



In the Matter of)	Request for Review of
)	NYSE Hearing Board
)	Decision 08-07
Charles B. Winitch)	

In accordance with NYSE Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties and oral argument, the Board affirms the decision of the Hearing Panel in all respects.

September 10, 2008

By the Board of Directors
NYSE Regulation, Inc.

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 08-7
CHARLES WINITCH
FORMER REGISTERED REPRESENTATIVE

March 3, 2008

* * *

Violated NYSE Rule 476(a)(6) by effecting unauthorized trades in three customer accounts, effecting trades in eight customer accounts that were unsuitable given customer's age, circumstances, investment objectives, and investment experience, and making material misstatement to NYSE; violated NYSE Rule 408(a) by exercising discretionary authority over customer's accounts without written authorization - Censure and five-year bar.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Andrew D. Kampel, Esq.
Michael S. Choi, Esq.

For Respondent
Charles Winitch, pro se

* * *

A Hearing Panel on behalf of the New York Stock Exchange LLC ("NYSE") considered a Charge Memorandum issued by NYSE Regulation, Inc.'s Division of Enforcement ("Enforcement") charging Charles Winitch ("Respondent"), a former registered representative with Morgan Stanley DW, Inc. ("MSDW" or the "Firm"), a member organization, with having:

- I. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he effected unauthorized trades in one or more customer accounts.
- II. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he effected trades in one or more customer accounts, that were unsuitable given the customer's age, circumstances, investment objectives, and investment experience.
- III. Violated NYSE Rule 408(a) in that he exercised discretionary authority over a customer's accounts without written authorization.

- IV. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that he made a material misstatement to the NYSE.

Respondent, through counsel, filed an Answer on November 29, 2006.

One business day before the hearing was scheduled to begin, Respondent, now acting pro se, filed a sworn statement (“Resp. Statement”) with the Hearing Board, in which he stated, “There no longer is any reason to appear at the hearing and I will therefore not do so.” Respondent’s request that his statement be made part of the record was granted. Hearing Transcript (“Tr.”) at 7. Respondent cited as reasons for not appearing at the hearing the Hearing Officer’s decisions (1) to deny his request to adjourn the hearing until resolution of his arbitration involving indemnification by the Firm, and (2) to exclude his witness list and exhibits as untimely filed.¹

Based on the pleadings, evidence and argument presented at the hearing, the Hearing Panel made the following findings:

Background and Jurisdiction

1. Respondent was born in 1959 and entered the securities industry as a registered representative (“RR”) with a member firm in May 1987. He joined MSDW in November 1998 as a RR and was employed there until his termination on or about August 29, 2005. Respondent joined a non-member firm in November 2005 and remains employed at that firm.
2. By letter dated August 30, 2005, which Respondent received, Enforcement notified Respondent that it was investigating certain matters that had occurred while he was employed at MSDW. Thereafter, Respondent responded.

Violative Conduct

3. During the period of November 1998 to August 2005, Respondent worked as a RR for MSDW in its 330 Madison Avenue, New York, NY (“330 Madison”) branch.
4. At all relevant times, John Steigerwald also worked as a RR at 330 Madison.²
5. Steigerwald was the RR for guardian accounts established for the benefit of IDT, LMA, MS, VA, KB, SB and DR (collectively, the “Guardian Accounts”).

¹ Respondent’s original witness list contained approximately 57 names, including names with no identifying information and individuals unrelated to this proceeding.

² See John Steigerwald, Decision 06-231 (NYSE Hearing Board, Jan. 4, 2007) (decision on default motion). See also, Arunabha Sengupta, Decision 07-99 (NYSE Hearing Board, June 27, 2007) (paragraphs 14-26); Morgan Stanley & Co., Incorporated, Decision 07-66 (NYSE Hearing Board, May 9, 2007) (paragraphs 16-28).

6. The Guardian Accounts were established pursuant to court orders after settlements had been reached in medical malpractice civil suits in favor of children who were injured at birth or during childhood (the “Court Orders”).
7. The Court Orders required that, after certain deductions, the balance of the award
 - be invested in a laddered portfolio of United States Treasury Bonds and/or Moody’s “A” or better rated tax exempt general obligation securities of the State of New York or its revenue producing agencies, ... provided that all fees and commissions incurred herein shall be the lowest rate available, and there be no management fees, and the maturity dates shall be selected in the discretion of the guardian, even if a lower interest results.³ Enf. Ex. 11; see also, Enf. Ex. 8, 14, 17, 23, 26.
8. Treasury STRIPS (Separate Trading of Registered Interest and Principal of Securities), or zero coupon bonds, do not generate continuous income; an investor in STRIPS receives a payment only upon maturity. Market prices of STRIPS fluctuate more than prices of fully constituted securities of the same maturity and the further out the maturity, the greater potential for market price fluctuation.
9. In or about February 2004, Steigerwald approached Respondent, seeking advice for investing in fixed income products for the Guardian Accounts.
10. Steigerwald offered to compensate Respondent for his advice and the two agreed that Respondent would receive 35-40% of the commissions for trades on which Respondent gave advice.
11. Respondent and Steigerwald did not have a written partnership agreement or share a RR number.
12. Between April 2004 and June 2005 (“the Relevant Period”), Respondent gave Steigerwald advice for the Guardian Accounts primarily about the purchase and sale of STRIPS.
13. In addition to advice, Respondent directly entered the majority of the trades in the Guardian Accounts during the Relevant Period.
14. When either Respondent or Steigerwald entered trades in the Guardian Accounts, they did so under the RR number of either Respondent or Steigerwald.
15. Rather than hold STRIPS until maturity, Respondent and Steigerwald effected short-term trades of STRIPS in the Guardian Accounts, selling STRIPS within a short period of time after purchase, and later purchasing other STRIPS.

³ The court order in the KB account does not specify United States Treasury Bonds. Enf. Ex. 20.

16. During the Relevant Period, Respondent and Steigerwald entered approximately 176 transactions in STRIPS in the Guardian Accounts; Respondent entered 132 of these STRIP transactions.
17. The STRIP trades in the Guardian Accounts generated \$537,153 in gross commissions for the Firm, of which Steigerwald and Respondent received \$196,431 – Steigerwald generated \$271,822 in gross commissions and received \$90,597, and Respondent generated \$265,331 in gross commissions and received \$105,834. These earnings were 57% and 16%, respectively, of Steigerwald's and Respondent's total earnings during the relevant period.
18. During the Relevant Period, Steigerwald and Respondent also entered 98 non-STRIPS trades in the Guardian Accounts. The trades were the purchase and sale of municipal securities. Respondent entered 81 of the trades, 48 under his production number and 33 under Steigerwald's number.
19. Based upon the terms of the Court Orders, the investment experience of the guardians of the respective Guardian Accounts, and the risk tolerance and investment objective of the accounts, the STRIPS trading, as described below, was unsuitable for the Guardian Accounts.
20. At all relevant times, the Firm had clubs to reward its highest producing RRs. Invitations to join the clubs were based on the previous year's production.
21. The Chairman's Club is the Firm's most prestigious and is limited to the top 175 producing RRs at the Firm. Each RR in the Chairman's Club receives a trip to a five-star resort, a jacket with the Firm's crest and a plaque.
22. The Firm's production year that determines compensation and entry into Firm clubs ends in November.
23. In November 2004, Steigerwald and Respondent agreed to enter trades in the Guardian Accounts under Respondent's RR number to help Respondent reach the production level needed to qualify him for the Chairman's Club.
24. Between November 17, 2004 and November 22, 2004, Respondent entered approximately 31 STRIPS trades and 22 non-STRIPS trades in the Guardian Accounts, accounting for 19% of all transactions in the Guardian Accounts during the Relevant Period. All of these trades were entered under Respondent's RR number.
25. Respondent paid Steigerwald \$14,800 in personal checks for the commissions earned on the trades entered in the Guardian Accounts in November 2004.
26. Based upon his 2004 production, Respondent was named to the Firm's Chairman's Club.

27. The trades entered in the Guardian Accounts under his production number contributed to the production necessary for Respondent to be invited into the Firm's Chairman's Club.

The Guardian Accounts

MT Guardian for IT (the "IT" Account) - Unsuitable Trading

28. The IT Account was opened on July 10, 2001, for the benefit of IT, age 12, based on an award pursuant to a medical malpractice lawsuit. To provide for IT's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in paragraph 7 above.
29. New account documents ("NADs") indicate that at the time the account was opened, MT, IT's mother and guardian, was single and unemployed, that she had no investment experience, and her annual income was listed as \$100,000. IT's net worth was listed as \$1,000,000. The NADs further indicated that the investment objectives were, in order of priority, income, aggressive income, capital appreciation and speculation.
30. The amount awarded in the court order constituted virtually all of IT's net worth.
31. In April 2004, the value of the IT Account was approximately \$1,007,387.
32. During the Relevant Period, 24 short-term STRIPS transactions were entered in the IT Account, with no position held longer than five months. The average holding period ("AHP") for the STRIPS during the Relevant Period was 45 days.
33. For example, on March 29, 2005, four STRIPS, maturing on November 15, 2024-2027, were purchased for \$568,816 and sold on April 20 and 22, 2005.
34. Respondent's production number was associated with fifteen of the STRIPS trades and Steigerwald's production number was associated with nine of the STRIPS trades.
35. The short-term trading in STRIPS in the IT Account generated approximately \$95,802 in commissions and gains of approximately \$10,389.
36. The trades entered by Respondent and Steigerwald in the IT Account, as described in paragraphs 32 to 34 above, were unsuitable as they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and with the court order that established the account.

CA Guardian for LA (the "LA Account") - Unsuitable and Unauthorized Trading

37. The LA Account was opened on January 6, 2000, for the benefit of LA, age 15, based on an award pursuant to a medical malpractice lawsuit. To provide for LA's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in paragraph 7 above.
38. The account's NADs indicate that CA is the mother and guardian of LA. CA had no investment experience and an annual income listed as \$14,000. LA's net worth was listed as \$900,000. CA is married; she is a teacher's aide and her husband is a bus driver. The account's investment objectives, in order of priority, were listed as income, aggressive income, capital appreciation, and speculation.
39. The amount awarded in the court order constituted virtually all of LA's net worth.
40. In April 2004, the value of the LA Account was approximately \$801,656.
41. During the Relevant Period, Respondent and Steigerwald entered 27 short-term purchases and sales of STRIPS. No position was held longer than four months and the AHP of the STRIPS during the Relevant Period was 46 days.
42. For example, on May 25, 2005, two STRIPS maturing on November 15, 2021 and 2022, were purchased for approximately \$515,968. They were sold on June 6, 2005.
43. Respondent's and Steigerwald's production numbers were associated with 17 and 10 of the 27 STRIPS trades, respectively.
44. The trades as described in paragraphs 41 to 43 above were entered in the LA Account by Steigerwald and Respondent without speaking with CA and without her authorization.
45. The STRIPS trades entered in the LA Account, as described in paragraphs 41 to 43 above, were unsuitable in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

JS Guardian for MS (the "MS Account") - Unsuitable and Unauthorized Trading

46. The MS Account was opened on February 22, 2002, for the benefit of MS, age 12, based on an award pursuant to a medical malpractice lawsuit. To provide for MS's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in paragraph 7 above.
47. NADs for the account indicate that JS, MS's mother and guardian, had no investing experience or annual income. MS's net worth was listed as \$345,000. At the time the account was opened, JS was single and unemployed. The account's investment

objectives, in order of priority, were income, capital appreciation, aggressive income and speculation.

48. The amount awarded in the court order constituted virtually all of MS's net worth.
49. In April 2004, the value of the MS Account was approximately \$730,650.
50. During the Relevant Period, 20 short-term purchases and sales of STRIPS were entered in the MS Account. No position was held longer than three months and the AHP for the STRIPS during the Relevant Period was 43 days.
51. Respondent's production number was associated with sixteen of the STRIPS trades, and Steigerwald's production number was associated with four of the STRIPS trades.
52. For example, on November 19 and 23, 2004, a total of five STRIPS maturing on November 15, 2026-2029 and May 15, 2030, were purchased for the MS Account for approximately \$281,905. They were sold between December 20, 2004 and January 19, 2005.
53. The short-term trading in STRIPS generated approximately \$29,986 in commissions and gains of approximately \$1,652.
54. Neither Respondent nor Steigerwald spoke to or received authorization from JS before they entered the trades described in paragraphs 50-52 above.
55. The STRIPS trades entered in the MS Account during the Relevant Period, as described in paragraphs 50-52 above, were unsuitable in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

RB Guardian for VA (the "VA Account") - Unsuitable and Unauthorized Trading

56. The VA Account was opened on August 27, 2001, for the benefit of VA, age 11, based on an award pursuant to a medical malpractice lawsuit. To provide for VA's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in paragraph 7 above.
57. The account's NADs indicate that RB is the mother and guardian of VA. RB had no investment experience and an annual income listed as \$75,000. RB has only a basic understanding of English. At the time the account was opened, she was single and a student. VA's net worth was listed as \$850,000. The investment objectives, listed in order of priority, were capital appreciation, income, aggressive income and speculation.
58. The amount awarded in the court order constituted virtually all of VA's net worth.

59. In April 2004, the value of the VA Account was approximately \$634,397.
60. During the Relevant Period, 30 short-term purchases and sales of STRIPS were entered in the VA Account. No position was held longer than four months and the AHP of the STRIPS during the Relevant Period was 43 days.
61. Respondent's production number was associated with twenty-two of the STRIPS transactions and Steigerwald's production number was associated with eight of the STRIPS transactions.
62. For example, on March 29, 2005, four STRIPS, maturing on November 15, 2024-2027 were purchased for approximately \$497,717 and sold on April 20 and 22, 2005.
63. The short-term trading in STRIPS generated approximately \$66,100 in commissions and gains of approximately \$7,285.
64. Neither Respondent nor Steigerwald spoke to or received authorization from RB before they entered the trades described above.
65. The STRIPS trades entered in the VA Account during the Relevant Period, as described in paragraphs 60-62 above, were unsuitable in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

JB Guardian for KB (the "KB Account") - Unsuitable Trading

66. The KB Account was opened on January 3, 2001, for the benefit of KB, age 10, based on an award pursuant to a medical malpractice lawsuit. To provide for KB's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in paragraph 7.
67. NADs indicate that JB is the mother and guardian of KB. JB had an annual income listed as \$50,000. JB is single and unemployed. KB's net worth was listed as \$500,000. The NADs further indicate that the investment objectives were capital appreciation and income.
68. The amount awarded in the court order constituted virtually all of KB's net worth.
69. In April 2004, the value of the KB Account was approximately \$435,796.
70. During the Relevant Period 20 were short-term purchases of STRIPS were entered in the KB Account. No position was held longer than three months and the AHP for the STRIPS during the Relevant Period was 42 days.

71. Respondent's production number was associated with fourteen of the 20 STRIPS trades and Steigerwald's production number was associated with six of the 20 STRIPS trades.
72. For example, on November 22 and 24, 2004, a total of six STRIPS maturing on November 15, 2025-2027 and 2029 and May 15, 2028 and 2030, were purchased for the KB Account for approximately \$187,668. They were sold between December 20, 2004 and January 19, 2005.
73. The short-term trading in STRIPS generated approximately \$22,709 in commissions and gains of approximately \$245.
74. The STRIPS trades, as described in paragraphs 70 to 72 above, were unsuitable for the KB Account in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

JUB Guardian for SB (the "SB Account") - Unsuitable Trading

75. The SB Account was opened on April 12, 2000, for the benefit of SB, age 13, based on an award pursuant to a medical malpractice lawsuit. To provide for SB's care and furnish income, the account was to be invested in accordance with the court order that established the account, as described in Paragraph 7 above.
76. NADs indicate that JUB is the mother and guardian of SB. JUB is single and unemployed, she had no investment experience, an annual income listed \$50,000. SB's net worth was listed as \$500,000. An "Account Information" system printout lists the investment objectives, in order of priority, as capital appreciation, income, speculation and aggressive income.
77. The amount awarded in the court order constituted virtually all of SB's net worth.
78. In April 2004, the value of the SB Account was approximately \$268,797.
79. During the Relevant Period, 12 short-term purchases of STRIPS were entered in the SB Account. No position was held longer than four months and the AHP of the STRIPS positions during the relevant period was 37 days.
80. Respondent's and Steigerwald's production numbers were associated with seven and five of the 12 STRIPS trades, respectively.
81. For example, on May 25, 2005, two STRIPS maturing on November 15, 2021 and 2022, were purchased for approximately \$100,905. They were sold on June 6, 2005.
82. The short-term trading in STRIPS generated approximately \$9,149 in commissions and contributed to a loss of approximately \$120.

83. The STRIPS trades entered in the SB Account during the Relevant Period, as described in paragraphs 79 to 81 above, were unsuitable in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

NR Guardian for DR (the "DR Account") - Unsuitable Trading

84. The DR Account was opened on November 22, 1999, for the benefit of DR, age 18, based on an award pursuant to a medical malpractice lawsuit. To provide for DR's care and furnish income, the account was to be invested in accordance with the court order that established the account, see paragraph 7 above.
85. NR is the mother and guardian of DR. NR is single and a bank teller. She had no investment experience before opening the account. The NADs show the investment objectives, in order of priority, as income, aggressive income, capital appreciation and speculation. NR's annual income was listed as \$30,000. DR's net worth was listed as \$100,000.
86. The amount awarded in the court order constituted virtually all of DR's net worth.
87. In April 2004, the value of the DR Account was approximately \$2,556,238.
88. Forty-three short-term purchases and sales of STRIPS were entered in the DR Account during the Relevant Period. No position was held longer than three months, and the AHP for the STRIPS during the Relevant Period was 35 days.
89. Respondent's and Steigerwald's production numbers were associated with 24 and 19 of the 43 STRIPS trades, respectively.
90. For example, on August 27, 2004, three STRIPS maturing on February 15, 2025, November 15, 2026 and August 15, 2027, were purchased for approximately \$604,489. They were sold on September 24, 2004.
91. The short-term trading in STRIPS generated commissions of approximately \$246,208 and gains of approximately \$35,653.
92. The STRIPS trades entered in the DR Account during the Relevant Period as described in paragraphs 88 to 90 above, were unsuitable in that they were inconsistent with the investment experience, risk tolerance and investment objectives of the account and the court order that established the account.

MMT - Discretionary and Unsuitable Trading

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93. In May 1999, customer MMT opened an Active Assets Account (“AAA”) and Choice Account at the Firm. She became Respondent’s customer in 2000.
94. The NADs for her accounts show her net worth listed as \$8,000,000 and her annual income listed as \$150,000, derived principally from her investments. Her investment objectives as stated in the NADs were capital appreciation and income from the AAA account, and income and capital appreciation for the Choice Account. The Choice Account is a fee-based, non-managed account.
95. MMT supported herself on the income from her investments. At the time she opened her accounts, MMT was 50 years old, single and did not work. She shows, rides, and trains show horses.
96. MMT never gave Respondent written discretionary authority over her accounts but MMT believed that Respondent had oral discretionary authority to trade her accounts.
97. Between January 1, 2004 and July 31, 2005 (“MMT’s Relevant Period”), Respondent entered approximately 46 purchases and 46 sales in MMT’s AAA account.
98. Respondent did so without specific instructions from MMT.
99. During MMT’s Relevant Period, Respondent entered approximately 21 purchases and 22 sales in MMT’s Choice Account.
100. Respondent did so without specific instructions from MMT.
101. In entering the trades, as described in paragraphs 97-100 above, without authorization or written discretionary authority, Respondent exercised discretionary power over MMT’s accounts without written authorization.
102. In MMT’s accounts, Respondent employed a trading strategy of short-term purchases and sales of new issue, fixed income securities and preferred stock.
103. In January 2004, the value of MMT’s AAA account was \$6,044,465 and the value of her Choice Account was \$952,012.

MMT’s AAA Account

104. During MMT’s Relevant Period, Respondent purchased, on their respective initial public offering dates, 26 different income-generating securities in MMT’s AAA account.

105. Respondent sold 20 of the income-generating securities described above within four months of their purchase, holding some for as little as two weeks.
106. For example, in MMT's AAA account, Respondent bought bonds on August 12, 2004 and sold them on September 20, 2004. Respondent also purchased STRIPS on April 23, 2004 and November 22, 2004 and sold them on July 16, 2004 and January 14, 2005, respectively. MMT suffered losses on the aforementioned trades.
107. Selling concessions of \$115,500 were generated as a result of the purchases in the AAA account, \$46,200 of which went to Respondent.
108. On the sell side, \$19,637 in commissions was generated, \$7,856 of which went to Respondent, while the overall short-term trading of these securities generated \$13,587 in realized losses, excluding accrued interest of \$17,384.

MMT's Choice Account

109. During MMT's Relevant Period, Respondent purchased, at their respective initial public offering dates, 19 different income-generating securities in MMT's Choice Account.
110. Respondent sold 17 of the income-generating securities described above within four months of purchase, holding some for as little as two weeks.
111. For example, in MMT's Choice Account, Respondent bought bonds on August 12, 2004 and sold them on August 31, 2004. Respondent again bought the same bonds on January 13, 2005 and sold them on May 19, 2005.
112. Selling concessions of \$73,000 were generated as a result of the purchases in the Choice Account, \$29,200 of which went to Respondent.
113. The overall short-term trading of these securities generated \$8,603 in realized losses, excluding accrued interest of \$11,153.
114. By entering the trades in MMT's AAA and Choice Accounts as above, Respondent effected trades that were unsuitable given MMT's investment objectives and investment knowledge.

Making Material Misstatements to the NYSE

115. On or about August 3, 2005, an examiner from NYSE Regulation's Division of Member Firm Regulation ("MFR") asked Respondent if Steigerwald reimbursed him or if he reimbursed Steigerwald for trades. Respondent denied being reimbursed or reimbursing Steigerwald.

116. During his on-the-record testimony to Enforcement, Respondent admitted that he had reimbursed Steigerwald \$14,800 as described in paragraph 25 above.

DECISION

The Hearing Panel found Respondent guilty of Charges I, II, III and IV.

Charge I – Unauthorized Trading

Customers CA, JS and RB, as guardians of their respective accounts, testified that they had not been asked for authorization to make trades in their accounts, and that they had not given such authorization to either Steigerwald or Respondent. Tr. at 36, 56, 58, 312 - 13. In addition, Respondent admitted that he executed trades in the accounts of certain customers without obtaining the approval of those customers. Resp. Statement at 11. Accordingly, the Panel found Respondent guilty of unauthorized trading in violation of NYSE Rule 476(a)(6).

Charge II – Unsuitable Trading

The Panel found that the trading activity in the seven Guardian Accounts was unsuitable. Enforcement presented the testimony of an expert, who testified that the trading in Treasury STRIPS was “not consistent with what you would do in a normal retail account.” Tr. at 224. He testified that while the initial investment in Treasury STRIPS might have been suitable, there was little sense in purchasing and selling those STRIPS within a few months without picking up yield. *Id.* at 209-11, 255.

I would say that in the case of the retail accounts, trading short-term, relatively short-term Treasury STRIPS is an unsuitable strategy because of volatility in interest rate market and the objective of trying to gain principal transaction advantages as opposed to interest advantages. *Id.* at 232.

Through this trading activity, the accounts became “unladdered,” in contravention of the Court Orders, which required that the investments be made in “laddered” portfolios. *Id.* at 235-36. Furthermore, in light of the high commissions, “there is no way that the account could gain enough to outrun the commissions and make it worthwhile to make this switch around in a three or four-month period.” *Id.* at 211. Finally, the guardians of the accounts were unsophisticated, inexperienced and not informed of the risks of the trading activity in their accounts.⁴

In his Statement, Respondent argued that not holding STRIPS until maturity “was an interest rate play.... It was to take advantage of the volatility in the Treasury market using long term zero’s for leverage and more volatility.” Resp. Statement at 18. Furthermore, he noted that “Strips are among the very safest investment vehicles on the market.” *Id.* at 20. Finally, Respondent stated that he could not have engaged in unsuitable trading because he did not know the nature of the guardian accounts:

⁴ Although “speculation” appears on six of the Guardian Accounts NADs, it was listed as last priority in all but one of them.

In sum, I readily acknowledge and admit that: (1) I entered a number of trades for another registered representative; (2) the trades were made in accounts which turned out to be guardianship accounts but that fact was not made known to me at the time; (3) I did not check the investment goals of the clients because their registered representative had done so; and (4) I did not speak with the clients because their registered representative had done so and the Branch Manager had approved proceeding in the manner we did. Id. at 10.

The Panel rejects Respondent's contention that "I owed no independent duty to each such customer just because I entered a trade in their account." Id. at 16. Unlike a sales assistant processing a trade on behalf of a registered representative, Respondent acted upon his independent knowledge and expertise (the very basis, according to Respondent, for Steigerwald requesting his help in the first place). Also, Respondent was not merely providing expertise to Steigerwald in a particular product area. Tr. at 290. As Enforcement's expert testified, "If a salesman is getting commission income, he is responsible for the transaction.... It is clearly the salesman's responsibility to know what is going on in that account." Id. at 280.

Furthermore, the Panel found that Respondent knew or should have known that the accounts in which he was trading were guardian accounts. The Firm's district risk officer testified that when an account number is entered into the Firm computer system, information would appear on the screen with the code "GDN" indicating that the account was a guardian account, along with the name and age of the beneficiary. Id. at 350-52. Thus, it would have been clear to Respondent at the time he entered each trade that he was dealing with guardian accounts requiring extra care. Id. at 288.

With regard to the trading in MMT's accounts, the Panel found that Respondent quickly turned initial public offerings, and entered trades in a commission account (the AAA Account) when a fee-based account was available (the Choice Account). Given the customer's lack of knowledge and experience, such trading was unsuitable.

Accordingly, the Hearing Panel found Respondent guilty of NYSE Rule 476(a)(6) in that he effected unsuitable trades in all eight customers' accounts.

Charge III – Discretionary Trading

The Charge Memorandum alleges that Respondent engaged in discretionary trading without written authorization, in violation of NYSE Rule 408(a), which states:

No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer.

Respondent admitted, “[a]s to the Charge that I exercised discretionary authority in the account of [MMT], one of my customers, without written authorization, there is technical truth to that claim.” Resp. Statement at 22. Respondent claimed that the customer’s “standing instruction to me was to purchase whatever issues I was able to get for her.” *Id.* Customer MMT testified that she believed she gave Respondent written authorization to engage in discretionary trading in her accounts. Tr. at 175-76. However, there is no letter of authorization or other writing to evidence this claim. Because NYSE Rule 408(a) explicitly requires written authorization for discretionary trading, the Panel found that Respondent violated NYSE Rule 408(a) by engaging in discretionary trading in MMT’s accounts without written authorization.

Charge IV – Material Misstatement

Respondent denies making the statement alleged in the Charge Memorandum. He argues that there were no transcript or notes of the interview, and that the summary which the investigator prepared after the interview was inaccurate. Resp. Statement at 23-24.

Members of the Panel questioned the investigator extensively about how the summary of the interview was prepared and any potential inaccuracies in it. Specifically, the panelists asked the witness about specific points raised by Respondent’s Statement, such as the accuracy of the purported statement by Respondent contained in the interview summary: “RR Winitch stated... that he does not receive or reimburse RR Steigerwald in any way, shape or form.” While admitting that the exact words, “way, shape or form” may not be precise, the witness testified that the substance of the statement was accurate. Tr. at 155.

The Hearing Panel credited the testimony of the investigator, and, accordingly, found Respondent guilty of violating NYSE Rule 476(a)(6) by making a material misstatement to the NYSE.

PENALTY

In determining a reasonable and appropriate penalty, the Hearing Panel took into account the factors enumerated in McCarthy v. SEC, 406 F.3d 179 (2d Cir. 2005):

The seriousness of the offense, the corresponding harm to the trading public, the potential gain to the [respondent] for disobeying the rules, the potential for repetition in light of the current regulatory and enforcement regime, and the deterrent value to the offending [respondent] and others are all relevant factors to be considered in deciding whether the sanction is appropriately remedial and not excessive and punitive. *Id.* at 190.

The Panel found the offense of unsuitable trading especially serious, involving deliberate trading activity in the accounts of several particularly vulnerable customers, who appear to have been targeted because they were unlikely to notice the unsuitable trading. The customers suffered harm by paying unnecessary commissions and incurring the risk inherent in short-term trading in STRIPS. Respondent obtained financial gain from his activities in the form of commissions for unnecessary and sometimes harmful trades; he also benefitted by gaining entry to the Firm’s Chairman Club through sales figures that included the unsuitable trading in these accounts.

Respondent has consistently failed to understand the severity of his actions by denying any responsibility for or duty to these customers. Without acknowledging responsibility for his actions or exhibiting any understanding of his wrongdoing, the Panel finds a high likelihood that Respondent will repeat his conduct in the future.

The Panel also considered the precedents noted by Enforcement, some of which involved elderly or vulnerable clients. In Adam Lazarus, Decision 07-147 (NYSE Hearing Board Sept. 11, 2007), the respondent consented to a censure and 30-month bar for, inter alia, engaging in unauthorized and unsuitable trading in the accounts of five elderly customers. In Plase Michael Tansil, Decision 06-43 (NYSE Hearing Board Sept. 18, 2006), a hearing panel imposed a penalty of a censure and five-year bar, after a contested hearing in which the respondent was found guilty, inter alia, of unsuitable trading in multiple customer accounts. Finally, in Alex Alfred Collins, Decision 04-169 (NYSE Hearing Board Nov. 9, 2004) and Paul Steven Alexander, Decision 04-76 (NYSE Hearing Board May 12, 2004), the respondents consented to penalties of a censure and five-year bar for, inter alia, unsuitable options trading, and unsuitable and excessive trading, respectively.

In view of the above findings, and taking the totality of the circumstances into consideration, the Hearing Panel imposed the penalty of a censure and a five-year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer
Barry J. Cohen
Brandon D. Gioffre