NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION, Complainant, v. STEVEN RICHARD JALOZA (CRD No. 1320831), NEAL ANTHONY IMPELLIZERI (CRD No. 1195207), and MICHAEL RAYMOND GIMELI (CRD No. 2197242), Respondents.	Disciplinary Proceeding No. 2005000127502 Hearing Officer—Andrew H. Perkins **EXTENDED HEARING PANEL DECISION** April 24, 2007

The Respondents recommended two OTC Bulletin Board stocks without their firm's affirmative determination that the issuers' current financial statements and material business information provided a reasonable basis for the recommendations, in violation of Conduct Rules 2315 and 2110. For these violations, the Hearing Panel barred the Respondents from associating with any member firm in any capacity. In addition, the Hearing panel found that Respondents Impellizeri and Jaloza failed to disclose material information concerning two speculative stocks they recommended to customers, and Impellizeri made unreasonable price predictions for those stock, all in violation of Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and NASD Rules 2120 and 2110. For these violations, the Hearing Panel barred Respondents Impellizeri and Jaloza from associating with any member firm in any capacity.

Appearances

Matthew Campbell, Esq., and Jeffrey K. Stith, Esq., Rockville, MD, counsel for the Department of Market Regulation.

David E. Robbins, Esq., KAUFMANN, FEINER, YAMIN, GILDIN & ROBBINS LLP, New York, NY, counsel for Neal Anthony Impellizeri.

Richard Roth, Esq., THE ROTH LAW FIRM PLLC, New York, NY, counsel for Steven Richard Jaloza and Michael Raymond Gimeli.

DECISION

On April 27, 2006, the Department of Market Regulation (the "Department") filed a Complaint against Steven Richard Jaloza, Neal Anthony Impellizeri, and Michael Raymond Gimeli (collectively the "Respondents") as a result of an investigation initiated by the Department's fraud surveillance section. The Complaint alleges that from January until May 2003, while associated with Benchmark Securities Group, Inc. ("Benchmark" or the "Firm"), the Respondents engaged in fraud: (1) by omitting to disclose material facts in connection with their recommendations that customers purchase shares of two speculative Over the Counter Bulletin Board ("OTCBB")[1] issuers, SRM Networks, Inc. ("SRM") and Telecommunications Products, Inc. ("TCP"); and (2) by making unreasonable price predictions to customers who purchased SRM and TCP stock. The Complaint alleged that the Respondents' actions violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110. The Complaint further alleged that the Respondents lacked a reasonable basis for their recommendations of SMR and TCP stock and that in making the recommendations they violated NASD Conduct Rules 2315 and 2110.

[1] The OTCBB is a regulated quotation service that displays real-time quotes, last-sale prices, and volume information in over-the-counter ("OTC") equity securities. An OTC equity security generally is any equity that is not listed or traded on NASDAQ or a national securities exchange.

The Respondents filed a joint Answer to the Complaint on May 30, 2006, and requested a hearing.

On October 13, 2006, the Department filed a motion to dismiss paragraphs 44 and 45 of the First Cause of Complaint, and paragraphs 65, 67, and 68-73 of the Third Cause of Complaint because all but one of the customer witnesses essential to proving these allegations were no longer willing to testify at the hearing. The Hearing Officer granted the Department's motion by order dated October 20, 2006.

On October 30, 2006, the Hearing Officer held a Final Pre-Hearing Conference. Gimeli's counsel requested clarification of the remaining charges against his client in light of the Department's dismissal of most of the substantive allegations in the Third Cause of Complaint. Following a review of the Department's theory and evidence, the Department conceded that the Third Cause of Complaint should be dismissed. Accordingly, the Hearing Officer entered an order dismissing the Third Cause of Complaint, which had charged Gimeli with fraudulent sales practices in connection with the sale of SRM and TCP stock. Accordingly, the only charges that remained against Gimeli were that he recommended SRM and TCP stock to his customers without a reasonable basis in violation of NASD Conduct Rules 2315 and 2110, as alleged in the Fourth and Fifth causes of the Complaint.

The hearing was held on November 7-9, 2006, at NASD's offices in New York, NY, before an Extended Hearing Panel that included the Hearing Officer, a former member of the District 3 Committee, and a former member of the District 11 Committee.

The Department presented the testimony of each Respondent, four customers, and Jeff Grant, an analyst from the Department's fraud surveillance section. The Department also introduced 25 exhibits into evidence. Jaloza and Impellizeri also testified in their defense, and

the Respondents introduced 43 exhibits into evidence.[2] Gimeli did not testify in his defense at the hearing.[3]

I. FINDINGS OF FACT

A. Respondents

The Respondents worked together at Investec Ernst & Co. ("Investec") before they joined Benchmark in August and September 2002. They all left Benchmark in September 2003 to join a another NASD firm and then left that firm to join their current firm. Each is currently registered with NASD.

1. Jaloza

Jaloza first registered as a General Securities Representative in November 1984. He was associated with eight different firms before he joined Benchmark on August 1, 2002.

Jaloza has a relevant disciplinary history. In June 2001, as President and Chief Executive Officer of NASD member firm Joseph Dillon & Co., Inc., he was fined $35,000 and suspended as a principal for two months for failing to establish, maintain, and enforce supervisory procedures to comply with the Taping Rule. A month later, in July 2001, pursuant to a second settlement, Jaloza was barred as a principal, suspended in all capacities for 90 days, and fined $25,000 for violations of the federal antifraud rules and Regulation M. In addition, Jaloza was ordered to disgorge $125,000 in ill-gotten gains. The charges underlying these sanctions related to his and his firm's sales and market-making activities in connection with the distribution of an

[2] References to the hearing transcript are cited as "Hr'g Tr. __." References to the Department's exhibits are cited as "CX- __," and references to the Respondents' exhibits are cited as "RX- __." References to witnesses' on-the-record interview transcripts are cited by exhibit number, followed by the witness's name, transcript page number, and the date of the on-the-record interview. For example a citation to page 257 of Jaloza's on-the-record interview would be cited, "CX-15, Jaloza Tr. 257 (Dec. 18, 2003)."

[3] All references to Gimeli's testimony in this Decision are to the testimony he gave at his on-the-record interview on December 18, 2003.

IPO. Finally, in September 2003, Jaloza was suspended for 45 days in all capacities and fined $10,000 for failing to disclose self-dealing and other violations involving the non-disclosure of material information to investors in connection with a private placement of securities.[4]

2. Impellizeri

Impellizeri first registered as a General Securities Representative in September 1983. He was associated with ten member firms before he joined Benchmark with Jaloza on August 1, 2002. Impellizeri does not have a prior disciplinary history.

3. Gimeli

Gimeli first registered as a General Securities Representative in November 1991. He was associated with seven different member firms before he joined Benchmark on August 16, 2002. Gimeli does not have a prior disciplinary history.

B. Benchmark and JIG Group, Inc.

Benchmark hired Louis Joseph Galeotafiore, Jr. ("Galeotafiore") as its president in or about March 2002.[5] Galeotafiore had been a General Securities principal with New World Securities, Inc., a day trading firm located on Long Island, NY. New World Securities went out of business in or about February 2002.

At the time Galeotafiore became Benchmark's president, it was a small NASD firm located in Oklahoma City, OK.[6] Upon taking over, Galeotafiore moved Benchmark's principal office to New World's former office space on Long Island and began recruiting brokers to

[4] *See* CX-14, at 17-33.

[5] CX-25, Galeotafiore Tr. 28 (Jan. 22, 2004). Galeotafiore is also referred to in the record by his alias, Fiore.

[6] CX-25, Galeotafiore Tr. 30 (Jan. 22, 2004). Benchmark went out of business in late 2003.

expand Benchmark's business.[7] One of Galeotafiore's clients introduced Galeotafiore to Jaloza who at the time was looking to switch firms because Investec had announced that it intended to cease retail operations in the United States. Jaloza wanted to associate with a firm where he could establish an independent operation under a "franchise agreement." Jaloza had operated under such agreements at other firms.

Jaloza and Galeotafiore met several times to discuss a possible franchise arrangement with Benchmark.[8] Once they reached an agreement in principal, Jaloza asked Impellizeri and Gimeli to join him as partners.[9] Impellizeri and Gimeli agreed, and together they formed JIG Group, Inc. ("JIG") to facilitate the franchise arrangement. Each Respondent owned an equal share of JIG, which they operated like a partnership. Impellizeri was JIG's president.[10]

After the Respondents joined Benchmark, Impellizeri finalized the franchise agreement.[11] Under the agreement, the Respondents were to recruit new brokers to join Benchmark. The Respondents also were responsible for helping supervise the brokers they recruited.[12] In return, Benchmark was to pay the Respondents an override equal to 85% of the commissions earned by all brokers the Respondents brought to Benchmark and 85% of the fees the Firm earned from its investment banking activities.[13]

---

[7] Before August 2002, when Galeotafiore first started hiring new brokers, Benchmark had three or four brokers between its Oklahoma and New York offices and another three or four independent contractors located in Florida. CX-25, Galeotafiore Tr. 40 (Jan. 22, 2004).

[8] CX-25, Galeotafiore Tr. 53 (Jan. 22, 2004).

[9] Hr'g Tr. 64-67.

[10] Hr'g Tr. 67.

[11] CX-25, Galeotafiore Tr. 58-59 (Jan. 22, 2004).

[12] CX-25, Galeotafiore Tr. 76-77, 80-81 (Jan. 22, 2004). However, the Respondents were not designated as supervisors in the Firm's written supervisory procedures, and the evidence does not show whether the franchise agreement required the Respondents to function in a supervisory capacity.

[13] Hr'g Tr. 66, 249-50; CX-25, Galeotafiore Tr. 146 (Jan. 22, 2004).

Although the Respondents brought approximately 25 brokers to Benchmark, the Firm soon found itself in economic trouble. By March 2003, in an effort to save the Firm, Galeotafiore and JIG negotiated an arrangement to buy out one of the Firm's original investors. Under their plan, Galeotafiore was to set up a company, Global Financial Services Group, Inc. ("Global Financial"), to facilitate the buyout, which JIG would help finance. In return for JIG's investment in Global Financial, JIG would receive an option to purchase an equity interest in Global Financial.[14] The Respondents testified that the investments contemplated by JIG's agreement with Global Financial never took place.

C. SRM Networks, Inc.

When the Respondents first learned of SRM, it was a shell corporation that had been unsuccessful in executing its business plan due to a lack of sufficient capital and was therefore looking to acquire another company through a reverse merger.[15] For the nine months ending September 30, 2002, SRM realized total revenues of approximately $40 from operations compared to $1,793 for the same period a year earlier.[16]

SRM was incorporated in the state of Nevada in June 2001 and was headquartered in Zurich, Switzerland, the residence of the company's controlling shareholder.[17] In June 2002, SRM entered into a Letter of Intent to acquire all of the outstanding common stock of weComm,

[14] *See* CX-13 (Agreement between Global Financial and JIG dated March 23, 2003). *See also* CX-25, Galeotafiore Tr. 61-63 (Jan. 22, 2004).

[15] Tr. 83, 106, 114, 271, 333-34. *See also* CX-2 (SRM Form 10-QSB, Sept. 30, 2002). The SEC filings as of the beginning of the relevant period stated that SRM was in the business of providing Internet solutions, including website hosting and development services, to small and medium size businesses.

[16] CX-2, at 12 (SRM Form 10-QSB, Sept. 30, 2002).

[17] *Id*. at 8. The company reincorporated in Delaware in or about August 2002. *See* RX-22.

LTD, a U.K. corporation, in a tax-free reverse merger.[18] The reverse merger with weComm was not completed.[19] Accordingly, SRM continued looking for another acquisition target.

The SEC filings in evidence state that on January 31, 2003, SRM completed a reverse merger with Hy-Tech Computer Systems, Inc. and changed its name to Hy-Tech Technology Group, Inc. ("HYTT").[20] Hy-Tech Computer Systems was incorporated in Florida in 1992. Hy-Tech Computer Systems manufactured computer systems and distributed computer components and peripherals. In 2002, it had approximately 17 locations in 6 states, which generated annual sales of approximately $30 million. The press release announcing its merger with SRM stated that the officers and directors of SRM resigned and the officers and directors of Hy-Tech Computer Systems became the officers and directors of HYTT.[21]

The Respondents first learned of SRM from Galeotafiore shortly after they joined Benchmark. Galeotafiore told Jaloza that Anthony Ferruzzi ("Ferruzzi"), Benchmark's trader, had taken in approximately 100,000 shares of SRM in anticipation of the merger with weComm, and Galeotafiore wanted the Respondents' help in selling those shares to the Firm's retail customers.[22] Galeotafiore had not approved Ferruzzi's acquisition of a proprietary position in SRM. In fact, Galeotafiore did not want the Firm holding overnight positions in any stock because the Firm had limited available capital. Galeotafiore was particularly concerned about SRM because it was so high risk.[23] Galeotafiore feared that Benchmark's position in SRM could "blow the whole company up."[24] Accordingly, he wanted to sell the stock as quickly as possible,

[18] CX-2, at 11 (SRM Form 10-QSB, Sept. 30, 2002); RX-14, at 2.

[19] Hr'g Tr. 83.

[20] CX-2(C), at 51 (HYTT Form 10-KSB, Dec. 31, 2002).

[21] RX-14, at 1. *See also* CX-2(C) (HYTT Form 10-KSB, Dec. 31, 2002) at 61.

[22] Tr. 258-59; CX-25, Galeotafiore Tr. 110-112, 124 (Jan. 22, 2004); CX-15, Jaloza Tr. 257-58 (Dec. 18, 2003).

[23] CX-25, Galeotafiore Tr. 110-11 (Jan. 22, 2004).

[24] *Id*. at 111.

and he asked the Respondents, whom Galeotafiore considered his investment banking team, to meet with representatives from SRM.[25] Galeotafiore relied on the Respondents because he did not have investment banking experience, and Impellizeri and Jaloza represented that they did have sufficient experience to oversee the Firm's investment banking activities.[26]

Impellizeri set up a meeting with PS and MG, SRM's consultants, for January 24, 2003.[27] The Respondents, Galeotafiore, and Benchmark's trader attended the meeting.[28] Impellizeri knew PS, who was a financial public relations consultant.[29] They had worked together years earlier at Lehman Brothers.[30]

PS presented an overview of SRM's short-term goals. He told those at the meeting that SRM was a shell company that was about to complete a reverse merger with an unidentified company.[31] PS told them that he had looked at a number of possible merger candidates for SRM and that he thought he had found one that was suitable for a reverse merger.[32] PS told them that the merger was imminent. PS further stated that he intended to do a European road show following the merger to generate investor interest in the company.[33] Impellizeri testified that PS gave him nothing but positive information about SRM and its anticipated reverse merger.[34]

---

[25] *Id*. at 112, 120; Hr'g Tr. 68.

[26] CX-25, Galeotafiore Tr. 120 (Jan. 22, 2004).

[27] Hr'g Tr. 70.

[28] Hr'g Tr. 70.

[29] Hr'g Tr. 70-71.

[30] CX-17, Impellizeri Tr. 103 (Nov. 7, 2003).

[31] *Id*. at 105.

[32] Hr'g Tr. 83.

[33] CX-17, Impellizeri Tr. 106 (Nov. 7, 2003); Hr'g Tr. 85.

[34] Hr'g Tr. 94.

The Respondents and the other Benchmark representatives all liked PS's presentation and therefore agreed to recommend SRM to their retail customers.[35] Impellizeri and Galeotafiore concluded from PS's presentation that Benchmark could sell approximately 400,000 shares to the Firm's retail customers.[36] In addition, they all agreed that Benchmark would become SRM's investment banker. Accordingly, Jaloza drafted a proposed consulting agreement that detailed the investment banking services Benchmark would provide to SRM and the compensation Benchmark would receive for those services.[37] The draft agreement provided that Benchmark would receive 150,000 warrants to purchase SRM stock at $1 per share.[38] They also agreed that Benchmark would begin to make a market in SRM stock.[39]

The draft consulting agreement called for Benchmark to provide SRM with a wide range of financial consulting services. These services included: (1) assisting SRM with developing, studying, evaluating, and negotiating financing, merger and acquisition proposals; (2) assisting SRM with obtaining financing; and (3) acting as SRM's "Wall Street Liaison," which duties included arranging meetings between representatives of SRM and members of the investment community such as security analysts, portfolio managers, and market makers.[40]

HYTT later became Innova Holdings, Inc. Its stock was trading at approximately $.02 per share in early October 2006.[41]

---

[35] CX-17, Impellizeri Tr. 106-07 (Nov. 7, 2003); Hr'g Tr. 72-73, 84.

[36] CX-25, Galeotafiore Tr. 118 (Jan. 22, 2004).

[37] Hr'g Tr. 76.

[38] Hr'g Tr. 76.

[39] CX-17, Impellizeri Tr. 107-08 (Nov. 7, 2003); Hr'g Tr. 74-76.

[40] CX-3.

[41] CX-4.

D. Sales of SRM's Shares to Benchmark's Customers

Following the meeting with PS and MG, on January 24, 2003, the Respondents began selling SRM stock to their retail customers.[42] Between January 24 and March 4, 2003, Impellizeri sold 80,000 shares to nine customers for $158,495; Jaloza sold 70,500 shares to six customers for $137,070; and Gimeli sold 12,800 shares to seven customers for $24,385.[43] Together, the Respondents' sales equaled 40% of the total sales volume of SRM during that period.[44]

1. Impellizeri's Sales of SRM Shares

Impellizeri recommended SRM to a majority of his customers based almost entirely on PS's assessment that SRM would soon complete a reverse merger with an unidentified company that had approximately $30 million in annual revenues.[45] Other than noting the prior three to six months of trading activity, and reviewing some basic information about SRM on the Internet site Yahoo.com,[46] Impellizeri did not conduct any independent research on SRM to justify his recommendations. Nonetheless, he told his customers that he expected SRM's stock price to rise sharply in anticipation of the expected reverse merger. Ferruzzi told Impellizeri that SRM's stock price had risen significantly in the period leading up to the anticipated merger with weComm and then had fallen back when the merger fell through. Based on SRM's trading history and PS's and Ferruzzi's representations, Impellizeri concluded that SRM's stock price would likely double. Accordingly, he told his customers to expect a short-term price increase of approximately $2.00. Customers JW and CH each testified that Impellizeri said the price of SRM

[42] Hr'g Tr. 90-91.

[43] CX-1, at 3.

[44] CX-1, at 2.

[45] Hr'g Tr. 104-07, 116; CX-17, Impellizeri Tr. 112 (Nov. 7, 2003).

[46] Impellizeri and Jaloza testified that they looked at the "Key Statistics" page on Yahoo! Finance for both HYTT and TCP. However, the Panel notes that the printouts Impellizeri attached to his Wells Submission dated December 19, 2005, reflect that Yahoo! Finance did not publish "Key Statistics" for the two companies. *See* RX-1, at 59, 205.

would soon go up to about $4 per share.[47] At the time, the stock was trading at approximately $2.37 per share.[48]

When Impellizeri recommended that his customers purchase SRM stock, he did not tell them about the company's dire financial condition. In fact, Impellizeri admitted that he never discussed the specific risks associated with any speculative stocks he recommended.[49] Nor did Impellizeri disclose any facts concerning SRM's relationship with Benchmark, JIG, and the Respondents. Specifically, Impellizeri did not disclose the following facts:

1) Benchmark had a materially significant position in SRM stock;

2) Benchmark's president had requested the Respondents' help in selling the Firm's position to its retail customers because he considered the stock too risky for the Firm to hold;

3) Benchmark had agreed to provide investment banking services to SRM for which Benchmark would be paid 150,000 warrants to purchase SRM stock at $1 per share, 85% of which would go to himself and his partners under the terms of their franchise agreement with Benchmark;

4) Benchmark had agreed to become a market maker in SRM stock;

5) He had not reviewed SRM's publicly available financial information;

6) He knew nothing about the identity of the merger target, its financial condition, or its business operations; or

[47] Hr'g Tr. 147-48, 462-63, 574.

[48] CX-11, at 1.

[49] Hr'g Tr. 148-49. Impellizeri testified that he relied on a general disclosure that the speculative stocks he recommends tend to be risky by nature.

7) In connection with the consulting agreement to provide SRM with investment banking services, he and his partners had committed to sell between 350,000 and 400,000 shares of SRM stock to the Firm's retail customers.

2. Jaloza's Sales of SRM Shares

Jaloza recommended SRM to his customers without doing any research on the company. All he knew about SRM was that it was about to acquire another company and that its stock price had risen in the few weeks before he started recommending SRM on January 23, 2003.[50] Jaloza testified that he did not review SRM's financial information because he did not consider a company's current financial condition to be relevant to his recommendation.[51] Instead, Jaloza testified that he based his recommendations of speculative companies on his projections of where the companies will end up if they hit their goals.[52] In this case, he based his recommendation of SRM on his prediction that SRM's stock price would rise due to its impending merger.[53]

In addition to omitting to disclose specific information about SRM's poor financial condition, Jaloza also did not disclose any facts concerning SRM's relationship with Benchmark, JIG, and the Respondents.[54]

E. Telecommunications Products, Inc.

According to SEC filings in 2002, Telecommunications Products, Inc. ("TCPD") was a development stage company with no revenue from operations.[55] TCPD's business plan was to

[50] Hr'g Tr. 270-71, 273-74; CX-15, Jaloza Tr. 214-15 (Dec. 18, 2003).

[51] Hr'g Tr. 275; CX-15, Jaloza Tr. 212 (Dec. 18, 2003).

[52] CX-15, Jaloza Tr. 212-14 (Dec. 18, 2003).

[53] CX-15, Jaloza Tr. 185 (Dec. 18, 2003).

[54] Jaloza failed to disclose the same facts Impellizeri omitted when he recommended SRM to his customers. *See* numbered list p. 22.

[55] *See* CX-6, at 12, 22.

develop software to provide video-on-demand and teleconferencing services to small and medium size hotels.[56] TCPD's corporate offices were located in Beverly Hills, CA.

TCPD's SEC financial filings show that the company had constant financial problems. The company had no significant operating capital and needed at least $1 million of additional capital in 2002.[57] On November 15, 2002, TCPD filed a Form 10-QSB with the SEC for the period ending September 30, 2002, which reported a net loss of $101,666 and an accumulated deficit of $2,167,262.[58] TCPD incurred a net loss of $1,032,582 for the fiscal year ended March 31, 2002.[59] Moreover, the notes to the financial statements filed with the company's Form 10-QSB dated September 30, 2002, stated that the accumulated deficit of $2,167,262 and the net stockholders' deficiency of $72,018 "may indicate that [TCPD] will be unable to continue as a going concern."[60]

In late 2002, Jaloza met with PA, a financial and public relations consultant working for TCPD, to discuss the opportunity to become TCPD's investment banker.[61] PA was working to raise needed capital for TCPD, and he thought that Jaloza and Benchmark might be able to help the company. Jaloza and PA had known each other since 1985 and had over the years done several investments together.[62] Jaloza testified that he trusted PA because some of those prior investments had been successful.[63]

---

[56] *Id*. at 3-4.

[57] *Id*. at 12.

[58] CX-6, at 55.

[59] *Id*. at 11.

[60] *Id*. at 57.

[61] Hr'g Tr. 280, 283.

[62] Hr'g Tr. 367-68.

[63] Hr'g Tr. 368.

After meeting with PA, Jaloza decided to pursue the opportunity with TCPD. Jaloza then introduced Impellizeri, Gimeli, and Galeotafiore to PA, TCPD's Chief Executive Officer, and SB, another consultant working for TCPD.[64] After a series of meetings that took place over a month or more, the Respondents and Galeotafiore agreed that they would enter into a consulting agreement with TCPD to provide it with investment banking services.[65] On March 26, 2003, TCPD issued a press release in which it announced that it had engaged Benchmark as its investment banker.[66] The TCPD consulting agreement stated that Benchmark would receive 120,000 shares of TCPD stock, options to acquire 800,000 shares of TCPD stock at an exercise price of $.35 per share, and options to acquire an additional 2 million shares at an exercise price of $.50 per share.[67]

As with SRM, Jaloza prepared the draft consulting agreement based on a form he had used in the past. Nonetheless, Jaloza claimed that he was not familiar with the content of the agreement and that he did he did not know if he was responsible to provide any services pursuant to the agreement.[68] The Panel did not find this testimony credible. The services to be provided TCPD under the Consulting Agreement dated January 16, 2003, were identical to the services outlined under the SRM consulting agreement and conformed to Jaloza's form agreement.[69]

TCPD's Chief Executive Officer also requested the Respondents assist SB in connection with the work he was doing for TCPD.[70] In return, the Respondents requested and received

---

[64] Hr'g Tr. 277-80.

[65] Hr'g Tr. 285-87.

[66] CX-8.

[67] CX-7, at 2. Benchmark would be entitled to further compensation if it arranged private financing, assisted with the purchase or sale of assets, or arranged or assisted with a merger or joint venture. *See* CX-7, at 3.

[68] Hr'g Tr. 290-93.

[69] *See* CX-7.

[70] Hr'g Tr. 299; CX-15, Jaloza Tr. 238 (Dec. 18, 2003).

400,000 shares of TCPD stock from SB.[71] SB sent the 400,000 shares to JIG on May 5, 2003.[72] JIG contributed the 400,000 shares to Global Financial pursuant to JIG's agreement with Galeotafiore to help finance the buyout of one of Benchmark's original investors.[73] Global Financial then transferred the shares to Benchmark's trading account.[74]

TCPD later became B2Digital, Inc. Its stock was trading at approximately $.16 per share in early October 2006.[75]

F. Sales of TCPD's Shares to Benchmark's Customers

On January 29, 2003, after their second meeting with PA, the Respondents began selling TCPD stock to their retail customers.[76] Between January 29 and May 27, 2003, Impellizeri sold 755,000 shares to 16 customers for $194,870; Jaloza sold 422,500 shares to 6 customers for $115,430; and Gimeli sold 312,500 shares to 11 customers for $88,720.[77] Together, the Respondents' sales equaled 59% of the total sales volume of TCPD on January 29, 2003, and 20% of the total sales volume of TCPD between February 1 and May 31, 2003.[78]

1. Impellizeri's Sales of TCPD Shares

When Impellizeri began recommending TCPD to his customers, he knew very little about the company other than what PA and its management told him. Impellizeri did not review the company's SEC filings or conduct any other due diligence inquiry on the company.[79] Impellizeri

[71] Hr'g Tr. 298-99; CX-9.

[72] CX-9, at 1.

[73] CX-25, Galeotafiore Tr. 239 (Jan. 22, 2004).

[74] *Id*. at 241.

[75] CX-10.

[76] Hr'g Tr. 188.

[77] CX-5, at 4.

[78] CX-5, at 2, 3.

[79] *See* Hr'g Tr. 162-63.

admitted that he recommended TCPD to his customers without first reviewing any of the publicly available financial information. Impellizeri testified that he relied on a brief handout from TCPD and what its Chief Executive Officer told him about the company's plans.[80] Impellizeri passed that information along to his customers when he recommended that they purchase shares of TCPD.[81]

In recommending TCPD, Impellizeri made unjustified price predictions. For example, Impellizeri told customer TA that the price of TCPD stock would increase by 50-100% within 6 to 12 months.[82] In addition, Impellizeri told TA and his other customers that TCPD was a "real good opportunity" because he expected its share price to increase substantially in the short term.[83] Impellizeri lacked a factual basis for his optimistic recommendations regarding TCPD and his predictions regarding the future price of its shares.

When Impellizeri recommended TCPD, he did not tell his customers about the company's dire financial condition. Indeed, as was his custom, Impellizeri did not discuss any of the specific risks associated with an investment in TCPD or its relationship with Benchmark, JIG, and the Respondents.[84] Specifically, Impellizeri did not disclose the following facts:

1) Benchmark and the Respondents had agreed to provide investment-banking services to TCPD.

2) Under the terms of the proposed consulting agreement between Benchmark and TCPD, Benchmark would receive 120,000 shares of TCPD stock and

[80] Hr'g Tr. 162-63, 189. The handout contained only portions of the company's Form 10-Q. Impellizeri also testified that he looked at the "Key Statistics" page on Yahoo! Finance. But as previously discussed, that information was not available on Yahoo! Finance.

[81] Hr'g Tr. 189; CX-17, Impellizeri Tr. 150-51 (Nov. 7, 2003).

[82] Hr'g Tr. 197.

[83] Hr'g Tr. 197-98.

[84] Hr'g Tr. 188.

options to acquire an additional 2.8 million shares of TCPD stock as compensation for the investment banking services Benchmark was to provide TCPD.

3) JIG and the Respondents would receive 85% of the compensation Benchmark received under the terms of their franchise agreement with Benchmark.

4) He had not reviewed TCPD's publicly available financial information.

5) TCPD was not an operating company, and its accountants had expressed doubt as to its ability to continue as a going concern unless it raised $1 million in new capital.

2. Jaloza's Sales of TCPD Shares

Jaloza recommended TCPD using the same information upon which Impellizeri based his recommendations. Like Impellizeri, Jaloza made no independent review of TCPD's financial condition or operations. Nonetheless, Jaloza told his customers that TCPD had considerable potential. For example, CB, a professor emeritus of chemistry at the University of California at Santa Barbara, testified that Jaloza told him that TCPD had a good business plan and that the company was doing well.[85] Jaloza did not inform CB that TCPD was not an operating company or that it needed to raise $1 million to stay in business.[86] Jaloza also did not disclose the business and financial relationship between TCPD and Benchmark, the Respondents, and JIG.[87]

G. Gimeli's Recommendations of SRM and TCPD to Benchmark's Customers

Gimeli followed Impellizeri and Jaloza's lead when he recommended SRM and TCPD to his customers. Like Impellizeri and Jaloza, Gimeli undertook no meaningful research on either

[85] Hr'g Tr. 404.

[86] Hr'g Tr. 411-13.

[87] Jaloza failed to disclose the same facts Impellizeri omitted when he recommended TCPD to his customers. *See* numbered list p. 33.

company. Gimeli testified at his on-the-record interview in December 2003 that he became interested in SRM in early January 2003 after he noticed on Quotron[88] that SRM stock had been a "big percentage leader for a few weeks in a row."[89] Gimeli also noted that SRM had reported expected revenue of $55 million in 2003 and $100 million in 2004 and that its share price carried a price target of $4.75 to $5 per share.[90] Based on the information displayed on Quotron and his review of a one-page report Benchmark received on SRM, Gimeli began recommending SRM to his customers on the same day Impellizeri and Jaloza started selling SRM shares to their customers. Also like Impellizeri and Jaloza, Gimeli testified that it was a coincidence that the three of them started selling the stock on the same day.

Gimeli testified that he based his recommendations of SRM solely on the company's press releases and the price and volume charts displayed on Quotron and Yahoo.com. Gimeli concluded that the company was a good prospect because the company's share price had been trading above its 100 or 200-day moving average in November and December 2002.[91] He also told his customers that SRM was going to make some acquisitions, but he could not recall where he got that information.[92] Gimeli testified that in formulating his recommendations he did not rely on any of the company's financial filings.[93]

Gimeli testified to a similar lack of due diligence regarding TCPD. Gimeli claimed that he first learned about TCPD when several representatives came to Benchmark to give a

[88] Quotron is a financial data service that provides real-time prices on securities and allows subscribers to follow the equity markets and market news via terminals at the subscribers' locations.

[89] CX-19, Gimeli Tr. 27-28 (Dec. 5, 2003).

[90] CX-19, Gimeli Tr. 37-38 (Dec. 5, 2003).

[91] *Id*. at 48.

[92] *Id*. at 128.

[93] *Id*. at 51.

presentation about the company.[94] Gimeli testified that he was impressed with the presentation and that he believed the company had a good business plan. After the presentation, Gimeli looked at the charts and news for TCPD on Quotron and Yahoo.com. Gimeli described his efforts by stating that he "[h]it up news announcements on the computer, Quotron, looked at the chart and that's about it. All I had was [TCPD's] paperwork."[95] He noted that TCPD's share price was under $1 while its competitors were trading in the $20 range.[96] Accordingly, he decided that he would recommend the stock to his customers.[97]

Gimeli told his customers that TCPD had $2.8 million worth of equipment in inventory and that it planned to install the equipment in small to mid-size hotels in the Caribbean region.[98] However, Gimeli admitted that he did not tell his customers about TCPD's limited resources or that TCPD's SEC financial statements showed that the company only reported $20,000 in net equipment and $81,000 in total assets as of December 31, 2002.[99]

Although he began selling TCPD at the same time Impellizeri and Jaloza did, Gimeli denied any knowledge of their activities. Indeed, Gimeli denied all knowledge of the investment banking relationship between Benchmark and TCPD or any of the discussions among representatives of Benchmark and TCPD. He claimed that he first learned of the TCPD consulting agreement from the news report on Quotron after he recommended TCPD to his customers.[100]

---

[94] *Id*. at 152.

[95] *Id*. at 152.

[96] CX-19, Gimeli Tr. 154 (Dec. 5, 2003).

[97] *Id*. at 193.

[98] *Id*. at 181, 186.

[99] *Id*. at 186-87.

[100] *Id*. at 359.

II. CONCLUSIONS OF LAW

A. Fraudulent Sales Practices

The Panel finds that Impellizeri and Jaloza violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110 by failing to disclose material information in connection with their sale of shares of SRM and TCPD stock. The Panel further finds that Impellizeri violated the foregoing antifraud rules by making fraudulent price predictions.

1. Applicable Legal Standards

Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Conduct Rule 2120 prohibit fraudulent and deceptive practices in connection with the offer, purchase, or sale of a security.[101] "The [SEC's] and NASD's antifraud rules are designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities."[102] A finding of a violation requires a showing that persons acting with scienter misrepresented or omitted material facts in connection with securities transactions.[103] A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of

---

[101] *Alvin W. Gebhart*, Exchange Act Release No. 53136, 2006 SEC LEXIS 93, at *59 (Jan.. 18, 2006). *See also Basic v. Levinson*, 485 U.S. 224, 239 n.17 (1988); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Misrepresentations and omissions are also inconsistent with just and equitable principles of trade and therefore are a violation of NASD Conduct Rule 2110.

[102] *Department of Enforcement v. Donner Corp. Int'l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (N.A.C. Mar. 9, 2006) (quoting *District Bus. Conduct Comm. V. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *16-17 (N.B.C.C. July 28, 1997)), *aff'd Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007).

[103] *Donner Corp.*, 2006 NASD Discip. LEXIS 4, at *50. In addition, violations of Section 10(b) and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. *See, e.g., SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, the requirement of interstate commerce is satisfied, *inter alia*, because Impellizeri and Jaloza made interstate telephone calls in connection with the subject sales.

the omitted fact would have significantly altered the total mix of information available.[104] Scienter is the "intent to deceive, manipulate or defraud."[105] Scienter may be established by a showing of recklessness that involves an '"extreme departure from the standards of ordinary care,… which presents a danger of misleading buyers and sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.'"[106]

2. Impellizeri's and Jaloza's Material Omissions

Impellizeri and Jaloza omitted material facts when they recommended that their customers purchase shares of SRM and TCPD. Impellizeri and Jaloza admitted that they failed to disclose the going-concern opinions in the companies' financial statements, or the net losses, accumulated deficits, cash-flow deficiencies, and lack of long-term credit that triggered those opinions. The materiality of such facts relating to a company's "financial condition, solvency and profitability is not subject to serious challenge."[107] Impellizeri's and Jaloza's statements that these were "speculative" stocks were insufficient to put potential investors on notice of the significant issues these companies had regarding their finances and operations.

Impellizeri and Jaloza also failed to disclose material facts concerning the companies' prospects. "Material facts include … those facts which affect the probable future of a company and which affect the desires of investors to buy, sell, or hold the company's securities."[108] As to SRM, they both largely based their recommendations on the inside information that SRM had

---

[104] *Basic*, 485 U.S. at 231-32.

[105] *Ernst & Ernst v. Hochfelder*, 425 U.S. at 193.

[106] *The Rockies Fund, Inc. v. SEC*, No. 04-1255 (D.C. Cir. Nov. 15, 2005), 2005 U.S. App. LEXIS 24521, at *12 (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977))). Proof of scienter is not required to establish that a misrepresentation or omission violates Conduct Rule 2110.

[107] *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *30 (Feb. 20, 2007) (quoting *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980)).

[108] *Donner*, 2007 SEC LEXIS 334, at *31 (quoting *SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992) (quoting *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968))).

found a reverse-merger candidate. Impellizeri and Jaloza emphasized this information and predicted that SRM's stock price would therefore rise although they knew nothing about the reverse-merger candidate's operations or finances. Under the circumstances, Impellizeri's and Jaloza's representations that SRM was a good investment were fraudulent. Impellizeri and Jaloza lacked sufficient information to evaluate SRM's prospects, and they failed to disclose this fact to prospective investors. The Panel further notes that Impellizeri and Jaloza knew that their customers could not obtain reliable information about the merger from any other source because the information had not been made public.

As to TCPD, both Impellizeri and Jaloza failed to disclose its "dim prospects and significant competition," which failures constituted material omissions.[109] TCPD's public filings were replete with warnings regarding its future. For example, TCPD's public filings disclosed that the company faced significant competition from much better financed companies; the company had no operating history, the company had no customers; and it had not completed development of the software that it needed to implement its business plan.

Furthermore, both Impellizeri and Jaloza failed to disclose facts relating to their self-interest, which were material omissions.[110] As the National Adjudicatory Council noted recently, "The case law has consistently held that a failure to disclose information related to a registered representative's own self-interest constitutes a material omission."[111] For example, in *Chasin v. Smith Barney & Co.*,[112] the federal court found that the failure to disclose the firm's position as a market maker was a material omission. The SEC also has found that the failure to disclose to

[109] *Donner*, 2007 SEC LEXIS 334, at *30.

[110] *See Department of Enforcement v. John M. Meyers*, No. C3A040023, 2007 NASD Discip. LEXIS 4, at *20 (N.A.C. Jan.. 23, 2007).

[111] *Id*.

[112] 438 F.2d 1167, 1172 (2d Cir. 1970).

prospective investors additional compensation a registered representative would receive on a sale is a material omission. A registered representative when making a recommendation to a prospective investor must disclose "any self-interest that could influence the salesman's recommendation."[113]

In this case, the record includes substantial evidence that the Respondents[114] failed to disclose the financial incentives that drove their recommendations of SRM and TCPD. The Respondents had negotiated investment-banking relationships with both companies, and the Respondents stood to make 85% of all revenue Benchmark earned because of those relationships. In addition, the Respondents agreed to sell the companies' stock to their retail customers as part of their deal to become SRM's and TCPD's investment bankers. Without question, this information was material. The Panel rejects the Respondents' arguments that their decisions to start selling these two stocks at the same time were arrived at independently and without regard to the fact that they were negotiating investment banking relationships with each of the companies. This testimony lacked any credibility.

3. Impellizeri and Jaloza Acted with Scienter

There is substantial evidence supporting the Panel's conclusion that Impellizeri and Jaloza intentionally omitted material information when they recommended SRM and TCPD to their customers. However, at a minimum, they acted recklessly, thereby satisfying the scienter requirement under the antifraud rules.[115] The courts have defined recklessness as "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers

---

[113] *John M. Meyers*, 2007 NASD Discip. LEXIS 4, at *21 (quoting *Richard H. Morrow*, 53 S.E.C. 772, 781-782 (1998)).

[114] The evidence shows that Gimeli also had a financial incentive to recommend these two stocks. Hence, his failures to disclose his self-interest were also material omissions, and the evidence would have supported a finding that Gimeli violated the antifraud rules under a properly charged Complaint.

[115] *See Hollinger v. Titan Capital Corp.*, 914 F.2d 1564 (9th Cir. 1990) (en banc).

or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it."[116]

Impellizeri and Jaloza were experienced brokers who knew or should have known the material significance of the facts they withheld from their customers. Immediately following their discussions to become the investment bankers for SRM and TCPD, the Respondents embarked on an aggressive sales campaign to sell shares of these two companies to their customers. The Respondents would not have engaged in this aggressive activity but for the financial incentives under the terms of their franchise agreement with Benchmark and the consulting agreements with SRM and TCPD. In other words, those financial arrangements were the primary motivation for Impellizeri's and Jaloza's sales of SRM and TCPD stock to their customers. Based on these facts, Impellizeri's and Jaloza's failure to disclose those financial arrangements rendered their recommendations to customers to buy SRM and TCPD stock fraudulent. Furthermore, Impellizeri's and Jaloza's failure to disclose that they had been asked to sell Benchmark's TCPD shares to the Firm's customers because the stock was too risky constituted fraud.

In sum, the Panel finds that, with scienter, Impellizeri and Jaloza omitted material information in connection with the sale of shares of SRM and TCPD stock to their customers, in violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

B. Impellizeri's Fraudulent Price Predictions

To establish that Impellizeri made baseless price predictions, the Department was required to prove that Impellizeri made price predictions, and that the price predictions were misleading and material. In addition, to establish that the price predictions violated Section 10(b)

[116] *See, e.g., Howard v. Everex, Inc.*, 228 F.3d 1057, 1063 (9th Cir. 2000).

of the Exchange Act, Exchange Act Rule 10b-5, and NASD Conduct Rule 2120, the Department had to prove that Impellizeri acted with scienter.

As an initial matter, the Panel rejects Impellizeri's denial that he made predictions of substantial price rises in connection with his recommendations of SRM and TCPD and accepts the testimony of Impellizeri's former customers, whose testimony was more credible than Impellizeri's. Customers JW and CH testified that Impellizeri predicted that SRM's share price would quickly increase by approximately 69%. And customer TA testified that Impellizeri predicted that TCPD's share price would increase by 50-100% in 6 to 12 months. Such predictions for these speculative securities are hallmarks of fraud.[117]

It is firmly established that when a registered representative makes a price prediction, even if offered as an opinion, the representative implicitly represents that he or she has a reasonable basis for the prediction. If the representative does not have a reasonable basis for the prediction, the implied representation is false and misleading.[118] Further, a representative cannot rely on the representations of the issuer's management or of his firm's principals. The representative has a duty to make an adequate investigation to ensure that his representations have an adequate basis.[119] Impellizeri lacked such a basis. He conducted no investigation of TCPD.

---

[117] *John M. Meyers*, 2007 NASD Discip. LEXIS 4, at *33. Moreover, in the case of a speculative security, it is unlikely that there can be a reasonable basis for such a prediction. *See Department of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at *26-27 (N.A.C. June 22, 2001), and cases cited therein.

[118] *See Hanley v. SEC*, 415 F.2d 589 (2d Cir. 1969) ("A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents that he has an adequate basis for the opinions he renders"); *SEC v. Hasho*, 784 F. Supp. at 1109 ("Guarantees and predictions of substantial price rises with respect to securities are actionable absent a reasonable basis for the prediction. … The fraud is not ameliorated where the positive prediction about the future performance of securities is cast as an opinion or possibility rather than as a guarantee.").

[119] *Joseph Abbondante*, Exchange Act Release No. 53066, 2006 SEC LEXIS 23, at *42 (Jan.. 6, 2006); *James E. Cavallo*, 49 S.E.C. 1099, 1102 (1989), *aff'd*, 993 F.2d 913 (D.C. Cir. 1993) (unpublished opinion); *Gilbert F. Tuffli*, Exchange Act Release No. 12534, 1976 SEC LEXIS 1467, at *10 (June 10, 1976). *See also Nassar & Co., Inc.*, 1978 SEC LEXIS 2551, at *5 (Nov. 22, 1978) (The respondent's "reliance on [the issuer's] self-serving statements

In addition to the inherently fraudulent nature of the price predictions, none of the information known to Impellizeri in January 2003 supported his conclusion that potential investors would be able to obtain strong positive results within the periods he projected. TCPD was little more than a shell corporation. It had no operating history, customers, or cash reserves. Further, it had repeatedly advised that it needed capital infusions to survive, and it and its auditors had expressed concerns about its ability to continue as a going concern.[120] These facts precluded Impellizeri from reasonably predicting that the price of TCPD's stock would appreciate.

Accordingly, the Panel concluded that Impellizeri violated Section 10(b), Exchange Act Rule 10b-5, and Conduct Rules 2120 and 2110 by making unreasonable price predictions for SRM and TCPD. Impellizeri acted at least recklessly by not fulfilling "his duty as a salesman to make an adequate investigation of [the companies] to ensure that [his] representations to customers had a reasonable basis."[121]

C. Respondents' Violations of NASD's Recommendation Rule

The Panel finds that each Respondent violated NASD Conduct Rules 2315 (the "Recommendation Rule") and 2110 by recommending SRM and TCPD without a reasonable basis for believing that the Firm had completed a due diligence review of the companies' current financial statements and current business information.

---

was patently unwarranted. It fell far short of the stringent standards to which a professional in the securities business must adhere when he under-takes to recommend securities, particularly the unknown securities of an obscure issuer. In that situation, he is under a duty to make an adequate independent investigation to ensure that his representations have a reasonable basis.").

[120] *Donner*, 2007 SEC LEXIS 334, at *37 (holding that both the existence of an opinion by a company's auditor expressing substantial doubt about the company's ability to continue in existence and the negative financial information providing the basis for such an opinion constitute material facts).

[121] *Hanly v. SEC*, 415 F.2d 589, 596.

1. Applicable Legal Standard

NASD Conduct Rule 2315(a), entitled "Review Requirements," provides in relevant part:

> No … person associated with a member shall recommend that a customer purchase … any equity security that is published or quoted in a quotation medium and that … is not listed on Nasdaq or on a national securities exchange … unless the member has reviewed the current financial statements of the issuer, current material business information about the issuer, and made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

The Recommendation Rule further imposes specific obligations on members before any of its brokers may sell an OTCBB security. Conduct Rule 2315(c), entitled Compliance Requirements, states that the member shall designate a registered person to conduct the due diligence review required by the Recommendation Rule and then document the information reviewed.

The Respondents contend that the Panel must dismiss this charge because the Recommendation Rule applies to member firms, not associated persons. They further argue that they had not been designated to undertake the due diligence review required by the rule.

The Panel rejects the Respondents' arguments that the Recommendation Rule does not cover individual registered representatives. Although the rule does not require each registered representative at a member firm to review the current financial statements and business information of companies covered by Rule 2315, it does prohibit any person associated with a member from recommending a microcap security unless the firm has completed the due diligence review and concluded that the reviewed information provides a reasonable basis for recommending the stock.

In this case, the Respondents lacked a reasonable basis for believing that Benchmark had completed the due diligence review mandated by Rule 2315. Although the Respondents argued that they relied on Galeotafiore to have performed the necessary review, the evidence shows that

the Respondents knew that no one at Benchmark had reviewed SRM's and TCPD's current financial statements. The Respondents participated in the meetings with representatives from SRM at which the Respondents received only summary information about SRM, and no financial information at all about its reverse-merger partner. Nonetheless, the Respondents began recommending SRM on January 23, 2003, based on the planned merger and the representations of PS, SRM's consultant. In fact, none of the Respondents ever claimed that he based his recommendations on the Firm's determination that SRM's current financial statements and business information provided a reasonable basis for recommending the stock.[122]

Similarly, the Respondents began recommending TCPD to their customers after its consultants, PA and SB, and TCPD's management made a presentation about the company and its plans to raise capital that it needed to stay in business. As was the case with SRM, the Respondents knew from their direct participation in the various discussions with TCPD's officers and consultants that no one at Benchmark had conducted the type of review required by the Recommendation Rule.

Accordingly, the Panel finds that Jaloza, Impellizeri, and Gimeli recommended SRM and TCPD stock in violation of Conduct Rules 2315 and 2110.

III. SANCTIONS

A. Material Omissions in Connection with the Sale of Securities

For misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine of $2,500 to $50,000 and a suspension of up to 30 business days for negligent

[122] In addition, there is no evidence that Benchmark maintained an approved list of stocks. In fact, Galeotafiore testified that the practice was for the Respondents and the brokers they brought to the Firm to determine which companies they would cover. And Galeotafiore relied on the Respondents to perform the appropriate review of those securities.

misconduct. For intentional or reckless misconduct, they recommend a fine of $10,000 to $100,000 and a suspension of 10 business days to two years, or in egregious cases a bar.[123]

The Panel concluded that Impellizeri and Jaloza should be barred for their violations of the antifraud provisions of the federal securities laws and the rules and regulations thereunder. As the SEC has stated, such fraudulent conduct is "especially serious and subject to the severest of sanctions."[124] Impellizeri and Jaloza disregarded their obligations to investigate SRM and TCPD to ensure that their representations had a reasonable basis.

The Panel took into consideration the following aggravating factors: (1) Impellizeri and Jaloza refused to accept responsibility for their misconduct; (2) Impellizeri and Jaloza engaged in the proven fraudulent sales practices with numerous customers over a substantial period; (3) Impellizeri's and Jaloza's misconduct caused direct financial injury to their customers who relied on their recommendations of SRM and TCPD; and (4) Impellizeri's and Jaloza's misconduct resulted in the potential for their monetary gain.[125]

In addition to the foregoing general factors, the Panel took into consideration the following as to each Respondent.

1. Jaloza's Disciplinary History

Jaloza has a serious, relevant disciplinary history. As discussed in Part I.A.1 above, in June 2001, Jaloza was fined $35,000 and suspended as a principal for two months for failing to establish, maintain, and enforce supervisory procedures relating to NASD's Taping Rule. At the time, Jaloza was the President and Chief Executive Officer of Joseph Dillon & Co. In July 2001,

[123] NASD SANCTION GUIDELINES at 95 (2006 ed.). In addition, the fine amount may be increased to take into consideration the respondent's financial benefit from the misconduct.

[124] *Donner*, 2007 SEC LEXIS 334, at *71 (quoting *SEC v. Alvin W. Gebhart*, Exchange Act Release No. 53136, 2006 SEC LEXIS 93 (Jan.. 18, 2006)).

[125] *See* NASD SANCTION GUIDELINES, Principal Considerations in Determining Sanctions, at 6-7.

pursuant to a second settlement, Jaloza was barred as a principal, suspended in all capacities for 90 days, fined $25,000, and ordered to disgorge $125,000 for violations of the federal antifraud rules and Regulation M. Then, in September 2003, Jaloza was suspended for 45 days in all capacities and fined $10,000 for violations involving the non-disclosure of material information in connections with a private placement.[126]

The Panel concluded that Jaloza's disciplinary history supports its conclusion that Jaloza's continued participation in the securities industry creates an unacceptable risk to the investing public. It is evident from his repeated disregard of the federal antifraud rules and NASD's investor protection rules that Jaloza is not fit to remain in the securities industry.

2. Impellizeri's Obstruction of the Disciplinary Process

Another aggravating factor the Panel considered was Impellizeri's efforts to obstruct the disciplinary hearing process. Impellizeri called several of his former customers who had been identified as potential witnesses to dissuade them from testifying against him. Impellizeri spoke to CH to quiz her on why she was going to testify against him and closer to the hearing left a voice-mail message in which he stated that NASD could not compel her to attend and that the attorney representing the NASD was not a nice person.[127] Impellizeri also called JW several times regarding his decision to testify at the hearing. In an effort to keep JW from testifying, Impellizeri told him that the hearing was going to be costly for Impellizeri and that if JW testified it would hurt Impellizeri.[128] Impellizeri also told JW that NASD could not force him to testify, and Impellizeri offered to reimburse JW for a portion of the losses he suffered if he refused to testify.[129] JW turned Impellizeri down. Impellizeri also admitted that he called TA

[126] *See* CX-14, at 17-33.

[127] Hr'g Tr. 135-36.

[128] Hr'g Tr. 151-56.

[129] Hr'g Tr. 475.

after learning that TA had agreed to testify. Impellizeri told TA that it would be beneficial to him if TA did not testify.

Obstruction of an NASD investigation is a serious matter because such conduct undermines confidence in the regulatory process and is a violation of NASD Conduct Rule 2110.[130] Although Impellizeri is not charged separately with this misconduct, his actions are relevant to a determination of the appropriate level of sanctions for the charged misconduct. Impellizeri and the other Respondents argued that their customers' lack of participation and complaints was a factor the Panel should consider. They all argued that the witnesses would not have come forward but for the Department's improper urging. In other words, they contended that the Department had created a case where none actually existed. They argued that most of their customers had no complaint with them and that those who came to testify did so to benefit personally. For example, counsel for Jaloza and Gimeli argued that at least a couple of the witnesses came just so that they could visit friends and family in the New York area. Impellizeri's conduct undercuts the Respondents' argument and is therefore relevant to the sanctions determination in this case. His conduct also bears on his unwillingness to take responsibility for his misconduct.

In sum, the Panel concludes that a bar is the appropriate sanction for Impellizeri's and Jaloza's violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110.[131] The Panel found no mitigating factors that would warrant permitting Impellizeri and Jaloza to remain in the securities industry.

---

[130] *Cf. Department of Enforcement v. Dieffenbach*, No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 (N.A.C. July 30, 2004), *aff'd in relevant part, Michael A. Rooms*, 2005 SEC LEXIS 728, *aff'd, Rooms v. SEC*, 2006 U.S. App. LEXIS 6513 (10th Cir. Mar. 14, 2006).

[131] The Panel did not award restitution because the Department did not present evidence of the customers' losses.

B. Recommendations of Over the Counter Bulletin Board Stock

The NASD Sanction Guidelines do not contain separate guidance for violations of the Recommendation Rule. However, the Rule was intended to supplement existing requirements under the federal securities laws and NASD's suitability rules that require a broker have a reasonable basis for his recommendations.[132] Accordingly, the Panel applied the sanction guidelines for unsuitable recommendations in violation of NASD Conduct Rule 2310, which recommend a fine of $2,500 to $75,000 and a suspension for a period of up to one year. In egregious cases, the sanction guidelines recommend a suspension of up to two years or a bar in all capacities.[133]

Based upon the totality of the evidence, the Panel concluded that a bar is the appropriate sanction for the Respondents' violations of Conduct Rule 2315. Foremost in the Panel's reasoning in reaching this determination is the fact that the Respondents acted in concert to benefit themselves at their customers' expense. As discussed above, there is substantial evidence to establish that the Respondents entered into a scheme to sell SRM and TCPD to their customers in order to secure the investment banking business for these companies. The Respondents knew that no one at Benchmark had undertaken the review required by Conduct Rule 2315(b). Under these facts and circumstances, the Panel concludes that in order to protect the investing public the Respondents should be barred from the securities industry.

IV. ORDER

For the reasons set forth above, Neal Anthony Impellizeri, Steven Richard Jaloza, and Michael Raymond Gimeli are barred from associating with any member firm in any capacity.[134]

---

[132] *See* Order Approving Proposed Rule Change, 2002 SEC LEXIS 2156, at *3-4 & n.8 (Aug. 19, 2002).

[133] NASD SANCTION GUIDELINES at 99.

[134] The Hearing Panel has considered all of the parties' arguments. They are rejected or sustained to the extent that they are inconsistent with the views expressed herein.

In addition, the Respondents are jointly and severally ordered to pay costs in the amount of $8,770.19.[135]

_____
Andrew H. Perkins
Hearing Officer
For the Extended Hearing Panel

Copies to:

Steven R. Jaloza (overnight delivery and first-class mail)
Neal A. Impellizeri (overnight delivery and first-class mail)
Michael R. Gimeli (overnight delivery and first-class mail)
David E. Robbins, Esq. (electronic and first-class mail)
Richard Roth, Esq. (electronic and first-class mail)
Matthew Campbell, Esq. (electronic and first-class mail)
Jeffrey K. Stith, Esq. (electronic and first-class mail)

[135] The costs are composed of an administrative fee of $750 and transcript costs of $8,020.19.