

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 53066 / January 6, 2006

Admin. Proc. File No. 3-11919

In the Matter of the Application of

JOSEPH ABBONDANTE
c/o Louis J. Maione, P.C.
228 River Vale Road
River Vale, New Jersey 07675

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - - REVIEW OF DISCIPLINARY
PROCEEDINGS

Failure to Provide Written Notice to, and Obtain Prior Approval from, Member
Firm Employer Regarding Private Securities Transactions

Fraudulent Sale of Securities

Conduct Inconsistent with Just and Equitable Principles of Trade

Failure to Provide Written Notice to Member Firm Employer of Outside Business
Activity

General securities representative of member firm of registered securities association engaged in private securities transactions without giving prior written notification to, or obtaining prior approval from, member; made material misrepresentations and omitted material facts in the sale of securities; engaged in outside business activity without prompt written notification to member; and assisted with the preparation of false account statements. Held, association's findings of violation and sanctions are sustained.

APPEARANCES:

Louis J. Maione, for Joseph Abbondante.

Marc Menchel, Alan Lawhead, Carla J. Carloni, and Vickie R. Olafson, for NASD.

Appeal filed: May 10, 2005
Last brief received: September 9, 2005

I.

Joseph Abbondante, formerly a general securities representative associated with Chase Investment Services Corp. (“CISC”), an NASD member firm, appeals from NASD disciplinary action. NASD found that Abbondante violated NASD Conduct Rules 2110 and 3040 1/ by engaging in private securities transactions without providing prior written notice to, and receiving prior written approval from, CISC. NASD also found that Abbondante violated Section 10(b) of the Securities Exchange Act of 1934 2/, Exchange Act Rule 10b-5 3/, and NASD Conduct Rules 2110 and 2120 4/ by making material misrepresentations and omissions of material facts to certain of his customers. NASD further found that Abbondante violated NASD Conduct Rules 2110 and 3030 5/ by engaging in outside business activity without providing CISC with prompt written notice. NASD also found that Abbondante violated NASD Conduct Rule 2110 by assisting with the preparation of false account statements. NASD barred Abbondante from associating with any NASD member firm in any capacity, ordered restitution to the customers at issue in the amount of \$276,265, plus interest, and assessed costs of \$6,990.09. We base our findings on an independent review of the record.

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- 1/ NASD Conduct Rule 2110 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. NASD Manual at 4111 (1998). Conduct Rule 3040 prohibits any person associated with a member firm from participating in any manner in a private securities transaction outside the regular course or scope of his employment without providing prior written notice to the member firm. Such notice must describe in detail the proposed transaction and the person's proposed role in it. The notice must also state whether the associated person has received or may receive selling compensation in connection with the transaction. If the associated person will receive compensation, the person must receive written approval from the member firm. NASD Manual at 4837.
- 2/ 15 U.S.C. § 78j(b).
- 3/ 17 C.F.R. § 240.10b-5.
- 4/ Conduct Rule 2120 prohibits NASD members from effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. NASD Manual at 4141.
- 5/ Conduct Rule 3030, which governs any outside business activity of an associated person, prohibits a person associated with a member from being employed by, or from accepting compensation from, any other person as a result of any business activity outside the scope of the associated person's employment with the member, unless the associated person provides prompt written notice to the member. NASD Manual at 4836.

II.

Abbondante's Involvement with Jerry Womack and Iris Limited Partnership ("Iris LP")

Abbondante was registered as a general securities representative with CISC from September 18, 1996 through November 1, 1999, at which time he voluntarily resigned.

Jerry Womack, a mechanic, claimed to be the general partner of Iris LP, an entity located in Nevada. Womack sold interests in Iris LP from September 1998 through March 1999. Womack represented to potential and current Iris LP investors that he would use investors' funds to trade stocks according to a supposedly successful trading program that he called the "Womack Dow Principle." Instead, Womack engaged in a classic Ponzi scheme, using the majority of the investors' funds to pay false profits to other investors and his personal expenses. ^{6/} On May 25, 2001, Womack was convicted of mail fraud, wire fraud, and money laundering in connection with Iris LP and other false entities, sentenced to approximately sixteen years in prison, and ordered to pay more than \$6 million in restitution to defrauded investors. ^{7/}

In September 1998, a CISC co-worker introduced Abbondante to Womack. Womack, who already had accounts with "the banking side" of Chase Manhattan Bank, wanted to open a brokerage account. Womack subsequently opened an account at CISC in his name, and, on September 22, 1998, deposited \$900,000 into the account. ^{8/} Womack told Abbondante that he intended to experiment with a "strategy that he devised some years ago that traded on the volatility of certain indexes[,] Dow Jones in particular" (the so-called Womack Dow Principle), and that it had "prove[n] to be very successful." When Abbondante asked for details about the strategy, Womack replied, "I can't tell you . . . it is a secret."

Womack experimented for only a few days trading with the Womack Dow Principle and incurred significant losses. He informed Abbondante about the losses from trading with the Womack Dow Principle. Thereafter, Womack changed his trading strategy and recouped some,

^{6/} Abbondante stipulated to a finding that Womack operated Iris LP as a fraudulent investment scheme and did not invest investors' funds using the alleged successful trading formula.

^{7/} United States v. Womack, CR 99-1070-CM (C.D. Cal. filed Oct. 16, 1999). On June 30, 2003, the United States District Court for the Central District of California permanently enjoined Womack from violating the registration and antifraud provisions of the federal securities laws, and required him to disgorge over \$18 million and pay a civil penalty of \$110,000. SEC v. Jerry A. Womack, Civil Action No. 01-1037 DOC (Rcx) (C.D. Cal.), Lit. Rel. 18220 (July 8, 2003).

^{8/} Although the brokerage account was in Womack's name, the money deposited into the account came from an Iris LP checking account with Nevada State Bank.

but not all, of his losses. On November 9, 1998, at Womack's request, Abbondante opened a second CISC brokerage account in the name of Iris LP and transferred all of the assets from Womack's personal account (approximately \$628,000) into the new Iris LP account.

Abbondante testified that Womack's trading activity in the Iris LP account "was completely different" from the trading activity in his personal account. "It had nothing to do with anything that resembled Dow. Diamonds, spiders or any other type of insect, it was nothing more than picking NASDAQ stocks. [Womack] was trying to go for real volatility." Although Abbondante knew that Womack had abandoned trading with the Womack Dow Principle, Abbondante claims that he believed Womack's representation that an unidentified "team of six people" on the West Coast continued to trade using the Womack Dow Principle. Abbondante communicated Womack's representation to certain of his customers when recommending that they invest in Iris LP. By February 1999, Womack's trading losses decreased Iris LP's "equities position" with CISC to zero. Between November 1998 and February 1999, Abbondante earned "very substantial" commissions from the trades in the Iris LP account, which kept him "extremely busy."

Abbondante testified that Womack told him that Iris LP was a partnership "where [the partners] were sharing in the returns of the partnership based on a number of different ventures that Jerry Womack was involved in." ^{9/} Abbondante also spoke with purported Iris LP partners, including Gary Beebe (Iris LP's office manager), Jeremy Womack (Womack's son who performed Iris LP "administrative functions"), and Carolyn Norland (an Iris LP "group leader"). ^{10/} Based on these conversations, Abbondante testified that he believed that an investment in Iris LP "in a very short period of time could grow to a substantial amount." However, while Abbondante received a copy of the Iris LP partnership agreement in November 1998, he never read through it because it was "legalese[, which] really [didn't] make sense to [him]." Abbondante also never asked Womack for financial or performance information regarding Iris LP.

On December 31, 1998, at Abbondante's request, CISC's Fraud Prevention and Investigation Department conducted a background check on Womack and Iris LP. On that same day, after being told that "it is okay to pursue this relationship," (i.e., that Womack could remain

^{9/} The "ventures" purportedly included a record company, real estate, golfing facilities, and art.

^{10/} Abbondante testified that Norland told him that her Iris LP account was valued at \$247,000 after having invested approximately \$12,000 two years before, and that Beebe told him that "he had amassed a fortune" and quit his job that had paid "\$100,000 per year." Abbondante also testified that, in deciding to invest in Iris LP, he relied on documents, such as an informal, untitled summary of Norland's investment status from October 23, 1997, when she made her initial contribution of \$33,000, to January 31, 1999, when her account was purportedly valued at \$244,467.

a client of CISC), 11/ Abbondante invested \$25,000 in Iris LP by wiring funds from his Chase Manhattan Bank checking account to the Iris LP account set up with Nevada State Bank in Las Vegas, Nevada. On March 31, 1999, Abbondante made a second and final investment of \$20,000.

Abbondante's Recommendation of Iris LP to Anthony Casino, Kenneth Curry, and Richard Simon

Abbondante admitted in testimony before the Commission staff that he "brought in" customers to Iris LP. The record before us shows that Abbondante offered and sold Iris LP interests to at least three customers, Anthony Casino, Kenneth Curry, and Richard Simon. Prior to the hearing on this matter, Abbondante stipulated that he told the customers, variously, that Iris LP, acting through Womack, would invest their money based on a trading formula that had done well in the past; that profits from their investments in Iris LP, including monthly income, would be derived from Womack's efforts; that Womack's investment strategy was based on a trading formula involving thirty Dow Jones industrial stocks; that the formula was conducive to good returns in a volatile market; that Womack was worth millions as a result of his trading formula; that one Iris LP investor had earned returns of a few hundred percent on her investment; and that Abbondante invested in Iris LP with profitable results. 12/ In addition, each of the customers testified as to their conversations with Abbondante.

A. Anthony Casino was a friend of Abbondante's. In 1998, Casino was a customer of Chase Manhattan Bank. 13/ Abbondante first told Casino about Iris LP in the fall of 1998

11/ Abbondante testified that he relied on CISC's general statement without even knowing what the statement meant or what the background check included. The record does not support Abbondante's argument that the background check served as adequate due diligence for any reason, let alone for his customers' investment in Iris LP, as Abbondante claims.

12/ Stipulated facts serve important policy interests in the adjudicatory process, including playing a key role in promoting timely and efficient litigation; we will honor stipulations in the absence of compelling circumstances. James F. Glaza, d/b/a Falcon Fin. Serv., Inc., Securities Exchange Act Rel. No. 50474 (Sept. 30, 2004), 83 SEC Docket 3101, 3107-08 n.7 (citation omitted). The stipulations are consistent with customer testimony. While Abbondante attempts to minimize what he told the customers, Abbondante raises no contention about the stipulations in this proceeding, and we find no reason to set them aside.

13/ Casino opened a brokerage account with CISC on March 22, 1999, although Abbondante was not his registered representative. Abbondante argues that Casino was not his customer. However, the record supports the conclusion that Abbondante sold Iris LP

(continued...)

during their commutes together to Wall Street. Casino had never invested in a limited partnership prior to his investment in Iris LP. Casino testified that Abbondante told him that CISC's corporate parent conducted a due diligence background check on Womack. According to Casino, Abbondante stated that Womack had informed him that an unspecified group of traders on the West Coast was using the Womack Dow Principle. Casino did not receive any disclosure documents about Iris LP. 14/ On December 31, 1998, Casino invested \$25,000 in Iris LP with Abbondante at Abbondante's office. Before Casino's second investment in Iris LP, Abbondante told Casino that Abbondante was going to make a second investment of \$25,000. 15/ Casino also spoke with Carolyn Norland, who told Casino that she had done "quite well" investing in Iris LP. On March 31, 1999, Casino invested \$25,000. Abbondante prepared the wire transfer and other paperwork for both of Casino's purchases. 16/

Casino received five account statements and a total of \$7,600 from Iris LP. Casino also received \$24,000 in a settlement with CISC. His net loss resulting from the purchase of Iris LP interests was \$19,400.

B. Kenneth Curry had been a customer of Abbondante's since 1997 and usually followed Abbondante's investment recommendations. 17/ Abbondante was Curry's sole source of information about Iris LP. Curry testified that Abbondante represented that "the minimum

13/ (...continued)
investments to Casino. See Meadows v. SEC, 119 F.3d 1219, 1225 (5th Cir. 1997) (holding that one who solicits and seek financial advantage by doing so is a seller of securities).

14/ Casino also had a brief telephone conversation with Gary Beebe. Casino testified that the conversation, which occurred in Abbondante's office on the day before Casino's first investment, had no effect on his investment decision because he already had committed to invest in Iris LP.

15/ As discussed above, Abbondante ultimately invested \$20,000, not \$25,000.

16/ In addition to the \$50,000 investment, Casino "put up \$1,000" when Womack came up with a plan to take the partners to Hawaii for a trip and required everyone to contribute.

17/ Curry met Abbondante between 1993 and 1995. Abbondante subsequently married Curry's cousin.

Curry "trusted in [Abbondante's] professionalism and the fact that he was a broker . . . [because Curry] was not [a broker], and . . . knew nothing about the stock market." Curry participated in his employer's own stock purchase program and 401(k) plan but never had invested in a limited partnership before. Curry felt that Abbondante "was the source of the information. He was the professional, and I trusted his judgement."

return on [his Iris LP] investment per month was 10%,” and that Womack, whose background “had been looked into,” was a customer of Abbondante’s. Abbondante further mentioned that a West Coast “broker . . . was involved [in Iris LP].” Before his investment in Iris LP, Curry did not receive any disclosure documents about Iris LP. Curry invested in Iris LP based on Abbondante’s recommendation.

When Curry decided to invest in Iris LP, Abbondante assisted Curry in transferring \$30,000, on March 31, 1999, to Iris LP. Curry testified that he had no contact with Womack and “had to do all [of his] transactions through Joe.”

Curry received \$3,660 in payments in connection with his Iris LP interest and \$13,500 from his settlement with CISC. 18/ His net loss resulting from the purchase of Iris LP interests was \$12,840.

C. Richard Simon had been a customer of Abbondante’s since 1995. 19/ Simon had inherited securities but was not knowledgeable about, nor interested in, the stock market. He sold securities only to meet immediate financial needs, and not as an investment strategy. Simon retained technical control over his account. However, he relied heavily on Abbondante for investment advice and never declined to authorize transactions that Abbondante recommended. 20/

Abbondante first recommended that Simon invest in Iris LP on March 24, 1999 in Abbondante’s office. Janet Walsh, Simon’s girlfriend, was present at this meeting. 21/ Before speaking to Abbondante, Simon had not heard of Iris LP. He did not receive any disclosure documents about Iris LP, was told nothing about the credentials of anyone associated with Iris

18/ See *infra* text following note 34.

19/ Simon had a net worth of between \$2 million - \$3 million as a result of an inheritance.

20/ Simon stated that he “knew nothing, and [Abbondante] was certainly knowledgeable.”

21/ Abbondante challenges Simon’s capacity to testify and the credibility of his testimony. We reject these challenges. Both Simon and Walsh testified about Simon’s discussions with Abbondante. The NASD Hearing Panel found Walsh to be a credible witness, and the testimony of Simon and Walsh is corroborated by Abbondante’s stipulations and the documentary evidence. As we have held, “credibility determinations of an initial fact finder are entitled to considerable weight.” Laurie Jones Canady, 54 S.E.C. 65, 78 n.23 (1999) (citing Anthony Tricarico, 51 S.E.C. 457, 460 (1993)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000); see also Universal Camera v. NLRB, 340 U.S. 474 (1950). We find no reason to reject NASD’s credibility determination.

LP, and did not understand that the investment was not approved by CISC. 22/ Simon invested in Iris LP based on Abbondante's recommendation. 23/ Abbondante called Womack to effect Simon's proposed investment. On March 30, 1999, Simon invested \$250,000 in Iris LP with Abbondante's assistance in completing the paperwork and processing the wire transfer. Abbondante was Simon's sole contact regarding Simon's investment in Iris LP.

Simon received \$5,975 in payments, but otherwise received no other money related to his investment in Iris LP. 24/ He did not try to recover his loss of \$244,025.

* * *

In April 1999, Abbondante received three checks, payable to him, from Iris LP that totaled \$55,567. The checks, issued by Nevada State Bank, listed Iris LP as the account holder and Jerry Womack as the signator. One of these checks, dated April 5, 1999, amounted to \$51,500 and stated "Referral" [sic] on the "memo" line. 25/ An Iris LP spreadsheet seized by the Federal Bureau of Investigation ("FBI") from Iris LP's office during a criminal investigation designated Abbondante as the "Referring Partner" to receive a 5% "Commission" of \$51,500 for a series of eight investments that totaled \$1,030,000 made in March 1999 by CISC customers, including

22/ At the March 24th meeting, Simon signed a letter of non-solicitation after Abbondante explained that Iris LP was not a CISC-approved product. Simon testified that he signed the letter without reading it carefully.

23/ Simon testified that he was "not really paying that much attention . . ." and that he "was basically there to go along with whatever [Abbondante] recommended."

24/ See *infra* text following note 34.

25/ The second check, dated April 9, 1999, amounted to \$3,227 and stated "098 Feb. Distributions" on the "memo" line. The third check, dated April 30, 1999, amounted to \$840 and stated "ILP" followed by illegible handwriting. Abbondante testified that he also received, as of August 19, 1999, purported earnings on his Iris LP investment. See *infra* note 32 and accompanying text. It is unclear from the record what other payments, if any, Abbondante received as a result of his involvement with Iris LP.

Abbondante received three Iris LP account statements, which indicated that his purported earnings from his personal Iris LP holdings for December 1998, January 1999, and February 1999 were \$0, \$2,236, and \$2,342, respectively. He received no payments from Iris LP that corresponded to amounts listed in those account statements.

Casino, Curry, and Simon. NASD did not credit Abbondante's testimony that Womack merely included the notation "Referral" [sic] as a bookkeeping entry for tax purposes. 26/

Abbondante stipulated that, before Casino, Curry, and Simon invested in Iris LP, Abbondante had received CISC's policy manual concerning its rules related to private securities transactions and outside business transactions. The manual stated that CISC associated persons were required to give CISC notice before engaging in such transactions. He further stipulated that he told CISC that he had read the materials. Abbondante also stipulated that he never provided written notice to, nor received written approval from, CISC to participate in Iris LP transactions.

Abbondante's Involvement with DJIA LLC ("DJIA") 27/ and DJIA False Account Statements

On May 12, 1999, Abbondante and Daniel Pszanka, another CISC registered representative, 28/ established DJIA, a Nevada limited liability company. Abbondante testified that he and Pszanka intended to engage in various business ventures, such as "laundromats" and "contracting" through DJIA. However, on DJIA's Nevada state registration application, Abbondante indicated that the nature of the business was an "Investment Trad[e] Firm."

26/ The eight deposits, listed separately on the spreadsheet, are identical in amount to each of the March 1999 Iris LP investments made by Abbondante's three CISC customers and by five CISC customers of Daniel Pszanka, another CISC salesperson. Except for Casino's investment, which is identified by his name, the spreadsheet lists "DJIA" as the investor for each of the seven other deposits. See text accompanying infra notes 27 and 28 for a description of "DJIA."

The spreadsheet does not explicitly tie the names of the seven other CISC customers to the deposits listed. However, the record demonstrates that all seven of the individuals invested corresponding amounts in Iris LP in March 1999. These individuals were the only CISC customers who invested in Iris LP and were the only recipients of DJIA account statements. Further, four of the seven customers had purported earnings that were wired by Womack into the DJIA checking account. We believe the evidence is sufficient to establish that the seven remaining CISC customers were represented by the "DJIA" entries on the spreadsheet. See infra text accompanying note 33.

27/ "DJIA" purportedly is an acronym for "Dan and Joe Investment Account."

28/ NASD named Pszanka as a co-respondent in this matter, but he failed to answer the complaint. According to the Central Registration Depository, in a default decision issued on November 7, 2003, NASD barred Pszanka from association with any NASD member in any capacity. No further action occurred, and the decision became final on December 5, 2003.

Abbondante intended to fund the business ventures with his Iris LP earnings. By June 7, 1999, Abbondante had opened a DJIA checking account with Nevada State Bank. 29/ Pszanka never contributed any money to the DJIA checking account.

On June 7, 1999, Womack wired \$39,054 into the DJIA checking account. Abbondante claims that he objected to the deposit. However, Womack refused to “reverse the wire.” Abbondante did not wire the money back to Womack. According to Abbondante, the wired funds included earnings of certain Iris LP investors who were CISC customers. 30/ On July 9, 1999, Womack wired an additional \$29,455 into the DJIA checking account, allegedly to the credit of the interests held by the same CISC customers.

Abbondante claims that he was concerned that it would appear that Iris LP positions were bought by CISC customers through DJIA. Abbondante never notified or consulted CISC about DJIA or the deposits because “[i]t would open up a whole can of worms. Now [Abbondante] would have to explain what bank customers’ money was doing in [his] own account, [and] the fact [that Abbondante] was invested with [Iris LP and] . . . should have let [CISC] know.”

Womack told Abbondante to “pay it out. I’ll tell you who it belongs to.” Abbondante and Pszanka “decided to get rid of the money,” which totaled \$68,509. Between June 10, 1999 and August 19, 1999, Abbondante and Pszanka disbursed \$19,200 to four Iris LP investors by wire transfer and/or check. 31/ Pszanka, Abbondante, and Abbondante’s wife, Patricia, also received \$16,250, \$25,000, and \$6,020, respectively, from the DJIA account during this time. 32/

29/ Abbondante testified that the bank erroneously opened two DJIA accounts, although it closed one account shortly thereafter. For purposes of this opinion, we will treat the two DJIA bank accounts as one.

30/ The customers were Curry and Simon—Abbondante’s CISC customers—and Susan Marens and Gustavo Moscoso—two of Pszanka’s CISC customers. Abbondante stipulated that Marens and Moscoso invested \$100,000 and \$50,000, respectively, in Iris LP.

31/ See supra note 30.

32/ According to Abbondante, Womack told him that the balance remaining in the DJIA account (approximately \$49,309) following distributions to Marens, Moscoso, Curry, and Simon represented Abbondante’s earnings in Iris LP. Marens received \$6,460, and Moscoso received \$3,105 purportedly from DJIA.

Pszanka testified, in an on-the-record interview before Commission staff, that the \$16,250 DJIA disbursement he received from Abbondante (three checks for \$2,250, \$3,750, and \$10,250) represented personal loans made from Abbondante to Pszanka. At

(continued...)

Abbondante and Pszanka also discussed sending out DJIA account statements to certain Iris LP investors who were also CISC customers. 33/ Abbondante testified that Womack told him the customers “wanted to know” information about their Iris LP accounts. Abbondante stipulated that Womack provided him with the purported investment information, which was used to create the DJIA account statements, during various telephone conversations. According to Abbondante, he never agreed that the DJIA account statements should be sent, but he concedes that he provided Pszanka with information for his CISC customers that bought Iris LP interests and that he knew that Pszanka would use that information to generate DJIA account statements.

Between June 1999 and August 1999, Pszanka issued DJIA account statements to Curry and Simon (Abbondante’s CISC customers), and to Gronlund, Marens, Moscoso, Lippman, and Shalam (Pszanka’s CISC customers). The statements purportedly reported the investor’s initial deposit, earnings, “positions” (expressed in dollars), and average returns (expressed in percentages). In fact, this information was spurious.

There is no indication on these account statements that any of this information was generated by or in connection with an investment in Iris LP. The statements were on DJIA letterhead, included a return address for DJIA in Nevada, and listed individual “positions” in DJIA, not in Iris LP. 34/

Curry received two checks and one wire transfer from DJIA LLC totaling \$3,660. The two checks contained no indication that Iris LP issued the payments. Curry also received two DJIA account statements. Curry did not know what DJIA LLC was and believed the letters stood for “Dow Jones Industrial Average.”

Simon received two checks in June and July 1999 for \$3,125 and \$2,850, respectively, from “DJIA, LLC,” not Iris LP. In July 1999, Abbondante handed Simon an account statement on DJIA letterhead that listed an initial deposit of \$250,000, subsequent earnings, monetary “positions,” and a return summary. The statement listed Simon’s earnings as \$3,125, \$2,850, and

32/ (...continued)
the hearing, Abbondante also testified that the \$2,250 check was for a personal loan he made to Pszanka. Abbondante was not asked what the other two checks represented.

33/ The customers included Simon, Curry, Marens, and Moscoso, each of whom was to receive purported distributions, as well as Jay Gronlund, George Lippman, and Iris Shalam, each of whom was a CISC customer of Pszanka. Abbondante stipulated that Gronlund, Lippman, and Shalam invested \$350,000, \$125,000, and \$100,000, respectively, in Iris LP but received no disbursements. Casino never received a DJIA account statement.

34/ Abbondante testified that the statements were prepared on DJIA letterhead “[b]ecause the money was put in DJIA and [the customers] were being paid by a check from DJIA.”

\$13,275 for the months ended April 30, May 31, and June 30, 1999, respectively. Simon did not know what DJIA LLC was and believed the statement and checks came from Iris LP because they had Nevada addresses.

II.

Exchange Act Section 19(e) provides the standards for our review. ^{35/} This section provides that, in reviewing a disciplinary proceeding by a self-regulatory organization (“SRO”), we shall determine whether the member or person engaged in the conduct found by the SRO, whether the conduct violated the securities laws or SRO rules at issue, and whether those rules were applied in a manner consistent with the purposes of the Exchange Act. ^{36/}

Private Securities Transactions

Conduct Rule 3040 prohibits an associated person from participating “in any manner” in a private securities transaction without prior written notification to the employer. When the associated person is to receive selling compensation, he must give prior written notice to the firm and receive written approval before engaging in the transaction. ^{37/}

Abbondante concedes that the Iris LP interests are securities. ^{38/} Abbondante claims, however, that he did not believe them to be securities during the time at issue because “Iris was involved with a number of ventures other than investments in the stock market[,] . . . includ[ing] a record company, a golf course, real estate, and art.” We agree with NASD that any Iris LP involvement with multiple investments is not dispositive of whether Iris LP interests are

^{35/} 15 U.S.C. § 78s(e).

^{36/} Id.

^{37/} Ronald J. Gogul, 52 S.E.C. 307, 310 n.14 (1995).

^{38/} Exchange Act Section 3(a)(10) defines the term “security” to include “any . . . investment contract.” NASD concluded that the Iris LP interests were investment contracts, and thus securities, based on the analysis in SEC v. W.J. Howey Co., 328 U.S. 293 (1946) (finding that an investment of money in a common enterprise with profits to come solely from the efforts of others is an investment contract). We agree with NASD’s conclusion that “the Iris LP interests are investment contracts because they represent an investment in a common enterprise (Iris LP) with a reasonable expectation by the limited partners that profits would be produced by the trading efforts of others – in this case by Womack.” Abbondante testified that any Iris LP returns were based only on Womack’s efforts and stipulated that he told Casino, Simon, and Curry the same. The Iris LP partnership agreement is consistent with this understanding.

securities. ^{39/} As we have noted before, the U.S. Supreme Court has affirmed that an “investment contract” under Howey is a contract or scheme for the “placing of capital or laying out of money in a way intended to secure income or profit from its employment.” ^{40/} We note that Abbondante represented that Womack would invest customer moneys in accordance with a trading formula. In any event, Abbondante’s belief that Iris LP interests were not securities is not dispositive of whether such interests were securities and whether he was required to give notice to, and receive approval from, CISC. ^{41/} If he were uncertain, he should have asked the appropriate CISC officials. ^{42/}

Abbondante also argues that he did not solicit Casino, Curry, or Simon to invest in Iris LP and attempts to downplay the importance of his participation in the transactions. Conduct Rule 3040 is broad in scope and is not limited merely to solicitation of an investment. ^{43/} Here, there is ample evidence to support NASD’s determination that Abbondante solicited Casino, Curry, and Simon to buy interests in Iris LP. ^{44/} Abbondante admitted in an on-the-record interview before the

^{39/} See e.g., W.J. Howey Co., 328 U.S. 293 (finding that land sale contracts involving orange groves were investment contracts).

^{40/} Joseph J. Vastano, Jr., Exchange Act Rel. No. 50219 (Aug. 19, 2004), 83 SEC Docket 2015, 2024 n.21 (quoting SEC v. Edwards, 540 U.S. 389, 394 (2004)).

^{41/} Id. at 2023.

Even if Abbondante believed that Iris LP interests were not securities, he still had the obligation to give notice to CISC of his outside business activities under Conduct Rule 3030. See infra text accompanying note 67.

^{42/} Anthony H. Barkate, Exchange Act Rel. No. 49542 (Apr. 8, 2004), 82 SEC Docket 2443, 2451, pet. denied, No. 04-72839 (9th Cir. 2005).

^{43/} See John P. Goldsworthy, Exchange Act Rel. No. 45926 (May 15, 2002), 77 SEC Docket 2025, 2039 n.42 (noting that an associated person can be liable under Conduct Rule 3040 even though a purchaser’s decision to invest in a security resulted from the representations of third parties) (citation omitted); see also Stephen J. Gluckman, 54 S.E.C. 175, 182-183 (1999) (noting that “[t]he reach of Conduct Rule 3040 is very broad, encompassing the activities of ‘an associated person who not only makes a sale but who participates ‘in any manner’ in the transaction.’”) (citation omitted).

^{44/} See Meadows 119 F.3d at 1225 (defining solicitation as an attempt “to produce the sale by urging or persuading another to act” and finding that solicitation occurred where registered representative made encouraging representations about potential investment,

(continued...)

Commission staff that he “brought in” investors to Iris LP. ^{45/} Abbondante was the sole source of information about Iris LP for Curry and Simon, and the critical source for Casino. ^{46/} These customers relied on Abbondante, who provided them with encouraging details about Iris LP’s purported structure, investment strategy, and performance, as well as the purported financial status of Iris LP’s issuer, Womack. Abbondante’s representations influenced the decisions of these customers to invest. Abbondante then facilitated their investments, using his CISC office resources to provide the account transfer paperwork, help them complete it, and execute wire transfer instructions he received from Womack.

Abbondante argues that he received no selling compensation. Under Conduct Rule 3040, he was required to give notice even if he did not receive compensation. Moreover, the record shows that he received compensation. Within six days of the Iris LP investments by Casino, Simon, and Curry, Abbondante received and deposited a \$51,500 check from Womack that included the notation “Referral” [sic] (“Referral Check”). Moreover, as NASD also found, the FBI seized a spreadsheet at Iris LP’s office (“Referral Spreadsheet”). The Referral Spreadsheet credited Abbondante with eight referrals of CISC customers resulting in a \$51,500 fee. Abbondante inconsistently testified before Commission staff in 2000 that he did “not know why”

^{44/} (...continued)

advised customers on mechanics of investing, disclosed that he invested himself, and used office resources to facilitate investments).

We reject Abbondante’s argument that Casino was not his customer because Abbondante was not Casino’s registered representative at CISC. Casino initially heard of Iris LP only as a result of Abbondante’s representations. Casino testified that Abbondante’s statements influenced his decision to invest in Iris LP. Abbondante facilitated that investment by handling all of the administrative steps leading to the wire transfer of funds to make the purchase.

^{45/} Abbondante cites Curry’s and Casino’s testimony that he did not “pitch” them and that they knew that CISC did not sponsor Iris LP as proof that he solicited neither of them. Abbondante also relies on Simon’s non-solicitation agreement as evidence that he did not solicit Simon. In the face of evidence to the contrary described above, we are not persuaded by Abbondante’s assertions.

The customers’ knowledge that Iris LP was not approved by CISC is no defense to a violation of Conduct Rule 3040. Gogul, 52 S.E.C. at 310 n.13 (citations omitted).

^{46/} Casino testified that he spoke with Beebe and Norland, who commented on their purported success with Iris LP, only after he had decided to invest.

the Referral Check was marked “referral,” and before NASD in 2005 that it was for “bookkeeping” reasons. NASD found Abbondante not credible on this point. 47/

Abbondante contends that he was deprived of his “right to due process, and his right to confront the evidence before him,” because the Referral Check and Referral Spreadsheet were inadmissible as hearsay and were corroborated only by testimony that was further hearsay. 48/ We recognize that the documents are hearsay evidence. However, neither NASD nor this Commission is bound by rules of evidence and may rely upon hearsay evidence under appropriate circumstances. 49/ In determining whether to rely on hearsay evidence, it is necessary to evaluate its probative value and reliability, and the fairness of its use. 50/

The investigating FBI agent testified to the retrieval of the Referral Check and Referral Spreadsheet from Womack’s office. 51/ As discussed above, the entries on the Referral

47/ As further evidence that he did not receive compensation, Abbondante testified that he declined a May 1999 “proposition” by Womack to refer clients to Womack and receive compensation for doing so. Abbondante does not dispute that a handwritten letter to him from Womack sets forth, among other incentives, a commission schedule based on percentages of Iris LP deposits. In the letter, Womack also states that the commission “will be paid the next day after deposits are made.” This representation is consistent with Abbondante’s receipt of the Referral Check approximately six days after Casino, Curry, and Simon invested in Iris LP.

48/ Abbondante claims that the Referral Check and Referral Spreadsheet were unavailable to the Hearing Panel and to Abbondante’s counsel. We do not understand the basis for this claim. The documents were discussed throughout the prehearing conferences and the hearing, and are in the record.

49/ See Frank J. Custable, Jr., 51 S.E.C. 855, 861 (1993) (citing Charles D. Tom, 50 S.E.C. 1142, 1145 n.5 (1992) (citations omitted)).

50/ Tom, 50 S.E.C. at 1145 n.6 (citing Calhoun v. Bailar, 626 F.2d 145, 148 (9th Cir. 1980)). The factors to consider include the possible bias of the declarant, the type of hearsay at issue, whether the statements are signed and sworn to rather than anonymous, oral or unsworn, whether the statements are contradicted by direct testimony, whether the declarant was available to testify, and whether the hearsay is corroborated. Id. at 1145 n.7 (citing Calhoun, 626 F.2d at 149).

51/ Abbondante contends that the testimony of the FBI investigator who participated in their seizure is unreliable “further hearsay” in addition to the documentary hearsay. We disagree. The investigator testified that the Referral Check was seized by the FBI from Iris LP’s office. His testimony on this point is not hearsay. He also testified about

(continued...)

Spreadsheet for “DJIA” correspond to investments by CISC customers. ^{52/} Abbondante admitted that he deposited the Referral Check from Womack in April 1999. The Referral Check and Referral Spreadsheet are, in our view, probative and reliable. Under the circumstances of this case, we see no unfairness in the use of those documents in making our findings.

Abbondante suggests that the payment reflected his earnings on his Iris LP interests. None of Abbondante’s Iris LP account statements indicated that he would receive distributions exceeding \$4,000, much less \$51,500. In fact, Abbondante received a second Iris LP check in April 1999 for \$3,227, which contained the notation that it was for February distributions. Abbondante’s purported return of at least \$90,000 (comprised of checks for \$51,500, \$3,227, and \$840, the balance in the DJIA account following distributions to Marens, Moscoso, Curry, and Simon, and checks Abbondante wrote to his wife and to Pszanka) on his Iris LP investment of \$45,000 significantly exceeded the returns of Casino, Simon, and Curry, who received \$5,975, \$3,660, and \$7,600 on their Iris LP investments of \$250,000, \$30,000, and \$50,000, respectively.

We sustain NASD’s finding that the Referral Check constitutes “selling compensation” under Rule 3040(e)(2). Thus, pursuant to Conduct Rule 3040, Abbondante was required to provide prior written notice to, and obtain written approval from, CISC for his participation in the sale of Iris LP interests to Casino, Curry, and Simon for compensation. Abbondante stipulated that he failed to do either, despite being aware of CISC’s policy manual concerning CISC’s requirements as to private securities transactions. CISC’s requirements mirror the requirements of Conduct Rule 3040. Abbondante had an obligation to know the NASD’s rules. ^{53/} Based on the findings made above, we conclude that Abbondante violated Conduct Rule 3040.

NASD further determined that Abbondante’s violation of Conduct Rule 3040 also constituted a violation of Conduct Rule 2110, which requires adherence to high standards of

^{51/} (...continued)

statements made by Beebe and/or Womack. However, NASD neither relied on, nor referred to this testimony in making its findings. Neither do we.

^{52/} See supra text accompanying note 26.

^{53/} Guang Lu, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket 2639, 2646 n.16 (finding that ignorance of NASD rules does not excuse an associated person from compliance with those rules) (citing Gilbert M. Hair, 51 S.E.C. 374, 378 (1993) (stating that ignorance of the rules is not an excuse for engaging in misconduct); Jay Frederick Keeton, 50 S.E.C. 1128, 1137 (1992) (charging associated person with knowledge of NASD’s rules); Philip S. Sirianni, 47 S.E.C. 355, 359 (1980) (finding ignorance of obligation to report securities transactions to member firm was no excuse for failing to satisfy such obligation), aff’d, Sirianni v. SEC, 677 F.2d 1284, 1288 (9th Cir. 1982)), appeal pending, No. 05-1153 (D.C. Cir.) .

commercial honor and just and equitable principles of trade. It is well settled that a violation of a rule promulgated by the Commission or by NASD also violates Conduct Rule 2110. 54/ We accordingly sustain NASD's findings of violation.

Fraudulent Sale of Securities

A finding of violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5 requires a showing that misrepresentations or omissions were made in connection with the purchase or sale of a security, were material, and were made with scienter. 55/ Conduct Rule 2120 prohibits effecting or inducing the purchase or sale of a security by any manipulative, deceptive, or other fraudulent device or contrivance.

The record establishes that Abbondante made material misrepresentations and omitted material information about Iris LP. Abbondante notes that the Hearing Panel found that he acted negligently, although the NASD staff argued that he acted with scienter. 56/ He claims that, on appeal, the National Adjudicatory Council ("NAC") "irresponsibly went beyond the Hearing Panel's findings" in determining that he acted with scienter. As a procedural matter, Rule 9348 of NASD's Code of Procedure provides that "[i]n any appeal or review proceeding . . . the [NAC] may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions . . ." 57/ Under this rule, the NAC "has broad discretion to review any finding within that decision provided it gives the parties notice that it is

54/ See, e.g., Chris Dinh Hartley, Exchange Act Rel. No. 50031 (July 16, 2004), 83 SEC Docket 1239, 1244; Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999); see also Gerald James Stoiber, 53 S.E.C. 171, 180 n.22 (1997), pet. denied, 161 F.3d 745 (D.C. Cir. 1998).

55/ Dane E. Faber, Exchange Act Rel. No. 49216 (Feb. 10, 2004), 82 SEC Docket 530, 538 n.11 (citing SEC v. First Jersey Secs., Inc., 101 F.3d 1450, 1467 (2d Cir. 1996)).

56/ See Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (1976); SEC v. Randy, 38 F. Supp. 2d 657, 668 (N.D. Ill. 1999). Scienter is satisfied if the defendant acts recklessly. Panter v. Marshall Field & Co., 646 F.2d 271, 282 (7th Cir. 1981); Randy, 38 F. Supp. 2d at 670. Reckless conduct includes "[a]n extreme departure from the standards of ordinary care . . . that present[s] a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it." Meadows, 119 F.3d at 1226 (internal quotations omitted).

57/ In addition to that rule, under Rule 9346(a), the NAC considers the entire record before it, as well as any briefs, submissions on appeal, and the oral argument transcript.

doing so.” ^{58/} The NAC, in a letter dated several months before the NAC hearing was held, advised the parties that they “should be aware that, on appeal, any findings of the Hearing Panel may be affirmed, dismissed, or modified . . . [and that the] NAC may also make findings affirming allegations that were dismissed by the Hearing Panel.” We believe the NAC acted within its authority in reviewing the Hearing Panel’s dismissal of the scienter-based fraud allegations.

Abbondante also claims that he relied on the representations of Womack and Iris LP investors, and that this reliance does not support a finding of scienter. We disagree. Abbondante did not read the Iris LP prospectus and partnership agreement or obtain financial or performance information related to Iris LP. Predictions of specific returns without a basis is fraudulent. ^{59/} Yet, Abbondante provided encouraging yet unverified details about specific returns to Casino, Curry, and Simon based simply on the testimonials of Womack and purported Iris LP investors, and did not inform Casino, Curry, and Simon of the negative information he actually could substantiate. Abbondante represented that it was possible to make better than average returns in a volatile market based on Womack’s purported trading formula that involved Dow Jones Industrial stocks, that Womack’s trading strategy was yielding investment returns of variously 6 to 10% per month, that one investor already had earned returns of a few hundred percent on her investment, that the trading strategy made money whether the market went up or down, and that traders on the West Coast continued to employ the formula. ^{60/}

When he made these representations, Abbondante failed to inform Casino, Curry, and Simon that he knew that Womack sustained losses while trading on the Womack Dow Principle in his personal account, that Womack had abandoned that formula while trading in the Iris LP

^{58/} Michael B. Jawitz, Exchange Act Rel. No. 44357 (May 29, 2001), 75 SEC Docket 280, 290.

^{59/} See SEC v. The Better Life Club of America, Inc., 995 F. Supp. 167, 176-177, 184 (D.D.C. 1998) (finding fraud liability where defendants made representations as to extent and source of returns, and destination of invested funds, in addition to material omissions, without any basis).

^{60/} Abbondante asserts that Beebe and Norland also made representations to Curry and Casino. Curry, however, testified that he spoke only to Abbondante. In any event, whether Beebe or Norland engaged in separate violative conduct does not excuse Abbondante’s violations. Faber, 82 SEC Docket at 543 n.22 (citing James L. Owsley, 51 S.E.C. 524, 531 (1993) (fact that others shared responsibility for violative conduct did not relieve respondent of his responsibility)).

account, and that Womack's trading in the Iris LP account continued to be unsuccessful. ^{61/} He further represented that CISC or its parent had conducted a due diligence check or background check on Womack. However, Abbondante did not know the significance of the result of his requested background check on Womack and Iris LP.

Based on the evidence above, we agree with NASD's determination that Abbondante acted at least recklessly by not fulfilling "his duty as a salesman to make an adequate investigation of Womack and Iris LP to ensure that [his] representations to customers had a reasonable basis." ^{62/} These misrepresentations and omissions were material. ^{63/} A reasonable investor also would be influenced by knowing that (a) Womack previously sustained significant losses while trading with his alleged proprietary formula in his personal account, (b) had abandoned the formula while trading on behalf of Iris LP investors, and (c) continued to be an unsuccessful trader. ^{64/}

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- ^{61/} Cf. Jay Houston Meadows, 52 S.E.C. 778, 785 (1996) (finding that respondent's knowledge that funds had been commingled and his questions about a company's integrity were red flags that supported a finding of recklessness), aff'd, 119 F.3d 1219 (5th Cir. 1997); see also Faber, 82 SEC Docket at 540-43 (finding scienter where general securities representative failed to exercise skepticism in face of red flags and knew, but failed to inform customers, of negative financial information).
- ^{62/} See Hanly v. SEC, 415 F.2d 589, 596 (2d Cir. 1969) ("[A] salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant."). Abbondante notes that he himself invested in Iris LP. An honest belief in an issuer's prospects, as Abbondante claims he had, does not in itself give one a reasonable basis for recommending the investment to others. See James E. Cavallo, 49 S.E.C. 1099, 1102 (1989), aff'd, 993 F.2d 913 (D.C. Cir. 1993) (unpublished opinion); Gilbert F. Tuffli, 46 S.E.C. 401, 405 (1976). We also note that Abbondante received at least \$90,000 from Womack, well in excess of the amount that he invested.
- ^{63/} See TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976) (stating that a fact is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."); see also SEC v. Murphy, 626 F.2d 633, 653 (9th Cir. 1980) (finding information relating to financial condition, solvency, and profitability material); Robert Tretiak, Exchange Act Rel. No. 47534 (Mar. 19, 2003), 79 SEC Docket 3166, 3176-77 (finding misrepresentations and omissions related to undisclosed financial commitments material).
- ^{64/} See SEC v. Hasho, 784 F. Supp. 1059, 1106, 1109 (S.D.N.Y. 1992) (finding that failure to disclose negative financial and performance information violated the antifraud provisions).

Abbondante contends that he did not act with scienter because Casino, Curry, and Simon were aware of the speculative nature of an investment in Iris LP. However, Abbondante represented that this investment based on Womack's formula was successful. Moreover, at least as to Simon and Curry, we do not believe the record supports a finding that they knew Iris LP was a risky investment. In any event, a customer's awareness of the speculative nature of an investment is no defense to fraud. ^{65/}

Abbondante argues that Casino, Curry, and Simon relied unreasonably on his statements, which are not actionable because they amounted to "mere sales puffing." We disagree that Abbondante's statements, as described above, were mere puffing.

Accordingly, we find that Abbondante violated Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

Outside Business Activity

Conduct Rule 3030 provides that persons associated with a member in any registered capacity shall not be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his or her relationship with the employer firm, unless prompt written notice to the member has been provided.

Abbondante formed DJIA as a business venture, either as he claims, to own laundromats and do contracting or to do "investment" trades, as he represented in the DJIA LLC organizational documents filed with Nevada. Abbondante used DJIA to receive into the DJIA account two wire transfers from Womack amounting to \$68,509, and to disburse those funds from the DJIA account to CISC customers. Abbondante helped Pszanka to provide DJIA false account statements to Abbondante's CISC customers – Simon and Curry, and to Pszanka's CISC customers – Marens, Moscoso, Gronlund, Lippman, and Shalam. Abbondante and his wife received payments from the DJIA checking account.

Abbondante notes that Conduct Rule 3030 does not require notice to a member of a registered representative's "passive investment." Abbondante claims, although DJIA already had been organized as an LLC for the purpose of conducting business ventures and had bank accounts in its name, that DJIA was a "passive investment" that did not require notice until Womack allegedly made his unauthorized deposits of purported earnings of other Iris LP investors into the DJIA account. We find Abbondante's argument unpersuasive.

^{65/} See Hanly, 415 F.2d at 596 n.9 ("It is irrelevant that customers to whom fraudulent representations are made are aware of the speculative nature of the security they are induced to buy.") (citation omitted); Cavallo, 49 S.E.C. at 1102 ("[T]he fact that customers initiated a transaction or are sophisticated or aware of speculative risks [does not] justify making misstatements to them.").

In 1988, we approved NASD's enactment of Conduct Rule 3030 to address the securities industry's growing concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities. 66/ We agreed with NASD's conclusion that "it was appropriate for member firms to receive prompt notification of all outside business activities so that [concerns] could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." 67/ In this context, we did not intend for the "passive investment" exception to include activities in which the associated person materially participates. 68/ To permit a passive investment exemption for a registered representative's material participation would frustrate the stated purposes of the rule.

Abbondante's activities in DJIA were not passive. Abbondante admits that he intended to engage in business through DJIA. He organized the company and opened a bank account. His material participation is evidenced by his distribution of "proceeds," in accordance with Womack's instructions, as well as by his facilitation of the creation and distribution of false DJIA account documents. Abbondante received a portion of the proceeds in the DJIA checking account for his and his wife's benefit.

Abbondante admits that he failed to provide prompt written notice of his activities to CISC. Abbondante did not want to "open up a whole can of worms" by notifying CISC of the unauthorized deposits. In doing so, Abbondante effectively sidestepped the preventive measures Conduct Rule 3030 was intended to implement.

We accordingly sustain NASD's finding that Abbondante violated Conduct Rules 3030 and 2110.

DJIA False Account Statements

Abbondante argues that he cannot be held liable for DJIA's issuance of the false account statements because he did not expressly authorize Pszanka to create or distribute the statements to the seven CISC customers. Abbondante admitted that he and Pszanka discussed sending out

66/ See Order Approving Proposed Rule Change Relating to Outside Business Activities of Associated Persons of Member Firms, Exchange Act Rel. No. 26178 (Oct. 13, 1988), 41 SEC Docket 1775.

67/ Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Outside Business Activities of Associated Persons, Exchange Act Rel. No. 26063 (Sept. 6, 1988), 41 SEC Docket 1254.

68/ Cf. Micah C. Douglas, 52 S.E.C. 1055, 1058-59 (1996) (finding that completion of a questionnaire in an effort to solicit business within a state constitutes an outside business activity).

DJIA account statements to the seven investors, regardless of whether they were to receive distributions from the DJIA account. Abbondante admitted that he provided Pszanka with all of the information included in the DJIA statements and that he received this information from Womack. NASD did not credit Abbondante's testimony that he did not know that Pszanka was going to create and distribute DJIA false account statements based on the information Abbondante provided. Abbondante knew that Pszanka was sending DJIA account statements to Pszanka's own customers. In July 1999, Abbondante handed a DJIA account statement to Simon.

We have held that similar conduct is inconsistent with just and equitable principles of trade. 69/ We find that Abbondante facilitated Pszanka's provision of false account statements to the seven CISC customers and disseminated a false account statement to one customer in violation of Conduct Rule 2110.

IV.

Exchange Act Section 19(e) provides that we will sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 70/ While the Hearing Panel suspended Abbondante for one year, ordered that he requalify by examination, and fined him, the NAC barred Abbondante in all capacities and ordered him to pay restitution. Abbondante contends that he "has now been doubly punished" for exercising his right to appeal. Abbondante further contends that the sanctions are inappropriate and "harsh." We do not agree with Abbondante's claims.

The NASD procedural rules expressly permit the NAC, where appropriate, to "affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction." 71/ As we have observed previously, the exercise of the NAC's power to impose additional sanctions in

69/ Cf. Jean Krause Kirkpatrick, 53 S.E.C. 918, 926-27 (1998) (providing false Form 1099 regarding activity in customer's account is inconsistent with just and equitable principles of trade); Jeffrey Michael Miller, 51 S.E.C. 1027, 1028-29 (1994) (falsifying account statement and documents confirming securities positions in customer account is inconsistent with just and equitable principles of trade); see also Ramiro Jose Sugranes, 52 S.E.C. 156, 157 (1995) (falsifying letter representing that CD was backed by letter of credit and falsifying bank wires is inconsistent with just and equitable principles of trade).

70/ 15 U.S.C. § 78s(e)(2). Abbondante does not claim, and the record does not show, that NASD's action imposed an undue burden on competition.

71/ Code of Procedure Rule 9348, NASD Manual at 7371.

appropriate circumstances does not infringe on the right of appeal. ^{72/} The mere fact that the NAC increased the sanctions here does not render the bar or restitution order invalid on fairness grounds.

For violations of Conduct Rules 2110, 2120, and 3030, the NASD Sanction Guidelines (“Guidelines”) provide for consideration of a bar in “egregious” cases. ^{73/} For violations of Conduct Rule 3040, the Guidelines recommend imposing a suspension or a bar, based, as a preliminary assessment, on the dollar amount of the sales at issue. The Guidelines then instruct the consideration of other factors described in “Principle Considerations” and “General Principles,” and note that the presence of mitigating or aggravating factors may raise or lower the sanction determined in the preliminary assessment. ^{74/} The Guidelines also recommend considering restitution where appropriate to remediate misconduct. ^{75/} We believe that Abbondante’s sanctions are neither excessive nor oppressive given the seriousness and wide-ranging nature of his misconduct.

Conduct Rule 3040 is intended to protect investors from the hazards of unmonitored private securities transactions, while protecting the member firm from exposure to loss and litigation. Abbondante’s actions resulted in the consequences that the rule was designed to prevent. Abbondante solicited Casino, Curry, and Simon to purchase interests in Iris LP without notice to CISC. Abbondante assisted Casino, Simon, and Curry in transferring their funds to Iris LP while using CISC facilities to lend credence to the legitimacy of his activities. Abbondante’s activity resulted in the sale of \$330,000 of interests in Iris LP to three CISC customers over a three-month period without informing CISC about his activities and receiving its approval. Those customers sustained losses amounting to a total of \$276,265, and Abbondante obtained a financial benefit in the form of a \$51,500 referral fee and additional payments to himself and his wife. Abbondante does not dispute that he knew what Conduct Rule 3040 required. He stipulated that he received and read CISC’s policy regarding private securities transactions, which mirrors the requirements of Conduct Rule 3040. Yet Abbondante did not provide prior written notice to, or obtain prior approval from, CISC regarding his activities.

^{72/} Kevin Eric Shaughnessy, 53 S.E.C. 692, 698 n.14 (1998) (citing Dillon Securities, Inc., 51 S.E.C. 142, 151-52 (1992); Paul F. Wickswat, 50 S.E.C. 785, 787-88 (1991); Remmele & Co., 45 S.E.C. 432, 434 (1974)).

^{73/} NASD Sanction Guidelines (2005 ed.) at 14 and 93.

^{74/} Id. at 15-16.

The NAC referred to the 2001 edition of the Guidelines in its determination of sanctions for violations of Conduct Rules 2110, 2120, 3030, and 3040. However, based on the NAC’s analysis, we conclude that it relied on the 2005 edition.

^{75/} Id. at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

As to the antifraud violations, Abbondante was responsible for Casino's, Curry's, and Simon's investment in Iris LP because Abbondante was their first (and in Curry's and Simon's cases, sole) source of information about Iris LP. As NASD noted, Abbondante was reckless in making extremely positive statements and withholding material negative information about Iris LP. Moreover, Abbondante made inherently fraudulent performance predictions and failed to adequately investigate Womack and Iris LP to ensure that his representations had a reasonable basis.

Abbondante's material participation in establishing an outside business activity was well underway by the time Womack made his unauthorized deposits of purported earnings of CISC customers into the DJIA checking account. As NASD noted, there were several aggravating factors, including that Abbondante's business was used to hold and disburse funds to CISC customers; that the false account statements were sent on DJIA letterhead and purported to provide the CISC customers with holdings and earnings information; that Abbondante determined to conceal his activities from CISC to avoid opening "a whole can of worms"; and that Abbondante disbursed funds from DJIA to his wife and himself.

We reject Abbondante's claim that NASD failed to consider any mitigating factors. Abbondante attempts to obfuscate the severity of his misconduct by shifting blame to others. He contends that he was an unsuspecting victim of Womack's fraud and unauthorized deposits. He also argues that Casino, Curry, and Simon invested in Iris LP on their own accord, conducted no due diligence themselves, and knew that Iris LP was not a CISC-approved product. Abbondante urges us to believe that Pszanka unilaterally created and distributed the false account documents over his objections. We reject these blame-shifting arguments. 76/

76/ See B.R. Stickle & Co., 51 S.E.C. 1022, 1025 (1994) (rejecting blame-shifting arguments); Michael G. Keselica, 52 S.E.C. 33, 37 (1994) (same).

Abbondante also portrays his actions as compliant and responsible. He argues that he was the only person to conduct due diligence on Womack and Iris LP, that he “told the absolute truth” about the Womack Dow Principle, and that he attempted to do the “right thing” by disbursing questionable Iris LP earnings from the DJIA account to CISC customers. We do not find these factors to be mitigating and instead believe that these assertions demonstrate Abbondante’s complete failure to appreciate his duties as a general securities representative. We therefore sustain NASD’s sanctions.

An appropriate order will issue. 77/

By the Commission (Chairman COX and Commissioners GLASSMAN, CAMPOS, and NAZARETH); Commissioner ATKINS not participating.

Nancy M. Morris
Secretary

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Rel. No. 53066 / January 6, 2006

Admin. Proc. File No. 3-11919

In the Matter of the Application of

JOSEPH ABBONDANTE
c/o Louis J. Maione, P.C.
228 River Vale Road
River Vale, New Jersey 07675

For Review of Disciplinary Action Taken by
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 action taken by NASD against Joseph Abbondante, and
NASD's assessment of costs, be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris
Secretary