FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN B. BUSACCA III (CRD No. 2302780), Respondent.	Disciplinary Proceeding No. E072005017201 Hearing Officer—DMF **HEARING PANEL DECISION** January 16, 2009

Summary

Respondent John B. Busacca III is suspended in all principal capacities for six months and fined $25,000 for failing to exercise reasonable supervision, in violation of Rules 3010 and 2110, and is fined $5,000 for permitting his firm to employ an unregistered Chief Compliance Officer, in violation of Rules 1022(a) and 2110.

Appearances

Mark P. Dauer, Esq., New Orleans, LA, for the Department of Enforcement.

John B. Busacca III, pro se.

DECISION

1. Introduction

On August 13, 2007, the Department of Enforcement filed a 17-cause Complaint against North American Clearing, Inc. and John B. Busacca III. Both North American and Busacca filed Answers contesting the charges, and requested a hearing. In May 2008, shortly prior to the scheduled hearing, the Securities and Exchange Commission filed suit against North American and some of its managers in the United States District Court for the Middle District of Florida. The court appointed a receiver for North American, who assumed control of the company, and North American went out of business. In July 2008, on petition of the Securities Investor

Protection Corporation, the United States District Court for the Middle District of Florida appointed a trustee to oversee North American's liquidation, pursuant to the Securities Investor Protection Act of 1970, under the direction of the United States Bankruptcy Court.

The hearing in this matter was postponed in light of the appointment of the receiver, and later the appointment of the trustee, and was re-scheduled. Enforcement subsequently filed a motion to sever the charges relating to North American, representing that it had entered into a proposed settlement with the receiver and trustee, acting on behalf of the firm, that had been submitted to the court for approval. The Chief Hearing Officer granted the motion, over Busacca's objection, and a hearing was held on the charges against Busacca, alone, on November 10, 2008.

2. Background

Busacca entered the securities industry in 1992, and was first registered as a General Securities Representative in January 1993. He was associated with a number of FINRA member firms thereafter, and became qualified and registered as a General Securities Principal and in other capacities. In January 2003, he became associated with North American's predecessor firm in a non-registered capacity. In February 2004 he became registered through North American as a General Securities Representative, General Securities Principal, Equity Trader and Options Principal. His registrations through North American terminated in September 2007. He has not been associated with a FINRA member since then, but remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws. (CX 2.)[1]

North American's principal business was clearing. Clearing firms handle "the mechanics of order entry, confirmation, clearance of trades, calculation of margin and similar activities" for

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[1] In this Decision, "Tr." citations refer to the transcript of the hearing, "CX" citations refer to Complainant's Exhibits, and "RX" citations refer to Respondent's Exhibit.

member firms that act as introducing brokers (correspondent firms). Katz v. Financial Clearing & Services Corp., 794 F. Supp 88 (S.D.N.Y. 1992). As a clearing firm, North American was responsible for carrying the customer accounts serviced by its correspondent firms.

Until late 2003, North American, under the name Advantage Trading Group, Inc., was a subsidiary of another member firm. Pursuant to a settlement of a dispute between the owners of the parent, Advantage Trading was spun off to one of the owners, Richard Gobel, in November 2003 and was re-named in 2004. In March 2004, Busacca was designated as North American's President, and he remained in that capacity until May 2007. (Tr. 22, 25, 29, 36-37, 57; CX 1.)

Busacca was charged in only two of the seventeen causes of action in the Complaint. The thirteenth cause alleges that, after he became President of North American, he "failed to reasonably supervise the firm's operations system conversion and its operations activities to detect and/or prevent certain violations" alleged in other causes of the Complaint, and thereby violated Rules 3010 and 2110. The seventeenth cause alleges that Busacca, on behalf of North American, employed and designated as the firm's Chief Compliance Officer an individual who was not registered as a General Securities Principal, and thereby violated Rules 2110 and 1022(a).

Busacca did not dispute that North American committed the rule violations underlying the supervision charge, and in any event, as discussed below, Enforcement proved those violations. Instead, Busacca argued that, as President of the firm, he did his best to address problems that were in place when he arrived, or were beyond his control. Similarly, Busacca did not dispute the allegation that an individual who served as the firm's Chief Compliance Officer was unregistered during his tenure at North American—and Enforcement proved that to be the case—but argued that he was unaware of the problem and acted reasonably under the circumstances.

3. North American's Back Office System Conversion

The back office system of a clearing firm, which allows the firm to prepare its books and records and comply with regulatory filing requirements, is crucial to its operations. As of late 2003, when North American was spun off to Gobel, it used a system, provided by a contractor, that was used by many other clearing firms. That system was expensive, however, and Gobel decided that North American would not renew the contract when it expired at the end of January 2004. Initially, Gobel proposed that the firm develop a system in-house, but he was told by in-house programmers, some of whom resigned from North American because of the issue, that this plan was not feasible. (Tr. 23-25, 41-42, 46-48, 56-57, 75-76, 168-69, 191-93.)

Although he was not yet President of North American, Busacca attempted to find an alternative system. He spoke to other contractors with widely-used back office systems, but Gobel rejected each as too expensive. Finally, Busacca located a small California company that offered a back office system at only about one-tenth the cost of the prior system, and Gobel agreed to enter into a contract with that provider. (Tr. 24-25, 75-76, 190-92.)

North American began operating with the new system on February 9, 2004, prior to Busacca becoming President of the firm. North American gave FINRA no prior notice of the change, as was required by NASD Rule 1017, and did little to prepare for the new system. It did not run parallel systems for any period of time in advance of the change, and did no testing of the new system to confirm that it met the firm's needs. Not surprisingly, under these circumstances, when North American attempted to implement the new system, many problems arose, some of which are discussed below, and the firm received a large number of customer complaints. (Tr. 42-46, 74-79, 119-21; CX 141, 197.)[2]

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[2] Gobel testified at the hearing and attempted to justify his decision to adopt the new, untested system. (Tr. 61-69.) The Panel, which included two industry members who have extensive experience with clearing operations, did not find Gobel's purported justifications reasonable or persuasive.

4. North American's Violations

Enforcement contends that Busacca's failure to reasonably supervise North American's operations system conversion and its operations activities contributed to certain regulatory violations by North American alleged in other causes of the Complaint, all of which came to light during FINRA's routine examination of the firm in 2005.

Securities Exchange Act (SEA) Rule 17a-13, promulgated by the Securities and Exchange Commission, requires, inter alia, that firms such as North American physically examine and count all securities held by the firm at least once each calendar quarter, compare the results against the firm's records, and record unresolved differences in the firm's records within seven days—this is referred to as a "box count." During FINRA's examination of North American in March 2005, FINRA staff found 19 inaccuracies in the box count conducted by the firm on February 28, 2005, as set forth in a staff schedule. Busacca did not dispute the staff's findings in this regard, either at the time the staff notified the firm of the inaccuracies in 2005 or at the hearing. (Tr. 81-89; CX 31, 34, 36-37.)

SEA Rule 17a-3(a)(5) requires firms such as North American to prepare a "securities record or ledger," SEA Rule 17a-4 requires firms to maintain such records, and NASD Rule 3110(a) requires firms to make and preserve the records called for by SEA Rule 17a-3. During the 2005 examination, FINRA staff found 17 inaccuracies in the firm's records with regard to customer mutual fund positions as of March 4 and March 9, 2005, as set forth in a staff schedule. Again, Busacca did not dispute the staff's findings, either when the staff notified the firm of the inaccuracies in 2005 or at the hearing. Both the box count inaccuracies and the position inaccuracies were, to some extent, attributable to deficiencies in the new back office system adopted by North American in February 2004, as well as to errors by North American staff who were attempting to manually perform tasks that the new system, unlike the old one, would not perform automatically. (Tr. 78, 90-94; CX 38, 40-71.)

NASD Rule 11870(f) requires member firms to initiate buy-in procedures or to otherwise take steps to obtain physical possession or control of securities that the firm fails to receive in connection with an account transfer, not later than 10 business days (or 30 business days for certain types of securities, including mutual funds) following the date when delivery was due. During the 2005 examination, FINRA staff found six instances in which the firm had failed to make timely buy-ins or take other steps to obtain possession or control of the securities, and again Busacca did not dispute this finding. (Tr. 94-98; CX 72-75.)

Section 220.8 of Regulation T, issued by the Federal Reserve Board, requires member firms to cancel or otherwise liquidate purchases in customer cash accounts if customers do not make full cash payment within the time limits set forth in that Section. During the 2005 examination, FINRA staff reviewed 511 trades in 136 North American customer cash accounts during the period January 1, 2004 through February 28, 2005, and found 71 instances (13.89%) in which North American failed to comply with this requirement. In addition, under certain circumstances, if securities are transferred out of a cash account without the customer having paid for them, Section 220.8 of Regulation T requires that the account be frozen. During the 2005 examination, FINRA staff found 11 instances in which the firm allowed customers to trade in frozen accounts. NASD Rule 2520(c) requires customers to maintain specified margins in margin accounts. During the 2005 examination, FINRA staff found 10 instances (7.5% of sampled accounts) in which, during the period October 2004 through January 2005, North American failed to liquidate customer positions in accounts in a timely manner when those accounts fell below the specified margin requirements. Once again, the buy-in, Regulation T, and margin violations were, at least to a degree, attributable to deficiencies in North American's new back office system, as well as to a lack of trained personnel to compensate for those deficiencies. (Tr. 98-106; CX 76-135.)

SEA Rule 17a-4(b)(4) requires firms to preserve certain records for at least three years, the first two years in an easily accessible place. Those records include:

> Originals of all communications received and copies of all communications sent … by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.

SEA Rule 17a-4(f) authorizes firms to preserve these records in "electronic storage media," but the electronic storage media must, <u>inter alia</u>, "[p]reserve the records exclusively in a non-rewritable, non-erasable format …." During the 2005 examination of North American, FINRA staff discovered that from 2003 until April 2005 the server used by North American to store email communications did not preserve them in a non-rewritable, non-erasable format. FINRA staff also discovered that North American's email system, and its written supervisory procedures, allowed its employees to delete emails and thereby prevent the emails from being stored at all. (Tr. 128-131; CX 138, 185.)

At the relevant time, NASD Rule 11870(b) required:

> Upon receipt from the customer of an authorized broker-to-broker transfer instruction form ("TIF") to receive such customer's securities account assets … from the carrying member, [the receiving member must notify the carrying member]. <u>The carrying member must, within three business days following receipt of such instruction, or receipt of a TIF received directly from the customer … validate the transfer instruction … or … take exception to the transfer instruction</u> …. [emphasis added]

During the 2005 examination, FINRA staff determined that, from November 2004 through January 2005, North American received 1,501 TIFs as the carrying member and failed either to validate or take exception to 306 (20%) within the three-day period. This failure, again, was attributable, in part, to limitations in the new back office system, as well as to a lack of experienced personnel and a crush of new correspondent firm business. (Tr. 131-38: CX 179-80.)

Finally, NASD Rule 3150 requires each clearing and self-clearing firm to report certain data regarding both the firm, itself, and any FINRA members for which it clears. The Rule implements a FINRA program, established in 2001, called Integrated National Surveillance and Information Technology Enhancements (INSITE). When Rule 3150 was adopted, FINRA explained to members that INSITE was developed to:

> collect and analyze information about members and produce reports that identify "exceptions" based on historical and current comparisons of member data. The exceptions will trigger follow-up reviews and possible examinations. INSITE will permit [FINRA] to concentrate its examinations on the higher-risk segments of the industry, focus the content of each examination on higher-risk topics, streamline the examination process for examiners and members, and better coordinate regulatory findings with other [FINRA] departments.

Special Notice to Members 01-84 (Dec. 2001).

After North American adopted its new back office system, it failed to report any INSITE data from February 2004 through May 2004. This failure was attributable to a deficiency in the new system that precluded North American from using it to make the required reports. While member firms can ask for an exception from the reporting requirement, North American did not do so. (Tr. 44, 138-41; CX 182.)

An experienced FINRA examiner testified that the violations discovered during the 2005 examination of North American were unusual. For example, this was the first box count discrepancy he had seen in the many examinations he had conducted; the examiners found many stock record differences at North American, while in most examinations such differences are "minimal"; and North American's Regulation T violations were "higher than at other firms." Another FINRA examiner, who had experience with clearing firms' back office conversions, explained that such conversions are "very closely monitored by the regulators," because "[t]here are always going to be glitches [in a conversion], that's typically why there is a lot of due diligence done on the front end. And then also parallel systems are typically run for an extensive amount of time, to get those glitches worked out before they actually go live." She explained that if North American had notified FINRA of the change, as required, "we would have monitored this and we would have required them to have some kind of … parallel system being run. And have these tested … ultimately for investor protection." (Tr. 121-22, 144-45.)

5. Busacca's Supervision

Enforcement argues that North American's wide-spread violations of SEA and NASD operational rules, as set forth above, demonstrate that Busacca failed to exercise reasonable supervision over North American's operations while he was President of the firm, beginning in March 2004. Busacca, on the other hand, argues that North American's violations were attributable to problems that already existed when he became President, including the new back office system that Gobel implemented, and that he addressed the problems promptly when they were brought to his attention.

Rule 3010 requires each FINRA member firm to "establish and maintain a system to supervise the activities of each registered representative … that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with [FINRA] Rules." The SEC has held that the President of a broker-dealer is responsible for the firm's compliance "with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his or her duties." Richard F. Kresge, Exchange Act Rel. No. 55,988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

When he became President of North American, Busacca did not delegate responsibility for the firm's operations department, but rather supervised that area of the firm himself.[3] (Tr. 38-39, 141-43, 180.) The issue is whether his supervision over those functions was reasonable.[4]

Busacca's testimony that Gobel made the decision to change back-office systems; that Gobel initially planned to attempt to conduct business manually; that Gobel rejected other established back-office systems suggested by Busacca on the ground that they were too expensive; and that Gobel made the decision to "go live" with the new system without adequate preparation, all before Busacca became President of North American, was undisputed. But Busacca knew all that when he accepted the position of President of the firm, and nevertheless agreed to assume supervisory responsibility for the firm's operations by becoming President.

Busacca also complains that Gobel frequently rejected his attempts to address problems at North American as too expensive, that Gobel fired employees without cause, and that, as a result, the firm was in "constant turmoil." (Tr. 205-10.) To paraphrase the SEC, however, Busacca "both held the position of, and held himself out as, the [P]resident of [North American]. … If [Gobel] made [Busacca's] job more difficult, it was [Busacca's] responsibility, as long as he remained the firm's [P]resident, to insist that [Gobel] cooperate in [Busacca's] compliance efforts. To the extent that, as [Busacca] suggests, he lacked a meaningful role in the firm's management, that consideration would not excuse his violations." James Michael Brown, 50 S.E.C. 1322, 1325 (1992).

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[3] As a FINRA examiner explained, a member firm's Financial and Operations Principal (FINOP) typically has overall responsibility for the firm's operations. North American's FINOP, however, was responsible only for the firm's financial statements, not its operations. Moreover, the individual who functioned as North American's operations manager until 2005 was qualified and registered only as a General Securities Representative, not as a General Securities Principal or as a FINOP, and, as discussed below, the individual who functioned as the firm's Chief Compliance Officer from April 2004 until February 2005 was not qualified or registered in any capacity. (Tr. 126-27; CX 136.)

[4] "The burden is on [FINRA's] staff to show that the respondent's procedures and conduct were not reasonable. … It is not enough to demonstrate that an individual is less than a model supervisor or that the supervision could have been better." Department of Enforcement v. Lobb, No. C07960105, 2000 NASD Discip. LEXIS 11, at *16-17 (N.A.C. Apr. 6, 2000) (citations omitted).

In fact, Busacca's testimony confirms that when he became President of North American, he was aware of numerous red flags indicating serious operational weaknesses in light of the new system, which he, himself, described as "untested, relatively unknown." (Tr. 24.) Busacca had an obligation to address those weaknesses promptly, on his own, rather than waiting until the examiners uncovered the weaknesses and brought them to his attention.

Busacca testified that when he became President of North American, "I agreed, yes, I'll take over as [P]resident. I'll stop being Mr. Salesman, I'll become [P]resident, I'll clean up the mess." (Tr. 25, 168.) But he also testified, "My primary function at North America[n] was sales." As a result, "I traveled extensively. I was the breadwinner of the family, so to speak. And every client that was brought in was mine, so I was doing a lot of sales." It was only "when I wasn't traveling on the road [that] I would come back to the office and I was intimately involved, trying to fix these problems. Because I do have experience on the operations side." (Tr. 25, 168, 17071, 202, 211.)

As President of North American, Busacca's primary obligation was to ensure that the firm was fulfilling its regulatory obligations before bringing in more business. [5] Instead, he points out that he brought in correspondent firms with thousands of customer accounts in 2004, but without ensuring that North American's operations systems and personnel were capable of handling those accounts in accordance with the firm's regulatory obligations.[6]

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[5] Under his employment agreement with North American, Busacca was to receive a monthly draw of $4,000 or 15% of the company's profits, whichever was greater, as well as $2,500 for every new clearing contract with a correspondent firm and, if the firm was sold, 15% of the value of the firm added during his tenure as President. (Tr. 60-61; RX 1.)

[6] According to Busacca, "in 2004 approximately 10,000 accounts transferred into North American," and in November and December 2004 the firm received 8,000 customer accounts from a single correspondent firm. (Tr. 112, 153.) North American's then-operations manager explained that, in spite of the new operating system's limited functionality, "[i]t was able to be handled on a manual basis for a little while. But as our business grew, [the new system] wasn't able to handle our business. And the lack of the automation is what really took a lot of our time, and, you know, left room for a lot of error." (Tr. 46.)

Considering all these circumstances, the Panel finds that Busacca failed to exercise reasonable supervision, in violation of Rules 3010 and 2110, as charged.[7]

6. Unregistered Chief Compliance Officer

In April 2004, North American hired Daniel McAuliffe as its Chief Compliance Officer, and he functioned in that capacity until February 2005. With exceptions not relevant here, Rule 1022(a) requires that a member firm's Chief Compliance Officer be qualified and registered as a General Securities Principal. While McAuliffe had previously qualified as a General Securities Principal and had been registered and served as a Chief Compliance Officer for other FINRA members, his last registration terminated in April 2001. Since more than two years had elapsed when he was hired by North American, pursuant to Rule 1021(c) he was required to re-qualify, or to obtain a waiver, before he could be registered again. McAuliffe, however, never re-qualified as a General Securities Principal, or obtained a waiver, and therefore he was never able to register in that capacity with North American. (Tr. 146-48; CX 183.)

Busacca argued that he was not responsible for North American's employment of an unregistered Chief Compliance Officer. He testified that Gobel made the decision to hire McAuliffe, and that he (Busacca) was not aware that McAuliffe had not registered and did not have access to the Central Registration Depository (CRD), which would have allowed him to review and confirm McAuliffe's status. (Tr. 186-90, 198-99.)

As President of North American, Busacca supervised the Chief Compliance Officer and was responsible for ascertaining whether he was appropriately qualified and registered. Although during the hearing Busacca repeatedly suggested that McAuliffe had simply not "put up his licenses," i.e., registered with FINRA, in fact, as explained above, he could not register

[7] The Panel does not find that Busacca's supervision was unreasonable with regard to the firm's email retention violations. The evidence indicates that the deficiencies pre-dated Busacca's appointment as President, and Enforcement failed to show any red flags that should have alerted Busacca to problems with email retention until the examiners brought it to his attention, at which point he promptly corrected the problems. (Tr. 116-17, 150-51.)

without either taking a qualifying examination or obtaining a waiver, which should have been obvious to Busacca. Busacca testified that he learned about McAuliffe from someone at another member firm, and then he "called up [McAuliffe], gave his resume to [Gobel]. [Gobel] flew him down here. And [Gobel] negotiated the deal." (Tr. 198; see also CX 189 at 11-12.) If he reviewed McAuliffe's resume, it should have been evident to Busacca that McAuliffe had not been in the industry for more than two years, and therefore would have to re-qualify or obtain a waiver.

Even if he did not see McAuliffe's resume, Busacca, as President of North American and McAuliffe's supervisor, had an obligation to confirm that McAuliffe was qualified to function in the role for which he was hired. If he could not access CRD himself, Busacca could have directed a person who did have access—even McAuliffe himself—to provide a printout confirming that he was qualified. If Busacca had done that, he would have learned that McAuliffe was not qualified, and could not "put up his licenses" with North American.[8]

Accordingly, the Panel found that Busacca violated Rules 1022(a) and 2110 by allowing North American to employ an unregistered and unqualified person as the firm's Chief Compliance Officer.

7. Sanctions

For the supervisory violation, Enforcement requests that Busacca be fined $25,000 and suspended in all principal capacities for six months; for the unregistered Chief Compliance Officer violation, Enforcement requests that Respondent be fined $5,000. For the reasons set forth below, the Panel finds that these sanctions are appropriate under the facts and circumstances of this case, and they will be imposed.

[8] Since McAuliffe was not registered in any capacity when North American hired him, he could not function as a Chief Compliance Officer until he qualified. See Rule 1022(d) ("In no event may a person previously unregistered in any capacity applying for principal status function as a Principal until fully qualified.").

For failure to supervise, the Sanction Guidelines recommend a fine of $5,000 to $50,000 and a suspension in all supervisory capacities of up to 30 business days, or in egregious cases a longer suspension in any or all capacities of up to two years or a bar. In setting sanctions for failure to supervise, the Guidelines list as specific considerations: (1) whether the respondent "ignored 'red flag' warnings that should have resulted in additional supervisory scrutiny"; (2) the nature, extent, size and character of the underlying misconduct; and (3) the quality and degree of the respondent's implementation of the firm's supervisory procedures and controls. The general sanctions considerations set forth in the guidelines are also applicable. FINRA Sanction Guidelines at 6-7, 108 (2007 ed.).

In this case, Busacca had ample red flag warnings of deficiencies in the new operating system that should have led him to exercise greater supervisory oversight; North American's operations violations were numerous and extensive, and continued for a lengthy period; and the firm lacked supervisory procedures and controls to offset the deficiencies in its new back office system. Further, with regard to the Guidelines' general considerations, Busacca has not accepted responsibility for his supervisory failures. On the other hand, the FINRA examiners acknowledged that Busacca was helpful and responsive in addressing the issues they raised, and there is no evidence of actual injury to the investing pubic from the violations that were attributable, in part, to Busacca's supervisory lapses. Taking all these circumstances into consideration, the Panel found that the sanctions proposed by Enforcement are appropriately remedial.

For registration violations, the Sanctions Guidelines recommend a fine of $2,500 to $50,000 and consideration of a suspension in any or all capacities of up to six months, or in egregious cases a longer suspension or a bar. Specific considerations are (1) whether the respondent had filed a registration application (not relevant here) and (2) the nature and extent of the unregistered person's responsibilities. Once again, the general considerations set forth in the Guidelines are also relevant. FINRA Sanction Guidelines at 6-7, 48.

In this case, the Panel noted the key responsibilities of a Chief Compliance Officer. On the other hand, the Panel also noted that McAuliffe had been appropriately qualified and registered in the past, and that there is no allegation or evidence that he did not properly fulfill the functions of a Chief Compliance Officer when serving in that role. The Panel, therefore, finds that Enforcement's proposed sanction is appropriate.

8. Conclusion

Respondent John B. Busacca III is suspended in all principal capacities for six months and fined $25,000 for failing to exercise reasonable supervision, in violation of Rules 3010 and 2110, and is fined $5,000 for permitting his firm to employ an unregistered Chief Compliance Officer, in violation of Rules 1022(a) and 2110. In addition, he is ordered to pay $2,078.60 in costs, which includes a $750 administrative fee and the cost of the hearing transcript.

These sanctions shall become effective on a date set by FINRA, but not earlier than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding, except that, if this decision becomes FINRA's final disciplinary action, Respondent's suspension shall begin on March 16, 2009, and end at the close of business on September 15, 2009.[9]

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to: John B. Busacca III (via overnight and first class-mail)
Mark P. Dauer, Esq. (via electronic and first class-mail)
David Sonnenberg, Esq. (via electronic and first-class mail)

[9] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.