parties stipulated that Dodge, the general counsel of Golf, lied to Beth Ducrest when he represented that Genesis was not an affiliate or control person of Golf.[74]

6. Additional Golf Shares Deposited and Traded

On May 14, 2002, Genesis deposited an additional 6,375,000 unregistered shares of Golf into its Morgan Keegan account, bringing its total holdings of Golf stock in its Morgan Keegan account to more than 6.7 million shares. The certificate for the shares did not contain a restrictive legend and apparently was converted into street name without incident.[75] Respondent 2 believed that Respondent 3 was aware of this

[70] Stip. 17; Tr. at 233-234, 240, 246-249.
[71] Tr. at 241, 247.
[72] Stip. 72; Tr. at 248, 590-591.
[73] Tr. at 301.
[74] Stip. 30.
[75] Stip. 18, 19; Tr. at 120, 592.

additional deposit of shares; however, he did not recall a specific conversation about it with Respondent 3. As Respondent 2 testified, "this is not what I was focusing on." Neither Respondent 2 nor Respondent 3 notified Morgan Keegan's compliance department that Genesis had deposited additional shares of Golf.[76] Ducrest testified that Respondent 2 should have called her when the additional shares were deposited; however, she stated that even if it had been clear that Genesis held a majority of Golf shares, she would still have ended up calling Dodge to determine whether Genesis was a control person.[77]

Genesis immediately began transferring and selling its Golf stock from its Morgan Keegan account. No one at Morgan Keegan, other than clerks who facilitated the trades, appears to have taken notice. Between May 14, 2002 and June 4, 2002, Genesis transferred 750,000 shares of Golf stock from its Morgan Keegan account to third parties, and sold 150,000 Golf shares to the market.[78]

Genesis did not execute trades or give transfer instructions at Morgan Keegan between June 4, 2002 and August 22, 2002.[79] Genesis never bought, sold or held positions in any other securities besides Golf in its Morgan Keegan account. Genesis immediately withdrew the proceeds from its sales of Golf stock after each transaction.[80]

7. Morgan Keegan Receives Subpoenas and Freezes the Genesis Account

On August 6 and 7, 2002, the Rogers office received subpoenas from the Benton County, Arkansas Prosecutor's Office requesting documents relating to Genesis, MR,

[76] Stip. 64; Tr. at 124.
[77] Tr. at 285-286.
[78] CX-20 at ENF03354-ENF03356.
[79] CX-20.
[80] Stip. 34; CX-20.

CR, JB and others. The subpoenas did not mention Golf.[81] Ritt testified that he did not immediately freeze the Genesis account after receiving these subpoenas because they did not instruct Morgan Keegan to stop trading in Golf or to freeze any accounts; they merely requested documents. In addition, the subpoenas clearly directed Morgan Keegan not to disclose the existence of the subpoena: "**You are not to disclose the existence of this request.** Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law." (Emphasis in original).[82] Ritt believed that freezing the Genesis account would cause it to question why and lead to the disclosure of the subpoenas.[83]

On August 22, 2002, Genesis placed an order to sell 500,000 shares of Golf stock.[84] Respondent 3, who had taken over all business relating to the Genesis account after receiving the subpoenas, was concerned about the subpoenas' non-disclosure order. He contacted Robert Balfe, the Prosecuting Attorney for Benton County, and asked him what to do about Genesis' outstanding order to sell 500,000 Golf shares. Balfe told Respondent 3 that it was "okay" to complete the trade.[85]

Before the sell order could be completed, Morgan Keegan received a call from the Arkansas Department of Securities alerting it to potential irregularities in Genesis' trading of Golf stock.[86] As a result of that phone call, on August 29, 2002, Morgan Keegan froze the Genesis account and the four other Morgan Keegan accounts holding

[81] Stip. 58; RX-13, RX-14.
[82] RX-13 at 7.
[83] Tr. at 649-651.
[84] CX-4 at ENF002838.
[85] RX-38 at ENF02907; Tr. at 510-12.
[86] Tr. at 644-45.

Golf stock.[87] Morgan Keegan cancelled all pending orders, but allowed executed trades to settle.[88] Morgan Keegan allowed the sale of 450,000 shares to settle in this manner.[89]

Subsequently, in a series of communications with Morgan Keegan spanning several months, Golf Entertainment and the Genesis Trust complained to Morgan Keegan that the Golf shares in the Genesis account were freely tradable and that the freeze should be lifted.[90] Ritt testified that because he had insufficient information to make a determination about the stock one way or another, as well as the Arkansas Department of Securities' open investigation, he refused to lift the freeze on the Genesis account.[91]

On September 10, 2002, the Arkansas Department of Securities sent Morgan Keegan a copy of a Cease and Desist Order which ordered Golf, Genesis, JB and the Genesis trustees, among others, as well as their agents, to cease their sales of Golf stock in the State of Arkansas. The Order stated, "The records of the Department do not reflect that the [Golf Entertainment shares] were ever registered pursuant to the [Arkansas Securities] Act, nor do they reflect that proof of exemption to exempt the issuance of the shares was ever filed pursuant to the Act…" [92]

On September 19, 2002, the Arkansas Securities Department sent Morgan Keegan a letter stating: "The staff is concerned that, given the circumstances surrounding the transfer into and the sales out of the [Genesis account], Morgan Keegan failed to ensure compliance with the Arkansas Securities Act and Rule 144."[93]

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[87] RX-16; Tr. at 644-48.
[88] Tr. at 654.
[89] Stip. 76.
[90] RX-17-RX-20.
[91] Tr. at 654-665.
[92] RX-24 at ENF00460, 463; Tr. at 670-672.
[93] RX-28; Tr. at 673-674.

On October 28, 2002, the Arkansas Department of Securities issued a Final Order related to Genesis and Golf. The Final Order stated, "The transfer of the Shares from Golf to Genesis and the subsequent transfers of the Shares from Genesis to the public were in violation of the [Arkansas Securities] Act." Golf was represented by John Dodge, who was also a respondent in the case.[94] As of the date of the hearing, the Genesis account at Morgan Keegan remained frozen.[95]

C. Respondent 3's Supervision of Respondent 2

The parties stipulated that "[a]t all relevant times, Morgan Keegan had established and maintained procedures, and a system for applying such procedures, to prevent and detect violations of Section 5 of the Securities Act of 1933."[96] Morgan Keegan had numerous policies and procedures for dealing with unregistered securities. In this case, however, no one at Morgan Keegan recognized that they were dealing with unregistered securities. Respondent 2 and Respondent 3 both testified that they had dealt with restricted and control securities before. In the typical case, a customer came to Morgan Keegan with unregistered or restricted stock, seeking Morgan Keegan's help in obtaining an exemption from registration or in complying with Rule 144 restrictions.[97] In this case, the Genesis trustees not only failed to tell Respondent 2 that the Golf stock was unregistered; they appear to have purposely misled him, perhaps knowing that they could not otherwise sell the stock. Given these unusual conditions, neither Respondent 2 nor Respondent 3 had the applicable procedures in mind.

[94] RX-31 at 3; Tr. at 677.
[95] Tr. at 682.
[96] Stip. 47.
[97] Tr. at 515-518.

Instead of focusing on whether Respondent 3 followed Morgan Keegan's supervisory procedures for dealing with restricted and control stock, the Hearing Panel looked at whether Respondent 3 fulfilled some basic supervisory responsibilities, most of which were contained in Morgan Keegan's supervisory procedures, in overseeing Respondent 2's activities. The Hearing Panel concluded that Respondent 3 did not sufficiently carry out those supervisory responsibilities and that if he had he might have appreciated that Genesis' trading involved unregistered, control or restricted securities.

Morgan Keegan's Branch Manager's Supervisory Manual directs branch office managers to monitor the activities of financial advisors who are "accepting orders for securities not followed by Morgan Keegan or listed on the NYSE, AMEX or NMS," and to consult the compliance department for guidance before transacting such business.[98] Respondent 3 knew that Genesis had a large block of Golf stock, that Golf was not traded on those national exchanges, and that Morgan Keegan did not follow Golf. Nevertheless, he did not monitor Respondent 2's handling of the account any more than usual.[99] Respondent 2 did not recall having any conversations with Respondent 3 when he opened the Genesis account or before Respondent 3 approved Genesis' first transaction in Golf stock. Respondent 3 did not contact the compliance department or direct Respondent 2 to consult compliance before Genesis began trading Golf.[100]

Once Genesis began trading Golf stock, Respondent 3 had another opportunity to recognize the unusual trading that was taking place in the bulletin board stock. As required by Morgan Keegan policies, in the course of his supervisory duties, Respondent 3 reviewed and approved the initial order in the Genesis account and all sell and transfer

[98] CX-13 at ENF06552.
[99] Tr. at 102-105.
[100] *Id.*

orders of 10,000 shares or more before Morgan Keegan executed them. Respondent 3 approved almost every sell order and also reviewed monthly concentration reports showing that Genesis owned only Golf stock in its account.[101] Despite this review, Respondent 3 failed to question the trading. He also failed to raise any questions or to consult the compliance department or to direct Respondent 2 to contact compliance when Genesis deposited the second block of 6,375,000 shares of Golf on May 14, 2002.

D. Other Facts

The parties spent much time and many pages of paper arguing about the significance of other facts they believed supported their positions. The Hearing Panel found these facts to be irrelevant because the Respondents were unaware of them at the time they were allowing the trading in the Genesis account.[102] Separately, the facts are inconclusive with respect to whether Genesis was a control person of Golf, whether the Golf shares were exempt from registration, or whether Genesis was involved in a distribution of Golf stock. Taken together, they serve only to show that, had the Respondents been aware of all of the facts, they would have known that "something strange" was occurring with Genesis' trading of Golf stock and that the situation merited investigation *before* allowing the trading.

[101] Stip. 26.

[102] E.g., CX-12 (On May 6, 2002, a federal judge, in approving a settlement, declared millions of shares of Golf stock issued to Genesis to be "free-trading stock exempt from registration," pursuant to Section 3(a)(10) of the Securities Act); Stip. 20 (Genesis opened an account at Arvest and deposited over 700,000 shares of Golf stock into it); Stip. 44 (The number of Golf's outstanding shares in the transfer agent's records differed from those disclosed in Golf's SEC filings).

IV. Conclusions of Law

A. Respondent 2 and Morgan Keegan, Through its Compliance Administrator, Violated NASD Conduct Rule 2110 by Selling Unregistered Golf Stock in Violation of Section 5

1. Enforcement Established a *Prima Facie* Case for a Violation of Section 5

Section 5 makes it unlawful to use the mails or interstate commerce to sell any security unless the security is the subject of an effective registration statement or the security or transaction is exempt from registration.[103] A violation of Section 5 constitutes a violation of NASD Conduct Rule 2110.[104]

In a January 18, 2006 decision, the Securities and Exchange Commission ("SEC") reaffirmed the legal standards applicable to this case. To establish a *prima facie* case of a violation of Sections 5(a) and 5(c) of the Securities Act, Enforcement must show that (1) no registration statement was in effect as to the securities; (2) Respondents sold or offered to sell these securities; and (3) interstate transportation or communication and the mails were used in connection with the sale or offer of sale.[105] A showing of scienter is not required because "[t]he Securities Act of 1933 imposes strict liability on offerors and sellers of unregistered securities."[106]

The parties stipulated to the facts sufficient to prove a *prima facie* case—the Respondents sold and transferred unregistered shares of Golf stock from the Genesis account using means or instruments of transportation or communication in interstate

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[103] 15 U.S.C. §§77e(a) , 77(e)(c).
[104] *Alvin W. Gebhart,* Securities Exchange Act Release No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006) ("Further, because we have consistently held that a violation of a Commission or NASD rule or regulation is inconsistent with just and equitable principles of trade, we find that the Gebharts' sale of the unregistered MHP notes also constitutes a violation of NASD Conduct Rule 2110."); *Stephen J. Gluckman,* Securities Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, *165 (July 20, 1999); *see William H. Gerhauser,* 1998 SEC LEXIS 2402 (November 4, 1998).
[105] *Gebhart,* at *53; *SEC v. Cont'l Tobacco Co.,* 463 F.2d 137, 155 (5th Cir. 1972).
[106] *Gebhart,* at *53 n.73, *quoting Swenson v. Engelstad*, 626 F.2d 421, 424 (5th Cir. 1980).

commerce in connection with those transactions.[107] None of the Golf stock was covered by registration statements filed pursuant to Section 5 of the Securities Act.[108]

2. Respondents Failed to Prove Any Exemptions From Registration

Once Enforcement makes a *prima facie* case, the burden shifts to Respondents to prove that the transactions qualify for exemption from registration.[109] Their evidence in support of an exemption must be "explicit, exact, and not built on mere conclusory statements."[110]

Respondents did not meet their burden of proving that the Golf securities were exempt from the registration requirements of Section 5. They admitted that they did not ascertain whether any particular exemption from registration was available before the sales took place because they did not appreciate that the stock was unregistered. They also admitted that now, without access to Golf and the selling shareholders, they are unable to prove that any specific exemptions applied. The Hearing Panel finds that, because Morgan Keegan and Respondent 2 failed to establish that the Golf stock was exempt from registration, they violated Section 5 of the Securities Act and thereby violated NASD Rule 2110.

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[107] Stip. 9, 19, 24, 35, 73.
[108] Stip. 36.
[109] *Gebhart, at *53; SEC v. Cavanagh,* 1 F. Supp. 2d 337, 361-363 (S.D.N.Y.), *aff'd,* 155 F.3d 129 (2d Cir. N.Y. 1998); *John A. Carley,* Initial Decision Rel. No. 292, 2005 SEC LEXIS 1745 at *87 (July 18, 2005), *citing Swenson v. Engelstad,* 626 F.2d 421, 425 (5th Cir. 1980).
[110] *Robert G. Weeks,* Securities Act Release No. 8313, 2003 SEC LEXIS 2572, *42 n.34 (October 23, 2003).

B. Respondent 3 Violated Rules 2110 and 3110 by Failing to Supervise Respondent 2

The Hearing Panel concluded that, although Respondent 3 followed the letter of Morgan Keegan's supervisory polices and procedures, he failed to adequately supervise Respondent 2.

When a supervisor discovers reds flags, indicating irregularities, he cannot "discharge his supervisory obligations simply by relying on the unverified representations of employees."[111] Respondent 3 reviewed and signed nearly all of Genesis' orders for Golf stock. Thus, he knew that Genesis had deposited a large block of Golf, an OTCBB penny stock that was not followed by Morgan Keegan. He knew that the account began trading the stock and removing the funds immediately after depositing the stock. Respondent 3 should have recognized these facts as red flags. They should have caused him to contact the compliance department or to direct Respondent 2 to do so. In addition, the red flags should have caused Respondent 3 to pay closer attention to the trading of Golf stock in Genesis' account and to question Respondent 2 about the account. Instead, Respondent 3 exercised little oversight of the Genesis account. He failed to discuss the account sufficiently with Respondent 2, only speaking to him a couple of times, well after the account started trading Golf stock. Respondent 3 also should have involved himself more with Respondent 2's consultations with Ducrest in the compliance department. Although Respondent 3 knew that the compliance department had approved the trading of the previous block of stock, he should have consulted compliance, or directed Respondent 2 to contact compliance, when the second block of 6,375,000 shares of Golf was deposited in May 2002.

[111] *Michael H. Hume*, 52 S.E.C. 243, 1995 SEC LEXIS 983, at *12 (April 17, 1995).

For these reasons, the Hearing Panel concludes that Respondent 3 failed to reasonably supervise Respondent 2 and thereby violated NASD Rules 3010 and 2110.[112]

V. Sanctions

A. Selling Unregistered Securities

1. Reasonableness of Respondents' Actions

In determining fair sanctions to impose, the Hearing Panel considered whether the Respondents' inquiry into the relevant circumstances surrounding Genesis' sales of Golf stock was reasonable. For the reasons described below, the Hearing Panel concluded that the Respondents' inquiry was not reasonable. The Hearing Panel concluded that if Respondents had reviewed publicly available information and communicated adequately among themselves, it is likely that they would have prevented the distribution of unregistered securities into the market.

a. Respondent 2's Actions

In January 2002, Respondent 2 knew facts which should have prompted him to inquire further into Genesis' transactions in Golf stock. Genesis was a new customer to Morgan Keegan and although JB had referred it, Respondent 2 knew him only slightly. He did not know the trustees; he only knew MR by reputation. Genesis deposited into its Morgan Keegan account a substantial block (1,375,000) of shares of Golf, a little-known penny stock trading on the OTCBB. Genesis told Respondent 2 that it had obtained the stock directly from the issuer, that there was more stock to come and that it intended to sell the stock. Within days of opening the account, Genesis began to sell and transfer Golf stock and to withdraw the proceeds. Finally, Respondent 2 knew that several accounts were opened at Morgan Keegan for the purpose of receiving Golf stock.

[112] *See DOE v. Castle Sec. Corp.*, 2004 NASD Discip. LEXIS 1 at *19-23 (NAC February 19, 2004).

Knowledge of these facts should have caused Respondent 2 to contact the compliance department before April. Ritt, Morgan Keegan's general counsel and director of compliance, testified that it would have been a "prudent step" for Respondent 2 to have called the compliance department when the Golf shares were first deposited.[113] Ducrest, a Morgan Keegan compliance administrator, testified that under Morgan Keegan's policies and procedures, it would have been prudent for Respondent 2 to have contacted her before the sales of Golf stock were made, "since it was such a large certificate deposited into the account."[114]

Respondent 2's failure to fully convey information to compliance contributed to its failure to conduct an adequate investigation. If Respondent 2 had told Ducrest that Genesis was claiming there were 500,000,000 shares of Golf stock outstanding and that Genesis was not a 10% shareholder of Golf, she would have quickly recognized a discrepancy. Upon reviewing Golf's 10-Q, she would have seen that there were only 5,293,044 shares outstanding and would have calculated that Genesis's block constituted 26%. That information should have led her to conduct a more thorough investigation. She could have read in Golf's 8-K that Genesis owned 3,750,000 shares—over 70% of Golf's outstanding stock. Those facts should have been sufficient to alert her to investigate further.

b. Morgan Keegan's Compliance Administrator's Actions

When Respondent 2 finally contacted Ducrest in the compliance department in April, he did not convey sufficient information to her, and Ducrest asked him virtually no questions. Respondent 2's request that Ducrest "check to see if there was any problem

[113] Tr. at 702.
[114] Tr. at 243-244.

with it being traded," was too vague a direction, and her acceptance of it without more questioning resulted in her not investigating the situation thoroughly enough. Although she had Genesis' trading records available to her, she failed to review them. If she had, the fact that Genesis had already made 15 transactions, selling and transferring some 372,000 shares of Golf stock, might have raised a question in her mind about what Genesis was doing.

Ducrest then conducted a superficial investigation of the only issues she considered—whether the stock was restricted and whether Genesis was an affiliate or control person of Golf. She relied on the fact that the shares did not bear restrictive legends and were held in street name to dispose of the question of whether the shares were unregistered or restricted. She then considered whether Genesis was a control person or affiliate of Golf.

To answer this question, Ducrest reviewed just one page of Golf's April 2002 10-K before calling Golf's general counsel. Respondents contend that Ducrest's review was adequate because the disclosure in Golf's April 2002 10-K about the "Genesis block" of restricted stock was "buried" too deeply for Ducrest to reasonably have been expected to find it. The Hearing Panel finds that since two key filings that Ducrest looked for were missing, i.e., Golf's proxy statement and Genesis' Form 13-D, Ducrest should have read whatever was publicly available to obtain additional information about Golf and Genesis—all of Golf's recent SEC filings. If she had read Golf's January 8, 2002 8-K, she would have learned about Golf's issuance of restricted shares to Genesis. That would have been an additional red flag that should have caused her to read through Golf's entire 10-K and she would have discovered the section describing the "Genesis

block."[115] These two filings should have raised two questions for Ducrest: whether the Golf shares deposited by Genesis in January were part of the restricted stock issued to it by Golf, and whether Genesis might actually be a control person of Golf.

Those questions should have led her to question why the stock certificates did not bear restrictive legends. She admitted that Morgan Keegan kept the certificate numbers of the original certificates on microfiche and with those she could have had the transfer agent confirm that the shares were unrestricted. In any event, the SEC has stated that Brokers who rely on transfer agents to determine if stock certificates are properly free of restrictions do so at their peril.[116] These are all questions Ducrest should have determined before calling Golf's counsel, who, the parties stipulated, lied to her when she called.

Once she called Dodge, Ducrest should have required more than an unverified oral representation from Golf's general counsel that Genesis was not an affiliate or a control person. She might also have called Genesis trustees. All of these persons may have ultimately lied to her, but she would at least have made sufficient inquiry. With so many unanswered questions, it would have been prudent for Morgan Keegan to have stopped the trading in the Genesis account, as it ultimately did.

Despite not having conducted as thorough an investigation as she could have, Ducrest should have relayed her findings to Respondent 2 and not simply told him that the Golf shares were free to trade. Even if she had told Respondent 2 that Genesis held 16% of Golf's outstanding stock, that fact would have alerted him to two discrepancies in

[115] It took the Hearing Officer approximately twenty minutes of scanning the 10-K to encounter this "buried" section concerning the words, "Genesis block".
[116] *John A. Carley*, Initial Decision Release No. 292, 2005 SEC LEXIS 1745 at *110-111 (July 18, 2005); *see also Wonsover v. SEC*, 205 F.3d 408, 411-412 (D.C. Cir. 2000); *Stead v. SEC*, 444 F.2d 713, 716 (10th Cir. 1971).

the information given to him by Genesis: Golf did not have 500 million shares outstanding, and Genesis actually was a more than 10% shareholder of a public company. If that had not halted the sales of Golf stock, Respondent 2 most likely would have, and certainly should have, contacted Ducrest again when Genesis deposited its next 6,375,000 share block in May. Once again, Ducrest would have had an opportunity to discover that something was wrong with Genesis' trading and could have stopped what now appears to have been an illegal distribution of Golf stock.

For all of these reasons, The Hearing Panel finds that Respondents Respondent 2 and Morgan Keegan, through its compliance department, failed to reasonably investigate the circumstances surrounding Genesis' sales and transfers of Golf stock.

2. Sanction Guidelines

The NASD Sanction Guidelines ("Guidelines") for the sale of unregistered securities provide for a fine of $2,500 to $50,000 and consideration of suspensions in egregious cases.[117] Enforcement recommended that Morgan Keegan and Respondent 2 each be censured and fined $50,000 and that Respondent 2 be suspended for six months. The Hearing Panel did not consider the Respondents' conduct to be egregious—their conduct was negligent, not intentional or reckless. Therefore, it found that a suspension for Respondent 2 was unwarranted and the recommended fines were excessive.

The Hearing Panel also found numerous facts that it considered to be mitigating or to indicate an absence of aggravation--most notably that the Respondents appear to have been purposely misled by Genesis and Golf. Several facts indicate that Morgan Keegan and Respondent 2 would have stopped the sales of Golf stock if they had been aware of irregularities. Once Respondent 2 became suspicious of the transactions, he

[117] NASD Sanction Guidelines at 26 (2006 ed.).

immediately contacted the compliance department. In addition, when Morgan Keegan was made aware that Golf stock might have been unregistered, it froze all of the accounts holding the stock, even though its customers complained and threatened to sue.

It is clear from the principle considerations applicable to this violation that this was not a typical case of selling unregistered securities; the considerations simply do not apply here. For example, the Guidelines recommend that the Hearing Panel take into consideration "whether respondent attempted to comply with an exemption from registration," and "whether respondent sold before effective date of registration statement." The Respondents did not even appreciate that the Golf stock was unregistered, let alone that they needed to comply with any exemptions from registration. With respect to the third principle, "the share volume and dollar amount of [the] transactions involved," the Hearing Panel recognized that, although the share volume was large, the dollar amount of the transactions was small.

Other principle considerations that are relevant point to the absence of aggravating factors or mitigation of Respondents' conduct. One of the most compelling is the lack of any significant monetary gain by Respondents. The combined sales of all of the Golf stock resulted in less than $3,800 in commissions to Morgan Keegan and Respondent 2's share of that was less than $1,500. There were no allegations or evidence that any member of the investing public incurred actual injury. The Hearing Panel recognized, however, that Respondent's conduct facilitated the release of over 2,000,000 shares of unregistered stock into the market and resulted in the potential for injury to the investing public and other market participants.

Other principle considerations that weigh in the Respondents' favor: Morgan Keegan had adequate procedures in place to detect the sale of unregistered securities (PC No. 5); in the context of this case, the sales were an isolated event and did not occur over an extended period (PC No. 9); there was no concealment of the activity from the firm, regulators or customers (PC No. 10); and Respondents have cooperated with Enforcement (PC No. 12).

For all of these reasons, the Hearing Panel imposes a censure and fines Morgan Keegan $22,300. This amount includes a fine of $20,000 plus $2,300--the amount of commissions Morgan Keegan earned from the sales of Golf stock. Respondent 2 is censured and fined $2,500, which includes the amount of commissions he earned.

B. Respondent 3's Failure to Supervise Respondent 2

The Sanction Guidelines for failure to supervise suggest a fine of $5,000 to $50,000 and a suspension in all supervisory capacities for up to 30 business days.[118] Enforcement recommended that Respondent 3 be fined $25,000 and suspended in a supervisory capacity for 30 business days.

The Hearing Panel concluded that Respondent 3 did fail to conduct sufficient inquiry into the Golf transactions; however, his conduct was less serious than that of Respondent 2 and Morgan Keegan. Respondent 2 was licensed as a supervisor and acted as branch manager. Respondent 3 reasonably relied on Respondent 2's assurances that he knew Genesis and was aware of the trading in the account. Respondent 3's main failure was in not recognizing the "red flags" in the Genesis account's trading. Respondent 3 did not receive any of the commissions generated from the trading. For all

[118] Sanction Guidelines at 108. (2006 ed.).

of these reasons, the Hearing Panel finds that a Letter of Caution is appropriate and will be imposed on Respondent 3.[119]

VI. Order

For violating NASD Conduct Rule 2110 by selling unregistered securities, Morgan Keegan shall be censured and fined $22,300. For violating NASD Conduct Rule 2110 by selling unregistered securities, Respondent 2 shall be censured and fined $2,500. For failing to supervise Respondent 2, in violation of NASD Conduct Rules 3010 and 2110, Respondent 3 shall be issued a Letter of Caution. In addition, Morgan Keegan is ordered to pay the cost of this proceeding in the total amount of $5,956.38, which includes an administrative fee of $750 and hearing transcript costs of $5,206.38.

HEARING PANEL

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By: Rochelle S. Hall
Hearing Officer

Copies to: Morgan Keegan & Co, Inc. (*via overnight and first class mail*)
Respondent 2 (*via overnight and first class mail*)
Respondent 3 (*via overnight and first class mail*)
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Rebecca A. Donnellan, Esq. (*electronically and via first class mail*)
Sherri Evans Harris, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*electronically and via first class mail*)

[119] 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 findings and conclusions expressed herein.