

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 08-49

December 10, 2008

JOHN HENRY RABON, III
FORMER REGISTERED REPRESENTATIVE

* * *

Violated NYSE Rule 476(a)(6) by (a) effecting trades in accounts of customers which were unsuitable and (b) effecting trades in accounts of customers which were excessive in size and/or frequency; violated NYSE Rule 408(a) by exercising discretionary power in accounts of customers of his employer without first obtaining written authorization from customer – Consent to censure and one-year bar.

Appearances:

For the Division of Enforcement
Susan Light, Esq.
Steven F. Korostoff, Esq.
Howard L. Kneller, Esq.

For Respondent
John Henry Rabon, III pro se

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and John Henry Rabon, III (“Respondent”), a former registered representative with H&R Block Financial Advisors, Inc., an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade, in violation of NYSE Rule 476(a)(6), in that he:

(a) effected trades in the accounts of four customers of his member organization employer which were unsuitable in light of the customers’ investment experience, investment objectives and financial resources; and

(b) effected trades in the accounts of three customers of his member firm organization employer which were excessive in size and/or frequency in light of the customers' investment experience, investment objectives and financial resources.

- II. Violated NYSE Rule 408(a) by exercising discretionary power in the accounts of three customers of his member organization employer without first obtaining written authorization from the customer.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. Rabon was born in [REDACTED]. In or about May 1988, he joined Firm A, where he was employed until October of 1992. After leaving that firm, Rabon was employed by the following firms: Firm B (October 1992 to December 1996); Firm C (December 1996 to January 2000); Firm D (January 2000 to April 2003); H&R Block Financial Advisors, Inc. (the "Firm"); and Firm E (July 2005 to November 2005).
2. Rabon has not been employed in the securities industry subsequent to November of 2005.
3. On or about July 15, 2005, NYSE Regulation received from the Firm a Form U-5 (Uniform Termination Notice for Securities Industry Registration) reporting the termination of Rabon's employment. The Form U-5 also reported that such termination occurred as a result of the fact that Rabon engaged in discretionary trading in violation of the Firm's policies.
4. By letter dated December 20, 2005, sent to Rabon at his last place of residence as reflected in the Central Registration Depository, the Division of Enforcement of NYSE Regulation informed Rabon of its investigation of certain matters that occurred while he was employed with the Firm.
5. Rabon subsequently provided information and testimony concerning the matters under investigation.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 44 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer, except that pseudonyms have been provided to protect the privacy of non-parties.

Summary

6. During 2004 and 2005 (the “Relevant Period”), Rabon engaged in conduct inconsistent with just and equitable principles of trade in that he affected violative trades in a total of four customer accounts of his member firm employer. The trading was excessive in three of the accounts and was conducted pursuant to technical trading strategies that were inappropriate for the customers’ moderate risk tolerances. Turnover ratios for a 12-month period ending June 2005 for the accounts were as high as 15.6.
7. The trading was unsuitable in all four customer accounts in that, contrary to these moderate risk tolerances, the customers were charged commissions for short-term transactions that often involved the purchase and sale of a stock within the same day or within a few days or weeks. For example, in some instances, the customer engaged in almost 50 transactions per month. Additionally, in one account, the trades were unsuitable in that the customer’s positions were overly concentrated in stocks that had a relatively small capitalization. Another account involved the excessive use of margin.
8. Rabon also violated NYSE Rule 408(a) by exercising discretionary power in the accounts of three customers without first obtaining written authorization from them. Although Rabon would generally speak to a customer prior to purchasing stock, he determined the timing, price and amount of the purchases.

Violative Conduct

Customer FE

9. Customer FE, who was born in 1931, was a widowed housewife when she opened her account at the Firm in 2003. As reflected on her new account documentation, at such time, she had an annual income of approximately \$60,000, net worth (exclusive of residence) of approximately \$1.5 million and liquid net worth of approximately \$300,000. Her investment objective was growth and she had a moderate risk tolerance.
10. In August of 2004, FE’s account profile was updated. At such time, her net worth (exclusive of residence) and liquid net worth were listed as \$1.7 million and \$690,000, respectively.
11. During the Relevant Period, Rabon executed an excessive number of trades in FE’s account at the Firm. In some months, Rabon executed almost 50 trades for the account. Excluding the value of an annuity that was held in the account, the turnover ratio for the account was 7.7 (based on average monthly equity of \$279,499 and total purchases of \$2,142,024) and the cost-equity factor was 12.3% for the one-year period ending June 30, 2005. (The cost-

equity factor is determined by adding margin interest and commissions paid, and then dividing that total by the average net equity.)

12. Additionally, many of the trades in FE's account were economically disadvantageous to her in that the sales occurred often within a few days or weeks of the purchase and were executed at prices that were close to the purchase price. These trades generated a net loss for FE and a commission for Rabon and the Firm.
13. For example, on February 14, 2005, 300 shares of XYZ, were purchased for FE's account at a price of \$32.65. Several days later, on February 17, 2005, such shares were sold at a price of \$32.57. Including a commission of \$179.83 that was assessed with respect to the transaction, FE realized a loss on the transaction of \$203.83.
14. Some of these short-term trades were in principal amounts in excess of \$40,000.
15. This short-term trading was unsuitable for FE.
16. The Firm's policies prohibited its registered representatives from exercising discretionary authority over a customer account, including discretion with respect to time and price.
17. However, during the Relevant Period, Rabon's general practice was to execute trades on a discretionary basis in FE's account. Rabon had FE's oral, but not written authorization to execute these transactions.

Customer LB

18. Customer LB, who was born in 1941, listed his annual income on his new account form as \$30,000. He also listed his net worth (exclusive of residence) and liquid net worth as \$300,000 and \$30,000, respectively.
19. Also as reflected on LB's new account documentation, his investment objectives were income and growth and he had a moderate risk tolerance.
20. During the Relevant Period, Rabon executed an excessive number of trades in LB's account at the Firm. Typically, short-term trades made up much of the activity in the account and occurred at least five times per month during a significant portion of this period.
21. The turnover ratio for LB's account for the one-year period ending June 30, 2005 was 15.6 (based on an average monthly equity of \$79,398 and total purchases of \$1,237,780) and the cost-equity factor of 25%. In addition, there

- was a loss in the account of \$65,650 (or 83% of the account's equity) from June 2004 through May of 2005 after costs of \$20,165 (\$18,087 in commissions and \$2,078 in margin interest).
22. Many of these trades were also economically disadvantageous to LB in that sales were executed at prices that were close to the purchase price of the security that was being sold. These trades generated a net loss for LB and a commission for Rabon and the Firm.
 23. For example, on February 15, 2005, 1,000 shares of ABC were sold short for LB's account at a price of \$19.10. A little over a week later, on February 23, 2005, this position was covered at a price of \$19.20. Including a commission of \$240.13 that was assessed with respect to the transaction, LB realized a loss on the transaction of \$340.13.
 24. Some of these short-term trades were in principal amounts in excess of \$20,000.
 25. This short-term trading was unsuitable for LB.
 26. In addition, during the Relevant Period, Rabon utilized excessive margin with respect to LB's account. For example, in the beginning of March of 2005, LB had total assets of about \$62,500 in his account and almost \$75,000 in margined securities, equaling total equities of over \$137,000. LB's margin interest payment for that month was almost \$500.
 27. The margin trading in LB's account as set forth above was inconsistent with his moderate risk tolerance and unsuitable for him.
 28. Also, during the Relevant Period, Rabon's general practice was to execute trades on a discretionary basis in LB's account. Rabon had LB's oral, but not written authorization to execute these transactions.

Customer AB

29. Customer AB, who was born in 1935, was married with one dependent at the time that he opened his IRA account at the Firm in 2003. In his new account form, AB listed his annual income of \$50,000. Net worth (exclusive of residence) and liquid net worth are listed as \$50,000 "plus" and \$20,000, respectively.
30. Also as reflected on AB's new account documentation, his investment objectives and risk tolerance were income and growth and he had a moderate risk tolerance.

31. During the Relevant Period, Rabon executed an excessive number of trades in AB' account. The turnover rate for the one-year period ending June 30, 2005 was nine based on average monthly equity of \$401,048 and total purchases of \$900,998. The cost-equity factor for the period from January through March of 2005 was 2.5%. There was a loss in the account of \$15,603 during that period and a loss of \$35,271 (or 8% of the account's value) after commissions of \$26,734 during the period June 2004 through March of 2005.
32. Many of these trades were economically disadvantageous to AB in that the sales occurred often within a few days or weeks of the purchases and were executed at prices that were close to the purchase price, thus generating a net loss for AB but a commission for Rabon and the Firm.
33. For example, on March 3, 2005, 500 shares of DEF were purchased for AB's account at a price of \$48.75. A few weeks later, on March 21, 2005, such shares were sold at a price of \$47.77. Including a commission of \$215.29 that was assessed with respect to the transaction, AB realized a loss on the transaction of \$705.29.
34. Many of these short-term trades were in principal amounts in excess of \$40,000.
35. These short-term trades were unsuitable for AB.
36. During the Relevant Period, Rabon also purchased stocks for AB's account that were overly concentrated in stocks which had relatively small capitalizations and traded for under \$4 per share.
37. Additionally, during the Relevant Period, Rabon's general practice was to execute trades on a discretionary basis in AB's account. Rabon had AB's oral, but not written authorization to execute these transactions.

Customer CB

38. Customer CB, who was born in 1929, opened several accounts at the Firm in 2003. At such time, he was a widowed maintenance worker with an annual income of \$25,000. His net worth (exclusive of residence) and liquid net worth was listed on his new account forms as \$300,000 and \$30,000, respectively.
39. Also as reflected on his new account documentation, CB's investment objective was growth and he had a moderate risk tolerance.
40. During the Relevant Period, Rabon executed short-term trades in one of CB's accounts that were unsuitable for him. These trades were economically disadvantageous to CB in that the sales occurred often within the same day, or

within a few days or weeks of the purchase and were executed at prices that were very close to the purchase price.

41. For example, on March 22, 2005, 500 shares of GHI were purchased for CB's account at a price of \$36.67. A month later, on April 22, 2005, these shares were sold at a price of \$35.10. Including a commission of \$285.24 that was assessed with respect to the transaction, CB realized a loss on the transaction of \$1070.24.
42. Also, on April 12, 2005, 300 shares of JKL Corp. were purchased for CB's account at a price of \$18.39. The following day, on April 13, 2005, these shares were sold at a price of \$18.83. Including a commission of \$139.74 that was assessed with respect to the transaction, CB realized a loss on the transaction of \$7.74.
43. Some of these short-term trades were in principal amounts in excess of \$17,000.
44. This trading, which was unsuitable for CB, often generated a net loss for CB and a commission for Rabon and the Firm.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondent committed the offenses as set forth above.

PENALTY

In view of the above findings, the Hearing Officer imposed the penalty consented to by Respondent of a censure and a one-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