

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 59404 / February 13, 2009

Admin. Proc. File No. 3-12988

In the Matter of the Application of

LUIS MIGUEL CESPEDES  
c/o Jonathan Schwartz, Esq.  
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4640 Admiralty Way, Fifth Floor  
Marina del Rey, CA 90292

For Review of Disciplinary Action Taken by  
NYSE REGULATION, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

Conduct Inconsistent with Just and Equitable Principles of Trade  
Unsuitable Recommendations

Former registered representative made unsuitable investment recommendations to customers. Held, association's findings of violations and the sanctions imposed are sustained.

APPEARANCES:

Jonathan Schwartz, of The Law Offices of Jonathan Schwartz, for Luis Miguel Cespedes.

Linda Riefberg, Tracy Timbers, Danielle Schanz, Ron Sannicandro, Dana Yoon, and Kelli Smith, for FINRA, on behalf of NYSE Regulation, Inc.

Appeal filed: March 11, 2008  
Last brief received: June 2, 2008

## I.

Luis Miguel Cespedes, formerly a registered representative associated with Financial Industry Regulatory Authority (“FINRA”) member firm A.G. Edwards and Sons, Inc. (“A.G. Edwards” or the “Firm”), appeals from an NYSE Regulation, Inc. (the “NYSE”) disciplinary action against him. 1/ The NYSE found that Cespedes recommended and effected unsuitable transactions that resulted in high concentrations of technology sector unit investment trusts (“UITs”) in the accounts of fourteen of his customers, 2/ frequently using margin debt, without due consideration of the age, investment experience, financial sophistication, and personal circumstances of the customers. The NYSE found that Cespedes’s conduct was inconsistent with just and equitable principles of trade. 3/ The NYSE censured Cespedes and imposed a ten-year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any NYSE member or member organization. Our findings are based on an independent review of the record.

## II.

At issue in this proceeding are the recommendations and purchases that occurred in the accounts of fourteen Cespedes customers from 1999 to 2001. Eight of the customers at issue testified, either in person, by telephone, or by video conference, during the hearing. 4/ The

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1/ On July 26, 2007, the Commission approved proposed rule changes in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Pursuant to this consolidation, the member firm regulatory and enforcement functions and employees of NYSE Regulation were transferred to NASD, and the expanded NASD changed its name to the Financial Industry Regulatory Authority, or FINRA. See Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. Because the proceeding was initiated by NYSE Regulation, we use the designation “NYSE” in this opinion.

2/ Section 4(2) of the Investment Company Act of 1940 defines a UIT as “an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.” 15 U.S.C. § 80a-4(2).

3/ NYSE Rule 476(a)(6) provides that members and their employees can be disciplined for conduct that is “inconsistent with just and equitable principles of trade.”

4/ The testifying customers were Dolores A, Marilyn A, Carole D, Antonina G, Maria G, Yolanda G, Elaine K, and Edwin W. The non-testifying customers were Josephine F, James J, Lucille M, Hortence M, Norah P, and Joseph Z. At least one customer, Joseph

(continued...)

NYSE also introduced account documentation, including monthly statements, trading slips, correspondence records, arbitration pleadings, and complaint letters for both the testifying and non-testifying customers. 5/ The NYSE called an expert witness, and Cespedes and his former assistant at the Firm testified. The record also includes Cespedes's investigative testimony.

The testifying customers stated that they trusted Cespedes to make investment recommendations suited to their financial circumstances and that Cespedes recommended the investments in their accounts. During the relevant period, Cespedes recommended that all of the customers at issue purchase shares in UITs. UITs are baskets of stocks or bonds, often composed of the securities of companies within a specific sector of the economy, that form a defined portfolio for a pre-determined period of time. 6/ Unlike a typical mutual fund, a UIT is not actively managed, meaning that the portfolio generally will not change during the course of the UIT's existence regardless of any changes in market circumstances. UITs generally do not have management fees, which exist in most open-end mutual funds. None of the customers at issue had heard of UITs prior to Cespedes's recommendations.

Cespedes further recommended that all fourteen customers purchase significant concentrations of UITs in the technology sector, so that the vast majority and, in some cases, the entirety of the accounts were invested in technology sector UITs. First Trust Portfolios, which issued the majority of the technology sector UITs that Cespedes recommended here, stated in its promotional materials:

Because the [UIT] portfolios place such an emphasis on concentration, many of the portfolios are subject to additional risks. For instance, portfolios that are heavily weighted in only a few stocks or portfolios that are focused on only one sector involve

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4/ (...continued)

Z, had died prior to the hearing. Customer James J, discussed in greater detail below, was unwilling to testify in part due to the fact that he had re-hired Cespedes as his broker subsequent to the settlement of an arbitration complaint he filed against A.G. Edwards.

5/ All fourteen customers at issue filed arbitration complaints against A.G. Edwards related to Cespedes's management of their accounts. The Firm reached settlement agreements with twelve of the customers for a total amount of approximately \$1,100,000. Cespedes personally contributed \$20,000 to the Firm's settlement with one of the customers, James J, but did not contribute to any of the other settlements. The record does not indicate the disposition of the arbitration proceedings brought by the two customers who did not receive settlement payments from the Firm.

6/ The owner of a share in a UIT receives a proportional ownership of the shares that constitute the UIT's portfolio, based on the dollar amount of the customer's investment. The price of a UIT share is based on the current net asset value of the share.

increased volatility. You should consider investing in more than one sector or pairing these types of portfolios with more diversified investments in your overall portfolio.

During Cespedes's hearing, the NYSE introduced charts showing volatility and sharp price drops in the UITs Cespedes recommended to these customers during the relevant time period. The NYSE's expert witness also testified that the technology UITs recommended by Cespedes experienced a significant degree of volatility during the time period and experienced significant losses in share price. <sup>7/</sup> Investments in the accounts that were not in UITs also tended to be in the technology sector.

Cespedes also recommended that his customers use margin debt to make purchases in many of the customer accounts. Margin increased the amount of loss the customers suffered when the share prices of the UIT or other security declined because the customers were forced to sell securities from their accounts at a loss to cover margin calls and to pay interest on the margin debt their accounts accrued. The testifying customers with margin accounts stated that they did not understand margin and that Cespedes did not explain margin to them or tell them that their accounts had accrued margin debt to purchase securities. Below we discuss the transactions in the accounts of some representative customers.

Marilynn A. Marilynn A worked as an administrative assistant at a high school with an annual salary of \$35,000 and was in her late forties when she opened an A.G. Edwards account with Cespedes in February 2000. Marilynn A retired from her position at the school in April 2006. Marilynn A's sole prior investment experience was her participation in an employer-sponsored retirement plan, which was worth less than \$10,000.

Marilynn A inherited a sizeable amount of money when her parents died in 1999. Because she had never before invested that much money, Marilynn A sought financial advice from Cespedes, with whom her husband had an account. After a meeting with Marilynn A in late 1999, Cespedes provided a handwritten list of his suggested investments for her account. This list included UITs, but Cespedes never explained to Marilynn A what UITs were. <sup>8/</sup> Cespedes also did not explain to Marilynn A that he intended to use margin debt to purchase securities in her account.

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<sup>7/</sup> For example, the First Trust Technology Growth Fund #12 had a price per share of over \$10 on March 24, 2000. After a period of volatility, the price of the shares began a steady decline on or about September 8, 2000, before ultimately reaching a price of just over \$2 per share on or about September 7, 2001. Other technology sector UITs that Cespedes recommended exhibited similar patterns of volatility and share price decline during this period.

<sup>8/</sup> The list assumed that Marilynn A would invest \$430,000 and recommended that Marilynn A invest \$200,000 of this amount in technology sector UITs.

Marilynn A opened her account in March 2000 with \$275,000, nearly her entire liquid net worth. Soon thereafter, she withdrew approximately \$55,000 to pay bills and for other expenses. At the time, Marilynn A told Cespedes that she “didn’t want to lose [her] principal no matter what.” Almost immediately after Marilynn A’s initial deposit, Cespedes invested the entire amount of Marilynn A’s account in UITs, representing approximately 103% of her account value (the “Total Account Value,” the term used on A.G. Edwards account statements, which is the full value of the securities in the account minus margin debt), with over half of those UITs in the technology sector. <sup>9/</sup> In September 2000, Cespedes increased the concentration of the account in technology sector UITs. In October 2000, after Cespedes purchased even more technology sector UITs on margin, technology sector UITs represented 137.5% of the Total Account Value at the end of that month, with a margin balance of approximately \$36,500.

During 2000, Marilynn A’s husband became seriously ill. Marilynn A testified that Cespedes was aware of her husband’s condition. In 2000 and 2001, Marilynn A wrote a number of checks against her account, totaling approximately \$36,000, including a check to purchase an automobile for her son. Marilynn A testified that Cespedes told her to notify him when she wanted to write checks against her account, so that he could sell securities to cover the checks. Marilynn A contacted Cespedes’s office as soon as she wrote each of the checks against her account and spoke either to Cespedes personally or to one of his assistants. Marilynn A further testified that she only wrote checks against her account when the value of the securities in the account had increased and that she assumed that Cespedes would sell the securities necessary to cover the checks. However, Marilynn A later learned that no such liquidations took place, and the checks simply added to the margin debt in her account. By October 2000, Marilynn A’s account maintained a margin balance of \$56,000.

Before Marilynn A ultimately closed her account and moved her investments to a different firm, Marilynn A testified that her Total Account Value dropped from the initial investment of approximately \$220,000 to \$24,000. Marilynn A’s July 2001 account statement (the last A.G. Edwards account statement included in the record) shows her account invested 100% in technology sector UITs, with a Total Account Value of approximately \$37,000.

Antonina and Maria G. The G sisters were age thirty-six and thirty-two respectively. Neither sister had any investment experience prior to opening their accounts with Cespedes, and both trusted Cespedes to make suitable investment recommendations for them. Their modest savings and liquid net worth derived in large part from a one-time lawsuit settlement.

Antonina G maintained both a personal and an IRA account with Cespedes during the relevant period. In July 2000, the majority of Antonina G’s personal account was invested in technology sector UITs, and most of the remainder of the account was invested in other securities

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<sup>9/</sup> The UIT investments represented over 100% of the Total Account Value because of the use of margin debt. Cespedes used the margin debt to purchase securities in the account with a greater value than the customer’s amount invested.

in the technology sector. In February 2001, Antonina G's entire IRA account was invested in securities in the technology sector. Maria G's entire account was invested in technology sector UITs during the relevant period. Both sisters lost significant portions of their already modest savings and net worths during the relevant period.

Hortence M. Hortence M was a 79-year-old retired nurse with an annual income of \$45,000. Hortence M did not testify at the hearing, but her new account documents state that, when she opened her account in May 1999, she had a net worth of \$815,000 and thirty-eight years of prior investment experience. However, Cespedes stated during his investigative testimony that Hortence M "was not truly savvy about investing." He further admitted that Hortence M did not request that Cespedes invest her account heavily in technology sector UITs, but rather that Cespedes recommended the strategy to her. Cespedes stated that Hortence M's decision to sell off her "conservative" investments to buy more technology sector UITs "was [Cespedes's] advice, not hers. [Hortence M] only wanted to get her dividends."

In July 2000, when Cespedes began to sell off Hortence M's investments in other sectors to increase her concentration in the technology sector, Hortence M's Total Account Value was approximately \$563,000. By February 2001, Hortence M's previously diversified account was invested 140.3% in technology sector UITs, owing to a margin balance of over \$109,000, and the Total Account Value had decreased to approximately \$266,000.

Carole D. Carole D opened an A.G. Edwards account with Cespedes in 1995, when she was employed as the marketing director of an architectural firm. In 2000, Carole D left her job with the architectural firm with a \$120,000 severance payment. She then sold her home and received an additional \$66,000 from the proceeds of that sale. She invested these funds with Cespedes. Carole D had previously made a few relatively small investments in penny stocks on the recommendation of her former employer and a friend and participated in the architectural firm's profit-sharing plan, but otherwise lacked investment experience prior to opening her accounts with Cespedes.

Carole D testified that she made clear to Cespedes that she needed to protect her \$186,000 investment, describing it as "[her] nut, and it's got to be protected, it just has to be." Carole D told Cespedes that she intended to start her own business as an interior decorator and hoped to withdraw approximately \$1,500 a month from her A.G. Edwards account for living expenses. Carole D testified that she understood that margin was "like a credit card," but Cespedes never told her that he intended to use margin in her account. As Carole D made her regular \$1,500 withdrawals, she was under the mistaken impression that Cespedes sold securities in her account to provide the funds. Instead, each withdrawal increased the margin debt in the account.

In May 2000, shortly after Carole D had deposited the \$186,000 in her account, Cespedes had invested 89.9% of the Total Account Value in UITs, over 60% of which were in the technology sector. At that time, the Total Account Value was approximately \$160,000. By

February 2001, UITs totaled 193% of the Total Account Value, owing partly to a margin balance of nearly \$54,000. The Total Account Value at that time was approximately \$44,000. At that time, twelve of the thirteen UITs in Carole D's account were in the technology sector, including several different semiconductor UITs. Carole D's account, which she started with an initial investment of approximately \$186,000, had a Total Account Value of approximately \$33,000 when she closed the account in 2001.

Dolores A. At the time Dolores A opened her A.G. Edwards accounts (an IRA and a personal account), she was sixty-one years old, divorced, about to retire as a dispatch clerk, and served as the sole source of financial support for teenage children. Dolores A had accumulated her employer's stock through a regular payroll deduction plan, which represented her only prior investment experience. Cespedes did not discuss with Dolores A the use of margin in her accounts, and Dolores A testified that she did not understand what margin was. However, Cespedes asked her to sign a margin agreement at the time she opened the accounts. When Dolores A noticed a margin balance on her account statement and asked Cespedes to explain it to her, Dolores A testified, "[Cespedes] said not to worry about that, he was buying stuff and that we would be making money and he would take care of that. After all, [Cespedes] said, he knew what he was doing."

In late 1996, the Total Account Value of Dolores A's IRA account was approximately \$137,000, over 82% invested in mutual funds across various sectors (including one technology sector mutual fund). By November 2000, however, the IRA account was invested over 78% in the shares of Intel Corporation, call options in the same stock (although Dolores A testified that she did not understand options trading and never discussed it with Cespedes), and nearly 25% in technology sector UITs. At that time, the Total Account Value of the IRA account was approximately \$238,000. By the time of the 2006 hearing, Dolores A's IRA account had a value of approximately \$88,000.

In October 1997, the Total Account Value of Dolores A's personal account was approximately \$60,000, and the account was invested over 90% in the equities of three technology companies. The account had a margin balance equal to 1.3% of the Total Account Value. By September 2000, however, an equity position in a single technology stock represented over 202% of the Total Account Value, and technology sector UITs represented 117.6% of the Total Account Value. The margin balance of the account was over \$72,000 at the time, and the Total Account Value had decreased to approximately \$33,000. Dolores A testified that, at the time she closed her account, her entire personal account was liquidated to cover margin calls and, at age seventy-two, she took a job as a parking attendant to make ends meet.

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The remaining customers at issue in this proceeding shared many of the same characteristics as the customers discussed above: (1) they had reached, or were near, retirement age; (2) they had relatively modest annual incomes and net worths; (3) the total size of their

investment accounts was relatively modest; and (4) they lacked significant prior investment experience. Cespedes nonetheless recommended that their accounts be concentrated in the technology sector. Appendix A, attached hereto, includes specific information about the age, employment status, income and net worth, and investment experience of all of the Cespedes customers at issue. Appendix B, attached hereto, provides detailed information about the technology sector concentrations in and the overall size of the accounts.

### III.

Pursuant to Section 19(e) of the Securities Exchange Act of 1934, 10/ we will sustain the NYSE's decision if the record shows that Cespedes engaged in the violative conduct that the NYSE found and that the NYSE applied its rules in a manner consistent with the purposes of the Exchange Act. Based on our independent review of the record, we find that a preponderance of the evidence supports the NYSE's findings of violation against Cespedes. 11/

A registered representative is obligated to make "a customer-specific determination of suitability and to tailor his recommendations to the customer's financial profile and investment objectives." 12/ Even if a customer understands a broker's recommendation and decides to follow it, this does not relieve the broker of the obligation to make reasonable

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10/ 15 U.S.C. § 78s(e).

11/ Cespedes states that "the accepted standard for evidence to support the findings of an administrative determination is that such evidence be 'substantial,' such that a reasonable mind would accept it as adequate to support a conclusion," citing Richardson v. Perales, 402 U.S. 389 (1971). That case, however, articulates the standard for judicial review of an administrative determination. It is well-established that preponderance of the evidence is the applicable standard of proof the Commission applies in its review of self-regulatory organization disciplinary proceedings. See, e.g., David M. Levine, 57 S.E.C. 50, 73 n.42 (2003) (holding that preponderance of the evidence is the standard of proof in self-regulatory organization disciplinary proceedings); Kirk A. Knapp, 51 S.E.C. 115, 130 n.65 (1992) (stating that "the correct standard is preponderance of the evidence" in an NASD proceeding).

We also note that the preponderance standard is a higher standard of proof than substantial evidence. See, e.g., FPL Energy Maine Hydro LLC v. FERC, 287 F.3d 1151, 1160 (D.C. Cir. 2002) ("The 'substantial evidence' standard requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence.").

12/ F.J. Kaufman & Co. Of Virginia, 50 S.E.C. 160, 164 (1989).



recommendations. 13/ By recommending unsuitable transactions, a registered representative acts inconsistently with just and equitable principles of trade. 14/

Each of the investors here had similar profiles with respect to their financial situations and needs. With the exception of the G sisters, Cespedes's customers were retired or close to retirement, indicating a lack of future earning capacity and consequent greater dependence on their investments for day-to-day living expenses. For example, Dolores A, discussed above, was near retirement, with relatively modest savings, and had financial responsibility for teenage children. Several of the customers, including Marilynn A and Carole D, testified that they told Cespedes that they needed to protect their principal and that it represented their entire life savings. 15/

Although Antonina and Maria G were younger than the other customers at issue, and the size of their accounts relative to their age and potential future earning power was greater than for the other investors, they had obtained a significant portion of their initial investments through a one-time lawsuit settlement, and their modest income levels militated in favor of the avoidance of risk. 16/ We have observed that the relative youth of a customer of modest means who lacks significant investment experience does not justify a broker's recommendations that the customer invest in a highly concentrated and risky manner. 17/

Cespedes also knew that some of the customers made regular withdrawals from their accounts for their daily living expenses. For example, Cespedes was aware that customer Carole

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13/ Clinton Hugh Holland, Jr., 52 S.E.C. 562, 566 (1995) (citing Paul F. Wickswat, 50 S.E.C. 785, 786-87 (1991)), aff'd 105 F.3d 665 (9th Cir. 1997); Eugene Erdos, 47 S.E.C. 985, 989 (1983), aff'd, 742 F.2d 507 (9th Cir. 1984)).

14/ See, e.g., id.

15/ The NYSE expressly found each of the testifying witnesses to have testified credibly. Credibility determinations of an initial fact finder are entitled to considerable weight. Joseph Abbondante, Exchange Act Rel. No. 53066 (Jan. 6, 2006), 87 SEC Docket 203, 209 n. 21 (citing Laurie Jones Canady, 54 S.E.C. 65, 78 n.23 (1999) (citing Anthony Tricarico, 51 S.E.C. 457, 460 (1993)), petition denied, 230 F.3d 362 (D.C. Cir. 2000)), petition denied, 209 Fed. Appx. 6 (2d Cir. 2006) (unpublished).

16/ See James B. Chase, 56 S.E.C. 149, 152 (2003) (finding that an unmarried college student, with low income and lacking investment experience "demanded an investment strategy that limited risk").

17/ Chase, 56 S.E.C. at 158 (finding unsuitable broker's recommendation that customer invest entire account in a single security even though customer was "young with a lifetime of earning potential").

D needed to make \$1,500 monthly withdrawals from her account to pay for her living expenses. Cespedes also knew that Marilyn A and other customers wrote checks against their accounts in order to make car payments and for other ordinary living expenses. All of the customers had relatively modest incomes and thus lacked the capacity to recoup any investment losses quickly by returning to or continuing to work.

Because the starting sizes of most of the accounts were relatively modest and represented all or substantially all of each individual's liquid net worth, the preservation of principal was of paramount concern - since there was little margin for error or loss in any investment plan. For example, taking into consideration that Marilyn A was in her late forties and planning an early retirement, had a husband who was seriously ill and unable to work, and that her approximately \$220,000 initial Total Account Value represented nearly her entire life savings and liquid net worth, Marilyn A required an investment portfolio focused on preservation of the account principal. Carole D's approximately \$160,000 account represented her entire liquid net worth and life savings.

Most of the customers lacked investment experience and relied significantly on Cespedes's advice. This lack of investment experience argued against employing more risky investment strategies, such as heavy concentration in a single sector and the use of margin debt to purchase securities, that the customers would not have been likely to comprehend. Although Hortence M's new account forms indicated that she had thirty-eight years of investment experience and she deposited \$563,000 upon opening her account, Cespedes testified that Hortence M was not a "savvy" investor and followed Cespedes's advice to dispose of her diversified portfolio and shift into a heavy concentration in technology UITs. There is nothing in the record that, given her age and retirement, would suggest that she could afford to lose nearly \$300,000 between July 2000 and February 2001.

We have previously held that risky investments are unsuitable recommendations for investors with relatively modest wealth and limited investment experience. <sup>18/</sup> We have also found that recommendations leading to high concentration of customer accounts in particular securities is "beyond what is consistent with the objective of safe, non-speculative investing." <sup>19/</sup> Highly speculative investment strategies are "suitable only for an individual who could withstand the loss of the entire principal amount." <sup>20/</sup>

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<sup>18/</sup> Stephen Thorlief Rangen, 52 S.E.C. 1304, 1307 (1997).

<sup>19/</sup> Id. at 1308 ("by concentrating so much of [the customers'] equity in particular securities, [the broker] increased the risk of loss for these individuals beyond what is consistent with the objective of safe, non-speculative investing").

<sup>20/</sup> Venters, 51 S.E.C. at 293-94.

Nonetheless, Cespedes recommended that these fourteen customers concentrate their accounts heavily in technology sector securities and UITs in the technology sector. As discussed above, the First Trust marketing materials for the technology sector UITs (Cespedes had recommended) discouraged investors, irrespective of background, from heavy concentrations in individual sectors and encouraged diversified portfolios. NYSE expert witness Christopher Franke testified that over-concentration in individual sector UITs was a risky investment profile for any customer because it exposed the customer disproportionately to the volatility of the sector. In fact, before the time period at issue, some of the accounts were diversified among different sectors and different types of investments and had experienced growth in the account values over the course of several years. However, as shown in Appendix B, Cespedes recommended that the customers invest these previously diversified accounts in either significant concentrations or entirely in the technology sector, either through UITs or individual securities, during the relevant period. 21/

Trading on margin also increases the risk of loss to a customer. The customer is at risk to lose more than the amount invested if the value of the security depreciates sufficiently, giving rise to a margin call in the account. The customer also is required to pay interest on the margin loan, adding to the investor's cost of maintaining the account and increasing the amount by which his or her investment must appreciate before the customer realizes a net gain. 22/ Many of the accounts maintained significant margin balances during the period at issue. Most of the customers were unsophisticated investors and did not appreciate the risk that the use of margin in their accounts entailed. Dolores A, who had no experience with margin, lost the entire value of her personal account and a significant portion of her life savings to margin calls. Several of the customers testified that they had the mistaken understanding that Cespedes would liquidate securities in their accounts to cover checks written against the accounts. In reality, those checks simply increased the margin debt of the accounts, forcing the customers to expend significant funds paying margin interest and covering margin calls, even though the financial needs and circumstances of these customers indicated that preservation of principal was of paramount importance to them.

For these reasons, we find that Cespedes's recommendations that these customers invest with significant concentrations in the technology sector, often using margin to purchase the

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21/ For example, the accounts of Marilyn A and those of the G sisters, which represented their entire life savings and liquid net worth, were invested entirely in the technology sector. Marilyn A's Total Account Value decreased from approximately \$220,000 to \$24,000, and both G sisters also lost significant portions of their account values during the relevant period. Hortence M's Total Account Value decreased by nearly \$300,000 between July 2000 and February 2001, the same period during which Cespedes recommended that she sell her diversified positions and concentrate her account entirely in technology sector UITs, with a margin balance of over \$109,000.

22/ See Chase, 56 S.E.C. at 157-58 (citing Rangen, 52 S.E.C. at 1308).

securities in their accounts, were unsuitable and inconsistent with just and equitable principles of trade.

#### IV.

On appeal, Cespedes does not claim that any of the recommendations at issue were suitable. He also does not challenge the accuracy or truthfulness of the customers who testified during his hearing. <sup>23/</sup> Instead, Cespedes argues that the NYSE's proceeding was unfair and, as a result, requests that the proceeding "be vacated and the matter returned to the Hearing Board for further action." Specifically, he argues that: 1) NYSE expert witness Christopher Franke was biased in favor of Cespedes's customers in assessing whether Cespedes's recommendations were suitable and 2) Franke's testimony was based on insufficient evidence to support his conclusions.

Cespedes also objects to the decision by the Hearing Board to admit into evidence audiotapes and written transcripts of telephone conversations between Cespedes and customer James J. We discuss that objection in Section V below.

#### Alleged Expert Witness Bias

After setting forth Franke's educational and professional background, including his previous employment for over twenty years as a senior compliance officer with two different broker-dealers and his eight years as a Vice President at NASD "responsible for the trading and oversight of the NASDAQ market," the NYSE offered Franke as an expert witness on questions of suitability and compliance. Cespedes did not object to Franke's qualifications.

Franke testified that, in preparation for the hearing, he reviewed transcripts of the on-the-record testimony of Cespedes and others, the account statements, new account forms, and arbitration complaints of the customers at issue (as well as A.G. Edwards's responses where applicable), A.G. Edwards's compliance manual, and the relevant UIT prospectuses. On the basis of this review, Franke opined that Cespedes had made unsuitable recommendations and purchases of high concentrations in technology sector UITs in all of the accounts at issue. He also opined that the use of margin debt to purchase securities in some of the accounts was unsuitable.

On cross-examination about his opinion of Cespedes's recommendations to customer Carole D, Franke acknowledged that he had reviewed, in preparation for testimony, Carole D's arbitration complaint and A.G. Edwards's response to Carole D's complaint. He further stated:

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<sup>23/</sup> See n. 15, supra.

I got an impression about [Carole D] based on who she was and the nature of the person she was, I got an impression from the [A.G. Edwards] response, so I needed to go to the empirical data to see whether there was anything that would support one side more than the other. And in the context of this, when I looked at this account and I said, well, these – this account follows a similar pattern to the others, therefore my bias is going to be a little bit more towards the customer.

Cespedes claims that this quotation indicates an inherent bias on the part of Franke that “taints the entire matter with unfairness.” We disagree. Franke states that his conclusion was “in the context of” his review of the “empirical data” related to the account. His reference to a “bias” referred to whether the empirical data about the particulars of Carole D’s account supported the customer or Cespedes more than the other. He did not, as Cespedes suggests, reach his conclusion that Carole D’s account was managed unsuitably simply because the investments resembled those made in the accounts of other Cespedes customers. Further, Franke testified in a more general statement of his approach to the case as a whole that he “didn’t have a bias” and formed his opinion based on his review of the evidence presented to him without any pressure or discussion of the case from the NYSE.

In any event, Cespedes cites no authority to support his contention that the alleged bias of an expert witness in an NYSE disciplinary proceeding warrants that the decision be vacated and the matter remanded for a new hearing, and we are aware of none. Cespedes was free to call an expert witness of his own to challenge Franke’s testimony, but he did not do so. The Hearing Board understood that Franke had been hired and paid by the NYSE to provide expert testimony, reviewed his background, observed his testimony and demeanor, and found him to be a credible witness.

Cespedes has not argued that the Hearing Board itself was biased, nor does our independent review of the record find any support for such a notion. The Hearing Board reviewed the documentary evidence that Franke reviewed in making his assessment and based its determination on that review and the testimony, as well as Franke’s discussion of his review. The Hearing Board found Carole D’s testimony, as well as the testimony of Cespedes’s other customers, to be credible. The record supports the Hearing Board’s determination that Cespedes’s recommendations were incompatible with his customers’ financial situations and needs, even without Franke’s testimony. Thus, we reject Cespedes’s assertion that Franke was biased and do not believe that the quoted passage in any way prejudiced Cespedes.

#### Allegation that Expert’s Testimony Was Based on Insufficient Evidence

Cespedes contends that Franke relied excessively on the customers’ new account forms and account statements in making his suitability assessments and that these documents do not provide a sufficient basis to support his opinion. The new account forms contained important information in assessing the suitability of investment recommendations, including the customer’s age, income, net worth, employment status, and investment experience. The account statements

exhibited the high concentrations of all of the accounts in the technology sector and showed the use of margin in many of the accounts. Cespedes also ignores Franke's testimony that he relied on other documents, including transcripts of testimony, arbitration complaints and responses, A.G. Edwards's compliance manual, and UIT prospectuses. The Hearing Board was aware that Franke relied on these documents, had the opportunity to review the exhibits themselves and to observe Franke's demeanor and testimony to assess his credibility, and determined to credit Franke's suitability assessment. We agree with that assessment.

Cespedes also suggests the possibility that the new account forms did not accurately reflect the customers' ages and investment preferences and that it is possible that "the customer's intentions changed over time, albeit without appropriate changes on the account forms." <sup>24/</sup> Cespedes has introduced no evidence to indicate that any of his customers requested that he invest their accounts in the manner that he did. To the contrary, the testifying customers stated universally and credibly that they did not understand UITs or margin and that they relied on Cespedes's recommendations. We have held that "[t]he test for whether [a broker's] recommendations were suitable is not whether [the customer] acquiesced in them, but whether [the broker's] recommendations were consistent with [the customer's] financial situation and needs." <sup>25/</sup> As we found above, Cespedes's recommendations to these customers were not.

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<sup>24/</sup> Customer Carole D acknowledged that she had misrepresented her age on her initial new account form by listing her birth year as 1948, rather than 1938. Carole D testified that this was a practice she routinely followed when filling out forms that requested a birth date "just to sort of protect [herself]." However, Carole D updated her account documentation to reflect her correct age in 2000, when she invested approximately \$160,000 as discussed above. Cespedes made the investment recommendations at issue here after Carole D's account information had been corrected.

Cespedes has introduced no evidence to suggest that the age on any other customer's new account form was incorrect or that his recommendations to Carole D would have been suitable, given her financial situation and experience, if she had been born in 1948. In addition, the testimony and other record evidence presented supported the accuracy of the new account forms with respect to the customers' ages and other information important to a suitability assessment.

<sup>25/</sup> Chase, 56 S.E.C. at 153 n. 23 (citing Reynolds, 50 S.E.C. at 809 (regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent with the customer's financial situation), amended on other grounds, Exchange Act Rel. No. 30036A (Feb. 25, 1992), 50 SEC Docket 1839); see also Gordon Scott Venters, 51 S.E.C. 292, 295 (1993).

## V.

Our review of the NYSE's sanctions is governed by Exchange Act Section 19(e)(2). 26/ Section 19(e)(2) provides that the Commission will sustain the NYSE's sanctions unless it finds, 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. 27/ On appeal, neither Cespedes nor the NYSE has specifically addressed the appropriateness of the sanctions imposed.

The NYSE censured Cespedes and imposed a ten-year bar for his violations of Rule 476(a)(6). Cespedes has not worked in the securities industry since July 2007. The NYSE elected not to impose restitution or any monetary sanction on Cespedes. In determining the appropriate sanction to impose on Cespedes, the NYSE stated, "There is precedent for imposing a permanent bar in cases involving unsuitable transactions that were accompanied by other violations, such as unauthorized trading." 28/ The NYSE noted that Cespedes's recommendations were repeated with a significant number of customers and caused the customers to lose all or almost all of their liquid net worth. The NYSE decided, however, that a lifetime bar was too severe because Cespedes had only committed violations involving one NYSE Rule.

We agree with the NYSE's assessment of Cespedes's conduct and find that Cespedes's violations were very serious. We have also looked to FINRA's Sanction Guidelines. 29/ The Sanction Guidelines have been promulgated by FINRA in an effort to achieve greater

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26/ 15 U.S.C. § 78s(e)(2).

27/ Cespedes does not claim, and the record does not show, that the NYSE's action imposed an unnecessary or inappropriate burden on competition.

28/ The NYSE cited William Floyd Gibbs, Sr., Decision 06-41 (NYSE Hearing Board Mar. 27, 2006) (consenting to permanent bar for unsuitable trades in 144 customer accounts and exercising discretion without prior written authorization), and Grant Ross, Decision 94-177 (NYSE Hearing Board Dec. 22, 1994) (permanent bar imposed by default in light of uncontested allegations of unsuitable and unauthorized trading, misstatements to customers and firm, and violations of NYSE Rules on options).

29/ FINRA Sanction Guidelines 99 (2006 ed.), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>. See note 1, supra.

consistency, uniformity, and fairness in the sanctions that are imposed for violations. <sup>30/</sup> FINRA's Sanction Guidelines discuss violations of this type and provide useful guidance in our sanctions analysis on appeal. FINRA's Sanction Guidelines recommend imposition of a monetary sanction of between \$2,500 and \$75,000 for unsuitable recommendations and a suspension for a period of ten business days to one year, and, in egregious cases, consideration of a longer suspension (of up to two years) or a bar.

Cespedes recommended that all of the customers at issue invest the majority, and in many cases all, of their account values in the technology sector. Many of the customers were of an advanced age and already retired or about to retire. At least one customer was forced to return to work at a low-paying job to pay for her living expenses. Many of the customers had relatively modest incomes and net worth and relied significantly on Cespedes to provide investment recommendations suitable to their life situations and needs. Cespedes failed to explain adequately to these inexperienced customers the significant risk of loss that his recommendations of highly concentrated technology sector portfolios entailed.

The customers in whose accounts Cespedes used margin did not understand what margin was. Several of the customers testified that they had the impression that Cespedes sold securities in their accounts to cover checks they wrote to make purchases, including at least two automobile purchases. These customers later learned that no securities had been sold and that they had, instead, incurred significant margin debt in connection with these checks. The numerous violations of suitability provisions and the significant harm suffered by vulnerable and unsophisticated customers warrant the imposition of serious sanctions against Cespedes.

Furthermore, Cespedes fails to recognize the wrongfulness of his conduct. Although Cespedes knew that his customers lacked investment experience and, based on their financial situations and needs, could not afford to suffer the losses to which his recommendations made them susceptible, he continues to suggest that he merely fulfilled the wishes of the customers by following an aggressive, risky investment strategy in all of their accounts. Cespedes introduced no evidence to show that the customers wanted to invest with heavy concentrations in the technology sector, including purchases of securities on margin in many accounts.

In assessing its sanctions, the NYSE identified three examples of what it termed bad faith by Cespedes. We agree with the NYSE's assessment that these instances were each aggravating factors appropriately weighed in imposing sanctions on Cespedes. The NYSE found that Cespedes called customer Edwin W's friend Stanley K after Stanley K contacted the Firm to complain about Cespedes's management of Edwin W's account, and Cespedes told Stanley K, "Don't do that again. If you want to contact anybody, contact me. Don't contact the office."

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<sup>30/</sup> See Perpetual Sec. Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2506 n.56. Although the Commission is not bound by the Sanction Guidelines, it uses them as a benchmark in conducting its review under Exchange Act Section 19(e)(2).



The NYSE found this conduct to be “highly improper and dangerous because it has the potential to undermine the entire regulatory framework.”

The NYSE also found that Cespedes called customer Carole D after the conclusion of the initial three days of his hearing. Cespedes asked Carole D to submit to the NYSE an affidavit indicating that she had overstated her claims against Cespedes in her arbitration proceeding. When Carole D refused Cespedes’s request, she testified that Cespedes threatened to expose alleged unspecified “funny business” in connection with Carole D’s small business. The NYSE found Cespedes “actually attempted – in a shocking, abusive, and highly unethical manner – to fabricate a mitigating circumstance.”

NYSE also cited taped telephone conversations between Cespedes and customer James J. James J, at his home in New Jersey, recorded five telephone conversations he had with Cespedes, who was in California at the time, in September and November 2002. <sup>31/</sup> During the taped conversations, Cespedes acknowledged that a heavy concentration of securities in the technology sector was unsuitable for someone of James J’s age and that James J “never truly understood” the use of margin in his account. Cespedes further encouraged James J to file an arbitration claim against the Firm as a way to recoup some of the money James J lost as a result of Cespedes’s unsuitable recommendations. The NYSE felt that this was an unethical attempt by Cespedes to “make the entire problem go away by persuading his customer [James J] that they were on the same side and encouraging [James J] to obtain money from the firm.” <sup>32/</sup>

Cespedes objects to the admission of the tape and transcripts. Cespedes does not dispute the authenticity of the tape and transcripts. Cespedes, however, claims that the use of the tapes in his NYSE disciplinary proceeding was illegal under California law because he was not aware that he was being recorded and did not consent to the taping. Cespedes argues that, as a California resident, he “is entitled to the protection of its laws.” <sup>33/</sup>

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<sup>31/</sup> The Hearing Board permitted NYSE Enforcement to play the audio cassette of one of the conversations during the hearing and admitted into evidence the transcripts of three of the other conversations. The Hearing Officer determined that the final tape was inaudible and did not admit it into evidence.

<sup>32/</sup> Cespedes contributed \$20,000 to A.G. Edwards’s settlement with James J. This was the only arbitration settlement of these fourteen customers to which Cespedes contributed.

<sup>33/</sup> The relevant provision of California law is Penal Code Section 632(d), Cal. Penal Code § 632, which prohibits the taping of telephone conversations without the consent of all parties to the conversation.

Cespedes cites Kearney v. Salomon Smith Barney, Inc., 39 Cal.4th 95 (2006), in which the California Supreme Court found that California residents whose telephone

(continued...)

However, SRO proceedings are informal and are not bound by the same rules of procedure and evidence that apply in court proceedings. <sup>34/</sup> Unlike a federal or state court, the NYSE lacks subpoena power, and the record indicates that James J was unwilling to testify at the hearing. The Hearing Board made a reasonable determination that the tapes provided a source of useful information about Cespedes's conduct with respect to James J's accounts. For these reasons, we find that the NYSE's determination to admit the audiotape and written transcripts was appropriate, and we agree with the NYSE's finding that Cespedes's statements on the tapes exhibits bad faith and is an aggravating factor in our sanctions analysis.

Cespedes has failed to cite, and our review of the record does not indicate the existence of, any mitigating factors that would argue in favor of a lesser sanction than the ten-year bar the NYSE imposed on Cespedes. Given Cespedes's conduct and his attempts to prevent detection of his conduct and to influence prospective witnesses in this proceeding, a ten-year bar will have the remedial effect of protecting the investing public from harm by preventing Cespedes from continuing to invest customer funds without adequate consideration of the customer's age, financial situation, and needs. The sanction will also deter other registered representatives from making similarly unsuitable recommendations in customer accounts in the future. <sup>35/</sup> Although we might have reached a different conclusion as to the appropriate sanction for Cespedes's conduct, we do not have authority to increase a sanction imposed by an SRO, but only to

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<sup>33/</sup> (...continued)

conversations with businesses located in Georgia were being recorded without the California residents' knowledge maintained the right to pursue an injunctive action against the Georgia businesses because the recordings were illegal under California law, although they were legal under Georgia law.

<sup>34/</sup> See Rita H. Malm, 52 S.E.C. 64, 72 n. 37 (1994) ("SRO proceedings are 'informal' when compared to 'formal' proceedings in federal and state courts where rules of evidence and procedure apply. For example, in SRO proceedings, Hearing Boards have great latitude in permitting evidence and testimony from witnesses that might be excluded on relevance and hearsay grounds before other tribunals.")

<sup>35/</sup> See SEC v. PAZ Sec., Inc., 494 F.3d 1059, 1066 (D.C. Cir. 2007) (stating that "general deterrence" may be "considered as part of the overall remedial inquiry," quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

determine whether the sanction is excessive or oppressive. We find that the censure and ten-year bar the NYSE imposed against Cespedes are neither excessive nor oppressive, and we sustain the NYSE's findings of violations. 36/

An appropriate order will issue.

By the Commission (Commissioners CASEY, PAREDES, and AGUILAR); Chairman SCHAPIRO and Commissioner WALTER not participating.

Elizabeth M. Murphy  
Secretary

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36/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

## APPENDIX A

<u>Customer</u>	<u>Age at Account Opening/ Employment Status</u>	<u>Income/ Net Worth</u>	<u>Prior Investment Experience/ Investment Objectives</u>
Yolanda G	Age 56, divorced, retired.	Received lump sum payment of \$173,000 from employer in lieu of pension; \$260,000 net worth.	Experience limited to automatic payroll deductions by employer for retirement account.
Elaine K	Age 69, did not work outside home, ill husband.	No annual income. Increased expenses because of husband's illness.	Shared a prior investment account with her husband, but testified that Cespedes made all investment decisions in her account.
Dolores A	Age 61, divorced, about to retire from job as a dispatch clerk, when opening account. At age 72, took a low-paying job as a parking attendant because most of her life savings were lost.	No income during the relevant period.	Limited to payroll deductions for retirement through her employer.
Carole D	Age 62, unmarried, had recently left her position as marketing director of an architectural firm. Planned to start a business as an interior decorator.	Minimal income during the relevant period. Had received \$120,000 severance payment from former employer and \$66,000 in proceeds from sale of home. Told Cespedes she needed to make \$1,500 monthly withdrawals from account for living expenses.	Minimal: had invested small amounts in penny stocks based on friends' suggestions and participated in employer's profit-sharing plan. Told Cespedes her account was "[her] nut, and it's got to be protected, it just has to be."
Marilynn A	Age late 40s, worked as an assistant at a high school. Seriously ill husband, who later died.	Low annual income. Increasing expenses due to husband's illness. Only approx. \$10,000 in personal savings. Received inheritance of approx. \$275,000, \$220,000 of which she invested with Cespedes.	Minimal, limited to participation in employer's retirement plan, in which her assets were less than \$10,000. Told Cespedes that she "didn't want to lose [her] principal no matter what."

Edwin W	Age 78, retired bartender, worked from time to time as a bartender at a social club.	No annual income. Net worth from savings of approx. \$200,000.	No prior investment experience. Deferred completely to Cespedes on investment decisions.
Antonina G	Age 36, reservations manager for travel agency.	Annual salary of \$36,000, savings of \$70,000, largely from a one-time lawsuit settlement.	No prior investment experience. Testified, "I don't know anything about investing, so I just took it whatever [Cespedes] said to purchase, he would say, okay, I am going to sell this and this and I would agree."
Maria G	Age 32, marketing assistant.	Annual salary of \$34,000, net worth of \$46,000, largely from a one-time lawsuit settlement.	No prior investment experience.
Josephine F	Age 70, retired, widow.	Did not testify. Account docs indicate \$67,000 annual income and \$600,000 net worth.	One year of prior investment experience in stocks and bonds. Cespedes testified, "[Josephine F] used to always say I trust you, I leave it up to you" and that Josephine F "never called to wonder about a stock or anything like that."
James J	Age 58, retired.	Did not testify. Account docs indicate \$40,000 annual income and \$400,000 net worth.	Two years of investment experience in stocks and bonds. Cespedes testified that James J relied on Cespedes for investment advice and that James J did not understand margin, even though Cespedes used margin to purchase securities in one of James J's accounts.

Lucille M	Age 59, retired/ disabled, unmarried.	Did not testify. Account docs indicate \$25,000 annual income and net worth of \$500,000.	21 years of prior investment experience in stocks and bonds, but Cespedes testified that, due to an illness, Lucille M “was not really able to do much of anything” and relied exclusively on Cespedes for investment advice.
Hortence M	Age 79, retired nurse, widow.	Did not testify. Account docs indicate \$45,000 annual income and \$815,000 net worth.	38 years of prior investment experience in stocks and bonds. But Cespedes testified that he suggested technology sector concentration and use of margin.
Norah P	Age 81, retired, widow.	Did not testify. Account docs indicate \$30,000 annual income and \$275,000 net worth.	6 years of prior investment experience in stocks and bonds.
Joseph Z	Age 59, retired police officer, now deceased.	Did not testify. Account docs indicate \$29,000 annual income and \$500,000 net worth.	6 years of prior investment experience limited to \$50,000 invested in bonds. Cespedes testified that Joseph Z relied on Cespedes’s advice to invest in technology sector UITs using margin.

**APPENDIX B**

<u>Customer</u>	<u>Percentage of Account in Tech Sector/ Use of Margin</u>	<u>Account Size (Net of Any Margin Debt in Account)</u>
Yolanda G	In February 2001, 113.8% in tech sector UITs in personal account, with margin balance of greater than \$500 in an account with a total value of approximately \$3,600. In IRA, over 75% in technology sector, no margin balance in IRA account.	Approx. \$175,000 in personal and IRA accounts combined at account opening. Lost approx. \$100,000 in value.
Elaine K	In December 2000, nearly 100% in technology sector: 84% in technology sector UITs, plus the remainder in technology sector mutual funds and the shares of an internet company. No margin balance.	Well-diversified account in 1997-99, increased in value from \$250,000 to \$650,000. Decreased to \$340,000 in February 2001.
Dolores A	In June 2000, margin balance was 75% of net account value of personal account, with a total margin balance in excess of \$72,000. In September 2000, a single technology sector stock represented 202% of net account value in personal account, and technology sector UITs represented another 117.6% of net account value. The margin balance remained over \$72,000 at that time. In November 2000, 78% of IRA was in a single technology sector stock and call options in the same stock, with the remainder of the account in technology sector UITs. No margin in IRA account.	<u>Personal account</u> value of approx. \$60,000 in October 1997, \$95,000 in June 2000, \$33,000 in September 2000, ultimately lost entire value of personal account to pay off margin calls. <u>IRA</u> was diversified and had a value of \$137,000 in late 1996. By November 2000, value was \$238,000, testified that it decreased to \$88,000 before closing account.
Carole D	In February 2001, UITs represented 193% of net account value, with a margin balance of approx. \$54,000. Twelve of the thirteen UITs in account at that time were in the technology sector, including several semi-conductor UITs.	In May 2000, approx. \$160,000. By February 2001, approx. \$44,000. At closing of the account in 2001, approx. \$33,000.

Marilynn A	In October 2000, technology sector UITs represented 137.5% of the net account value, owing to the use of margin in the account. At that time, margin balance was over \$56,000. Cespedes steadily increased the concentration in technology sector during 2000.	Testified that account value decreased from approx. \$220,000 in March 2000 to \$24,000 at account closing. July 2001 statement shows account value of \$37,000, 100% in technology sector UITs.
Edwin W	In April 2000, approx. 60% of account in technology sector UITs. In January 2001, vast majority of account in technology sector UITs. No margin balance.	Initial account value in April 2000 was approx. \$125,000. Decreased to approx. \$20,000 when he closed the account.
Antonina G	In July 2000, vast majority of personal account in technology sector, with many technology sector UITs and no margin balance at that time. In February 2001, entire IRA account in technology sector, with no margin balance.	Personal account value was approx. \$66,000 in July 2000. IRA account value was approx. \$17,500 in February 2001.
Maria G	Account was 100% in technology sector UITs during relevant period, with no margin balance.	Account value was approx. \$12,000 in October 2000, approx. \$5,500 in July 2001.
Josephine F	In October 2000, account was invested 117.6% in technology sector UITs. Margin balance was greater than \$45,000 at the time.	In October 2000, account value was approx. \$263,000.
James J	In February 2001, joint account was invested 100% in the technology sector, with 92% in technology sector UITs and 8% in the stock of a technology sector company. The margin balance in the joint account was approx. \$117,000. In July 2001, approx. 88% of IRA account was invested in technology sector UITs, with no margin balance in the IRA account.	In February 2001, joint account with son had a value of approx. \$46,000, having decreased in value from approx. \$95,000 one month earlier. In July 2001, IRA account value was approx. \$32,000.



Lucille M	In August 2000, IRA was invested 100% in technology sector UITs, with no margin in that account. In November 2000, 149.6% of personal account invested in technology sector UITs, with margin balance greater than \$78,000 at that time.	In August 2000, IRA account value was approx. \$89,000. In November 2000, personal account value was approx. \$154,000.
Hortence M	In February 2001, 140.3% in technology sector UITs. Margin balance was greater than \$109,000 at that time.	In February 2001, account value was approx. \$266,000.
Norah P	In February 2001, 119% of net account value in technology sector UITs. Margin balance was greater than \$1,500 in \$7,900 account. Cespedes encouraged Norah P to write checks against her account to purchase a car, which increased her margin debt, even though she had enough cash to purchase the car outright.	In February 2001, account value was approx. \$7,900.
Joseph Z	In November 2000, 100.3% of account was invested in technology sector UITs, with a margin balance of approx. \$200.	In November 2000, account value was approx. \$36,500.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 59404 / February 13, 2009

Admin. Proc. File No. 3-12988

In the Matter of the Application of

LUIS MIGUEL CESPEDES  
c/o Jonathan Schwartz, Esq.  
Law Offices of Jonathan Schwartz  
4640 Admiralty Way, Fifth Floor  
Marina del Rey, CA 90292

For Review of Disciplinary Action Taken By

NYSE REGULATION, INC.

ORDER SUSTAINING DISCIPLINARY ACTION

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

ORDERED that the findings of violation and imposition of sanctions by NYSE Regulation, Inc. against Luis Miguel Céspedes be, and they hereby are, sustained.

By the Commission.

Elizabeth M. Murphy  
Secretary