

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54722 / November 8, 2006

Admin. Proc. File No. 3-12245

In the Matter of the Application of

RAGHAVAN SATHIANATHAN
c/o S.T. Allen & Co.
336 Bloomfield Avenue
Montclair, NJ 07042

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY
PROCEEDING

Unsuitable Recommendations

Discretionary Trading Without Written Authorization

Associated person of member firms of registered securities association made unsuitable recommendations to customers and exercised discretion in the account of a customer without written authorization. Held, association's findings of violation and the sanctions it imposed are sustained.

APPEARANCES:

Raghavan Sathianathan, pro se.

Marc Menchel, Alan B. Lawhead, Carla J. Carloni, and Brant K. Brown, for NASD.

Appeal filed: March 22, 2006
Last brief received: July 10, 2006

I.

Raghavan Sathianathan, formerly associated with Salomon Smith Barney Inc. ("Smith Barney") and Morgan Stanley DW Inc. ("Morgan Stanley"), NASD member firms, appeals from NASD disciplinary action. NASD found that Sathianathan made unsuitable recommendations to two customers in violation of NASD Conduct Rules 2310 and 2110, and exercised discretion in the account of one of those customers without the customer's written authorization in violation of NASD Conduct Rules 2510(b) and 2110. NASD barred Sathianathan from associating with any member firm in any capacity for his violations of NASD's suitability rule. NASD also assessed costs, but declined to impose additional sanctions for Sathianathan's unauthorized discretionary trading. We base our findings upon an independent review of the record.

II.

The facts in this matter are largely undisputed. Smith Barney hired Sathianathan in its Little Falls, New Jersey, branch office on August 24, 1998. In November 1998, Sathianathan passed the general securities representative examination and became registered with Smith Barney. He voluntarily left Smith Barney on February 16, 2001, and joined Morgan Stanley at its office in New York City. Sathianathan resigned from Morgan Stanley in February 2002.

Sathianathan's sales practices came into question almost immediately after he started with Smith Barney. During Sathianathan's first year with Smith Barney, his supervisor became concerned that Sathianathan's dealings with his customers had not "shown a consistent pattern of . . . acceptable behavior." On September 27, 1999, the supervisor issued Sathianathan a "warning/probation letter" placing him on probation for four months and instructing him to adhere to a list of seven guidelines. One of the guidelines was entitled "proper portfolio management" and defined this term to include limited or no use of margin, proper asset allocation and diversification, and elimination of any excessive trading or commissions.

The violative conduct at issue in this proceeding occurred from September 2000 through June 2001. Sathianathan made recommendations alleged by NASD to be unsuitable to two of his customers, Anjan Venkatramani and Srikar Srinath, who were twenty-eight-year-old engineers with Juniper Networks, Inc. ("Juniper"), a California company specializing in telecommunications equipment. In mid 1999, Juniper engaged in an initial public offering and, between that time and the time of the recommendations at issue in this proceeding, the stock experienced significant price volatility. Venkatramani's and Srinath's compensation packages included Juniper stock options.

Class A and Class B Shares of Mutual Funds

The suitability issues in this proceeding include Sathianathan's recommendations to Venkatramani and Srinath that they purchase Class B shares of various mutual funds. Typically, Class A shares differ from Class B shares with respect to their cost structure. Class A shares usually include an initial sales charge, or front-end load, a fee that is levied upon the purchase of

mutual fund shares, while Class B shares do not. Class A shares include breakpoint discounts, which reduce the front-end load incrementally in the event that the investor invests specified amounts in the fund. At each breakpoint, the representative's commission rate is reduced. Most mutual funds waive front-end loads for investments in Class A shares of more than \$1 million. Many mutual fund families also permit investors to aggregate their investments in multiple funds within the same family when calculating whether the investor has reached a breakpoint.

Unlike Class A shares, Class B shares usually include a contingent deferred sales charge ("CDSC"), or back-end load, which is a fee that is levied upon the sale of mutual fund shares. Typically, the CDSC is reduced with each year that the investor holds the fund shares, phasing out entirely after a certain number of years, and at some point afterward the Class B shares convert into Class A shares. Since there are no breakpoints for Class B shares, there is no reduction in the commission rate for larger investments in Class B shares. This means that, for investments at or above the breakpoint levels, the representative receives a larger percentage commission for Class B shares than for Class A shares.

A mutual fund's expense ratio measures the fund's total annual expenses expressed as a percentage of the fund's net assets. The expense ratio includes asset-based sales charges, such as charges permitted under Investment Company Act Rule 12b-1, ^{1/} that are taken from the mutual fund's assets to pay to market the fund and distribute its shares. The expense ratios for Class B shares often are up to 75 basis points higher than the expense ratios for Class A shares.

Sathianathan's Recommendations to Venkatramani

In or around April 2000, Venkatramani opened an account with Smith Barney at its Menlo Park, California, branch office. He deposited into the account 13,500 shares of Juniper stock that he had acquired through the exercise of stock options. The account application contained a section entitled "Risk Tolerance" that indicated Venkatramani had a moderate risk tolerance (out of a choice of aggressive, moderate, or conservative). The application also indicated that Venkatramani's investment objectives did not allow for speculation and that he had no investment experience.

In May 2000, after meeting Sathianathan through Sathianathan's younger brother, Venkatramani moved his account from the Menlo Park branch to Smith Barney's Little Falls branch office so that Sathianathan could serve as his financial consultant. In contrast to the account application completed in connection with Venkatramani's Menlo Park branch account, the account application that Sathianathan filled out and that Venkatramani signed in May 2000 when he opened the account with Sathianathan listed Venkatramani's risk tolerance as "aggressive," indicated that his investment objectives allowed for speculation, and stated that he had been investing in stock since 1995. However, Sathianathan testified that Venkatramani had informed him that Venkatramani's investment objective was the preservation of capital.

^{1/} 17 C.F.R. § 270.12b-1.

Sathianathan also knew that Venkatramani had no prior investment experience and that "his level of sophistication was almost zero." Although Venkatramani was not interested in aggressive or speculative investing, Sathianathan marked the account form to indicate that Venkatramani's risk tolerance was aggressive and that he was interested in speculative investing because, according to Sathianathan, without doing so, Smith Barney would not allow the customer to engage in certain hedging strategies.

Primarily as a result of the increase in value of Juniper shares and Venkatramani's exercise of additional Juniper stock options, the value of Venkatramani's account increased from approximately \$2 million as of June 30, 2000, to over \$10 million in September 2000. In August and September 2000, Sathianathan contacted the Smith Barney Global Equity Derivatives department, which specialized in hedging strategies, to price potential ways to diversify Venkatramani's concentrated equity position in Juniper. The Global Equity Derivatives Department proposed several alternatives and recommended a program entitled "Enhanced Equity Monetization Securities," which consisted of private contracts between eligible investors and Smith Barney. According to Smith Barney, these contracts allowed investors to monetize a portion of their equity position without realizing a taxable event. Sathianathan rejected the Global Equity Derivatives Department's proposal. Instead, he recommended that Venkatramani hold his Juniper shares until early 2001, at which time they would be eligible for long-term capital gains treatment, and diversify his holdings by purchasing mutual fund shares on margin using the Juniper shares as collateral.

On September 26, 2000, consistent with the strategy proposed by Sathianathan, Venkatramani purchased \$200,000 of Class B shares in each of fourteen different mutual funds, none of which was in the same fund family. Sathianathan also recommended that Venkatramani invest \$500,000 in the Smith Barney Spectrum Fund, a new Smith Barney fund, because Sathianathan claims he felt pressure to put some of Venkatramani's assets into a Smith Barney product. Sathianathan stated that he "didn't want to buy Smith Barney funds, but [he] felt obliged to buy one, so [he] bought a new one [for Venkatramani's account], a brand new one with no bad record or whatever." Venkatramani's Smith Barney account was non-discretionary, and each of the mutual fund purchases was made based on Sathianathan's recommendation. Venkatramani invested a total of \$3.3 million, and all of the purchases were effected on margin using Juniper stock, which closed at \$230.50 per share on September 26, 2000, as the margin collateral. At the time that Sathianathan made his recommendations to Venkatramani, the account was erroneously credited with additional shares of stock he did not own, and this resulted in the account being overvalued by approximately \$3 million for a total account value of approximately \$13 million. Sathianathan received \$66,600 in commissions as a result of Venkatramani's purchases.

Sathianathan testified that he had little experience with mutual fund investments at the time that he made his recommendations to Venkatramani. In preparing his recommendations, Sathianathan reviewed the funds' information from Morningstar and the funds' three-year performance records, but did not compare the funds' securities holdings to determine whether Venkatramani could have achieved appropriate diversification by using fewer funds or funds

within the same fund family. Sathianathan also recommended that Venkatramani purchase Class B shares of the recommended mutual funds to avoid the front-end sales charges levied on the purchase on Class A shares. Sathianathan specifically recommended that Venkatramani purchase \$200,000 in each fund because he knew that many investment companies prohibit purchases of Class B shares, rather than Class A shares, in larger amounts. Sathianathan also stated that he was focused not on breakpoints but on obtaining commissions and increasing the amount of assets under his management.

Also on September 26, 2000, Venkatramani invested, on Sathianathan's recommendation, \$1 million in index warrants issued by Smith Barney. The prospectus for the index warrants stated that the warrants involved "a high degree of risk" and that purchasers "should be prepared to sustain a total loss of the purchase price of their warrants." Venkatramani purchased the warrants on margin, and he used Juniper stock as the collateral for the margin loan. Sathianathan received a six percent commission for the purchase of the warrants.

During the three months that followed the purchases described above, the price of Juniper shares fell from a closing price of \$230.50 per share on September 26, 2000, to a closing price of \$123.12 per share on December 22, 2000. On December 26, 2000, pursuant to Sathianathan's recommendation, Venkatramani invested \$200,000 in each of three different mutual funds which were in different fund families, none of which Venkatramani previously had purchased. Venkatramani purchased these funds on margin using Juniper stock as the margin collateral.

Juniper's stock price continued to decline into early 2001. In February 2001, when Juniper's stock price had fallen below \$100 per share, Venkatramani's account began to become subject to margin calls. On February 8, 2001, based on Sathianathan's recommendation, Venkatramani sold the Smith Barney warrants for approximately \$925,000 to cover a margin call resulting in a loss of approximately \$75,000. On February 14, 2001, Venkatramani sold approximately \$470,000 in shares of the Smith Barney Spectrum Fund resulting in a loss of almost \$30,000. Two days later, on February 16, 2001, Venkatramani redeemed \$75,000 in each of 17 different mutual funds for a total redemption of \$1,275,000. The price declines in the Juniper collateral, and the resulting margin calls and liquidations of the mutual funds, caused Venkatramani to incur a loss of approximately \$680,000, as well as approximately \$44,000 in CDSCs.

On February 16, 2001, Sathianathan voluntarily left Smith Barney and joined Morgan Stanley. Nevertheless, Venkatramani's assets continued to be sold to cover the margin balance at Smith Barney. By mid April 2001, Venkatramani was forced to redeem all of the mutual funds and sell a portion of his Juniper stock. Ultimately, Venkatramani paid over \$100,000 in CDSCs and a little over \$193,000 in margin interest.

Sathianathan Purchases Juniper Stock for Venkatramani's Account

On April 12, 2001, the approximately \$2.6 million in Juniper stock that remained in Venkatramani's Smith Barney account was transferred to Morgan Stanley. That same month, Sathianathan recommended that Venkatramani sell 25,000 Juniper shares at a time when the stock price had rebounded from a low of \$30 per share to over \$50 per share. Two days later Venkatramani sold an additional 8,000 shares of Juniper stock at Sathianathan's urging. Venkatramani was unhappy with the price at which the shares were sold, and he and Sathianathan subsequently discussed a trading strategy to recoup some of the losses Venkatramani had incurred. According to Sathianathan, the basic plan was "to sell [Juniper stock] when the price of the stock was high and then to buy it back when it was lower and to do this over the next few years (if need be) by trying to time the market rallies in summer and January."

In May 2001, Venkatramani sent Sathianathan an e-mail in which he relayed a rumor that Juniper would be added to the S&P 500. Sathianathan believed that, if the rumor proved to be correct, Juniper's stock price would increase. Based on the strategy they had discussed earlier and on this rumor, Sathianathan decided to buy back a portion of the 33,000 shares of Juniper stock that Venkatramani had sold in April. On May, 29, 2001, while Venkatramani was out of the country and Sathianathan could not reach him, Sathianathan purchased 13,000 Juniper shares for Venkatramani's account for approximately \$47 per share. On June 8, 2001, Sathianathan purchased an additional 10,000 shares of Juniper stock for Venkatramani's account for approximately \$38 per share.

On August 2, 2001, Venkatramani sent an e-mail to Sathianathan, in which he indicated that he had not authorized the purchase of 23,000 Juniper shares and that the unauthorized trades had resulted in \$400,000 in losses. In response, Sathianathan represented that his decision to purchase the 23,000 Juniper shares was "purely based on what I thought was a strong family relationship that you and I have through the fact that one of your best friends is my brother."

Sathianathan's Recommendations to Srinath

In late May or early June 2000, Srinath met with Sathianathan. After that meeting, Srinath transferred his existing Smith Barney account to the Little Falls branch office so that Sathianathan could serve as his financial consultant. When Srinath first discussed his account with Sathianathan, he informed Sathianathan that his objectives were to diversify his holdings and to protect his net worth. Sathianathan also was aware that Srinath had little previous investment experience and "minimal" experience with mutual funds. Srinath's account opening application, however, indicated that his risk tolerance was aggressive and that his investment objectives included speculative investments. By December 2000, Srinath had transferred, at Sathianathan's urging, all of the assets in his other Smith Barney accounts to his account at the Little Falls branch office.

In December 2000, Sathianathan recommended that Srinath purchase \$1,750,000 in Class B shares of different mutual funds. Although Sathianathan recommended that Srinath purchase these shares using a margin loan with Juniper stock as collateral, Srinath decided against using margin loans to fund the purchases. Instead, Srinath instructed Sathianathan to sell a portion of his Juniper stock to pay for the mutual fund purchases, and Srinath purchased \$150,000 of Class B shares in each of nine stock mutual funds. Srinath also instructed Sathianathan to invest a portion of his assets in two bond funds. Sathianathan purchased for Srinath \$200,000 in each of two bond mutual funds; none of the funds was in the same fund family. Sathianathan admitted that he performed no independent analysis of the funds he recommended to Srinath. Rather, he selected a subset of the mutual funds that he had recommended to Venkatramani three months earlier.

Procedural History of NASD Disciplinary Action Against Sathianathan

In late 2001, NASD began an investigation of Sathianathan following Smith Barney's filing of an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5") that disclosed a customer complaint by Venkatramani involving Sathianathan. An NASD Hearing Panel (the "Hearing Panel") conducted a two-day disciplinary hearing in July 2004. On November 30, 2004, the Hearing Panel issued a decision that found that Sathianathan had violated NASD Rules 2310, 2510, and 2110. The Hearing Panel dismissed an allegation that Sathianathan committed fraud. The Hearing Panel barred Sathianathan from associating with any NASD member firm in any capacity for the suitability rule violations and did not impose a separate sanction for the unauthorized discretionary trading.

Sathianathan appealed the decision of the Hearing Panel to NASD's National Adjudicatory Council ("NAC"). On March 7, 2005, and on March 10, 2005, he filed motions to adduce additional evidence on appeal. In addition, Sathianathan submitted a letter dated May 11, 2005, to NASD's Office of the General Counsel containing two exhibits. The NAC treated portions of this letter as a further motion to adduce additional evidence. The subcommittee of the NAC assigned to hear the case considered all three motions and, in a letter dated July 8, 2005, issued its ruling admitting one of the exhibits and denying the motions to adduce with respect to the other exhibits, but including the exhibits in the record before us on appeal. On June 23, 2005, and on June 29, 2005, Sathianathan again sought leave to adduce further additional evidence, and the subcommittee denied the motions as untimely in a letter dated July 20, 2005. All of the subcommittee's rulings regarding Sathianathan's motion to adduce additional evidence were affirmed by the NAC.

With respect to the allegations against Sathianathan, the NAC, in a decision dated February 21, 2006, found that his recommendations were unsuitable in numerous ways and that he was motivated by his own interest and financial gain. The NAC determined that Sathianathan's violations of the suitability rule and numerous aggravating factors warranted a bar under the relevant Sanction Guidelines.

Sathianathan appealed NASD's decision to the Commission on March 26, 2006. After submitting an amended initial brief on May 25, 2006, and a reply brief on July 10, 2006, he submitted a motion to adduce additional evidence on August 25, 2006. Sathianathan attached to the motion the twenty-two additional exhibits he sought to adduce. One of the exhibits already has been admitted by the NAC upon Sathianathan's motion. Another exhibit is a BNA article from 2005 containing a quantitative analysis of a portion of NASD disciplinary decisions over a four-year span.

Seventeen of the documents had been included in Sathianathan's motions to adduce evidence before the NAC. Sathianathan has not shown with particularity that the additional evidence he seeks to introduce is material and that there are reasonable grounds for his failure to adduce the evidence previously as he is required to do by Rule 452 of the Commission's Rules of Practice. ^{2/} Nevertheless, as a discretionary matter, we will admit these seventeen documents into evidence in this proceeding.

The remaining three documents Sathianathan seeks to adduce are descriptions, handwritten by Sathianathan, of documents that he asked NASD to compel from Smith Barney and Morgan Stanley. These documents are Srinath's account application from his account at Smith Barney's Menlo Park office, Srinath's January 2001 Smith Barney account statement, and an e-mail that Sathianathan alleges Venkatramani sent to an associated person of Morgan Stanley in May 2001.

NASD denied his request to compel the account application and the account statement as untimely. With respect to the e-mail, the subcommittee of the NAC noted "recent press reports" that indicated that Morgan Stanley might have access to e-mails to which it earlier had denied having access. The subcommittee determined not to remand the case to the Hearing Panel given the amount of time that had elapsed since the conduct at issue. Rather, the subcommittee determined to "credit [] Sathianathan's contention regarding a May 2001 e-mail" and provided him "an opportunity, in writing, to state his recollection as to the contents of the e-mail." There is no evidence in the record that Sathianathan made such a submission.

Sathianathan cannot move to adduce these three documents because he does not have them in his possession. Therefore, we are construing his motion to adduce these documents as an argument that NASD erred in refusing to compel them. NASD Procedural Rule 9252 enables respondents to request that NASD invoke Rule 8210 to compel production of documents in disciplinary hearings. Rule 9252, however, requires respondents to make such a request no later than 21 days before the scheduled hearing date in the underlying proceeding. Sathianathan did not file his request until after the Hearing Panel issued its decision. Moreover, NASD Procedural Rule 9346 requires a respondent who seeks to adduce additional evidence on appeal to demonstrate good cause for failing to introduce the evidence before the Hearing Panel and to show that the evidence is material.

^{2/} 17 C.F.R. § 201.452

Sathianathan has not established good cause for his failure to introduce the account application and account statement before the Hearing Panel. Sathianathan also has failed to establish that the documents are material. He states that the account statement "will refute the NASD's attempt to draw a parallel between my recommendations to [Venkatramani] and my recommendations to [Srinath]." However, the contents of Srinath's account statement are not material given that Sathianathan admitted that he performed no independent analysis of the funds he recommended to Srinath and instead selected them from a subset that he had recommended to Venkatramani. He states that the account application "refutes NASD's unsubstantiated allegation that [he] made misrepresentations on Srinath's account application form." NASD, however, did not charge Sathianathan with making misrepresentations on the account statement. In addition, Sathianathan makes no argument concerning NASD's ruling providing him with the opportunity to state his recollection of the alleged May 2001 e-mail or his failure to make a submission stating his recollection of the contents of that e-mail as provided by NASD. Given these facts, we cannot conclude, as Sathianathan would have us do, that NASD committed error in refusing to compel the three documents at issue.

III.

Unsuitability

NASD Conduct Rule 2310 requires that, in recommending a transaction to a customer, a registered representative "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." ^{3/} As we have frequently stated, a broker's recommendations must be consistent with his customers' best interests. ^{4/}

Sathianathan's Recommendations to Venkatramani

The recommendations that Sathianathan made to Venkatramani were unsuitable in numerous ways. Sathianathan knew that Venkatramani's investment objectives were to preserve his newly acquired wealth and to obtain moderate growth, and that he had no prior investment experience. Sathianathan even sought pricing models from Smith Barney's Global Equity Derivative Department on various hedging strategies intended to protect Venkatramani's wealth which was concentrated in one highly volatile stock. The Global Equity Derivative Department responded with several alternatives and a recommended strategy. Sathianathan rejected the

^{3/} See Maximo Justo Guevara, 54 S.E.C. 655, 662 (2000), petition denied, 47 Fed. Appx. 198 (3d Cir. 2002) (Table); Rafael Pinchas, 54 S.E.C. 331, 341 (1999).

^{4/} Wendell D. Belden, Exchange Act Rel. No. 47859 (May 14, 2003), 80 SEC Docket 699, 704; Jack H. Stein, Exchange Act Rel. No. 47335 (Feb. 10, 2003), 79 SEC Docket 2276, 2280; Daniel Richard Howard, 55 S.E.C. 1096, 1100 (2002), aff'd, 77 Fed. Appx. 2 (1st Cir. 2003).

Department's recommendation and instead recommended that Venkatramani increase the leverage in his account by purchasing approximately \$4 million in seventeen different mutual funds and the Smith Barney fund, in eighteen different fund families, and \$1 million in speculative warrants on margin using the highly speculative Juniper stock as the sole collateral.

Sathianathan's recommendations that Venkatramani invest in Class B shares in seventeen different mutual funds (in addition to shares in the Smith Barney fund), all in different fund families, were unsuitable because they were designed to maximize his own commissions rather than to establish a suitable portfolio. When breakpoints are available, Class B shares, while maximizing the commissions paid to the account representative, often entail greater fees and expenses than Class A shares. Yet Sathianathan recommended that Venkatramani purchase \$200,000 in each fund because Sathianathan was aware that many fund companies prohibit purchases of Class B shares in larger amounts. He admitted he structured the purchases to avoid these limitations and to prevent the fund companies from requiring that the purchases be made in Class A shares. He admitted that his recommendations were based, at least in part, on his desire to maximize his commissions.

Moreover, by recommending that Venkatramani purchase Class B shares in seventeen different fund families and shares in the Smith Barney fund, Sathianathan ensured that Venkatramani's purchases would not be aggregated to qualify for Class A share breakpoint discounts and the resulting lower commissions. Although Sathianathan claims the purpose of his recommendation of so many different funds was to diversify Venkatramani's account, he admitted that he gave no serious consideration to whether he could have achieved appropriate diversification in Venkatramani's account while allowing him to take advantage of breakpoint discounts offered on Class A shares. Rather, Sathianathan recommended that Venkatramani structure his mutual fund purchases in plain disregard of the mutual funds' policies, expressed through the dollar limits on the purchase of Class B shares, that it would be more advantageous for an investor making a large investment to purchase Class A shares, and in disregard of NASD's directions to its members to consider all of the expenses charged, and discounts offered, by a mutual fund in determining whether the purchase of that fund's shares is suitable. ^{5/}

Sathianathan's recommendation that Venkatramani use margin for his purchases also was unsuitable given that his investment objectives were moderate growth and the preservation of capital, and that he had no prior investment experience. Using a margin loan with the highly

^{5/} Wendell D. Belden, 80 SEC Docket at 704-06; see also Suitability Issues for Multi-Class Mutual Funds, NASD Regulatory and Compliance Alert (Summer 2000) ("[M]embers generally should not recommend Class B or C shares to investors who seek to purchase in large amounts and who would incur significantly lower sales charges for Class A share purchases due to the availability of breakpoints, rights of accumulation, or letters of intent."); NASD Notice to Members 95-80 (Sept. 1995) (reminding members that, in determining whether a fund is suitable for an investor, a member should consider the fund's expense ratio and sales charges as well as its investment objectives).

speculative Juniper stock as collateral failed to manage the risk posed to Venkatramani by his concentrated holdings in that stock. Moreover, the margin purchase added an additional source of volatility to the portfolio, and required Venkatramani to pay interest charges on the margin loan, adding to the cost of maintaining the account and increasing the amount by which his investment had to appreciate before realizing a net gain. ^{6/} The recommendation to use margin to purchase Class B mutual fund shares also failed to take into account the possibility that Venkatramani would have to pay CDSCs if, as ultimately happened, he had to sell Class B shares in order to cover margin calls prior to the expiration of the CDSC period. Sathianathan admitted that he failed to consider the consequences if a margin call were to occur, likening the event to the chances of "a meteorite hitting New York City tomorrow."

Sathianathan's recommendation that Venkatramani invest \$1 million in speculative Smith Barney warrants also was unsuitable given Venkatramani's stated investment objective to preserve his newly acquired wealth by diversifying his holdings. The warrants could potentially expire worthless, and the prospectus stated that the warrants involved "a high degree of risk." Sathianathan has not articulated a reason as to why he believed the purchase of the warrants would further Venkatramani's investment goals or was consistent with an investment strategy of moderate growth and preservation of capital.

Sathianathan's Recommendations to Srinath

The recommendations that Sathianathan made to Srinath also were unsuitable. Sathianathan's recommendations that Srinath invest in Class B shares in nine different mutual funds in nine different fund families resulted in unnecessary costs. Sathianathan's mutual fund recommendations to Srinath, like those he made to Venkatramani, were designed to maximize his own commissions, and they failed to account for the fact that by aggregating Srinath's purchases into fewer funds and fewer fund families and by purchasing Class A shares rather than Class B shares, Srinath could have qualified for breakpoint discounts available with Class A shares and could have paid less in fees and expenses.

^{6/} See Stephen Thorlief Rangen, 52 S.E.C. 1304, 1307-08 (1997) (finding the use of margin to be unsuitable for unsophisticated investors who were seeking income producing investments and did not wish to speculate). To avoid the use of margin to purchase the mutual funds, Venkatramani would have had to liquidate part of his position in Juniper stock and incur capital gains taxes, which may have been more costly than paying margin interest. However, Sathianathan does not claim, and nothing in the record indicates, that he weighed the suitability of paying margin interest instead of incurring capital gains taxes or that he analyzed the impact of the choice of whether to liquidate Juniper stock or to use it as collateral on the total risk to Venkatramani's position.

Sathianathan's Arguments

Sathianathan provides several reasons why he believes the recommendations that he made were suitable. Sathianathan maintains that it is wrong to assume that Class B shares were unsuitable given the amounts invested by Venkatramani and Srinath. He contends that the fact that many mutual fund companies restrict Class B share purchases to amounts at or below \$250,000 is a "strong signal that Class A shares are more profitable than Class B shares for the mutual fund companies." He argues that, accordingly, recommending Class A shares to his customers would have violated "basic expectations of the workings of free markets . . . that what is more profitable for the mutual fund family is more costly for customers."

Sathianathan offers nothing in support of this proposition. To the contrary, he admits in his brief on appeal that a customer investing over \$1 million in mutual funds can benefit from the breakpoint discounts offered on Class A shares. Moreover, he admitted that, prior to making his recommendations, he failed to perform any calculations or to consider hypothetical scenarios to determine which class of shares would be more beneficial to the customers in the long run. Sathianathan cites to "academic studies conducted by Nobel prize winning economists" that he asserts show that investors generally prefer not to pay initial sales charges even if they have to pay more in deferred charges. He also refers to "basic financial theory that more diversification is better."

There is no evidence, however, that Venkatramani and Srinath ever manifested a preference to avoid up-front charges. More fundamentally, a general preference "not to pay initial sales charges" does not address whether Class B shares, with their lack of up-front sales charges but higher costs and commissions, were suitable for these customers. While Class B shares may be suitable for some investors, particularly those who cannot take advantage of breakpoint discounts, Venkatramani and Srinath were investing millions of dollars and would have qualified for breakpoint discounts had they invested in Class A shares in fewer fund families. In addition, a general preference to avoid initial sales charges does not address the risk that Venkatramani would have to pay CDSCs if he had to sell Class B shares in order to cover margin calls prior to the expiration of the CDSC period. Moreover, the assertion that more diversification is better is beside the point; Sathianathan could have achieved appropriate diversification while obtaining the lower costs available when purchasing Class A shares had he recommended that Venkatramani and Srinath select mutual funds from fewer mutual fund families.

Sathianathan argues that NASD made an incomplete analysis of the cost of concentrating mutual fund purchases into a small number of mutual fund families in order to purchase lower-cost Class A shares. Specifically, he claims that, as an associated person of Smith Barney, he would have been forced to purchase Smith Barney funds, which he contends were poor-performing and expensive and, therefore, unsuitable. Without accepting Sathianathan's conclusions with respect to the performance of Smith Barney funds, this argument is based on

the faulty assumption that the only alternative to Sathianathan's unsuitable recommendation was to invest all of his customers' assets in Smith Barney funds.

Sathianathan argues that various applications for accounts opened by Venkatramani at Smith Barney and at other firms establish that Venkatramani's investment objective was growth and that he was interested in aggressive and speculative investing. He further argues that it is incorrect to infer, as he claims NASD did, that Sathianathan made material misrepresentations on the account application that he filled out for Venkatramani. However, the application that Sathianathan completed was inconsistent not only with Venkatramani's earlier Smith Barney application that indicated his risk tolerance was moderate rather than aggressive and that his investment objectives did not allow for speculation, but also with Sathianathan's testimony that Venkatramani had informed him that Venkatramani's investment objective was the preservation of capital and that, as Sathianathan stated, "his level of sophistication was almost zero." Sathianathan's testimony and Venkatramani's first Smith Barney application establish that Venkatramani's investment objective was to obtain moderate growth and preserve his wealth, and Sathianathan's recommendations were unsuitable given these objectives.

Sathianathan argues that NASD did not consider his entire recommendation to Venkatramani. Sathianathan claims that he originally recommended that Venkatramani hedge his concentrated position in Juniper stock and that this recommendation was suitable. However, even if he did so, the fact that Sathianathan originally may have made a suitable recommendation does not change the fact that his subsequent recommendations, the ones on which Venkatramani acted, were unsuitable. Sathianathan also claims that NASD failed to consider that he made a calculation of the "return versus risk tradeoff that turned out to be incorrect due to a historic stock market collapse" and Smith Barney's error in crediting Venkatramani's account with additional shares at the time of his September recommendations. However, neither the overall performance of the stock market nor Smith Barney's error change the fact that Sathianathan's recommendations were unsuitable because they involved unnecessary costs and were too risky given the investment objectives and investment experience of his customers. In addition, while Sathianathan appears to argue that the amount of margin that Venkatramani assumed was suitable given Smith Barney's overvaluation of his account, the issue is not the amount of margin but whether the use of margin collateralized by a highly speculative security was suitable for an unsophisticated investor seeking moderate growth. As we conclude above, under the circumstances presented here, Sathianathan's recommendation that Venkatramani use margin was unsuitable.

Accordingly, we find that Sathianathan's recommendations to Venkatramani and Srinath were unsuitable in violation of NASD Conduct Rules 2310 and 2110. ^{7/}

Unauthorized Trades

NASD Conduct Rule 2510(b) prohibits a registered representative from exercising any discretionary power in a customer's account without prior written authorization from the customer and written acceptance from the member firm. Conduct Rule 2510(d)(1) provides that these requirements do not apply to "discretion as to the price at which or time when an order given by a customer" to purchase or sell a "definite amount" of a "specified security" will be executed. ^{8/}

Sathianathan exercised discretion in Venkatramani's account when he purchased 23,000 shares of Juniper stock while Venkatramani was out of the country. It is undisputed that Venkatramani did not know of these trades at the time they were made, and he did not provide Sathianathan with written authorization to make the transactions. Sathianathan argues that he had price and time discretion to make the trades in accordance with Conduct Rule 2510(d). However, Sathianathan's testimony and his e-mail communications with Venkatramani show that the two men discussed a general strategy whose "basic plan was to sell [Juniper shares] when the price of the stock was high and then to buy it back when it was lower and to do this over the next few years (if need be) by trying to time the market rallies in summer and January." Sathianathan and Venkatramani did not agree on specific amounts for each of these purchases. When Sathianathan purchased the 23,000 Juniper shares, he did so pursuant to this general strategy and a rumor that Juniper might be added to the S&P 500. These general strategy discussions, however, did not include specific orders for the purchase of a definite amount of Juniper stock. Moreover, Sathianathan admitted that his decision to purchase the 23,000 Juniper shares was not based on an order to purchase a definite amount of Juniper stock, but instead was "purely based on what I thought was a strong family relationship that you and I have through the fact that one of your best friends is my brother." We find that Sathianathan violated NASD Conduct Rules 2510(b) and 2110 by exercising discretionary authority over Venkatramani's account without prior written authorization.

^{7/} NASD charged Sathianathan with violating Conduct Rule 2110, which directs registered representatives of NASD member firms to conduct their business in accordance with just and equitable principles of trade. It is well established that a violation of a Commission or NASD rule or regulation constitutes a violation of Conduct Rule 2110. See Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999).

^{8/} Conduct Rule 2510(d)(1) was amended effective January 31, 2005. See NASD Notice to Members 04-71 (Oct. 2004). We have analyzed Sathianathan's conduct under the rule in effect at the time of his alleged misconduct.

IV.

Sathianathan makes a number of arguments that, taken together, generally contend that NASD's disciplinary proceeding was deficient on procedural and due process grounds. These various claims can be grouped into three general categories: (1) that Sathianathan is a whistleblower and therefore cannot be subject to this disciplinary proceeding by NASD; (2) that he is the victim of selective prosecution by NASD; and (3) that the NASD proceedings were unfair and tainted by bias.

Sathianathan argues that NASD instituted this proceeding in retaliation for what he claims is his whistleblowing to federal and state enforcement authorities about "criminal activities by leading NASD member firms Smith Barney and Morgan Stanley" with respect to an arbitration proceeding that Venkatramani filed regarding Sathianathan's conduct. He states that, because this disciplinary action was brought in retaliation for his alleged whistleblowing, federal whistleblower statutes protect him from being sanctioned. Sathianathan cites to Section 1107 of the Sarbanes Oxley Act, which added paragraph (e) to Section 1513 of Title 18 of the United States Code, the federal criminal statute that protects a witness, victim, or informant from retaliation. It establishes criminal penalties for a person who knowingly, with the intent to retaliate, takes an action harmful to a person for providing to law enforcement truthful information about the commission or possible commission of a federal offense. Sathianathan also relies on Sections 241 and 242 of Title 18 which establish criminal penalties for conspiring to injure, oppress, threaten, or intimidate any person in the free exercise of a right or privilege provided by the Constitution or the laws of the United States.

As an initial matter, we note that although Sathianathan raises the argument that he is a whistleblower numerous times throughout the record, he never clearly identifies the allegedly criminal activities about which he allegedly informed enforcement authorities beyond the general classifications of "material perjury" and "fraudulent activities." Even assuming, however, that Sathianathan had knowledge of unlawful activity about which he informed federal or state authorities, the statutes that Sathianathan cites do not provide him with immunity in this disciplinary proceeding. Sections 241, 242, and 1513 of Title 18 are federal criminal statutes directed at punishing prohibited retaliatory action by a party against a person who has provided to law enforcement truthful information about the commission or possible commission of a crime. They do not purport to provide a defense in a disciplinary action or to estop NASD from taking disciplinary action consistent with its rules. As such, these provisions are not relevant with respect to this disciplinary proceeding and do not provide Sathianathan with an affirmative defense or immunity from sanction for his misconduct.

Sathianathan also argues that he has been selectively targeted by NASD as a result of his whistleblowing and his refusal to assist Smith Barney in the Venkatramani arbitration proceeding. To establish a claim of selective prosecution, a petitioner must demonstrate that he was unfairly singled out and that his prosecution was motivated by improper considerations such

as race, religion, or the desire to prevent the exercise of a constitutionally protected right. ^{9/} No such showing was made here. The record is clear that this proceeding resulted from an investigation by NASD in response to Smith Barney and Morgan Stanley amending Sathianathan's Forms U-5 and U-4, as they were required to do by NASD rules, to reflect Venkatramani's customer complaint and, later, his arbitration claim. Moreover, NASD conducted its own investigation and prosecuted the case based on the facts in the record and there is no evidence that NASD gave any consideration to any alleged whistleblowing by Sathianathan with respect to Venkatramani's arbitration.

Sathianathan argues that the amendment to his Form U-5 that Smith Barney filed to reflect Venkatramani's customer complaint establishes that this action was motivated by improper considerations. Sathianathan claims that Smith Barney's amendment of his Form U-5 was retaliatory and defamatory. Even were it true that Smith Barney acted with improper motives, this does not establish that NASD's investigation and prosecution were motivated by improper concerns. Moreover, Sathianathan has failed to establish that Smith Barney acted with retaliatory motive, given that Smith Barney was required to report the customer complaint pursuant to NASD By-Laws. ^{10/}

Sathianathan further asserts that prosecution based on improper considerations can be inferred from the fact that the NAC claimed that the investigation was triggered when Smith Barney amended his Form U-5 on November 16, 2001, to reflect the filing of an arbitration claim by Venkatramani, but that Venkatramani did not file for arbitration until February 7, 2002. This contention is baseless. The NAC erred in stating that the November 16, 2001, Form U-5 that triggered the investigation was based on the filing of an arbitration claim rather than a customer complaint, but this error does not establish retaliatory motive.

Sathianathan also asserts that NASD's proceedings were unfair and biased. Among other things, he contends that he was prevented from communicating with officers of NASD and from referring to or reviewing his exhibits while testifying. Our review of the transcript of the hearing indicates that the Hearing Panel attempted to confine the record to relevant evidence and to ensure that NASD's procedures were being followed. We see no evidence of bias or that Sathianathan was treated unfairly in any way. The record indicates that Sathianathan was given wide latitude to present evidence and make arguments. The Hearing Officer allowed Sathianathan to file a forty-two page single-spaced pleading that the Hearing Officer admitted as a post-hearing brief, even though the Hearing Panel had not requested post-hearing briefs. We

^{9/} United States v. Huff, 959 F.2d 731, 735 (8th Cir. 1992); see also Maximo Justo Guevara, 54 S.E.C. 655, 665 (2000); Richard J. Puccio, 52 S.E.C. 1041, 1046 (1996).

^{10/} NASD By-Laws, Art. V, Sec. 3(b).

conclude that Sathianathan had a full and fair opportunity to present his case and defend himself against the charges alleged by NASD. 11/

V.

Exchange Act Section 19(e) provides that we may cancel, reduce, or require the remission of a sanction if we find that it imposes an unnecessary or inappropriate burden on competition, or if it is excessive or oppressive. 12/ NASD 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. 13/ Using these Guidelines, NASD found that Sathianathan's unsuitable recommendations warranted a bar.

We conclude, as did NASD, that Sathianathan engaged in repeated violations of the suitability rule. He recommended multiple purchases of Class B shares of mutual funds to Venkatramani and Srinath that were unsuitable because they were designed to maximize his commissions rather than to establish an appropriate portfolio in that his customers could have invested in lower-cost Class A shares given the large amounts that they intended to invest. His recommendations that Venkatramani purchase the mutual funds and warrants on margin using his concentrated position in Juniper stock as collateral were unsuitable because they entailed too much risk given Venkatramani's investment objectives and experience. He recommended that Venkatramani purchase speculative index warrants that were unsuitable given his investment objectives of moderate growth and preservation of wealth and given his lack of investment experience. Sathianathan's numerous violations of NASD's suitability rule warrant serious sanctions.

NASD also identified numerous aggravating factors. Sathianathan's misconduct resulted in substantial losses to his unsophisticated customers and resulted in his own monetary gain. His misconduct occurred after he had been placed on probation by his supervisor and after he had been instructed specifically to limit his use of margin, to ensure proper asset allocation and diversification, and to eliminate excessive trading or commissions. He has sought to shift the blame for his violations to others, repeatedly blaming his supervisors, the firms with which he was associated, and general market conditions for his violative conduct. His statement that "instead of blaming customers [Venkatramani] and [Srinath], I have been pro-investor by

11/ Rita H. Malm, 52 S.E.C. 64, 74 (1994) (respondents in self-regulatory organization disciplinary proceedings are entitled to a full and fair opportunity to present their case and defend themselves against charges).

12/ 15 U.S.C. § 78s(e)(2). Sathianathan does not claim, and the record does not show, that NASD's action has imposed an undue burden on competition.

13/ NASD Sanction Guidelines 99 (2006).

blaming my former employer [NASD member] firms" reveals a troubling inability to accept accountability for his own conduct. Sathianathan's arguments to us have demonstrated a fundamental lack of understanding of his duties as a securities professional in general and his responsibility to provide his customers with suitable recommendations in particular. Under the circumstances, a bar from association with any broker or dealer serves to protect the investing public from further harm.

Sathianathan contends that the sanctions imposed upon him are too severe when compared with sanctions imposed in other NASD disciplinary proceedings. The appropriate sanction, however, depends on the facts and circumstances of each particular case. ^{14/} Moreover, one of the two cases cited by Sathianathan is a settled case. ^{15/} We have repeatedly stated that pragmatic considerations may justify lesser sanctions in negotiated settlements. ^{16/} In the other case, an NASD hearing panel imposed a one-year suspension and a fine of \$25,000 for what it concluded was a "serious" violation of its suitability rule, but the dollar amounts invested were significantly smaller than those invested here. ^{17/} Sathianathan also points to the fact that NASD imposed two bars, one for the unsuitable recommendations made to Venkatramani and the other for the unsuitable recommendations made to Srinath, as evidence that NASD treated him differently than other associated persons, and asserts that NASD has never before imposed multiple bars on one applicant. His assertion is factually incorrect: NASD has imposed more than one bar on a single applicant when a complaint includes multiple causes of action that the adjudicator determines warrant separate sanctions. ^{18/} Therefore, we reject his

^{14/} See Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973); Jonathan Feins, 54 S.E.C. 366, 380 & n.36 (1999); Christopher J. Benz, 52 S.E.C. 1280, 1285 (1997), petition denied, 168 F.3d 478 (3d Cir. 1998) (Table).

^{15/} See NASD Regulation Censures and Fines Stifel, Nicolaus & Company, and Two Individuals for the Unsuitable Sale of Class B Mutual Fund Shares, NASD Notice to Members - Disciplinary Actions 318 (May 2001).

^{16/} See, e.g., Anthony A. Adonnino & Thomas Cannizzario, Exchange Act Rel. No. 48618 (Oct. 9, 2003), 81 SEC Docket 981, 999, aff'd, 111 Fed. Appx. 46 (2d Cir. 2004); Richard J. Puccio, 52 S.E.C. 1041, 1045 (1996).

^{17/} See Dep't of Enforcement v. Fantetti, (Hearing Panel decision, July 18, 2005).

^{18/} See, e.g., Guang Lu, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 64 SEC Docket 2639 (sustaining two separate bars, one for failure to obtain written authorization before transacting trades in discretionary accounts and the other for providing a false answer on Form U-4), aff'd, No. 05-1153 (D.C. Cir. May 9, 2006)

claim that the sanctions imposed on him are disproportionate to those imposed in other cases. For all the reasons stated above, we do not find the sanctions imposed by NASD to be excessive or oppressive.

Accordingly, we sustain NASD's findings of violation and the sanctions it imposed against Sathianathan. An appropriate order will issue. 19/

By the Commission (Chairman COX and Commissioners ATKINS, CAMPOS, NAZARETH and CASEY).

Nancy M. Morris
Secretary

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54722 / November 8, 2006

Admin. Proc. File No. 3-12245

In the Matter of the Application of

RAGHAVAN SATHIANATHAN
c/o S.T. Allen & Co.
336 Bloomfield Avenue
Montclair, NJ 07042

For Review of 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 Raghavan Sathianathan,
and NASD's assessment of costs be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris
Secretary