

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 50543A / November 30, 2004

Admin. Proc. File No. 3-11426

In the Matter of the Application of

MICHAEL T. STUDER  
and  
CASTLE SECURITIES CORP.

45 Church Street  
Freeport, New York 11520

For Review of Disciplinary Action Taken by

NASD

AMENDED OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF ASSOCIATION  
ACTION

Churning Customer Account

Failure to Supervise

Conduct Inconsistent With Just and Equitable Principles  
of Trade

Member firm of registered securities association churned a customer account. Member firm and associated person failed to supervise trading in that account and firm induced customer to guarantee margin accounts of other unrelated customers. Held, association's findings of violation and sanctions sustained.

APPEARANCES:

Michael T. Studer pro se, and for Castle Securities Corp.

Marc Menchel, Alan Lawhead, and Leavy Mathews, III, for NASD.

Appeal filed: March 3, 2004  
Last brief filed: June 14, 2004

I.

Michael T. Studer, formerly president and registered general securities principal, limited principal -- finance and operations, and general securities representative of Castle Securities Corp. ("Castle"), a former NASD member, and Castle appeal from NASD disciplinary action. NASD found that Castle violated Securities Exchange Act Section 10(b), 1/ Exchange Act Rule 10b-5, 2/ and NASD Conduct Rules 2510, 2120, and 2110 3/ by churning an account of a Castle customer. Applicants further appeal NASD's finding that Studer and Castle failed to supervise the trading in the customer's account in violation of NASD Rules 3010 and 2110. 4/ NASD also found that Castle violated NASD Rule 2110 by inducing the customer to guarantee the margin accounts of five other, unrelated Castle customers.

NASD expelled Castle from membership and barred Studer from association with any member in any capacity. 5/ We base our findings on an independent review of the record.

II.

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1/ 15 U.S.C. § 78j(b).

2/ 17 C.F.R. § 240.10b-5.

3/ NASD Conduct Rules 2510 (prohibiting excessive transactions in discretionary accounts), 2120 (prohibiting use of manipulative, deceptive, or fraudulent devices), and 2110 (failure to observe just and equitable principles of trade), NASD Manual at 4183, 4127, and 4111 respectively (2003).

4/ NASD Conduct Rules 3010 (supervision of registered representatives) and 2110, NASD Manual at 4324 and 4111 (2003).

5/ NASD did not base its expulsion and bar on the inducement to sign margin guarantees.

Studer entered the securities industry in 1981. Castle became a registered broker-dealer in 1984. Studer has been Castle's president since its entry into the industry.

Initially, Castle acted as a retail broker-dealer. However, between 1992 and 1999, Castle emphasized day-trading, which provided most of Castle's revenue. After 1996, Castle's earnings from day-trading declined in absolute terms although day-trading still constituted the primary source of Castle's revenue.

The vehicle for Castle's transformation from retail broker-dealer to day-trading brokerage was the so-called Active Account Program ("AAP"). AAP customers opened discretionary margin accounts with Castle. The registered representatives responsible for the trading in AAP accounts (referred to as "executing brokers" by Castle) engaged in a rapid-trading strategy. Typically, AAP accounts would open and close each trading day "flat," that is without any securities in the account, and during the trading day would hold securities for extremely brief periods (sometimes only a few seconds) before selling them. The AAP account application recited that the applicant had been informed of the "inherent risks" involved in investing and understood that the account would be actively traded on a daily basis. The application did not identify those risks.

John Fisher was a Castle registered representative. His activities for Castle were generally limited to selling insurance and mutual funds. He had no experience with the offer and sale of stock. In early 1993, Studer requested that Fisher identify any of Fisher's customers who might benefit from the AAP. Studer described the AAP to Fisher as a good investment, with minimal risk, for anyone who wanted to increase his or her income.

Fisher suggested that Phebe Schilling, an elderly retiree, would be a good prospect for the AAP. 6/ It appears from the

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6/ Castle referred to the registered representative who brought a customer to the AAP as an "introducing broker." An "introducing broker" was compensated on a per-trade basis.

The "executing broker," or trader, was compensated on the basis of commissions on each transaction as well as the account's value. Victor Soare was Schilling's "executing broker."

NASD charged Fisher with churning and violating NASD Rule 2110, charged Soare with churning, and charged Thomas Shaughnessy, another Castle employee, with failure to supervise. Fisher and Shaughnessy settled with NASD before the hearing. NASD suspended Fisher for thirty days, fined  
(continued...)

record that, beginning in the late 1980s, Fisher played an increasingly important role in Schilling's daily life. At first, Fisher began helping Schilling with her taxes and her bill paying, but as Schilling became more infirm, Fisher's assistance expanded to providing grocery shopping and other services. From approximately 1990, Schilling was one of Fisher's customers. By early 1993, Fisher had a banking power of attorney for Schilling, and, as of September 1993, he had a full durable power of attorney for her. Schilling paid Fisher \$750 per month for his services. Studer knew that Schilling was dependent on Fisher at least by December 1995, and perhaps as early as June 1993. 7/

In 1993, according to her application, Schilling had a net worth of approximately \$700,000, excluding the value of her residence, a liquid net worth of \$500,000, and an annual income of \$60,000. 8/ According to Fisher, Schilling was a conservative investor with a portfolio of bond funds and utility stocks. He testified that Schilling's alertness and comprehension varied from day to day and that she became increasingly forgetful as she aged.

In February 1993, Schilling, then aged 86, opened a Castle AAP account at Fisher's recommendation. 9/ She signed the application and other paperwork herself. Her AAP account

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- 6/ (...continued)  
him \$6,950, and ordered him to pay \$8,050 in restitution. NASD fined Shaughnessy \$5,000. The hearing panel exonerated Soare.
- 7/ One of the key indications of this dependence was Fisher's role as the sole recipient of all account information for Schilling's AAP account. As discussed infra, by the summer of 1993, Castle sent all account paperwork for Schilling's account to Fisher.
- 8/ The parties dispute Schilling's net worth. Applicants assert that her liquid net worth exceeded \$700,000. NASD relies on Schilling's liquid net worth of \$500,000 reported in Schilling's AAP application.
- 9/ Fisher testified that he based his recommendation on the information he received from Studer. Although Fisher observed registered representatives trading AAP accounts, he did not investigate the AAP any further. Fisher's usual practice was to bring prospective AAP customers to Castle's offices to watch the trading of AAP accounts, but he did not bring Schilling to Castle because of her infirmity. The record discloses that Schilling had no knowledge of the AAP other than Studer's description that Fisher had relayed to her.

application listed Schilling's investment goals as speculation and trading profits although Fisher had described the program to her as a vehicle that generated income with minimal risk. 10/ The application recited that Schilling understood the inherent risks in investing in the AAP (although those risks were not specified in any of the application documents) and further understood that the account would be extremely active on a daily basis with all of the additional (but unidentified) risks active trading implied.

Castle's clearing broker inquired about the propriety of Schilling's participation in the AAP given her age. By letter, Studer responded that Castle assumed "full responsibility" for Schilling's AAP account. 11/ Studer did not inform Fisher or Schilling about the clearing broker's concerns or Castle's response. Fisher testified that he would not have recommended the AAP to Schilling had he been aware of the clearing broker's concerns.

Schilling opened her AAP account with \$20,000 cash. 12/ Approximately a year after opening her AAP account, Schilling withdrew the cash and deposited into the account shares of a mutual fund worth approximately \$86,000 at the time of the deposit. 13/ As the Castle registered representative who brought Schilling to the AAP, Fisher was paid by Castle on a per-trade basis for every trade that occurred in Schilling's account. 14/ Although Schilling initially received trade confirmations and monthly statements regarding her AAP account, after June 1993, Castle, with Studer's knowledge, sent all account paperwork to Fisher rather than Schilling. The record does not reveal the reason for the change.

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10/ The boxes labeled "speculation" and "trading profits" were checked on Schilling's application. The record is unclear as to whether she made those marks.

11/ Studer did not explain what he meant by "full responsibility."

12/ The record does not indicate whether Schilling made this deposit herself or had someone else make it on her behalf.

13/ The value of the shares varied over the life of the account. Over the seventy-seven months the account was in existence, Schilling deposited net \$101,908.17, including the mutual fund shares.

14/ According to the record, Fisher received \$1.25 per trade. The record reflects that Fisher received \$38,492.50 in commissions over the life of Schilling's account.

As part of the AAP application, Schilling granted Castle "full and complete" discretion with respect to the AAP account. Victor Soare was designated the trader for Schilling's AAP account. 15/ Soare's compensation depended on commissions. 16/ Soare knew nothing about Schilling other than that she was Fisher's customer. 17/

From the beginning, Schilling's account was extremely active on a daily basis, with modest trading gains and sometimes significant trading losses. In late 1995, Fisher learned that Schilling's AAP account had more than \$12,000 in trading losses. Fisher spoke to Studer regarding the status of Schilling's account and suggested the possibility of a "settlement." 18/ Fisher proposed to forego \$7,000 in earned-but-unpaid commissions from Schilling's AAP account, among others, if Castle would match that amount; Fisher proposed that Castle use the contributions to pay Schilling \$14,000. In response to Fisher's concerns, Studer stopped Soare's trading in Schilling's AAP account and agreed to the settlement. The December 1, 1995, settlement agreement recited that the settlement resolved a dispute regarding the commissions charged to Schilling's account. After the settlement was executed, Fisher wrote a \$7,000 check to Castle. In turn, Castle wrote a \$14,000 check to Schilling, which Fisher deposited in Schilling's bank account. Then Fisher wrote a check on Schilling's bank account to Castle. 19/

There was no trading in Schilling's AAP account in December 1995 or January 1996, but trading in that account resumed in February 1996 without any change in strategy or approach or other

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15/ Schilling named Soare as the person to exercise that trading discretion by executing a separate Castle document.

16/ Soare earned \$3.00 per trade between April and December 1993. Then he earned fifty percent of any commission in excess of \$20.00 until February 1994. From February 1994 through June 1999 Soare earned fifty percent of all commissions in excess of \$12.00. During his tenure as the trader for Schilling's account, NASD computed that Soare earned \$84,194.50. The record contains testimony that customers who were losing money were charged lower commissions than those who were making money.

17/ The hearing panel dismissed the churning allegations against Soare.

18/ The record does not provide the exact terms of the dispute.

19/ It appears that Schilling was never told that her account had suffered significant trading losses or that Fisher contributed to the settlement.

limitation and continued through June 1999. There were nearly 10,000 trades in Schilling's AAP account for the eleven months of trading in 1995. When Soare recommenced trading in Schilling's account, it was at a lower, but still high volume, averaging approximately 3,300 trades annually between March 1996 and June 1999.

In January and February 1996, Schilling, acting on Fisher's advice as prompted by Studer, signed five margin guarantees for the benefit of other, unrelated Castle customers. There is no indication in the record that the customers whose accounts Schilling guaranteed executed reciprocal guarantees for Schilling's benefit or that Schilling received any other consideration for the guarantees. Studer testified that Castle's clearing broker would not accept or act on margin guarantees unless they were reciprocated. No such policy -- or any other limitation on the guarantee -- appeared on the guarantee form. Studer testified that the clearing firm did not have copies of any of the guarantees Schilling signed on behalf of other customers.

Nonetheless, in October 1996, to cover a margin call the clearing firm transferred \$30,000 from Schilling's account to an account for whose benefit Schilling had executed a guarantee. After Studer intervened, the clearing firm reversed that transaction. Studer testified that the initial transfer was a mistake. 20/ Schilling was charged margin interest -- which Castle never refunded -- with respect to this mistaken transfer.

From 1993 through June 1999 there were over 30,000 trades in Schilling's account. The turnover ratio for the account over the seventy-seven months that it was active was 784.83, which means that the securities in Schilling's account were replaced by new securities 784.83 times in the course of an average year between 1993 and 1999. 21/ NASD calculated that the account showed some

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20/ The record contains no other explanation of this event.

21/ The annualized turnover rate is computed by dividing the aggregate amount of purchases in an account by the average monthly investment. Here the aggregate amount of purchases over the seventy-seven months was \$443,746,929.04. The average monthly investment over the same period was \$88,114.96. This ratio is then annualized to produce an annualized turnover rate of 784.83. Shearson Lehman Hutton Inc., 49 S.E.C. 1119, 1122 n.10 (1989). Although the rate of trading varied in Schilling's account, we have held that annualizing is an appropriate technique to express turnover ratios. Laurie Jones Canaday, Securities Exchange Act Rel. No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1476-77,

(continued...)

modest profits in some years, but had a realized loss of \$8,050.73 over the life of the account. 22/ Schilling's AAP account was charged \$567,635 in "commissions" 23/ and \$3,000 in margin interest over the life of the AAP account.

Studer's oversight of the account was limited to monitoring the performance for Schilling, and he did not examine the commissions paid by Schilling against the amount of profits her AAP account earned. 24/ From 1993 through June 1999, trading in Schilling's AAP account provided from 0.5 percent (in 1993) up to fourteen percent (in 1998) of Castle's total AAP trade volume. Trading in Schilling's account ceased in June 1999 after an NASD examination.

Schilling died in 2000 at age 93 leaving no survivors. Fisher is the executor of her estate. In 2001, Schilling's estate received an initial settlement check for approximately \$75,000 from litigation against NASDAQ market-makers. 25/

### III.

A. Churning. "Churning occurs when a securities broker enters into transactions and manages a client's account for the

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21/ (...continued)  
petition denied, 230 F.3d 362 (D.C. Cir. 2000).

22/ The net loss computed by NASD does not include the \$14,000 settlement from December 1995. The loss also does not include a monetary settlement Schilling's estate received from her claim submitted in the settlement of the NASDAQ Market-Maker Antitrust Litigation class action. See NASDAQ Market-Makers Antitrust Litigation, 169 F.R.D. 493 (S.D.N.Y. 1996) (class certification and description).

23/ In making this calculation, NASD used the amounts designated as "commissions" on Schilling's monthly statements. At the hearing Applicants argued that this figure included charges, such as transaction fees, that were not commissions. The fact remains that these deductions (whether they were sales commissions or some other costs) were charged against Schilling's AAP account.

24/ Fisher testified that he would stop by the trading desk and ask Soare how Schilling's account was doing. He never compared the performance of the account to the amount of commissions that her account paid, although Fisher testified that he had sufficient information to allow him to make that comparison.

25/ See supra note 22 and infra text following note 31.

purpose of generating commissions and in disregard of his client's interests.'" 26/ To establish that a broker-dealer has churned a customer account, NASD must prove that the broker-dealer controls the customer account, that trading in the account was excessive in the light of the customer's investment objectives, and that the broker-dealer acted with intent to defraud or with reckless disregard for the customer's interests. 27/ Castle's handling of Schilling's account satisfies each of these criteria.

There is no dispute that Castle controlled Schilling's AAP account: she granted "full and complete" discretion over the account to Castle.

Moreover, the trading in Schilling's account was excessive in light of Schilling's conservative investment goals. In suggesting this strategy for Schilling's account, Studer, on behalf of Castle, ignored Schilling's history of conservative investment. Studer described the AAP account to Fisher as providing increased income with minimal risk. Fisher based his recommendation of the AAP to Schilling on Studer's description. The check-mark indications on the account application that Schilling was interested in speculation are contradicted by Schilling's age, investment history, her infirmity, and need for income, as well as Fisher's testimony that he informed Schilling, based on Studer's discussion, that the AAP was an income-generating investment with minimal risk.

The Commission has found turnover ratios of 3.3 to be excessive for some conservative investors. 28/ This account's turnover ratio of 784.83 is excessive for this customer's circumstances.

The generation of commissions as a goal overriding the client's interests evidences scienter in churning. 29/ Studer and Fisher each admitted that they monitored the performance of Schilling's AAP account, but this attention did not translate into solicitude for Schilling's interests over Castle's. After allowing trading to resume in February 1996 until June 1999, Studer did nothing to change the trading strategy that prompted the December 1995 halt of trading in Schilling's account and a

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26/ Donald A. Roche, 53 S.E.C. 16, 22 (1997) (quoting Miley v. Oppenheimer & Co., 637 F.2d 318, 324 (5th Cir. 1981)).

27/ Sandra K. Simpson, Exchange Act Rel. No. 45923 (May 14, 2002), 77 SEC Docket 1983, 2006.

28/ Roche, 53 S.E.C. at 21.

29/ Simpson, 77 SEC Docket at 2007.

\$14,000 settlement payment. Studer recklessly ignored firm records that showed that the excessive trading continued, albeit at slower but still frantic pace, until June 1999. During this time, Schilling's account provided as much as fourteen percent of the trade volume for all of Castle's AAP accounts. We conclude that Castle, through Studer, managed Schilling's account for Castle's benefit, not Schilling's, evidencing the scienter required to establish churning.

Applicants assert that the NASD decision contains numerous factual errors. Applicants assert that Schilling earned a profit in her AAP account. Applicants cite two events: Castle's 1995 settlement with Schilling and the settlement of the market-maker litigation.

The existence of churning does not turn on whether the customer lost money. The effect of churning is to reduce the customer's return on her investment by increasing the commissions generated by the account. <sup>30/</sup> An account may be churned even if the customer shows a profit on the excessive trading. To maintain otherwise would mean that "securities brokers would be free to churn their customers' accounts with impunity so long as the net value of the account did not fall below the amount originally invested." <sup>31/</sup>

Thus, neither payment is relevant to the disposition of the churning allegations in this proceeding. Even if Schilling's trading in the account included the \$14,000 and \$75,000 payments that Studer claims she earned, that result would not substantially diminish the astronomically high turnover ratio in her account or the \$567,635 that Castle collected from her account.

The firm argues that Castle did not profit to the extent found by NASD because not all of the amounts denominated on Schilling's account statements as "commissions" went to Castle. According to this argument, NASDAQ, Castle's clearing firm, and Castle employees received part of the proceeds from the commissions. The amount Castle deducted from Schilling's AAP account under the rubric of "commissions" is not in dispute. How Castle distributed the proceeds among its employees and applied the proceeds to firm expenses is not relevant to whether the trading in Schilling's account that generated those substantial amounts was excessive or disregarded Schilling's interests.

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<sup>30/</sup> Miley v. Oppenheimer & Co., Inc., 637 F.2d 318, 326 (5th Cir. 1981) (churning diminishes account value).

<sup>31/</sup> Davis v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 906 F.2d 1206, 1218 (8th Cir. 1990).

Applicants argue further that NASD should not have found that Castle churned Schilling's account in the absence of a finding that Soare, the employee trading the account, churned it. Applicants frame this argument as an application of the respondeat superior doctrine from employment law. Respondeat superior holds an employer liable for the wrongs committed by its employee. NASD did not allege that Castle's violation is imputed to it by application of respondeat superior. NASD properly found that Castle was the primary violator based on Castle's direct control of Schilling's account through a grant of discretion from Schilling. Castle, through Studer, was aware of the level of trading in Schilling's account, stopping it for a short period, and then allowing its resumption. Castle, through Studer, knew (at least by 1995) that Schilling was dependent on Fisher and thus could not assess independently the performance of her account. Castle, through Studer, further knew, or recklessly disregarded, the facts that Schilling's account was a substantial part of the AAP business and that account generated commissions well in excess of the account's return to the customer, for the benefit of Castle rather than Schilling.

In light of these findings we conclude that Castle churned Schilling's AAP account.

B. Failure to Supervise. NASD rules require that NASD members "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of [NASD]." 32/ Final responsibility for supervision of the trading activities at a member firm of NASD rests with the firm's president, unless the president reasonably delegates the duties to someone else and has no reason to know that person is not properly performing the delegated duties. 33/ Studer was Castle's president at all relevant times, and he has admitted that he supervised the trading of Schilling's account during the relevant period. The duty of supervision includes the responsibility to investigate "red flags" that suggest that misconduct may be occurring and to act upon the results of such investigation. 34/

Studer suggested to Fisher that Schilling open an AAP account, describing it to Fisher as an income-producing investment with minimal risk. Studer paid attention to the

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32/ NASD Conduct Rule 3010 (2003).

33/ See William H. Gerhauser, Sr., 53 S.E.C. 933, 940-41 (1998).

34/ See Quest Capital Strategies, Inc., Exchange Act Rel. No. 44935 (Oct. 15, 2001), 76 SEC Docket 131, 138.

trading in Schilling's account. He knew about the level of trading in her account and had firm records available to compare the amount of commissions that the AAP account generated for Castle to the returns it generated for Schilling. Studer nonetheless permitted the trading to continue despite his knowledge of her age and dependency on Fisher. He told Fisher that the AAP account was an income-producing vehicle with minimal risk. Studer was put on notice that Castle's clearing firm had serious reservations about the propriety of this sort of account for a person of Schilling's age, but he provided a response that rebuffed the clearing firm's concerns.

Although Studer admits that he, as president, was responsible for supervising the management of Schilling's account, Studer claims that he could rely on Fisher to represent Schilling's interests. We have held that a registered representative cannot supervise himself. 35/ Thus, Studer had a continuing obligation to monitor Fisher's activities. Studer knew that Fisher's compensation depended on the level of trading in Schilling's account, whether or not a high volume of trades was in Schilling's interest. Studer also knew that Schilling was no longer receiving any statements or trade confirmations from Castle regarding her AAP account: Fisher was the sole recipient of that information. Therefore, Studer knew that Schilling had no independent ability to monitor the performance of her account or the amount of commissions charged to her account. Thus, Studer should have given particular supervisory attention to Schilling's account.

In spite of these risks, Studer continued to authorize Schilling's continued and very active participation in the AAP. Studer responded to none of these signals, and that failure constitutes a failure to supervise. 36/

C. Inducement to Sign Margin Guarantees. When Fisher, at Studer's suggestion, persuaded Schilling to execute margin guarantees for five other Castle customers in January and February 1996 (thereby increasing the buying power in those accounts 37/ and reducing Castle's exposure to its clearing firm), they exposed Schilling to substantial trading risk for no

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35/ Harry Glikzman, Exchange Act Rel. No. 42255 (Dec. 20, 1999), 71 SEC Docket 892, aff'd, 24 Fed. Appx. 702 (9th Cir. 2001); Bradford John Titus, 52 S.E.C. 1154, 1158 (1998).

36/ See Quest Capital Strategies, Inc., 76 SEC Docket at 138.

37/ The guarantees permitted the owners of the guaranteed accounts to use more margin than they could have supported using the equity in their accounts independently of the guarantees.

consideration. From the record before us, it appears that there were no guarantees that operated for Schilling's benefit, but she was at risk to make good any unsatisfied margin calls on the accounts that she guaranteed. This is exactly what happened. While Studer has asserted that the clearing firm's transfer of \$30,000 from Schilling's account to one of the accounts for which she signed a guarantee to cover a margin call was a mistake that Castle and the clearing firm corrected, the transfer evidenced that Schilling's account was exposed to the debts of other, specified Castle customers. The guarantees were an imposition of risk on one customer for the benefit of Castle and other customers without compensation of any kind. Imposing that on a customer, particularly one who was elderly, infirm, and dependent on a Castle representative, violates NASD Rule 2110, which demands that NASD members adhere to high levels of just and equitable principles of trade.

## IV.

Our review of NASD's sanctions is governed by Section 19(e)(2) of the Exchange Act, which requires us to determine whether a self-regulatory organization's sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 38/ The proper sanctions depend on the facts and circumstances of each case. 39/

We conclude, in light of the nature of Castle's and Studer's misconduct, that the sanctions imposed by NASD upon them, expulsion and a bar from association with any member firm in any capacity, are appropriate. The applicable NASD sanction guidelines suggest that a bar is appropriate in egregious cases such as the churning of Schilling's account and the failure to supervise. 40/

Both Castle and Studer have been subject to numerous regulatory actions in the past. On July 21, 2003, in a suit brought by the Commission, Castle and Studer were permanently enjoined by a federal court from violations of the antifraud provisions of the securities laws. 41/ The record reveals that

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38/ 15 U.S.C. § 78s(e)(2).

39/ Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 185 (1973); Donald R. Gates, Exchange Act Rel. No. 41777 (Aug. 23, 1999), 70 SEC Docket 1228, 1236 (citing cases).

40/ See NASD Sanction Guidelines at 86, 108 (2001).

41/ SEC v. U.S. Environmental, Inc., 2003 WL 21697891 (S.D.N.Y. July 21, 2003) appeal pending, \_\_\_\_\_ (2d Cir.). We  
(continued...)

on eight different occasions since 1989, Castle has been the subject of regulatory proceedings by the Commission and NASD. 42/ The record also reveals that Castle has twice been the subject of regulatory proceedings brought by state securities commissions. 43/ Castle's and Studer's disciplinary history is an aggravating factor in assessing the sanctions.

NASD concluded that the violations were sufficiently serious in this case to justify expulsion and a bar. In the

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- 41/ (...continued)  
recently determined that Studer could not be associated with another member firm because of the statutory disqualification. Citadel Secs. Corp., Exchange Act Rel. No. 49666 (May 7, 2004), 82 SEC Docket 3249.
- 42/ NASD cited two matters involving market-manipulation violations, SEC v. U.S. Environmental, Inc., 2003 WL 21697891 (S.D.N.Y. July 21, 2003) and Castle Secs. Corp., 53 S.E.C. 406 (1998), and a failure-to-supervise violation in Castle Secs. Corp., NASD Complaint No. C10940068 (Jan. 11, 1993).
- 43/ We recently barred Studer as a result of the U.S. Environmental injunction. Michael T. Studer, Exchange Act Rel. No. 50411 (Sept. 20, 2004), \_\_\_ SEC Docket \_\_\_\_\_. Castle withdrew its registration as a broker-dealer effective on December 30, 2003. "The Exchange Act contemplates multi-level enforcement -- Commission-initiated proceedings, both administrative and injunctive, disciplinary proceedings initiated at the SRO level, and proceedings on a member's application to employ a person subject to a statutory disqualification." Howard F. Rubin, 52 S.E.C. 126, 128-29 (1994).

circumstances of this case, we have no difficulty concluding that NASD's sanctions are neither excessive, oppressive nor an unnecessary or inappropriate burden on competition.

An appropriate order will issue. 44/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, ATKINS and CAMPOS).

Jonathan G. Katz  
Secretary

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44/ We have considered all of the parties' contentions. We reject or sustain these contentions to the extent that they are inconsistent or in accord with the views we express here.

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

Securities Exchange Act of 1934  
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45 Church Street  
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NASD

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY REGISTERED  
SECURITIES ASSOCIATION

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

ORDERED that the disciplinary actions taken by NASD against  
Michael T. Studer and Castle Securities Corp. be, and they hereby  
are, sustained.

By the Commission.

Jonathan G. Katz  
Secretary