

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DIRK ALLEN TAYLOR
(CRD No. 1008197),

Respondent.

Disciplinary Proceeding
No. 20070094468

Hearing Officer – LBB

**AMENDED HEARING
PANEL DECISION¹**

May 21, 2010

For failing to deliver preliminary prospectuses to customers who were expected to purchase shares of the initial public offering of a closed-end mutual fund, in violation of SEC Rule 15c2-8 and NASD Conduct Rule 2110, and causing his firm's books and records to be inaccurate by submitting false documents to the firm about delivery of the preliminary prospectuses, in violation of NASD Conduct Rules 3110 and 2110, Respondent Dirk Allen Taylor is fined \$5,000 and suspended in all capacities for 60 days.

Appearances

For the Department of Enforcement: Joseph P. Darcy, Esq. and Scott M. Andersen, Esq., New York, New York.

For Respondent: Eric A. Pullen, Esq., San Antonio, Texas.

DECISION

The Complaint in this disciplinary proceeding was filed on March 27, 2009, asserting three causes of action against Respondent Dirk Allen Taylor ("Respondent"): failing to deliver preliminary prospectuses to several customers who had indicated that they were expecting to purchase shares of an initial public offering of a closed-end mutual fund, in violation of SEC Rule 15c2-8 and NASD Conduct Rule 2110; making misrepresentations to his member firm

¹ This decision is amended to correct the dates of Respondent's suspension.

employer about the delivery of preliminary prospectuses to customers, in violation of Rule 2110; and causing his member firm to maintain inaccurate books and records, in violation of NASD Conduct Rules 3110 and 2110. Respondent answered the Complaint on April 23, 2009, denying that he had violated FINRA's rules.²

A hearing was conducted in San Antonio, Texas, from December 8 – 10, 2009, before a Hearing Panel comprised of a current member of the District 5 Committee, a current member of the District 11 Committee, and a Hearing Officer.

I. Introduction

SEC Rule 15c2-8³ requires that firms, and their registered representatives, provide a preliminary prospectus for a new equity offering to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation. Respondent failed to deliver preliminary prospectuses to customers who had expressed an intention to purchase shares in an initial equity syndicate offering, and submitted documents to his firm that falsely represented that the preliminary prospectuses had been delivered. As a result of the submission of the false worksheets, his firm's books and records were inaccurate. These facts are sufficient to establish that Respondent violated SEC Rule 15c2-8, NASD Conduct Rule 3110, and NASD Conduct Rule 2110.

² As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct.

³ 17 C.F.R. § 240.15c2-8(a), (b) (2003).

II. Facts⁴

A. Respondent

Respondent entered the securities industry in 1981, and became a general securities representative in 1982. From September 2005 to March 2007, Respondent was employed by UBS Financial Services, Inc. (“UBS” or the “Firm”), in the Firm’s San Antonio office. Respondent is currently associated with another FINRA member. Answer ¶ 2; CX-1.

B. UBS Procedures for Equity Syndicate Offerings

The National Adjudicatory Council (“NAC”) has described the equity syndication process as follows:

A “syndicate” is a group of broker-dealers who agree to purchase a new issue of securities from the issuer for distribution to the investing public. The marketing process includes the distribution of a preliminary prospectus (also called a “red herring”) to prospective purchasers and the solicitation of indications of interest as to how many shares each investor would like to purchase in the IPO [initial public offering]. Indications of interest do not commit investors to buy securities. On the day the offering registration becomes effective with the Securities and Exchange Commission ..., broker-dealer syndicate members must confirm customers’ indications of interest prior to executing trades on the customers’ behalf. Subsequently, the broker-dealers must send the customers written confirmations of the executed trades.⁵

The UBS procedures for equity syndicate offerings were set forth in an internal compliance bulletin (#06-09) issued on August 9, 2006 (“Bulletin”), which was distributed to the Firm’s registered representatives and available to them online. CX-3a; Tr. 86, 275 – 276, 346. The Firm reminded its representatives of the procedures in an internal “Compliance Note” on September 5, 2007. CX-3b; Tr. 390.

⁴ References to the exhibits provided by Enforcement are designated as “CX-___.” References to the exhibits provided by Respondent are designated as “RX-___.” The parties filed a set of factual stipulations on November 9, 2009. References to the stipulations are identified as “Stip. ___.” References to the hearing transcript are designated as “Tr. ___.” References to Respondent’s Answer to the Complaint are designated as “Answer ¶ ___.”

⁵ *Dep’t of Enforcement v. Flannigan*, No. C8A980097, 2001 NASD Discip. LEXIS 36, at *3 n.3 (N.A.C. June 4, 2001).

The Firm's procedures required registered representatives to complete an Indication of Interest Ticket ("IOI Ticket") for any client interested in an equity syndicate offering available through the Firm's Equity Syndicate System, and submit the tickets to the office's syndicate coordinator. The procedures also required the delivery of a preliminary prospectus to each client who indicated interest in an offering. The Firm offered several delivery alternatives:

- The preliminary prospectus could be delivered electronically, by e-mail or facsimile. Client consent, in the medium in which the client wanted delivery, was required before electronic delivery was permitted.
- The Firm's Star Case system could be used to cause the Firm to send the preliminary prospectus. The Star Case system could be used up to four business days before expected pricing of the IPO.⁶
- The preliminary prospectus could be sent by U.S. Mail, "on average, up to three days prior to expected pricing."
- Overnight mail could be used up to the day before pricing.
- Hand delivery could be used up to the pricing date.

CX-3a at 5 – 7.

The Firm's procedures required registered representatives to document delivery of preliminary prospectuses by completing an Equity Syndicate Information Delivery Record, or "Syndicate Worksheet." CX-3a at 6, 10, 16. The Bulletin required that the Worksheet be provided to the branch office manager before the beginning of trading in the offering. CX-3a at 6, 10. Syndicate Worksheets were used by the Firm to keep track of whether brokers had delivered preliminary prospectuses to clients. Tr. 372 – 374. The Worksheet included columns for the method and date of delivery of the preliminary prospectuses, and for attestation by the registered representative that the receipt of the preliminary prospectus by the client had been confirmed by telephone. CX-3a at 16.

⁶ "Pricing" or the "pricing date" refers to the date on which the offeror sets the final price at which the security will be offered to the public.

The Firm's procedures also required the completion of an Equity Syndicate Supervisory Checklist for each IPO that was marketed by an office. For the San Antonio office, the Supervisory Checklists were prepared by Abraham Valdes, the office's administrative manager, who was also responsible for compliance. CX-3a at 10, 20; CX-11f; Tr. 372 – 373. The checklist included an entry for "Delivery of preliminary prospectus [f]or initial public offerings." Valdes used the Syndicate Worksheets to verify that the preliminary prospectuses had been delivered to each client of the office who had expressed an interest in investing in the IPO. Tr. 373 – 374. UBS maintained the Worksheets and Supervisory Checklists as records of the Firm. Tr. 480, 570.

C. Respondent's Marketing of the EXG Syndicate Offering

Eaton Vance Tax Managed Global Diversified Equity Income Fund ("EXG") was a syndicate offering, registered with the U.S. Securities and Exchange Commission pursuant to Section 8(a) of the Investment Company Act of 1940. The Firm announced that Firm employees could gather indications of interest from customers on or about January 31, 2007. Answer ¶ 5. EXG was a "newly organized, diversified, closed-end management investment company." CX-17 at 5. EXG's pricing date was February 22, 2007. Tr. 93. EXG's Initial Public Offering occurred on or about February 23, 2007. Answer ¶ 5.

Respondent called or met with several of his customers during most of the month of February 2007 to market EXG. Tr. 93. All of the customers who ultimately decided to invest were long-term clients, most of whom Respondent had brought with him to UBS. Tr. 605. Respondent had the prospectuses with him when he met with his clients, and he discussed the characteristics of the investment with his clients. Most of the clients were experienced investors who had invested in similar offerings. Tr. 119, 188, 567, 571 – 572.

Respondent knew that his clients had to receive a preliminary prospectus before they could participate in an IPO. Tr. 92. Although Respondent discussed the prospectuses with his customers, the preliminary prospectuses were not delivered to them. Answer ¶¶ 1, 15; Tr. 119, 188.

D. Submission of Trades to UBS and Preparation of Inaccurate Delivery Records

1. Respondent submits the EXG trades to the Firm and learns that failure to deliver preliminary prospectuses is a problem

Early on the afternoon of February 22, 2007, Respondent prepared and handed IOI Tickets to LeeAnn Douglas, his registered sales assistant, for nine customers who gave indications of interest for the EXG initial public offering. Stip. 3; Answer ¶ 11; Tr. 97. Douglas entered the tickets into the computer system. Tr. 199; CX-11d. Douglas told Respondent that he needed to do a Syndicate Worksheet. Respondent had not realized that he needed to deliver the preliminary prospectuses prior to submitting the orders to his Firm because the procedure at his previous firm had been different. Tr. 108 – 110, 568 – 569.

Respondent then spoke to Brad Bishop, the branch office manager. Respondent told Bishop that he had a million dollars worth of orders, and that he had not delivered the preliminary prospectuses. Bishop responded that Respondent could not submit the tickets because he had not delivered preliminary prospectuses. Tr. 118, 120 – 122, 550 – 551. They discussed possible delivery methods. Bishop said Respondent could fax or e-mail the preliminary prospectuses, but he would have to have signed authorizations from the clients to receive them by fax or e-mail. Respondent said it is not possible because he did not have the signed authorizations from his clients to use electronic delivery. Tr. 124, 441 – 442, 545, 595 – 596, 610 – 611. Respondent also understood Bishop to say that it was too late for hand delivery. He understood, incorrectly, that if the documents were delivered by hand, the Firm required the

delivery to be completed three days before the pricing date. Thus, Respondent believed that it was not possible to comply with the firm's delivery requirement. Tr. 124 – 128, 179 – 180, 606. Respondent asked Bishop what he should record on the Syndicate Worksheet for the method of delivery if the transactions were going to be completed. Respondent understood Bishop's response to be a suggestion to record that the preliminary prospectuses had been hand delivered. Tr. 150, 551, 573 - 574.⁷

Bishop signed the trade tickets later that afternoon. Tr. 442 – 443. Although he signed all of the tickets, he noticed that some were not local, and that it was not possible that hand delivery could have occurred. Tr. 443, 473; CX-11d.

2. Respondent prepares inaccurate worksheets

On or about February 22, 2007, Respondent prepared a Syndicate Worksheet. The Worksheet showed that the preliminary prospectuses had been hand delivered to each client. Respondent reported the date of delivery as the dates on which Respondent had spoken to his clients – the “IOI dates.” He signed and initialed the Worksheet under the column “FA Attestation,”⁸ thereby certifying to the Firm that he had confirmed with each client that the client had received the preliminary prospectuses. Stip. 4; CX-11b, CX-11g; Tr. 130 – 133, 136 – 137, 142 – 143, 179, 553.

⁷ The parties devoted the bulk of their efforts at the hearing to the issue of whether Bishop told Respondent to falsify the worksheets, an issue that is, at best, tangential. The Hearing Panel finds that Respondent reasonably believed that Bishop implied that the worksheet should be falsified, whether or not Bishop intended such a suggestion. There were clear conflicts among the testimony of the witnesses, with witnesses contradicting each other and themselves. Douglas and William Kopplin had palpable animosity toward Respondent, and were not credible on the key areas of dispute. Bishop was evasive and inconsistent, and his memory was selective. He was very guarded in his testimony, appearing to be calculating his own exposure to criticism or contradiction as he answered. Valdes was a credible witness. The Hearing Panel considered Respondent's testimony on this issue to be generally credible. While there were inconsistencies in his testimony, he seemed to be trying to answer honestly.

⁸ The Firm referred to its registered representatives as “Financial Advisors,” often shortened to “FA.”

Valdes completed the Supervisory Checklist in the evening of February 22, checking the entry that indicated that preliminary prospectuses had been delivered to all of the San Antonio office's clients for whom order tickets had been entered. By checking the entry for delivery of the preliminary prospectus, he was confirming that he had received attestations from each representative whose customers had expressed an interest in investing in the offering that the preliminary prospectuses had been delivered. Tr. 402 – 403, 432 – 433, 478; CX-11f.

On or about February 23, 2007, Respondent prepared another Syndicate Worksheet. Respondent signed and initialed the Syndicate Worksheet under the column titled "FA Attestation," again attesting to hand delivery of the preliminary prospectuses. Stip. 5; CX-11c. The information on the February 23 worksheet was the same as the information on the previous version of the worksheet, except that there was no attestation of delivery for the customers in London, England, or Montgomery, Alabama. CX-11c, CX-11h; Tr. 152, 183, 193 – 194.

The Syndicate Worksheets were inaccurate because they falsely reported that Respondent had hand-delivered the preliminary prospectuses and confirmed delivery by telephone conferences with each client. Respondent admitted at the hearing that the worksheets were inaccurate, and that he knew when he prepared the Worksheets and submitted them to his firm that they were inaccurate. Tr. 152, 155, 183 – 184, 187 – 189, 566 – 567, 570, 587, 612.

E. UBS Terminates Respondent's Employment

On March 8, 2007, Bishop called Respondent into his office and terminated Respondent's employment with UBS for submitting false documents to the Firm. Valdes was also present at the meeting. As Valdes walked Respondent back to Respondent's office, Respondent told Valdes that he thought he had done what Bishop had wanted him to do. Tr. 376 – 378, 416, 476; CX-7.

On or about April 23, 2007, UBS filed a Uniform Termination Notice for Securities Registration (Form U5) concerning Respondent, which read, “FA violated Firm policy by failing to provide accurate information on a prospectus log.” Stip. 1.

F. Respondent’s Customers Decline UBS’s Offer to Rescind their EXG Purchases

By letter of May 17, 2007, UBS contacted Respondent’s clients who had invested in the EXG offering, and offered them the opportunity to rescind their trades because of the Firm’s failure to provide preliminary prospectuses. All clients had gains on the Eaton Vance offering at the time of the letter, and none accepted the offer to rescind. CX-12; Tr. 379 – 380, 420, 466 – 467, 469.

III. Violations

A. Respondent Violated SEC Rule 15c2-8 and NASD Conduct Rule 2110 by Failing to Deliver Preliminary Prospectuses to Customers Who Were Expected to Purchase Shares in the EXG Syndicate Offering

The Second Cause of Action charges Respondent with violating SEC Rule 15c2-8 and NASD Conduct Rule 2110 by failing to deliver preliminary prospectuses to nine customers who had expressed an intention to invest in the EXG syndicate offering. SEC Rule 15c2-8 provides that it is a deceptive act or practice to fail to deliver a copy of the preliminary prospectus for an initial public offering to anyone who is expected to receive a confirmation of sale at least 48 hours before the sending of the confirmation.⁹ A registered representative violates Rule 2110

⁹ 17 C.F.R. § 240.15c2-8(a), (b) (2003).

when he fails to ensure that a customer who is expected to purchase shares of the initial public offering of a security receives a prospectus.¹⁰

Respondent did not deliver preliminary prospectuses to the nine customers for whom he had received indications of interest. By failing to ensure that each of those customers received a preliminary prospectus, he violated SEC Rule 15c2-8 and NASD Rule 2110.

B. Respondent Violated Rules 3110 and 2110 by Submitting Worksheets Falsely Representing that He Had Delivered Preliminary Prospectuses, Causing His Firm's Books and Records to Be Inaccurate

The First Cause of Action charges Respondent with misrepresenting information to his Firm by submitting the false Syndicate Worksheets, in violation of Rule 2110. The Third Cause of Action charges Respondent with causing UBS's records to be inaccurate, in violation of Rules 3110 and 2110.

Entering false information on a firm's books and records violates Rule 2110's requirement that representatives observe high standards of commercial honor and just and equitable principles of trade and Rule 3110's requirement to keep accurate books and records.¹¹

Respondent submitted Syndicate Worksheets to his firm that falsely represented that he had

¹⁰ See, *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 – *13 (N.A.C. June 2, 2000) (citations omitted) (“Conduct Rule 2110 requires adherence to ‘high standards of commercial honor and just and equitable principles of trade.’ In the caselaw developed under the rule, some types of misconduct, such as violations of federal securities laws and NASD Conduct Rules, are viewed as violations of Conduct Rule 2110 without attention to the surrounding circumstances because members of the securities industry are expected and required to abide by the applicable rules and regulations.”); *Dep't of Enforcement v. Faber*, No. CAF010009, 2003 NASD Discip. LEXIS 3, at *28 (N.A.C. May 7, 2003), *aff'd*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, (Feb. 10, 2004) (“The Securities Act of 1933 requires an issuer to file a prospectus and the rules promulgated under the Exchange Act require registered representatives ... to deliver a prospectus to their customers.”), citing SEC Rule 15c2-8; *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (“The NASD's determination that [Respondent] violated Conduct Rule 2110 is in accord with our long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation ... constitutes a violation of Conduct Rule 2110.”).

¹¹ *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *6 (N.A.C. Aug. 7, 2009); *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *22 – *23 (Aug. 22, 2008) (submission of false information to one's member firm is inconsistent with just and equitable principles of trade, in violation of Rule 2110); *Dep't of Enforcement v. Corroero*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *14 (N.A.C. Aug. 12, 2008) (“Compliance with recordkeeping rules is essential to the proper functioning of the regulatory process.”).

delivered preliminary prospectuses to his clients, causing the Firm's books and records to be inaccurate, both with respect to the Syndicate Worksheets he submitted and the Syndicate Checklist that Valdes created. Enforcement has established violations with respect to both causes of action.

Respondent's understanding that the branch office manager suggested the creation of the inaccurate Syndicate Worksheet is not a defense. Accurate recordkeeping is essential to the oversight functions of the SEC, FINRA, and member firms. As the SEC said in rejecting a similar argument:

Moreover, regardless of his Firm's policy or knowledge of this practice, it is a violation of NASD Rules to enter false information on official Firm records. The entry of accurate information on official Firm records is a predicate to the NASD's regulatory oversight of its members. It is critical that associated persons, as well as firms, comply with this basic requirement.¹²

By submitting the false Syndicate Worksheets to UBS, Respondent made misrepresentations to UBS, in violation of Rule 2110, and caused the Firm's books and records to be inaccurate, in violation of Rules 3110 and 2110.

IV. Sanctions

There is no guideline in the FINRA Sanction Guidelines for failure to deliver a preliminary prospectus. The most closely analogous guideline is for making material omissions in the sale of securities. For material omissions the Sanction Guidelines recommend consideration of a suspension of up to 30 business days for negligent omissions, 10 business days to two years if reckless, and a bar if egregious. The principal considerations are those in the

¹² *Charles E. Kautz*, Exchange Act Rel. No. 37072, 1996 SEC LEXIS 994, at *11 – *12 (Apr. 5, 1996) (citations omitted); *see also Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *22 – *23 (Aug. 22, 2008); *Dep't of Enforcement v. Cuzzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at*20 - *23 (N.A.C. Feb. 27, 2007).

introductory section.¹³ In addition, the Guidelines recommend a fine of \$2,500 to \$50,000 for negligent misconduct, and \$10,000 to \$100,000 for intentional or reckless misconduct.

For recordkeeping violations, the Sanction Guidelines recommend a suspension of up to 30 business days, and longer in egregious cases. The principal considerations are the nature and materiality of the information that was inaccurately reported, in addition to those in the introductory section.¹⁴ In addition, the Guidelines recommend a fine of \$1,000 to \$10,000, or in egregious cases, a fine of \$10,000 to \$100,000.

Enforcement recommends an aggregate sanction of a \$5,000 fine and a six-month suspension for the three violations. The Hearing Panel finds that aggregating the three violations is appropriate, and imposes a suspension of 60 days in all capacities and a fine of \$5,000.

Respondent did not intentionally deprive his customers of the opportunity to review the preliminary prospectus, but failed to deliver them due to his misunderstanding of his Firm's practices. His customers were generally knowledgeable about IPOs and had participated in them before, and Respondent had explained the offering to each of them. His customers were not injured, and all profited from their investments. The conduct took place over a very short time, and was not part of a pattern of falsification of records.

Respondent received gross commissions of about \$7,000 - \$7,500 for the trades, an aggravating factor. CX-12; CX-13 at 4; Tr. 180 – 182, 469. The Hearing Panel was concerned by Respondent's lack of remorse. He appears to believe that his conduct was justified because his branch manager implied that he should falsify the records, and does not understand that falsification of records was a serious breach of FINRA's Rules, regardless of his branch manager's instructions or awareness of the facts. Although he acknowledges that his conduct

¹³ *FINRA Sanction Guidelines* at 93 (2007).

¹⁴ *FINRA Sanction Guidelines* at 30.

was wrong, he appears to regret his wrongful conduct primarily because of the consequences it has caused him. See, e.g., Tr. 562 – 564, 566, 582, 587, 594, 612 – 615.

Having considered all of the foregoing, the Hearing Panel finds that a fine of \$5,000 and a suspension of 60 days in all capacities is a sufficiently remedial sanction.

V. Conclusion

For failing to deliver preliminary prospectuses to customers who were expected to purchase shares of the initial public offering of a closed-end mutual fund, and causing the Firm's books and records to be inaccurate by submitting false documents to the Firm about delivery of the preliminary prospectuses, in violation of SEC Rule 15c2-8, NASD Rule 3110, and NASD Rule 2110, Respondent Dirk Allen Taylor is fined \$5,000 and suspended for 60 days in all capacities. In addition, Respondent is ordered to pay the costs in the amount of \$5,858.90, which includes an administrative fee of \$750 and the cost of the hearing transcript.

If this Decision becomes the final disciplinary action of FINRA, the suspension shall become effective with the opening of business on July 19, 2010, and end with the close of business on September 17, 2010. The fine and costs shall become due and payable when Respondent returns to the industry.¹⁵

HEARING PANEL

By: Lawrence B. Bernard
Hearing Officer

Copies to: Dirk Allen Taylor (*via overnight and first-class mail*)
Eric A. Pullen, Esq. (*via e-mail and first-class mail*)
Joseph P. Darcy, Esq. (*via e-mail and first-class mail*)
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¹⁵ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.