NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. KAREN HILL (CRD No. 1018669), Respondent.	Disciplinary Proceeding No. C8A050060 **HEARING PANEL DECISION** Hearing Officer – SW Dated: November 14, 2006

Respondent violated NASD Conduct Rule 2110 by falsifying firm records when she submitted completed switch forms that she knew had been signed by the customers in blank. For violating Conduct Rule 2110, Respondent is suspended for six months in all capacities.

Appearances

Kevin G. Kulling, Esq., Regional Counsel, and Marcletta R. Kerr, Esq., Regional Attorney, Chicago, IL, for the Department of Enforcement.

Dean J. Groulx, Esq., Troy, MI, for Respondent Karen Hill.

DECISION

I. PROCEDURAL BACKGROUND

On June 24, 2005, the Department of Enforcement ("Enforcement") filed a three-count Complaint against Respondent Karen Hill ("Respondent"). Count one of the Complaint alleges that, in 2002, Respondent recommended that five customers switch between mutual funds that had the same or substantially the same investment objectives without having a reasonable basis for the recommendations, in violation of NASD Conduct Rules 2310 and 2110, and IM-2310-2.

Count two of the Complaint alleges that, in 2002, Respondent committed fraud when she (i) misrepresented to 15 customers that there were no surrender charges or initial sales charges owed in connection with mutual fund trades, and (ii) wrote false or inaccurate reasons for the trades in the spaces provided on the mutual fund switch forms ("switch forms"), in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

Count three of the Complaint alleges that, in 2002, Respondent created false documents and submitted the documents to her employer, Banc One Securities Corporation ("Banc One"), by having customers sign blank switch forms, which she then completed with the correct surrender charges and submitted to Banc One as if the customers had executed the completed switch forms, in violation of NASD Conduct Rule 2110.

Respondent denied each of the allegations of the Complaint.

The Hearing Panel, consisting of a Hearing Officer and two current members of the District 8 Committee, conducted a Hearing in Saginaw, Michigan, on January 11-12, 2006, which was continued on January 20, 2006, via telephone.[1]

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background: Team Leader System

In February 1999, via a mass transfer, the registered representatives of First Chicago NBD Investment Services ("NBD"), including Respondent, became registered

[1] Post-hearing briefs were filed in April 2006. Hereinafter, "Tr." refers to the hearing transcripts; "CX" refers to Enforcement's exhibits; "RX" refers to Respondent's exhibits; and "JX" refers to the joint exhibits filed by the Parties.

representatives of Banc One.[2] (RX-3, p. 1). Prior to February 1, 1999, Respondent acted as a financial consultant to individual bankers in the NBD bank system. (CX-4, p. 3; Tr. p. 489). The individual bankers in the NBD bank system were not registered representatives. (Tr. p. 489).

Beginning in 1999 and continuing through 2002, under the Banc One team leader system, an individual banker in each branch of Bank One, NA ("Bank NA"), Banc One's banking affiliate, became a Series 6 registered representative of Banc One, known as a relationship or licensed banker. (Tr. p. 28). The licensed bankers worked inside the banking centers helping clients to effect basic mutual fund and annuity transactions. (Id.). Banc One restricted the licensed bankers to selling mutual funds in Bank NA's proprietary funds, i.e., the One Group family of funds. (Tr. p. 29).

If a licensed banker's customer wanted to invest in a product outside of the One Group family of funds, the licensed banker was required by internal guidelines to seek the assistance of his or her team leader, a Series 7 registered representative. (Tr. pp. 20, 29). Trades in a customer's account, in which the licensed banker participated, were coded as assisted sales and were noted on the trade tickets as executed under the team leader's representative code. (Tr. pp. 186, 380).[3]

Respondent was the team leader for nine different branch offices of Bank NA covering approximately 70 square miles in the greater Saginaw, Michigan region. (Tr. p.

[2] From February 1, 1999 to December 9, 2002, Respondent was registered as a general securities representative with Banc One. (CX-1, p. 3). Respondent has been registered as a general securities representative with Newbridge Securities Corporation since February 3, 2004. (CX-1, p. 2). Thus, NASD has jurisdiction over Respondent.

[3] The team leaders were compensated on business written within the banking centers, regardless of whether the team leader or the licensed banker wrote the trade. (Tr. p. 30). As a team leader, Respondent received 3% of the gross commissions on both mutual funds and platform, i.e., proprietary mutual funds, as well as 3% on trailers and 12b-1 fees. (RX-5, pp. 19-30). The licensed banker received compensation only if he or she participated in the security sale. (Tr. p. 52).

20). In 2002, Respondent assisted 11 licensed bankers. (Tr. p. 177; RX-14, p. 1). As team leader, Respondent coached the licensed bankers on product knowledge, and would participate, on occasion, in client meetings to make sure that the licensed bankers were "profiling their clients" correctly, i.e., gathering information regarding the customer's financial condition, investment objectives, and risk tolerances to make appropriate securities recommendations to the customer. (Tr. pp. 30, 175).

On the other hand, Respondent was not a registered principal, and she was not assigned to supervise the licensed bankers. (Id.). In 2002, Respondent felt that nine of the 11 licensed bankers for whom she was the team leader were able to conduct client interviews without her direct input.[4] (Tr. pp. 177, 493). Under Banc One's team system, Respondent was assigned approximately 1,900 customers, all of whom were also assigned to a licensed banker. (Tr. p. 403). It would have been impossible for Respondent to meet with every customer.

B. First Cause of Complaint: Unsuitability of Five Switch Transactions Not Proven

Count one of the Complaint alleges that, without having a reasonable basis for recommending the mutual fund switches, Respondent recommended that each of her five customers switch from one mutual fund to another mutual fund that had the same or substantially similar investment objectives for which the customers incurred charges.[5]

[4] Upon meeting with a customer, if the licensed banker determined that an investment other than one of the One Group mutual funds was appropriate for the customer, after the meeting ended, the licensed banker would typically: (i) telephone Respondent to review the client profile with Respondent and obtain her input; (ii) set up a second appointment with the client and arrange for Respondent to be present at the second appointment; or (iii) direct the client to call Respondent directly. (Tr. p. 176).

[5] Each of the switch transactions was numbered by the NASD staff. For purposes of identification in this Decision, the customers' initials are combined with the number of the transaction.

1. Five Customer Trades

Enforcement charged that five of 60 switch transactions executed under Respondent's team leader code "KBB," specifically those transactions involving customers (i) MAB-1, (ii) MC-34, (iii) CF-40, (iv) ER-35, and (v) CRC-2, were unsuitable.[6]

a. Customer MAB-1

On August 20, 2002, customer MAB-1 executed a switch form for the following trades:

> Sold $283,044 of One Group Gov't Bond Class A on August 13, 2002;
> Bought $283,150 of Franklin Income Fund Class A on August 14, 2002.

Respondent signed the switch form on August 23, 2002, and Banc One's Principal Review Desk ("PRD") approved the switch form on August 26, 2002.[7] (CX-3, p. 1; CX-4, p. 1).

b. Customer MC-34

On September 12, 2002, customer MC-34 and her daughter executed a switch form for the following trades:

> Sold $57,205 of One Group Intermediate Bond Fund Class C on September 12, 2002;
> Bought $62,217 of Franklin Income Fund Class A on September 13, 2002.

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[6] Enforcement did not argue that the switch transactions were unsuitable because the mutual fund product recommended was unsuitable. The recommended products did not involve risky or speculative securities, nor were the securities inconsistent with the customers' investment objectives, tolerances for risk, or financial situations. The transactions also did not involve in and out trading. Enforcement argued that recommending that customers switch between funds with the same or substantially similar investment objectives when the customers would incur charges was unsuitable.

[7] Customer MAB-1 also executed a second switch form on August 20, 2002, involving the sale of One Group Municipal Income Bond Fund Class A and the purchase of Putnam MI Tax Exempt Fund Class A. (CX-3, p. 38). In the switch from a national fund to a Michigan Fund, customer MAB-1 saved on Michigan taxes that would otherwise have been charged. (Tr. p. 512). The second switch was not alleged to be unsuitable.

Someone else signed Respondent's name to the switch form, and PRD approved the switch form on September 23, 2002. (CX-3, p. 34; CX-4, p. 11).

c. Customer CF-40

On October 8, 2002, customer CF-40 executed a switch form for the following trades:

> Sold $114,469 of One Group Gov't Bond Class C on October 3, 2002;
> Bought $114,469 of Franklin Income Fund Class A on October 4, 2002.

Although Respondent's name was hand-printed on the switch form by someone other than Respondent, Respondent's signature was not on the switch form. (CX-3, p. 40). Despite the absence of a team leader signature on the switch form, PRD approved the switch form on October 9, 2002.

d. Customer ER-35

On October 23, 2002, customer ER-35 executed a switch form for the following trades:

> Sold $29,023 of One Group Bond Fund Class C on October 1, 2002;
> Bought $29,023 of Franklin Income Fund Class A on October 2, 2002.

Someone else signed Respondent's name on the switch form, and PRD approved the switch form on October 24, 2002. (CX-3, p. 35; CX-4, p. 11).

e. Customer CRC-2

On November 25, 2002, customer CRC-2 executed a switch form for the following trades:

> Sold $45,047 of AIM Intermediate Gov't Bond Fund Class A on November 15, 2002;
> Bought $42,608 Franklin Income Fund Class A on November 18, 2002.

Respondent signed the switch form on November 25, 2002, and PRD approved

the switch form on December 3, 2002.[8]

2. Mutual Funds Did Not Have Substantially Similar Investment Objectives

NASD Conduct Rule 2310(a) provides that, in recommending a purchase of a security to a customer, a broker "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

Enforcement argued that each customer was primarily interested in income and each of the funds provided income, therefore the funds were similar, and Respondent had no basis for recommending the switch.

However, the Hearing Panel does not find that the Franklin Income Fund recommended to the five customers had substantially similar investment objectives as the funds previously held. Each of the five customers switched from a bond fund to an income and growth fund.[9] As such, the switches substantially reduced the five customers' bond holdings. The Franklin Income Fund was described as "well diversified among various assets categories, including bonds, dividend-paying stocks and convertible securities," and income from the Franklin Income Fund had increased steadily over the years. (RX-9, p. 42; Tr. pp. 511-512).

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[8] Customer CRC-2 testified that all of her retirement income, approximately $90,000, had been invested in the AIM Intermediate Gov't Bond Fund and that after the transaction, one half of her retirement funds had been invested in a different mutual fund in the interest of "not putting all of her eggs in one basket." (Tr. pp. 156, 158).

[9] The One Group Intermediate Bond Fund held 5.75% of its assets in cash and 94.26% of its assets in bonds, primarily in treasuries. (RX-10). The One Group Gov't Bond Fund held 3.62%of its assets in cash and 96.3% in bonds, primarily in treasuries. (Id.). The Aim Intermediate Gov't Bond Fund held .20% of its assets in cash and 95.4% in bonds, primarily in FNMA and FHLMC securities. (RX-10). On the other hand, the Franklin Income Fund, which replaced each of the foregoing funds, held 8.02% in cash, 55.1% in stocks, 35.11% in bonds, and 11.78% in other. (Id.).

In addition, class C mutual fund shares are appropriate for investors with shorter-term investment horizons because of the relatively high fees associated with this class of funds. Therefore, it was not unsuitable to recommend that longer-term investors, such as MC-34, CF-40, and ER-35, who were "out of surrender," switch from a class C mutual fund investment to a class A mutual fund investment.[10] (RX-13, p. 3).

Accordingly, the Hearing Panel does not find that Enforcement proved by a preponderance of the evidence that Respondent violated NASD Conduct Rules 2310 and 2110, and IM-2310-2 by making unsuitable recommendations to the five customers.

In any event, the Hearing Panel did not find that Enforcement proved by a preponderance of the evidence that Respondent made the recommendations to switch to the five customers. Respondent credibly testified that it was usual for the licensed bankers assigned to her to make a recommendation to a client, execute the trade ticket for the transaction, and then, if necessary, submit a switch form to her or to PRD after the transaction was completed. (Tr. pp. 189-190). Joseph Miller, Respondent's Banc One area manager for Greater Michigan, confirmed that a team leader's book of business was assigned to the licensed bankers in the branches, i.e., the licensed bankers were expected to manage the customer relationships.[11] (Tr. p. 79). Enforcement failed to prove that

[10] With respect to customers MC-34, CF-40, and ER-35, Respondent testified that it was her belief that it is "better to own [a Class] A [mutual fund share] over a [Class] C share because [a Class] A [share] has less internal fees and especially [at these] dollar amount[s], they would have a break point, and ongoing, the fees are less because on a Class C [share], the fees are so high." (Tr. p. 508). Respondent also noted that the representative's trailing commission on a Class C fund becomes larger the longer the shares are held and such trails have an adverse impact on the yield of a Class C share. (Tr. p. 509).

[11] In a letter to NASD staff, Banc One's compliance officer explained that "[a] licensed banker manages customer relationships to ensure continued customer satisfaction, retention and loyalty, effectively partnering with retail lending, business banking, investment sales and other product areas to maximize customer relationships and develop new customer relationships by building a referral network." (RX-14, p. 2).

Respondent, rather than the licensed bankers, recommended the five allegedly unsuitable switches.

C. Second Cause of the Complaint: Fraudulent Misrepresentations and Omissions by Respondent not Proven

Count two of the Complaint alleges that Respondent committed fraud when she (i) either misrepresented or omitted to discuss with the 15 customers the surrender charges or initial sales charges owed in connection with mutual fund switches, and (ii) misled Banc One when listing the reasons for the switches on the space provided on the switch form.

1. Misrepresentations or Omissions Regarding Fees on Switch Forms

Mr. Miller testified that, at the time of a switch transaction,[12] pursuant to internal guidelines, the team leader was to provide the client with a completed switch form and make sure that there was a discussion of any fees and a disclosure of the reasons for the switch. (Tr. pp. 33-34). The customer was to sign the completed form, which was then to be signed by the team leader and forwarded to PRD for approval. Mr. Miller testified "because [the team leader] signed the switch letter, they kind of follow up to make sure it was right." (Tr. p. 39).

On the other hand, as stated above, Respondent testified that in a switch transaction it was not unusual for the licensed bankers to make a recommendation to a client, execute the trade tickets, and then submit the switch form to PRD without notifying her. (Tr. pp. 189-190). Respondent testified that, on a number of occasions, she

[12] Banc One's 2002 policy statement defined a switch transaction as selling one mutual fund and using all or some of the proceeds of the sale to purchase another mutual fund of another fund family, which the Hearing Panel adopted for purposes of this Decision. (CX-2, p. 1).

learned of a switch transaction when PRD notified her that a switch form needed to be submitted or needed to be filled in completely. (Tr. p. 190).

To prove that Respondent made misrepresentations or omission to the customers, Enforcement presented the testimony of four customers and questionnaires from 16 customers. Three of the four customer witnesses testified that they did not have a great deal of interaction with the people at Banc One. Customer BAK-54 said "I really didn't have any dealing with the people at the bank." (Tr. p. 88). In response to the question, "As you sit here today, do you recognize [Respondent] as being the person you met with," BAK-34 testified "I think she's changed. I think her hair changed." (Tr. p. 96). BAK-34 did not know whether Respondent had opened the account for her. (Id.). BAK-34 testified it was hard to keep track of the different people calling her from the bank. (Tr. p. 98). Customer CRC-2 was vague about her account and stated that she believed she had only spoken to Respondent once on the telephone and never in person. (Tr. p. 155).

In each instance, the 16 customers who completed the questionnaires first realized that there may have been an issue with their account upon receiving a questionnaire from NASD identifying Respondent as their broker and asking the customer to detail his or her interaction with Respondent about the account. Because of this, and considering the testimony of the witnesses who appeared at the Hearing, the Hearing Panel determined that insofar as the questionnaires indicated that the customers spoke directly to Respondent, they were not reliable. The Hearing Panel finds that the person to whom the customers spoke was more likely to be the licensed banker assigned to the customer as opposed to the team leader, because of the system in place.

Enforcement argued that Respondent was vague, evasive and inconsistent throughout her testimony, and should not be given any credibility. The Hearing Panel finds that Respondent's nervousness did not indicate a lack of sincerity.[13] More importantly, Respondent's recitation of the practices at Banc One, i.e., the switch forms were executed after the trades were executed, was consistent with the documents in this case.

Enforcement argued that Respondent recommended the mutual fund switches to the customers not for their benefit but for her economic benefit. In fact, the Hearing Panel finds that the licensed banker had a greater financial incentive than Respondent to encourage the customers to switch mutual funds. The licensed banker received a percentage of the commissions or points on switch transactions but no trailer fees if no switch transaction was executed. Although Respondent received a percentage of the commission on switch transactions, she also received trailer fees if no switch transaction occurred.

Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and NASD Conduct Rule 2120 "proscribe fraudulent conduct in connection with the purchase or sale of securities."[14] To establish that Respondent violated the antifraud provisions of the federal securities laws and the NASD Rules as charged, Enforcement had to prove by a preponderance of the evidence that Respondent made misrepresentations or omissions of material facts, in connection with the purchase, sale, or offer of securities, and that she

[13] Respondent was understandably nervous about her future. Prior to being terminated by Banc One, Respondent had earned approximately $300,000 in 2001, and $300,000 in 2002. (Tr. p. 408). She was unemployed in 2003, and exhausted all of her savings and her 401(K) to support herself and her family. (Tr. p. 463). Since regaining employment in 2004, Respondent's annual income has significantly declined to $24,000 in 2004, and $31,000 in 2005. (Tr. p. 408).

[14] Leslie E. Rosello, Exchange Act Rel. No. 43,650, 2000 SEC LEXIS 2632, at **6-7 (Dec. 1, 2000).

acted with scienter.[15] Recklessness suffices to show scienter.[16]

In light of the credibility of Respondent, the high probability that the customers' infrequent interactions with Banc One personnel were with the licensed bankers assigned to the accounts, rather than the team leader, the absence of any testimony by the licensed bankers regarding their interaction with the customers, and the underlying assumptions of the questionnaires, the Hearing Panel found the evidence insufficient to establish that the customers, with one exception, spoke with Respondent.

The one exception involved Customer CC-20. Customer CC-20 testified that he had a continuing relationship with Respondent and spoke with her on an annual basis. Accordingly, the Hearing Panel found that Customer CC-20's statement that he spoke directly to Respondent to be credible.

Enforcement argued that Respondent falsely represented to Customer CC-20 in a telephone conversation that there would be no surrender charges on the transaction, whereas according to the switch form Customer CC-20 was charged a surrender fee of $1,694. Respondent credibly argued that the surrender fee information shown on the switch form was incorrect because Customer CC-20 had held his

[15] Dane S. Faber, Exchange Act Rel. No. 49,216, 2004 SEC LEXIS 277, at **13-14 (Feb. 10, 2004). Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976).

[16] See, e.g., Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990), cert. denied, 499 U.S. 976 (1991); Kevin Eric Shaughnessy, Exchange Act Rel. No. 40,244, 1998 SEC Lexis 1507, *9 (July 22, 1998). Recklessness has been defined as highly unreasonable conduct involving not merely simple or excusable negligence but an extreme departure from the standards of ordinary care. See Market Regulation Committee v. Jawitz, No. CMS960238, 1999 NASD Discip. Lexis 24, at **19-20 (NAC July 1999) (citing Hollinger, 914 F.2d at 1568-69 and cases there cited), aff'd, Michael B. Jawitz, Exchange Act Rel. No. 44,357, 2001 SEC Lexis 1042 (May 29, 2001).

investment in the class B shares in excess of six years.[17] Thus, even assuming that Respondent advised the customer that there would be no surrender fees, that was not a misrepresentation. In addition, Customer CC-20's switch form had clearly been altered after it was signed by Customer CC-20 not only to add the reasons for the switch, but also to forge Respondent's name. (CX-10, pp. 6, 8). The preponderance of the evidence did not establish that Respondent was the individual who altered the form.[18]

Respondent testified that the licensed bankers told her what fees they disclosed to the customers. (Tr. p. 376). It would have been a better practice for Respondent to provide the fee information to those customers for whom she signed switch forms. Nevertheless, as discussed above, the Hearing Panel finds it more likely that the licensed banker spoke directly with the customers and that Respondent relied on the licensed bankers to provide accurate fee information to the customers and to provide her with the reasons why the customers agreed to the switch.[19]

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[17] Customer CC-20 had executed an investment account application with NBD on March 28, 1997. (CX-10, pp. 9-10). Respondent also pointed out that the fees set forth on several switch forms were inaccurate. (RX-13). Respondent argued that is was implausible that the commission rate for the broker dealer, which generally included a dealer's concession, would match perfectly the surrender or sales charges on trades, as shown on 20 switch forms. (CX-3, pp. 2, 11, 21, 26, 29, 30, 33, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 47, 55, 60; CX-4). For example, with respect to customer LAH-13, despite the switch form's indication that $203,128 of One Group shares had been purchased, Enforcement provided no evidence that the switch actually occurred because there was no evidence that the purchase had actually been executed. (RX-13, p. 1; CX-4, p. 4).

[18] Information on an additional six switch forms for customers CSZ-6, HB-11, BS-29, BS-30, WCC-56, and MEK-59 was also clearly altered. Based on Enforcement's assumption that the forms were signed by the customer in blank and returned to Respondent, and that Respondent added the fee information and submitted the switch form to PRD, it would not have been necessary for Respondent to alter the information on the forms prior to submitting them to PRD.

[19] The Hearing Panel noted that on June 12, 2002, someone from Banc One other than Respondent, probably a licensed banker, signed Respondent's name on a new account form to switch the account of customer GR-27 to his son's name. (RX-6, pp. 90-93). On that same date, customer GR-27 was at Banc One and signed a switch form. (CX-4, p. 9). Accordingly, the Hearing Panel finds it likely that the person who signed the new account form was the same person who recommended the mutual fund switch and had customer GR-27 sign the switch form.

Accordingly, the Hearing Panel finds that Enforcement failed to prove by a preponderance of the credible evidence that, in connection with the switch transactions, Respondent recklessly or intentionally made misrepresentations about fees to customers MAB-1, BSB-9, CB-15, CRC-2, MC-34, CC-20, CF-40, JI-40, AK-18,[20] BK-54, SK-47, LM-45, AR-33,[21] ER-35, LAH-13, and RS-51, as alleged in the Complaint.

2. Misrepresentations Regarding Reasons for Switches on Switch Forms

Banc One's switch form required that the reasons for the switch be set forth on the form. Respondent testified that the reasons on the switch form were the reasons that the licensed bankers stated were provided by the customer. Enforcement argued that the reasons for the switch transactions written on the switch forms by Respondent were false because they were not the reasons provided by the customers.[22]

For example, the reason for customer MAB-1's switch was listed as "CPA recommend to customer Franklin Income." (CX-3, p. 1). On the questionnaire, MAB-1 indicated that the recommendation to change did not come from her CPA, but from her broker. (CX-5, p. 1). CF-40 indicated in her questionnaire that the reason listed on the switch form, i.e., "Friend recommended Franklin Income," was not accurate.[23]

[20] Customer AK-18 and his spouse engaged in four switch transactions, two in their joint account, and one in each of their IRA accounts. (CX-3, pp. 19, 20, 49, 50; CX-4, pp. 6-7).

[21] Customer AR-33 engaged in two switch transactions. (CX-3, pp. 32, 33; CX-4, p. 11).

[22] Enforcement also suggested that the reasons listed on the switch forms were misleading because Banc One expected the team leader to memorialize the suitability reasons for the switch on the switch form. However, there was no evidence presented that the PRD desk ever questioned the reasons listed on the switch letters or refused to execute a trade based on the reasons listed. In fact, the reason listed on the switch form that Mr. Miller signed on Respondent's behalf, i.e., "client concerned about erosion of municipal bond performance (rate and principal)," would not have constituted a reason to find the switch transaction suitable. (CX-3, p. 60).

[23] Almost 30% of the switch forms stated that the customers' accountants recommended the transaction. (CX-3). The remaining switch forms stated either that a friend recommended the switch or the customer no longer liked the fund family. (Id.).

Respondent credibly testified that she simply wrote down what the licensed banker told her. (Tr. p. 262).

The Hearing Panel finds Respondent's testimony concerning the process for executing the switch forms to be credible and consistent with the switch forms. More than 80% of the switch forms for the 60 switch transactions were signed and approved by PRD substantially after the transactions had been executed, rather than concurrently with the transactions as described by Mr. Miller.[24] (CX-3; CX-4).

The Hearing Panel finds that Enforcement failed to prove by a preponderance of the credible evidence that Respondent knew or was reckless in not knowing that the information she wrote on the switch forms, which was provided by the licensed bankers, was false.[25]

Accordingly, the Hearing Panel finds that Enforcement failed to prove by a preponderance of the evidence that Respondent committed fraud, by misrepresenting or omitting to discuss with the customers information about fees, or by knowingly or recklessly writing false reasons for the switches on the switch forms, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and NASD Conduct Rule 2120.

D. Third Cause of the Complaint: Falsified Documents Proven

Count three of the Complaint alleges that Respondent created false documents and submitted the documents to her employer, Banc One, by having customers sign blank switch forms and then completing the forms with the correct surrender charges and

[24] The lapse between the execution of the trade and the signatures by the customers ranged from one day to more than 50 days. (CX-3; CX-4).

[25] The switch form for customer CC-20 to whom Respondent did speak stated, "the customer did not like the fund." (CX-3; p. 20). At the Hearing, CC-20 testified that "I didn't like the fact that we wasn't (sic) making money on the fund." (Tr. p. 118).

submitting the completed forms to Banc One as if the customers had executed the completed forms, in violation of NASD Conduct Rule 2110.

Respondent admitted that she completed incomplete switch forms that had been submitted by licensed bankers to PRD. Mr. Miller testified that, as early as March 2002, he noted "a trend of a lot of switch activity" under Respondent's representative code based on PRD exception reports, which listed incomplete switch forms.[26] (Tr. pp. 41, 46, 70). Most of the customer questionnaires indicated that the customers had signed the switch forms in blank.[27]

Accordingly, the evidence substantiated Enforcement's allegations that the customers signed incomplete forms that were later completed in some instances by Respondent.

Respondent argued that it was not her responsibility to obtain the information to complete the switch form. Banc One's 2002 policy statement stated that in a switch transaction:

> (i) the sales representative must determine the reason the client wants to switch funds, (ii) it is the registered representative's responsibility to ensure that any switches are in the best interest of the client, and (iii) the investment representative will explain the switch form to the client in detail, and both the investment representative and the client must sign the switch form. (CX-2, p. 2).

[26] On a weekly basis, PRD created exception reports that listed the transactions for which PRD failed to receive a required switch form or received a switch form that was missing information, i.e., dates, signatures, or other information, and for which the team leader failed to provide a completed form upon request of PRD. (Tr. pp. 37, 39).

[27] Each of the 60 switch forms presented as evidence stated "[m]ust be completed and signed by clients wishing to switch from one investment company product to another." (emphasis added) (CX-3). The switch form had blanks for: (i) the account number; (ii) the rep number; (iii) the name and amount of securities sold; (iv) the name and amount of securities purchased; (v) the reasons for the switch; (vi) the surrender charges, if any, for selling the investment; (vii) the initial sales charges, if any, for the new purchase; (viii) the CDSC period for the new purchase; (ix) the customer's signature; and (x) the investment representative's signature. (Id.).

The policy statement failed to specifically indicate whether the phrases "sales representative" and "registered representative" referred to the Series 6 licensed banker, or whether the phrase "registered representative" only referred to the Series 7 team leader.

In any event, there is no dispute that Respondent and the licensed bankers routinely sent out blank switch forms, and that Respondent was aware that customers were signing blank forms. (Tr. p. 22).

As a registered representative, Respondent should have known that the accuracy of a brokerage firm's records is one of the bedrocks upon which the public trust in the financial markets is built.[28] Even in the absence of specific language, Respondent should have known that customers should not be signing blank documents, and that she should not be completing documents with information from the licensed bankers that the customers had not seen, because of the risk that such documents would contain inaccurate, misleading, or deceptive information.[29]

In this case, contrary to the implications of the signatures on the switch forms, Respondent had not explained the fee information to the customers and the customers had not provided the reasons for the switches set forth on the switch forms. By entering information on firm records signed by customers without confirming the information with the customers, Respondent failed to uphold the industry standards for dealing with customers justly and equitably.

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[28] Respondent stated that in the quarterly meetings with Mr. Miller, he never discussed procedures. (Tr. p. 203). Respondent also stated that in the three-day training that she underwent when converting from NBD to Banc One, "there was nothing said about paperwork or procedures, and they gave us a packet of paperwork and said read it and implement it." (Tr. p. 203).

[29] In 2003, the following language was added to Banc One's policy:

> The switch letter must be completed in full prior to obtaining the customer's signature. Under no circumstances should an Investment Representative have a customer sign a blank switch letter. (RX-1, p. 5; Tr. p. 64).

The Hearing Panel finds that Respondent's actions were improper and unethical, and, therefore, finds that Respondent's actions violated NASD Conduct Rule 2110.

III. SANCTIONS

The NASD Sanction Guidelines ("Guidelines") recommend a fine of $5,000 to $100,000 for forgery and/or falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar, in egregious cases.[30] In determining appropriate sanctions under this Guideline, the adjudicator is to consider the nature of the forged or falsified document and whether the respondent had a good faith, but mistaken, belief of express or implied authority.

Enforcement presented 60 switch forms that Respondent had completed and/or signed and argued that the 60 switch forms represented a pattern of misconduct that warranted a serious sanction. Respondent argued convincingly that the 60 switch forms presented by Enforcement did not accurately reflect her involvement in the switch transactions. Not all of the switch forms presented by Enforcement were signed by Respondent. One of the 60 forms was clearly not signed by Respondent, but was signed on her behalf after Banc One had terminated her. (CX-3, p. 60). Three other switch forms did not have any signature. (CX-3, pp. 31, 40, 53). Finally, although neither Party presented a handwriting expert, Respondent testified, and the Hearing Panel concurred, that at least an additional 15 of the 60 switch forms were not signed by Respondent but

[30] NASD Sanction Guidelines, p. 39 (2006).

by someone else signing Respondent's name.[31]

Nevertheless, the Hearing Panel finds that Respondent participated in the significant breach of care practiced by her licensed brokers, when she completed switch forms that she knew customers had signed in blank.

The Hearing Panel also considered the number of times and the length of time that the practice continued, and that Respondent's failure to prevent this practice permitted the licensed bankers to provide misleading information to their customers.

Accordingly, the Hearing Panel finds that Respondent's conduct was a serious breach of NASD Rules and deserves a significant sanction. However, the Hearing Panel also noted the absence of a number of aggravating factors. Most importantly, the Hearing Panel does not find that Respondent was intentionally attempting to deceive her customers or Banc One. Respondent viewed the switch forms as documenting, after the fact, conversations that had previously occurred between the licensed bankers and the customers. Respondent believed that the information on the switch forms accurately reflected what the licensed bankers had told the customers about fees and what the customers had told the licensed bankers about the reasons for agreeing to the trades. Respondent acted in compliance with Bank One's policy when she treated the licensed bankers as the primary contacts with the customers, and, therefore, did not insist on personal contact with every customer.

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[31] A fact finder can - without the aid of an expert - compare known and questioned signatures in finding that purportedly authorized signatures were not genuine. District Bus Conduct Comm. v. Vaughn, No. C04940026, 1995 NASD Discip. LEXIS 233, at *33-34 (NBCC, Oct. 24, 1995). The Hearing Panel finds that Respondent's signature was forged on switch forms for customers: BB-3; HB-11; JD-16; AK-18; CC-20; JT-23; BS-29; BS-30; MC-34; MB-38; JY-43; JT-44; JH-46; AK-49; WC-56; and JH-58. (CX-3, pp. 3, 11, 17, 19, 21, 23, 29, 30, 34, 38, 43, 44, 46, 49, 56, 58). Respondent testified that she had complained to her area manager, Mr. Miller, without remedy, about Respondent's administrative assistant and at least one licensed banker signing Respondent's name to documents. (Tr. p. 398). The Hearing Panel also noted that a number of customer account application documents that were supposedly signed by Respondent actually were signed by others, without her authorization. (RX-6, pp. 18, 33, 71, 72, 93, 112).

The system, as designed by Banc One, lulled Respondent into the belief that the licensed bankers, who were also registered representatives, were responsible for providing the customers and her with accurate information about the trade. Respondent had utilized this system for almost four years previously without complaint. Because of the lack of prior customer complaints, Respondent was not put on notice that certain licensed bankers might not be providing her with accurate representations of what the licensed bankers told the customers or what the customers told the licensed bankers.[32]

Accordingly, the Hearing Panel finds that a suspension of six months is an appropriate remedial sanction for Respondent's participation in, or failure to prevent, the misconduct of certain licensed bankers of having the customers sign blank switch forms. Taking into account Respondent's current financial condition, the substantial negative impact of a six month suspension on Respondent's financial condition, and Respondent's candor regarding her activities, the Hearing Panel will not impose a separate fine, finding that to do so would serve no additional remedial purpose, but on the contrary would be punitive.

IV. CONCLUSION

Respondent Karen Hill violated NASD Conduct Rule 2110 by participating in the creation of misleading company records because the records did not accurately reflect what the customers were told or what the customers told the licensed bankers. For violating Conduct Rule 2110, Respondent is suspended for six months in all capacities.

The Hearing Panel also orders Respondent to pay the $4,102.25 costs of the Hearing, which include an administrative fee of $750 and Hearing transcript costs of

[32] The Banc One customer account numbers were coded to include a particular branch number. (Tr. pp. 189, 495). Twenty-three switch forms were out of the same branch designated as 517. (CX-3).

$3,352.25. The costs shall be due and payable when, and if, Respondent seeks to return to the securities industry.

The sanction shall become effective on a date determined by NASD, but not sooner than thirty days from the date this Decision become the final disciplinary action of NASD, except that, if this Decision becomes the final disciplinary action of NASD, Respondent's suspension in all capacities shall commence at the opening of business on Tuesday, January 16, 2007, and conclude on July 15, 2007.[33]

HEARING PANEL.

_____
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
November 14, 2006

Copies to:
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[33] We have considered all of the arguments of the Parties. Such arguments are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.