

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN CHRISTOPHER CORRERO  
(CRD No. 3179667),

Respondent.

Disciplinary Proceeding  
No. E102004083702

Hearing Officer—Andrew H. Perkins

**HEARING PANEL DECISION**

July 13, 2007

**Respondent improperly obtained contingent deferred sales charge waivers for customers selling Class B mutual fund shares by falsely claiming that those customers were disabled. Respondent is suspended from associating with any NASD member in any capacity for one year, fined \$5,000, and ordered to requalify by examination.**

*Appearances*

Paul Hare and Julie K. Glynn, NASD, Department of Enforcement, New York, NY (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, and Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

Bruce V. Schewe, Esq., PHELPS DUNBAR LLP, New Orleans, LA, for the Respondent.

**DECISION**

**I. INTRODUCTION**

The Department of Enforcement (“Department”) filed a Complaint against John Christopher Correro (“Correro” or the “Respondent”) on October 17, 2006. The Complaint alleges that Correro, while a General Securities Representative with UBS Financial Services, Inc. (“UBS”), violated NASD Conduct Rule 2110 by falsely representing that certain customers were disabled and therefore entitled to obtain waivers of sales charges that otherwise would be

imposed upon their sale of certain Class B mutual fund shares. In addition, the Complaint alleges that Correro thereby caused UBS's books and records to be inaccurate, in violation of Conduct Rules 2110 and 3110. On November 13, 2006, Correro filed his Answer and requested a hearing in New Orleans, LA. On May 22, 2007, a hearing was held before a hearing panel composed of the Hearing Officer and two current members of the District 5 Committee.<sup>1</sup>

## II. FINDINGS OF FACT

There are no material facts in dispute. Correro admitted that he knowingly obtained contingent deferred sales charge ("CDSC")<sup>2</sup> waivers on behalf of five customers by falsely claiming that they were disabled on sales orders he entered in UBS's electronic mutual fund entry system or MFGI system ("MFGI system").<sup>3</sup> None of the five customers was disabled; none was entitled to the waiver; and none asked Correro to obtain a waiver on his behalf. In addition, Correro admitted that he made six false entries in the MFGI system in connection with the sale of Class C mutual fund shares for the Mississippi Association of Agricultural Assets ("Agricultural Association").<sup>4</sup> Although CDSCs were not due upon the sale of the Agricultural Association's Class C shares, Correro nonetheless claimed a waiver of any such charges by entering in the MFGI system that the Agricultural Association was "disabled."<sup>5</sup> At the time Correro made those entries, he knew they were false.

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<sup>1</sup> References to the Department's exhibits are cited as "CX- \_\_\_\_," and references to Correro's exhibits are cited as "RX- \_\_\_\_" although Correro did not label his exhibits with a letter prefix.

<sup>2</sup> A CDSC is a form of sales charge (or "back-end load") that is paid by the investor in a fund at the time of redemption. The fee is contingent on a redemption within an initial holding period. Typically, the CDSC decreases to zero if the investor holds his or her shares long enough. The purpose of such charges is to reimburse the mutual fund's distributor for commissions paid to dealers at the time the investor purchases fund shares.

<sup>3</sup> CX-2, Factual Stipulations for Hearing ("Stip's") ¶¶ 16, 24, 29, 35, 40; Hr'g Tr. 44.

<sup>4</sup> The Department withdrew its claim regarding a seventh transaction (transaction number 24 on CX-3) because the Department determined that the transaction related to another customer. UBS erred when it reported that the transaction related to the Agricultural Association. Hr'g Tr. 40.

<sup>5</sup> CX-2 ¶¶ 44, 45.

## A. The Respondent

Correro entered the securities industry in 1998 when he joined UBS. In March 1999, Correro became registered as a General Securities Representative. Thereafter, in or about January 2000, Albert H. Green (“Green”) invited Correro to join his asset-management team. Green was a senior broker in the firm’s Jackson, MS, office with approximately \$130 million in assets under management. Green and his team members at UBS did no commission business. All of their accounts were fee-based management accounts. By the time in question, Green’s team as a whole managed approximately \$250 million in assets, of which Correro managed approximately \$65 million.<sup>6</sup> The assets Correro managed generated approximately \$400,000 in fees annually.<sup>7</sup>

On September 22, 2004, UBS permitted Correro to resign following an investigation of the false disability claims Correro made in connection with the sales orders he entered in the MFGI system. UBS filed a Form U-5 Uniform Termination Notice for Securities Industry Registration (“Form U-5”) on Correro’s behalf on October 14, 2004. The Form U-5 states, “Mr. Correro was allowed to resign after he entered mutual fund sales orders with inaccurate information concerning disability waivers of contingent deferred sales charges.”<sup>8</sup>

The day following Correro’s separation from UBS, eight other firms in Jackson, MS, solicited him to join them.<sup>9</sup> After interviewing with each, Correro decided to accept an offer from Morgan Keegan & Co., Inc. (“Morgan Keegan”), where he is employed currently.<sup>10</sup> Correro has

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<sup>6</sup> CX-12; Hr’g Tr. 130.

<sup>7</sup> *Id.*

<sup>8</sup> CX-1, at 6. NASD opened the investigation that led to the filing of the Complaint in this matter due to the Form U-5 UBS filed on Correro’s behalf. Hr’g Tr. 39.

<sup>9</sup> Hr’g Tr. 158.

<sup>10</sup> *Id.* at 1.

been registered as a General Securities Representative with Morgan Keegan since October 6, 2004.<sup>11</sup>

Correro has no prior disciplinary history.

## **B. Origin of Proceeding**

The Department began investigating Correro's mutual fund orders after it received the Form U-5 from UBS in October 2004 that disclosed that he had resigned because he had submitted inaccurate orders claiming disability waivers of CDSCs.<sup>12</sup> At the time, the Department already had an ongoing investigation of waivers of CDSCs in connection with sales of mutual fund shares by UBS customers. The Department opened that investigation in May or June 2004.<sup>13</sup>

In connection with the UBS investigation, UBS identified 27 financial advisors or teams of financial advisors that had entered five or more orders requesting disability waivers of CDSCs that did not appear valid.<sup>14</sup> The Department did not investigate UBS financial advisors that had obtained CDSC waivers in fewer than five accounts unless an individual order involved shares valued at \$50,000 or more.<sup>15</sup> Since Correro requested waivers for six accounts, the Department brought this action against him.

## **C. UBS's Electronic Mutual Fund Order Entry System**

In June 2001, UBS implemented the MFGI system, which allowed the firm's financial advisors to enter mutual fund orders without supervisory approval.<sup>16</sup> The MFGI system allowed

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> Hr'g. Tr. 33-34.

<sup>13</sup> Hr'g Tr. 48.

<sup>14</sup> *See* RX-10.

<sup>15</sup> Hr'g Tr. 78.

<sup>16</sup> Hr'g Tr. 66. CX-7. UBS updated the MFGI system in June 2004, to require branch manager approval of CDSC waivers.

financial advisors to claim a waiver of any CDSCs. The system default for a CDSC waiver was set to “NO.” If a financial advisor elected to claim a waiver, the system required the financial advisor to select CDSC waiver and then select a reason for the waiver from a drop-down menu.<sup>17</sup> The available options were death, disability, mandatory distribution, or systematic withdrawal.<sup>18</sup> When an order was placed through the MFGI system, it was electronically transmitted directly to the mutual fund company.<sup>19</sup>

## **D. Correro’s False Entries**

### **1. Customer RD**

On or about October 21, 2003, Correro entered orders in the MFGI system for customer RD to sell shares in two mutual funds totaling \$24,556.47.<sup>20</sup> For each transaction, Correro falsely indicated that RD was disabled. As a result, RD received CDSC waivers of approximately \$736.96.<sup>21</sup>

### **2. Customer TLG**

Correro entered six mutual fund sales orders for TLG on August 22, 2003, October 30, 2003, November 5, 2003, and November 6, 2003, totaling \$2,500.<sup>22</sup> For each transaction, Correro falsely indicated that TLG was disabled. As a result, TLG received CDSC waivers of approximately \$64.50.<sup>23</sup>

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<sup>17</sup> Hr’g Tr. 42-43, 145; CX-6, at 7.

<sup>18</sup> CX-7, at 1. CX-10 is a printout of a page from UBS’s training material that shows the order-entry screen in use after the MFGI system was modified to require branch manager approval of CDSC waivers.

<sup>19</sup> Hr’g Tr. 72, 105-06.

<sup>20</sup> Stip’s ¶ 13.

<sup>21</sup> *Id.* ¶ 15. The stipulated amounts are approximations based on a 3% CDSC because the parties could not calculate the exact amount due.

<sup>22</sup> Stip’s ¶¶ 18-23.

<sup>23</sup> Stip’s ¶ 23 and n.2. The stipulated amounts are approximations based on a 3% CDSC because the parties could not calculate the exact amount due.

### **3. Customer RN**

Correro entered two mutual fund sales orders for RN on April 2, 2003, totaling \$4,850.71.<sup>24</sup> For each transaction, Correro falsely indicated that RN was disabled. As a result, RN received CDSC waivers of \$121.83.<sup>25</sup>

### **4. Customer FT**

Correro entered five mutual fund sales orders for FT on October 13, 2003, and October 30, 2003, totaling \$9,071.34.<sup>26</sup> For each transaction, Correro falsely indicated that FT was disabled. As a result, FT received CDSC waivers of \$323.12.<sup>27</sup>

### **5. Customer RW**

Correro entered two mutual fund sales orders for RW on November 11, 2003, totaling \$21,590.18.<sup>28</sup> For each transaction, Correro falsely indicated that RW was disabled. As a result, RW received CDSC waivers of \$863.61.<sup>29</sup>

### **6. Customer Agricultural Association**

Correro entered six mutual fund sales orders for the Agricultural Association on August 13, 2003, totaling \$58,579.26.<sup>30</sup> No fees were due on these transactions because the Agricultural Association had held the shares longer than the required minimum period.<sup>31</sup> Nonetheless, Correro falsely indicated for each transaction that the Agricultural Association was entitled to a CDSC

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<sup>24</sup> Stip's ¶ 26.

<sup>25</sup> *Id.* ¶ 28.

<sup>26</sup> *Id.* ¶¶ 31, 32.

<sup>27</sup> *Id.* ¶ 34.

<sup>28</sup> *Id.* ¶ 37.

<sup>29</sup> *Id.* ¶ 39.

<sup>30</sup> *Id.* ¶ 42.

<sup>31</sup> Hr'g Tr. 147.

waiver because it was disabled.<sup>32</sup> Correro testified that he entered the false information to ensure that the Agricultural Association was not charged a fee in error.<sup>33</sup>

### III. CONCLUSIONS OF LAW

NASD Conduct Rule 2110 requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”<sup>34</sup> The Rule articulates a “broad ethical principle”<sup>35</sup> to promote the “professionalization of the securities industry.”<sup>36</sup> By knowingly submitting false information on mutual fund sales orders, Correro violated that ethical obligation.<sup>37</sup>

Correro also violated NASD Conduct Rule 3110 by misrepresenting his customers’ status on the mutual fund sales orders.<sup>38</sup> NASD Conduct Rule 3110 requires each NASD member to make and preserve books, accounts, records, memoranda, and correspondence in conformity with applicable rules. Correro caused UBS’s books and records to be inaccurate by knowingly entering false information into the MFGI system.

Accordingly, the Hearing Panel finds that Correro violated NASD Conduct Rules 2110 and 3110 by knowingly entering false information into the MFGI system in connection with the sales of mutual fund shares for his customers.

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<sup>32</sup> Stip’s ¶ 45.

<sup>33</sup> Hr’g Tr. 148, 177.

<sup>34</sup> Rule 0115 extends the obligations of Conduct Rule 2110 to associated persons, as well as members.

<sup>35</sup> *Timothy L. Burkes*, 51 S.E.C. 356 (1993), *aff’d mem.*, *Burkes v. SEC*, 29 F.3d 630 (9th Cir. 1994).

<sup>36</sup> *Department of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*11 (N.A.C. June 2, 2000).

<sup>37</sup> *Cf.*, e.g., *Department of Enforcement v. Prout*, No. C01990014, 2000 NASD Discip. LEXIS 18, at \*6 (N.A.C. Dec. 18, 2000) (submitting false information about customers on variable annuity applications).

<sup>38</sup> *See*, e.g., *Department of Enforcement v. Charles J. Cuozzo, Jr.*, No. C9B050011, 2007 NASD Discip. LEXIS 12 (N.A.C. Feb. 27, 2007).

#### IV. SANCTIONS

For falsification of records, the NASD Sanction Guidelines (“Guidelines”) recommend the imposition of a fine of \$5,000 to \$100,000 and a suspension in any or all capacities for a period of up to two years.<sup>39</sup> For recordkeeping violations, the Guidelines recommend the imposition of a fine of \$1,000 to \$50,000 and a suspension of up to 30 business days.<sup>40</sup> In egregious cases, the Guidelines for both violations suggest consideration of a bar. The Department argued that Corroero’s misconduct was egregious and that he therefore should be suspended in all capacities for two years and fined \$5,000.

Corroero, urged the Hearing Panel to limit any suspension to 30 days because there were numerous mitigating factors. Principally, Corroero argued: (1) he did not benefit from any of the transactions; (2) the violations would not have occurred if UBS had instituted appropriate supervisory controls over entry of orders on the MFGI system; (3) the amounts in question were insignificant; and (4) he did not harm or deceive his customers.

The main thrust of Corroero’s argument was that he acted in his customers’ best interest and without any motive of personal gain. Corroero testified that customers RN and LG had lost their jobs in 2003 and that he presumed they needed to withdraw funds from their accounts to pay their living expenses. Corroero therefore took it upon himself to misrepresent RN and LG as disabled so that they would not incur CDSCs on the sales of their Class B mutual fund shares. Neither customer had complained about the fees or had requested Corroero to obtain the waivers.

As to customers FT, RD, and RW, Corroero testified that he wanted to save them money on the sale of the mutual fund shares in connection with the rebalancing of their accounts.<sup>41</sup> None

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<sup>39</sup> NASD SANCTION GUIDELINES 39 (2006), [http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw\\_011038.pdf](http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf).

<sup>40</sup> *Id.* at 31.

<sup>41</sup> Hr’g Tr. 171-72.

of the three customers was experiencing financial hardship at the time.<sup>42</sup> In fact, they had not requested Correro to send them the proceeds from the sales.

Finally, as to the Agricultural Association, Correro testified that he became confused when the computer system prompted him to indicate whether a CDSC waiver was requested. Correro testified that he knew no CDSC was due, but he thought if he did not claim a waiver a charge might be imposed incorrectly. Accordingly, he indicated that the Agricultural Association was disabled. Correro made this false entry rather than seeking assistance from anyone at UBS on how to complete the orders for the Agricultural Association. Again, Correro testified that he took this action to benefit his customer, not himself.

The Hearing Panel credit Correro's testimony that he entered the false disability claims to benefit his customers, not for personal gain. Correro did not stand to benefit directly or indirectly from his actions. Indeed, there is no evidence that Correro claimed credit for the waivers with his customers. Rather, it appears to the Hearing Panel that Green's philosophical guidance to always "take the side of the client, not the firm,"<sup>43</sup> which Green testified he "beat ... into his head," perhaps led Correro to conclude that he should always side with the client versus the firm. Since the amounts were insignificant, Correro sided with his customers even though he knew what he was doing was wrong.

The Hearing Panel also finds a number of other mitigating factors. The number of transactions and the amounts involved were small; Correro never attempted to conceal his actions; and, both his former and current partners attested to his integrity. William Geary ("Geary") from Morgan Keegan testified that he worked closely with Correro and had the opportunity to speak to a number of Correro's customers over a period of several months. Geary

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<sup>42</sup> Hr'g Tr. 173-74.

<sup>43</sup> Hr'g Tr. 125.

concluded that Corroero was “one of the more honest people [he] had ever known” and viewed his actions as an aberration.<sup>44</sup>

On the other hand, the Hearing Panel rejects Corroero’s argument that UBS’s failure to review the mutual fund orders entered in the MFGI system is a mitigating factor. Corroero knew his actions were wrong, but he went forward nonetheless. On this core issue, Corroero was not confused. The fact that a supervisor did not also tell him what he already knew—his actions were wrong—is not mitigating. To the contrary, the Hearing Panel concludes that Corroero’s unwillingness to accept full responsibility for his misconduct actually is an aggravating factor.

In conclusion, the Hearing Panel finds that Corroero’s misconduct was serious and deserving of a substantial sanction. Accordingly, the Hearing Panel determines that Corroero should be suspended in all capacities for one year, fined \$5,000, and ordered to requalify by examination.

## **V. ORDER**

John Christopher Corroero is suspended from associating with any NASD member in any capacity for one year, fined \$5,000, and ordered to requalify by examination before again serving in any registered capacity for violating NASD Conduct Rules 2110 and 3110.<sup>45</sup>

The suspension shall begin on September 3, 2007, and end at the close of business on September 2, 2008. The remaining sanctions shall become effective on a date set by NASD, but

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<sup>44</sup> Hr’g Tr. 204.

<sup>45</sup> 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.

not earlier than 30 days after this Decision becomes the final disciplinary action of NASD.

In addition, Correro is ordered to pay \$1,972.40 in costs.<sup>46</sup>

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies sent to:

John Christopher Correro (*by FedEx and first-class mail*)  
Bruce V. Schewe, Esq. (*by electronic and first-class mail*)  
Paul Hare, Esq. (*by electronic and first-class mail*)  
Julie K. Glynn, Esq. (*by electronic and first-class mail*)  
Rory C. Flynn, Esq. (*by electronic and first-class mail*)  
Mark P. Dauer, Esq. (*by electronic and first-class mail*)

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<sup>46</sup> The costs are composed of an administrative fee of \$750 and transcript costs of \$1,222.40.