

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58917 / November 7, 2008

Admin. Proc. File No. 3-12260r

In the Matter of the Application of

VINCENT M. UBERTI
10901 San Leon Avenue
Fountain Valley, California 92708

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY
PROCEEDING

Sanctions for Anti-Fraud and Association Rule Violations

On remand to registered securities association for reconsideration of sanctions for violations by former associated person of antifraud provisions, public communications rule, and just and equitable principles of trade, association reaffirmed sanctions it had imposed for some violations and imposed sanctions it had assessed but not imposed for other violations. Held, association's sanctions imposed sustained in part.

APPEARANCES:

Vincent M. Uberti, pro se.

Marc Menchel, Alan B. Lawhead, and Carla Carloni, for FINRA.

Appeal filed: February 5, 2008
Last brief received: May 29, 2008

I.

Applicant Vincent M. Uberti, a former registered representative of former NASD member Donner Corporation International ("Donner") and subsequently of former NASD member Lloyd, Scott, and Valenti, appeals from disciplinary action taken by FINRA on remand from our decision of February 20, 2007 ("Commission 2007 Decision"). 1/

The Commission 2007 Decision sustained NASD's findings that Uberti was liable for the preparation and dissemination of twenty-two research reports issued by Donner and two research reports issued by Lincoln Equity Research, LLC ("Lincoln") containing material misstatements and omitting material information, in violation of Section 10(b) of the Securities Exchange Act of 1934, 2/ Exchange Act Rule 10b-5, 3/ and NASD Rules 2120, 2210, and 2110. 4/ The Commission 2007 Decision also found that Uberti violated NASD Rule 2110 by failing to disclose, in violation of Section 17(b) of the Securities Act of 1933, the compensation received by Donner in exchange for issuing research reports covering forty-three issuers. 5/

1/ Donner Corp. Int'l., Securities Exchange Act Rel. No. 55313 (Feb. 20, 2007), 90 SEC Docket 11. On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member-regulation, enforcement and arbitration functions of the New York Stock Exchange. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (Aug. 1, 2007). Because NASD instituted the disciplinary action before that date, we continue to use the designation NASD.

2/ 15 U.S.C. § 78j.

3/ 17 C.F.R. § 240.10b-5.

4/ NASD Rule 2120 prohibits inducing the purchase or sale of a security by means of "any manipulative, deceptive or other fraudulent device or contrivance." Rule 2210 requires that public communications, including research reports, "be based on principles of fair dealing and good faith," "be fair and balanced," and "provide a sound basis" for evaluating a security. The rule prohibits making "any false, exaggerated, unwarranted or misleading statement or claim" in a research report or omitting "any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading." Rule 2110 requires members to "observe high standards of commercial honor and just and equitable principles of trade."

5/ 15 U.S.C. § 77q(b). Any violation of a statute or Commission rule by a registered person is also a violation of NASD Rule 2110. See, e.g., Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999).

We found, however, that we could not determine from NASD's decision whether the bar imposed by NASD for the Donner violations was excessive or oppressive. We vacated and remanded for reconsideration of the sanctions. We also noted that NASD had determined not to impose on Uberti the six-month suspension, \$20,000 fine, and requirement that he requalify as a general securities representative and principal because of the bar imposed for the Donner violations. We asked NASD to consider whether imposition of such sanctions was warranted.

NASD's January 8, 2008 amended decision ("NASD Remand Decision") again barred Uberti for the Donner violations and imposed the six-month suspension, fined him \$20,000, and required him to requalify as a general securities representative and principal for the Lincoln violations. 6/ This appeal followed.

II.

In our review, we rely on the findings of fact and conclusions of law set out in the Commission 2007 Decision, which we summarize here to provide context for our discussion of the NASD Remand Decision.

A. The Donner Disclosure Violations

Uberti first registered with NASD in 1995 and joined Donner in 1998. Donner issued research reports on companies whose stock traded below \$5 per share. Under a typical agreement, Donner received an initial retainer fee of \$2,500, \$2,000 per month for services provided (including publication of Donner's report on Donner's website), and \$2 to \$3 for each investor package mailed to potential investors. Jeffrey Baclet was Donner's president and sole owner. 7/ For the companies Baclet assigned Uberti "to handle," Uberti received fifty percent of the amounts "generated by [Donner's] relationship with the company."

Baclet retained Richard Merrell, an independent contractor, to prepare draft research reports for Donner. Merrell had no background in the securities industry, was not registered with NASD, had no experience conducting research on publicly traded companies, and did not know enough about finance to form his own opinions on the companies he researched. Merrell admitted that he was not "expert enough to know what was negative information" and did not understand the significance of a going-concern qualification in a company's audited financial statements. Donner did not train Merrell. Baclet provided Merrell with a template with a

6/ NASD also imposed hearing costs of \$5,090.12 and appeal costs of \$931.61.

7/ NASD also expelled Donner and barred Jeffrey Baclet, Donner's president, sole owner, financial and operations principal, and options principal and suspended Paul A. Runyon, a former Donner registered representative and co-owner of Lincoln, fined him \$20,000, and required him to requalify as a general securities principal and representative. The Commission 2007 Decision sustained these disciplinary actions.

"generally positive" tone to use in preparing his drafts. Merrell's reports followed the template and described the covered companies in consistently positive terms, even though Merrell did not know whether those descriptions were accurate. Merrell limited his research to information provided by the covered company, the Yahoo Finance website, and, "as a last resort," information obtained from the covered company's public filings; Merrell verified none of this information.

Merrell testified that Uberti was his primary contact at Donner. Uberti checked Merrell's drafts for the accuracy of the financial data on the first page of the draft, asked Merrell to add information about recent developments, and edited Merrell's language. At the hearing, Uberti admitted that he "look[ed] at financial information" generally from the issuer's press releases or Forms 10-K and 10-Q and "read audited financial statements or going concern opinion statements." Uberti acknowledged that, if a report contained "something that was not accurate then it would be my obligation to point that out." In his sworn investigative testimony taken by NASD staff, Uberti stated that a going-concern qualification should "definitely" be disclosed in a research report "so the investor knows the financial status of the company before they make an investment decision." Uberti also stated that a research report should disclose negative earnings, pending lawsuits, and accumulated losses. According to Uberti's investigative testimony, "all negative information, as far as financial, needs to be disclosed."

Uberti oversaw the preparation of twenty-two Donner research reports issued between March 22, 1999 and June 27, 2001 that contained material misstatements and made material omissions. Statements that companies were "undervalued," "well positioned," or "poised for growth," or had "superior potential for appreciation," or "significant upside potential," featured frequently and prominently in each of the reports. These statements were not supported by the issuers' periodic filings. Every one of the twenty-two companies at issue was subject to a going-concern qualification, but none of the reports disclosed that information. Moreover, as described in greater detail in the Commission 2007 Decision, the companies variously faced financial and operational issues, including net losses, inadequate working capital, defaults on payment obligations, accumulated deficits, reliance on short-term borrowing, lawsuits, and significant competition. These Donner reports were misleading and fraudulent in violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Rules 2120, 2210, and 2110.

Baclet also testified that "if a [r]esearch [r]eport was put together, it would go through Mike Uberti before it was published." Paul Runyon testified that Uberti "probably had his hands on the research reports more than anyone else in the compilation and coordination of putting the report together." As we observed in the Commission 2007 Decision, Uberti read the Donner draft research reports that contained positive statements about the issuers, reviewed the public filings pertaining to the issuers that included negative material information, and knew that this negative information was not included in the reports. We found that Uberti's failure to include in the research reports material negative financial and operations information, despite knowing that the companies' public filings contained such negative information, involved an extreme departure from the standards of ordinary care, which presented an obvious danger of misleading buyers or sellers.

Uberti sent the draft reports he had reviewed to Baclet. Baclet testified that he "look[ed] at" the draft reports, but he also stated that he "wouldn't read them." Uberti acknowledged that he did not know whether Baclet read the reports in depth. Uberti also testified that research reports "went through a compliance and through a legal department," but that "[w]hat they did specifically, I don't know." In the Commission 2007 Decision, we concluded that "Uberti did not reasonably rely on Baclet or the compliance or legal department to correct the material misstatements and omissions he failed to correct."

B. The Donner Touting Violations

Between March 22, 1999 and April 24, 2000, Uberti oversaw the preparation of Donner-issued research reports on forty-three companies. The reports stated that Donner "may from time to time perform investment banking, corporate finance, [or] provide services for" the issuer, sometimes adding that Donner might perform these services "for a fee." Uberti provided this disclosure language to Merrell for inclusion in the draft reports and checked the drafts to ensure that it had been included. The reports did not disclose that Donner, in fact, received compensation in exchange for writing and publishing the research reports or the type or amount of compensation. Uberti knew that Donner received compensation for issuing reports, and he shared in that compensation. After reviewing the relevant rules and regulations when NASD issued its complaint in this matter, Uberti admitted that the disclosures that he provided to Merrell were inadequate. We found in the Commission 2007 Decision that the Donner reports violated Securities Act 17(b) and, consequently, Uberti violated NASD Rule 2110.

C. The Lincoln Violations

In 2001, Uberti left Donner and with Runyon began Lincoln for the purpose of preparing research reports for small publicly traded companies in the same way that they had done at Donner. As at Donner, Uberti hired Merrell to draft positive research reports for which the covered companies would compensate Lincoln. Uberti told Merrell to follow the same format he used in drafting reports for Donner, and the two Lincoln reports at issue in this proceeding resembled Donner's in form and content. As described in the Commission 2007 Decision, the reports represented that the companies had "significant upside potential" or were "well positioned for growth." The reports failed to disclose going-concern qualifications and adverse financial and operational information. As at Donner, Uberti reviewed the reports Merrell prepared for Lincoln and reviewed the covered companies' financial filings, which included this negative information. Nonetheless, Uberti recklessly failed to revise those reports to reflect that negative information. We previously found that Uberti was responsible for the Lincoln reports being omissive, misleading, and fraudulent in violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Rules 2120, 2210, and 2110.

III.

The Commission 2007 Decision directed NASD on remand to consider certain matters addressed by the Hearing Panel. The Hearing Panel had suspended Uberti for two years and fined him \$20,000 for the Donner violations. The Hearing Panel had concluded based on findings discussed below that Uberti was less culpable for the Donner violations than Baclet. As noted, NASD's National Adjudicatory Council ("NAC") determined to bar Uberti; however, the NAC did not address directly the Hearing Panel's findings. ^{8/} We directed NASD to consider whether the bar was excessive or oppressive in light of these factors considered in mitigation by the Hearing Panel.

As an initial matter, Uberti takes issue with NASD's construction of the Commission 2007 Decision. Uberti argues that NASD's February 28, 2007 letter setting the briefing schedule on remand ("Briefing Schedule") "does not mention significant factors the Commission identified [in the Commission 2007 Decision]." Specifically, Uberti challenges the Briefing Schedule's reference to Uberti's "claimed" reliance on Baclet, his "purported" belief that Baclet had cleared the format of the reports, and whether Uberti's expressions of remorse were credible. Uberti notes that the Briefing Schedule states "**NASD's consideration of this matter on remand therefore will be confined exclusively to the issue of whether a bar of Uberti in all capacities is excessive or oppressive for Uberti's Donner-related misconduct, the findings of which the Commission confirmed in their entirety.**" (bold in Briefing Schedule). Uberti contrasts this language with the statement in the Commission 2007 Decision, after listing the factors found by the Hearing Panel to be mitigating, that "[u]nder the circumstances, we find it appropriate to remand this matter to NASD so that it may consider whether a bar is excessive or [o]ppressive, **in light of this evidence.**" (emphasis in Uberti's brief).

The purport of Uberti's argument is unclear. NASD correctly stated in the Briefing Schedule that the Commission 2007 Decision both sustained its findings of Donner-related misconduct in their entirety and remanded, with respect to Donner, only the issue of the appropriate sanction. We did not suggest that NASD needed to re-open the findings on the merits or that it was required to accept the Hearing Panel's findings of mitigation.

Rather, we asked NASD to explain its choice of sanctions in light of the Hearing Panel's findings. We also recognize that NASD Rules 9348 and 9349 grant the NAC plenary authority in reviewing Hearing Panel decisions. As provided in NASD Rules 9348 and 9349, the NAC

^{8/} Compare PAZ Sec., v. SEC, 494 F.3d 1059, 1065 (D.C. Cir. 2007) (remanding matter to the Commission and stating that "the Commission must be particularly careful to address potentially mitigating factors before it affirms an [NASD] order . . . barring an individual from associating with an NASD member firm . . .").

"may affirm, dismiss, modify, or reverse" Hearing Panel findings. ^{9/} The NAC also "may affirm, modify, reverse, increase, or reduce" any sanctions imposed by a Hearing Panel. ^{10/} Accordingly, we remanded to allow the NAC to discuss the Hearing Panel's findings and make whatever determinations with respect to them were permissible under NASD Rules 9348 and 9349 and warranted by the record. As explained in more detail below, we believe NAC appropriately performed this function on remand.

The NASD Remand Decision found no "appreciable difference" in Uberti's and Baclet's culpability. The NASD Remand Decision concluded that Uberti's conduct in overseeing research reports that contained misstatements and omissions that were "egregious in nature and materiality" made his actions equivalent to Baclet's. The NASD Remand Decision also noted that Uberti's conduct continued at Lincoln.

The Hearing Panel had found that Uberti reasonably relied on Baclet's review of the research reports for conformity with securities laws and NASD rules because Baclet had more industry experience than Uberti, Baclet was the sole principal involved in the review process, and Baclet appeared to review the reports. The NASD Remand Decision concluded, unlike the Hearing Panel, that Uberti's reliance on Baclet's review of the research reports was not reasonable. The NASD Remand Decision found that Baclet's experience in the industry and status as a registered principal was not significantly greater than Uberti's. Uberti had been registered for more than four years when the majority of the misleading reports were issued. Regardless of his experience, as a general securities representative assigned to review Donner's reports, Uberti had an independent obligation to make sure that those reports complied with regulatory requirements, and he cannot excuse himself from that obligation by reliance on a firm principal, Baclet. ^{11/} Uberti admitted that, if a report contained "something that was not accurate

^{9/} NASD Rule 9348. All NASD rules are available at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>. The opening page of the internet site on which FINRA makes its rules available states that members of the former NASD remain subject to NASD rules. See <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

^{10/} NASD Rule 9348.

^{11/} Jeffrey D. Field, 51 S.E.C. 1074, 1076 (1994) (finding that "participants in the industry must take responsibility for their compliance [with applicable regulatory requirements] and cannot be excused for lack of knowledge, understanding, or appreciation of those requirements") (quoting Kirk A. Knapp, 51 S.E.C. 115, 139 (1992)); Thomas C. Kocherhans, 52 S.E.C. 528, 531 (1995) (holding that participants in the securities industry are responsible for regulatory compliance and cannot excuse their conduct by lack of knowledge or understanding of the rules or by reliance on a supervisor); Gluckman, 54 S.E.C. at 184 (finding that a registered person cannot shift responsibility for compliance to a supervisor); see also East/West Sec. Co., 54 S.E.C. 947, 951 n.13

(continued...)

then it would be my obligation to point that out," and that "all negative information, as far as financial, needs to be disclosed," and going-concern qualifications "definitely" need to be disclosed. Notwithstanding his expressed understanding and his admitted concentration on financial information in his review of draft research reports, Uberti did not correct research reports that "omitted material negative financial information about the recommended companies and misleadingly portrayed the companies as undervalued, poised for growth, and having significant potential for appreciation." 12/

Although the Hearing Panel found that Baclet appeared to review the reports, Uberti's admission that he did not know the scope of Baclet's review is inconsistent with the Hearing Panel's finding that Uberti acted reasonably in relying on Baclet's review. The NASD Remand Decision recognizes that Baclet failed as Uberti's supervisor but concludes that Uberti failed in his duty to review the research reports. Given Uberti's review and awareness of the financial and operational difficulties of the subject issuers and his review of the resulting research reports, NASD concluded that Uberti's asserted reliance on Baclet to review the reports did not justify mitigating the sanctions. The record supports NASD's conclusion, and we sustain it.

Uberti disputes the NASD Remand Decision's findings that Uberti had been associated with Donner since 1998 as a vice president and was "not a novice" in the securities industry. Uberti passed his Series 7 license examination in 1995. It is unclear whether Uberti commenced his employment with Donner as a vice-president, although the record supports the conclusion that he held himself out as a vice-president in firm marketing materials and on his business card. His work from 1995 until he joined Donner in 1998 included "raising capital on a private placement," which supports NASD's conclusion that Uberti was "not a novice."

The Hearing Panel also found that Uberti believed that Donner had received regulatory clearance for the reports' format. The NASD Remand Decision found that any such approval was irrelevant to the violations charged. As the Commission 2007 Decision found, it was the substance of the reports that constituted the violations, not their format. 13/ Consequently, whether Donner submitted a template to a regulator and had received approval is not relevant. In any event, NASD also found that the record did not support a finding that Uberti had a basis to believe that a regulator had approved the template. Uberti testified that, although Donner sent a draft research report to NASD for comment, NASD staff "didn't comment on what you need to put in there or what you don't need to put in there." He also testified that Donner staff made occasional inquiries of NASD staff concerning advertising requirements and other compliance

11/ (...continued)
(2000) (finding that participants in the industry have substantial responsibilities that they cannot avoid by reliance on regulators).

12/ Donner, 90 SEC Docket at 40.

13/ Id. at 30.

issues, but offered no evidence that any of these inquiries resulted in NASD approval of Donner's research report format. The record supports NASD's conclusion, and we sustain it.

Finally, the Hearing Panel found that Uberti's expressions of remorse for his misconduct and his statements that he intended to avoid such mistakes in the future were credible and treated them as a mitigating factor in its determination not to bar Uberti. The NASD Remand Decision, while acknowledging that credibility determinations by a Hearing Panel receive great weight and deference, 14/ nonetheless reversed the Hearing Panel's finding and determined that Uberti's statements were not credible and should not be considered mitigating. In reaching this conclusion, NASD noted that credibility findings can only be overcome by substantial record evidence, 15/ and focused on Uberti's persistent arguments that his duties at Donner were administrative and did not implicate his duties as a registered person, that a "reasonable investor" would not rely solely on a research report, and (contradicting his own pre-hearing testimony) that a going-concern qualification is not material for purposes of a research report. NASD found that Uberti's contentions evidenced a "buyer beware" view of his duties as a registered person that "is contrary to every idea espoused in the securities law" and demonstrated that Uberti "cannot be trusted to deal fairly with public customers."

We agree with NASD that this evidence is "particularly troubling." Although we question whether these arguments prove that Uberti's expressions of remorse and assurances against future wrongdoing were not sincere when given, we agree that Uberti's perceptions of his obligations as a securities professional and of his duties towards his customers are "misguided" and that he cannot be trusted "to deal fairly with public customers." Accordingly, we believe that the risk that he will not be able to honor his assurances of future compliance outweighs any mitigation in the Hearing Panel's findings of credibility. The securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence. 16/ Consequently, we find that Uberti's expression of remorse and assurances against future violations, accepting that they were sincerely made before the Hearing Panel, do not outweigh the future threat discussed below that Uberti could present if he returned to the securities industry.

14/ Dane S. Faber, 57 S.E.C. 297, 307 (2004).

15/ See Dennis Todd Lloyd Gordon, Securities Exchange Act Rel. No. 57655 (Apr. 11, 2008), ___ SEC Docket ___ [2008 SEC LEXIS 819 at *38].

16/ See Conrad P. Seghers, Investment Advisers Act Rel. No. 2656 (Sep. 26, 2007), 91 SEC Docket 2293, 2304 & n.42, appeal filed, No. 07-1478 (D.C. Cir. Nov. 27, 2007); Paul K. Grassi, Exchange Act Rel. No. 52858 (Nov. 30, 2005), 86 SEC Docket 2494, 2498; Frank Kufrovich, 55 S.E.C. 616, 627 (2002); Philip S. Wilson, 48 S.E.C. 511, 517 (1986); Walter H.T. Seager, 47 S.E.C. 1040, 1043 (1984).

IV.

NASD addressed the factors the Hearing Panel considered as mitigating and again imposed sanctions. Pursuant to Exchange Act Section 19(e), we must sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 17/ In our analysis we consider NASD's Sanction Guidelines. Although the Commission is not bound by the Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). 18/

The NASD Sanction Guideline for intentional or reckless misrepresentations or omissions of material fact recommends suspending an individual for up to two years or, in egregious cases, barring the individual. 19/ The guideline for intentional or reckless use of misleading communications with the public recommends suspending the individual for up to two years, or, in the case of numerous acts of intentional or reckless conduct over an extended period of time, barring the individual. 20/ The Sanction Guidelines also provide "Principal Considerations in Determining Sanctions," which apply to sanctions for any violation. 21/ The Principal Considerations applicable to all violations identify several factors to be weighed: whether the respondent engaged in numerous acts or a pattern of misconduct; whether the respondent engaged in misconduct over an extended period; whether the respondent acted recklessly; and whether the respondent's misconduct resulted in the potential for monetary gain. 22/ The Principal Considerations specifically applicable to the use of misleading public communications require adjudicators to weigh whether the research reports were widely circulated. 23/ The Sanction Guidelines also provide in their "General Principles Applicable to All Sanction Determinations" that "[a]djudicators should tailor sanctions to respond to the

17/ 15 U.S.C. § 78s(e). Applicant does not claim, nor does the record show, that NASD's sanctions impose an unnecessary or inappropriate burden on competition.

18/ Perpetual Sec., Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2506 n.56. NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in sanctions. Id. (citing NASD Sanction Guidelines 1 (2006 ed.)).

19/ NASD Sanction Guidelines 96 (2001 ed.).

20/ Id. at 89.

21/ Id. at 9 - 10.

22/ Id.

23/ Id. at 88.

misconduct at issue." 24/ The General Principles direct that "[a]djudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case." 25/

Uberti's Donner violations encompassed the release, over a two-year period, of twenty-two fraudulently misleading research reports and research reports covering forty-three issuers that failed to disclose that Donner received compensation for preparing the reports. Conduct that violates the anti-fraud provisions "is especially serious and subject to the severest of sanctions." 26/ Uberti's misconduct was reckless and motivated by economic gain. The misconduct occurred over two years, and Donner's reports were accessible to the general public on the Donner website. As discussed above, NASD appropriately rejected the factors found to be mitigating by the Hearing Panel. Uberti's conduct at Donner was so serious and presented, and continues to present, such a threat to the public interest that we find that the bar imposed by NASD for that misconduct is not excessive or oppressive, and we sustain it.

In its 2006 Decision, NASD had determined that a six-month suspension in all capacities, a \$20,000 fine, and a requirement that Uberti requalify as a general securities representative and principal would constitute an appropriate sanction for Uberti's misconduct at Lincoln. As noted, because NASD had barred Uberti for his Donner misconduct, NASD did not impose any sanction with respect to the Lincoln violations.

In the Commission 2007 Decision, we directed NASD to consider on remand whether it was appropriate, in light of its action with respect to the remanded Donner sanctions, to impose the sanctions that it had found appropriate for the Lincoln violations but decided not to impose. The NASD Remand Decision imposed the sanctions for the Lincoln conduct.

However, the Briefing Schedule stated that NASD's consideration on remand would "be confined exclusively to the issue of whether a bar of Uberti in all capacities is excessive or oppressive for Uberti's Donner-related misconduct" (emphasis in original) and that the parties would have the opportunity to file opening and response briefs "confined to the issue of whether the bar imposed on Uberti for his Donner-related misconduct is excessive or oppressive."

24/ Id. at 4.

25/ Id. at 5.

26/ Marshall E. Melton, 56 S.E.C. 695, 713 (2003).

Sections 15A(b)(8) and 15A(h)(1) of the Exchange Act require NASD to provide fair procedures for its disciplinary proceedings. 27/ NASD Rules provide for appropriate notice to respondents at every stage of disciplinary proceedings. 28/ Indeed, notice of the issues to be litigated is a minimal requirement of procedural fairness. 29/ We find that NASD was required to provide notice and an opportunity to address the imposition of the sanctions that had been assessed for the Lincoln-related violations prior to imposing them and that the Briefing Schedule did not provide Uberti with such notice or opportunity. Accordingly, we dismiss the sanctions imposed on him for that conduct.

An appropriate order will issue. 30/

By the Commission (Chairman COX and Commissioners CASEY, AGUILAR and PAREDES); Commissioner WALTER not participating.

Florence E. Harmon
Acting Secretary

27/ 15 U.S.C. §§ 78o-3(b)(8) and (h)(1); see Robert J. Prager, Exchange Act Rel. No. 51974 (July 6, 2005),), 85 SEC Docket 3413, 3433 n.54 (NASD Rules must provide fair disciplinary procedures).

28/ See e.g. NASD Procedural Rule 9212 (providing that initial complaints must give reasonable notice of alleged violative conduct and rules violated) and NASD Procedural Rule 9312 (providing for notice of, and opportunity to submit briefs on, any issue to be considered by the NAC when it calls a case for review).

29/ Cf. Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (finding that "minimum requirements of due process . . . include . . . written notice of the claimed violations . . .")

30/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58917 / November 7, 2008

Admin. Proc. File No. 3-12260r

In the Matter of the Application of

VINCENT M. UBERTI
10901 San Leon Avenue
Fountain Valley, California 92708

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART DISCIPLINARY SANCTIONS IMPOSED BY
REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the bar imposed by FINRA on Vincent M. Uberti for violations of Section 10(b) of the Exchange Act of 1934, Exchange Act Rule 10b-5, Section 17(b) of the Securities Act of 1933, and NASD Rules 2120, 2210, and 2110 in connection with Donner Corporation International, and FINRA's assessment of costs, be, and they hereby are, sustained; and it is further

ORDERED that the six-month suspension, \$20,000 fine, and requalification requirements imposed by FINRA on Vincent M. Uberti for violations of Section 10(b) of the Exchange Act of 1934, Exchange Act Rule 10b-5, and NASD Rules 2120, 2210, and 2110 in connection with Lincoln Equity Research, LLC be, and they hereby are, set aside.

By the Commission.

Florence E. Harmon
Acting Secretary