United States Securities and Exchange Commission

Appeal of FINRA/NASD and National Adjudicatory Council Decisions

Re: John J. Plunkett Complaint # 2006005259801

3-14810

On March 19, 2012 I submitted my reasons for this Appeal in a 2 pg. memo to the Commission. Herein I shall provide additional information and documents for the Commission to consider.

I must state that I am not represented by counsel due to my inability to afford such representation. Therefore I apologize if the format, exhibits, and language are not what you might expect to see if I was represented by counsel. Also I needed to represent myself at the arbitration hearing due to the same reason.

Documents Attached

I have attached the following documents to this brief for your review. I also refer to some during this brief.

1. 6/29/09 letter from me to FINRA in response to their investigation
2. 1/19/10 letter from me to FINRA denying the allegations
3. 12/22/10 the Arbitration Panel Decision
4. 1/4/2011 the Arbitration Panel Amended Decision
5. 2/17/11 FINRA notice that the National Adjudicatory Council ("NAC") will review the above decision
6. 2/11/12 NAC Decision
7. 3*20/12 My Application to SEC to have the above decisions reviewed
8. 4/13/12 FINRA Index to the Certified Record

I am at a disadvantage since I was told by FINRA staff, when I inquired, that they would not provide me with the same material which they had provided to the Commission.

Causes of Action

FINRA Department of Enforcement filed the Complaint in this disciplinary proceeding on December 1, 2009 alleging two Causes of Action. The First Cause of Action charges Respondent with engaging in conduct inconsistent with just and equitable principles of trade, in violation of NASD Conduct Rule 2110. The Second Cause of Action charges Respondent with failing to respond to a FINRA request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

First Cause of Action

The Hearing Panel found that "Regardless of true motive, however, the Hearing Panel finds that Respondents actions were inconsistent with the high standards of commercial honor required of registered reps, and violated NASD Conduct Rule2110.

I contend that there is an implicit contract between the Broker/Dealer firm and its registered representatives. There are two parties to this contract – the firm and the rep. There are obligations and responsibilities of both parties to each other which constitute the covenants of the contract and its maintenance and continuance. As a result of the actions of the owners of the Lempert B/D, among which some were:

1. Numerous lies stating that they would pay me, Mitch Borcherding, and Brian Coventry the back pay of over one year, and grant us equity in the B/D for our staying with them with no pay for so long.
2. Their refusal to speak, fax, or e-mail me back, when their felonious actions were discovered and addressed to them by me. Prior to this we would communicate daily.
3. The Ponzi Scheme against their European clients running into the tens of millions of dollars,
4. Their malicious forgeries of Documents stating things such as:
    a. The US Broker Dealer had granted Power of Attorney to a European entity.
    b. The agreement of the US Broker Dealer to merge with a European entity.
    c. The agreement of the US Broker Dealer to accept many of their European accounts with millions of dollars in losses onto the US Broker Dealer books and records, and the statement that the US Broker Dealer would make these accounts whole wiping out the losses in them.
    d. The planned forgeries of additional documents when I was to be dismissed promptly and totally unexpectedly without cause.
    e. The heavy handed pressure they put on the registered reps in the office to sell a penny stock to the reps clients of which the reps would receive a 25% (twenty five per cent) commission.
    f. Their threats of violence against myself and my family.
    g. Etc., etc.

I therefore contend that the firm was totally and solely responsible for violating and breaking contract covenants and as a result egregiously broke and effectively cancelled the contract between the Broker Dealer and the Registered Representative. Therefore the Broker Dealer actions were massively inconsistent with the high standards of commercial honor required of it and it violated NASD Conduct Rule 2110. The actions of the firm broke the contract between the firm and me and effectively cancelled it prior to our leaving.

As such I was under no obligation what so ever to exhibit commercial honor toward the firm, and I assert that the Hearing Panel ("HP") and the NAC findings are inconsistent, inappropriate, and baseless.

Further, in observing INVESTOR PROTECTION – MARKET INTEGRITY (the NASD banner at the time) I believe that our actions did just that. By temporarily removing the files we:

1. Prevented the owners and their unregistered proxies from illegally contacting and dealing with the US customers and/or pressuring the reps to sell to these customers the penny stock with the excessive commission discussed above.
2. Prevented the additional forgery of untold additional documents affecting the unauthorized and illegal transfer of many European accounts with millions of dollars in losses onto the books of the US Broker Dealer with the promise that these accounts would then be made whole.
3. Prevented the continuance of the European Ponzi Scheme in the US Broker Dealer, and against US customers as well.

By immediately notifying the SEC, NASD, and Penson (the clearing firm) this further insured Investor Protection and Market Integrity.

Second Cause of Action

With regard to the Second Cause of Action of not responding to an 8210 Request, and also by taking the Firms Books and Records the HP alleges violation of Rule 8210.

The assertions of the HP with regard to this cause of action contain many irregularities and misstatements of fact as well. They state as fact many items which are simply not so but are inferences on their part. I believe the NAC then used these non-facts as facts during their review.

I must state that to specifically address every time that the HP or the NAC is incorrect in their statement of "fact" would cause this brief to be un-necessarily extensive. However I do refer to a number of instances to illustrate the point.

As an example on pg. 12 of the HP Decision the Panel stated "Respondent and his group took the books and records in furtherance of their own economic interests". I stated above why we did what we did, and when we did what we did, and I stated these reasons to the Panel. If they did not believe me then they should state that it is their opinion that we removed the records in furtherance of their own economic interests.

I believe that the Hearing Panel did not think or look outside the box. Having been confronted with a highly unusual case, as they stated, they arrived at an incorrect conclusion stating it as fact.

Some of the specifics of the HP findings which are inappropriate, I will comment on as follows.

The HP stated that "he knew as early as March 23, 2006 that the owners intended to fire him as president".

This is incorrect. The e-mail was reviewed sometime after its date I believe as was the March 30 e-mail which the HP refers to next. My recollection is that I became aware of these later and we decided it was necessary to leave immediately.

The HP stated"...furtherance of their own economic interests". The firm was not making any money, the owners of Lempert stated that they were attempting to raise capital in Europe, we (me, Mitch Borcherding, and Brian Coventry) had not been paid for over 12 months, and the firm had no reps until I convinced Ray Thomas to join near the end of 2005. It took Ray some time to transfer his clients, and then he began contacting some friends of his to come in to interview, get hired, and transfer their accounts. These reps joined Lempert solely because they were friends of Ray. Not one of them had any book of business. There were no economic interests to be furthered.

The HP has no record of our meeting with the Emerald investors and their attorney, only a brief e-mail or two. I had explained to the investors at these meetings that there was business to bring to Emerald. The reps had long time relationships with their customers and wanted to maintain these accounts, but were willing to prospect for new clients. The investors and their attorney stated that they would provide substantial capital to Emerald for the purpose of attracting reps with profitable books of business and that bonus money was usually paid to these reps. The investors never followed up with their investment.

On pg. 13 of the HP decision the Panel states "Furthermore they offered to return the documents to Lempert USA only in return for money".

The Panel conveniently omits the fact that Lempert illegally stopped payment on duly earned commission checks payable to the reps, pay check for the secretary etc. We had begun copying the documents; it was expensive since not having a copy machine we were using an outside service, when we had to use our working capital to make good on the stopped checks. Additionally we used working capital to register at Success Trade on an interim basis. We asked the Emerald investors for the promised capital and it took a while for them to send a small amount.

One day after leaving, we had our counsel speak to the Lempert counsel in order to arrange for the return of the documents in a business-like manner without any further threats to us. Lempert counsel spoke with Lempert and informed our counsel that they only wanted certain items back and he offered to issue checks to replace some of the stopped ones for these documents. Lempert counsel delayed this action, and began changing the terms several times a day. This went on and on for some time. Only after lengthy delays on Lempert counsels part did my counsel and I realize that he never intended to issue any checks. They had delayed in order to make us look bad. They stated that the document return delay was caused solely by us.

Again on page 13 the Panel states all of the ways that there were "other obvious and far more sensible ways to forestall any possible fraud"

The Panel missed the entire point of our reasons for defensively removing the records. Lempert wanted to forge many items including Corporate Documents (as referenced by John Hickey, NASD staff. See following paragraph) e-mails etc., etc. There were many e-mails which incriminated Lempert, but at the Lempert vs. Emerald arbitration their attorney convinced the Panel that they could not be introduced as evidence. This was a major setback for us and our attorney, Dan Druz, hardly resisted at all on this issue!

NASD finally agreed to meet with me and my counsel approximately two weeks after I informed them of our actions. As Alfred V. Greco, Esq. and I were walking into the meeting room at the NASD offices, John Hickey, NASD staff told Al and me that Lempert was claiming that I was not the President of the US Broker Dealer for the last two (2) years according to the Lempert corporate records! Al stated that we anticipated these types of actions and this was exactly the reason that we defensively removed the records.

The timing factor is again being ignored by the Panel on pg. 16. This is extremely important.

There was no time left to copy files, there was no time left to alert regulators. If I had been dismissed, documents would have been forged and falsified, US clients would have been ripped off, the Ponzi Scheme continued against US clients and the NASD casually looking into it in several weeks or so?! The clearing firm to look for improprieties – really, and if they found any who would make the clients whole?

The Panel on pg. 15 states "A registered rep owes a duty of loyalty to his firm...and a breach of this duty of loyalty violates Rule2110.

Once again the Panel missis the point here by not realizing that the firm had through its activities enumerated earlier negated any loyalty factor owed to it and therefore I cannot be found to have violated Rule 2110 in this regard.

The HP states that Respondent Violated Rule 8210 and 2010 by not providing Information and Documents.

Throughout the Arbitration hearing I stressed that I had responded to every 8210 Request for information in a timely manner. Occasionally I requested and was granted time extensions for replies which were granted by Staff and I adhered to. William Kennedy of NASD staff testified that all 8210 requests prior to the last one (the one in question here) were indeed responded to in a timely manner.

I contend that I always responded to the 8210 Requests previously and would have done so again for this one, however as I stated Emerald was shut down and not operating the Broker Dealer due to a Net Capital Violation, we had been locked out of our space by the landlord for back rent, finally evicted, and files were lost or destroyed by the landlord employees who had started to tear the space down. We grabbed what we could at the eviction time. With all of this chaos the 8210 request was overlooked.

I testified that when it was brought to my attention later I did in fact respond as well as I could given the circumstances. However the Panel again ignored the above reasons as well as claiming the response was insufficient. I also stated that I could not provide documents which were either lost or destroyed, and therefore did not exist.

I contend that the HP and the NAC finding are inappropriate due to my consistent record of compliance with all previous 8210 Requests and the circumstances which were occurring during the time frame that this particular 8210 Request was made.

Most of the foregoing was focused on the HP statements and decisions which I believe to be totally inappropriate; I would have won the arbitration and the NAC would have no sanctions to review. I will devote time to some of the issues which I contest with the NAC.

The NAC proceeds to state the "facts" as they see them which is totally prejudicial. I will once again discuss several vs. all of their statements. Pgs. 1-8 do not mention any of the salient

points which I have made above. (As stated I only highlighted some of the HP language not all of it).

The NAC statement of my history again shows a bias and is prejudiced. The first paragraph leaves out the pertinent facts which are in the record. Dave Goldblatt the supervising S-24 for the office was supposed to be listed as such with the C RD. The clerk in Seaboards main office, Jackie, failed to submit this to CRD. Since this was before WebCRD I had no access to verify this other than their word that it was done. NAC also does not know that I was told by counsel for Seaboard that I had no choice but to accept neither admitting or denying the charge since Seaboard had informed counsel that they would not pay for legal representation to fight it. I later found out that the Long Island office was charged with many violations which counsel was charged with fighting so there was no time for me. I also paid the fine personally. It should be noted that the examination of the office I was in found all else to be in fine shape.

The NAC second paragraph on pg.8 is accurate in that I could not pay the arbitration award from the Lempert vs. Emerald due to the firm shut down and no cash flow. I should point out that of the four individuals that the fine was against, counsel for Lempert informed my attorney that he chose not to pursue the two investors due their location in Wisconsin and Minn. Also he cut a deal with Brian Coventry which he would not reveal to me which let Brian off the hook. Instead of the payments coming from four people, it was just me and I could not afford it.

The incidents are ten (10) years apart with no other Disciplinary History. One was an oversight by a clerk in another office and the other was due to the closing of the firm. I contend that neither is in any way relevant to this case and should not even be mentioned.

The NAC on pg. 9 states that I transferred the accounts from Lempert to Emerald without notifying the customers. This is totally inaccurate and false. Each and every customer was contacted by the rep that had handled the customer for several years and various firms before the customers transferred to Lempert. The reps used their personal book of business as I discussed above, not the firms records. Upon the agreement of the customer to transfer his or her account from Lempert, an ACAT transfer form was sent to the customer. When executed it was returned to us, the form verified by a S-24, and processed through the clearing firm. These accounts were transferred from Lempert to Success Trade. Emerald was not approved to do business until June 2006. The NAC error here stating the transfer went from Lempert to Emerald leads me to wonder what else was missed, glossed over, or ignored. Further nothing was "held hostage" as the NAC states since all of the customer information was offered to be

returned but Lempert counsel delayed to build their case as I discussed above. Additionally all customer records were on file with the clearing firm and available electronically.

The NAC on pg. 9 is again prejudicial. I have previously stated that there was no financial gain. Lempert forced the timing issue and the SEC, NASD, and clearing firm were all contacted at 9am.

In the footnote on pg.8 the NAC claims that the accusations were not supported by any further evidence. I refer the Commission to the 6/29/09 letter from me to FINRA and the attachments which clearly show the forgeries, the Ponzi scheme, pending transfer to the US Broker Dealer etc.

On pg. 10, paragraph 2. Of course I left in anticipation of my discharge. The reasons for the timing have been previously explained above several times.

Paragraph 3 talks about the base of customers. As previously stated these customers did no business. Other records contrary to NAC assertions were useless and never looked at. Employee records were on Web CRD and we had a new Compliance Manual prepared for Emerald by our consultant, Anna Mesrobian, and did not need nor want that of Lempert,

Paragraph 4. The NAC statements are not factual or accurate. I have previously stated and explained that we did not have exclusive access to the customers. The NAC again ignores the reasons for leaving among which was that Emerald was not approved when we were forced to leave Lempert. Emerald was not approved until June 6th at 6:30 pm. It is April 4th when we left Lempert. Why would anyone make such a move unless the items which I have described actually had and were happening at a frenetic pace, and we needed to make a clean break from Lempert. The NAC selectively leaves out the reason why Mitch Borcherding was left behind. He was part of the move from day one, but he insisted on remaining on a Lempert fund. They also selectively leave out how we told counsel on the Lempert vs. Emerald arbitration, which was Dan Druz that we did not want to seek the back pay owed to us, just to make a clean break. He insisted that we seek the back pay in the arbitration stating that we are entitled to it and should ask for it. I came to realize that this was done only to increase his fee.

Pg.11, paragraph 2. The NAC is incorrect. These documents were indeed provided.

Pg.11, paragraph 3. There is a plethora of mitigating evidence; all of the other 8210 Requests were responded to and William Kennedy testifying to this effect.

Conclusion

I hereby contend that The Hearing Panel's Decisions were inappropriate in all respects as demonstrated above.

I hereby state that the NAC was prejudicial in their review and that their conduct was egregious. Their total lack of a thorough review of the Hearing Panel Decisions is evidenced by their cursory review of the record, and their misstatements.

It is my contention that the NAC simply furthered the mistreatment perpetrated by the NASD in their effort to cover up their ignoring and mishandling of the Lempert/Orlov Ponzi scheme by silencing me through continuing unfair treatment and unjust punishment.

John J. Plunkett

Ps. One final thought.

Near the end of the Lempert vs. Emerald arbitration I discovered and verified, via Web CRD, that Lempert had filed a Broker Dealer Withdrawal. In spite of Dan Druz misconduct, the evidence supported the Emerald position. I spoke with Pat MacGeorge, staff at FINRA asking why the BD Withdrawal of Lempert was still pending and she stalled me but provided no answer. We discovered, after the Panel issues its ruling, that counsel for Lempert was contacted, and it was suggested that he inform his client to cancel the BD Withdrawal (which should have been processed already), which they did. Lempert believed they were about to lose the arbitration and by submitting the BD Withdrawal there would be no entity to enforce the judgment against.

EMERALD INVESTMENTS INC.

Broad Financial Center
33 Whitehall Street
17th Floor
New York, N.Y. 10004

Elissa Meth Kestin, Esq.
Senior Regional Counsel
District No. 10
One Liberty Plaza, 48th Floor
New York, NY 10006

June 29, 2009

Via Fax 212-858-4770 and First Class Mail

Re: FINRA Examination Matter No. 2006-005-2598 (John Plunkett)

Dear Ms Meth Kestin:

Attached please find my submission regarding the above item.

Additionally I have attached documents which are referred to in my submission.

Very truly yours,

John J Plunkett

Enc.

Tel 1 212 554 2270 Fax 1 212 554 2275
Member FINRA/ SIPC

Investor Protection. Market Integrity.

FINRA has adopted the above statements as their mission statement. FINRA holds these statements out for all to see as evidenced on the FINRA web site, in FINRA literature, FINRA advertising, and even on the letterhead informing me of the contemplated actions. Such widespread publication of these statements could only lead a reasonable person to believe that FINRA holds these ideals above all else, and as such, that they are representative of the reason for the very existence of FINRA itself.

My response will demonstrate that, given the circumstances, there was no alternative course of action available to either myself or the others who left Lempert Brothers International USA, Inc. In leaving we insured Investor Protection and we demonstrated and protected Market Integrity. The following is a brief synopsis of the events that led to our eventual departure from Lempert Brothers International USA, Inc., along with the subsequent events that have taken place as a result of our leaving.

1. The owners, non-US citizens, of Russian descent had stopped paying Mitch Borcherding, Brian Coventry and myself. They promised to make it up to us in cash and with equity in the firm. This promise of equity kept us at the firm, which we had built, much longer than we should have stayed.

2. George Milter, the nephew of the owners and a non-registered person was provided an office by the owners over my objections. I insisted both verbally and in writing that George not be allowed to have any influence or say in the operations of the broker dealer. This was honored at first, but as time went on I discovered that this was not being adhered to. George Milter became more and more aggressive and hostile towards me, and we had heated arguments on more than one occasion. I informed the owners about his actions, and they promised to move George to another location, and instruct him to not interfere in the broker dealer business. He threatened me on several occasions, and then threatened my family referring to the Russian mob. By this time I had begun to make preparations to leave the firm.

3. George Milter was soliciting money from individuals overseas. I am now certain that he was stating that there was a relationship with the US broker dealer (which I made sure there was not). He and Mitch Borcherding had created a Lempert Fund that the money was supposedly going to be invested in. I overheard conversations that included George and Mitch indicating that Mitch not only knew about this and condoned it, but that Mitch was preparing to open accounts in the broker dealer to facilitate this trading. This money flowed into accounts at First Republic Bank on Ave of the Americas and 49th Street. I believe they opened them in the name of Lempert Inc and various others. They were creating phony brokerage account statements purportedly at Bear Stearns. I called a friend at Bear Stearns and he informed me that the account number series did not even exist at the firm let alone the

particular account I had copied and was asking about. To my knowledge there were no accounts opened in the name of the broker dealer.

4. On a particular day that I was out of the office attending a function with my wife and daughter I received a call from Ray Thomas. Ray Thomas is a Series 24 that I have known and worked with for many years. He was quite upset because George Milter and one of the owners, Eduard Orlav, had been calling the registered reps into George's office one by one asking to speak directly with their clients and telling the reps that if they had their clients invest in a stock that was trading at $.20 per share they would give them a commission of $.05 per share. Ray had informed George and Eduard that they could not do these things and he was told to mind own his business. Ray had gone to Mitch, another Series 24, at the firm much longer than Ray, and Mitch told Ray "So what, who cares". When I returned I was furious and I told both George and Eduard that this behavior would not be tolerated and that I would soon resign.

5. I received a letter from a Ukraine Law Firm indicating that a class action lawsuit had been instituted against the two owners, Eduard and Roman Orlov in the amount of tens of millions of dollars in Europe. The lawyers wanted to know what involvement I or the broker dealer had since the claimants had indicated that they had been told and had received documents stating that the Lempert accounts in Europe were to be moved into the broker dealer in the United States where they would be made whole!

6. With counsel we responded to the law firm and had a conversation with one of the partners. Additionally we sent a written communication to the law firm. The attorney stated that she believed that neither I nor the broker dealer had any involvement. She also delivered a document that Lempert had given to their European clients which purports to be an agreement between Lempert Europe and the US broker dealer stating that the making good of all accounts to their original investment level would occur and the upcoming transfer to the US broker dealer would be taking place. This document was a forgery! I asked Mitch Borcherding if he was aware of it and his response was: no, who knows what Eduard, Roman, and George are doing.

7. As the President of the broker dealer and the Chief Compliance Officer, I had a responsibility to go directly to the owners to find out what was going on. I called numerous times and sent several faxes as well as e-mails to both Eduard and Roman, the two owners. There was no response to any of the communications which was extremely suspicious since we typically spoke several times daily, and they had always answered their cell phone or office phone and responded quickly to fax or e-mail.

8. Ray Thomas picked up a fax on Saturday sent from Eduard and Roman to George telling George Milter that I had sent communications to them, that I had discovered what was going on, and that George was to deny everything! Furthermore, George was to tell me that they were on vacation and could not be reached, which of course he did.

9. As the Chief Compliance Officer it was my responsibility to review all of the incoming and outgoing e-mails. In reviewing such I discovered the following during the next couple of days:
   a. An e-mail from the owners instructing George Milter to change the date on their Lempert Europe financial statements (which were over one year old) to a current date, then to give it to me as though this was the current audited statement from Europe which he just received, so that I would believe it to be authentic and hand it the SEC examiner who was conducting an audit of our firm and had requested the current audited statement of the Lempert business in Europe. The name of the SEC auditor was Albert Poon.
   b. An e-mail addressed to George Milter telling him not to worry about what I had discovered or that I was attempting to contact the owners about it, because Eduard Orlov was coming to New York soon and would dismiss me thereby eliminating the problem.
   c. A fax that George Milter had left at the printer in error stating that he and the owners planned to inform NASD that I was not actually the President and that I was dismissed for numerous reasons which they would fabricate, falsify documents, and then inform the NASD.

10. Based upon the series of events described above which unfolded within approximately two weeks time, myself, Mitch Borcherding, Brian Coventry, and Ray Thomas decided to accelerate our departure. Previously, with the exception of Ray (who was not with our firm at the time) we, through counsel for Lempert, namely Shustack, Jalill & Heller in the US, had been introduced to two investors from the mid-west who had agreed to finance a new broker dealer. We were leaving because of not being paid and the law firm was helping because George had misrepresented certain items to them causing their firm monetary damages as well as other issues. We held a meeting off premises and invited the registered reps to attend. One rep was not invited because of his attachment to George. Additionally, Mitch was not asked to attend due to his insistence upon wanting to remain on the fund he had created with Lempert even after we left. I insisted that all ties must be severed with the Lempert organization due to the overwhelming amount of evidence we had discovered that there was a criminal activity occurring in a major way, and that Lempert was preparing to bring the US broker dealer into it, and possibly perpetrate a fraud on the US Government through SIPC. At the least, Lempert was attempting to offload hundreds of accounts with massive losses onto the US broker dealer in order to continue to mask the Ponzi scheme and criminal activity. Mitch stated that he would not leave his fund no matter what! For that reason we decided to leave Mitch behind. All of the reps were presented with the information we had discovered and we (John Plunkett, Raymond Thomas, and Brian Coventry) then left the room so they could decide what they wanted to do. When we re-entered the room it was unanimous that they wanted to get away from Lempert as fast as possible. None of the reps were offered a bonus or enticement of any kind to leave Lempert. The reps had joined Lempert only recently due to the efforts of Ray Thomas, and they had joined because

they knew him personally. They were producing very little revenue. They stated that they would go wherever Ray went.

11. We submit U-5's, and letters of resignation to the owners overseas. We immediately leave and temporarily remove some records (to be returned within 24 hours) in order to make copies to protect our customers, as well as our good names, based upon events described above.

12. At 9 o'clock in the morning I call the SEC, NASD, Penson (our clearing firm), and the landlord and inform all of our actions.

13. Albert Poon of the SEC, who was conducting the audit at Lempert, calls me back and states he is removing all of his files. He asks if I can meet him and his supervisor later that day. I meet Albert and his supervisor at my attorney's office that afternoon. His supervisor states for the record that we did the right thing. The NASD informed me that they would meet us in a few days.

14. George Milter, who was not authorized on the bank account of the broker dealer, calls the bank and says that he is me. He stops payment on duly earned commission checks for the reps, and the earned salary due to our secretary. We are completely unaware of this at the time.

15. During the next day we copy the records for our protection and are prepared to deliver all the records back. At this time we find out that the checks have been stopped!

16. Their attorney speaks with our attorney and their attorney begins negotiations to issue new checks in exchange for the records. Their attorney drags this on and on and on. We return the records on our own with no agreement of any kind signed as they had promised and they laugh at our attorney about Lempert issuing new replacement checks. The Lempert attorney, Marlin Kruskov, purposely initiated and dragged on these negotiations in bad faith.

17. When NASD scheduled their meeting with us, John Hickey, our coordinator, on the way in states to myself and counsel that Lempert is stating to NASD that I have not been the President for the past year etc., etc. I proceed to state that what they are saying verifies our fear and confirms our suspicions that Lempert intended to change records at will to falsely implicate innocent individuals in their criminal activities, and to hurt the reps and the customers. If we did not do what we did Lempert would have materially altered many records to our detriment and to that of our customers as well. Who knows how many US customers would have been scammed and how much money would have been lost if Lempert was not stopped.

18. We discovered an investment banking engagement letter signed by George Milter as the Chairman of the Board of the broker dealer. He of course was not the Chairman of the Board. This blank agreement was the property of the broker dealer. George had

26. The arbitration is decided in Lemperts' favor due, we believe, to the unethical actions of Druz, and a monetary award against Emerald is ordered. This happens in spite of all the documents we present which prove our case. The panel states that we raided Lempert and ignores all else. This is the furthest thing from the truth as I have explained above. The reps that decided independently to leave Lempert were in fact all friends of Ray Thomas and would have gone wherever he went; they received to incentive to come with us other than getting away from a criminal organization attempting to implicate them. We wanted Druz to have the reps testify and Dan refused saying that it was not necessary.
    1. We believe that the arbitration was unfair due to Druz' actions because of his decision to handle his own case which had gone on for years and his lack of attention to our case. His case had become intense during our case and concluded near the time that our case conclude. Druz was awarded $700,000.00 while we lost.

27. ***We protected customers.*** We uncovered, thwarted, and reported to the regulators a major Ponzi scheme and criminal operation poised to be unleashed on the US Govt. and citizens of the US. We adhered to market integrity and attempted to protect our good name as well.

28. Maybe there is some justice...an attorney from Europe had a meeting with myself and David Gehn Esq. He informed us that Eduard Orlov, one of the Lempert owners was in jail in Vienna, and that Interpol had an international arrest warrant out for Roman Orlov, the other Lempert owner. The arrest was the result of charges brought against them by the European investors that had been swindled.

29. In conclusion I am reiterating that based upon what happened we were forced to do what we did in order to protect investors, ourselves, the clearing firm, SIPC, SEC, NASD, the US Government and the citizens and taxpayers of the United States and to insure market integrity.

30. To punish people for upholding both the law and the mission statement of their regulatory agency would lead to the undesirable consequence in the future of individuals being disinclined to do what is right because they are scared of the consequences. In that scenario, nobody wins.

For the aforementioned reasons, I do not believe that any charges should be brought against me.

PERSONAL AND CONFIDENTIAL

November 21, 2005

L. Henry Sarmiento
President & Chief Executive Officer
International Solubles Corporation
283 Cranes Roost Boulevard
Suite 111
Altamonte Springs, Florida 32701

Dear Mr Sarmiento:

This letter outlines the terms upon which Lempert Brothers International USA, Inc. ("Lempert" or the "Agent") is to be engaged by International Solubles Corporation (the "Company") to act as exclusive agent in connection with the private placement (the "Offering") of one or more equity-related or equity-linked securities (the "Securities") to be issued by the Company (the "Agreement"). It is currently contemplated that the Offering will consist of a best-effort, $500,000 to $1,000,000 equity raise. The Company also agrees to a $500,000 over-allotment option.

Services

1. The Agent agrees to use its reasonable best efforts to complete the private placement of the Securities. The terms of the Offering shall be subject to mutual agreement of the Company and each investor in the Offering. The Agent will contact potential investors, assist in the negotiation and the structuring of the investment in the Company, and provide related services that the Agent deems advisable and reasonable that may facilitate the successful completion of the Offering. The Agent will conduct all sales and solicitation efforts in a manner consistent with your intent that the Offering be an exempt transaction pursuant to the Securities Act of 1933, as amended (the "Act") and only to "Accredited Investors" as defined in Rule 501(a) under the Act. The Agent may decline to participate in the Offering if it determines that the completion of the Offering is impractical, undesirable or not advisable.

2. The Agent shall be entitled to rely on the accuracy and completeness of all information provided by the Company, including historical financial information, projected financial results, business plans and other due diligence. Additionally, representatives of the Company shall be available to answer questions of, and to provide additional information to, any potential investors. The Company represents that the Offering Materials (as defined in the purchase agreement referred to below) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

Singerstrasse 2/5
A-1010 Vienna
AUSTRIA

Phone: +43 19611212
Fax: +43 1 9613232
e-mail: info@a-k-europe.com

6. Return of investments in case of INVESTOR's death

6.1. In case of the INVESTOR's death or loss of its competence the PARTNER undertakes to return immediately and at the first demand (upon the cessation of the validity period of the investment program set forth in p.1.3) the initial investment amount of the INVESTOR and the amount of accrued interest in full to the INVESTOR's assignee Mrs. Tamara Muttonen, date of birth [redacted], place of birth [redacted] whose simple of signature is confirmed by the INVESTOR:

6.2. In case of the Investor's assignee death or loss of its competence next assignee will be appointed as required by appropriate Latvian laws and Legal procedures.

7. Validity period of the present Agreement

The present Agreement comes into force from the moment of signing it by the Parties and is valid till the moment of duly execution by the Partner of all Investor's or its assignee instructions on repayment of the initial investment amount of the Investor and the amount of accrued interest in full.

8. Other conditions

8.1. All amendments to the present Agreement are valid in written form duly signed by the Parties.
8.2. The present Agreement is signed in two copies on two pages each in English language, one copy for each Party, the copies have equal legal force.
8.3. The integral part of the present Agreement are its appendixes:
- Appendix 1 - Procedure on withdrawal of funds from investment accounts;
- Appendix 2 - Confirmation by the Parties of the initial investments transfer and the interest accrued.

The PARTNER

FEITSCHINGER

The INVESTOR

AZURINS Vladislavs

Adolph & Komorsky International GmbH
Singerstrasse 2, Top 5,
A-1010 Vienna, Austria

INTERNATIONAL LIMITED

A LEMPERT BROTHERS COMPANY

[illegible]

[illegible] 10.10.2005

Lempert Brothers International LTD London, [illegible] 04312126, [illegible] 25 [illegible] 2001 [illegible] Lempert Brothers International USA Inc. [illegible] Manfred Feltschinger, [illegible] Vladimir Cepliev, [illegible] 281150-12605 [illegible] 28.11.1950. [illegible] Str. 25, Riga, LV-1058 Latvia [illegible]

I. [illegible]

1.1. [illegible] LBI London [illegible] Adolph & Komorsky International GmbH, Firmenbuchnummer FN 216570d, [illegible] 14.09.2005, [illegible] № 36 S 34/05d.

1.2. [illegible] STATEMENT [illegible] 2005 [illegible] USD 471,506.72.

1.3. LBI London [illegible]

LBI London [illegible] (Securities Investor Protection Corporation – SIPC) [illegible] SIPC [illegible]

1.4. [illegible] LBI London [illegible] PENSON Financial Services, Inc. [illegible] MRON-AKI-NASDAQ 100 Index Tracking [illegible]

1.5. [illegible] Lempert Brothers International USA, Inc. [illegible]

1.6. [illegible]

- [illegible] STATEMENT.
- [illegible]
- [illegible]

CUSTOMER AGREEMENT

Vienna 10.10.2005

Lempert Brothers International LTD. London, registration number 04312126, registration date 26 October 2001, acting by the virtue of Power of Attorney granted by Lempert Brothers International USA Inc., registration number 0313H000, represented by Mr. Manfred Feltschinger, Executive Director, hereinafter referred to as the "LBI London", on the one hand, and Mr. Vladimir Cepliev, personal ID # 281150-12605, date of birth 28.11.1950, declared residence Kalvenes Str. 25, Riga, LV-1058 Latvia, hereinafter referred to as the "Investor", on the other hand, hereinafter jointly referred to as the Parties, have entered the herein Agreement on the following:

I. Subject of Agreement

1.1. LBI London shall undertake towards the Investor all and any obligations of the Company in Liquidation Adolph & Komorsky International GmbH, Firmenbuchnummer FN 216570d (decree of Vienna Commercial Court of 14.09.2005, judicial file No 36 S 34/05d).

1.2. The Parties hereby ascertain the aggregate Investor's investment capital as of the effective date hereof in the amount of USD 471,506.72 according to STATEMENT of June 2005.

1.3. LBI London shall repay the amount held on the Investor's account at the date of request, including the interest accrued thereon, upon the Investor's first demand pursuant to the provisions hereof.

LBI London shall ensure protection of the Investor's investment capital placed with the Securities Investor Protection Corporation, USA (SIPC), on SIPC terms. The above protection shall not apply to transactions involving futures and spreads.

1.4. The Investor hereby entrusts LBI London with custody and qualified management of the Investor's funds held on accounts with the USA clearing bank PENSON Financial Services, Inc. within the scope of investment programs MRON-AKI-NASDAQ 100 Index Tracking subject to delivering the relevant account statements to the Investor.

1.5. Lempert Brothers International USA, Inc shall ensure proper fulfillment of their obligations by managing the Investor's funds, rendering custodian and clearing services and undertaking transactions securities.

1.6. The following conditions shall apply to management of the investment capital:

- term of investment – minimum one year from placement of the Investor's funds on the account in accordance with the STATEMENT attached hereto
- regularity of income gaining (minimum) – once a year
- [illegible] of account statements – once a month

[illegible] W
[illegible] Avenue of the Americas, 27th Floor
New York, N.Y. 10036
USA

Partnership Cooperation Agreement

July 9, 200[illegible]

COOPERATION AGREEMENT between the Lempert Brothers International USA, Inc. ("LBI USA"), a member of the Lempert Brothers Group, and the Lempert Brothers International, Inc. Ltd., London EC2 V.AE, Great Britain ("LBI Ltd."), hereinafter referred to as the Parties, regarding cooperation on the dissemination of investment information for LBI USA investment services.

WHEREAS, LBI Ltd. PROMOTES INVESTMENT AND DISSEMINATES INFORMATION ABOUT INVESTMENT OPPORTUNITIES AND BUSINESS OPERATING CONDITIONS FOR LBI USA,

WHEREAS, this collaboration and exchange between LBI USA and the LBI Ltd. is designed to further the objectives of both parties.

NOW THEREFORE, it is hereby agreed as follows:

I- Subject of the Agreement

1.1. The subject of the Agreement is Cooperation between the Parties on Dissemination of information, presented by LBT USA, to potential investors in Europe with the aim to attract direct investments into foreign intellectual programs, and presenting appropriate services.

1.2. LBI Ltd. is given all authorities related to this activity and exportation of services.

1.3. LBI USA undertakes to inform LBI Ltd. immediately of all additions and changes in intellectual products and services.

1.4. On the basis of this Agreement, LBT Ltd. shall perform representative agency and mediation functions. LBI USA empowers LBT Ltd to receive clients' resources,

1.4.1. Rendering of practical support to LBI USA in marketing of intellectual programs and representative services.

1.4.2. Carrying out of advertising activity for LBI USA aimed at attraction of customers for participation in the programs of *LBI USA*, *with* conclusion by the customers of the respective agreements with clearing banks participating in the programs.

1.5. LBI USA ensures that the information provided to LBI Ltd. is current and accurate. In particular, when providing information on specific investment opportunities, such as firms seeking joint venture partners or project promoters seeking external investors, *the LBT USA* will exercise its best efforts to ensure that these are legitimate business opportunities from reputable organizations.

1.6. LBI Ltd. agrees to display LBI USA partner logo on its any and all marketing materials pertaining to the investments in the any and all intellectual programs.

8. The Company represents and warrants that no person or organization other than Lempert is, as a result of any action by the Company, entitled to compensation for services as a finder, broker, placement agent or investment banker in connection with the Offering.

9. The initial term of this engagement shall be three months and it shall automatically renew on a month-to-month basis until terminated in writing by either party. However, upon completion of the Offering, or upon mutual written consent of both parties, the Agreement shall terminate immediately. In any such event the Company shall be responsible for the reimbursement of expenses as provided in Section 4 incurred by Lempert through the date of termination.

10. The Company agrees that Lempert shall have the right to advertise its participation in the Offering in "tombstone" or other appropriate financial advertisements in newspapers, magazines, trade periodicals or other publications. Lempert agrees that such tombstone or other advertisements shall not be published without the Company's prior approval, provided that such approval is not unreasonably withheld or delayed.

11. The invalidity or unenforceability of any provision of this Agreement shall in no way offset the validity or enforceability of any other provision. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of New York. Any right to trial by jury with respect to any claim, action, suit or proceeding arising out of this Agreement or any of the matters contemplated hereby is waived. The terms and provisions of this letter are solely for the benefit of the Company and the Agent and the other indemnified parties and their respective successors, assigns, heirs and personal representatives, and no other person shall acquire or have any right by virtue of this Agreement.

Please confirm that the terms described here are in accordance with your understanding by signing and returning to us the enclosed duplicate of this letter. We are pleased to be working with International Solubles Corporation on this project and look forward to a successful outcome.

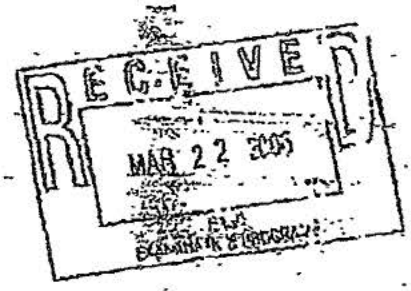
Very truly yours,

Lempert Brothers International USA, Inc

By: _____
S. George Milter
Chairman

To: NASD Investor Complaint Center
1735 K Street, NW
Washington, DC 20006-1500

Copy to: Securities and Exchange Commission
SEC Complaint Center
100 F Street NE, Washington, D.C. 20549-0213



From: Mr. Vladislav Mazurin
Basteja Bulv. 6-12
LV-1050, Riga, Latvia

1 March 2006

Dear sirs

We would like to make a complaint about improper actions of companies: Adolph Komorsky Investments (660 White Plains Road, Suite 430,Tarrytown, NY 10591-5107) and Lempert Brothers International USA, Inc. (CRD # 128241, SEC # 8-066109, Rockefeller Center 1270 Avenue of the Americas, 27th floor New York, NY 10020)

Mr. Vladislav Mazurin, resident of Latvia, on 17th of September, 2002 submitted to Adolph & Komorsky International GmbH (Austrian branch of Adolph Komorsky Investments) an Application for investment account opening and deposit making with Adolph Komorsky Investments. From November, 2002 through June, 2004 Mr. Mazurin submitted other 5 Applications for deposits and made altogether 7 deposits in total amount of 50,000 USD.

On 26 of September, 2002 Mr. Manfred Feitschinger, Director of Adolph Komorsky Investments, confirmed an account opening and receiving of the first investment amount of 10,000 USD (attached – Notification letter to Mr. Mazurin). Since that time Mr. Mazurin started to receive monthly account statements where deposited and allocated funds were indicated (Attached – last copies of statements). On statements, which Mr. Mazurin is still receiving, Adolph Komorsky Investments with office address at 245 Sawmill River Road, Hawthorne, New York 10532, is indicated as account executive.

In April, 2005 Mr. Mazurin received a letter where Adolph Komorsky Investments informed about its reorganization and assignation of its management services to Lempert Brothers Investment Group (copy of the letter attached).

As we know by now, Adolph Komorsky Investments (other name – Adolph Komorsky Hoffman & Associates, Tarrytown, New York, CRD #30838) does not exist since March, 2002 and the company was expelled from NASD in August, 2002. Since the company disbanded, its principals, Peter Adolph and Mark Komorsky have been brokers with Ryan Beck & Co. Inc. [redacted]

On 15th of May, 2005 Mr. Mazurin signed Customer Agreement with Adolph & Komorsky International GmbH (attached – copy of Customer Agreement 05/04-12) with Confirmation where total deposited amount and amount of accrued interest of 68,756.20 USD was confirmed by both sides. In the Customer Agreement Lempert Brothers International USA, Inc. was named as manager of Mr. Mazurin's funds (p. 1.5. of the Agreement). Mr. Manfred Feitschinger, who signed the Agreement, is named as co-founder and CEO of Lempert Brothers International Ltd. (www.lempertbrothers.com).

On 14th of September, 2005 Adolph & Komorsky International GmbH filed for bankruptcy in Austria and Mr. Mazurin registered his claim for 68,752,20 USD with Vienna Commercial Court. The Court hearings last for months and we still have no official court decree on the issue. It is known, however that we will get no funds or any compensation from the bankrupt as it was obvious fraud.

Trying to settle the problem on 10th of October, 2005 Mr. Mazurin and Lempert Brothers International Ltd. signed supplier Customer Agreement, where Lempert Brothers International Ltd., acting by proxy of Lempert Brothers International USA, Inc., takes all the obligations of the bankrupt Adolph & Komorsky International GmbH in respect to Mr. Mazurin (attached – copy of Customer Agreement).

Pursuant to the conditions of the last Customer Agreement Mr. Mazurin in December, 2005 made all written requests to Lempert Brothers International Ltd. and Lempert Brothers International USA, Inc. about funds withdrawal. But no answer was given and no funds were paid back to Mr Mazurin by now.

Taking all this in consideration, please, take appropriate measures to check if Adolph Komorsky Investments and Lempert Brothers International USA, Inc. are really involved in the fraudulent actions. And if they are could you help us to get back our funds or any compensation from these companies?

Yours sincerely

Vladislav Mazurin

e-mail: investproject@inbox.lv
fax: +371-7541654
address: Basteja Bulv. 6-13
LV-1050, Riga, Latvia

Singerstrasse 2/5
A-1010 Vienna
AUSTRIA

Phone: +43 1 961 12 12
Fax: +43 1 961 32 32
e-mail: [redacted] @ak-europe.com

CUSTOMER AGREEMENT 05/04-12

Vienna 12.04.05

Adolph & Komorsky International GmbH, Vienna, (AKI), FIRMENBUCH&DATENBANK FN 215579d, in the person of Mr. Manfred Feitschinger, Executive Director, hereinafter referred to as the "PARTNER", on the one part, and Mr. Vladislavs Mazurins [redacted] place of birth Russia, place of residence [redacted] hereinafter referred to as the "INVESTOR", on the other part, have concluded this present Agreement on the following.

1. Subject of the Agreement

1.1. Cooperation of the Parties on participation in Nasdaq 100 Index Tracking Stock program (PORTFOLIO35).

1.2. Within the validity period of the present Agreement the PARTNER carries out intermediary and clearing services on placement of investment capital of the INVESTOR to accounts of US Clearing for participation in Nasdaq 100 Index Tracking Stock program with further submission of relevant statements to the INVESTOR.

1.3. Placement conditions:

- investment period (minimal)	one year
- regularity of profit receiving (at least)	once in year
- regularity of statements submission	once a month
- minimum guaranteed annual yield on investment capital	10%

1.4. The PARTNER ensures the safety of the initial investment amount (investment capital) of the INVESTOR and makes repayment of the initial investment amount of the INVESTOR and the amount of accrued interest in full at the INVESTOR's demand pursuant to the provisions of the present Agreement. The PARTNER ensures protection of the investment capital of the INVESTOR in the Securities Investor Protection Corporation, USA (SIPC) according to the SIPC's conditions.

1.5. To properly execute its obligation on the present Agreement the PARTNER appoints Lempert Brothers International USA, Inc. to manage the INVESTOR's funds, to perform custodian and clearing services and do deal in securities.

2. Amount of the Agreement

The INVESTOR undertakes to fulfill all the necessary actions on the transfer of the initial investment amount for the sum of USD 50 000,00 (fifty thousand) to the PARTNER's account: [redacted] with RAIFFEISENLANDESBANK NÖ/Wien Vienna, Austria, [redacted] in order to use the funds further on in participation in the program.

Singerstrasse 2/3
A-1010 Vienna
AUSTRIA

Phone: +43 19611212
Fax: +43 1 9613282
e-mail: info@ aki-europe.com

3. Special conditions

3.1. In case the monthly yield for the last three months makes up in average less than 3,5%, the Investor could get back the initial investment amount and the amount of accrued interest in full at its first demand.

3.2. Notwithstanding the case set forth in p. 3.1. the Investor is entitled to withdraw the initial investment amount and the amount of accrued interest in full on written request after minimum investment period of one year set forth in p. 1.3. of the present Agreement expires.

3.3. All the repayments to the Investor at its demand should not take more than 41 trading/banking days after acknowledge of receiving the Investor's written request by the Partner. For each day exceeding the set term of the repayment the Partner pays to the Investor interest not less then minimum guaranteed annual yield set forth in p. 1.3. of the present Agreement of the total amount due calculated on basis of 360 days in a year.

3.4. The procedure on withdrawal of the Investor's funds from the Partner's investment accounts is provided in the Appendix 2 to the present Agreement.

4. Confidentiality

Neither of the Parties has the right to disclose to a third party any trust information or documents on the present Agreement without a prior written consent of the other Party.

5. Arbitration

5.1. Should in the course of execution of the present Agreement or agreements on its implementation arise disputes or differences, both Parties will try to settle them first of all in an amicable way. An effort to reconcile is considered as a failure as soon as one of the Parties notifies of it the other Party in a written form.

5.2. Should an effort to reconcile fail, all disputes should be settled at the Arbitration of the Chamber of Commerce in Vienna or Riga's International Arbitration Court (Latvia) by three arbitrators appointed in accordance with the existing rules.

The Party submitting the claim is entitled to chose a court.

5.3. Arbitration claim should be made in a written form. The Arbitration also settles the matter as to expenses on the court proceedings.

5.4. All disputes between the Parties should be settled in accordance with the Provisions of the present Agreement and all additional agreements on its execution (if any) in accordance with the appropriate Laws of Austria or Latvia (which applicable).

5.5. The Arbitration takes a decision by the majority of votes basing on condition of the present Agreement and in accordance with the Law on settlement of disputes in Austria or Latvia.

USA Offices
1270 Avenue of the Americas, 27th Floor
New York, N.Y. 10020
U.S.A.

1.7. LBI USA maintains the right to review and reject all information to be disseminated through LBI Ltd. marketing and representative services and to not establish and approve any material and information content that it deems inappropriate.

2. Joint Work

2.1. LBT Ltd. shall extend the sales markets for intellectual programs and services of LBI USA on the European territory.

2.2. LBI Ltd. shall provide necessary technical facilities and qualified personnel.

2.3. LBI USA shall supply LBI Ltd. with all information on intellectual programs and service required for agency and mediation activities.

2.4. In the case of any claim or handlings, maintained by the third parties, connected with the activity and the subject of the present Agreement, (a) the party informs immediately the other part about the claim of the third party, (b) cooperates with other party in the defending and settling the claim and, (c) allows the other party to control and settle the claim. No claim may be settled without the prior written consent of the party seeking indemnification, which consent shall not b_ unreasonably withheld.

2.5. LBT Ltd. shall not be responsible for fulfillment of the obligations of LBT USA, provided to the customers *in any form*, as well as for observance of the terms for fulfillment of these obligations.

2.6. Should LBI Ltd. display in writing any data involving conscious misrepresentation of an_ documents, printed matters or promotional material presented to LBT Ltd. by LBI USA, LBT Ltd. shall indemnify and hold LBI USA harmless against any claim or action brought by a third party in relation to the foregoing, provided however that any such indemnification may not exceed the amount of commission fee due to LBI Ltd. hereunder, subject to compliance by LBI USA with a of the provisions hereof.

2.7. LBI USA shall not be responsible for fulfillment of the obligations based on direct or indirect misrepresentation of their products or services.

3. Confidentiality

3.1. Neither of the Parties to the Agreement has right to use or transfer to third persons (excluding government law enforcement agencies) industrial, business or any other confidential information and materials, which they became aware of within validity of the present Agreement, having no preliminary written consent to this from the other Party.

4. Dispute Resolution and Applicable Law

4.1. The Parties have entered into this Agreement in good faith. In performing their various duties and obligations as set out in this Agreement, the Parties agree to act *in good faith* and reasonably on the basis of the objectives set forth herein.

4.2. Any difference in opinion or disputes arising from or in connection with this Agreement, which have not been resolved, shall be settled by both Parties through friendly consultations on cooperative basis.

3rd 6th Floor
1290 Avenue of the Americas, 27th floor
New York, N.Y. 10019
U.S.A.

4.3. Should in relation hereto or out of the agreement on its implementation any disputable matters or disagreements in opinions arise, both Parties shall try first of all to regulate those by amicable way.

4.4. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof which have not been resolved as per paragraph 5.1. within 60 days, shall be settled in the New York Chamber of Commerce in accordance with its Rules of Arbitration. The number of arbitrators shall be three. Arbitral proceedings shall be conducted in English.

4.5 The Arbitration Court shall also settle the matter of bearing expenses in relation to proceedings.

4.6. Laws of the United States shall be applicable to this Agreement.

5. Validity of the Agreement.

5.1. This Agreement shall remain in effect for a period of [THREE YEARS] from the date of its Entry into Force, which shall be the date on which this Agreement is signed by both Parties. It shall be automatically renewed for an unlimited number of [THREE-YEAR] terms unless either Party provides written notice, 30 days prior to the expiration of a term, which it wishes to withdraw from the Agreement.

6. Final Provisions

6.1. Recognizing that good communication is essential to the success of this cooperative agreement, LBI USA nominates George Miller [redacted] as liaison to LBI Ltd. for this initiative. He will be responsible for (a) reviewing new content to be provided to LBI Ltd. representative editing or reestablishing information previously added to LBI Ltd. representative services, (d) reporting on the results of specific investment opportunities advertised LBI USA, and (;) coordinating communications with LBI Ltd. LBI Ltd. liaison to LBI USA is Manfred Fritschinger [redacted]

6.2. The Agreement shall include full mutual understanding of the Parties in relation to the issues contained or mentioned herein, and it shall include no any promises, provisions or obligations expressed in oral or written form or implied, except those, which are contained in this Agreement.

6.3. The Agreement cannot be changed or amended or terminated, and any promise shall be invalid if it is not fixed in writing and signed by both Parties.

6.4. The present Agreement is signed in duplicate in English, one original for each Party. Both texts are of equal legal force.

7. Amendments

7.1. Where unforeseen circumstances compel substantial modifications to the scope of the commitments assumed by the Parties in this Agreement, the Parties shall use their best efforts to agree upon any modification to the Agreement which, in the reasonable opinion of the Parties, is

1270 Avenue of the Americas, 27th Floor
New York, NY. 10020
USA

necessary to take account of such circumstances. All amendments hereto shall be in writing between the Parties.

7.2. The applicable law shall be the general principles of law.

8. Miscellaneous

8.1. LBI USA gives no incentive and does not admit without LBI Ltd. assistance concluding agreements and opening accounts for clients, who were presented to LBI USA intellectual programs and services by LBI Ltd.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names on the dates indicated below.

Lempert Brothers International USA, Inc.
George Miller
President/ CFO
Address:
1270 Avenue of the Americas
Rockefeller Center 27th Floor
New York, NY 10020, USA

Signature

July 9, 2—
Date

Lenbpert Brothers International, Inc. Ltd.
Manfred Feilschinger
President/CEO
Address:
3RD Floor,
Black Well House,
Guildhall
London EC2 V AB, Great Britain

Signature

July 9, 2005
Date

John Plunkett

From: Yelena Kvjatkovska [redacted]
Sent: Thursday, March 09, 2006 2:49 AM
To: Info
Cc: office@lempertusa.com
Subject: FW: Attn. Mr. Plunkett

From: Yelena Kvjatkovska
Sent: Wednesday, March 08, 2006 5:11 PM
To: 'info@lempertbrothers.com'
Cc: 'sgm@lempertusa.com'; 'manfred@lempertbrothers.com'
Subject: Attn. Mr. Plunkett

Dear Mr. Plunkett,

Please find attached an information Memo prepared by the team of lawyers representing the investors of Adolph & Komorsky group. For the time being this Memo is sent out to the individuals connected to AKI and Lempert group.

Should you have any questions or comments, please feel free to contact me.

Best regards,

Yelena Kvjatkovska, L.L.M
Attorney at Law

RUSANOVS, RODE, BUSS
Attorneys at Law
Riga

www.rrb-c.lv

RIGA
Brivibas iela 103-24
Riga LV-1010, Latvija
Tel./Fax: + 371 7 273267 / 7 317724

Subject:

Adolph & Komorsky Investments

Lempert Brothers International

To Whom It May Concern

RUSANOVS, RODE, BUŠS
Zvērinātu advokātu birojs

Brīvības iela 103-3
Rīga, LV-1006, Latvija
Tālr. +371 7225257
Fakss +371 7217721
E-pasts: [illegible]
www.[illegible].lv

Riga-Vienna

March 1, 2006

Dear Madame/Sir,

Our Law Office is representing a number of clients (hereinafter referred to as "the Investors") who had contractual relationships with the structure of Adolph & Komorsky (hereinafter referred to as AKI) and Lempert Brothers (hereinafter referred to as LBI)*. In this we are part of an international team of lawyers in Austria, Germany and USA who have joined forces in order to assess the situation and accordingly take various here described legal actions for retrieving the funds of the Investors and prosecuting the persons at fault for the direct financial losses caused to the Investors, as well as moral damage and damage caused to the Investors' business and financial reputation.

The Investors that were cooperating with the AKI structures since 2001-2002, invested significant amounts of money allegedly through European branch of the US based Brokerage Company Adolph & Komorsky Investments; the management of the funds was to be executed by the latter company. Since 2004 they were unable to retrieve part of their main investments or according declared income, despite numerous requests.

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* Under the titles of AKI and LBI hereinafter other various legal structures registered in various jurisdictions are meant; the owners and management of these structures in many cases are represented by the same natural persons.

In autumn 2005 bankruptcy proceedings regarding the alleged European branch of AKI were instituted in Vienna, during which facts were disclosed which formed a basis for instituting criminal proceedings against certain individuals involved. The Investors were offered to re-conclude their contracts for investments with another structure that allegedly over-took obligations of AKI within the merger of these two companies, and namely the so-called LBI Holding. However it appeared during the research done by counsel, that the US company Lempert Brothers International USA, Inc is allegedly unaware of any of the processes including the merger; moreover, it has no formal link with any of the European LBI structures, part of which is under liquidation now.

During initial research it became known to counsel that some persons connected to the processes described below, are unaware about the current factual and legal situation. The purpose of the Memorandum attached to this letter therefore is to inform all persons connected with the mentioned structures, namely AKI and LBI, about the current situation and commenced proceedings.

Counsel on behalf of the Investors would like to stipulate that the main goal and purpose of all proceedings described in the attached Memorandum, actual and planned, is to retrieve the funds of the Investors and to compensate the material and moral damage as well as damage caused to their business and financial reputation.

This letter and the attached Memorandum are of private character and contain solely the information and considerations of counsel. Counsel would appreciate any opinion or comments of the addressees of this letter, as well as any possible corrections to the statement of facts supported by evidence.

Sincerely Yours,

Egons Rusanovs
Attorney at Law

Yelena Kvjatkovska
Attorney at Law

Table of Contents

1. Introduction

The Memorandum contains the information acquired by counsel up to the current moment and in respect of only limited part of the Investors concerned in the course of the existing civil/criminal proceedings and the research performed. The issue of the Memorandum is the situation which arose in connection with the investments done through the AKI structure, the bankruptcy proceedings of the European "branch" of AKI, the information initially presented to the Investors, the proposed re-establishment of contractual relations with the structures of LBI, as well as actions taken and currently assessed by counsel with the purpose of retrieving the Investor's funds.

2. Factual background

2.1 The Investors

Below please find the list of the Investors represented by the undersigned counsel. Please mind that the number of the Investors is not limited to the below listed and will be well extended in the nearest future.

	Name of the Investors	Initial Investment Amount	Amount of the Interest acquired according to Statements	Total
1.	[redacted]	$575 389,09	$158 265,67	$733 654,76
2.		$25 697,99	$13 925,66	$39 623,65
3.		$748 041,54	$284 754,13	$1 032 795,67
4.		$681 921,98	$354 988,97	$1 036 910,95
5.		$28 927,72	$11 684,26	$40 611,98
6.		$226 881,81	$111 389,97	$338 271,78
7.		$205 109,49	$56 076,12	$261 185,61
8.		$259 312,74	$111 019,01	$370 331,75
9.		$451 983,83	$197 831,93	$649 815,76
10.		$411 827,51	$82 534,09	$494 361,60
11.		$100 125,42	$21 949,57	$122 074,99
12.		$49 986,94	$8 512,42	$58 499,36
13.		41 648,26	10 897,53	$52 545,79
14.		$50 000,00	$10 883,53	$60 883,53
15.		$24 935,00	$65,00	$25 000,00
16.		$24 935,00	$65,00	$25 000,00
17.		$25 024,30	$6 722,64	$31 746,94
18.		$50 000,00	$25 129,65	$75 129,65

19.	[redacted]	$174 486,89	$37 576,48	$212 06
20.		$34 990,00	$21 921,25	$56 91
21.		$49 879,11	$9 699,08	$59 57
22.		$26 294,07	$4 933,85	$31 22
23		$42 688,00	$36 260,53	$78 94
24		$224 600,94	$192 311,41	416 912
25		$101 990,00	$92 267,94	$194 25

2.2 Legal basis for investments. Statements.

In 2001 – 2002, starting cooperation with AKI, most of the Investors concluded a standard Customer Agreement with Adolph & Komorsky International GmbH, Vienna. The agreements were mostly signed by Mr. Manfred Feitschinger on behalf of Adolph & Komorsky International and stamped by this company's stamp.

A standard package of documents creating a legal contractual relationship with the Investors included General Terms of investments into AK Investments. The beneficiary of the investments was indicated as Adolph Komorsky Investments at Westchester, 245 Saw Mill River Road, Hawthorne, New York 10532. The Investors also had to fill in the so called "AK Invest Depots", indicating the amount to be invested and the portfolio to which it should be invested.

All Investors until June 2005 received monthly statements made under the same letterhead as all other documents presented to the Investors: "Adolph Komorsky Investments". The statements indicated as "office serving your account – 245 Sawmill River Road, Hawthorne, New York 10532". The clearance agent indicated was Bear Stearns Securities Corp., USA. The statements provided for a specific account number for each investor.

Apart from the statements some of the Investors received original certificates of ownership for shares done under Adolph Komorsky International letterhead and signed by Mr. Eduard Orlov as the president of Adolph & Komorsky International, Vienna and Mr. Roman Orlov as the secretary.

2.3 Information initially presented to the Investors

2.3.1 Information on AKI and partners.

According to the hand-outs presented to the Investors in autumn of 2002 and signed by Mr. Peter William Adolph and Mr. Marc Eric Komorsky, the company Adolph Komorsky Investments is an investing company with membership in NASD, SIPC, MSRB, NFA and CFTC. The head office of the company was stated to be 660 White Plains Road, Suite 430, Tarrytown, NY; the European branch Adolph & Komorsky International, Singerstrasse 2, Top 5, Vienna. The following companies were *inter alia* listed among AKI partners:

Lempert Brothers International Holding AG, Lichtenstein
Lempert Brothers Investments New York/USA
Lempert Brothers International London
Lempert Brothers International Investments AG Zurich

During visit to Riga, Latvia and meeting with the Investors in May 2001 Mr. Peter Adolph, Mr. Eduard Orlov and Mr. Oleg Sukhatskiy explained, in line with the leaflet statements, that AKI is in fact a US based company with subsidiaries in Europe. All the investments have to be transferred through Vienna office for technical reasons, but all operations will be performed through AKI USA. Later this was on various occasions confirmed by Mr. Manfred Feitschinger, Mr. Eduard Orlov, Mr. Oleg Suhatskiy and other officials of the structures involved.

2.3.2 Information on merger of AKI and LBI

In April 2004 Mr. Jean Luc Meier (claimed chairman of the supervisory council of LBI holding), Mrs. Nancy Prager-Kamel (claimed president of LBI New York), Mr. Manfred Feitschinger (claimed vice-president of AKI holding) and Mr. Eduard Orlov (claimed president of AKI Vienna) announced to the Investors that AKI and LBI structures are in the process of a merger. These persons stipulated that this fact in no way influences the Investors, and invited some of the Latvian Investors to consider concluding a General Partner's agreement with the LBI "Holding".

At the same time the General Partnership Contract was concluded, signed on the name of LBI Holding by Mr. Eduard Ordov, and on the Latvian side by some Investors. The contract, generally referring to Latvian party's undertaking to attract investments to LBI, and contingent upon attraction of certain specific amount, *inter alia* included a clause providing:

> "At the moment this Contract comes into force there is an integration of all Company's partners going on (in particular all structures and client's data bases of the companies Lempert Brothers International AG and AKI (Wien) are handed over in accordance with the plan agreed upon by the parties) [...]"

To this contract a document was attached under the title "Order of Business Relations between Subsidiaries of LBII and AKI in the territory of Baltic Republic" and signed by Mr. Jean Luc Meier *p/p* Mr. Eduard Ordov for Lempert Brothers International Investments, as well as by Mr. Peter Adolph as a Managing Director of Adolph & Komorsky Investments. The document provided:

> "Further to significant structural changes resulting from the merger of Lempert Brothers International Investments and Adolph & Komorsky Investments and establishment of an international holding company [...] All agreements and obligations signed by Adolph & Komorsky Investments and Lempert Brothers International Investments remain in full force till the moment new agreements are signed [...]"

Later after the insolvency of AKI Austria was commenced (see below at 2.4) the Investors were presented with a document called "Customer agreement" signed by Mr. Manfred Feitschinger as executive director of Lempert Brothers International, London. The pre-amble of the Agreement stated that Lempert Brother International LTD, London was acting by virtue of Power of Attorney granted by Lempert Brothers International USA Inc. The subject of the agreement was that LBI London shall undertake towards the Investor all and any obligations of the company in liquidation Adolph & Komorsky International GmbH. The Agreement provided that Lempert Brothers International USA, Inc shall ensure proper fulfillment of their obligations by managing the Investor's funds, rendering custodian and clearing services and undertaking transaction securities. The Investors were entitled to withdraw the investments on the expiry of minimum investment period of one year.

2.4 Insolvency proceedings of AKI

In September 2005 by the decree of Vienna Commercial Court bankruptcy proceedings have been instituted regarding the assets of Adolph & Komorsky International GmbH. The Investors have filed their claims as requested by the administrator of the proceedings however the claims were formally rejected. The reason for that was that Mr. Eduard Orlov claimed that the investments made by the investors in fact were the *commission* amounts paid to AKI for its services. The same was indicated in the bookkeeping records of the company. Mr. Orlov was unable to support his statement. At current the evidence has been filed by the Investors' counsel to the administrator of the proceedings in support of their claims. Furthermore, Mr. Orlov submitted to the administrator that the statements sent to the Investors on regular basis (see above under 2.2) were *forged and did not resemble statements normally issued by AKI.*

Mr. Manfred Feitschinger, who signed most of the Customer Agreements and other documents on behalf of AKI, declared that he did not remember whether he had signed any contracts – allegedly he signed empty forms without knowing the content.

The administrator of the proceedings immediately reported the situation to Austrian prosecutor's office and a criminal case Nr. 67 ST 4005 y was initiated against Mr. Eduard Orlov and Mr. Roman Orlov for a large scale fraud. The respective prosecutors are currently assessing a possibility to institute criminal process against Mr. Feitschinger as well.

According to the administrator of the proceedings, there is no property or assets at the company AKI that could satisfy any of the claims (in total there are over 100 creditors of the said company).

2.5 Official information about AKI and LBI

Adolph & Komorsky International GmbH was registered in Austria on October 18, 1999. The statutory capital of the company is 35000 Euro. The owners of the company were Mr. Eduard Orlov, Mr. Roman Orlov, Mr. Peter Adolph and Mr. Marc Komorsky, as well as a certain Mr. Fotios Stamiris-Chousos. The director of the company was Mr. Eduard Orlov. On September 14, 2005 the bankruptcy proceedings have been commenced in Austria for this company.

Adolph Komorsky Hoffman & Associates LLC was registered in the US under the NY state jurisdiction on June 06, 1995 as a domestic limited liability corporation, currently active.

Adolph Komorsky Hoffman & Associates Ltd was registered in the US under the Illinois state jurisdiction on June 10, 1996 as a foreign business corporation, currently active. The CEO of the corporation is Mr. Peter W. Adolph; the address: 245 Saw Mill River Road Hawthorne, New York, 1053.

Adolph Komorsky Hoffman & Associates LTD registration with NASD was suspended in April, 2002 upon disciplinary actions by the said organization.

In 2003 Mr. Peter Adolph and Mr. Marc Komorsky were revoked from NASD membership for failing to pay fines and/or costs.

Adolph Komorsky Hoffman & Associates LTD, also known as Adolph & Komorsky Investments, membership at NFA and CFTC was withdrawn in July 19, 2002.

Lempert Brothers International Ltd. was registered in Austria on May 30, 2002 as a Gesellschaft mit beschränkter Haftung (a limited liability company). The statutory capital of the company is 1000 GB pounds. The company holds foreign office in London. Registered type of activity is Handel mit Waren aller Art (trade of various types of items). Lempert Brothers International LTD was also registered in the UK on October 26, 2001 as a private limited company. Registered type of activity: business & management consultancy.

Lempert Brothers International Investments AG was registered in Switzerland on May 10, 2002. Registered address of the company is Rämistrasse 50, 8001 Zürich. Currently the company is undergoing a liquidation process.

Lempert Brothers International USA, Inc was registered in the US under the NY state jurisdiction on December 18, 2002 as a domestic business corporation, currently active. LBI USA is a member of NASD since February 6, 2004. The president of the company (according to the LBI web page information) is Mr. John J. Plunkett.

Lempert Brothers International USA, Inc is a member of NASD and SIPC.

None of the European companies of LBI are registered as rendering financial/investments services, as required under European law.

2.6 Other information received

Upon counsel's request the company Bear Stearns Securities Corp. indicated on monthly statements received by the Investors (see above under 2.2) as a clearance agent, informed counsel, *inter alia*:

> "We do not maintain any accounts in the clients' names and the noted account numbers are not Bear Stearns account numbers. Furthermore, the statements you provided, with the logo of Bear, Stearns Securities Corp. as clearance agent printed on them, are not our statements, nor do they resemble any statements issued by us."

Furthermore, the clearance agent informed that Adolph & Komorsky company seized clearing through their company in 2001.

In telephone conversation with the counsel, Mr. John J. Plunkett, the president of Lempert Brothers International USA, Inc, explicitly stated that his company never had any partnership or any other kind of relationship with AKI and never planned to overtake its obligations towards the Investors. He alleged that his company is purely a US based relatively new brokerage firm that does not have any formal connection to the European companies of the similar name – Lempert Brothers, which are only "affiliated companies". He never entrusted anybody to sign any contracts or other documents in Europe in the name or on behalf of Lempert Brothers International USA. He was allegedly unaware of any liquidation/bankruptcy proceedings of the European structures.

Adolph & Komorsky International GmbH, as well as European LBI structures are not properly authorized or licensed for providing financial brokerage services; therefore there is no guarantee or insurance coverage for the Investors.

3. Conclusion

The situation can be summarized as follows:

The Investors were informed by several employees and owners of various Adolph & Komorsky companies (Mr. Peter Adolph, Mr. Eduard Orlov, Mr. Manfred

Fetschinger and others) that they conclude contract and perform investments through a US-based company Adolph & Komorsky Investments, being a member of NASD, SIPC, MSRB, NFA, CFTC. Concluding contracts with the Austrian "branch" or "office" of AKI was allegedly necessary for "technical" reasons. Later, when some of the Investors started to experience problems with withdrawing their investments or interest accrued, the same officials together with certain other persons (Mr. Jean Luc Meier, Mrs. Nancy Prager-Kahiel) informed the Investors about the structural changes – merger of AKI with the "Lempert Brothers Holding".

In Autumn 2005, when the bankruptcy proceedings of AKI Austria commenced, the Investors occasionally found out that

- there is no formal link of AKI Austria with AKI New York, the former had never been a branch or a division of the latter;
- AKI Austria does not have any assets, as well as no insurance or other guarantees for the Investors to cover their claims, which it should have had as a brokerage company under European law;
- Adolph Komorsky Hoffman & Associates was expelled from NASD and withdrew membership in other here mentioned structures already in 2002-2003, so the information presented to the Investors was false;
- The statements presented to the Investors by AKI were false since the indicated clearance agent denies any connection to AKI;
- the director of the company Adolph & Komorsky International GmbH, Mr. Eduard Orlov refuses to admit the claims by the Investors, indicating that the amounts paid by the Investors (approximately 5 mln US dollars transferred by the here mentioned group of the Investors only) was paid to AKI Vienna as a "commission" for some unclear services.

Moreover, the situation with the alleged merger with the so called "Lempert Brother Holding", within which the Investors were offered to conclude new agreements for LBI to overtake the obligations of AKI, appeared as follows:

- the contract that was proposed to the Investors was signed by Mr. Feitschinger on behalf of Lempert Brothers International USA, Inc. However, despite the existence of a Power of Attorney, the president of

the latter, Mr. Plunkett, denied any intention to overtake the obligations of AKI or any knowledge about such contracts and processes of merger;

- the US based company LBI does not have any formal connection with the European "offices" as they are called at www.lempertbrothers.com. Therefore any contract concluded with the European LBI does not create direct link with the US based brokerage firm, identically with the situation with AKI; accordingly no guarantees of NASD and other investors protection organizations would apply to the investors;
- European – based LBI are under liquidation now; it is impossible to get in touch with any of the European offices – the numbers indicated on the web-page www.lempertbrothers.com are not active.

In counsel's opinion (supported by the opinion of Austrian prosecutors' office) the factual situation clearly indicates that a criminal offence has been committed against the Investors. The scope of the individuals involved in this large-scale fraud is currently assessed by counsel in close cooperation with the authorities.

4. Actions taken by counsel for the Investors

At current the international group of attorneys formed in order to represent the interests of the Investors is involved in both bankruptcy/civil and criminal proceedings on the Austrian forum. Simultaneously the following actions are considered and evaluated by counsel:

1. Initiation of criminal proceedings in USA;
2. Filing a civil claim against certain natural persons both in Europe and USA, that were involved in the situation;
3. Filing a civil claim against certain US based companies that were involved in the situation;
4. Informing the respective investors protection institutions in USA, including SIPC and NASD of the situation;
5. Informing all clearance agents mentioned in various AKI/LBI documents as holding the accounts for the Investors with the purpose of obtaining information about actual placement of the funds;
6. Involvement of the mass-media in USA to publish all the information known to counsel, including detailed and concrete description of the situation;

7. Consultations and cooperation with the national and international authorities in Europe and USA for the purpose of disclosure of the international network of the supposed fraud for full compensation of damages caused to the Investors.

Message Summary

Message Options
Details
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Sent 2006-11-04 10:24 AM
From Marlen Kruzhkov <mk@law-mk.com>
To George Ritter <sgm@imperiusa.com>
Filter Score 2
Filter Hits Compliance Insider: officer of 1
Reviewed John Plunkett

Subject Docs

File Attachments
[06-03-16 Board Resolution.doc] [06-03-16 R. Orlov Power of Attorney.doc] [06-03-16 E. Orlov Power of Attorney.doc] [06-03-16 Power of Attorney - Model Invest.doc]

Contents

Dear George,

Attached as requested please find (i) board resolution in regards to the President; (ii) model power of attorney for prospective clients; and (iii) powers of attorney for both Edward and Roman.

Please review the attached documents and contact me to discuss same.

Sincerely,

Marlen Kruzhkov, Esq.

Law Offices of Marlen Kruzhkov, P.L.L.C.
48 Wall Street, 26th Floor
New York, New York 10005
Telephone: (212) 363-2000
Facsimile: (212) 268-0287
E-Mail: mk@law-mk.com

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BOARD OF DIRECTORS RESOLUTION The undersigned, constituting all of the members of the Board of Directors of Lempert Brothers USA, Inc. (the "Company"), a New York corporation, with its principal place of business located at Rockefeller Center, 27th Floor, 1270 Avenue of the Americas, New York, New York 10020, hereby (i) immediately remove and dismiss John Plunkett as President of the Company; (ii) immediately appoint and install Mitch Borcherding ("MB") as the new President of the Company with all the rights and powers attendant to such office; (iii) direct the new President to make it his first order of business to take all possible and necessary acts required to register with all required and necessary governmental and regulatory agencies George Milter as the Chief Executive Officer of the Company; and (iv) authorize, empower and direct MB, on behalf of and in the name of the Company, to take any and all actions and execute any and all documents he deems necessary or desirable for the purpose of conducting the day-to-day operations of the Company. IN WITNESS WHEREOF, the undersigned have executed the foregoing instrument as of the _____ day of March, 2006. ______________________________ [name of person (s)]

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POWER OF ATTORNEY "NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNINC THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO PLEDGE, SELL, OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. YOU MAY SPECIFY THAT THESE POWERS WILL EXIST EVEN AFTER YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT. THE POWERS THAT YOU GIVE YOUR AGENT ARE EXPLAINED MORE FULLY IN NEW YORK GENERAL OBLIGATIONS LAW, ARTICLE 5, TITLE 15, SECTIONS 5-1502A THROUGH 5-1503, WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OF OTHER HEALTH CARE DECISIONS FOR YOU. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU." "Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law: That I, ROMAN ORLOV, residing at ____ do hereby appoint GEORGE MILTER, residing at

____ MY ATTORNEY (S)-IN-FACT TO ACT IN MY STEAD IN REGARDS TO ALL MATTERS AND ISSUES IN CONNECTION WITH THE BUSINESS OF LEMPERT BROTHERS USA, INC. IN MY NAME, PLACE AND STEAD in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by Law to act through an agent: Initial in the opposite box any one or more of the subdivisions as to which the principal WANTS to give the agent authority. ("NOTICE: The principal must write his or her initials in the corresponding blank space of a box below with respect to each of the subdivisions (A) through (N) below for which the principal wants to give the agent(s) authority. If the blank space within a box for any particular subdivision is NOT initialed, NO AUTHORITY WILL BE GRANTED for matters that are included in that subdivision") (A) real estate transactions .... [] B) chattel and goods transactions .... [] C) bond, share and

LEMPERT BROTHERS

INTERNATIONAL USA

1270 Avenue of the Americas, 27th Floor
New York, N.Y. 10020
U.S.A.

Eduard Orlov
Roman Orlov
Lempert Brothers International AG.
Singerstrasse 2/5
1010 Wien
Austria

March 23, 2006

Sent via E-Mail
Roman@LempertBrothers.com
Eduard@LempertBrothers.com
public@aon.at

Sent via Fax
011-43-1961-3232

Gentlemen:

I must write to you and officially notify you of several things which have occurred.

I.

A. I have just learned that George Milter, your nephew, who occupies your office on our premises at your request, has apparently executed a certain "Partnership Cooperation Agreement" dated July 9, 2005 between Lempert Brothers International USA, Inc. ("USA") and Lempert Brothers International Inc., Ltd. ("Lempert"). As you are aware, George is not an officer, director or employee of USA. Furthermore, he signed the agreement as the President/CEO of Lempert Brothers International USA, Inc., the NASD registered US Broker Dealer. George never was nor could he ever be, without satisfying the requirements below, an officer of the US Broker Dealer.

B. As you are also aware (I told you on many occasions) all of the broker dealer officers must be:

1. persons who have passed the Series 7 exam and are registered with the NASD, and

2. persons who have additionally passed the Series 24 exam called the Principals Exam.

George has neither qualification.

C. I also recently learned that he signed another document as President of Lempert Brothers International USA, Inc., but I was awaiting your next visit to discuss the matter face to face.

D. I am deeply concerned over this issue which is a very serious matter. George has absolutely zero authority to sign anything in the name of the broker dealer. He should not be on the premises. His presence only assists him in creating the false impression that he is part of the brokerage firm. All correspondents that were shown or relied on the agreements must be notified of his total lack of authority. I am appalled that you permitted this knowing full well (I have told you many times) that only qualified officers may sign documents on behalf of a Broker Dealer. His execution of the document is tantamount to fraud.

II.

A. It has also recently come to my attention that Manfred Feitschenger, the President of Lempert International AG, utilized a Power of Attorney issued by Lempert Brothers International USA, Inc., to sign contracts on behalf of the broker dealer.

LEMPERT BROTHERS
INTERNATIONAL USA

1270 Avenue of the Americas, 27th Floor
New York, N.Y. 10020
U.S.A.

B. This is a total misrepresentation and outright fraud. Lempert Brothers International USA, Inc. has never issued a Power of Attorney to anyone, or any company, nor could it ever issue a Power of Attorney since this would be a violation of the rules.

C. Additionally we have also received allegations of some secret merger and Lempert Brothers International USA, Inc. agreeing to accept accounts of a firm named AKI, to manage them going forward and to eventually make them whole for their losses incurred at AKI. This too is erroneous, baseless, and totally fraudulent. Lempert Brothers International USA, Inc. was never a part of this, nor would it ever so agree to such .We have no knowledge of any of these purported accounts. To suggest otherwise would be fraudulent.

III.

A. Lastly, I recently became aware of allegations of fraud perpetrated by various Lempert companies which you own and or control, as well as similar allegations of fraud by each of you. It appears that Attorneys for investors and individuals are threatening civil and criminal prosecution and may be attempting to involve and link Lempert Brothers International USA, Inc. in the various frauds alleged by them. Gentlemen, I as President of Lempert Brothers International USA, Inc. cannot avoid responding to the allegations

These are all very serious matters which must be addressed directly to me in writing. I do not want to discuss these items with you on the phone, and insist that you respond to me in writing immediately.

Very truly yours

John J Plunkett
President

Content-Type:application/msword Content-Disposition:attachment;filename=Eduard & Roman Allegations letter3.22.06 on letterhead.doc ÐÏ à¡± á??????????????>? ?þÿ ? ??????????? ??? ??????? ??C??? ???þÿÿÿ????F???

Eduard Orlov Roman Orlov Lempert Brothers International AG Singerstrasse 2/5 1010 Wien Austria March 23, 2006 Sent via E-Mail HYPERLINK "mailto:Roman@LempertBrothers.com" Roman@LempertBrothers.com HYPERLINK "mailto:Eduard@LempertBrothers.com" Eduard@LempertBrothers.com HYPERLINK "mailto:public@aon.at" public@aon.at Sent via Fax 011-43-1961-3232 Gentlemen: I must write to you and officially notify you of several things which have occurred. I. A. I have just learned that George Milter, your nephew, who occupies your office on our premises at your request, has apparently executed a certain "Partnership Cooperation Agreement" dated July 9, 2005 between Lempert Brothers International USA, Inc. ("USA") and Lempert Brothers International Inc., Ltd. ("Lempert"). As you are aware, George is not an officer, director or employee of USA. Furthermore, he signed the agreement as the President/CEO of Lempert Brothers International USA, Inc., the NASD registered US Broker Dealer. George never was nor could he ever be, without satisfying the requirements below, an officer of the US Broker Dealer. B. As you are also aware (I told you on many occasions) all of the broker dealer officers must be: 1. persons who have passed the Series 7 exam and are registered with the NASD, and 2. persons who have additionally passed the Series 24 exam called the Principals Exam. George has neither qualification. C. I also recently learned that he signed another document as President of Lempert Brothers International USA, Inc., but I was awaiting your next visit to discuss the matter face to face. D. I am deeply concerned over this issue which is a very serious matter. George has absolutely zero authority to sign anything in the name of the broker dealer. He should not be on the premises. His presence only assists him in creating the false impression that he is part of the brokerage firm. All correspondents that were shown or relied on the agreements must be notified of his total lack of authority. I am appalled that you permitted this knowing full well (I have told you many times) that only qualified officers may sign documents on behalf of a Broker Dealer. His execution of the document is tantamount to fraud. II. A. It has also recently come to my attention that Manfred Feitschenger, the President of Lempert International AG, utilized a Power of Attorney issued by Lempert Brothers International USA, Inc., to sign contracts on behalf of the broker dealer. B. This is a total misrepresentation and outright fraud. Lempert Brothers International USA, Inc. has never issued a Power of Attorney to anyone, or any company, nor could it ever issue a Power of Attorney since this would be a violation of the rules. C. Additionally we have also received allegations of some secret merger and Lempert Brothers International USA, Inc. agreeing to accept accounts of a firm named AKI, to manage them going forward and to eventually make them

whole for their losses incurred at AKI. This too is erroneous, baseless, and totally fraudulent. Lempert Brothers International USA, Inc. was never a part of this, nor would it ever so agree to such .We have no knowledge of any of these purported accounts. To suggest otherwise would be fraudulent. III. A. Lastly, I recently became aware of allegations of fraud perpetrated by various Lempert companies which you own and or control, as well as similar allegations of fraud by each of you. It appears that Attorneys for investors and individuals are threatening civil and criminal prosecution and may be attempting to involve and link Lempert Brothers International USA, Inc. in the various frauds alleged by them. Gentlemen, I as President of Lempert Brothers International USA, Inc. cannot avoid responding to the allegations These are all very serious matters which must be addressed directly to me in writing. I do not want to discuss these items with you on the phone, and insist that you respond to me in writing immediately. Very truly yours John J Plunkett President INTERNATIONAL USA 1270 Avenue of the Americas, 27th Floor New York, N.Y. 10020 U.S.A. Phone (212) 715-9887 Toll Free (866) LBI – USA1 Fax (212) 644- 2335 www.lempertbrothers.com A Lempert Brothers Company – New York - London - Zurich - Vienna – Riga – Moskow - Kiev

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John J Plunkett
476 16th Street
Brooklyn NY 11215

Ms Elissa Meth Kestin
Senior Regional Counsel
FINRA District No. 10
Department of Enforcement
One Liberty Plaza/165 Broadway
New York, NY 10006

via Fax 212-858-4770 and Certified Mail

January 19, 2010

Re: Disciplinary Proceeding No. 20060052598-01

Dear Ms Meth Kestin:

I hereby deny the allegations contained in the Notice of Complaint, and affirm my defenses as stated below and in previous correspondence to Staff.

I hereby request a hearing on the allegations.

My response to the allegations follows.

1. During the on-going dispute with the owners, Eduard and Roman Orlov, we (myself, Brian Coventry, and Mitch Borcherding) told them on numerous occasions that we would leave, and were preparing to do so. These statements were emphasized during the winter of 2005/2006 as it became apparent that all of their promises which they made to not only pay us what we were owed in back pay but also to provide equity ownership in the firm if we stayed were just a delay tactic. They never intended to compensate us but instead needed us in place in order to move hundreds of client accounts from Lempert Europe which they had looted through a massive Ponzi scheme and had told the clients that they would be transferred to the US Broker Dealer and made whole. Without us in place they could not continue their scam.

The complaint only states "Plunkett" which is incorrect. Richard Heller the attorney for Lempert had contacted me to see if there was interest in forming a new broker dealer since he knew of the situation and was owed money from Lempert Europe. I informed Brian Coventry and Mitch Borcherding and the three of us met with Richard Heller and then his two investing clients. It was decided to move forward with five owners of the new BD. The two investing partners, John Ince and Ross Rivard owned 50% of the firm in total, and the three operating partners, myself Brian Coventry, and Mitch Borcherding owned the remaining 50 % divided equally. The new BD was never my firm but from inception was a combined effort.

We discovered the Ponzi scheme which the Orlovs were perpetrating on their clients in Europe. This was uncovered by Raymond Thomas a Series 24 principal, who saw a fax on a Saturday morning at the office and immediately called me. During the next several weeks:

A. I received correspondence from an attorney in Latvia regarding a class action lawsuit she was pursuing against Lempert and the Orlovs in Europe. With counsel we responded to her that we were totally unaware of this.

B. Uncovered documents signed by their nephew, and unregistered person, as the President of the US Broker Dealer.

C. Uncovered e-mails indicating that all of the Lempert Europe accounts were to be transferred to the US Broker Dealer, and that then they would be made whole!

D. Uncovered e-mail from another attorney for Lempert Europe stating that George Milter, their nephew, should forge documents which the SEC had requested. George should provide these forged documents to me as being legitimate for me to present to the SEC and NASD.

E. I was informed by Raymond Thomas that while I was out of the office Eduard and George had spoken with the registered reps one at a time strongly urging the reps to have their clients buy a penny stock and that they would receive a commission of 25 percent.

F. Received no response to my e-mail, faxes, and letters demanding explanations. Very negative since we spoke daily, and I had their cell numbers as well. All contact was halted on their end.

G. Uncovered e-mail that Eduard and Roman were to accelerate their plan to move all of the accounts.

We (myself, Brian Covenrty, Ray Thomas, and Mitch Borcherding) met and decided that we had to leave immediately in order to protect our clients and our good name. Mitch just prior to leaving informed us he would not give up his position he had taken on a Lempert Fund. We insisted that he do so; he would not and he stayed behind. The remaining three of us met all of the registered reps off premises and informed them of our discoveries, and that the three of us were leaving. They could stay if they wanted to. They were all friends of Ray Thomas who had recruited them when he joined and all of them decided to leave with us and "go with Ray".

It must be pointed out that our intent was to have the new firm approved and resign in a professional and orderly manner due to our not being paid for over one year. If any of the reps wanted to transfer to our new firm that would have been up to them. We were prepared to hire new reps and build the business accordingly.

We had not been paid for one year and to leave before the new broker dealer was approved made no sense and we had no intention to do so and we would not have done so. However the events described above caused us to act swiftly in order to protect the clients and our good name.

Due to the forgeries we had uncovered we removed records in order to copy them to

protect ourselves. We were deeply concerned that we would be implicated in their criminal activities. Our intent was to return everything very quickly once we had copied such to protect ourselves. The actions of their attorney, Marlen Kruzhkov we believe were meant to delay the return of the documents which they did. He acted in bad faith with our attorney Al Greco for a long time and then abruptly dropped the talks.

2. Previously Addressed

Once again I must stress that both Brian Coventry and Ray Thomas acted with me and were never ordered by me.

3. Again the new BD was not mine. It was 50% owned by myself, Brian Coventry, and Mitch Borcherding as the operating partners, and 50% owned by John Ince and Ross Rivard as the investing partners (brought to us by Richard Heller Esq).

4. Staff has not stated why the documents were not returned quickly as intended. I have addressed it in #1 above. Nor has Staff addressed why we brought Lempert to arbitration which is pertinent. We were being harassed and threatened by Lempert personnel. Brian was physically threatened by George Milter. We obtained a cease and desist letter and George ripped it up in front of me. George threatened my family and me that the Russian mob would get even with all of us. We engaged Dan Druz Esq. to proceed with an arbitration in order to have the harassment stopped. We were being prevented from doing any business by Lempert, not the other way around that they claimed in the arbitration. We told Dan not to seek the money but to just have them leave us alone. It turned out that Dan Druz was not acting in our best interests as I will explain later and he convinced us to seek the money.

5. Our actions did not cause these things to occur since all the information was at the clearing firm, at NASD, with the FINOP, and on their back-up tapes. Mitch was a Series 24 as well. Lempert's attorney Marlen Krusckov specifically worked to delay the return of the documents to strengthen his case.

6. I believe I did respond to this and am endeavoring to locate a copy of such.

7,8,9,10,11. Statement of dates No response needed.

12. No response needed

13. Their lack of response to phone, e-mail, fax combined with the other evidence where they were being instructed to lie to the SEC etc, to forge documents for the SEC, and the documents which they had already forged caused us to believe that they would alter documents if we did not have copies, and would implicate us in their illegal criminal activities. We would become embroiled in hundreds of arbitrations and possibly criminal prosecutions. Based upon their actions we were certain they would forge more documents.

14. Addressed above

15. Addressed above

16, 17,18 19. Addressed above

20. The main reason for filing the arbitration was to have Lempert stop harassing, threatening us personally, and preventing us from doing business. Dan Druz pushed for the money. I told him it was blood money as far as I was concerned and did not want it. He persuaded us to ask for it we now know to increase his fees.

It is very important to note that the attorney for Lempert who handled the arbitration, Alan Brodherson, stated to myself and counsel that Dan Druz totally misrepresented us at the arbitration. He stated that Druz was unprepared and not knowledgeable of the facts. He also stated that he found out that Druz was handling his own personal arbitration case at the time he was handling our case. One week before our case was decided Druz won his case and received approximately $700,000. Alan stated that Druz should be sued for his actions and Alan stated that he would be glad to testify on our behalf.

21. We contend that all of the Lempert allegations were false.

22. Again as previously stated the reasons for the delay as just as important as the delay...Lempert attorney caused the delay. Staff has omitted the reason.

23. I disagree with this. Previously addressed.

24. We believe that our actions were necessitated by the criminal activity we uncovered in Lempert Europe and the plot to move the accounts to the US BD to continue the criminal activity here. We acted to protect the clients and our good name. We believe that Staff is ignoring all the facts. We believe that our conduct was consistent with high standards of commercial honor and just and equitable principles of trade. We believe that the owners of Lempert, their nephew George Milter, and Mitch Borcherding's actions were inconsistent with high standards of commercial honor and equitable principles of trade, and were guilty of criminal actions.

I would like to stress the fact that immediately upon leaving Lempert we contacted NASD, SEC, and our clearing firm informing them of what we had uncovered and our actions.

The SEC examiner (who was conducting a routine exam during this time) brought his supervisor with him to Al Greco Esq. office that afternoon. The supervisor stated that we had done the right thing in leaving hastily and that he would look into it.

When we met the NASD for an On The Record statement, one of the Staff stated to Al Greco and me before it started that Lempert had attempted to claim that I was not

the President for the time I was there. He had told them that NASD records stated they were incorrect. This proves our concern to be valid that they would change records; they were attempting to do so and were caught.

Based upon the above we believe that Plunkett did not violate Conduct Rule 2110

25. No response needed

26. Done

27. The documents which are stated that were not attached are mis-filed to the best of my knowledge, but do exist. I believe that they have been submitted to Staff previously as well as presented at the arbitration. I am reviewing documents at the storage facility attempting to locate such.

28. Addressed above. I request that I see a copy of the response in question to determine the unnamed people which are being referred to.

29,30,31,32,33,34,35. As stated in item #27 I did indeed prepare the 30paragraph response submitted on June29, 2009. I am sure that I also responded to the additional requests. I am attempting to locate a copy of the response reviewing files in storage. I believe it was sent but not received by Staff. There was no intent to not respond...why would I originally respond with a 30 paragraph submission. I do believe it was lost in the mail. I need time to review many file boxes and believe it will be located.

Therefore I believe it was sent and I did not violate FINRA procedural Rule 8210 and Conduct Rule 2010.

Relief Requested

A. I believe that no relief should be imposed

B. I believe that this is unfair and I should not bear the costs.

Further I hereby make a motion to have all of the allegations against me dismissed.

Sincerely

John J. Plunkett

3

Subj: **John Joseph Plunkett Hearing Panel Decision, 20060052598-01**
Date: 12/22/2010 3:11:15 P.M. Eastern Standard Time
From:
To:
CC:

Good Afternoon:

Attached please find the Notice of Hearing Panel Decision and decision for the John Joseph Plunkett matter.

Thank you.

Ashley-Rose Harris
Case Administrator
FINRA
Office of Hearing Officers
1801 K Street, N.W.
Washington, D.C. 20006

p (202) 728-8003
f (202) 303-8598

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN JOSEPH PLUNKETT (CRD No. 2321368), Respondent.	Disciplinary Proceeding No. 20060052598-01 Hearing Officer – LBB

NOTICE OF HEARING PANEL DECISION

Enclosed is the Hearing Panel's decision in this disciplinary proceeding dated December 22, 2010 ("Decision"). This Decision will become the final decision of FINRA 45 days after service of the Decision upon you unless either you or the Department of Enforcement appeals to the National Adjudicatory Council ("NAC"), or the NAC calls the Decision for review.

You may appeal to the NAC if you disagree with this Decision by filing a Notice of Appeal within 25 calendar days after service of the Decision upon you. Your rights of appeal are set forth in Code of Procedure Rule 9311. If another Party files a Notice of Appeal you may file a Notice of Cross-Appeal within five days after service of the Notice of Appeal. You should read carefully the entire 9300 series of Rules in the Code of Procedure to understand fully and protect your rights.

Upon appeal or review, the NAC may affirm, dismiss, modify, or reverse any of the findings made by the Hearing Panel; and the NAC may affirm, modify, reverse, increase, or reduce the sanctions imposed by the Hearing Panel, or may impose any other fitting

sanctions. Questions concerning the appeal process should be directed to the General Counsel's Office of FINRA at (202) 728-8071.

To appeal this Decision, you must file a written Notice of Appeal with the Office of Hearing Officers at the following address: FINRA, Office of Hearing Officers, 1801 K Street, NW, Suite 301-L, Washington, DC 20006-1500. The following information must be included in the Notice of Appeal: (1) the name of the disciplinary proceeding; (2) the docket number of the disciplinary proceeding; (3) the name of the Party filing the appeal; (4) a statement of whether oral argument before the NAC is requested; and (5) a brief statement identifying the findings, conclusions, or sanctions to which you are taking exception. The NAC may, in its discretion, deem waived any issue not raised in the Notice of Appeal or the Notice of Cross-Appeal. In addition, the Notice of Appeal must be signed by you or your counsel.

SO ORDERED.

Lawrence B. Bernard
Hearing Officer

Dated: December 22, 2010

Copies to: John J. Plunkett (*via e-mail and first-class mail*)
Elissa Meth Kestin, Esq. (*via e-mail and first-class mail*)
Julie K. Glynn, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN JOSEPH PLUNKETT (CRD No. 2321368), Respondent.	Disciplinary Proceeding No. 20060052598-01 Hearing Officer – LBB **HEARING PANEL DECISION** December 22, 2010

Respondent John Joseph Plunkett is suspended for two years and fined $20,000 for taking his firm's books and records at the time of his resignation from the firm, in violation of NASD Conduct Rule 2110. Respondent is suspended for an additional six months and fined an additional $5,000 for failing to respond to a request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The suspensions shall be served consecutively. Respondent is also ordered to pay costs.

Appearances

For the Department of Enforcement: Elissa Meth Kestin, Senior Regional Counsel, and Julie K. Glynn, Senior Regional Counsel, New York, New York.

John Joseph Plunkett, *pro se*.

DECISION

The Department of Enforcement filed the Complaint in this disciplinary proceeding on December 1, 2009, asserting two causes of action against Respondent John Joseph Plunkett ("Respondent").[1] The First Cause of Action charges Respondent with engaging in conduct

[1] 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). For the First Cause of Action, this decision relies on NASD Conduct Rule 2110, which was the applicable rule at the time of Respondent's alleged misconduct. For the Second Cause of Action, this decision relies on FINRA Rules 8210 and 2010, which had been implemented prior to the alleged violation.

inconsistent with just and equitable principles of trade, in violation of NASD Conduct Rule 2110, by taking almost all of the books and records from his firm when he, and most of the firm's registered representatives, resigned from the firm. The Second Cause of Action charges Respondent with failing to respond to a FINRA request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

A hearing was held in New York City on September 27 and 28, 2010, before a Hearing Panel composed of one current and one former member of the District 10 Committee, and a Hearing Officer.

I. Summary

A. First Cause of Action: Removal of Books and Records

Beginning in 2003, Respondent was the president and chief compliance officer of Lempert Brothers International USA, Inc. ("Lempert USA"),[2] a FINRA member firm that he helped establish. Lempert USA was owned indirectly by Roman and Edouard Orlov, Ukrainian brothers who also owned brokerage firms in Europe. Lempert USA was unprofitable, and stopped paying Respondent and other representatives in March 2005. In the summer of 2005, Respondent and two other Lempert USA principals, Mitch Borcherding ("Borcherding") and Brian Coventry ("Coventry"), secretly began to form a new brokerage firm, Emerald Investments, Inc. ("Emerald"), with plans to take Lempert USA's business and brokers to their new firm.

In early 2006, Respondent, Borcherding, and Coventry began to receive reports that the Orlovs were engaged in fraud in their European operations. In March 2006, Respondent learned that the Orlovs were about to fire him. In late March and early April 2006, Lempert USA was

[2] Lempert Brothers International USA, Inc. was related to other firms that included the name "Lempert." Lempert USA was owned by Lempert Holdings Establishment, a European holding company. CX-2; CX-5, at 5; CX-66, at 35. In this decision, "Lempert USA" refers solely to the American firm that was a FINRA member.

the subject of an on-site SEC examination. Respondent did not inform the SEC examiner of the fraud allegations concerning the Orlovs.

On the night of April 3, 2006, Respondent, Coventry, and several other Lempert USA registered representatives resigned from the firm. They left the office and, when those who were not included in their plans had left for the day, they went back and took almost all of the firm's original books and records, copied the firm's computer files, and erased the files on the firm's computers. Respondent and the others soon established an office for Success Trade Securities, Inc. ("Success Trade"), and moved to Emerald when its FINRA membership application was approved. Respondent did not return the books and records for several months.

Respondent seeks to justify his actions by asserting that he acted to protect the firm's clients, European investors, the registered representatives who left the firm and the Securities Investor Protection Corporation ("SIPC") from frauds that the Orlovs would have committed. The Hearing Panel finds that the true motivation was economic self-interest and not the protection of others. Regardless of the true motivation, however, the Hearing Panel finds that Respondent's actions were inconsistent with the high standards of commercial honor required of registered representatives, and violated NASD Conduct Rule 2110.

B. Second Cause of Action: Failure to Respond to a Request for Documents and Information Pursuant to Rule 8210

Enforcement sent Respondent a Wells notice on May 8, 2009, notifying him that a preliminary determination had been made to file a disciplinary action charging him with a violation of NASD Rules for removing Lempert USA's books and records. Respondent responded to the Wells notice on June 29, 2009. On July 15, 2009, a FINRA examiner served Respondent with a Rule 8210 request seeking documents and information relating to Respondent's response to the Wells notice. Respondent failed to submit a substantive response

until several months after the Complaint was filed. By failing to provide documents and information in response to the July 2009 request until after the Complaint was filed, Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

II. Respondent

Respondent first registered with a FINRA member firm in 1993. He was registered with Lempert USA from August 13, 2003, through April 3, 2006. Respondent was co-president and chief compliance officer during his first year at Lempert USA, then became the sole president and chief compliance officer. CX-1; CX-2; CX-5, at 14; Tr. 44-45.

Although he was still employed by Lempert USA Respondent began his employment with Emerald in October 2005. He remained employed in this capacity by Emerald until January 2010. CX-1; CX-3. When Respondent left Lempert USA, he registered with Success Trade, where he was employed from April 17, 2006, until July 11, 2006. When Respondent left Success Trade, he registered with Emerald, where he was registered until January 4, 2010. He has not been registered with a member firm since January 2010. CX-1.

III. Respondent Violated NASD Rule 2110 by Taking His Firm's Books and Records When He Left Lempert USA

A. Facts

1. Events Leading Up to Respondent's Departure from Lempert USA

a) Lempert USA's Struggles

Respondent was hired in August 2003 to help set up Lempert USA. Tr. 41-42. Lempert USA was owned indirectly by the Orlovs, whose main office was in Vienna, Austria. CX-66, at 35; Tr. 94. George Milter ("Milter"), the Orlovs' nephew, was their representative in the United States. Milter was never registered with FINRA, but had an informal role with Lempert USA. CX-66, at 35; Tr. 87, 204, 261, 318, 332. Borcherding helped to set up Lempert USA in late

2002. He was initially the firm's executive vice-president, then its co-president with Respondent when the firm first began operations, until Respondent became the sole president. Borcherding became a trader for the firm, primarily trading the owners' capital. Tr. 316; CX-5, at 14. Coventry was hired to handle investment banking. Tr. 48; CX-5, at 14.

Lempert USA was never profitable. By March 2005, the firm was having financial difficulties, and could not pay its employees, including Respondent.[3] Lempert USA stopped paying Respondent in March 2005. CX-33, at 5; CX-42; CX-44, at 3; CX-46, at 2; CX-57, at 22-23; Tr. 47-48, 120-121, 317. As a result of the financial situation, Respondent and other Lempert USA principals told the owners that they would have to look for another firm with which to associate, and they began to look for other employment. Tr. 318, 361-362.

b) Respondent and Other Lempert Principals Take Steps to Start a New Broker-Dealer While Employed at Lempert USA

In the summer of 2005, Lempert USA's lawyer introduced Respondent, Borcherding, and Coventry to two investors, J.I. and R.R. (the "Emerald Investors"). The group developed a plan to start a new broker-dealer, which became known as Emerald. Tr. 51, 71, 319; CX-29, at 5; CX-51; CX-52; CX-53; CX-81. Respondent did not disclose Emerald to the Orlovs while he was at Lempert USA. Tr. 95, 167.

A shareholder agreement was drafted in about August 2005. Tr. 51; CX-66, at 41. Respondent, Borcherding, Coventry, and the Emerald Investors signed the agreement in September 2005. CX-51. The Emerald Investors agreed to contribute $250,000. Respondent, Borcherding, Coventry agreed to establish the new broker-dealer as quickly as possible, to work for it once established, and to continue to build the business at Lempert USA with the goal of

[3] Respondent testified that the Orlovs had stopped putting money into the firm by March 2005. Tr. 47-48. In fact, the Orlovs contributed $150,000 to the firm in March and $100,000 after March. CX-5 at 18.

bringing Lempert USA's business to the new broker-dealer. However, Lempert USA had no business until Ray Thomas ("Thomas") joined the firm later in 2005, as a Series 24 sales supervisor, and brought retail brokers to the firm. Tr. 47, 55-57, 130; CX-5, at 14; CX-51, at 5-6.

Although he was still president and chief compliance officer at Lempert USA, Respondent was Emerald's president and chief compliance officer from the time it was formed in October 2005. CX-3; Tr. 59-60. In late 2005 through early 2006, Respondent, Borcherding, and Coventry continued to prepare for the move to their new broker-dealer. They hired a consultant and an attorney to do the paperwork for the new firm. Tr. 59. In October 2005, Respondent told the Emerald Investors he would stay at Lempert USA "in order to grow, maintain and bring a functioning broker-dealer online from day one after approval," and that he was taking action to "continue to build the business, maintain it, and be able to move it with us." Respondent hoped to obtain FINRA's approval for Emerald by the beginning of 2006, and projected that he and the others would bring enough business to Emerald to at least break even without additional cash infusions. CX-81; Tr. 66, 73.

Respondent, Borcherding, and Coventry each received a total of between $25,000 and $40,000 from the Emerald Investors in late 2005. Tr. 77-78, 366-367; CX-84.[4] Respondent told the Emerald Investors, and testified at the hearing, that they did not keep the money they received from the Emerald Investors, but used it to pay Lempert USA's bills so they could build the business and move it to Emerald. CX-81; Tr. 400-401.[5]

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[4] Respondent acknowledged receipt of at least $25,000. Tr. 168-170; CX-84. Borcherding testified that he received $40,000. Tr. 366-367. Under the terms of the shareholder agreement, the three principals should have received the same amount.

[5] The Hearing Panel did not find this assertion credible. It is also inconsistent with the demand in arbitration by Respondent and Emerald against Borcherding, in which Respondent and Emerald sought to recover the $40,000 from Borcherding. CX-65.

Respondent signed a Uniform Application for Broker-Dealer Registration (Form BD) for Emerald as the new firm's president on December 22, 2005. The Form BD was submitted to FINRA on January 19, 2006. CX-54; CX-55; Tr. 84. In January 2006, Respondent reported to the Emerald Investors that there had been good progress in securing a lease for Emerald's offices and in building the Lempert USA business, and that he would soon execute an agreement with a clearing firm. Respondent expressed optimism about the plans and projections for Emerald. CX-84. Coventry signed a lease for office space for Emerald on March 22, 2006. CX-44, at 6; Tr. 109. Emerald's office was on the same floor as Lempert USA. CX-56; Tr. 107.

On June 30, 2006, FINRA notified Respondent that Emerald's membership application had been approved. Tr. 60.

c) Respondent Learns of Allegations Concerning the Orlovs' European Operations

In early 2006, Respondent spoke to a Latvian lawyer concerning allegations of fraud in the Orlovs' European operations. The lawyer also told Respondent that the Orlovs had represented that Lempert USA would participate in a merger, partnership, or other business relationship with Lempert entities in Europe. Respondent informed the lawyer that these representations concerning plans for a business relationship were false. On March 1, 2006, the lawyer's firm sent Respondent a letter following up on their conversations. The letter stated that they represented clients who had invested with Adolph & Komorsky International ("AKI"), an Austrian brokerage firm owned and operated by the Orlovs, and that the Orlovs were the subject of criminal fraud proceedings in Austria. The Latvian attorneys claimed that the head of a Lempert company in London ("Lempert London") had signed an agreement representing that Lempert USA would take over AKI's obligations to the European investors and provide services to AKI's European customers. CX-86, at 9-10, 12; Tr. 181-184.

On about March 22, 2006, FINRA received a letter from a Latvian investor, alleging that there was a connection among Lempert USA, AKI, and a failed American brokerage firm. The investor alleged that Lempert USA had been named as the manager of the customer's funds, and that someone from Lempert International had agreed that Lempert USA "takes all the obligations of the bankrupt" AKI. CX-90. FINRA forwarded the letter to Respondent on March 31, 2006. CX-90; Tr. 171-172. Respondent also received an undated letter from another Latvian investor alleging fraudulent activities by Lempert London, enclosing a cooperation agreement between Lempert London and Lempert USA that was signed by Milter. CX-4 at 29.

Respondent wrote to the Orlovs on March 23, 2006, concerning the allegations against them in Europe, and making allegations concerning improper acts by Milter. CX-18; CX-88; Tr. 195-197. The Orlovs were allegedly on vacation and did not respond. Tr. 192-193; CX-18, at 5.[6]

d) Respondent Learns that the Orlovs Plan to Fire Him

On about March 16, 2006, a week before Respondent wrote to the Orlovs concerning the fraud allegations, an attorney representing Milter and the Orlovs sent a draft resolution of Lempert USA's board of directors to Milter at Lempert USA. The resolution stated that the board would immediately terminate Respondent's employment as president. CX-18 at 36; Tr. 117-118. As Lempert USA's chief compliance officer, Respondent reviewed all Lempert USA e-mails. Respondent saw the e-mail with the draft resolution before he left Lempert USA.

[6] The Hearing Panel makes no findings with respect to the accuracy of the allegations concerning the Orlovs or Milter. The allegations are hearsay of unproven reliability, and a finding would not be supported by the record. *See, e.g., Joseph Abbondante*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23, at *32-33 (Jan. 6, 2006), *aff'd*, 209 Fed. Appx. 6 (2d Cir. 2006); *Dep't of Enforcement v. Cuozzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *24, n.12 (N.A.C. Feb. 27, 2007); *Dep't of Enforcement v. Belden*, No. C05010012, 2002 NASD Discip. LEXIS 12, at *22 (N.A.C. Aug. 13, 2002)..

He knew at least as early as March 23, 2006, that the owners intended to fire him as president. Tr. 80, 112-113, 117, 118, 120, 193.

On March 30, 2006, the attorney for the Orlovs and Milter sent them an e-mail saying that Respondent would soon be relieved of his position with Lempert USA. CX-89. Respondent saw this e-mail before he left Lempert USA. Tr. 113, 116.

2. Respondent Leaves Lempert USA and Takes the Firm's Books and Records

In late March or early April 2006, Respondent and Thomas, Lempert USA's sales supervisor, met out of the office with the firm's seven or eight registered representatives to explain their plans to leave Lempert USA. All agreed to join Respondent, Thomas, and Coventry in leaving the firm and associating with Emerald. Tr. 131-132, 414. On March 31, 2006, Respondent wrote 15 checks from Lempert USA's bank account, totaling about $33,000, making payments to himself, other representatives who were leaving the firm, J.M. (the firm's sole clerical employee, who was leaving the firm with Respondent and the other representatives), and vendors. CX-12, at 19 et seq.; Tr. 123. The checks required signatures from Respondent and Borcherding, who co-signed the checks late in the afternoon of April 3. Tr. 126, 370. When he signed the checks, Borcherding did not know that Respondent and most of the firm's other representatives were leaving Lempert USA that night. Tr. 127.

At some time on April 3, 2006, Forms U5 were filed for Respondent and the other registered representatives who were leaving. Tr. 423-424. All Lempert USA employees left the office on April 3 and resigned from the firm that night, except Borcherding and registered representative Andy Shah, who were not aware of the others' plan. Respondent and the others waited for Borcherding to leave the office, then returned and took all of the firm's books and records except those that were in Borcherding's, Shah's, and Milter's offices. They took order

tickets, accounting documents, customer files, employee files, the firm's checkbook and check register, bank statements, brokerage statements, FOCUS filings, compliance manuals, incorporation documents, documents relating to investment deals, and all computer records. In addition, they erased almost everything from Lempert USA's computers, and removed the backup computer tapes.[7] Tr. 132-137, 132, 320, 414, 331, 399; CX-5, at 1; CX-26, at 1, 2, 7, 9; CX-29, at 2-3; CX-42, at 2. They moved the documents to an office in the same building, where Coventry had arranged to have space available. Tr. 143-144, 419. The documents were subsequently moved to Emerald's office. Tr. 421.

Before leaving on April 3, Respondent faxed a letter of resignation to the Orlovs in Vienna. CX-85; Tr. 137. The other representatives who left submitted letters of resignation addressed to Respondent as Lempert USA's president and chief compliance officer. CX-85; Tr. 129-130.

Borcherding arrived to a cleaned-out office on the morning of April 4, 2006. Tr. 319. It appeared to him that everything had been taken but the files from his office. He found that computer files had been deleted and the backup tapes had been taken. Tr. 319, 331. He called the police. He also called the bank and reported that the firm's checkbook had been stolen and stopped payment on all checks. Tr. 321.

Because Emerald's membership application had not yet been approved by FINRA, Respondent and the others who left Lempert USA joined Success Trade. Tr. 146-147. Within about 24 hours after leaving Lempert USA, the representatives had contacted all of their clients. The clients also received a letter from the brokers following up on the telephone calls. Virtually

[7] J.M.'s husband ran the computer firm that maintained Lempert's e-mails. He assisted in the removal of computer files and the erasure of Lempert USA's computers. The husband's firm subsequently received a contract to maintain Emerald's computers. Tr. 122.

all of Lempert USA's clients transferred their accounts to Success Trade, and then to Emerald. Tr. 68-69, 145-147, 149-150; CX-5, at 13.

Lempert USA initially hired a consultant to help it attempt to reconstruct its records. Tr. 322-323. The consultant worked for about a week, until the firm hired a new principal to act as a compliance officer. Tr. 323. It took about a week to get account numbers so Borcherding could access records online at the clearing firm. After working with the clearing firm for about two weeks, Lempert USA was able to get trading records. Tr. 326-327. Borcherding eventually spoke to the firm's former clients, some of whom were confused about where their accounts were, and were unaware their accounts had been moved from Lempert USA. Tr. 325.

At the time of the departure, Lempert USA was the subject of an on-site SEC examination. Tr. 161-163. Respondent did not alert the SEC examiner to the fraud allegations concerning the Orlovs until after the Respondent left the firm on April 3. Tr. 164. On the morning of April 4, Respondent spoke to the SEC examiner, and to FINRA, about departing from Lempert USA and removing the books and records. Tr. 161-162, 410. He and his attorney met with three FINRA examiners on April 11, 2006, and told them about the departure from Lempert USA, the removal of books and records, and the allegations concerning the Orlovs. Tr. 179, 249-250; CX-4.[8] Respondent did not offer to turn Lempert USA's documents over to the FINRA investigators because, he testified, he "didn't think of it." Tr. 415-416. Borcherding, on behalf of Lempert USA, also met with FINRA on April 11. The FINRA examiners told Borcherding that Lempert USA could do only liquidating transactions until FINRA was certain that the firm was capital compliant. Tr. 251-252, 324-326. Lempert USA did not resume full operations until August. Tr. 343.

[8] FINRA's investigation began after Respondent met with FINRA examiners on April 11, 2006. Tr. 249, 254.

3. Respondent's Alleged Reasons for Removing the Files

Respondent testified that he and his colleagues removed books and records and erased files "defensively," "to protect everyone" from the "criminals." Tr. 190. The principal "defensive" reason advanced by Respondent was that "they" were going to forge the names of the representatives who had left the firm on Lempert USA documents, harming the representatives and the firm's customers. Tr. 145-146, 401.[9]

Respondent testified that his group removed Lempert USA's files to prevent the firm from contacting clients, in order to protect the clients from being persuaded to make inappropriate investments. Tr. 150-151; CX-5. His basis for this concern was that on one occasion, when he was out of the office, Milter and one of the Orlovs allegedly tried unsuccessfully to persuade the firm's representatives to participate in marketing a questionable investment in a penny stock with very high commission rates to the firm's clients. Tr. 154-155.

Respondent also asserted that "they" were going to engage in some sort of scheme to defraud the SIPC. Tr. 188. He testified that the fraudulent activity that would have taken place after his departure would have involved a massive transfer of accounts from Europe, perhaps in furtherance of the alleged plan to defraud the SIPC. Tr. 150.

The Hearing Panel did not find credible Respondent's claim that he and his group took the books and records to protect Lempert USA customers, the SIPC, and the departing representatives from fraud. Respondent and his group took the books and records in furtherance of their own economic interests. They had represented to the Emerald Investors that they were building Lempert USA to move it to Emerald, and taking the books and records was consistent

[9] It is unclear who "they" were, since only Borcherding, Shah, and Milter remained at Lempert USA. There had been no allegations concerning Borcherding and Shah, and Milter was not registered.

with that plan. Furthermore, they offered to return the documents to Lempert USA only in return for money.

If the concerns were truly defensive, there were other obvious and far more sensible, ways to forestall any possible fraud. Respondent could have alerted the SEC examiner who was in Lempert USA's offices of the potential for fraud, or contacted FINRA. He also could have alerted the clearing firm to the alleged fraudulent intentions of the Orlovs and Milter. If Respondent's motivation was to ensure that the books and records could not have been altered without detection, he could have copied files and returned them to Lempert USA. He also could have immediately returned certain of the books and records that could not have been used for fraudulent purposes, such as the firm's corporate documents. Furthermore, if the goal was to have a copy of the records that could not be altered, then there was no need to erase Lempert USA's computer files and remove the backup tapes.

The Hearing Panel finds that Respondent took the books and records to further his own interests and interests of those whom he led in leaving Lempert USA in establishing their new business, and not for the purpose of protecting anyone from fraud.

4. The Eventual Return of Books and Records

On April 12, 2006, soon after Respondent departed from Lempert USA, the firm's attorney wrote to Respondent demanding the return of the books and records that he and his group had removed. CX-59. Respondent testified that he had been ready to return the books and records when Lempert USA stopped payment on the checks he had written on March 31. He

testified that as of June 2006, he would have returned the documents if he had gotten the money represented by the checks. Tr. 214-215, 401.[10]

Through counsel, Respondent and at least some of the others who had left Lempert USA asked for back pay, plus the money represented by the checks Respondent had written on March 31, as a condition for the return of the documents. On June 19, 2006, Lempert USA's attorney wrote to Respondent's attorney, again demanding the return of the books and records, and noting that Respondent and others who had left the firm had demanded money for the return of the books and records. The attorney stated that "your clients have no right to hold [Lempert USA's] property, such as the Company's checkbook, hostage and blackmail the Company for their return." Tr. 215; CX-64; CX-79, at 9.

On June 28, 2006, Emerald, Respondent, Coventry, and Jeff Heller,[11] filed an arbitration claim against Lempert USA, Milter, the Orlovs, and Borcherding, seeking approximately $300,000 in damages, primarily for back pay, and other relief.[12] No documents had been returned at that time. The first documents were returned on October 25, 2006, after Lempert USA had filed a motion to compel in the arbitration. CX-65; CX-69; CX-72; Tr. 220-224, 399-400. Additional documents were returned to Lempert USA in response to additional motions to compel and an order from the arbitrators. CX-73; CX-75. Respondent returned documents to Lempert USA only in response to discovery in the arbitration. Tr. 231-232. Some documents were never returned. CX-40; Tr. 338, 352-353.

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[10] Respondent has provided shifting explanations for precisely what happened and why. In his post-Complaint response to FINRA's Rule 8210 request of July 15, 2009, Respondent told FINRA that his group "temporarily remove[d] some records (to be returned in 24 hours) in order to make copies," that copies of some of the records were made on April 4, and that his group had been prepared to return all of the records until they learned that Lempert USA had stopped payment on the checks. CX-18 at 7. Respondent testified at the hearing that they did not make copies because they did not have enough money. Tr. 144. If there was not enough money to make copies, they could not have intended to make copies and return the documents in 24 hours.

[11] Heller had been Lempert USA's FINOP. Tr. 101. He moved to Emerald and became its FINOP. CX-3.

[12] Lempert USA and Borcherding filed counterclaims. CX-66; CX-67.

B. Respondent Violated NASD Rule 2110 by Taking His Firm's Books and Records

NASD Conduct Rule 2110 requires a registered representative "in the conduct of his business," to "observe high standards of commercial honor and just and equitable principles of trade." Unethical conduct violates Rule 2110.[13] A violation of the Rule is based on the ethical implications of a representative's conduct, and does not depend on whether the representative has committed a legally cognizable wrong.[14] Rule 2110 applies broadly to apply to all business-related misconduct.[15] "NASD Rule 2110 reaches beyond legal requirements and, among other things, depends upon general rules of fair dealing, the reasonable expectations of the parties, and marketplace practices."[16] A registered representative owes a duty of loyalty to his firm, and a breach of the duty of loyalty violates Rule 2110.[17]

Respondent breached his ethical duties by removing his firm's books and records, taking property that was not his, and rendering the firm unable to operate. Such conduct violates the ethical standards required of registered representatives. It was a gross deviation from reasonable expectations and business practices, and violated Respondent's duty of loyalty to his firm.

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[13] *See Dep't of Enforcement v. Davenport*, No. CO5010017, 2003 NASD Discip. LEXIS 4, at *8 (N.A.C. May 7, 2003).

[14] *See, e.g., Dep't of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *13-14 (N.A.C. Sept. 1, 2000); *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (N.A.C. June 2, 2000).

[15] *Dep't of Enforcement v. Davenport*, 2003 NASD Discip. LEXIS 4, at *8-9.

[16] *Dep't of Enforcement v. Conway*, No. E102003025201, 2010 FINRA Discip. LEXIS 27, at *29 (N.A.C. Oct. 26, 2010), *appeal filed* (S.E.C. Dec. 2, 2010) (citing *Dep't of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *12).

[17] *See, e.g., David Arm*, Exchange Act Rel. No. 28418, 1990 SEC LEXIS 3115, at *23 (Sept. 7, 1990); *Jay Frederick Keeton*, Exchange Act Rel. No. 31082, 1992 SEC LEXIS 2002, at *22 (Aug. 24, 1992); *Louis Feldman*, Exchange Act Rel. No. 34933, 1994 SEC LEXIS 3428, at *8-9 (Nov. 3, 1994) ("In seeking to transfer the [customer] accounts to his future employer, [respondent] acted solely out of self-interest, in a manner both contrary to the interests of his employing broker-dealer, and indifferent to the interests of the mutual fund accountholders."), citing *Michael T. McAuliffe*, Exchange Act Rel. 21649, 1985 SEC LEXIS 2398, at *4, n. 3 (Jan. 14, 1985); *Dep't of Enforcement v. Foran*, 2000 NASD Discip. LEXIS 8, at *17-18.

Respondent seeks to justify his actions as defensive, taken to protect customers, the SIPC, and the brokers who left the firm, including himself, from fraud. Such motives, even if proven, would not excuse Respondent's actions. To prove a violation of Rule 2110, "'[b]ad faith' in the sense of malicious intent or deceitfulness need not be established."[18] "Rule 2110 and the overall regulatory scheme do not permit members and associated persons to engage in vigilante justice."[19] If Respondent believed that there was potential for wrongful conduct, he had "many lawful avenues to seek redress, including notifying [FINRA] or the SEC."[20] Although there was an SEC examiner in Lempert USA's office conducting an on-site examination, Respondent failed to notify the examiner of possible improprieties until after he left with the documents. He did not offer to turn the documents over to FINRA. He also could have notified the clearing firm to be alert to possible improprieties in the customers' accounts. He could have copied the documents and returned them before leaving,[21] and could have copied computer files without erasing the computers or taking the backup tapes. Instead, he chose a course of action that was certain to shut down Lempert USA, and to facilitate Respondent's move to his new firm.

The Hearing Panel finds that by removing the books and records from Lempert USA, Respondent violated NASD Conduct Rule 2110.

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[18] *Dep't of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *16; *see also Heath v. SEC*, 586 F.3d 122, 131-139 (2d Cir. 2009), *cert. denied*, 2010 U.S. LEXIS 3029 (Apr. 5, 2010) (extensive discussion of analogous NYSE rule, finding that unethical conduct violates the rule even in the absence of a finding of bad faith).

[19] *Dep't of Market Reg. v. Respondent*, No. CMS030181, slip op. at 12 (N.A.C. June 9, 2005), available on FINRA's website at http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p014664.pdf.

[20] *Id.*

[21] The Hearing Panel does not find that it would have been proper to take copies of documents, but it clearly would have been less harmful to Lempert USA to do so.

IV. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Respond to FINRA's Request for Information and Documents

A. Respondent Did Not Respond to FINRA's Rule 8210 Request of July 15, 2009, Until After the Complaint Was Filed

On May 8, 2009, Enforcement sent a Wells notice to Respondent's counsel, informing him that a preliminary determination had been made to institute a disciplinary action against him for removing the books and records from Lempert USA.[22] CX-17. Respondent responded to the Wells notice on June 29, 2009, providing his version of the circumstances of his departure from Lempert USA and the removal of the firm's books and records. CX-18.

On July 15, 2009, pursuant to Rule 8210, a FINRA examiner sent a letter to Respondent, asking 20 questions concerning statements in Respondent's Wells submission, and requesting documents relating to those statements. The request directed Respondent to respond by July 27. CX-19. Respondent requested additional time to search for documents, and the examiner granted him an extension to August 10, 2009. CX-20; Tr. 238. On August 11, Respondent again requested additional time to respond, this time due to illness. CX-21. On August 20, the examiner sent a Second Request, enclosing the request of July 15, 2009, and requiring a response by September 3, 2009. CX-22; Tr. 240.

Respondent did not respond to the July 15 Rule 8210 request prior to the filing of the Complaint. He testified that he worked on the response, but so much was happening that he forgot to complete it and submit it to the examiner. He testified that the firm was being evicted, the files were in disarray, there was no way of getting to the files, and his secretary left the firm, all distracting him and making it difficult to respond. Tr. 385-386, 428.

[22] *See* Reg. Notice 09-17, at 3 (Mar. 2009), for a description of the Wells process.

Respondent submitted a narrative response to the Rule 8210 request on April 29, 2010. Citing the same difficulties to which he testified, he did not submit any documents. CX-23; Tr. 241, 384-386.

B. Respondent Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA in response to requests for information. Rule 8210 is FINRA's mechanism "to police the activities of its members and associated persons."[23] Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[24] "The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."[25] The failure to respond to a Rule 8210 request until after the initiation of disciplinary action is considered a complete failure to respond, and a violation of Rule 8210.[26]

Respondent violated FINRA Rules 8210 and 2010 by failing to respond to the request for information served on July 15, 2009, until April 29, 2010, four months after the Complaint was filed.

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[23] *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) *quoting Richard J. Rouse*, Exchange Act Rel. No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993).

[24] See *also, Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *15 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *18 (Jan. 28, 2000).

[25] *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

[26] *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *12 (Sept. 10, 2010), *appeal filed*, No. 10-4566 (2d Cir. Nov. 15, 2010) ("We have emphasized repeatedly that NASD should not have to initiate a disciplinary action to elicit a response to its information requests made pursuant to Rule 8210."). A violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of Rule 2010. *Id.* at *13, n.12.

V. Sanctions

A. Sanctions for Taking Books and Records

There is no Guideline that is specifically applicable to the taking of books and records in the FINRA Sanction Guidelines. ("Sanction Guidelines" or "Guidelines"). An adjudicator may look to analogous Guidelines in considering the sanction for violations that are not expressly covered by the Guidelines.[27] Enforcement cites the Guideline for recordkeeping violations as the most analogous,[28] arguing that Respondent's violation caused Lempert USA to violate FINRA and SEC recordkeeping requirements and is therefore an egregious recordkeeping violation.[29]

Characterizing the violation as recordkeeping misses the essence of the violation. Respondent did not merely fail to make and preserve books and records; he took almost all of them, virtually shutting down Lempert USA. Accordingly, the Hearing Panel has considered the Principal Considerations in Determining Sanctions applicable to all violations, rather than relying on a single Guideline.[30]

Respondent's misconduct resulted in injury to his member firm. Principal Consideration No. 11. Lempert USA could not operate without books and records. It had no records of who its customers were, and had to reconstruct its customer records by working with its clearing firm. FINRA permitted the firm to conduct only liquidating transactions as a result of Respondent's actions. In addition, as Enforcement argues in support of its proposed sanctions, the removal of

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[27] "For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations." *Sanction Guidelines* at 1. *See, e.g., Dep't of Enforcement v. McCrudden*, No. 2007008358101, 2010 FINRA Discip. 25, at *25 (N.A.C. Oct. 15, 2010).

[28] *See Sanction Guidelines* at 30.

[29] For egregious recordkeeping violations, the Guidelines recommend a fine of $10,000 to $100,000, and a suspension of more than 30 business days or a bar.

[30] *Sanction Guidelines* at 6-7.

the firm's books and records caused the firm to be non-compliant with the recordkeeping obligations of SEC Rules 17a-3, 17a-4, and NASD Rule 3110.

Respondent's misconduct resulted in the potential for Respondent's monetary or other gain. Principal Consideration No. 17. By taking all the customer records, Respondent made certain that the brokers who moved with Respondent would have exclusive access to the Lempert USA customers until Lempert USA could reconstruct its customer records. The books and records were potentially helpful to the launch of Emerald by providing account histories for the clients, employment histories for the employees, and compliance manuals. Respondent had represented to the Emerald Investors that he would bring a functioning office to Emerald, and having a full set of books and records helped to fulfill that promise.

Respondent's misconduct was an intentional act. Principal Consideration No. 13. He fully understood that he was taking Lempert USA's records, and that he did not own them. Respondent has not accepted responsibility for his misconduct. Principal Consideration No. 2. Rather, he persists in his attempts to justify what he did with vague assertions that he was protecting customers, the SIPC, or himself, from "criminals." He fails to recognize that such "vigilante justice" is improper.

Respondent's concern about the honesty of the Orlovs is not a mitigating factor. While Respondent may have had genuine concerns, the Hearing Panel finds that Respondent's motivation was financial and not altruistic. The hodgepodge of fraudulent scenarios was a post-hoc justification for an economic decision.[31]

[31] Even if the Hearing Panel had found Respondent's altruistic explanation credible, it would not have found the explanation mitigating because there were other, far more reasonable, ways to protect the alleged intended victims.

Enforcement seeks a one-year suspension and a $30,000 fine.[32] Given the seriousness of Respondent's conduct, a one-year suspension is not sufficiently remedial. Respondent orchestrated a scheme to take his firm's property, caused substantial injury to the firm and potential injury to the firm's customers, and violated his duty to the firm. The Hearing Panel finds that a two-year suspension is appropriate. The Hearing Panel finds that a fine of $20,000 is sufficiently remedial, and, with the substantial suspension, will provide a sufficient deterrent to future misconduct by Respondent.

B. Sanctions for Failure to Respond to Rule 8210 Request for Documents and Information

The Guidelines provide that for a failure to respond to Rule 8210 requests, a bar is the standard sanction for the responsible individual. Where mitigation exists, or the person did not respond in a timely manner, the Guidelines suggest consideration of a suspension in any or all capacities for up to two years. *Sanction Guidelines* at 35. Enforcement recommends a six-month suspension and a fine of $20,000.[33]

In determining the appropriate sanctions, the Hearing Panel considered Respondent's compliance with several previous requests for information. Respondent responded to several requests for information from FINRA, although typically not promptly, in 2006. FINRA requested information from Respondent pursuant to Rule 8210 on March 31, May 23, July 20, August 18, and October 20, 2006. CX-4; CX-7; CX-11; CX-14; CX-90; Tr. 171-172, 265, 269, 271-272. Respondent submitted responses to all of these requests, answering all questions, except one about his financial situation. CX-5, at 27; CX-6; CX-8; CX-9; CX-10; CX-12; CX-13; CX-16; Tr. 270-271, 287, 306-307. He also provided information concerning Lempert

[32] Tr. 444.

[33] Tr. 444.

USA's finances, his departure from Lempert USA, and the Orlovs, to FINRA in connection with Emerald's application for FINRA membership.

Given Respondent's history of responding to Rule 8210 requests, the Hearing Panel finds that a six-month suspension and a $5,000 fine is sufficiently remedial. The suspensions shall run consecutively.[34]

VI. Conclusion

Respondent John Joseph Plunkett is suspended for two years and fined $20,000 for taking almost all of the books and records from his firm at the time of his resignation from the firm, in violation of NASD Conduct Rule 2110. Respondent is suspended for an additional six months and fined an additional $5,000 for failing to respond to a request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The suspensions shall run consecutively. In addition, Respondents shall pay costs in the amount of $4,004.85, which represents the cost of the hearing transcript together with a $750 administrative fee.

If this decision becomes the final disciplinary action of FINRA, the suspensions shall become effective with the opening of business on February 7, 2011, and end on August 6, 2013. The fine and costs shall become due and payable when Respondent returns to the industry.[35]

HEARING PANEL.

Lawrence B. Bernard

By: Lawrence B. Bernard

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[34] *Michael Frederick Siegel*, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459, at *46 (Oct. 6, 2008) (consecutive suspensions appropriate because "violations are different in nature and raise separate public interest concerns"), *aff'd in part, rev'd in part on other grounds*, 592 F.3d 147, 157-158 (D.C. Cir. 2010).

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

Copies to: John J. Plunkett (*via e-mail and first-class mail*)
Elissa Meth Kestin, Esq. (*via e-mail and first-class mail*)
Julie K. Glynn, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

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Subj: **John Joseph Plunkett Amended Hearing Panel Decision, 20060052598-01**
Date: 1/4/2011 3:56:45 P.M. Eastern Standard Time
From:
To: Ashley.Harris@finra.org, [redacted] Elissa.Meth@finra.org, Julie.Glynn@finra.org
CC:

Attached please find the Notice of Amended Hearing Panel Decision and Amended Decision for the John

Thank you

Ashley-Rose Harris
Case Administrator
FINRA
Office of Hearing Officers
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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN JOSEPH PLUNKETT (CRD No. 2321368), Respondent.	Disciplinary Proceeding No. 20060052598-01 Hearing Officer – LBB

NOTICE OF AMENDED HEARING PANEL DECISION

Enclosed is the Hearing Panel's Amended Decision in this disciplinary proceeding dated January 4, 2011 (Decision). This Decision will become the final decision of FINRA 45 days after service of the Decision upon you unless either you or the Department of Enforcement appeals to the National Adjudicatory Council ("NAC"), or the NAC calls the Decision for review.

You may appeal to the NAC if you disagree with this Decision by filing a Notice of Appeal within 25 calendar days after service of the Decision upon you. Your rights of appeal are set forth in the Code of Procedure Rule 9311. If another Party files a Notice of Appeal you may file a Notice of Cross-Appeal within five days after service of the Notice of Appeal. You should read carefully the entire 9300 series of Rules in the Code of Procedure to understand fully and protect your rights.

Upon appeal or review, the NAC may affirm, dismiss, modify, or reverse any of the findings made by the Hearing Panel; and the NAC may affirm, modify, reverse, increase,

or reduce the sanctions imposed by the Hearing Panel, or may impose any other fitting sanctions. Questions concerning the appeal process should be directed to the General Counsel's Office, FINRA, (202) 728-8071.

To appeal this Decision, you must file a written Notice of Appeal with the Office of Hearing Officers at the following address: FINRA, Office of Hearing Officers, 1801 K Street, NW, Suite 301, Washington, DC 20006-1500. The following information must be included in the Notice of Appeal: (1) the name of the disciplinary proceeding; (2) the docket number of the disciplinary proceeding; (3) the name of the Party filing the appeal; (4) a statement of whether oral argument before the NAC is requested; and (5) a brief statement identifying the findings, conclusions, or sanctions to which you are taking exception. The NAC may, in its discretion, deem waived any issue not raised in the Notice of Appeal or the Notice of Cross Appeal. In addition, the Notice of Appeal must be signed by you or your counsel.

Lawrence B. Bernard
Hearing Officer

Dated: January 4, 2011

Copies to: John J. Plunkett (*via e-mail and first-class mail*)
Elissa Meth Kestin, Esq. (*via e-mail and first-class mail*)
Julie K. Glynn, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN JOSEPH PLUNKETT (CRD No. 2321368), Respondent.	Disciplinary Proceeding No. 20060052598-01 Hearing Officer – LBB **AMENDED HEARING PANEL DECISION**[1] January 4, 2011

Respondent John Joseph Plunkett is suspended for two years and fined $20,000 for taking his firm's books and records at the time of his resignation from the firm, in violation of NASD Conduct Rule 2110. Respondent is suspended for an additional six months and fined an additional $5,000 for failing to respond to a request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The suspensions shall be served consecutively. Respondent is also ordered to pay costs.

Appearances

For the Department of Enforcement: Elissa Meth Kestin, Senior Regional Counsel, and Julie K. Glynn, Senior Regional Counsel, New York, New York.

John Joseph Plunkett, *pro se*.

DECISION

The Department of Enforcement filed the Complaint in this disciplinary proceeding on December 1, 2009, asserting two causes of action against Respondent John Joseph Plunkett

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

Respondent").[2] The First Cause of Action charges Respondent with engaging in conduct inconsistent with just and equitable principles of trade, in violation of NASD Conduct Rule 2110, by taking almost all of the books and records from his firm when he, and most of the firm's registered representatives, resigned from the firm. The Second Cause of Action charges Respondent with failing to respond to a FINRA request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

A hearing was held in New York City on September 27 and 28, 2010, before a Hearing Panel composed of one current and one former member of the District 10 Committee, and a Hearing Officer.

I. Summary

A. First Cause of Action: Removal of Books and Records

Beginning in 2003, Respondent was the president and chief compliance officer of Lempert Brothers International USA, Inc. ("Lempert USA"),[3] a FINRA member firm that he helped establish. Lempert USA was owned indirectly by Roman and Edouard Orlov, Ukrainian brothers who also owned brokerage firms in Europe. Lempert USA was unprofitable, and stopped paying Respondent and other representatives in March 2005. In the summer of 2005, Respondent and two other Lempert USA principals, Mitch Borcherding ("Borcherding") and Brian Coventry ("Coventry"), secretly began to form a new brokerage firm, Emerald

[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). For the First Cause of Action, this decision relies on NASD Conduct Rule 2110, which was the applicable rule at the time of Respondent's alleged misconduct. For the Second Cause of Action, this decision relies on FINRA Rules 8210 and 2010, which had been implemented prior to the alleged violation.

[3] Lempert Brothers International USA, Inc. was related to other firms that included the name "Lempert." Lempert USA was owned by Lempert Holdings Establishment, a European holding company. CX-2; CX-5, at 5; CX-66, at 35. In this decision, "Lempert USA" refers solely to the American firm that was a FINRA member.

Investments, Inc. ("Emerald"), with plans to take Lempert USA's business and brokers to their new firm.

In early 2006, Respondent, Borcherding, and Coventry began to receive reports that the Orlovs were engaged in fraud in their European operations. In March 2006, Respondent learned that the Orlovs were about to fire him. In late March and early April 2006, Lempert USA was the subject of an on-site SEC examination. Respondent did not inform the SEC examiner of the fraud allegations concerning the Orlovs.

On the night of April 3, 2006, Respondent, Coventry, and several other Lempert USA registered representatives resigned from the firm. They left the office and, when those who were not included in their plans had left for the day, they went back and took almost all of the firm's original books and records, copied the firm's computer files, and erased the files on the firm's computers. Respondent and the others soon established an office for Success Trade Securities, Inc. ("Success Trade"), and moved to Emerald when its FINRA membership application was approved. Respondent did not return the books and records for several months.

Respondent seeks to justify his actions by asserting that he acted to protect the firm's clients, European investors, the registered representatives who left the firm and the Securities Investor Protection Corporation ("SIPC") from frauds that the Orlovs would have committed. The Hearing Panel finds that the true motivation was economic self-interest and not the protection of others. Regardless of the true motivation, however, the Hearing Panel finds that Respondent's actions were inconsistent with the high standards of commercial honor required of registered representatives, and violated NASD Conduct Rule 2110.

B. Second Cause of Action: Failure to Respond to a Request for Documents and Information Pursuant to Rule 8210

Enforcement sent Respondent a Wells notice on May 8, 2009, notifying him that a preliminary determination had been made to file a disciplinary action charging him with a violation of NASD Rules for removing Lempert USA's books and records. Respondent responded to the Wells notice on June 29, 2009. On July 15, 2009, a FINRA examiner served Respondent with a Rule 8210 request seeking documents and information relating to Respondent's response to the Wells notice. Respondent failed to submit a substantive response until several months after the Complaint was filed. By failing to provide documents and information in response to the July 2009 request until after the Complaint was filed, Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

II. Respondent

Respondent first registered with a FINRA member firm in 1993. He was registered with Lempert USA from August 13, 2003, through April 3, 2006. Respondent was co-president and chief compliance officer during his first year at Lempert USA, then became the sole president and chief compliance officer. CX-1; CX-2; CX-5, at 14; Tr. 44-45.

Although he was still employed by Lempert USA Respondent began his employment with Emerald in October 2005. He remained employed in this capacity by Emerald until January 2010. CX-1; CX-3. When Respondent left Lempert USA, he registered with Success Trade, where he was employed from April 17, 2006, until July 11, 2006. When Respondent left Success Trade, he registered with Emerald, where he was registered until January 4, 2010. He has not been registered with a member firm since January 2010. CX-1.

III. Respondent Violated NASD Rule 2110 by Taking His Firm's Books and Records When He Left Lempert USA

A. Facts

1. Events Leading Up to Respondent's Departure from Lempert USA

a) Lempert USA's Struggles

Respondent was hired in August 2003 to help set up Lempert USA. Tr. 41-42. Lempert USA was owned indirectly by the Orlovs, whose main office was in Vienna, Austria. CX-66, at 35; Tr. 94. George Milter ("Milter"), the Orlovs' nephew, was their representative in the United States. Milter was never registered with FINRA, but had an informal role with Lempert USA. CX-66, at 35; Tr. 87, 204, 261, 318, 332. Borcherding helped to set up Lempert USA in late 2002. He was initially the firm's executive vice-president, then its co-president with Respondent when the firm first began operations, until Respondent became the sole president. Borcherding became a trader for the firm, primarily trading the owners' capital. Tr. 316; CX-5, at 14. Coventry was hired to handle investment banking. Tr. 48; CX-5, at 14.

Lempert USA was never profitable. By March 2005, the firm was having financial difficulties, and could not pay its employees, including Respondent.[4] Lempert USA stopped paying Respondent in March 2005. CX-33, at 5; CX-42; CX-44, at 3; CX-46, at 2; CX-57, at 22-23; Tr. 47-48, 120-121, 317. As a result of the financial situation, Respondent and other Lempert USA principals told the owners that they would have to look for another firm with which to associate, and they began to look for other employment. Tr. 318, 361-362.

[4] Respondent testified that the Orlovs had stopped putting money into the firm by March 2005. Tr. 47-48. In fact, the Orlovs contributed $150,000 to the firm in March and $100,000 after March. CX-5 at 18.

b) Respondent and Other Lempert Principals Take Steps to Start a New Broker-Dealer While Employed at Lempert USA

In the summer of 2005, Lempert USA's lawyer introduced Respondent, Borcherding, and Coventry to two investors, J.I. and R.R. (the "Emerald Investors"). The group developed a plan to start a new broker-dealer, which became known as Emerald. Tr. 51, 71, 319; CX-29, at 5; CX-51; CX-52; CX-53; CX-81. Respondent did not disclose Emerald to the Orlovs while he was at Lempert USA. Tr. 95, 167.

A shareholder agreement was drafted in about August 2005. Tr. 51; CX-66, at 41. Respondent, Borcherding, Coventry, and the Emerald Investors signed the agreement in September 2005. CX-51. The Emerald Investors agreed to contribute $250,000. Respondent, Borcherding, Coventry agreed to establish the new broker-dealer as quickly as possible, to work for it once established, and to continue to build the business at Lempert USA with the goal of bringing Lempert USA's business to the new broker-dealer. However, Lempert USA had no business until Ray Thomas ("Thomas") joined the firm later in 2005, as a Series 24 sales supervisor, and brought retail brokers to the firm. Tr. 47, 55-57, 130; CX-5, at 14; CX-51, at 5-6.

Although he was still president and chief compliance officer at Lempert USA, Respondent was Emerald's president and chief compliance officer from the time it was formed in October 2005. CX-3; Tr. 59-60. In late 2005 through early 2006, Respondent, Borcherding, and Coventry continued to prepare for the move to their new broker-dealer. They hired a consultant and an attorney to do the paperwork for the new firm. Tr. 59. In October 2005, Respondent told the Emerald Investors he would stay at Lempert USA "in order to grow, maintain and bring a functioning broker-dealer online from day one after approval," and that he was taking action to "continue to build the business, maintain it, and be able to move it with us." Respondent hoped

to obtain FINRA's approval for Emerald by the beginning of 2006, and projected that he and the others would bring enough business to Emerald to at least break even without additional cash infusions. CX-81; Tr. 66, 73.

Respondent, Borcherding, and Coventry each received a total of between $25,000 and $40,000 from the Emerald Investors in late 2005. Tr. 77-78, 366-367; CX-84.[5] Respondent told the Emerald Investors, and testified at the hearing, that they did not keep the money they received from the Emerald Investors, but used it to pay Lempert USA's bills so they could build the business and move it to Emerald. CX-81; Tr. 400-401.[6]

Respondent signed a Uniform Application for Broker-Dealer Registration (Form BD) for Emerald as the new firm's president on December 22, 2005. The Form BD was submitted to FINRA on January 19, 2006. CX-54; CX-55; Tr. 84. In January 2006, Respondent reported to the Emerald Investors that there had been good progress in securing a lease for Emerald's offices and in building the Lempert USA business, and that he would soon execute an agreement with a clearing firm. Respondent expressed optimism about the plans and projections for Emerald. CX-84. Coventry signed a lease for office space for Emerald on March 22, 2006. CX-44, at 6; Tr. 109. Emerald's office was on the same floor as Lempert USA. CX-56; Tr. 107.

On June 30, 2006, FINRA notified Respondent that Emerald's membership application had been approved. Tr. 60.

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[5] Respondent acknowledged receipt of at least $25,000. Tr. 168-170; CX-84. Borcherding testified that he received $40,000. Tr. 366-367. Under the terms of the shareholder agreement, the three principals should have received the same amount.

[6] The Hearing Panel did not find this assertion credible. It is also inconsistent with the demand in arbitration by Respondent and Emerald against Borcherding, in which Respondent and Emerald sought to recover the $40,000 from Borcherding. CX-65.

c) Respondent Learns of Allegations Concerning the Orlovs' European Operations

In early 2006, Respondent spoke to a Latvian lawyer concerning allegations of fraud in the Orlovs' European operations. The lawyer also told Respondent that the Orlovs had represented that Lempert USA would participate in a merger, partnership, or other business relationship with Lempert entities in Europe. Respondent informed the lawyer that these representations concerning plans for a business relationship were false. On March 1, 2006, the lawyer's firm sent Respondent a letter following up on their conversations. The letter stated that they represented clients who had invested with Adolph & Komorsky International ("AKI"), an Austrian brokerage firm owned and operated by the Orlovs, and that the Orlovs were the subject of criminal fraud proceedings in Austria. The Latvian attorneys claimed that the head of a Lempert company in London ("Lempert London") had signed an agreement representing that Lempert USA would take over AKI's obligations to the European investors and provide services to AKI's European customers. CX-86, at 9-10, 12; Tr. 181-184.

On about March 22, 2006, FINRA received a letter from a Latvian investor, alleging that there was a connection among Lempert USA, AKI, and a failed American brokerage firm. The investor alleged that Lempert USA had been named as the manager of the customer's funds, and that someone from Lempert International had agreed that Lempert USA "takes all the obligations of the bankrupt" AKI. CX-90. FINRA forwarded the letter to Respondent on March 31, 2006. CX-90; Tr. 171-172. Respondent also received an undated letter from another Latvian investor alleging fraudulent activities by Lempert London, enclosing a cooperation agreement between Lempert London and Lempert USA that was signed by Milter. CX-4 at 29.

Respondent wrote to the Orlovs on March 23, 2006, concerning the allegations against them in Europe, and making allegations concerning improper acts by Milter. CX-18; CX-88;

Tr. 195-197. The Orlovs were allegedly on vacation and did not respond. Tr. 192-193; CX-18, at 5.[7]

d) Respondent Learns that the Orlovs Plan to Fire Him

On about March 16, 2006, a week before Respondent wrote to the Orlovs concerning the fraud allegations, an attorney representing Milter and the Orlovs sent a draft resolution of Lempert USA's board of directors to Milter at Lempert USA. The resolution stated that the board would immediately terminate Respondent's employment as president. CX-18 at 36; Tr. 117-118. As Lempert USA's chief compliance officer, Respondent reviewed all Lempert USA e-mails. Respondent saw the e-mail with the draft resolution before he left Lempert USA. He knew at least as early as March 23, 2006, that the owners intended to fire him as president. Tr. 80, 112-113, 117, 118, 120, 193.

On March 30, 2006, the attorney for the Orlovs and Milter sent them an e-mail saying that Respondent would soon be relieved of his position with Lempert USA. CX-89. Respondent saw this e-mail before he left Lempert USA. Tr. 113, 116.

2. Respondent Leaves Lempert USA and Takes the Firm's Books and Records

In late March or early April 2006, Respondent and Thomas, Lempert USA's sales supervisor, met out of the office with the firm's seven or eight registered representatives to explain their plans to leave Lempert USA. All agreed to join Respondent, Thomas, and Coventry in leaving the firm and associating with Emerald. Tr. 131-132, 414. On March 31, 2006, Respondent wrote 15 checks from Lempert USA's bank account, totaling about $33,000,

[7] The Hearing Panel makes no findings with respect to the accuracy of the allegations concerning the Orlovs or Milter. The allegations are hearsay of unproven reliability, and a finding would not be supported by the record. *See, e.g., Joseph Abbondante*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23, at *32-33 (Jan. 6, 2006), *aff'd*, 209 Fed. Appx. 6 (2d Cir. 2006); *Dep't of Enforcement v. Cuozzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *24 n.12 (N.A.C. Feb. 27, 2007); *Dep't of Enforcement v. Belden*, No. C05010012, 2002 NASD Discip. LEXIS 12, at *22 (N.A.C. Aug. 13, 2002)..

making payments to himself, other representatives who were leaving the firm, J.M. (the firm's sole clerical employee, who was leaving the firm with Respondent and the other representatives), and vendors. CX-12, at 19 et seq.; Tr. 123. The checks required signatures from Respondent and Borcherding, who co-signed the checks late in the afternoon of April 3. Tr. 126, 370. When he signed the checks, Borcherding did not know that Respondent and most of the firm's other representatives were leaving Lempert USA that night. Tr. 127.

At some time on April 3, 2006, Forms U5 were filed for Respondent and the other registered representatives who were leaving. Tr. 423-424. All Lempert USA employees left the office on April 3 and resigned from the firm that night, except Borcherding and registered representative Andy Shah, who were not aware of the others' plan. Respondent and the others waited for Borcherding to leave the office, then returned and took all of the firm's books and records except those that were in Borcherding's, Shah's, and Milter's offices. They took order tickets, accounting documents, customer files, employee files, the firm's checkbook and check register, bank statements, brokerage statements, FOCUS filings, compliance manuals, incorporation documents, documents relating to investment deals, and all computer records. In addition, they erased almost everything from Lempert USA's computers, and removed the backup computer tapes.[8] Tr. 132-137, 132, 320, 414, 331, 399; CX-5, at 1; CX-26, at 1, 2, 7, 9; CX-29, at 2-3; CX-42, at 2. They moved the documents to an office in the same building, where Coventry had arranged to have space available. Tr. 143-144, 419. The documents were subsequently moved to Emerald's office. Tr. 421.

Before leaving on April 3, Respondent faxed a letter of resignation to the Orlovs in Vienna. CX-85; Tr. 137. The other representatives who left submitted letters of resignation

[8] J.M.'s husband ran the computer firm that maintained Lempert's e-mails. He assisted in the removal of computer files and the erasure of Lempert USA's computers. The husband's firm subsequently received a contract to maintain Emerald's computers. Tr. 122.

addressed to Respondent as Lempert USA's president and chief compliance officer. CX-85; Tr. 129-130.

Borcherding arrived to a cleaned-out office on the morning of April 4, 2006. Tr. 319. It appeared to him that everything had been taken but the files from his office. He found that computer files had been deleted and the backup tapes had been taken. Tr. 319, 331. He called the police. He also called the bank and reported that the firm's checkbook had been stolen and stopped payment on all checks. Tr. 321.

Because Emerald's membership application had not yet been approved by FINRA, Respondent and the others who left Lempert USA joined Success Trade. Tr. 146-147. Within about 24 hours after leaving Lempert USA, the representatives had contacted all of their clients. The clients also received a letter from the brokers following up on the telephone calls. Virtually all of Lempert USA's clients transferred their accounts to Success Trade, and then to Emerald. Tr. 68-69, 145-147, 149-150; CX-5, at 13.

Lempert USA initially hired a consultant to help it attempt to reconstruct its records. Tr. 322-323. The consultant worked for about a week, until the firm hired a new principal to act as a compliance officer. Tr. 323. It took about a week to get account numbers so Borcherding could access records online at the clearing firm. After working with the clearing firm for about two weeks, Lempert USA was able to get trading records. Tr. 326-327. Borcherding eventually spoke to the firm's former clients, some of whom were confused about where their accounts were, and were unaware their accounts had been moved from Lempert USA. Tr. 325.

At the time of the departure, Lempert USA was the subject of an on-site SEC examination. Tr. 161-163. Respondent did not alert the SEC examiner to the fraud allegations concerning the Orlovs until after the Respondent left the firm on April 3. Tr. 164. On the

morning of April 4, Respondent spoke to the SEC examiner, and to FINRA, about departing from Lempert USA and removing the books and records. Tr. 161-162, 410. He and his attorney met with three FINRA examiners on April 11, 2006, and told them about the departure from Lempert USA, the removal of books and records, and the allegations concerning the Orlovs. Tr. 179, 249-250; CX-4.[9] Respondent did not offer to turn Lempert USA's documents over to the FINRA investigators because, he testified, he "didn't think of it." Tr. 415-416. Borcherding, on behalf of Lempert USA, also met with FINRA on April 11. The FINRA examiners told Borcherding that Lempert USA could do only liquidating transactions until FINRA was certain that the firm was capital compliant. Tr. 251-252, 324-326. Lempert USA did not resume full operations until August. Tr. 343.

3. Respondent's Alleged Reasons for Removing the Files

Respondent testified that he and his colleagues removed books and records and erased files "defensively," "to protect everyone" from the "criminals." Tr. 190. The principal "defensive" reason advanced by Respondent was that "they" were going to forge the names of the representatives who had left the firm on Lempert USA documents, harming the representatives and the firm's customers. Tr. 145-146, 401.[10]

Respondent testified that his group removed Lempert USA's files to prevent the firm from contacting clients, in order to protect the clients from being persuaded to make inappropriate investments. Tr. 150-151; CX-5. His basis for this concern was that on one occasion, when he was out of the office, Milter and one of the Orlovs allegedly tried

[9] FINRA's investigation began after Respondent met with FINRA examiners on April 11, 2006. Tr. 249, 254.

[10] It is unclear who "they" were, since only Borcherding, Shah, and Milter remained at Lempert USA. There had been no allegations concerning Borcherding and Shah, and Milter was not registered.

unsuccessfully to persuade the firm's representatives to participate in marketing a questionable investment in a penny stock with very high commission rates to the firm's clients. Tr. 154-155.

Respondent also asserted that "they" were going to engage in some sort of scheme to defraud the SIPC. Tr. 188. He testified that the fraudulent activity that would have taken place after his departure would have involved a massive transfer of accounts from Europe, perhaps in furtherance of the alleged plan to defraud the SIPC. Tr. 150.

The Hearing Panel did not find credible Respondent's claim that he and his group took the books and records to protect Lempert USA customers, the SIPC, and the departing representatives from fraud. Respondent and his group took the books and records in furtherance of their own economic interests. They had represented to the Emerald Investors that they were building Lempert USA to move it to Emerald, and taking the books and records was consistent with that plan. Furthermore, they offered to return the documents to Lempert USA only in return for money.

If the concerns were truly defensive, there were other obvious and far more sensible, ways to forestall any possible fraud. Respondent could have alerted the SEC examiner who was in Lempert USA's offices of the potential for fraud, or contacted FINRA. He also could have alerted the clearing firm to the alleged fraudulent intentions of the Orlovs and Milter. If Respondent's motivation was to ensure that the books and records could not have been altered without detection, he could have copied files and returned them to Lempert USA. He also could have immediately returned certain of the books and records that could not have been used for fraudulent purposes, such as the firm's corporate documents. Furthermore, if the goal was to have a copy of the records that could not be altered, then there was no need to erase Lempert USA's computer files and remove the backup tapes.

The Hearing Panel finds that Respondent took the books and records to further his own interests and interests of those whom he led in leaving Lempert USA in establishing their new business, and not for the purpose of protecting anyone from fraud.

4. The Eventual Return of Books and Records

On April 12, 2006, soon after Respondent departed from Lempert USA, the firm's attorney wrote to Respondent demanding the return of the books and records that he and his group had removed. CX-59. Respondent testified that he had been ready to return the books and records when Lempert USA stopped payment on the checks he had written on March 31. He testified that as of June 2006, he would have returned the documents if he had gotten the money represented by the checks. Tr. 214-215, 401.[11]

Through counsel, Respondent and at least some of the others who had left Lempert USA asked for back pay, plus the money represented by the checks Respondent had written on March 31, as a condition for the return of the documents. On June 19, 2006, Lempert USA's attorney wrote to Respondent's attorney, again demanding the return of the books and records, and noting that Respondent and others who had left the firm had demanded money for the return of the books and records. The attorney stated that "your clients have no right to hold [Lempert USA's] property, such as the Company's checkbook, hostage and blackmail the Company for their return." Tr. 215; CX-64; CX-79, at 9.

[11] Respondent has provided shifting explanations for precisely what happened and why. In his post-Complaint response to FINRA's Rule 8210 request of July 15, 2009, Respondent told FINRA that his group "temporarily remove[d] some records (to be returned in 24 hours) in order to make copies," that copies of some of the records were made on April 4, and that his group had been prepared to return all of the records until they learned that Lempert USA had stopped payment on the checks. CX-18 at 7. Respondent testified at the hearing that they did not make copies because they did not have enough money. Tr. 144. If there was not enough money to make copies, they could not have intended to make copies and return the documents in 24 hours.

On June 28, 2006, Emerald, Respondent, Coventry, and Jeff Heller,[12] filed an arbitration claim against Lempert USA, Milter, the Orlovs, and Borcherding, seeking approximately $300,000 in damages, primarily for back pay, and other relief.[13] No documents had been returned at that time. The first documents were returned on October 25, 2006, after Lempert USA had filed a motion to compel in the arbitration. CX-65; CX-69; CX-72; Tr. 220-224, 399-400. Additional documents were returned to Lempert USA in response to additional motions to compel and an order from the arbitrators. CX-73; CX-75. Respondent returned documents to Lempert USA only in response to discovery in the arbitration. Tr. 231-232. Some documents were never returned. CX-40; Tr. 338, 352-353.

B. Respondent Violated NASD Rule 2110 by Taking His Firm's Books and Records

NASD Conduct Rule 2110 requires a registered representative "in the conduct of his business," to "observe high standards of commercial honor and just and equitable principles of trade." Unethical conduct violates Rule 2110.[14] A violation of the Rule is based on the ethical implications of a representative's conduct, and does not depend on whether the representative has committed a legally cognizable wrong.[15] Rule 2110 applies broadly to apply to all business-related misconduct.[16] "NASD Rule 2110 reaches beyond legal requirements and, among other things, depends upon general rules of fair dealing, the reasonable expectations of the parties, and

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[12] Heller had been Lempert USA's FINOP. Tr. 101. He moved to Emerald and became its FINOP. CX-3.

[13] Lempert USA and Borcherding filed counterclaims. CX-66; CX-67.

[14] *See Dep't of Enforcement v. Davenport*, No. CO5010017, 2003 NASD Discip. LEXIS 4, at *8 (N.A.C. May 7, 2003).

[15] *See, e.g., Dep't of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *13-14 (N.A.C. Sept. 1, 2000); *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (N.A.C. June 2, 2000).

[16] *Dep't of Enforcement v. Davenport*, 2003 NASD Discip. LEXIS 4, at *8-9.

marketplace practices."[17] A registered representative owes a duty of loyalty to his firm, and a breach of the duty of loyalty violates Rule 2110.[18]

Respondent breached his ethical duties by removing his firm's books and records, taking property that was not his, and rendering the firm unable to operate. Such conduct violates the ethical standards required of registered representatives. It was a gross deviation from reasonable expectations and business practices, and violated Respondent's duty of loyalty to his firm.

Respondent seeks to justify his actions as defensive, taken to protect customers, the SIPC, and the brokers who left the firm, including himself, from fraud. Such motives, even if proven, would not excuse Respondent's actions. To prove a violation of Rule 2110, "'[b]ad faith' in the sense of malicious intent or deceitfulness need not be established."[19] "Rule 2110 and the overall regulatory scheme do not permit members and associated persons to engage in vigilante justice."[20] If Respondent believed that there was potential for wrongful conduct, he had "many lawful avenues to seek redress, including notifying [FINRA] or the SEC."[21] Although there was an SEC examiner in Lempert USA's office conducting an on-site examination, Respondent failed to notify the examiner of possible improprieties until after he left with the documents. He

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[17] *Dep't of Enforcement v. Conway*, No. E102003025201, 2010 FINRA Discip. LEXIS 27, at *29 (N.A.C. Oct. 26, 2010), *appeal filed* (S.E.C. Dec. 2, 2010) (citing *Dep't of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *12).

[18] *See, e.g., David Arm*, Exchange Act Rel. No. 28418, 1990 SEC LEXIS 3115, at *23 (Sept. 7, 1990); *Jay Frederick Keeton*, Exchange Act Rel. No. 31082, 1992 SEC LEXIS 2002, at *22 (Aug. 24, 1992); *Louis Feldman*, Exchange Act Rel. No. 34933, 1994 SEC LEXIS 3428, at *8-9 (Nov. 3, 1994) ("In seeking to transfer the [customer] accounts to his future employer, [respondent] acted solely out of self-interest, in a manner both contrary to the interests of his employing broker-dealer, and indifferent to the interests of the mutual fund accountholders."), citing *Michael T. McAuliffe*, Exchange Act Rel. 21649, 1985 SEC LEXIS 2398, at *4, n. 3 (Jan. 14, 1985); *Dep't of Enforcement v. Foran*, 2000 NASD Discip. LEXIS 8, at *17-18.

[19] *Dep't of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *16; *see also Heath v. SEC*, 586 F.3d 122, 131-139 (2d Cir. 2009), *cert. denied*, 2010 U.S. LEXIS 3029 (Apr. 5, 2010) (extensive discussion of analogous NYSE rule, finding that unethical conduct violates the rule even in the absence of a finding of bad faith).

[20] *Dep't of Market Reg. v. Respondent*, No. CMS030181, slip op. at 12 (N.A.C. June 9, 2005), available on FINRA's website at http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p014664.pdf.

[21] *Id.*

did not offer to turn the documents over to FINRA. He also could have notified the clearing firm to be alert to possible improprieties in the customers' accounts. He could have copied the documents and returned them before leaving,[22] and could have copied computer files without erasing the computers or taking the backup tapes. Instead, he chose a course of action that was certain to shut down Lempert USA, and to facilitate Respondent's move to his new firm.

The Hearing Panel finds that by removing the books and records from Lempert USA, Respondent violated NASD Conduct Rule 2110.

IV. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Respond to FINRA's Request for Information and Documents

A. Respondent Did Not Respond to FINRA's Rule 8210 Request of July 15, 2009, Until After the Complaint Was Filed

On May 8, 2009, Enforcement sent a Wells notice to Respondent's counsel, informing him that a preliminary determination had been made to institute a disciplinary action against him for removing the books and records from Lempert USA.[23] CX-17. Respondent responded to the Wells notice on June 29, 2009, providing his version of the circumstances of his departure from Lempert USA and the removal of the firm's books and records. CX-18.

On July 15, 2009, pursuant to Rule 8210, a FINRA examiner sent a letter to Respondent, asking 20 questions concerning statements in Respondent's Wells submission, and requesting documents relating to those statements. The request directed Respondent to respond by July 27. CX-19. Respondent requested additional time to search for documents, and the examiner granted him an extension to August 10, 2009. CX-20; Tr. 238. On August 11, Respondent again requested additional time to respond, this time due to illness. CX-21. On August 20, the

[22] The Hearing Panel does not find that it would have been proper to take copies of documents, but it clearly would have been less harmful to Lempert USA to do so.

[23] *See* Reg. Notice 09-17, at 3 (Mar. 2009), for a description of the Wells process.

examiner sent a Second Request, enclosing the request of July 15, 2009, and requiring a response by September 3, 2009. CX-22; Tr. 240.

Respondent did not respond to the July 15 Rule 8210 request prior to the filing of the Complaint. He testified that he worked on the response, but so much was happening that he forgot to complete it and submit it to the examiner. He testified that the firm was being evicted, the files were in disarray, there was no way of getting to the files, and his secretary left the firm, all distracting him and making it difficult to respond. Tr. 385-386, 428.

Respondent submitted a narrative response to the Rule 8210 request on April 29, 2010. Citing the same difficulties to which he testified, he did not submit any documents. CX-23; Tr. 241, 384-386.

B. Respondent Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA in response to requests for information. Rule 8210 is FINRA's mechanism "to police the activities of its members and associated persons."[24] Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[25] "The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."[26] The failure to respond to a Rule 8210 request until after the

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[24] *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) *quoting Richard J. Rouse*, Exchange Act Rel. No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993).

[25] See *also, Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *15 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *18 (Jan. 28, 2000).

[26] *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

initiation of disciplinary action is considered a complete failure to respond, and a violation of Rule 8210.[27]

Respondent violated FINRA Rules 8210 and 2010 by failing to respond to the request for information served on July 15, 2009, until April 29, 2010, four months after the Complaint was filed.

V. Sanctions

A. Sanctions for Taking Books and Records

There is no Guideline that is specifically applicable to the taking of books and records in the FINRA Sanction Guidelines. ("Sanction Guidelines" or "Guidelines"). An adjudicator may look to analogous Guidelines in considering the sanction for violations that are not expressly covered by the Guidelines.[28] Enforcement cites the Guideline for recordkeeping violations as the most analogous,[29] arguing that Respondent's violation caused Lempert USA to violate FINRA and SEC recordkeeping requirements and is therefore an egregious recordkeeping violation.[30]

Characterizing the violation as recordkeeping misses the essence of the violation. Respondent did not merely fail to make and preserve books and records; he took almost all of them, virtually shutting down Lempert USA. Accordingly, the Hearing Panel has considered the

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[27] *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *12 (Sept. 10, 2010), *appeal filed*, No. 10-4566 (2d Cir. Nov. 15, 2010) ("We have emphasized repeatedly that NASD should not have to initiate a disciplinary action to elicit a response to its information requests made pursuant to Rule 8210."). A violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of Rule 2010. *Id.* at *13, n.12.

[28] "For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations." *Sanction Guidelines* at 1. *See, e.g., Dep't of Enforcement v. McCrudden*, No. 2007008358101, 2010 FINRA Discip. 25, at *25 (N.A.C. Oct. 15, 2010).

[29] *See Sanction Guidelines* at 30.

[30] For egregious recordkeeping violations, the Guidelines recommend a fine of $10,000 to $100,000, and a suspension of more than 30 business days or a bar.

Principal Considerations in Determining Sanctions applicable to all violations, rather than relying on a single Guideline.[31]

Respondent's misconduct resulted in injury to his member firm. Principal Consideration No. 11. Lempert USA could not operate without books and records. It had no records of who its customers were, and had to reconstruct its customer records by working with its clearing firm. FINRA permitted the firm to conduct only liquidating transactions as a result of Respondent's actions. In addition, as Enforcement argues in support of its proposed sanctions, the removal of the firm's books and records caused the firm to be non-compliant with the recordkeeping obligations of SEC Rules 17a-3, 17a-4, and NASD Rule 3110.

Respondent's misconduct resulted in the potential for Respondent's monetary or other gain. Principal Consideration No. 17. By taking all the customer records, Respondent made certain that the brokers who moved with Respondent would have exclusive access to the Lempert USA customers until Lempert USA could reconstruct its customer records. The books and records were potentially helpful to the launch of Emerald by providing account histories for the clients, employment histories for the employees, and compliance manuals. Respondent had represented to the Emerald Investors that he would bring a functioning office to Emerald, and having a full set of books and records helped to fulfill that promise.

Respondent's misconduct was an intentional act. Principal Consideration No. 13. He fully understood that he was taking Lempert USA's records, and that he did not own them. Respondent has not accepted responsibility for his misconduct. Principal Consideration No. 2. Rather, he persists in his attempts to justify what he did with vague assertions that he was

[31] *Sanction Guidelines* at 6-7.

protecting customers, the SIPC, or himself, from "criminals." He fails to recognize that such "vigilante justice" is improper.

Respondent's concern about the honesty of the Orlovs is not a mitigating factor. While Respondent may have had genuine concerns, the Hearing Panel finds that Respondent's motivation was financial and not altruistic. The hodgepodge of fraudulent scenarios was a post-hoc justification for an economic decision.[32]

Enforcement seeks a one-year suspension and a $30,000 fine.[33] Given the seriousness of Respondent's conduct, a one-year suspension is not sufficiently remedial. Respondent orchestrated a scheme to take his firm's property, caused substantial injury to the firm and potential injury to the firm's customers, and violated his duty to the firm. The Hearing Panel finds that a two-year suspension is appropriate. The Hearing Panel finds that a fine of $20,000 is sufficiently remedial, and, with the substantial suspension, will provide a sufficient deterrent to future misconduct by Respondent.

B. Sanctions for Failure to Respond to Rule 8210 Request for Documents and Information

The Guidelines provide that for a failure to respond to Rule 8210 requests, a bar is the standard sanction for the responsible individual. Where mitigation exists, or the person did not respond in a timely manner, the Guidelines suggest consideration of a suspension in any or all capacities for up to two years. *Sanction Guidelines* at 35. Enforcement recommends a six-month suspension and a fine of $20,000.[34]

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[32] Even if the Hearing Panel had found Respondent's altruistic explanation credible, it would not have found the explanation mitigating because there were other, far more reasonable, ways to protect the alleged intended victims.

[33] Tr. 444.

[34] Tr. 444.

In determining the appropriate sanctions, the Hearing Panel considered Respondent's compliance with several previous requests for information. Respondent responded to several requests for information from FINRA, although typically not promptly, in 2006. FINRA requested information from Respondent pursuant to Rule 8210 on March 31, May 23, July 20, August 18, and October 20, 2006. CX-4; CX-7; CX-11; CX-14; CX-90; Tr. 171-172, 265, 269, 271-272. Respondent submitted responses to all of these requests, answering all questions, except one about his financial situation. CX-5, at 27; CX-6; CX-8; CX-9; CX-10; CX-12; CX-13; CX-16; Tr. 270-271, 287, 306-307. He also provided information concerning Lempert USA's finances, his departure from Lempert USA, and the Orlovs, to FINRA in connection with Emerald's application for FINRA membership.

Given Respondent's history of responding to Rule 8210 requests, the Hearing Panel finds that a six-month suspension and a $5,000 fine is sufficiently remedial. The suspensions shall run consecutively.[35]

VI. Conclusion

Respondent John Joseph Plunkett is suspended for two years and fined $20,000 for taking almost all of the books and records from his firm at the time of his resignation from the firm, in violation of NASD Conduct Rule 2110. Respondent is suspended for an additional six months and fined an additional $5,000 for failing to respond to a request for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The suspensions shall run consecutively. In addition, Respondents shall pay costs in the amount of $4,004.85, which represents the cost of the hearing transcript together with a $750 administrative fee.

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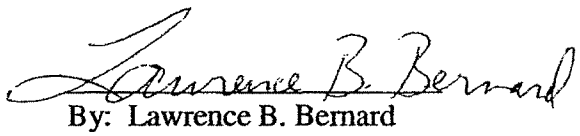
[35] *Michael Frederick Siegel*, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459, at *46 (Oct. 6, 2008) (consecutive suspensions appropriate because "violations are different in nature and raise separate public interest concerns"), *aff'd in part, rev'd in part on other grounds*, 592 F.3d 147, 157-158 (D.C. Cir. 2010).

If this decision becomes the final disciplinary action of FINRA, the suspensions shall become effective with the opening of business on March 7, 2011, and end with the close of business on September 6, 2013. The fine and costs shall become due and payable when Respondent returns to the industry.[36]

HEARING PANEL.



By: Lawrence B. Bernard

Copies to: John J. Plunkett (*via e-mail and first-class mail*)
Elissa Meth Kestin, Esq. (*via e-mail and first-class mail*)
Julie K. Glynn, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

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

Financial Industry Regulatory Authority

Jante C. Turner
Counsel

Direct: 202- 728-8317
Fax: 202-728-8264

February 17, 2011

VIA CERTIFIED MAIL – FIRST-CLASS MAIL – ELECTRONIC MAIL

John J. Plunkett
[redacted]

Leo F. Orenstein, Esq.
FINRA – Department of Enforcement
1801 K Street, NW
Washington, DC 20006

RE: JOHN JOSEPH PLUNKETT – COMPLAINT NO. 20060052598-01

Messrs. Plunkett and Orenstein:

Please be advised that the Review Subcommittee of FINRA's National Adjudicatory Council ("NAC") has called the referenced case for review pursuant to Rule 9312. The NAC will review the Hearing Panel's amended decision of January 4, 2011, to review the sanctions imposed for each cause of action. The NAC may supplement this review statement at a later time and identify additional issues for review.

The parties to this matter are the Department of Enforcement, represented by Leo F. Orenstein, Esq., and Plunkett, representing himself pro se. The parties' addresses are listed in the heading of this letter. The Office of Hearing Officers ("OHO") is instructed to submit the record in this matter to this office on or before Friday, March 11, 2011, and to provide a copy of the index to the record to the parties. Thereafter, this office will establish a briefing schedule for this review.

The parties may request oral argument before a NAC Subcommittee pursuant to Rule 9341(a). The parties must request oral argument within 15 days of service of the NAC's notice of review. If oral argument is not requested within 15 days, the NAC will review this matter based on the written record alone.

On review, the NAC may affirm, dismiss, or modify the findings of the Hearing Panel, and may increase, decrease, or otherwise amend the sanctions imposed. The NAC also may make findings affirming allegations that the Hearing Panel dismissed, remand the case for further proceedings before the Hearing Panel, and impose additional sanctions and hearing costs. The parties are encouraged to familiarize themselves with Rule 9348, which sets forth the NAC's powers with respect to cases that are appealed or called for review. The proceedings before the NAC will be conducted in accordance with FINRA's Code of Procedure, as set forth

in the Rule 9300 Series. A copy of these rules is attached, but also may be found at http://finra.complinet.com.

A party who seeks to adduce additional evidence while a case is before the NAC must file a motion seeking leave to adduce additional evidence pursuant to Rule 9346(b). The motion must be filed with this office no later than 30 days after OHO transmits the record to this office and provides a copy of the index to the record to all parties. The motion must describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce the evidence below, and demonstrate why the evidence is material to the proceeding. Any party who files a motion to adduce additional evidence must serve a copy of the motion on all other parties to this proceeding.

All communications with the Office of General Counsel regarding this case must be in writing and copies must be provided to all parties. These communications will become part of the official record in this matter. Pursuant to Rule 9143, the parties are directed not to engage in any ex parte communications with any attorney in this office, or to contact any member of the NAC or NAC subcommittee assigned to this matter. The parties may direct questions to Deborah Baker, Senior Paralegal, at 202-728-8852.

Very truly yours,

Jante C. Turner

cc: Deborah Baker
Lawrence Bernard
Catherine Bruns
Bernard Canepa
Christopher Dragos
Julie Glynn
Cindy Greer
Ashley-Rose Harris
Elissa Kestin
Andrew Perkins
Hans Reich
David Sonnenberg

Enclosures: Rule 9300 et seq.
Rule 9143

Subj: **JOHN JOSEPH PLUNKETT - COMPLAINT NO. 2006005259801**
Date: 2/21/2012 3:36:02 P.M. Eastern Standard Time
From: Michelle.Parker@finra.org
To: [redacted]
CC: Deborah.Baker@finra.org, jante.turner@finra.org

Attached is the NAC's decision in Dep't of Enforcement v. Plunkett, FINRA Complaint No. 2006005259801 (FINRA NAC Feb. 21, 2012). The NAC affirmed the Hearing Panel's findings, but modified the sanctions.

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Financial Industry Regulatory Authority

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Counsel – Appellate Group

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February 21, 2012

VIA MESSENGER

Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: JOHN JOSEPH PLUNKETT – COMPLAINT NO. 2006005259801

Ms. Murphy:

Enclosed is the National Adjudicatory Council's decision for this matter. FINRA's Board of Governors did not call this matter for review, and the attached decision of the National Adjudicatory Council is the final decision of FINRA.

Very truly yours,

Jante C. Turner

Enclosures

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John Joseph Plunkett Brooklyn, NY, Respondent.	DECISION Complaint No. 2006005259801 Dated: February 21, 2012

Respondent removed his firm's books and records, erased the firm's electronic files and computer servers, and failed to respond to FINRA requests for information and documents. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Elisa Meth Kestin, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: John Joseph Plunkett, Pro Se

Decision

A Review Subcommittee of the National Adjudicatory Council called this matter for discretionary review to examine the sanctions imposed on John Joseph Plunkett in a Hearing Panel decision issued on January 4, 2011. The Hearing Panel found that, when Plunkett resigned from his firm, he took the firm's books and records and erased the firm's electronic files and computer servers. The Hearing Panel also found that Plunkett failed to respond to requests for information and documents issued by FINRA staff. The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records, and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents. After an independent review of the record, we eliminate the fines and suspensions that the Hearing Panel assessed and impose a bar for each cause of action.

I. Factual Background

A. Plunkett

Plunkett entered the securities industry in August 1993. Between August 1993 and January 2010, Plunkett remained registered with FINRA continuously, associating with several current and former FINRA firms. Plunkett has not registered with FINRA, or associated with another FINRA firm, since the termination of his registration in January 2010.

B. Lempert Brothers

At the time of the conduct in this case, Plunkett was associated with former FINRA firm, Lempert Brothers International USA, Inc. ("Lempert Brothers"). Lempert Brothers was a limited liability company based in New York and a wholly owned subsidiary of a holding company based in Liechtenstein. Although the European holding company maintained legal ownership of Lempert Brothers, de facto ownership of the firm rested with two Ukrainian brothers, Roman and Eduard Orlov. The Orlovs resided in Austria and operated several broker-dealers throughout Europe. The Orlovs authorized their nephew, George Milter, to act as their representative in the United States.[1]

C. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

In August 2003, Lempert Brothers hired Plunkett to assist the company in establishing its operations in the United States. He served as Lempert Brothers' president and chief compliance officer and registered through the firm as a general securities representative and principal.

1. Lempert Brothers Stops Paying Plunkett

Lempert Brothers was never profitable, and, by early 2005, there was not sufficient capital for the firm to satisfy its ongoing obligations and pay its employees. Accordingly, in March 2005, Lempert Brothers ceased funding salaries and expenses for all Lempert Brothers' personnel, including Plunkett.

Around that time, Plunkett and several other registered representatives at Lempert Brothers met with Milter to discuss the firm's dire financial situation. They informed Milter, at that meeting, that they intended to leave Lempert Brothers if the firm's financial situation did not improve. In early to mid-2005, Plunkett and the other registered representatives at Lempert Brothers began to search for other employment opportunities.

2. Plunkett Establishes Emerald Investments

In the summer of 2005, while Plunkett was employed with Lempert Brothers as president and chief compliance officer, he and two other registered representatives began forming a new

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[1] Lempert Brothers was a member of FINRA from February 2004 until June 2010.

broker-dealer, Emerald Investments, Inc. ("Emerald Investments").[2] Plunkett did not disclose his involvement with Emerald Investments to the Orlovs or their representative, Milter.

Plunkett intended to remain at Lempert Brothers to continue growing its business, and then transfer that business to Emerald Investments upon his departure from the firm. In September 2005, for example, Plunkett and the other founding principals of Emerald Investments identified investors for Emerald Investments and entered into an agreement with the investors for the capitalization of the firm. Among other representations and warranties, Plunkett agreed to "maintain the current base of operations [at Lempert Brothers] for as long as possible in order to maintain the various businesses as long as possible and to facilitate ease of transfer to the new broker-dealer." Plunkett even projected that he and the other founding principals of Emerald Investments would have sufficient business from their existing platform at Lempert Brothers to fund the new broker-dealer without additional cash infusions.

Throughout late 2005 and early 2006, Plunkett and the founding principals of Emerald Investments arranged to establish the new broker-dealer and sever ties with Lempert Brothers. By March 2006, Emerald Investments had secured office space, executed a service agreement with a clearing firm, and applied for FINRA membership.[3]

3. Lempert Brothers Prepares to Fire Plunkett

As Plunkett and the founding principals of Emerald Investments continued their preparations to build Emerald Investments' business and leave Lempert Brothers, Plunkett's relationship with the Orlovs began to deteriorate, and the Orlovs decided to terminate Plunkett.

On or about March 16, 2006, an attorney representing the Orlovs and Milter prepared a draft resolution for Lempert Brothers' board of directors' approval and emailed the draft to Milter for his review. The resolution called for the "immediate" removal and dismissal of Plunkett as president of Lempert Brothers. On March 30, 2006, after the same attorney and Plunkett had a disagreement about the production of certain documents in preparation for a routine compliance examination, the attorney sent an email to the Orlovs and Milter, explaining the circumstances of the disagreement and the compromise he had reached with Plunkett. As the attorney concluded the summary of what had transpired, he noted, "[t]his of course may all be academic as we will soon be relieving [Plunkett] of his position." Plunkett, as Lempert Brothers' chief compliance officer, reviewed all Lempert Brothers' email correspondence. Plunkett admitted that he saw the aforementioned emails in late March 2006, and knew that the Orlovs intended to fire him.

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[2] From October 2005 to April 2006, Plunkett served as president and chief compliance officer of both Lempert Brothers and Emerald Investments.

[3] In January 2006, Emerald Investments filed a Uniform Application for Broker-Dealer Registration ("Form BD"), requesting FINRA membership. Plunkett signed the Form BD as Emerald Investments' president. FINRA approved Emerald Investments' membership application in June 2006.

4. Plunkett Takes Lempert Brothers' Books and Records

Faced with his imminent termination, Plunkett expedited his departure from Lempert Brothers. Plunkett met outside of the Lempert Brothers' offices with the firm's sales supervisor and seven or eight of the firm's registered representatives. At that meeting, Plunkett explained his plan and timeframe to leave Lempert Brothers. Everyone in attendance agreed to join Plunkett and associate with Emerald Investments.

On April 3, 2006, Plunkett and the departing personnel prepared and tendered letters of resignation to Lempert Brothers and the Orlovs. A Lempert Brothers' employee also filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Plunkett and each of the resigning registered representatives.

On the evening of April 3, 2006, Plunkett and the resigning employees waited for Lempert Brothers' remaining personnel to leave for the day. After these individuals left, Plunkett and the other resigning personnel took all of Lempert Brothers' books and records, except for those that were located in the offices of three other employees.[4]

At Plunkett's direction, the former employees of Lempert Brothers took the firm's accounting documents, bank and brokerage statements, compliance manuals, customer files, employee records, incorporation documents, order tickets, documents concerning pending investment deals, and all electronic records, including the firm's FOCUS Reports. Plunkett and the other resigning employees also took office supplies and Lempert Brothers' checkbook and check register. Before departing, they erased Lempert Brothers' electronic files and computer servers. When the remaining Lempert Brothers employees arrived for work on April 4, 2006, they discovered the cleared-out offices. Lempert Brothers contacted the police to report the incident.

Within 24 hours, Plunkett and the other registered representatives who had left Lempert Brothers contacted all of their customers and sent follow-up letters to provide the customers with information concerning Emerald Investments. Virtually all of Lempert Brothers' customers transferred their accounts to Emerald Investments.

5. Plunkett's Misconduct Shuts Down Lempert Brothers for Four Months

Lempert Brothers hired a consultant to reconstruct the firm's missing books and records. It took one week for Lempert Brothers to obtain customer account numbers to access the records maintained at its clearing firm. After working with the clearing firm for two weeks, Lempert Brothers obtained copies of trading records.

Lempert Brothers also engaged the services of an attorney. From April through June 2006, the attorney attempted to negotiate the return of the stolen books and records. Plunkett,

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[4] Plunkett and the other resigning employees did not remove anything from Milter's office or the offices of two registered representatives who intended to remain at the firm.

however, refused to return the documents until Lempert Brothers agreed to provide each of the former employees with back pay.

In the midst of these negotiations, Plunkett contacted FINRA staff to give his account of what had transpired at Lempert Brothers. When FINRA staff learned that Lempert Brothers no longer had access to its books and records, the staff informed the firm that it could only engage in "liquidating transactions" until the firm could confirm its net capital compliance. Lempert Brothers did not resume full operations until August 2006.

6. A FINRA Arbitration Panel Compels Plunkett to Return Lempert Brothers' Books and Records

In June 2006, Plunkett, Emerald Investments, and several of Lempert Brothers' former registered representatives filed arbitration claims against Lempert Brothers and its owners, seeking approximately $300,000 in damages related to Lempert Brothers' failure to pay salaries in 2005 and 2006.[5] Lempert Brothers and its owners filed a counterclaim against Plunkett and the other claimants, alleging, among other claims, that Plunkett and the former representatives had stolen Lempert Brothers' personal and intellectual property.

During the arbitration proceedings, Lempert Brothers twice moved to compel the production of the books and records that Plunkett and the resigning employees had removed on April 3, 2006. The first set of documents was returned on October 25, 2006, after Lempert Brothers filed its initial motion to compel. Additional records were produced to Lempert Brothers in response to the firm's subsequent motion to compel, but only after the arbitrators issued a production order. Although a majority of the documents were returned to Lempert Brothers during the course of the arbitration, some documents were never produced.

The arbitration panel issued its decision on May 16, 2007. The panel denied the claims that Plunkett, Emerald Investments, and the other claimants had asserted during the arbitration proceedings, and ordered them to pay fees and compensatory and punitive damages of approximately $550,000 to Lempert Brothers and its owners.

D. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

On May 8, 2009, Enforcement sent Plunkett and his attorney a Wells Notice, informing them that FINRA had made a preliminary determination to initiate formal disciplinary proceedings against Plunkett for his conduct involving Lempert Brothers' books and records. Plunkett submitted a response to the Wells Notice on June 29, 2009. Plunkett's response explained the circumstances surrounding his departure from Lempert Brothers. The response also referred to documents, which he did not attach to the submission, and individuals that he did not identify by name.

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[5] *See Emerald Invs., Inc. v. Lempert Bros. Int'l USA, Inc.*, Case No. 06-03216, 2007 NASD Arb. LEXIS 531, at *1 (NASD Arbitration May 16, 2007).

On July 15, 2009, FINRA staff sent to Plunkett a request for information and documents made pursuant to FINRA Rule 8210. The request asked Plunkett to provide copies of the documents and identify the individuals referenced in his response to the Wells Notice. The letter requested a response by July 27, 2009. On July 27, 2009, Plunkett requested an extension of time to respond to the request. He stated that he required additional time to search for the documents. The staff granted Plunkett an extension until August 10, 2009. Plunkett, however, did not respond to the request by August 10, 2009. On August 11, 2009, Plunkett requested additional time to respond. He stated that he could not respond at that time because he was ill.

On August 20, 2009, FINRA staff sent Plunkett a second request for information and documents made pursuant to FINRA Rule 8210. The second request enclosed a copy of the original request from July 15, 2009, and required Plunkett to respond no later than September 3, 2009. Plunkett submitted a written narrative response to the request for information and documents seven months later, on April 29, 2010. Plunkett did not provide any documents with the response.

II. Procedural Background

FINRA initiated the investigation of this matter after Plunkett met with FINRA staff in April 2006 to explain his departure from Lempert Brothers and his rationale for taking the firm's books and records. Enforcement filed the complaint on December 1, 2009, alleging that Plunkett's misconduct involving Lempert Brothers' books and records violated NASD Rule 2110. Enforcement also alleged that Plunkett failed to respond to FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010. A two-day hearing took place in New York in September 2010. Plunkett, a FINRA examiner, and a representative of Lempert Brothers testified at the hearing.

The Hearing Panel issued its decision in January 2011, finding that Plunkett violated FINRA's rules, as alleged in the complaint. The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents.

III. Legal Findings

Although our consideration of this case focuses primarily on sanctions, we briefly review, and affirm, the Hearing Panel's findings and conclusions related to Plunkett's misconduct.

A. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

When Lempert Brothers stopped funding the salaries of its employees, Plunkett decided to leave the firm to establish his own broker-dealer, Emerald Investments. As Plunkett arranged for this transition from Lempert Brothers to Emerald Investments, he learned that Lempert Brothers intended to fire him and hastened his departure from the firm. During his departure, Plunkett implemented an exit strategy, which was guaranteed to cripple Lempert Brothers.

Plunkett summoned the other resigning employees of Lempert Brothers, and at Plunkett's direction, the resigning employees took nearly all of Lempert Brothers' books and records. Plunkett also directed the resigning employees to erase the firm's electronic files and computer servers. In one day, Plunkett rendered Lempert Brothers inoperable for months and succeeded in granting himself exclusive access to Lempert Brothers' customers, without regard to the effect of his actions on the firm or its customers.

Plunkett's conduct in this case represented a gross deviation from the standards expected of those employed in the securities industry, trampled ethical boundaries and standards of commercial honor, and violated NASD Rule 2110.[6]

B. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

FINRA staff properly served Plunkett with requests for information and documents on July 15 and August 20, 2009. Despite Plunkett's admitted receipt of these requests, he did not provide a response for nine months, until April 2010. When Plunkett finally responded to the requests for information and documents, he supplied only a written narrative. He did not proffer any documents. By failing to provide the information and documents by the date prescribed in FINRA's requests, Plunkett violated FINRA Rules 8210 and 2010.[7] *See PAZ Secs., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008) ("The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

IV. Sanctions

The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents. Our review of the record in this case, however, suggests that the Hearing Panel grossly misjudged the gravity of Plunkett's misconduct and the effect of that

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[6] We discuss the rules in effect when the conduct occurred. NASD Rule 2110 states that, "[A] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The rule is not limited to legal conduct, but incorporates broad ethical principles. *See Jay Frederick Keeton*, 50 S.E.C. 1128, 1134 (1992). NASD Rule 0115 subjects associated persons to all rules applicable to FINRA firms.

[7] A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade, and violates FINRA Rule 2010. *See Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *13 n.12 (Sept. 10, 2010), *appeal docketed*, No. 10-4566 (2d Cir. Nov. 15, 2010). NASD Rule 2110 was transferred without change to FINRA's consolidated rulebook and codified as FINRA Rule 2010, which became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50, at *32-33 (Oct. 2008). Associated persons are subject to the duties and obligations of FINRA Rule 2010 pursuant to FINRA Rule 0140.

misconduct on Lempert Brothers' customers, the firm, and FINRA. As discussed in further detail below, we bar Plunkett for each cause of action.

A. Plunkett's Disciplinary History

We note that the Hearing Panel failed to consider Plunkett's relevant disciplinary history, which is an aggravating factor applicable to each violation.[8] In May 2000, without admitting or denying the allegations, Plunkett consented to a settlement with FINRA for acting as a general securities principal without the proper qualifications and registrations. FINRA fined Plunkett $7,500 and suspended him in all principal capacities for 15 days for the violation.

Plunkett experienced an additional disciplinary event more recently, in January 2010, one month after Enforcement filed the complaint in this matter. In January 2010, FINRA initiated proceedings against Plunkett because he failed to pay the arbitration award entered in favor of Lempert Brothers. As a result of the proceedings, Plunkett is suspended from associating with any FINRA member, and will remain so, until he pays the arbitration award. Mindful that FINRA's Sanction Guidelines ("Guidelines") favor more severe disciplinary sanctions for recidivists, we examine the specific causes of action at issue in this case.

B. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

Enforcement recommends that we consider the Guidelines for recordkeeping violations to inform our sanctions determination.[9] We, however, find that the application of the Guidelines for recordkeeping violations is not helpful here. To characterize Plunkett's actions as a recordkeeping violation oversimplifies the misconduct and fails to capture the essence of what had transpired between Plunkett and Lempert Brothers. When Plunkett decided to resign from Lempert Brothers, he took the firm's books and records and erased the firm's electronic files and computer servers, guaranteeing that Lempert Brothers would be inoperable when he left. While Plunkett's misconduct generally involves books and records, this is not a recordkeeping violation, and we decline to apply those Guidelines in this context. Rather, we rely on the "General Principles Applicable to All Sanction Determinations" and the "Principal Considerations in Determining Sanctions," which we apply in every disciplinary case, to assist our formulation of sanctions here.[10]

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[8] *See FINRA Sanction Guidelines*, at 6 (2011) (Principal Considerations in Determining Sanctions, No. 1) (considering respondent's disciplinary history), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

[9] *See id.* at 1 (Overview) ("For violations that are not addressed specifically, [a]djudicators are encouraged to look to the guidelines for analogous violations"), 29 (Recordkeeping Violations).

[10] *See id.* at 2-5 (General Principles Applicable to All Sanction Determinations), 6-7 (Principal Considerations in Determining Sanctions).

As we review the Hearing Panel's decision, we are concerned that the decision and the resulting sanctions do not adequately address the harm caused by Plunkett's misconduct. The injurious effects of Plunkett's misconduct on Lempert Brothers are obvious. Less obvious, however, is the substantial risk that Plunkett's misconduct imposed on Lempert Brothers' customers.[11] Plunkett's misconduct impeded the Lempert Brothers' ability to comply with basic requirements necessary for customer protection. For example, without access to its books and records, the firm was unable to ensure that it had sufficient capital to meet net capital requirements and could not conduct the due diligence necessary to provide customers with investment advice or respond to their requests.[12]

We also are troubled by the fact that Plunkett transferred the customer files and accounts from Lempert Brothers to Emerald Investments without notifying the customers that he intended to do so. Although many of the former customers of Lempert Brothers agreed to move their accounts with Plunkett to Emerald Investments, they did so after Plunkett already had removed the records from Lempert Brothers' offices. The fact that Plunkett assumed control of customers' records without their consent, risked their assets to transfer their accounts to Emerald Investments, and held their records hostage for his personal gain is intolerable and presents a significant aggravating factor under the circumstances presented.

That being said, we are mindful of the effect of Plunkett's misconduct on Lempert Brothers and note that the misconduct not only rendered the firm inoperable for four months, but also hindered the firm's ability to comply with a host of financial and operational rules.[13] Lempert Brothers had to engage in extraordinary and costly measures to regain possession of its books and records from Plunkett. The fact that, despite these efforts, Plunkett never returned several documents is problematic and aggravating.

We also consider the intentional and self-serving nature of Plunkett's misconduct.[14] Throughout the proceedings before the Hearing Panel, Plunkett asserted that he took Lempert Brothers' books and records because he had concerns that the Orlovs were engaged in fraudulent activities abroad, and he wanted to protect the interests of his customers.[15] The evidence,

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11 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering whether misconduct resulted in direct or indirect injury to investing public).

12 After Plunkett removed the books and records, Lempert Brothers could not identify its customers.

13 *See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering whether misconduct resulted in injury to firm).

14 *See id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 13, 17) (considering whether misconduct was intentional and resulted in monetary or other gain).

15 In March 2006, Plunkett received reports that the Orlovs were engaged in fraud in their European operations. Plunkett received letters from a Latvian attorney and investor, claiming that the Orlovs were the subject of criminal fraud proceedings in Austria. FINRA received similar correspondence from a Latvian investor around this same time and forwarded the letter to Plunkett for his review. We, like the Hearing Panel, make no findings with respect to the

[Footnote continued on next page]

however, supports the conclusion that Plunkett's motivation for the misconduct was financial, not altruistic, and that his concern about the Orlovs' activities was nothing more than a post hoc justification for his prior economic decision.

We highlight the temporal proximity of Plunkett's review of emails in late March 2006, revealing his imminent termination from Lempert Brothers, with his departure from the firm in April 2006, and conclude that Plunkett left Lempert Brothers in anticipation of his discharge.

We also consider the violation and note how it benefitted Emerald Investments, and consequently, Plunkett. The books and records that Plunkett took from Lempert Brothers, including customer account records and histories, provided Emerald Investments with an established base of customers. Other documents that Plunkett removed, such as compliance manuals and employee records, assisted Emerald Investments' launch as a full-functioning broker-dealer.

Indeed, if there were any doubt about Plunkett's motivation, we need only consider the fact that he erased Lempert Brothers' electronic files and computer servers, an act intended to provide him with exclusive access to Lempert Brothers' customers. If Plunkett believed that the Orlovs were engaged in fraudulent activities, as he claims, he had far less drastic alternatives at his disposal to address the situation, including notifying FINRA or the Commission.[16] Instead, he initiated an intentional and risky course of conduct, which by design benefitted him and his newly-formed broker-dealer, at the expense of Lempert Brothers and its customers. Our review of this case leads us to conclude that the Hearing Panel's sanctions are inadequate to remedy Plunkett's misconduct and insufficient to deter Plunkett from engaging, again, in the type of misconduct presented here. We therefore bar Plunkett for his misconduct involving Lempert Brothers' books and records.

C. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

As we turn to the issue of sanctions for Plunkett's failure to respond to FINRA's requests for information and documents, we note that Plunkett did not respond to the information requests until April 2010, four months after Enforcement had filed the complaint in this matter. When a respondent does not respond to a request for information and documents until after FINRA files a complaint, the Guidelines instruct adjudicators to apply the presumption that the respondent's

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[cont'd]

validity of the claims against the Orlovs because the accusations in the letters were not supported by any further evidence. In addition, to the extent the allegations are true, they do not mitigate Plunkett's misconduct. *See Dist. Bus. Conduct Comm. v. Aspen Capital Group*, Complaint No. C3A940064, 1997 NASD Discip. LEXIS 53, at *11 (NASD NBCC Sept. 19, 1997) (explaining that third-party's potential wrongdoing had no bearing on respondent's misconduct).

[16] In late March and early April 2006, Lempert Brothers was the subject of a routine Commission examination.

failure constitutes a complete failure to respond.[17] Consistent with the Guidelines, we apply the presumption here.

The Guidelines state that a bar is standard when an individual fails to respond in any manner to a request for information and documents.[18] Where mitigation exists, the Guidelines suggest a suspension in any or all capacities for up to two years and a fine of $25,000 to $50,000.[19] In assessing sanctions, the Guidelines advise adjudicators to consider the importance of the information requested as viewed from FINRA's perspective.[20]

In this instance, the information and documents that FINRA requested not only were important to determine whether FINRA should proceed with formal disciplinary action against Plunkett, but also to assist FINRA's investigation of the Orlovs. When Plunkett provided FINRA with the response to his Wells Notice, he asserted that there were individuals and documents that substantiated his claims against the Orlovs and supported his rationale for leaving the firm and taking the firm's books and records with him. Plunkett's failure to provide the requested information and documents frustrated FINRA's investigation and curtailed FINRA's ability to verify Plunkett's claims, particularly as it related to the Orlovs' purportedly fraudulent activities.

We also examined the record for evidence of mitigation, but conclude that no such evidence exists. In so holding, we carefully considered the explanations that Plunkett proffered for his failure to respond to the requests. Plunkett noted that his secretary's departure from the firm, the misfiling of some documents, the offsite storage of other documents, and the general disarray of his office left him unable to comply with the requests for information and documents issued in this case. These considerations, however, are not mitigating and have no bearing on Plunkett's compliance obligations under FINRA Rule 8210.[21] We expect individuals, as well as FINRA firms, to assign the utmost priority to responding to FINRA's Rule 8210 requests.[22]

As we consider the importance of the information that FINRA sought and the dearth of evidence of mitigation, we conclude that the record supports assessing Plunkett with the standard sanction for failing to respond in any manner to a request for information and documents. We

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17 *See Ricupero*, 2010 SEC LEXIS 2988, at *12; *Guidelines*, at 33 n.1 (Failure to Respond to Requests Made Pursuant to FINRA Rule 8210).

18 *See Guidelines*, at 33.

19 *See id.*

20 *See id.*

21 *See Ricupero*, 2010 SEC LEXIS 2988, at *20 (rejecting applicant's claim that his inability to locate documents should lessen severity of his violation of FINRA Rule 8210).

22 *See Wedbush Secs., Inc.*, 48 S.E.C. 963, 971-972 (1988) (rejecting applicant's contention personnel shortages and the disarray of firm records mitigated delay in responding to FINRA's requests for information and documents).

therefore bar Plunkett for failing to respond to FINRA's requests for information and documents.[23]

V. Conclusion

Plunkett removed his firm's books and records and erased the firm's electronic files and computer servers. In so doing, he violated NASD Rule 2110. Plunkett also failed to respond to FINRA's requests for information and documents, in violation of FINRA Rules 8210 and 2010. We bar Plunkett for each violation and affirm the Hearing Panel's order that he pay costs of $4,004.85. We have considered, and reject without discussion, all other arguments of the parties.

On behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

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[23] Plunkett's misconduct involving Lempert Brothers' books and records, and his failure to respond to FINRA's requests for information and documents, present distinct violations, which are different in nature and raise separate public interest concerns. Accordingly, we have concluded that it is appropriate in this case to impose a bar for each cause of action presented. *See generally, Michael Frederick Siegel*, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459, at *46 (Oct. 6, 2008), *aff'd in relevant part*, 592 F.3d 147, 157-158 (D.C. Cir. 2010).

FINRA

Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President and Corporate Secretary
202-728-8831 – Telephone
202-728-8300 – Facsimile

February 21, 2012

VIA CERTIFIED MAIL
FIRST-CLASS MAIL – ELECTRONIC MAIL

John J. Plunkett
[redacted]

RE: JOHN JOSEPH PLUNKETT – COMPLAINT NO. 2006005259801

Mr. Plunkett:

Enclosed is the decision of the National Adjudicatory Council for this case. FINRA's Board of Governors did not call the matter for review, and the attached decision of the National Adjudicatory Council is the final decision of FINRA. In the enclosed decision, the National Adjudicatory Council barred you and affirmed the Hearing Panel's order that you pay costs of $4,004.85.

Please note that under Rule 8311 ("Effect of a Suspension, Revocation or Bar"), because the NAC has barred you, effective immediately, you are not permitted to associate further with any FINRA member firm in any capacity, including a clerical or ministerial capacity.

If you are currently employed with a FINRA member firm, Article V, Section 2 of the FINRA By-Laws requires you immediately to update your Form U4 to reflect this action. You are also reminded that the failure to keep FINRA apprised of your most recent address may result in the entry of a default decision against you. Article V, Section 2 of the FINRA By-Laws requires all persons who apply for registration with FINRA to submit a Form U4 and to keep all information on the Form U4 current and accurate. Accordingly, you must keep your member firm informed of your current address.

In addition, FINRA may request information from, or file a formal disciplinary action against, persons who are no longer registered with a FINRA member firm for at least two years after their termination from association with that member. *See* Article V, Sections 3 and 4 of FINRA's By-Laws. Requests for information and disciplinary complaints issued by FINRA during this two-year period will be mailed to such persons at their last known address as reflected in FINRA's records.

Such individuals are deemed to have received correspondence sent to their last known address, whether or not the individuals have actually received them. Thus, individuals who are no longer associated with a FINRA member firm, and who have failed to update their addresses during the two years after they end their association, are subject to the entry of default decisions against them. *See NASD Notice to Members 97-31* (May 1997). Letters notifying FINRA of such address changes should be sent to:

CRD
PO Box 9495
Gaithersburg, MD 20898-9401

You may appeal this decision to the Securities and Exchange Commission ("SEC"). To do so, you must file an application for review with the SEC within 30 days of receipt of this decision. A copy of this application must be sent to FINRA's Office of General Counsel for Regulatory Policy and Oversight, as must copies of all documents filed with the SEC. Any document provided to the SEC via facsimile or overnight mail should also be provided to FINRA by similar means.

The address of the SEC is:
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

The address of FINRA is:
Jante C. Turner
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006

If you file an application for review with the SEC, the application must identify the FINRA case number and state the basis for appeal. The application must also include an address where you may be served and a telephone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

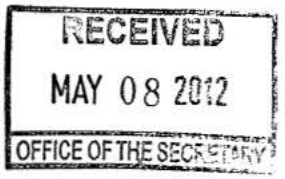
The filing with the SEC of an application for review shall stay the effectiveness of any sanction except a bar or expulsion. Thus, the bars that the NAC imposed in the enclosed decision will not be stayed pending appeal to the SEC, unless the SEC orders a stay. Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The telephone number of that office is 202-551-5400.

Very truly yours,

Marcia E. Asquith

Marcia E. Asquith
Senior Vice President and Corporate Secretary

cc: Deborah Baker
Lawrence Bernard
Catherine Bruns
Bernard Canepa
Christopher Dragos
Julie Glynn
Cindy Greer
Elissa Kestin
Leo Orenstein
Jeff Pasquerella
David Sonnenberg



John J. Plunkett

[redacted]

March 20, 2012 via USPS Overnight Mail # E1 099021278, & Fax # 202-772-9324

Office of the Secretary

United States Securities and Exchange Commission

100 F Street, NE

Washington DC, 20549-1090

Dear Sir or Madame:

Please find enclosed the following:

1. A signed original Application for Review of FINRA NAC decision
2. Three copies of Application
3. A signed Certificate of Mailing
4. A copy of the NAC decision delivered to me via e-mail from FINRA

Please note that I have delivered a copy of the Application for Review and the Certificate of Mailing to FINRA Office of General Counsel, via USPS Overnight Mail # E1 099021295 US, and via fax # 202-728-8264 as well.

Very truly yours

John J. Plunkett

Application for Review Dated March 19, 2012

Re: John Joseph Plunkett Complaint # 2006005259801

I am appealing the recent decision of the FINRA National Adjudicatory Council (NAC) on February 21, 2012, which called the matter for discretionary review to examine a Hearing Panel decision issued on January 4,2011.

The Council as well as the Hearing Panel were prejudiced toward me and rendered their decisions' without a thorough examination of the circumstances, evidence, and facts.

This was done in an effort to cover up the failure of NASD/FINRA to act upon documentary evidence which I provided FINRA staff that I had uncovered. They failed to act upon a significant Ponzi scheme orchestrated and carried out by the owners of Lempert Brothers International USA, Inc., Eduard Orlav and Roman Orlav. At the time I was the President of this broker dealer.

To foster the cover up of the failure to act on the evidence of the Ponzi scheme, FINRA instituted a campaign of company and personal harassment directed against my new broker dealer, myself, and my registered representatives. I received nonstop requests for information from FINRA from varied and different FINRA staff, of which the records show I responded to each. On several occasions FINRA staff questioned me why I had so many African American registered reps in the firm. FINRA staff even asked several of the registered reps why they were there at all on occasion.

In 2006 I discovered the owners' scheme which had robbed European investors of tens of millions if not hundreds of millions of dollars. The Orlovs intended to transfer hundreds of accounts with major losses in them from their business in Europe onto the books and records of the US Broker Dealer while I was on vacation. Through conversation with their attorney and review of e-mails, it was determined that my signature would be forged on reams of documents authorizing this action.

Further the Orlovs in conjunction with George Milter, their nephew had met with the registered reps while I was out of the office one day telling the registered reps that they were being required to sell a security to their clients at a price of $.25 (twenty five cents) in order to benefit the broker dealer, and that they would be compensated a commission of $.10 per share (ten cents per share). Ray Thomas a principal at the firm called me about this and testified to this effect at the arbitration.

Evidence has been presented detailing correspondence to their European clients from the Orlovs stating that the transfer of their accounts to the US Broker Dealer would occur, and that their accounts would then be made whole. Verbally one client called and told me that he was informed that SIPC would provide the funds to recover the losses. Copies of forgeries by Milter were presented as well.

These documents were introduced as evidence during the Arbitration between Emerald Investments Inc. (the broker dealer established after leaving Lempert) and Lempert which I informed the hearing panel.

I should point out that after that Arbitration the opposing counsel, (for Lempert), told me and my counsel at the time that Dan Druz, the attorney that represented Emerald at the Arbitration should be dis-barred for his actions during the Arbitration and he offered to testify against Dan Druz. I believe that the gross misconduct of Dan Druz resulted in our loss in that Arbitration (he was simultaneously handling his own personal arbitration vs. Morgan Stanley while working on our arbitration of which we were not informed – he won a $750,000 settlement personally). Opposing counsel had no knowledge of Druz personal case when he offered to testify.

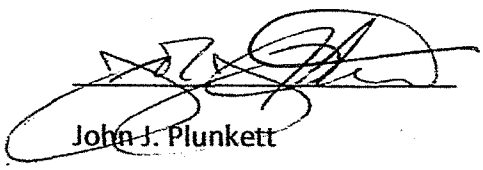
This verdict was front and center for the Hearing Panel and the NAC, and the evidence which Druz could not, and did not properly present was never examined in order to maintain the cover up.

This NAC decision miss-states the facts. As an example...On the morning that we left Lempert I personally initiated calls to the SEC, NASD, and our clearing firm beginning at 9 a.m. There is no mention that an examiner from the SEC was conducting an examination of Lempert at the time and that he and his supervisor met myself and counsel (he himself a former SEC attorney) that afternoon. After hearing what had transpired the supervisor stated that we had done the correct thing.

Contrary to the conclusions of the Hearing Panel and the NAC we were forced to leave in the manner that we did in order to protect the clients, our good name, and avoid possibly massive claims against SIPC which would have consumed massive time and dollars to sort out. It was also hoped that NASD/FINRA would inform SEC and work with overseas regulators to bring the criminals to justice including George Milter who resided on Long Island at the time.

Contrary to their conclusion that the lack of a response was willful and intentional I state that all other requests were responded to. This last request came in while we were not conducting a business due to a net capital deficiency, were unable to pay bills including rent due to lack of revenue, and had been locked out of the office with no access to records to provide for the request. Much of the requested information was subsequently thrown out by the landlord upon eviction.

I believe that upon an impartial examination of all of the facts, circumstances, and evidence, it will be determined that what we did was indeed to protect the clients, that it was impossible to access information that does not exist, that we uncovered a major Ponzi scheme, thwarted the transfer of hundreds of claims to the US, and that I have been persecuted and prosecuted by FINRA to keep me silent about their cover up of their failure to act on the evidence of the Ponzi scheme.



John J. Plunkett

John J. Plunkett

[redacted]

CERTIFICATE OF MAILING

I hereby certify that on this date, March 20, 2012, I served via the United States Postal Service Overnight Mail Delivery # E1 099021278 US, an Application for Review by The Securities and Exchange Commission of a recent decision by FINRA National Adjudicatory Council regarding Complaint No. 2006005259801 dated February 21, 2012. This request is made pursuant to Rule 420. Delivery was made to:

Office of the Secretary

United States Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

I further certify that the Application for Review was also delivered to the Office of the Secretary, United States Securities and Exchange Commission via facsimile # 202-772-9324, which number was provided to me from the Office of the Secretary.

Additionally I hereby certify that on this date, March 20, 2012, I served via the United States Postal Service Overnight Mail Delivery # E1 099021295 US, a copy of this Application for Review to the appropriate FINRA office. Delivery was made to:

Jante C. Turner

FINRA – Office of General Counsel

1735 K Street, NW

Washington DC, 20006

I further certify that the Application for Review was also delivered to FINRA – Office of General Counsel via facsimile # 202-728-8264, which number was provided by Ms. Turner.

John J. Plunkett

FINRA

Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President and
Corporate Secretary

Direct: 202-728-8831
Fax: 202-728-8300

April 3, 2012

VIA MESSENGER

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: APPLICATION FOR REVIEW OF JOHN JOSEPH PLUNKETT
ADMINISTRATIVE PROCEEDING NO. 3-14810

Ms. Murphy:

Enclosed is the certified record for the above-referenced matter, together with three copies of the index to the certified record. The index to the certified record identifies every document contained in the certified record and provides a corresponding record page number for each document. Also enclosed is a CD, which contains an electronic copy of the NAC hearing transcript and the index to certified record.

Very truly yours,

Marcia E. Asquith

Marcia E. Asquith

cc: John Joseph Plunkett (index only)

[redacted]

Enclosures

CERTIFICATE OF SERVICE

I, Jante C. Turner, certify that on April 3, 2012, I caused the original and three copies of the index to the certified record in the matter of John Joseph Plunkett, Administrative Proceeding File No. 3-14810, to be served via messenger on:

Elizabeth M. Murphy
Secretary – Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

and via overnight Federal Express, Electronic Mail, and Facsimile:

John Joseph Plunkett
[redacted]

Different means of service were made on the Commission and applicant due to the distance between the FINRA offices and the applicant's address.

Respectfully submitted,

Jante C. Turner
FINRA – Office of General Counsel
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CERTIFICATION OF THE RECORD
TO THE SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF JOHN JOSEPH PLUNKETT

ADMINISTRATIVE PROCEEDING FILE NO. 3-14810
FINRA COMPLAINT NO. 2006005259801

DATE	DESCRIPTION	BATES NUMBER
12/01/2009	Complaint, Dated December 1, 2009	000001
12/03/2009	Notice of Assignment of Hearing Officer, Dated December 3, 2009	000031
12/30/2009	Second Notice of Complaint, Dated December 30, 2009	000033
01/25/2010	Answer, Dated January 19, 2010	000071
01/28/2010	Notice of Receipt of Answer, Dated January 28, 2010	000077
01/28/2010	Order Setting Initial Pre-Hearing Conference, Dated January 28, 2010	000079
02/16/2010	Transcript of Pre-Hearing Conference	000083
02/17/2010	Request for Clarification of Answer, Dated February 17, 2010	000115
02/19/2010	Notice of Assignment of Settlement Hearing Officer, Dated February 19, 2010	000125
02/24/2010	Scheduling and Procedures Order, Dated February 24, 2010	000127
04/14/2010	Order Directing Respondent to Respond to Enforcement's Request for Clarification of Answer, Dated April 14, 2010	000135
05/17/2010	Order Setting Pre-Hearing Conference, Dated May 17, 2010	000137
05/24/2010	Transcript of Pre-Hearing Conference	000139
06/01/2010	Amended Answer, Dated June 1, 2010	000167

DATE	DESCRIPTION		BATES NUMBER
06/14/2010	Notice of Appointment of Hearing Panelists, Dated June 14, 2010		000175
07/16/2010	Enforcement's Motion for Leave to Offer Telephone Testimony, Dated July 16, 2010		000177
08/02/2010	Order Granting Enforcement's Motion for Leave to Offer Telephone Testimony by Witness A.G., Dated August 2, 2010		000193
08/13/2010	Enforcement's Pre-Hearing Memorandum, Dated August 6, 2010		000195
08/13/2010	Enforcement's Proposed Witness List, Dated August 6, 2010		000233
08/13/2010	Enforcement's Proposed Exhibit List, Dated August 6, 2010		000237
ENFORCEMENT'S PROPOSED EXHIBITS			
	CX-1	Excerpts from CRD re: Plunkett	000255
	CX-2	Excerpts from CRD re: LBIU	000273
	CX-3	Excerpts from CRD re: Emerald Investments	000277
	CX-4	May 23, 2006 - Letter from Kennedy to Plunkett Including: ▪ November 21, 2005 - Unsigned Letter from Milter to Sarmiento ▪ March 1, 2006 - Letter from Mazurin to NASD Investor Complaint Center and SEC ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir, March 1, 2006 ▪ Undated - Letter from Capuns to Plunkett and Milter	000279

DATE		DESCRIPTION	BATES NUMBER
	CX-5	July 12, 2006 - Letter from Plunkett to Kennedy Including: ▪ List of LBIU Accounts and Accounts Transferred to Success Trade Securities ▪ List of LBIU Registered Representative Numbers and Names ▪ April 25, 2006 - Letter from Thomas to Englebert ▪ LBIU Organizational Chart ▪ Undated - Letter from E. Orlov and R. Orlov to NASD re: Broker Dealer Registration ▪ December 15, 2003 - Agreement Between Lempert Brothers Holding and LBIU ▪ List of LBIU Capital Contributions During 2005 - ▪ April 27, 2006 - Facsimile from Plunkett to Kim ▪ April 13, 2006 - Letter from Plunkett to Kim ▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ April 27, 2006 - Facsimile from Plunkett to Hickey ▪ April 13, 2006 - Letter from Plunkett to Kim ▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ April 27, 2006 - Facsimile from Plunkett to Greco ▪ April 13, 2006 - Letter from Plunkett to Kim	000321

DATE		DESCRIPTION	BATES NUMBER
		▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ March 31, 2006 - Letter from Greco to Gentlemen re: Memorandum to [LBIU] Concerning Adolph and Komorsky Investments Lempert Brothers International ▪ March 23, 2006 - Unexecuted Letter from Plunkett to E. Orlov, R. Orlov	
	CX-6	July 17, 2006 – Emails Between Kvjatkovska and Greco re: "Our Reply E-Mail to Yours of June 28, 2006 "	000365
	CX-7	July 20, 2006 - Request Letter from Kennedy to Plunkett	000371
	CX-8	July 21, 2006 - Request Letter from Kennedy to Plunkett Including: ▪ May 23, 2006 - Request Letter	000373
	CX-9	August 1, 2006 - Response Letter from Plunkett to Kennedy	000379
	CX-10	August 15, 2006 - Email from Plunkett to Kennedy re: "Response to Your Letter of 7/21/06" Including: ▪ August 14, 2006 - Letter from Plunkett to Kennedy	000381
	CX-11	August 18, 2006 - Request Letter from Kennedy to Plunkett	000385
	CX-12	September 25, 2006 - Facsimile from Plunkett to Kennedy Including: ▪ September 25, 2006 - Response Letter from Plunkett to Kennedy	000387

DATE		DESCRIPTION	BATES NUMBER
		▪ September 25, 2006 - Letter from Coventry to Kennedy and Check Register for LBIU Check Nos. 1568 – 1609	
	CX-13	October 9, 2006 - Response Letter from Plunkett to Kennedy (No CDs Filed with OHO That Correspond to Photocopies of CDs)	000411
	CX-14	October 20, 2006 - Email from Kennedy to Plunkett Including: ▪ October 20, 2006 - Request Letter	000419
	CX-15	November 8, 2006 - Letter from Kennedy to Plunkett Including: ▪ October 20, 2006 - Request Letter	000421
	CX-16	November 10, 2006 - Response from Plunkett to Kennedy Including: ▪ November 10, 2006 - Letter from Coventry to Kennedy	000427
	CX-17	May 8, 2009 - Letter from Kestin to Gehn	000431
	CX-18	June 29, 2009 - Letter from Plunkett to Kestin Including: ▪ November 21, 2005 - Unexecuted Letter from Milter to Sarmiento ▪ March 1, 2006 - Letter from Mazurin to NASD Investor Complaint Center and the SEC ▪ Customer Agreements between Adolph and Komorsky International GMBH and Mazurin ▪ Partnership Cooperation Agreement between LBIU and Lempert Brothers International	000433

DATE		DESCRIPTION	BATES NUMBER
		▪ March 9, 2006 - Email from Kvjatkovska re: "Attn. Mr. Plunkett" ▪ March 8, 2006 - Email from Kvjatkovska re: "Attn. Mr. Plunkett" ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir ▪ Email from Kruzhkov to Milter re: "Docs" Attaching Board Resolution and Power of Attorney Documents ▪ March 23, 2006 - Unexecuted Letter from Plunkett to E. Orlov and R. Orlov ▪ March 23, 2006 - Facsimile re: Letter from Plunkett to E. Orlov and R. Orlov	
	CX-19	July 15, 2009 - Request Letter from Kennedy to Plunkett	000475
	CX-20	July 27, 2009 - Emails Between Plunkett and Kennedy re: Extension and Response Email from Kennedy to Plunkett Granting Extension	000479
	CX-21	August 11, 2009 - Email from Plunkett to Kennedy re: Response as Soon as Possible	000481
	CX-22	August 20, 2009 - Request Letter from Kennedy to Plunkett, Including: ▪ July 15, 2009 - Request Letter from Kennedy to Plunkett ▪ July 27, 2009 - Emails Between Plunkett and Kennedy	000483
	CX-23	April 29, 2010 - Response Letter from Plunkett to Kennedy and Kestin	000505

DATE		DESCRIPTION	BATES NUMBER
	CX-24	May 22, 2006 - Request Letter from Kennedy to Goodman and Kruzhkov	000511
	CX-25	May 26, 2006 - Request Letter from Kennedy to Goodman and Kruzhkov	000515
	CX-26	June 26, 2006 - Response Letter from Borcherding to Kennedy Including: ▪ Statement from Savage, President of Cedonix Technologies ▪ June 14, 2006 - Affidavit from Sarmiento ▪ List of Missing and Recreated Documents of LBIU ▪ June 26, 2006 - Affidavit from Milter ▪ April 27, 2006 - Letter From Kruzhkov to Mazurin	000517
	CX-27	June 30, 2006 - Request Letter from Kennedy to Goodman re: Coventry, LBIU	000531
	CX-28	June 30, 2006 - Request Letter from Kennedy to Goodman re: Heller, LBIU	000533
	CX-29	July 13, 2006 - Response Letter from Goodman to Kennedy	000535
	CX-30	July 20, 2006 - Request Letter from Kennedy to Borcherding, Goodman, and Kruzhkov	000541
	CX-31	August 3, 2006 - Response Letter from Borcherding to Kennedy	000543
	CX-32	October 3, 2006 – Request Letter from Kennedy to Borcherding, Goodman, and Kruzhkov with Correction	000545

DATE		DESCRIPTION	BATES NUMBER
	CX-33	October 16, 2006 - Response Letter from Borcherding to Kennedy Including: ▪ January 1, 2005 - March 31, 2006 -LBIU General Ledger ▪ October 3 and 4, 2006 – Emails Among Kennedy, Goodman, Borcherding, Kruzhkov and empyrean17@aol.com re: "10-03-03 Follow up to firm(corrected).doc" ▪ September 14, 2006 - Letter from Druz to Brodherson re: Arbitration Discovery ▪ October 12, 2006 - Letter from Brodherson to Druz re: Arbitration Discovery	000549
	CX-34	October 30, 2006 - Email from Goodman to Kennedy, re: "Categories of Things Missing" Including: ▪ October 27, 2006 - Emails Between Goodman and Brodherson	000567
	CX-35	October 30, 2006 - Emails Between Goodman and Kennedy re: Lempert Brothers Arbitrations	000569
	CX-36	October 31, 2006 - Request Letter from Kennedy to Goodman	000571
	CX-37	November 1, 2006 - Response Letter from Goodman to Kennedy Including: ▪ Copies of LBIU Checks No. 1595 through 1608	000573

DATE		DESCRIPTION	BATES NUMBER
	CX-38	October 9, 2007 - Email from Goodman to Kennedy Including: ▪ August 7, 2007 - Email from Plunkett to Coventry, Druz, and Brodherson re: "Non Cash Items in Award Letter Due to Lempert"	000587
	CX-39	May 29, 2009 - Request Letter from Robb to Goodman	000591
	CX-40	June 8, 2009 - Response Email and Letter from Goodman to Robb	000593
	CX-41	July 5, 2006 - Request Letter from Kennedy to Coventry	000597
	CX-42	Undated - Response Letter from Coventry to Kennedy	000599
	CX-43	May 24, 2007 - Request Letter from Kennedy to Koplin and Coventry	000601
	CX-44	May 31, 2007 - Response Letter from Coventry to Kennedy Including: ▪ March 22, 2006 - Sublease Information for Emerald One's Sublease of 1270 Avenue of the Americas ▪ Executed Sublease Agreement Between TIBCO Software and Emerald One ▪ March 25, 2005 - Letter from Coventry to Berns ▪ September 17, 2005 - Letter from Coventry to Rivers ▪ August 24, 2004 - Letter from Coventry to Kim ▪ June 14, 2006 - Affidavit of Sarmiento	000603

DATE		DESCRIPTION	BATES NUMBER
		▪ January 24, 2006 - Email from Coventry to Plunkett and Borcherding re: "You Lied" ▪ June 27, 2005 - Email from Coventry to Plunkett and Borcherding re: "Tonight"	
	CX-45	July 5, 2006 - Request Letter from Kennedy to Heller and Plunkett	000643
	CX-46	August 1, 2006 - Response Letter from Heller to Kennedy	000645
	CX-47	May 23, 2006 - Letter from Kennedy to Lowery-Whille	000647
	CX-48	May 23, 2006 - Letter from Kennedy to Yancey	000651
	CX-49	June 7, 2006 - Response Letter from Miller to Kennedy	000653
	CX-50	June 13, 2006 - Response Letter from Gordon to Kennedy	000655
	CX-51	September 22, 2005 - Agreement of Shareholders of Emerald Investments	000685
	CX-52	September 22, 2005 - Unexecuted Copy of Option Agreement re: Purchase of Shares in Emerald Investments	000697
	CX-53	Incorporation Documents for Emerald One	000705
	CX-54	December 27, 2005 - Handwritten Uniform Application for Broker-Dealer Registration	000717
	CX-55	January 19, 2006 - Electronic Uniform Application for Broker-Dealer Registration	000749

DATE		DESCRIPTION	BATES NUMBER
	CX-56	March 31, 2006 - Emerald One Consent to Sublease	000763
	CX-57	April 20, 2006 - Membership Interview Checklist Including: ▪ April 28, 2006 - Facsimile from Plunkett to Punch re: Response to Requests for Additional Information	000771
	CX-58	April 5, 2006 - Email from de la Torre to Borcherding	000801
	CX-59	April 12, 2006 - Letter from Kruzhkov to Plunkett	000803
	CX-60	April 12, 2006 - Letter from Kruzhkov to Missrobian	000805
	CX-61	April 12, 2006 - Letter from Kruzhkov to Heller	000807
	CX-62	April 12, 2006 - Letter from Kruzhkov to de la Torre	000809
	CX-63	April 20, 2006 - Letter from Kruzhkov to Greco	000811
	CX-64	June 19, 2006 - Letter from Kruzhkov to Greco	000813
	CX-65	November 8, 2006 - Facsimile from Plunkett to Kennedy Including: ▪ June 28, 2006 - Statement of Claim	000815
	CX-66	August 17, 2006 - Answer, Counterstatement, and Third Party Statement of LBIU Including: ▪ February 21, 2005 - Letter from Plunkett to E. Orlov, R. Orlov with "Accomplishments" and "Contract"	000823

DATE		DESCRIPTION	BATES NUMBER
		▪ June 27, 2006 - Affidavit of Plunkett ▪ August 2005 - Unexecuted Agreement of Shareholders of NewCo ▪ NYS Department of State Division of Corporations Entity Information re: Emerald Investments ▪ CRD Information re: Emerald Personnel ▪ January 11, 2006 - Email from Plunkett to johnince1@yahoo.com, wrelect@citlink.net, Borcherding, Coventry, and heller@shufirm.com, re: "Update" ▪ Plunkett Registrations Summary CRD Excerpt ▪ Coventry Registrations Summary CRD Excerpt ▪ Javapop Securities Purchase Agreement ▪ April 25, 2006 - Letter from Henriquez to Henson-King	
	CX-67	August 17, 2006 - Unexecuted Borcherding Answer to the Statement of Claim and Counterclaim	000903
	CX-68	October 20, 2006 - Letter from Brodherson from Haynes with LBIU's Motion to Compel	000913
	CX-69	October 25, 2006 - Letter from Plunkett to Borcherding and Goodman re: Delivery of Boxes to LBIU	000985

DATE		DESCRIPTION	BATES NUMBER
	CX-70	October 30, 2006 - Email from Goodman to Kennedy Including: ▪ October 27, 2006 - Letter from Brodherson to Druz re: Arbitration	000987
	CX-71	November 3, 2006 – Borcherding Motion to Compel Production of Documents	000991
	CX-72	November 9, 2006 - Response to Motions to Compel Including: ▪ October 20, 2006 - Inventory List ▪ October 27, 2006 - Letter from Brodherson to Druz re: Document Production	001003
	CX-73	November 29, 2006 - Email from Brodherson to Haynes, Druz, and Bard re: "Emerald v. Lempert" Including: ▪ LBIU's Second Motion to Compel Production of Documents ▪ November 13, 2006 - NASD Dispute Resolution Order re: Motions to Compel Discovery ▪ November 27, 2006 - Letter from Plunkett to Brodherson, Druz, and Bard re: Discovery ▪ April 25, 2006 - Letter from Thomas to Aminoff ▪ Email from Kruzhkov to Milter re: Documents ▪ TowerTek "Terms of Use" ▪ November 15, 2006 - Letter from Brodherson to Druz re: Discovery	001015

DATE		DESCRIPTION	BATES NUMBER
	CX-74	December 6, 2007 - LBIU Response to Motion for Sanctions and Reply in Support of LBIU's Motion to Compel Including: ▪ October 27, 2006 - Letter from Brodherson to Druz and Bard ▪ October 6, 2006 - Letter from Brodherson to Druz and Bard ▪ November 28, 2006 - Email from Brodherson to Druz and Bard ▪ November 28, 2006 - Email from Druz to Brodherson ▪ November 27, 2006 - Letter from Plunkett to Brodherson re: Consultation with TowerTek	001047
	CX-75	December 13, 2006 - Order re: LBIU's Motion to Compel	001071
	CX-76	June 19, 2007 - Email from Brodherson to Goodman Including: ▪ Arbitration Settlement Agreement ▪ Arbitration Award ▪ Affidavits of Judgment	001073
	CX-77	January 24, 2007 - Excerpts from Borcherding Arbitration Testimony	001111
	CX-78	January 25, 2007 - Excerpts from Borcherding Arbitration Testimony	001151
	CX-79	April 9, 2007 - Excerpts from Kruzhkov Arbitration Testimony	001189
	CX-80	April 9, 2007 - Excerpts from Milter Arbitration Testimony	001201
	CX-81	October 14, 2005 - Email from Plunkett to wrelect@citlink.net, johnince1@yahoo.com, and heller@shufirm.com	001207

DATE		DESCRIPTION	BATES NUMBER
	CX-82	November 1, 2005 - Email from Plunkett to wrelect@citlink.net, johnince1@yahoo.com, Missrobian, and heller@shufirm.com re: "Update"	001209
	CX-83	January 9, 2006 - Email from R. Orlov to Milter Including: ▪ December 30, 2005 - Email from Plunkett to public@aon_at, roman@lempertbrothers.com, eduard@lempertbrothers.com re: Year End Summary	001211
	CX-84	January 11, 2006 - Email from Plunkett to Ince, wrelect@citilink.net, Borcherding, Coventry, heller@shufirm.com re: "Update"	001215
	CX-85	April 3, 2006 - Resignations Letters from LBIU	001219
	CX-86	March 16, 2006 - Facsimile from Plunkett to Greco Including: ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir	001229
	CX-87	March 20, 2006 - Email from Plunkett to Heller re: February Financial Statements	001245
	CX-88	March 24, 2006 - Facsimile from Plunkett to E. Orlov and R. Orlov re: Allegations Including: ▪ March 23, 2006 - Letter from Plunkett to E. Orlov and R. Orlov	001247
	CX-89	March 30, 2006 - Email from Kruzhkov to Milter, R. Orlov, eduard@lempertbrothers.com re: Request from SEC Examiner	001251

DATE	DESCRIPTION		BATES NUMBER
	CX-90	March 31, 2006 - Facsimile from Plunkett to Greco Including: ▪ March 31, 2006 - Letter from Kim ▪ March 1, 2006 - Letter from Mazurin to NASD and SEC	001253
08/17/2010	Notice of Hearing, Dated August 17, 2010		001263
08/26/2010	Notice of Issuance of Rule 8210 Request to Plunkett, Borcherding, and Goodman, Dated August 26, 2010		001265
08/27/2010	Enforcement's Motion to Preclude Testimony and Exhibits, Dated August 26, 2010		001271
09/07/2010	Order Convening Final Pre-Hearing Conference, Dated September 7, 2010		001279
09/13/2010	Transcript of Pre-Hearing Conference		001281
09/20/2010	Email re: Testimony and Evidence at Hearing, Dated September 20, 2010		001303
09/21/2010	Enforcement's Response to Plunkett's Email, Dated September 21, 2010		001305
09/22/2010	Order re: Testimony and Evidence at Hearing, Dated September 22, 2010		001313
09/27/2010	Transcript of Hearing, Dated September 27, 2010		001315
09/28/2010	Transcript of Hearing, Dated September 28, 2010		001593
ENFORCEMENT'S ADMITTED EXHIBITS			
	CX-1	Excerpts from CRD re: Plunkett	001779
	CX-2	Excerpts from CRD re: LBIU	001797
	CX-3	Excerpts from CRD re: Emerald Investments	001801

DATE		DESCRIPTION	BATES NUMBER
	CX-4	May 23, 2006 - Letter from Kennedy to Plunkett Including: ▪ November 21, 2005 - Unsigned Letter from Milter to Sarmiento ▪ March 1, 2006 - Letter from Mazurin to NASD Investor Complaint Center and SEC ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir, March 1, 2006 ▪ Undated - Letter from Capuns to Plunkett and Milter	001803
	CX-5	July 12, 2006 - Letter from Plunkett to Kennedy Including: ▪ List of LBIU Accounts and Accounts Transferred to Success Trade Securities ▪ List of LBIU Registered Representative Numbers and Names ▪ April 25, 2006 - Letter from Thomas to Englebert ▪ LBIU Organizational Chart ▪ Undated - Letter from E. Orlov and R. Orlov to NASD re: Broker Dealer Registration ▪ December 15, 2003 - Agreement Between Lempert Brothers Holding and LBIU ▪ List of LBIU Capital Contributions During 2005 - ▪ April 27, 2006 - Facsimile from Plunkett to Kim ▪ April 13, 2006 - Letter from Plunkett to Kim	001845

DATE		DESCRIPTION	BATES NUMBER
		▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ April 27, 2006 - Facsimile from Plunkett to Hickey ▪ April 13, 2006 - Letter from Plunkett to Kim ▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ April 27, 2006 - Facsimile from Plunkett to Greco ▪ April 13, 2006 - Letter from Plunkett to Kim ▪ April 3, 2006 - Unexecuted Letter from Plunkett to Mazurin Labeled "Unofficial Response" ▪ March 31, 2006 - Letter from Greco to Gentlemen re: Memorandum to [LBIU] Concerning Adolph and Komorsky Investments Lempert Brothers International ▪ March 23, 2006 - Unexecuted Letter from Plunkett to E. Orlov, R. Orlov	
	CX-6	July 17, 2006 – Emails Between Kvjatkovska and Greco re: "Our Reply E-Mail to Yours of June 28, 2006 "	001889
	CX-7	July 20, 2006 - Request Letter from Kennedy to Plunkett	001895
	CX-8	July 21, 2006 - Request Letter from Kennedy to Plunkett Including: ▪ May 23, 2006 - Request Letter	001897

DATE		DESCRIPTION	BATES NUMBER
	CX-9	August 1, 2006 - Response Letter from Plunkett to Kennedy	001903
	CX-10	August 15, 2006 - Email from Plunkett to Kennedy re: "Response to Your Letter of 7/21/06" Including: ▪ August 14, 2006 - Letter from Plunkett to Kennedy	001905
	CX-11	August 18, 2006 - Request Letter from Kennedy to Plunkett	001909
	CX-12	September 25, 2006 - Facsimile from Plunkett to Kennedy Including: ▪ September 25, 2006 - Response Letter from Plunkett to Kennedy ▪ September 25, 2006 - Letter from Coventry to Kennedy and Check Register for LBIU Check Nos. 1568 – 1609	001911
	CX-13	October 9, 2006 - Response Letter from Plunkett to Kennedy (No CDs Filed with OHO That Correspond to Photocopies of CDs)	001935
	CX-14	October 20, 2006 - Email from Kennedy to Plunkett Including: ▪ October 20, 2006 - Request Letter	001943
	CX-15	November 8, 2006 - Letter from Kennedy to Plunkett Including: ▪ October 20, 2006 - Request Letter	001945
	CX-16	November 10, 2006 - Response from Plunkett to Kennedy Including: ▪ November 10, 2006 - Letter from Coventry to Kennedy	001951
	CX-17	May 8, 2009 - Letter from Kestin to Gehn	001955

DATE		DESCRIPTION	BATES NUMBER
	CX-18	June 29, 2009 - Letter from Plunkett to Kestin Including: ▪ November 21, 2005 - Unexecuted Letter from Milter to Sarmiento ▪ March 1, 2006 - Letter from Mazurin to NASD Investor Complaint Center and the SEC ▪ Customer Agreements between Adolph and Komorsky International GMBH and Mazurin ▪ Partnership Cooperation Agreement between LBIU and Lempert Brothers International ▪ March 9, 2006 - Email from Kvjatkovska re: "Attn. Mr. Plunkett" ▪ March 8, 2006 - Email from Kvjatkovska re: "Attn. Mr. Plunkett" ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir ▪ Email from Kruzhkov to Milter re: "Docs" Attaching Board Resolution and Power of Attorney Documents ▪ March 23, 2006 - Unexecuted Letter from Plunkett to E. Orlov and R. Orlov ▪ March 23, 2006 - Facsimile re: Letter from Plunkett to E. Orlov and R. Orlov	001957
	CX-19	July 15, 2009 - Request Letter from Kennedy to Plunkett	001999

DATE		DESCRIPTION	BATES NUMBER
	CX-20	July 27, 2009 - Emails Between Plunkett and Kennedy re: Extension and Response Email from Kennedy to Plunkett Granting Extension	002003
	CX-21	August 11, 2009 - Email from Plunkett to Kennedy re: Response as Soon as Possible	002005
	CX-22	August 20, 2009 - Request Letter from Kennedy to Plunkett, Including: ▪ July 15, 2009 - Request Letter from Kennedy to Plunkett ▪ July 27, 2009 - Emails Between Plunkett and Kennedy	002007
	CX-23	April 29, 2010 - Response Letter from Plunkett to Kennedy and Kestin	002029
	CX-24	May 22, 2006 - Request Letter from Kennedy to Goodman and Kruzhkov	002035
	CX-26	June 26, 2006 - Response Letter from Borcherding to Kennedy Including: ▪ Statement from Savage, President of Cedonix Technologies ▪ June 14, 2006 - Affidavit from Sarmiento ▪ List of Missing and Recreated Documents of LBIU ▪ June 26, 2006 - Affidavit from Milter ▪ April 27, 2006 - Letter From Kruzhkov to Mazurin	002039
	CX-37	November 1, 2006 - Response Letter from Goodman to Kennedy Including: ▪ Copies of LBIU Checks No. 1595 through 1608	002053

DATE		DESCRIPTION	BATES NUMBER
	CX-40	June 8, 2009 - Response Email and Letter from Goodman to Robb	002067
	CX-42	Undated - Response Letter from Coventry to Kennedy	002071
	CX-44	May 31, 2007 - Response Letter from Coventry to Kennedy Including: ▪ March 22, 2006 - Sublease Information for Emerald One's Sublease of 1270 Avenue of the Americas ▪ Executed Sublease Agreement Between TIBCO Software and Emerald One ▪ March 25, 2005 - Letter from Coventry to Berns ▪ September 17, 2005 - Letter from Coventry to Rivers ▪ August 24, 2004 - Letter from Coventry to Kim ▪ June 14, 2006 - Affidavit of Sarmiento ▪ January 24, 2006 - Email from Coventry to Plunkett and Borcherding re: "You Lied" ▪ June 27, 2005 - Email from Coventry to Plunkett and Borcherding re: "Tonight"	002073
	CX-47	May 23, 2006 - Letter from Kennedy to Lowery-Whille	002113
	CX-48	May 23, 2006 - Letter from Kennedy to Yancey	002117
	CX-49	June 7, 2006 - Response Letter from Miller to Kennedy	002119
	CX-50	June 13, 2006 - Response Letter from Gordon to Kennedy	002121

DATE		DESCRIPTION	BATES NUMBER
	CX-51	September 22, 2005 - Agreement of Shareholders of Emerald Investments	002151
	CX-52	September 22, 2005 - Unexecuted Copy of Option Agreement re: Purchase of Shares in Emerald Investments	002163
	CX-53	Incorporation Documents for Emerald One	002171
	CX-54	December 27, 2005 - Handwritten Uniform Application for Broker-Dealer Registration	002183
	CX-55	January 19, 2006 - Electronic Uniform Application for Broker-Dealer Registration	002215
	CX-56	March 31, 2006 - Emerald One Consent to Sublease	002229
	CX-57	April 20, 2006 - Membership Interview Checklist Including: ▪ April 28, 2006 - Facsimile from Plunkett to Punch re: Response to Requests for Additional Information	002237
	CX-59	April 12, 2006 - Letter from Kruzhkov to Plunkett	002267
	CX-60	April 12, 2006 - Letter from Kruzhkov to Missrobian	002269
	CX-61	April 12, 2006 - Letter from Kruzhkov to Heller	002271
	CX-62	April 12, 2006 - Letter from Kruzhkov to de la Torre	002273
	CX-63	April 20, 2006 - Letter from Kruzhkov to Greco	002275

DATE		DESCRIPTION	BATES NUMBER
	CX-64	June 19, 2006 - Letter from Kruzhkov to Greco	002277
	CX-65	November 8, 2006 - Facsimile from Plunkett to Kennedy Including: ▪ June 28, 2006 - Statement of Claim	002279
	CX-66	August 17, 2006 - Answer, Counterstatement, and Third Party Statement of LBIU Including: ▪ February 21, 2005 - Letter from Plunkett to E. Orlov, R. Orlov with "Accomplishments" and "Contract" ▪ June 27, 2006 - Affidavit of Plunkett ▪ August 2005 - Unexecuted Agreement of Shareholders of NewCo ▪ NYS Department of State Division of Corporations Entity Information re: Emerald Investments ▪ CRD Information re: Emerald Personnel ▪ January 11, 2006 - Email from Plunkett to johnince1@yahoo.com, wrelect@citlink.net, Borcherding, Coventry, and heller@shufirm.com, re: "Update" ▪ Plunkett Registrations Summary CRD Excerpt ▪ Coventry Registrations Summary CRD Excerpt ▪ Javapop Securities Purchase Agreement ▪ April 25, 2006 - Letter from Henriquez to Henson-King	002287

DATE		DESCRIPTION	BATES NUMBER
	CX-68	October 20, 2006 - Letter from Brodherson from Haynes with LBIU's Motion to Compel	002367
	CX-69	October 25, 2006 - Letter from Plunkett to Borcherding and Goodman re: Delivery of Boxes to LBIU	002439
	CX-70	October 30, 2006 - Email from Goodman to Kennedy Including: ▪ October 27, 2006 - Letter from Brodherson to Druz re: Arbitration	002441
	CX-72	November 9, 2006 - Response to Motions to Compel Including: ▪ October 20, 2006 - Inventory List ▪ October 27, 2006 - Letter from Brodherson to Druz re: Document Production	002445
	CX-73	November 29, 2006 - Email from Brodherson to Haynes, Druz, and Bard re: "Emerald v. Lempert" Including: ▪ LBIU's Second Motion to Compel Production of Documents ▪ November 13, 2006 - NASD Dispute Resolution Order re: Motions to Compel Discovery ▪ November 27, 2006 - Letter from Plunkett to Brodherson, Druz, and Bard re: Discovery ▪ April 25, 2006 - Letter from Thomas to Aminoff ▪ Email from Kruzhkov to Milter re: Documents ▪ TowerTek "Terms of Use" ▪ November 15, 2006 - Letter from Brodherson to Druz re: Discovery	002457

DATE		DESCRIPTION	BATES NUMBER
	CX-74	December 6, 2007 - LBIU Response to Motion for Sanctions and Reply in Support of LBIU's Motion to Compel Including: ▪ October 27, 2006 - Letter from Brodherson to Druz and Bard ▪ October 6, 2006 - Letter from Brodherson to Druz and Bard ▪ November 28, 2006 - Email from Brodherson to Druz and Bard ▪ November 28, 2006 - Email from Druz to Brodherson ▪ November 27, 2006 - Letter from Plunkett to Brodherson re: Consultation with TowerTek	002489
	CX-75	December 13, 2006 - Order re: LBIU's Motion to Compel	002513
	CX-79	April 9, 2007 - Excerpts from Kruzhkov Arbitration Testimony	002515
	CX-81	October 14, 2005 - Email from Plunkett to wrelect@citlink.net, johnince1@yahoo.com, and heller@shufirm.com	002527
	CX-82	November 1, 2005 - Email from Plunkett to wrelect@citlink.net, johnince1@yahoo.com, Missrobian, and heller@shufirm.com re: "Update"	002529
	CX-83	January 9, 2006 - Email from R. Orlov to Milter Including: ▪ December 30, 2005 - Email from Plunkett to public@aon_at, roman@lempertbrothers.com, eduard@lempertbrothers.com re: Year End Summary	002531

DATE		DESCRIPTION	BATES NUMBER
	CX-84	January 11, 2006 - Email from Plunkett to Ince, wrelect@citilink.net, Borcherding, Coventry, heller@shufirm.com re: "Update"	002535
	CX-85	April 3, 2006 - Resignations Letters from LBIU	002539
	CX-86	March 16, 2006 - Facsimile from Plunkett to Greco Including: ▪ March 1, 2006 - Letter from Rusanovs and Kvjatkovska to Madame/Sir	002549
	CX-87	March 20, 2006 - Email from Plunkett to Heller re: February Financial Statements	002565
	CX-88	March 24, 2006 - Facsimile from Plunkett to E. Orlov and R. Orlov re: Allegations Including: ▪ March 23, 2006 - Letter from Plunkett to E. Orlov and R. Orlov	002567
	CX-89	March 30, 2006 - Email from Kruzhkov to Milter, R. Orlov, eduard@lempertbrothers.com re: Request from SEC Examiner	002571
	CX-90	March 31, 2006 - Facsimile from Plunkett to Greco Including: ▪ March 31, 2006 - Letter from Kim ▪ March 1, 2006 - Letter from Mazurin to NASD and SEC	002573
	CX-91	May 8, 2006 - E-mail from Pasquerella to Hickey and William	002583
12/22/2010	Notice of Hearing Panel Decision, Dated December 22, 2010		002585
12/22/2010	Hearing Panel Decision, Dated December 22, 2010		002587

DATE	DESCRIPTION	BATES NUMBER
01/04/2011	Notice of Amended Hearing Panel Decision, Dated January 4, 2011	002611
01/04/2011	Amended Hearing Panel Decision, Dated January 4, 2011	002613
02/18/2011	Letter re: Call for Review, Dated February 17, 2011	002637
03/11/2011	Certification of Record, Dated March 11, 2011	002639
03/14/2011	Briefing Schedule, Dated March 14, 2011	002663
04/15/2011	Amended Briefing Schedule, Dated April 15, 2011	002689
05/09/2011	Enforcement's Brief, Dated May 9 2011	002697
02/21/2012	National Adjudicatory Council Decision, Dated February 21, 2012	002717
03/21/2012	Application for Review, Dated March 19, 2012	002735
03/22/2012	SEC Acknowledgement of Application for Review, Dated March 22, 2012	002745