

HEARING PANEL DECISION 97-135

APPEALED TO THE SEC

SEE RELEASE 34-42772 DATED MAY 11, 2000

**NEW YORK STOCK EXCHANGE, INC.**

In the Matter of            )  
  )  
Jeffrey Ainley Hayden    )

Appeal from  
Exchange Hearing Panel  
Decision 97-135

In accordance with Exchange Rule 476(f), the Board considered the record in this matter and written submissions filed by the parties. The parties declined the opportunity to present oral argument.

Based on its review, the Board sustains the decision of the Hearing Panel in all respects.

June 4, 1998

By the Board of Directors  
New York Stock Exchange, Inc.

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 97-135

December 5, 1997

JEFFREY AINLEY HAYDEN  
FORMER REGISTERED REPRESENTATIVE

\* \* \*

**Caused unsuitable investments to be effected in customers' accounts; made misrepresentations or omissions of information to customers; and violated SEA Regulations 240.17a-3 and 17a-4 and Exchange Rule 440 by omitting or causing to be omitted information, or entering or causing to be entered inaccurate information on the books and records of his employer -- Censure, six-year bar and permanent bar from selling limited partnerships. \***

**Appearances:**

For the Division of Enforcement  
Susan Light, Esq.  
Michael Krevor, Esq.  
Henry A. Harrison, Esq.  
Ronald G. Schwan

For the Respondent  
Peter J. Anderson, Esq.  
Sarah B. Estes, Esq.

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An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Jeffrey Ainley Hayden, a former registered representative with Dean Witter Reynolds, Inc. (the "Firm"). Mr. Hayden was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he caused investments to be effected in the accounts of customers of his member organization employer which were unsuitable in view of the customers' investment objectives, investment experience and/or financial resources.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he made misrepresentations or omissions of pertinent information to customers of his member organization employer in connection with investments.
- III. Violated Securities Exchange Act Regulations §240.17a-3 and §240.17a-4 and Exchange Rule 440 in that he omitted information or caused the omission of information or entered or caused to be entered inaccurate information on the books and records of his member organization employer.

Mr. Hayden submitted an Answer and a Supplemental Answer to the Memorandum of Charges by which he admitted some of the allegations contained in the Charge Memorandum

\* See decision by the Board of Directors dated June 4, 1998.

and denied others. The Answer also denied the charges and asserted affirmative defenses, including laches and the Statute of Limitations.

Mr. Hayden appeared through counsel at some of the hearings. At the ninth hearing session, Mr. Hayden and counsel discontinued active participation in the hearings. Mr. Hayden continued to deny the charges. He also reasserted the defenses contained in the Answer, made during cross-examination of witnesses, and stated at the introduction of exhibits during the course of the hearing. Mr. Hayden's counsel also reserved the right to make motions at the end of the case and to appear at the penalty phase of the case. In the event, Mr. Hayden submitted a Renewed Motion to Dismiss and appeared at the penalty phase of the hearing.

After hearing testimony from witnesses called by the Division of Enforcement and after receiving evidence, the Hearing Panel denied Respondent's Renewed Motion to Dismiss and found as follows:

### **Background & Jurisdiction**

1. Jeffrey Ainley Hayden was born on January 19, 1946.
2. He entered the securities industry in 1977 with Reynolds Securities, Inc., where he became a registered representative. Hayden has spent his entire securities career with Reynolds Securities, Inc. and its successor, Dean Witter Reynolds, Inc. He resigned from the Firm on July 18, 1997.
3. In or about 1980, Hayden began soliciting individuals who were about to retire to become customers.
4. Hayden represented himself as knowledgeable about investing for retirees. Hayden made these representations both orally and through printed mailings.
5. Some of Hayden's prospective investors were civilian retirees or related to civilian retirees of XYZ. XYZ is a U.S. Air Force research and development facility located near the city of Tullahoma, Tennessee.
6. Some of the XYZ retirees who invested with Hayden received lump sum retirement payments and had little or no previous investment experience.
7. Hayden recommended and purchased limited partnership investments for many of his customers including the retirees.
8. On April 28, 1993, the Exchange received a report on Form RE-3 from the Firm which stated that Hayden was the subject of an arbitration proceeding involving 12 former customers. The principal allegations concerned unsuitable limited partnership recommendations by Hayden.

9. By letter dated May 25, 1993, which Hayden received, the Exchange notified Hayden that it was investigating possible sales practice violations during his employment at the Firm.
10. On July 22, 1993, the Exchange received an additional report from the Firm stating that Hayden was the subject of an arbitration filed by another former customer who claimed Hayden entered unsuitable limited partnership investments.

### **The Customers and Their Accounts**

#### **AB**

11. At the time AB met Hayden in 1982, she was a widow with two children, approximately 3 and 6 years of age, whose husband had recently died as the result of an accident at XYZ.
12. In 1982, AB was an unsophisticated investor with a high school education who earned approximately \$13,000 per year as a court reporter.
13. Hayden did not consider AB to be a sophisticated investor.
14. In 1984, AB's liquid net worth consisted primarily of funds from a small insurance settlement and a wrongful death settlement with respect to her husband, totaling approximately \$200,000.
15. AB opened three accounts with Hayden, a personal account opened in 1983 and two custodial accounts for her sons opened in 1984.
16. AB told Hayden that her objectives for the three accounts were safety of principal and liquidity as well as income for raising her children and for their education. These objectives remained unchanged during the lives of the accounts.
17. AB relied on Hayden to determine suitable investments for her personal and custodial accounts.
18. Hayden recommended and purchased for AB's personal and custodial accounts the following limited partnership interests at a cost of approximately \$74,000. Hayden also allocated, in the aggregate, approximately \$58,890 to money market funds and a real estate annuity in AB's personal and custodial accounts.

#### **AB's Personal Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/15/84	\$10,000	UVW Income Fund 1983
03/02/84	\$30,000	RST Income Fund VII

**AB's Custodial Accounts (each)**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/02/84	\$17,000	OPQ Equity Pension Investors I

19. The primary sources of funds for the purchases of these limited partnership interests were the insurance settlement and wrongful death settlement with respect to her deceased husband.
20. UVW was an illiquid oil and gas limited partnership.
21. RST was an illiquid computer leasing limited partnership.
22. OPQ was an illiquid real estate limited partnership.
23. The limited partnership investments Hayden effected in AB's personal account represented approximately 55% of the account's investments.
24. The limited partnership investments Hayden effected in each of AB's custodial accounts for her minor children represented approximately 50% of each of the accounts' investments.
25. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for AB's personal and custodial accounts.
26. The limited partnership investments in AB's personal account and custodial accounts were unsuitable, given her investment experience, investment objectives and financial resources.

**CD**

27. In 1982, CD was an unemployed widow with one dependent child. She was an unsophisticated investor with a high school education. CD's husband had worked for XYZ.
28. Hayden did not consider CD to be a sophisticated investor.
29. CD's net worth and her liquid net worth were limited. Her liquid net worth consisted primarily of her husband's death benefits and XYZ retirement lump sum payment, which together amounted to approximately \$130,000.
30. With the funds from her husband's lump sum payment and insurance death benefits, Hayden opened a personal account for CD in 1982, shortly after her husband died.

31. CD told Hayden that her objectives for her account were income, liquidity and preservation of principal. These objectives remained unchanged during the life of the account.
32. CD accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for her personal account.
33. Hayden recommended and purchased for CD's personal account the following limited partnership interests at a cost of approximately \$80,000. Hayden also allocated approximately \$39,000 to money market funds in CD's personal account.

**CD's Personal Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
09/16/82	\$40,000	LMN Income Program 1982-1
09/17/82	\$40,000	RST V

34. LMN was an illiquid oil and gas limited partnership.
35. The limited partnership investments Hayden effected in CD's personal account represented approximately 65% of the accounts investments.
36. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for CD's personal account.
37. The limited partnership investments in CD's personal account were unsuitable, given her investment experience, investment objectives and financial resources.

**EF**

38. In 1982, EF was the widow of an XYZ employee. She worked as a secretary at XYZ, retired in 1988 and earned less than \$20,000 annually. She had a high school education and no prior investment experience.
39. Hayden did not consider EF to be a sophisticated investor.
40. In 1982, EF's liquid net worth consisted primarily of her husband's lump sum pension and insurance death benefits, which together amounted to approximately \$173,000.
41. With the funds from her husband's lump sum pension and insurance death benefits, Hayden opened an individual retirement account and a personal account for EF in 1982, shortly after her husband died.

42. EF told Hayden that her objectives for her accounts were income, preservation of principal and capital appreciation. These objectives remained unchanged during the lives of the accounts.
43. EF accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for her accounts.
44. Hayden recommended and purchased for EF's IRA and personal account the following limited partnership interests at an aggregate cost of approximately \$110,000. Hayden also allocated, in the aggregate, approximately \$73,000 to covered call writing, an annuity and money market funds in her IRA and in her personal account.

**EF's Personal Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
05/24/82	\$50,000	RST 1982-2
06/01/82	\$50,000	IJK VIII

**EF's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
11/23/83	\$10,000	UVW 1982-3

45. IJK was an illiquid mini-warehouse real estate limited partnership.
46. The limited partnership investments Hayden effected in EF's personal account represented approximately 65% of the account's investments.
47. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for EF's personal account.
48. The limited partnership investments Hayden effected in EF's personal account were unsuitable, given her investment experience, investment objectives and financial resources.

**GH**

49. GH retired in 1985 from XYZ, where he had been employed as a heavy equipment operator earning an annual salary between \$25,000 and \$30,000 at the time of retirement. GH had an eighth-grade education.
50. When he met Hayden, GH had no prior investment experience.

51. Hayden did not consider GH to be a sophisticated investor.
52. In 1985, GH's liquid net worth consisted primarily of his lump sum retirement payment from XYZ, which amounted to approximately \$74,000.
53. With approximately \$40,000 from GH's lump sum retirement pension funds, Hayden opened an IRA for GH in 1985.
54. GH told Hayden that his objectives for his account were income, safety of principal and liquidity. These objectives remained unchanged during the life of the account.
55. GH accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his IRA.
56. Hayden recommended and purchased for GH's IRA the following limited partnership interests at a cost of approximately \$20,000. Hayden also allocated approximately \$20,000 to Dean Witter U.S. Government Securities Trust ("DW USGVT") and money market funds in GH's IRA.

#### **GH's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
10/16/85	\$20,000	FGH IV

57. FGH was an illiquid electronic equipment leasing limited partnership.
58. The limited partnership investment in GH's IRA represented approximately 50% of the account's investments.
59. The total amount invested in the limited partnership represented an undue concentration in an illiquid investment for GH's IRA.
60. The limited partnership investment Hayden effected in GH's IRA was unsuitable, given his investment experience, investment objectives and financial resources.

#### **JK and LM**

61. JK was a pipefitter at XYZ who retired in January 1983. He was his family's primary wage earner. His wife was a homemaker. JK earned approximately \$22,000 annually at XYZ at the time of his retirement.
62. JK was not a sophisticated investor, and Hayden did not consider JK to be a sophisticated investor.
63. JK was responsible for his grandson, LM, age 14 in 1983, who had cerebral palsy.

64. JK's liquid net worth, which amounted to approximately \$92,000, consisted primarily of his lump sum pension payment from XYZ.
65. In 1982, Hayden opened a joint account for the Ks and, upon JK's retirement in 1983, opened an IRA for JK.
66. In 1983, JK gave Hayden \$25,000 to purchase an annuity for LM. These funds were derived from insurance proceeds received upon the death of LM's mother (JK's daughter).
67. In 1987, Hayden opened an account for JK as guardian for LM and in 1988 Hayden opened a trust account for LM. The guardian account's assets were transferred to the trust account in 1988 (collectively referred to as the "custodial accounts").
68. JK told Hayden that his objectives for his accounts were income and safety of principal. His objectives for his grandson's custodial accounts included income and safety of principal plus liquidity in case funds were needed for his grandson's illness. These objectives remained unchanged during the lives of the accounts.
69. JK accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his IRA, joint and custodial accounts.
70. Hayden recommended and purchased for JK's IRA and in his custodial accounts for his grandson the following limited partnership interests at an aggregate cost of approximately \$85,000. The \$25,000 utilized to purchase the limited partnership interest in LM's guardian account was obtained through the sale of the annuity Hayden had previously purchased for LM. Hayden also allocated, in the aggregate, approximately \$47,200 to money market funds in JK's joint, custodial and IRA accounts.

#### **JK's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/15/83	\$40,000	FGH I
04/05/83	\$20,000	LMN 2

#### **LM's Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
12/15/87	\$25,000	FGH VI

71. The primary sources of funds from JK for the purchase of these limited partnership interests were his XYZ lump sum pension payment, credit union savings and daughter's life insurance benefits.

72. The limited partnership investments Hayden effected in JK's IRA represented approximately 95% of the account's investments.
73. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for JK's IRA.
74. The limited partnership investments Hayden effected in JK's IRA were unsuitable given his investment experience, investment objectives and financial resources.
75. Hayden allocated approximately 70% of LM's liquid net worth to an illiquid limited partnership investment.
76. The total amount invested in the limited partnership represented an undue concentration in illiquid investments for JK's dependent grandchild.
77. The single limited partnership investment Hayden effected in LM's account was unsuitable, given the purpose of the account.

**NO**

78. NO retired in 1985 as an electrical designer with XYZ. He had been his family's sole wage earner, having an annual income of approximately \$35,000 at the time of his retirement.
79. NO was not a sophisticated investor, and Hayden did not consider him to be a sophisticated investor.
80. Upon his retirement NO had a net worth of approximately \$200,000. His liquid net worth consisted primarily of his lump sum pension payment from XYZ of approximately \$135,000.
81. In 1985, with approximately \$155,000, Hayden opened for NO an IRA and a joint account.
82. NO told Hayden that his objectives for his accounts were safety of principal, and income. These objectives remained unchanged during the lives of the accounts.
83. NO accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his IRA and his joint account.
84. Hayden initially recommended and purchased for NO's IRA the first four of the following limited partnership interests at a cost of approximately \$100,000. Hayden also initially allocated approximately \$55,000 to DW USGVT in NO's IRA and joint account. Thereafter, Hayden used distributions into the IRA from existing limited partnerships to purchase additional limited partnership interests at a cost of approximately \$20,000.

**NO's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
01/24/85	\$30,000	LMN 85-A
01/31/85	\$20,000	Dean Witter Realty Income Partnership ("Dean Witter Realty") 2
02/15/85	\$15,000	CDE II
02/20/85	\$35,000	FGH III
11/22/85	\$10,000	ZAB II
09/26/86	\$10,000	Dean Witter Cornerstone Funds ("Cornerstone Funds")

85. The primary source of funds for the purchases of these limited partnership interests was NO's XYZ lump sum pension payment.
86. CDE was an illiquid real estate limited partnership.
87. ZAB was an illiquid equipment leasing limited partnership.
88. Cornerstone Funds was a commodities trading limited partnership.
89. The initial limited partnership investments Hayden effected in NO's IRA represented approximately 75% of the account's investments.
90. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for NO's IRA.
91. The limited partnership investments Hayden effected in NO's IRA were unsuitable, given his investment experience, investment objectives and financial resources.

**PQ**

92. In 1983, PQ retired from XYZ, where he had been a testing manager. He was his family's sole wage earner, having an annual salary at the time of retirement of approximately \$46,000.
93. At the time of his retirement, PQ's liquid net worth consisted primarily of a lump sum pension payment from XYZ which amounted to approximately \$175,000.

- 94. Hayden opened PQ’s joint account with his wife in 1981, and in 1982 he opened PQ’s IRA.
- 95. PQ told Hayden that the objectives for the IRA were safety of principal, liquidity and income. These objectives remained unchanged during the life of the account.
- 96. PQ accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his IRA and joint accounts.
- 97. Hayden recommended, and purchased, for PQ’s IRA the following limited partnership interests at a cost of approximately \$132,000. Hayden also allocated, in the aggregate, approximately \$95,000 to covered call writing and money market funds in PQ’s IRA and PQ’s joint account with his wife.

**PQ’s IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/02/82	\$2,000	RST 1981
03/04/83	\$30,000	LMN 1983
03/04/83	\$20,000	WXY I
03/11/83	\$50,000	FGH 1982
04/05/83	\$30,000	CDE 1983

- 98. The primary source of funds from PQ for the purchases of these limited partnership interests was his XYZ lump sum pension payment.
- 99. WXY was an illiquid real estate limited partnership.
- 100. The limited partnership investments Hayden effected in PQ’s IRA represented approximately 75% of the account’s investments.
- 101. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for PQ’s IRA.
- 102. The limited partnership investments Hayden effected in PQ’s IRA were unsuitable, given his investment experience, investment objectives and financial resources.

**RS**

- 103. In 1985 RS retired from XYZ, where he had been an engineering department manager. He was his family’s sole wage earner, having an annual salary at the time of retirement of approximately \$35,000.

104. RS was an unsophisticated investor.
105. In 1985, Hayden opened RS's IRA, RS's joint account with his wife and Mrs. S's personal account with approximately \$126,000, \$59,000 and \$10,000, respectively.
106. In 1985, the bulk of the Ss' liquid net worth consisted of RS's lump sum pension payment from XYZ, which amounted to approximately \$126,000.
107. The Ss told Hayden that their objectives for their accounts were preservation of principal, liquidity and income. These objectives remained unchanged during the lives of the accounts.
108. The Ss accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for their accounts.
109. Hayden recommended and purchased for RS's IRA and joint account the following limited partnership interests at a cost of approximately \$147,000. Hayden also allocated, in the aggregate, approximately \$73,000 to DW USGVT and money market funds in RS's IRA and his joint account with his wife and in Mrs. S's personal account.

**RS's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
10/16/85	\$45,000	FGH IV
10/18/85	\$10,000	IJK XVI
11/04/85	\$20,000	TUV XXIII
11/12/85	\$31,000	LMN 85-C
02/04/86	\$15,000	Cornerstone Funds
08/18/86	\$10,000	Cornerstone Funds

**The Ss' Joint Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
10/25/85	\$16,000	ZAB II

110. The primary source of funds from RS for the purchases of these limited partnership interests was his XYZ lump sum pension payment.
111. TUV was an illiquid real estate limited partnership.

112. The limited partnership investments Hayden effected in RS's IRA represented approximately 85% of the account's investments.
113. On an aggregate basis, the limited partnership investments Hayden effected in the Ss' accounts represented approximately 65% of the accounts' investments.
114. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for the Ss' accounts.
115. The limited partnership investments Hayden effected in RS's IRA and the Ss' joint account were unsuitable, given their investment experience, investment objectives and financial resources.

#### **TU and VW**

116. TU and her daughter VW were not XYZ employees or related to XYZ employees.
117. In 1983, TU, who was 70 at the time, opened a joint account at the Firm with her daughter, VW, with securities which had previously been in TU's account at another member firm. Hayden was the broker of record for the TU/VW account. VW did not contribute any assets to the account.
118. At the time TU opened the account, TU was a widow who relied on social security and income generated from a securities account she had inherited from her husband's parents for living expenses.
119. In 1983, the liquid portion of TU's assets comprised the majority of her net worth. TU's liquid assets amounted to approximately \$575,000, which were invested in conservative securities and certificates of deposit at another member firm, prior to opening the TU/VW account with Hayden.
120. In 1983, VW's liquid net worth amounted to approximately \$58,000, which was invested in a money market account.
121. TU and VW told Hayden that the objectives for their account were income, safety of principal, liquidity and tax sheltering, with the primary concern being safety of principal. These objectives remained unchanged during the life of the account.
122. TU and VW accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for their account.
123. Within approximately four months of opening their account, Hayden recommended liquidating the conservative portfolio and did so for proceeds of approximately \$500,000. With these proceeds and approximately \$78,000 additional funds deposited into the account, Hayden initially recommended and purchased among other securities the following limited partnership interests (other than FGH IV) in their account at a cost of approximately \$301,300. Hayden

also allocated approximately \$228,900 to covered call writing, mutual funds and money market funds in their account. In December 1985, Hayden purchased an additional limited partnership interest, FGH IV, for approximately \$30,000.

**TU/VW Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
01/18/84	\$70,000	UVW 1983
01/18/84	\$50,000	WXY II
01/25/84	\$50,000	OPQ I
02/15/84	\$31,300	CDE II
02/23/84	\$100,000	RST VII
12/27/85	\$30,000	FGH IV

124. The limited partnership investments Hayden effected in their account represented approximately 55% of the account's investments.
125. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for their account.
126. The limited partnership investments Hayden effected in the TU/VW account were unsuitable given their investment experience and investment objectives.

**XY**

127. In 1986, XY retired from XYZ, where he had been employed as an engineer associate. He was his family's sole wage earner, having an annual salary of approximately \$34,000 at the time of his retirement. XY's first wife had died in 1983 as the result of a plane crash.
128. Although XY had prior limited investment experience, he was not a sophisticated investor.
129. In 1986, the bulk of XY's liquid net worth consisted of his lump sum pension payment from XYZ, which amounted to approximately \$121,000 and a wrongful death settlement concerning his wife, in the amount of approximately \$87,000.
130. Hayden opened XY's IRA and personal account upon his retirement in 1986.
131. XY told Hayden that his objectives for his IRA were preservation of principal and income and that the objective for his personal account, in which he deposited the wrongful death proceeds

had an emphasis on safety. These objectives for both accounts remained unchanged during the lives of the accounts.

132. XY accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his accounts.
133. Hayden initially recommended and purchased for XY's IRA and personal account the following limited partnerships other than QRS Income Partners I, at an aggregate cost of approximately \$158,000. Hayden also allocated, in the aggregate, approximately \$45,000 to DW USGVT and an annuity in XY's IRA and personal account. Hayden subsequently liquidated the Cornerstone Funds in XY's personal account and, with the proceeds, purchased QRS, another limited partnership, at a cost of approximately \$30,000.

**XY's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
04/08/86	\$20,000	Cornerstone Funds
04/30/86	\$80,000	Dean Witter Realty 3

**XY's Personal Account**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/11/86	\$30,000	Cornerstone Funds
02/18/86	\$20,000	IJK XVI
06/27/86	\$8,000	Cornerstone Funds
04/03/90	\$25,000	QRS
04/04/90	\$5,000	QRS

134. The primary sources of funds from XY for the purchases of these limited partnership interests were his XYZ lump sum pension and the wrongful death settlement regarding his wife.
135. QRS was an illiquid railroad car leasing limited partnership.
136. The limited partnership investments Hayden effected in XY's IRA represented approximately 80% of the account's investments.
137. The initial limited partnership investments Hayden effected in XY's personal account represented approximately 75% of the account's investments.

- 138. The total amount invested in limited partnerships represented an undue concentration in illiquid investments for XY's accounts.
- 139. The limited partnership investments Hayden effected in XY's accounts were unsuitable given his investment experience, investment objectives and financial resources.

**ZA**

- 140. In 1982, ZA retired from XYZ, where he had been employed as an engineer. He was his family's sole wage earner, having an annual salary of approximately \$32,000 at the time of his retirement. His wife was a homemaker.
- 141. ZA was not a sophisticated investor and Hayden did not consider him to be a sophisticated investor.
- 142. Hayden opened ZA's IRA and a joint account for ZA and his wife in 1982.
- 143. In 1982, the bulk of ZA's liquid net worth consisted of his lump sum pension payments from XYZ of approximately \$96,000, and savings of approximately \$40,000.
- 144. ZA told Hayden that his objectives for his IRA were preservation of principal and income. These objectives remained unchanged during the life of the account.
- 145. ZA accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for the two accounts.
- 146. Hayden recommended and purchased for ZA's IRA the following limited partnership interests at a cost of approximately \$90,000. Hayden also purchased approximately \$4,300 in money market funds in ZA's IRA.

**ZA's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
10/21/82	\$40,000	LMN 1982-83
10/25/82	\$50,000	RST V

- 147. The primary source of funds from ZA for the purchases of these limited partnership interests was his XYZ lump sum pension payment.
- 148. The limited partnership investments Hayden effected in ZA's IRA represented approximately 95% of the account's investments.

- 149. The total amount invested in the limited partnerships represents an undue concentration in illiquid investments for ZA's account.
- 150. The limited partnership investments Hayden effected in ZA's IRA were unsuitable given his investment experience, investment objectives and financial resources.

**BC**

- 151. In 1983, BC retired from XYZ, where he had been employed as a test facility craftsman supervisor, having a high school education. He was his family's sole wage earner, having an annual salary of approximately \$30,000 at the time of his retirement.
- 152. BC was not a sophisticated investor and Hayden did not consider him to be a sophisticated investor.
- 153. In 1983, the bulk of BC's liquid net worth consisted of his lump sum pension payment and other funds from XYZ which amounted to approximately \$105,000.
- 154. Hayden opened BC's IRA in 1983 with approximately \$82,000.
- 155. BC told Hayden that his objectives for his IRA were preservation of principal, and income. These objectives remained unchanged during the life of the account.
- 156. BC accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his account.
- 157. Hayden recommended and purchased for BC's IRA the following limited partnership interests at a cost of approximately \$70,000. Hayden also allocated approximately \$12,000 to another investment and money market funds in BC's IRA.

**BC's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
05/23/83	\$30,000	UVW 1983
07/11/83	\$40,000	RST VI

- 158. The primary source of funds from BC for the purchases of these limited partnership interests was his XYZ lump sum pension payment.
- 159. The limited partnership investments Hayden effected in BC's IRA represented approximately 80% of the account's investments.

- 160. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments for BC's IRA.
- 161. The limited partnership investments Hayden effected in BC's IRA were unsuitable given his investment experience, investment objectives and financial resources.

**DE**

- 162. DE retired in 1984 from XYZ, where he had been employed as a quality control supervisor with an annual salary of approximately \$35,000. DE had a high school and technical school education. His wife was a homemaker.
- 163. DE had limited investment experience and was not a sophisticated investor.
- 164. DE met Hayden in 1984, at which time DE's liquid net worth consisted primarily of his lump sum retirement pension payment from XYZ, which amounted to approximately \$155,000.
- 165. With DE's lump sum retirement pension funds and other savings, Hayden opened an IRA for DE and a joint account for the Es in 1984.
- 166. DE told Hayden that his objectives for his IRA were income and safety of principal. These objectives remained unchanged during the life of the account.
- 167. DE accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his accounts.
- 168. Hayden recommended and purchased for DE's IRA the following limited partnership interests at a cost of approximately \$129,000. Hayden also allocated approximately \$34,000 to DW USGVT in DE's IRA.

**DE's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
10/11/84	\$40,000	LMN 84-C
10/18/84	\$38,000	CDE II
11/09/84	\$40,000	FGH III
04/26/85	\$11,000	FGH III

- 169. The limited partnership investments Hayden effected in DE's IRA represented approximately 75% of the account's investments.

- 170. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments in DE's IRA.
- 171. The limited partnership investments Hayden effected in DE's IRA were unsuitable given his investment experience, investment objectives and financial resources.

**FG**

- 172. FG retired in 1987 from XYZ, where he had been employed as a work scheduler with a yearly salary of approximately \$25,000. FG had a high school education. His wife was a homemaker.
- 173. FG was an unsophisticated investor having no prior investment experience.
- 174. FG met Hayden in 1987, at which time his liquid net worth consisted primarily of his lump sum retirement pension from XYZ, which amounted to approximately \$94,000.
- 175. With the majority of FG's lump sum retirement pension funds, Hayden opened an IRA for FG in 1988.
- 176. FG told Hayden that his objectives for his IRA were safety of principal, income and liquidity. These objectives remained unchanged during the life of the account.
- 177. FG accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his account.
- 178. Hayden recommended and purchased for FG's IRA the following limited partnership interests at a cost of approximately \$57,000. Hayden also allocated approximately \$29,000 to a foreign currency bond and DW USGVT in FG's IRA.

**FG's IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
02/17/88	\$12,000	Cornerstone Funds
02/22/88	\$45,000	FGH VI

- 179. The limited partnership investments Hayden effected in FG's IRA represented approximately 65% of the account's investments.
- 180. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments in FG's IRA.

181. Such limited partnership investments as Hayden effected in FG’s IRA were unsuitable given his investment experience, investment objectives and financial resources.

**HJ**

182. HJ retired in 1982 from XYZ, where he had been employed as a senior engineer with a yearly salary of approximately \$47,000 at the time of his retirement. HJ had a college education. His wife was a homemaker.

183. HJ had limited investment experience and was not a sophisticated investor.

184. HJ met Hayden in 1982, at which time his liquid net worth consisted primarily of his lump sum retirement pension payment from XYZ which amounted to approximately \$137,000.

185. In 1982, with the majority of HJ’s lump sum retirement pension funds and other savings, Hayden opened an IRA for HJ and a joint account for the Js.

186. HJ told Hayden that his objectives for his IRA were income and safety of principal. These objectives remained unchanged during the life of the IRA.

187. HJ accepted all investment recommendations made by Hayden, relying on him to determine suitable investments for his IRA.

188. Hayden initially recommended and purchased for HJ’s IRA the following limited partnership interests at an aggregate cost of approximately \$90,000. Hayden also allocated approximately \$40,000 to covered call writing in HJ’s IRA. In 1986, Hayden purchased an additional limited partnership interest in HJ’s IRA for approximately \$15,000.

**HJ’s IRA**

<b><u>Date of Purchase</u></b>	<b><u>Amount of Purchase</u></b>	<b><u>Limited Partnership</u></b>
11/23/82	\$40,000	LMN 1982-83
11/23/82	\$50,000	RST V
07/07/86	\$15,000	Cornerstone Funds

189. The initial limited partnership investments Hayden effected in HJ’s IRA represented approximately 65% of the account’s investments.

190. The total amount invested in the limited partnerships represented an undue concentration in illiquid investments in HJ’s IRA.

191. The limited partnership investments Hayden effected in HJ's IRA were unsuitable given his investment experience, investment objectives and financial resources.

**Misrepresentations and Omissions**

192. In an effort to persuade one or more of the customers to purchase limited partnership interests, Hayden omitted one or more required disclosures and/or misrepresented facts concerning these investments at or prior to the time of purchase. Hayden continued to make misleading representations and omissions subsequent to the purchase of these investments. Hayden's misrepresentations and omissions include the following:

**AB**

193. Hayden made misrepresentations to AB to the effect that limited partnerships were as safe as buying United States government bonds.
194. Hayden misrepresented to AB that there would not be a problem in AB's obtaining the return of the principal she had invested in RST VII.
195. Hayden omitted disclosures to AB with respect to the risk factors of the limited partnership investments.
196. When AB questioned Hayden about the diminished disbursements she received from the limited partnerships, Hayden falsely assured her that there was no cause for concern.

**CD**

197. Hayden misrepresented to CD that limited partnerships were safe and liquid investments.
198. Hayden made misrepresentations to CD to the effect that she would receive 20%-28% interest annually on the proposed investment in RST V.
199. Hayden did not disclose the risk factors of the limited partnership investments to CD.

**EF**

200. Hayden made misrepresentations to EF to the effect that RST 1982-2, IJK VIII and UVW 1982-3 were liquid investments.
201. Hayden omitted disclosures to EF about the risk factors of the limited partnership investments.

**GH**

- 202. Hayden omitted disclosures to GH about how limited partnerships work and their risk factors.
- 203. Hayden misrepresented to GH that FGH had a six-year maturity when it actually had a longer maturity.

**JK**

- 204. Hayden did not disclose to JK specific details, including risk factors, relating to the limited partnership investments in which JK invested.
- 205. When JK questioned Hayden about the diminished values of his limited partnerships, Hayden falsely assured him that they were not cause for concern.

**NO**

- 206. Hayden made misrepresentations regarding limited partnerships to NO to the effect that oil and gas had no inherent risk and real estate values could not collapse.

**PQ**

- 207. Hayden made misrepresentations to PQ regarding limited partnerships, including misrepresenting to PQ that real estate limited partnerships would pay a 300% return in ten years and that there was no risk in oil and gas limited partnerships because one would always be able to sell oil and gas.
- 208. In or about December 1985 and June 1986, PQ questioned Hayden about whether the performance of the limited partnership investments Hayden had recommended was cause for concern. Hayden falsely assured him that it was not.
- 209. In or about June 1986, Hayden guaranteed that three of the five limited partnership investments he had recommended for PQ would outperform the market.

**TU and VW**

- 210. Hayden misrepresented to TU and VW that limited partnerships were comparable in safety to CDs.
- 211. Hayden misrepresented to TU and VW the maturities of their limited partnerships.
- 212. Hayden omitted disclosures to TU and VW about the risk factors of the limited partnership investments.

213. Shortly after the death of TU, Hayden misrepresented the value of the account to VW and her husband and falsely advised them that upon maturity of the limited partnerships, VW would receive the principal back in its entirety.

**XY**

214. Hayden omitted disclosing to XY risk and illiquidity factors relating to the limited partnership investments.
215. In or about 1989, XY questioned Hayden about whether his investment was cause for concern. Hayden falsely assured him that it was not.

**ZA**

216. Hayden made misrepresentations to ZA to the effect that there was little risk associated with the limited partnership investments he recommended.
217. When Mrs. A questioned Hayden about the diminished values on ZA's account statements, Hayden falsely assured her that there was no cause for concern.
218. Hayden made misrepresentations to ZA to the effect that RST V would mature in seven years when it actually had a longer maturity.

**BC**

219. Hayden omitted disclosures to BC with respect to the risk factors of the limited partnership investments.

**FG**

220. Hayden misrepresented to FG that there would not be a problem in obtaining the return of his principal in FGH VI, with the proper paperwork.
221. Hayden omitted disclosures to FG with respect to the risk factors of his limited partnership investments and how FGH VI operated.

**HJ**

222. Hayden omitted disclosures to HJ with respect to the risk factors of his limited partnership investments.

**Inaccurate Information and Omissions on Customer Account Documentation**

223. Hayden entered or caused to be entered inaccurate information on the books and records of the Firm and omitted or caused to be omitted relevant information which was essential to the Firm's knowledge of the customers.

224. The option agreement for EF's account dated May 28, 1982 reflected an inaccurate approximate annual income of \$50,000 and Hayden knew or should have known that this figure was inaccurate.
225. The new account document for RS's IRA dated October 10, 1985, omitted any reference to his income, net worth, liquid assets and tax bracket, although a location on the form was designated for each.
226. The new account document for Mrs. S's personal account omitted any reference to her income, net worth, liquid assets, tax bracket and investment objectives, although a location on the form was designated for each.
227. The new account document for Mr. and Mrs. S's joint account dated October 10, 1985, omitted any reference to their income, net worth, liquid assets and tax bracket, although a location on the form was designated for each.
228. The new account document for TU's and VW's joint account dated December 19, 1983 omitted any reference to their income, net worth, liquid assets and tax bracket, although a location on the form was designated for each.
229. The subscription agreement for FG's investment in Cornerstone Funds in his IRA reflected an inaccurate net worth of \$300,000 and Hayden knew or should have known this figure was inaccurate.

### **DISCUSSION AND DECISION**

Most of the events described in the Charge Memorandum and presented to the Hearing Panel occurred well over five years ago. Motions to Dismiss based upon the Statute of Limitations of five years set forth in 28 U.S.C. §2462 were submitted prior to and at the conclusion of the hearings. Both motions were denied.

The Exchange must rely on reports, such as the Form RE-3 referred to in paragraph 8, from its member organizations to learn of potential violative conduct by those subject to its jurisdiction. When, as here, the reportable event, such as an arbitration, occurs years after the underlying misconduct, a hard and fast Statute of Limitations would undermine the system of self-regulation. Also, while the Exchange fulfills some quasi-public duties, it is clearly not a governmental agency subject to the Statute. The Hearing Panel believed that, due to the unique nature of self-regulatory disciplinary actions, the Statute of Limitations of five years cited by the Respondent did not apply to this type of Exchange action.

This is not to say a Respondent is without rights. The Hearing Panel looked for lapses of memory or missing evidence which might have jeopardized Mr. Hayden's ability to defend himself. Those faults were not evident. The witnesses the Hearing Panel heard had clear memories of their conversations and dealings with Mr. Hayden. Some even retained tape recordings of their conversations with Mr. Hayden. The Hearing Panel heard these tapes without objection and received ample documentation concerning the

investments and recordkeeping described in the Charge Memorandum. In summary, the Hearing Panel found that the passage of time did not so hinder Mr. Hayden as to violate due process.

With respect to the customers, a recurring theme throughout the hearing was their desire to preserve their assets while generating a reliable income stream. For most, those assets represented a lifetime of effort and were designed to support them in their retirement. With few exceptions, the lump sums received from XYZ were the first significant liquid assets they had ever possessed. For many, their other assets consisted only of equity in their homes and modest amounts of personal property.

While many of their investments in limited partnerships were made during a highly inflationary period, all contained a degree of risk which was clearly unsuitable for these investors. The mere fact that a limited partnership's prospectus and sales materials established minimum net worth and liquid assets criteria for investment did not mean that it was suitable for all investors who met those minimums.

For example, FGH 1982, an equipment leasing partnership appeared in PQ's account. According to the prospectus for FGH 1982, it should only have been sold to investors with a net worth (exclusive of home, home furnishings and automobiles) of at least \$20,000 and an annual gross income of at least \$20,000, or a net worth of \$75,000 (with the same exclusions). PQ met these minimums. Yet, the risks of this partnership, which run to six pages in the prospectus, clearly demonstrate that the investment was unsuitable for a retiree whose investment objectives were safety of principal, liquidity and income.

The limited partnerships invested in by PQ and the others also had limited liquidity. There was no ready market for the partnerships and such markets that did exist generally offered to buy the partnerships at deep discounts from their purchase price.

While PQ may have been a bit more affluent than some of the other Hayden clients, he well serves as an exemplar. The assumption of excessive risk and limited liquidity of investment contrasts with their stated desire for conservative investment objectives of safety, income and liquidity. This theme recurs with each of Hayden's clients heard by the Hearing Panel.

In summary, the limited partnership investments effected by Hayden for these clients were clearly unsuitable and accordingly, the Hearing Panel found Hayden guilty of Charge I, by unanimous vote.

Hayden, as described above, misrepresented the nature of the risks of limited partnerships and gave false reassurances to customers such as PQ. As demonstrated on the tapes of his conversations with PQ, Hayden also presented overly optimistic scenarios of return rates and guaranteed the performance of the partnerships. Such misrepresentations and assurances clearly are inconsistent with just and equitable principles of trade and, accordingly, the Hearing Panel found Mr. Hayden guilty of Charge II by unanimous vote.

The conduct which constitutes a violation of Exchange Rule 440 and SEC Regulations §240.17a-3 and §240.17a-4 is described in paragraphs 223 et seq above. Hayden's customer account documentation was

replete with inaccuracies and omissions. The Hearing Panel, accordingly, by unanimous vote, found Mr. Hayden guilty of Charge III.

**PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Hayden be censured, barred for six years from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization and permanently barred from selling limited partnerships.

For the Hearing Panel

Edward W. Morris, Jr.  
Chief Hearing Officer