

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 57426 / March 4, 2008

Admin. Proc. File No. 3-12599

In the Matter of the Application of

ROBERT E. STRONG  
105 Pinehurst Avenue  
New York, New York 10033

For Review of Disciplinary Action Taken by  
NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

Violation of Conduct Rules

Failure to Supervise

Incomplete and Inaccurate Disclosures in Research Reports

Untimely Filing of Required Attestation

Conduct Inconsistent With Just and Equitable Principles of Trade

Chief Compliance Officer of member of registered securities association failed to supervise research analyst whose personal securities trading violated association rules. Chief Compliance Officer also allowed incomplete and inaccurate disclosures in research reports and failed to file timely attestation of procedures. Held, association's findings of violations and sanctions it imposed are sustained.

## APPEARANCES:

Robert E. Strong, pro se.

Marc Menchel, Alan B. Lawhead, and Jennifer C. Brooks, for NASD.

Appeal filed: March 23, 2007

Last brief received: August 1, 2007

## I.

Robert E. Strong, former Chief Compliance Officer of NASD member Jesup & Lamont Securities Corp. ("J&L" or the "Firm"), appeals from NASD disciplinary action. 1/ NASD found that Strong failed to supervise the personal trading of Gary B. Davis, 2/ a J&L research analyst, in violation of NASD Conduct Rules 3010 and 2110. 3/ NASD also found that Strong violated NASD Conduct Rules 2711 and 2110 by failing to enforce NASD disclosure requirements in connection with various research reports issued by the Firm and by failing to file within the time

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1/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member-regulation, enforcement and arbitration functions of the New York Stock Exchange. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (Aug. 1, 2007). Because the disciplinary action here was taken before that date, we continue to use the designation NASD.

2/ In a separate proceeding, Davis submitted a Letter of Acceptance, Waiver and Consent, in which he agreed to pay a fine of \$130,000, of which approximately \$116,000 represented disgorgement of trading profits related to the allegations in this proceeding, serve a six-month suspension from association with any NASD member in any capacity, and serve an eighteen-month suspension from association with any NASD member as a research analyst. J&L, which was charged with Strong in this proceeding, agreed to a censure and payment of a \$75,000 fine in settlement of the charges against it.

3/ NASD Conduct Rule 3010(a) imposes supervisory requirements on NASD members. NASD Conduct Rule 2110 requires NASD members to "observe high standards of commercial honor and just and equitable principles of trade."

specified a required annual attestation of related procedures. <sup>4/</sup> NASD fined Strong \$10,000 and imposed \$3,723.54 in costs. We base our findings on an independent review of the record.

## II.

a. This case concerns Strong's role in overseeing J&L's compliance with NASD Conduct Rule 2711. Among other things, Rule 2711 imposes restrictions on personal trading by research analysts and requires that research reports contain certain disclosures. The rule, which was approved in May 2002 and took effect beginning in July 2002, <sup>5/</sup> was intended "to improve the objectivity of research and provide investors with more useful and reliable information when making decisions." <sup>6/</sup>

Strong was hired by J&L's Co-President William Moreno as the Firm's Chief Compliance Officer in July 2002. Moreno testified that the Firm, which had recently been formed from the merger of Broadmark Capital Corp. and J&L, had "a lot going on" with respect to, among other things, the newly effective Rule 2711, and that he hired Strong to "keep [J&L] compliant . . . keep [it] up to date on what the rules and regs were and make sure [it] followed them."

On July 31, 2002, soon after joining the Firm, Strong wrote a memorandum to the research staff and the Firm's senior management attaching a copy of Rule 2711 and describing its requirements. Among other things, Strong's memorandum explained that Rule 2711 forbids research analysts from "purchas[ing] or sell[ing] any security . . . in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the [NASD] member [firm]." <sup>7/</sup> During the time of the alleged misconduct, the rule defined a

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<sup>4/</sup> NASD Conduct Rule 2711(h) requires that members include specified disclosures in all research reports. At the time of the charged conduct, NASD Conduct Rule 2711(i) required NASD members to "adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of [NASD Conduct Rule 2711] and a senior officer of such a member must attest annually to NASD that it has adopted and implemented those procedures."

<sup>5/</sup> Order Approving NASD Proposed Rule Change Regarding Research Analyst Conflicts of Interest, Exchange Act Rel. No. 45908 (May 10, 2002), 77 SEC Docket 1945.

<sup>6/</sup> NASD Notice to Members 02-39, Research Analysts and Research Reports (July 2002) at 353.

<sup>7/</sup> Rule 2711(g)(3). As discussed below, Rule 2711(g)(4) permits "legal or compliance personnel [to] authorize a transaction otherwise prohibited . . . based on an unanticipated significant change in the personal financial circumstance of the analyst." This exception to Rule 2711(g)(3) is available provided that, among other things, "legal or compliance

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"research report" as any "written or electronic communication which includes an analysis of equity securities of individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision and includes a recommendation." 8/ The rule also provides that "[n]o research analyst account 9/ may purchase or sell any security issued by a company that the research analyst follows . . . for a period beginning 30 calendar days before and ending five days after the publication of a research report concerning the company . . . ." 10/ Strong testified that he had an informal conversation with Davis about the new rule but never made a formal presentation to the Firm's staff on the rule or its application to personal trading by the Firm's research analysts. Davis testified that he recalled discussing the rule with Strong "a little bit" and that he read Strong's memorandum about the rule but "to what extent, I don't remember." 11/

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7/ (...continued)

personnel authorize the transaction before it is entered . . . ."

8/ As discussed below, in March 2004, six months after the end of the period at issue here, NASD excluded from the definition of "research report" any communication "distributed to fewer than 15 persons." NASD Notice to Members 04-18, Research Analysts and Research Reports (Mar. 2004) at 228. NASD also subsequently deleted from the definition the requirement that research reports include a recommendation.

9/ Rule 2711(a)(6) defined a "research analyst account" as "any account in which a research analyst . . . has a financial interest, or over which such analyst has discretion or control, other than an investment company registered under the Investment Company Act of 1940." NASD Notice to Members 02-39 at 355.

10/ Rule 2711(g)(2). Also as discussed below, Rule 2711(g)(2)(B) authorizes a firm to "permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the publication of a research report . . . due to significant news or a significant event concerning the subject company provided that legal or compliance personnel pre-approve the research report . . . ."

11/ In addition to his July 2002 memorandum summarizing Rule 2711, the record contains six other memoranda from Strong addressing issues related to research activities. These include his memorandum of February 3, 2003, which is a "reminder" to the analysts that research reports must contain specific disclosures and provides some information that must be included among those disclosures. The first of two memoranda dated April 14, 2003 reminds analysts to give Strong ten days' notice before the issuance of a research report, and the other discusses proposed new rules governing research analysts.

On April 16, 2003, Strong issued a memorandum announcing the effectiveness of the Commission's Regulation AC, 17 C.F.R. §§ 242.500 - .505, which, as discussed below,  
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During his first months at the Firm, and at Moreno's direction, Strong produced a revised version of the Firm's "Written Supervisory Procedures" (the "Procedures"), which was implemented in October 2002. Strong drafted some of the provisions himself and adapted others for use by J&L. The Procedures closely tracked Rule 2711, stating that "[a]nalytsts are not permitted to purchase or sell any security . . . in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report." In accordance with Rule 2711, the Procedures required further that "[n]o analyst may purchase or sell any security issued by a company that the analyst follows . . . for a period beginning 30 calendar days before and ending five days after the publication of a research report concerning the company . . . ."

The Procedures prepared by Strong also provided a mechanism to detect and prevent such prohibited trading practices by assigning the "Compliance Officer" ("CO"), *i.e.*, Strong, responsibility for giving prior approval to "[t]ransactions in the accounts of research personnel." <sup>12/</sup> The Procedures further required the CO to retain "evidence of securities ownership [by research personnel] and review [research personnel's] trading activity to ensure compliance with holding requirements" and to retain "evidence of the review and note any action taken." Thus Strong assigned himself responsibility for J&L's monitoring of its research analysts' trading practices.

However, while the Procedures required Strong to pre-approve all personal trades by analysts, he failed to do so. Davis routinely and repeatedly executed personal trades at the Firm without the prior approval of Strong or any other Firm official. Indeed, Strong readily admits that he was unaware of Davis' trading activity and did not even begin reviewing Davis' monthly account statements until, according to Strong, "some time in the second quarter of 2003," *i.e.*, no earlier than April 2003. Nor is there evidence that Strong reviewed other Firm trading data, such as the trade blotter, to monitor trading by Firm research personnel. <sup>13/</sup> Moreover, the evidence indicates that Strong took no other action, such as discussing the pre-approval requirement with

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<sup>11/</sup> (...continued)  
defines "research report" differently than Rule 2711 did at the time. Strong's July 30 and August 16, 2003 memoranda provided analysts an update on rules barring their interaction with investment banking activities and identifying related conflicts of interest.

<sup>12/</sup> The Procedures refer variously to the "Compliance Officer" ("CO") and "Chief Compliance Officer" ("CCO"): it is undisputed that all such references refer to Strong. The Procedures name Strong as "Chief Compliance Officer" in the list of "Officers, Designated Principals, and Their Responsibilities." Strong also prepared an updated version of the Firm's Written Supervisory Procedures that became effective in August 2003, which explicitly identified Strong as responsible for "Research Activity."

<sup>13/</sup> When asked about the Firm's trade blotter, Strong testified: "there probably was one available. It wasn't something I looked at."

the Firm's trading desk or providing internal training on this aspect of the Firm's Procedures, to verify that the Firm's staff understood and were following them.

The Procedures further gave Strong not only responsibility for overseeing trading by Firm personnel, but also authority to respond to trading that conflicted with the Procedures or regulatory requirements. For example, the Procedures required Strong, as part of his duty to maintain and publish the Firm's "Restricted List" of securities in which Firm employees were not permitted to trade freely, to "monitor daily trading to identify transactions in securities . . . on the Restricted List and take action as necessary, which may include . . . canceling transactions; or taking other appropriate action." <sup>14/</sup> The Procedures also required Strong to address trading issues brought to his attention by other supervisors, such as trades involving penny stocks, and possible violations of state "blue sky" laws. In handling such issues, Strong, according to the Procedures, was authorized to "take corrective action including canceling transactions or offering rescission." While these provisions do not expressly describe Strong's power to act to prevent trading that conflicted with Rule 2711, they do reflect that Strong had authority in general to address trading by Firm personnel that conflicted with the compliance requirements Strong was responsible for enforcing.

At the hearing, Moreno confirmed Strong's authority. Moreno testified that he delegated the supervision of J&L's research department to Strong and expected Strong to be responsible for the Firm's compliance with Rule 2711. Moreno further testified that he did not review trading activity by Davis or other research personnel for compliance purposes but understood that such review was being carried out by Strong. While Moreno testified that Strong also had authority, after consultation with Moreno, to discipline employees for compliance violations, he stated that whether Strong's disciplinary authority included the authority to fire an employee for compliance violations never arose, because Strong "never made the case" for firing an employee.

b. Between January 2, 2002 and July 22, 2003, Davis, as a J&L analyst, prepared the following reports published by the Firm:

<b>Date</b>	<b>Covered Company</b>	<b>Recommendation (comment)</b>
1/2/02	Discovery Laboratories, Inc. ("Discovery")	STRONG BUY (reiteration)
3/2/02	Nastech Pharm. Co. ("Nastech")	STRONG BUY (reiteration)

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<sup>14/</sup> With respect to the contents of the Restricted List, the Procedures provide that, in addition to securities subject to underwriting restrictions and those as to which J&L had material non-public information, the Restricted List could include securities subject to "[o]ther restrictions determined by the CO . . . ." Therefore, it appears that Strong could have added the securities covered by the Firm's research analysts to the Restricted List. Strong did not do so.

<b>Date</b>	<b>Covered Company</b>	<b>Recommendation (comment)</b>
4/23/02	Med-Design Corp. ("Med-Design")	STRONG BUY (reiteration)
6/4/02	Emisphere Technologies, Inc. ("Emisphere")	STRONG BUY (reiteration)
12/17/02	AVI Biopharma, Inc. ("AVI")	BUY (reiteration)
2/19/03	Med-Design	STRONG BUY (reiteration)
2/27/03	Collagenex Pharm., Inc. ("Collagenex")	STRONG BUY (reiteration)
3/21/03	Nastech	STRONG BUY (reiteration)
4/16/03	InKine Pharm., Inc. ("InKine")	BUY (initiating coverage)
7/22/03	Discovery	STRONG BUY (reiteration)

Each report met NASD's then-current definition of "research report" at the time J&L issued it; the reports included an "analysis of equity securities" and provided information "reasonably sufficient upon which to base an investment decision and include[d] a recommendation." <sup>15/</sup> While the extent of the reports' distribution is not entirely clear from the record, Davis testified that the Firm routinely made approximately 100 copies of each report. Davis claimed at one point during the hearing that he sent his reports only to four or five clients and to management of the covered companies and that, while the reports were made available to other Firm personnel, only two or three Firm salespersons used them. At another point in the hearing, he stated that a "majority" of the reports went to "less than 10 people." Although Strong claims that the research reports received very limited distribution, he admitted that J&L distributed as many as fifteen copies of Davis' reports on two occasions.

c. It is undisputed that between July 2, 2002 and September 30, 2003, Davis executed, without notice to or pre-approval from Strong, approximately 178 trades (112 in stocks he was covering and sixty-six in other companies), among which were forty-one sales of stock that he had most recently recommended in research reports as "buys" or "strong buys." In total, Davis sold 207,357 shares of stock that he had most recently recommended as buys in forty-one trades, earning approximately \$116,000 in profits. <sup>16/</sup> Davis testified that he did not know during the period at issue that Strong was required to pre-approve his personal trades.

Davis was an active trader. In May 2003, for example, Davis sold 56,000 shares of securities that he had recommended as "buys" or "strong buys" and in August of 2003 sold 38,000 more shares similarly recommended. Between January and August 2003, Davis sold all

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<sup>15/</sup> See supra note 8 and accompanying text.

<sup>16/</sup> See supra note 2. These trades are listed in the attached Appendix.

of his shares in AVI and InKine. Davis was especially active in trading AVI. From a position of 23,500 shares on December 30, 2002, Davis sold his position down to zero by June 24, 2003. Then, after subsequently accumulating additional AVI stock, he sold all 28,000 shares he owned over two days, on August 25 and 26, 2003.

It is also undisputed that on four occasions Davis bought stock in companies he covered within thirty days before J&L issued a report authored by Davis on the covered company. On December 13, 2002, Davis purchased 100 shares of AVI, and on December 17, 2002, J&L issued his report on AVI. Davis sent Strong an apology for making this trade during the blackout period, but Strong did not take any action in connection with this violation of Rule 2711 and J&L's Procedures and did not increase his monitoring of Davis' trades. On February 4, 2003, Davis purchased 2,000 shares of Collagenex, and on February 27, 2003, J&L issued his report on Collagenex. On March 18, 2003, Davis purchased 4,000 shares of Nastech in two trades, and on March 21, 2003, J&L issued his report on Nastech. There is no evidence that Strong and Davis ever discussed the latter three trades or that Davis was aware of them.

As mentioned, Strong admittedly took no action to monitor Davis' trading until April 2003 at the earliest. At that point, according to Strong, he began reviewing Davis' account statements and finally discovered that Davis was trading without prior approval. Despite this belated discovery, however, Strong failed to discuss the matter with Davis, or address Davis' misconduct in some other way, until August 2003, when Strong finally "asked him to go to [Strong] for prior approval." It does not appear that they discussed Davis' repeated violations of Rule 2711. Strong took no other action, such as discussing Davis' improper trading with the trading desk or Moreno, and Davis' misconduct continued for roughly another month.

NASD discovered Davis' improper trading during an examination of J&L in October 2003, during which NASD reviewed, among other things, the Firm's compliance with Rule 2711. There is no evidence that Strong alerted NASD to Davis' misconduct. This proceeding developed from the October 2003 examination..

### III.

NASD found that Strong failed to supervise the personal trading of Davis. NASD rules require that NASD members "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of [NASD]." <sup>17/</sup> Strong established a supervisory system with respect to analyst trading through the Procedures implemented by J&L in October 2002. The Procedures placed responsibility for monitoring analysts' trading squarely with Strong.

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<sup>17/</sup> NASD Conduct Rule 3010(a).



Strong does not deny that Davis engaged in misconduct, but argues that he, Strong, should not be held accountable for any failure to supervise Davis on account of that misconduct. First, Strong contends that his role at the Firm and the authority he had been given were too limited to make him responsible for Davis' actions. He asserts, in support, that he "did not have the 'power' to cancel inappropriate trades or prevent the trading desk from executing Davis' trades." He further notes that NASD found that Strong was not Davis' "line supervisor," and suggests that Moreno, whom Davis viewed as his supervisor for administrative purposes, was generally responsible for Davis' supervision. 18/

We agree with NASD that Strong failed to enforce the Procedures, thereby violating NASD Conduct Rule 3010. In particular, he failed, from at least October 2002 through March 2003, to monitor Davis' account for compliance with the pre-approval requirement and, from around April 2003, when he finally began reviewing Davis' account statements, until August 2003, failed to address Davis' misconduct in any way – and never in an effective manner – despite overwhelming evidence of that misconduct contained in Davis' account statements.

We have held that Firm officials can be held liable for supervisory failures where, as here, the officials have the "responsibility, ability, or authority to affect the . . . conduct" of Firm personnel. 19/ We believe that the evidence establishes that Strong had the requisite responsibility and authority. As discussed, J&L's Procedures unequivocally placed supervisory responsibility for the Firm's research department with Strong. The Procedures also gave him authority to cancel trades when those trades conflicted with the Procedures or regulatory requirements. In addition, Moreno testified that he delegated to Strong supervisory responsibility for research personnel and that Strong had the authority, after consultation with Moreno, to discipline personnel for compliance violations. 20/ While evidence indicates that Moreno also played a role in Davis' supervision, that role did not relieve Strong of the express responsibilities conferred on him by the Procedures. 21/

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18/ It appears that Moreno acted as Davis' line supervisor, although the record is unclear on this point. Although Davis viewed Moreno as his supervisor for administrative purposes, he stated that he would approach Strong when he had questions about research matters. For example, Davis reported his purchase of AVI stock in December 2002 to Strong.

19/ Conrad C. Lysiak, 51 S.E.C. 841, 844 n.13 (1993) (holding compliance director responsible for failure to establish procedures to monitor branch-office correspondence), aff'd, 47 F.3d 1175 (9th Cir. 1995) (Table).

20/ As discussed, when Moreno was asked whether Strong had the authority to fire personnel, he answered that the matter was never discussed because Strong never sought to take such action.

21/ Steven P. Sanders, 53 S.E.C. 889, 904 (1998) (holding that "even where supervisory  
(continued...)

Strong next complains that NASD "failed to conduct an inquiry into the reasonableness of" his actions and contends that, if NASD had done so, it could not have found Strong liable because he acted "reasonably" under the circumstances. Strong argues that his exclusive reliance on after-the-fact review of Davis' trading was reasonable given what he claims was a lack of "red flags" with respect to Davis' trading activity. Strong asserts that, aside from a single trade that Davis admitted to him, 22/ Strong "had no reason to believe that Davis was trading in covered securities." According to Strong, until Strong began receiving Davis' account statements, "the indications were that Mr. Davis understood the procedures and was following them."

The evidence contradicts Strong's claim that he acted reasonably. Strong testified that, notwithstanding the responsibility he had given himself to monitor Davis' trading activity, he did not begin to review Davis' account statements until April 2003 at the earliest, well after Strong became the Firm's compliance officer, eight months after the trading restrictions of Rule 2711 took effect in July 2002, six months after Strong had given himself authority to monitor compliance with Rule 2711, and six months after Davis began violating that rule, as well as the Procedures. Moreover, Strong failed to utilize, for at least a portion of the period at issue, readily available reports, including the Firm's trade blotter, to inform himself about the personal trading of J&L's analysts. Such trading data would have given an almost immediate view of Davis' unapproved trading activities and would have allowed Strong to detect and, presumably, address those activities soon after they began in October 2002.

Moreover, even Strong's very belated and fairly minimal efforts to monitor Davis' trading did not result in effective action. Despite the fact that Strong began to review Davis' account statements around April 2003 and the account statements showed that Davis was repeatedly violating NASD rules and the Procedures, Strong took no action for roughly four months after

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21/ (...continued)

responsibility is shared between firm executives, each can be held liable for supervisory failures"). Moreover, while Moreno monitored the Firm's trading blotter and generally reviewed the Firm's trading activity, he did not do so for purposes of determining compliance with the analyst rules. Although Strong testified that Moreno reviewed the daily order tickets and confirmations, Moreno testified, when asked if he "handle[d] any compliance issues" after Mr. Strong began at J&L, "[n]o I did not."

22/ As mentioned earlier, this trade was a purchase of 100 shares of AVI on December 13, 2002, four days before J&L issued a Davis-authored report on AVI on December 17, 2002. Davis told Strong that he, Davis, had traded in violation of the blackout provisions, and Strong had Davis put a memo in the file to that effect. While Strong states that this incident gave Strong confidence that Davis understood the blackout rule, we believe it should have caused Strong to reconsider the appropriateness of relying on Davis to comply on his own, because Davis had not obtained Strong's prior approval of the trade.

finally reviewing those statements. 23/ Although Strong eventually, in August 2003, discussed with Davis his failure to obtain pre-approval for his trades, Davis continued to trade without prior approval and in violation of Rule 2711 for another month. Moreover, there is no evidence that Strong ever took any other action to address Davis' misconduct or even discussed it with other Firm officials. Strong's response to Davis' actions was inadequate, and unreasonable, under the circumstances. 24/

Twenty-five of Davis' forty-one violative trades occurred between October 2002 and April 2003. Strong asserts that when, around April 2003, he finally became aware of Davis' "trading in securities he was covering," Strong began "a review of Mr. Davis' trades." Strong contends that, at the time, he thought Davis' trading since October 2002 had not necessarily been violative because Davis continued to hold large blocks of the recommended companies' stock and his sales were small compared to his holdings and were motivated, in most cases, by personal financial circumstances, not a loss of confidence in the stocks. 25/ However, because Rule 2711, by its own terms, prohibits "any" purchase or sale that is inconsistent with the most recent recommendation, absent prior approval by a firm under limited circumstances, Strong now

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23/ Even when one of Davis' inconsistent trades was brought to Strong's attention, he did not take the opportunity to address violations of Rule 2711 and the Procedures. In May 2003, a sale by Davis of his entire position in InKine to one of his clients prompted an inquiry by the trading desk to Strong. Strong asserts that this trade was done for the benefit of the client and was the "only time Mr. Strong was aware of one of Mr. Davis' trades on a real-time basis." Strong approved the trade, a sale of all of Davis' stock in a company he had most recently recommended as a "buy," determining that "the question [was] not necessarily whether the [trade] was a violation of [ ] Rule [2711] but whether it was reasonable to place the interests of the client above a strict adherence to the Rule." Although Davis had liquidated his entire position in a stock he was recommending as a buy, Strong again did not increase his supervision of Davis' trading activity.

24/ Bradford John Titus, 52 S.E.C. 1154, 1160 n.24 (1996) ("We have emphasized that 'there must be adequate follow-up and review when a firm's own procedures detect irregularities or unusual trading activity.'" (quoting Rita H. Malm, 52 S.E.C. 64, 70 (1996)). See generally Richard F. Kresge, Exchange Act Rel. No. 55988 (June 29, 2007), 90 SEC Docket 3072, 3088 (holding compliance officer responsible who "turned a blind eye to the activity that occurred" at broker-dealer); Quest Capital Strategies, 55 S.E.C. 362, 371 (2001) (holding a supervisor accountable for not acting on violations of firm policies because "supervisors must act decisively to detect and prevent violations of the securities laws when an indication of irregularity is brought to their attention"); John A. Chepak, 54 S.E.C. 502, 512 n.23 (2000) (holding that a compliance officer can be held accountable for unreasonable passivity with respect to employee misconduct).

25/ Strong admitted that he never asked NASD to confirm his understanding of the way Rule 2711 operated, despite asking NASD for guidance on other research-related issues.

concedes that his interpretation of Rule 2711 was incorrect. Moreover, Strong's factual premise is incorrect. Of the seven stocks that Davis sold inconsistently with his most recent "buy" or "strong buy" recommendations, Strong admits that Davis completely sold out his positions in AVI in June and August 2003 and InKine in May 2003. 26/ Most important, however, Strong misperceives the issue before us. By delaying his monitoring of Davis' trading and by allowing Davis to make dozens of trades in violation of the Firm's prior-approval requirement without any intervention, Strong demonstrated a significant failure of supervision.

Strong contends that certain of Davis' violative trades were within the scope of two exceptions contained in Rule 2711: Rule 2711(g)(2)(B), permitting analysts to trade during a blackout period if the report creating the blackout period was prompted by "significant news or a significant event" that required reporting; and Rule 2711(g)(4), permitting analysts to trade in a manner that would ordinarily violate Rule 2711 "based on an unanticipated significant change in the [analyst's] personal financial circumstances." 27/ We find Strong's argument unpersuasive because each exception requires that the analyst obtain prior approval for the otherwise violative trading activity from the firm's compliance department. Because Davis did not seek, and was not given, prior approval for the trades at issue, the exceptions do not apply to his actions.

Strong further asserts that he reasonably believed at the time that the reports at issue were not necessarily covered by Rule 2711 because of their limited distribution. During the relevant period, Rule 2711's definition of "research report" did not exclude reports based on limited distribution. Strong notes, however, that the February 27, 2003 adopting release for a related Commission regulation, Regulation AC, which took effect April 14, 2003, excluded communications distributed to fewer than fifteen persons from its own definition of research reports. 28/ Strong further notes that, in a letter dated July 2003, NASD informed the

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26/ The record reflects that Davis also sold all of his shares in Emisphere and Med-Design, but NASD did not make any findings with respect to those trades.

27/ Strong also argues that certain of Davis' trades were not truly inconsistent with the most recent published recommendation because the contingencies upon which the recommendation had been based did not occur, and the report was, consequently, "stale" and its recommendation no longer operative. Strong cites Davis' sale of his entire position in AVI. According to Strong, the contingencies identified in the most recent AVI research report did not occur, and, therefore, the report's positive recommendation was no longer supported. Strong argues that "[a]n important point is that NASD Rule 2711 did not at the time require that a written report be issued to clients when the recommendation is changed." Whether or not the Firm was required to issue a revised recommendation, such trading violated the Rule and was not covered by any of its exceptions.

28/ Securities Act Rel. No. 8193 (Feb. 27, 2003), 79 SEC Docket 2451. Regulation AC  
(continued...)

Commission that, in light of Regulation AC, it would exempt a communication to fewer than fifteen recipients from the definition of "research report" applicable to Rule 2711. However, NASD did not issue its notice to members announcing that change until March 2004, six months after the events at issue here. 29/ In any event, Strong readily admits that two of the research reports involved were distributed to at least fifteen of Davis' clients, thereby coming within the revised definition of research reports.

Strong, thus, has provided no basis for questioning NASD's finding of supervisory failure. In sum, the evidence establishes that Strong's unreasonable inaction effectively nullified the supervisory system related to the Firm's compliance with Rule 2711 that he himself had designed and was responsible for enforcing. Consequently, we find that Strong violated NASD Conduct Rule 3010 and that, because a violation of any NASD Conduct Rule is also a violation of NASD Conduct Rule 2110, Strong also violated NASD Conduct Rule 2110. 30/

#### IV.

NASD further found that Strong was responsible for the failure of various of the Firm's research reports to include required disclosures and for the inclusion of inaccurate disclosures, in violation of Rule 2711(h). During the period at issue, J&L issued thirty-five research reports. The Procedures required Strong to review "research reports to ensure compliance with NASD Rule 2711." Each report at issue in this proceeding met the definition of "research report" in

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28/ (...continued)  
addresses issues related to the certification of research analysts. The Commission's adopting release for that regulation states that "[t]he following communications would generally not be research reports even if they recommend or rate individual securities or companies: . . . [a]n analysis prepared for a specific person or a limited group of fewer than fifteen persons." 79 SEC Docket at 2454. Strong asserts that, given the small number of Davis' clients and the definition of "research report" contained in Regulation AC, the "applicability of NASD Rule 2711 to Mr. Davis was the subject of numerous discussions within the firm." Strong does not say, and the record does not establish, with whom Strong held these alleged discussions, or otherwise contain any details about them.

29/ NASD Notice to Members 04-18, Research Analysts and Research Reports (Mar. 2004) at 228. While Strong states that the July 2003 letter between NASD and Commission staff "was available on-line prior" to the issuance of NASD's authoritative interpretation in March 2004, he does not state precisely when the letter was made public, and the record contains no evidence on this question. However, even assuming that he had access to the letter shortly after it was sent, in late July or early August, this would be after much of the misconduct at issue occurred. Indeed, it was in August that Strong, belatedly, began to focus on the problem and talked to Davis about it.

30/ See, e.g., Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999).

effect at the time the report was issued. <sup>31/</sup> NASD concluded that Strong committed a direct violation of Rule 2711 based on the role he played in reviewing the research reports, not that he failed to supervise Davis' compliance with the Rule.

Rule 2711(h) required that these reports contain various disclosures. Rule 2711(h)(1)(A) required that they disclose whether the analyst owned a financial interest in the covered company and, if so, the nature of that interest. Rule 2711(h)(4) required that a research report define terms, such as "buy," used in making a recommendation. Rule 2711(h)(6) required research reports to present "a line graph of the security's daily closing prices for the period the member has assigned any rating or for a three-year period whichever is shorter." Rule 2711(h)(7) required reports to disclose "the valuation methods used to determine a price target . . . accompanied by a disclosure concerning the risks that may impede achievement of the price target." Rule 2711(h)(8) required research reports to disclose whether the issuing firm made a market in the covered company's stock. The same requirements are included in the Procedures which, as discussed, were prepared by Strong. The reports at issue in this proceeding and their respective violations are summarized in the following chart.

Date	Name of Company	Rule 2711 Violations				
		(h)(1)(A)	(h)(4)	(h)(6)	(h)(7)	(h)(8)
12/17/02	AVI			✓	✓	
2/19/03	Med-Design		✓		✓	
2/27/03	Collagenex	✓			✓	
3/21/03	Nastech		✓	✓	✓	
4/16/03	InKine				✓	✓
4/30/03	Curative Health Svcs., Inc.					✓
7/16/03	Providian Financial Corp. <sup>32/</sup>				✓	
7/22/03	Discovery		✓	✓	✓	

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<sup>31/</sup> The reports published after July 2002 discussed in Section II, *supra*, and those at issue here are, with the exception of two reports authored by analysts other than Davis, the same.

<sup>32/</sup> The reports on Curative Health Services, Inc. and Providian Financial Corp. were prepared by J&L analysts other than Davis.

Strong does not deny that these research reports contained misstatements and also omitted required disclosures. Indeed, Strong conceded that certain of the defective disclosures occurred because the item was "something that I missed" or "thought [the disclosure] didn't need to be there." <sup>33/</sup> The reports at issue misstated that Davis had no interest in Collagenex, failed to define key terms such as "strong buy," provided incomplete historical price data, and failed to disclose the Firm's market-maker status in InKine and Curative Health Services, Inc. stock. These misstatements and omissions violated Rules 2711(h)(1)(A), (h)(4), (h)(6), and (h)(8) respectively.

Strong argues generally, however, that his role as compliance officer of the Firm was so limited that he should not be held responsible for these violations. <sup>34/</sup> Strong argues that, given the many demands on his time, he reasonably relied on Davis to make the disclosures required by Rule 2711 completely and accurately and further relied on Moreno to review those disclosures. Strong then reviewed certain disclosures that were generally made on a separate page attached to the end of each report. According to Strong, to do more, in advance of any indication that more supervision was necessary, would have taken time away from other, more critical, compliance tasks. Strong further asserts "that the number of errors were de [minimis] in number relative to the number of disclosures required in the reports . . . ."

Strong construes his responsibilities with respect to disclosure too narrowly. The Procedures provided a direct role for Strong in the review process, stating that "the CCO [Strong] will review research reports to ensure compliance with NASD Rule 2711" and that "[a]ll research reports will be reviewed and initialed to demonstrate approval by the CCO and COO [Moreno] . . . ." Strong played an integral role and, by his own admission, "proactively inserted himself" into the preparation of the reports for publication "to see that the newly required disclosures were being made." <sup>35/</sup> According to his and Moreno's testimony, Strong reviewed each draft report (including its attached disclosures) and, after directing that any necessary changes be made, initialed it. Although Moreno also reviewed the reports, that review did not

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<sup>33/</sup> We note that Strong's memorandum of February 3, 2003, reminding the analysts that Rule 2711 required specific disclosures preceded the Firm's issuance of reports, reviewed and approved by Strong, that omit some of the disclosures Strong mentioned in the memorandum. See supra note 11.

<sup>34/</sup> As he does with respect to the findings that Davis' trading was inconsistent with his recommendations, Strong argues that the research reports at issue here were not subject to Rule 2711 because of their limited distribution. We find, however, as discussed, that the reports were subject to the rule as adopted, before NASD issued an interpretation limiting its application. See supra text accompanying note 29.

<sup>35/</sup> For example, in a 2003 internal memorandum to the research staff, Strong reminded the analyst that he needed to be notified at least ten days before the release of a report so he could "ensure that the proper disclosures are made."

permit Strong to neglect his responsibility to verify that the reports satisfied disclosure requirements. 36/

In our view, Strong did not employ reasonable diligence to perform the verification function required by the Procedures he prepared. The burden of reviewing these reports, during the period at issue, does not appear to have been great. During this time, the Firm issued only thirty-five reports, averaging four pages each. Strong was, thus, required to review an average of fewer than three reports per month. Moreover, verification of the presence and accuracy of the disclosures required by Rule 2711 required no more than reasonable diligence. Nonetheless, the reports exhibited the disclosure violations described above. We find that, in failing to carry out his responsibility to review these reports, Strong violated Rules 2711(h)(1)(A), (4), (6), (8), and 2110. 37/

Strong makes somewhat different arguments regarding NASD's findings concerning Rule 2711(h)(7), *i.e.*, that he was responsible for the reports' failure to disclose the valuation method used by the analyst and the associated risk factors. Strong first asserts that the requisite "[r]isk factors were disclosed" and that "NASD has never identified what additional risk factors it

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36/ Moreno's testimony as to his own role in the report review process varied. In his investigative testimony, Moreno stated that he would just "look at [a report] quickly . . . once he [Strong] has signed off on it . . . ." At the hearing, however, Moreno stated that he did not receive copies of the reports after Strong reviewed them, although he did admit that he reviewed research reports when Strong was absent from the office. Moreno believed that Strong was reviewing the reports "for the proper disclosures." For his part, Davis testified consistently that both Moreno and Strong reviewed his work. In his investigative testimony, he stated that "they [Moreno and Strong] both sign off on my reports." At the hearing he stated that his reports "would have to be signed off by [Strong] and [Moreno]." As discussed, Moreno's role in approving the reports did not relieve Strong of the express responsibilities conferred on him by the Procedures. See supra note 21.

37/ Although these rules impose disclosure requirements on NASD "members," those requirements also apply to associated persons of members where, as here, the associated person has responsibility for the member's compliance with the requirements. See NASD General Provision 0115(a) ("[p]ersons associated with a member shall have the same duties and obligations as a member under these [NASD] Rules."); see, e.g., Richard F. Kresge, Exchange Act Rel. No. 55988 (June 29, 2007), 90SEC Docket 3072, 3090-91 (holding compliance officer liable for firm's failure to report customer complaints, in violation of NASD Conduct Rule 3070(c), where compliance officer was given responsibility for such reporting); Pac. On-Line Trading & Sec., 56 S.E.C. 1111, 1116-17 (2003) (holding firm president responsible for firm's failure to file its initial advertisement in violation of NASD Conduct Rule 2210(c)(4)(A) where president was responsible for advertising compliance).



believes are required." According to Strong, "[a] comparison of Mr. Davis' reports with those issued by other firms shows that similar risk factors were identified" in the reports at issue.

Contrary to Strong's assertion, however, NASD presented testimony by one of its examiners who stated that Davis' reports "did not have the same . . . content, disclosures and risks that were contained in other reports" published by other firms. Our comparison of the reports at issue here with similar reports published by other firms, which Strong introduced before NASD as evidence of industry practice, is consistent with the views expressed by the NASD examiner. For example, a report by a firm other than J&L on Collagenex, an issuer recommended in one of the J&L reports at issue here, describes the analyst's valuation model explicitly and contains a separate section entitled "Impediments," which introduces an eight-item list of risk factors and states that "[t]he following impediments may cause our price objective to go unrealized." Similarly, three reports also introduced by Strong from another firm on Discovery, AVI, and InKine each describe the applicable valuation model and provide a separate section detailing risks that may impede the achievement of the report's price target. As indicated, the J&L reports at issue do not provide a comparable discussion of the valuation method used or the relevant risk factors. 38/

The J&L research reports at issue provide no explicit disclosure of risk factors, relying instead upon discussions of various contingencies, the occurrence of which, according to the reports, could enhance the value of the covered stock. For example, the February 27, 2003 report on Collagenex disclosed possible new product acquisitions and anticipated releases of favorable scientific data supporting new uses for an existing product, each of which would be a positive development for Collagenex stock. The report, however, did not mention any risk factors. Similarly, the March 21, 2003 report on Nastech discloses increased sales of an existing product, the beginning of marketing for a newly approved product, and the reporting of data from product tests and describes the positive outcomes that could be expected from each event. This report also does not identify any risks.

Strong further claims that, although he "provided guidance and information on the disclosure requirements to both Mr. Davis and Mr. Moreno, consistent with his role as the compliance officer," he actually "was not qualified to review the reports . . . for compliance with Rule 2711(h)(7)." Instead, according to Strong, he believed that Moreno was reviewing the reports to ensure that the proper disclosures were made.

However, in the Procedures, Strong assigned himself responsibility for verifying that Firm research reports contained the appropriate disclosures. Moreno testified that he looked to Strong to ensure the research reports complied with NASD Rule 2711. Whatever role Moreno played in the reviewing process was supplemental to Strong's and, as discussed, did not relieve Strong of compliance responsibility. As to Strong's arguments that he was not able to judge the

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38/ In any event, we do not believe that industry practice establishes the standard by which compliance with NASD Rule 2711(h) is measured.

adequacy of the disclosures related to valuation and investment risk, we believe he should have been able to notice their absence from the reports. <sup>39/</sup> In any event, given his position and the Firm's reliance on him to achieve compliance, Strong could not rely on the belief someone else at the Firm would cover for his own claimed inability to assess the adequacy of those disclosures. We therefore find that Strong violated NASD Conduct Rules 2711(h)(7) and 2110.

#### V.

NASD found that Strong violated Rule 2711(i) because an attestation regarding the Procedures was filed late. Rule 2711(i) requires that members "adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of [NASD Conduct Rule 2711] and a senior officer of such a member must attest annually to NASD that it has adopted and implemented those procedures." Strong does not contest that it was his responsibility to prepare and file with NASD the Firm's attestation under Rule 2711(i). At the time of the charged conduct, the deadline for filing the attestation was December 31, 2002. Strong admittedly filed J&L's attestation on February 27, 2003, roughly two months late. As a result, we find that Strong violated NASD Conduct Rules 2711(i) and 2110.

#### VI.

Following the settlement of the proceedings NASD brought against Davis, NASD issued a press release stating that "NASD has also charged [J&L], a New York City broker-dealer, and its chief compliance officer, Robert Strong, with failing to adequately supervise Davis." <sup>40/</sup> Strong asserts that the press release falsely stated or implied that he was involved in fraudulent misconduct and that the press release was an unfair punitive measure. We find that the press release accurately depicted the nature of the complaint against Strong and noted that Strong could respond to the complaint and request a hearing on the charges against him.

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<sup>39/</sup> If Strong did not feel competent to judge the adequacy of those disclosures, he should have acted to see that another Firm official was exercising responsibility for review of that information. Of course, any such delegation should have included an appropriate amendment of the Procedures to reflect the new delegation of responsibility. Kirk Montgomery, 55 S.E.C. 485, 496 (2001); Sanders, 53 S.E.C. at 904 (holding accountable for violations person identified in compliance manual as responsible for ensuring regulatory compliance).

<sup>40/</sup> Press Release, FINRA, "NASD Fines Former Jesup & Lamont Research Analyst for Trading Contrary to His Own Recommendations" (February 23, 2005) (available online at <http://www.finra.org/PressRoom/NewsReleases/2005NewsReleases/P013410>).

Strong relies on a statement from Industrial Safety Equipment Ass'n v. EPA for the proposition that false publicity by a government agency can be considered a sanction. 41/ That case is inapposite. It requires that a government agency or actor generate the publicity and that the agency have an intent to punish the subject of the publicity. 42/ NASD, however, is not a governmental actor. 43/ Nor is there evidence of any punitive intent by NASD. We find that the press release issued by NASD was not a sanction subject to review in this proceeding.

## VII.

Section 19(e)(2) of the Exchange Act governs our consideration of the sanctions imposed by NASD. 44/ Section 19(e)(2) directs us to sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 45/ Strong argues that Davis' clients, the target audience of his reports, were financial institutions who were more sophisticated than the typical retail client and that, despite his occasional sales, Davis' buy recommendations represented his honest beliefs about the favorable prospects for the stocks he covered. Strong contends that the sanctions, fines totaling \$10,000, are "punitive rather than remedial" and should be reduced or set aside. 46/ We disagree with Strong's characterization and find the sanctions satisfy the statutory standard.

In sustaining these sanctions, we note that NASD's National Adjudicatory Council ("NAC"), which considered Strong's appeal from NASD's hearing panel, reduced the sanctions

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41/ 837 F.2d 1115, 1119 (D.C. Cir. 1988) (noting that "Congress itself did note that in certain circumstances adverse publicity [from a government agency] might operate as a sanction").

42/ Id.

43/ See, e.g., Rooney A. Sahai, Exchange Act Rel. No. 55046 (Jan. 5, 2007), 89 SEC Docket 2402, 2408 (holding that NASD's authority "to discipline its members and . . . impose remedial sanctions does not convert it into a state actor").

44/ 15 U.S.C. § 78s(e)(2).

45/ Strong does not claim, and the record does not show, that NASD's action imposed an unnecessary or inappropriate burden on competition.

46/ The NAC assessed a \$5,000 fine for Strong's supervisory violations and the late filing of the attestation under Rule 2711(i), and a \$5,000 fine for the violations of Rule 2711(h). Strong also complains that, as a result of the proceeding, he has not been able to find comparable securities-industry employment and has gone into debt. Strong was also assessed costs of \$3,723.54.

from the nine-month supervisory suspension and \$15,000 fine imposed by the hearing panel. In reducing the sanctions, the NAC noted that it did "not find Strong's violations to be egregious" as had the hearing panel. The NAC considered "the circumstances under which Strong was operating," finding that Strong was "the sole compliance person in a 40-person firm that had previously neglected compliance." The NAC also considered, as mitigating, that the misconduct at issue occurred "within months of Strong's joining the Firm and when Strong was attempting to fulfill the broad-based compliance responsibilities put upon him." According to the NAC, "Strong was overwhelmed by the enormity of the responsibilities [and] . . . not equipped to undertake the responsibilities required of him at the Firm." In addition, the NAC found that Strong did not "personally benefit in any way" from his misconduct. Based on those considerations, the NAC determined that "the minimum sanction suggested in the Guidelines for the supervisory and disclosure violations" was "appropriate."

While NASD recognized the presence of various mitigating circumstances, it nevertheless also observed that its decision regarding sanctions "should not be read to indicate that supervisory violations or violations of the research analyst rules warrant light sanctions." We agree that the rules at issue serve important policy objectives related to investor protection. Rule 2711(g) is intended to ensure that research reports reflect the independent and honest opinions of the responsible analysts and are not compromised by personal financial interest.<sup>47/</sup> Similarly, the disclosure requirements of Rule 2711(h) seek to ensure that the reports contain a minimal level of information relevant to an investor's assessment of the reports' assertions.

NASD's Sanction Guidelines provide for a range of fines between \$5,000 and \$50,000 for the misconduct at issue here as well as suspensions of varying lengths, and, in egregious cases, also provide for bars from association with NASD members.<sup>48/</sup> Among the considerations identified by the Guidelines for evaluation of the proper sanctions for supervisory cases are: whether the respondent ignored "red flags" or other warnings that should have resulted in additional supervisory scrutiny; the "nature, extent, and character of the underlying misconduct;" and the "[q]uality and degree of the supervisor's implementation of the firm's supervisory

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<sup>47/</sup> Strong claims that NASD failed to consider that Davis' trading practices resulted in no harm "to individual customers or to the investing public." We are unwilling to say, on this record, whether or not the misconduct at issue resulted in no harm. In any event, a showing of harm is not required under Rule 2711, since the rule is intended to serve a prophylactic purpose.

<sup>48/</sup> FINRA Sanction Guidelines 1 (2006 ed.) (available on line at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>). The Sanction Guidelines have been promulgated by NASD in an effort to achieve greater consistency, uniformity, and fairness in the sanctions that are imposed for violations. See Perpetual Sec., Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 90 SEC Docket 2489, 2506 n.56 (describing function of Sanction Guidelines).

procedures and controls." 49/ Similarly, the Guidelines list the following considerations for evaluation of the proper sanctions for defective disclosure cases: whether the misconduct resulted from negligence or intentional behavior; whether the misconduct resulted in "publication of research reports that omitted material information or contained misleading information;" and whether there was evidence of "systemic problems or widespread abuse in the firm."

NASD considered these factors in assessing sanctions against Strong, as do we. 50/ Strong's supervisory failures reflect a troubling inattention to the responsibilities given to him by J&L's management and the Procedures. Although Strong revised the Firm's supervisory system, he failed effectively to implement that system and, as time went on, ignored indications of misconduct by Davis. Similarly, the disclosure violations, attributable to Strong's inattention, resulted in the publication of reports that omitted and misstated important information. While we, like NASD, do not consider Strong's conduct egregious, we believe that the sanctions imposed by NASD serve the public interest by encouraging future compliance with the rules at issue here, by Strong and by others in the industry who have been given similar responsibilities. As such, these sanctions are remedial and not punitive and satisfy the statutory standard in that they are neither excessive nor oppressive.

An appropriate order will issue. 51/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY)

Nancy M. Morris  
Secretary

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49/ FINRA Sanction Guidelines at 108.

50/ We note that a fine can be an adequate sanction when the violative conduct does not warrant a bar or suspension. See, e.g., James S. Pritula, 53 S.E.C. 968, 977 (1998).

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

Appendix  
Stock Sales That Conflicted With Recommendations

<b>Settlement Date</b>	<b>Company</b>	<b>No. of Shares</b>	<b>Position</b>	<b>Recommendation</b>
10/8/02	NASTECH	2,600	55,255	Strong Buy
10/18/02	MED-DESIGN	2,500	1,200	Strong Buy
12/30/02	AVI	1,500	22,000	Buy
1/2/03	MED-DESIGN	1,200	0	Strong Buy
1/7/03	NASTECH	1,755	55,000	Strong Buy
1/30/03	NASTECH	1,755	55,621	Strong Buy
2/3/03	NASTECH	1,576	54,045	Strong Buy
2/5/03	NASTECH	800	55,000	Strong Buy
2/27/03	AVI	3,000	23,700	Buy
3/10/03	EMISPHERE	10,000	28,400	Strong Buy
3/11/03	EMISPHERE	10,000	18,400	Strong Buy
3/14/03	EMISPHERE	10,000	8,400	Strong Buy
3/18/03	AVI	10,000	26,700	Buy
3/18/03	EMISPHERE	2,000	6,400	Strong Buy
3/19/03	COLLAGENEX	671	33,500	Strong Buy
3/20/03	EMISPHERE	6,400	0	Strong Buy
4/1/03	COLLAGENEX	5,000	35,500	Strong Buy
4/23/03	DISCOVERY	5,000	100,377	Strong Buy
4/23/03	NASTECH	4,000	63,000	Strong Buy
4/28/03	MED-DESIGN	4,000	0	Strong Buy
5/1/03	AVI	15,000	12,900	Buy
5/6/03	AVI	10,000	2,900	Buy
5/8/03	INKINE	20,000	0	Buy
5/13/03	AVI	8,000	2,900	Buy

<b>Settlement Date</b>	<b>Company</b>	<b>No. of Shares</b>	<b>Position</b>	<b>Recommendation</b>
5/19/03	AVI	300	4,600	Buy
6/3/03	NASTECH	4,000	68,000	Strong Buy
6/3/03	COLLAGENEX	2,500	35,500	Strong Buy
6/16/03	AVI	1,700	2,900	Buy
6/24/03	AVI	2,900	0	Buy
6/26/03	NASTECH	1,200	66,800	Strong Buy
6/26/03	COLLAGENEX	1,000	34,500	Strong Buy
7/17/03	COLLAGENEX	6,500	28,000	Strong Buy
7/24/03	NASTECH	1,800	65,000	Strong Buy
7/24/03	COLLAGENEX	1,000	27,000	Strong Buy
8/1/03	COLLAGENEX	5,000	22,000	Strong Buy
8/1/03	COLLAGENEX	5,000	17,000	Strong Buy
8/25/03	AVI	20,000	8,000	Buy
8/25/03	AVI	3,000	5,000	Buy
8/26/03	AVI	5,000	0	Buy
9/9/03	DISCOVERY	10,000	161,134	Strong Buy
9/17/03	DISCOVERY	8,000	153,134	Strong Buy

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

SECURITIES EXCHANGE ACT OF 1934  
Rel. No.

Admin. Proc. File No. 3-12599

In the Matter of the Application of

ROBERT E. STRONG  
105 Pinehurst Avenue  
New York, New York 10033

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

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

ORDERED that the disciplinary action taken by NASD against Robert E. Strong, and  
NASD's assessment of costs, be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris  
Secretary