STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

IN THE MATTER OF: Richard Michael Barber CRD #1636416	:	CONSENT ORDER

BEFORE MARC B. MINOR, BUREAU CHIEF

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("Bureau Chief") by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law"), and after investigation, review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief has determined that civil monetary penalties and other remedies be assessed against Richard M. Barber ("Barber").

WHEREAS, the New Jersey Bureau of Securities ("Bureau") is the State agency with the responsibility to administer and enforce the Securities Law; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Securities Law; and

WHEREAS, the Bureau has conducted an investigation into certain activities occurring in the Short Hills, New Jersey branch office of A.G. Edwards & Sons, Inc. during the period of March 2004 through May 2006 where Barber acted as branch manager; and

WHEREAS, Barber and the Bureau Chief wish to resolve these issues without the expense and delay that formal administrative proceedings would involve; and

WHEREAS, Barber consents to the form and entry on this Consent Order without admitting or denying the allegations set forth herein. Accordingly, Barber waives the following rights:

a. To be afforded an opportunity for hearing on the Bureau Chief's findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and

b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order; and

WHEREAS, Barber agrees that for the purposes of settling this matter, or any future proceedings by the Bureau, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq.; and

WHEREAS, this Consent Order concludes the investigation by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against Barber for the conduct described herein.

FINDINGS OF FACT

The Bureau Chief makes the following findings of fact:

1. Richard Michael Barber (CRD #1636416) is an individual residing in Chatham, New Jersey.

2. Barber was registered as an agent of A.G. Edwards & Sons, Inc. ("AGE") with the Bureau from September 2003 through December 2007, and with Wells Fargo Advisers, LLC (CRD #19616) from January 2008 to June 2010.[1] He is not presently registered.

3. From September 2003 to June 2008, Barber served as branch office manager for the AGE/Wachovia Securities branch office located at 150 J.F.K. Parkway, Short Hills, New Jersey (the "Short Hills Branch"), and was responsible for the supervision of agents operating at that location.

4. From June 2008 to June 2010, Barber has served as an agent with Wells Fargo Advisers, LLC and worked out of the branch office located at 160 Mount Bethel Road, Warren, New Jersey.

5. In or around the fall of 2003, the AGE Short Hills Branch considered hiring Michael K. Jones (CRD #730365) ("Jones") as an agent of AGE.

6. Jones was registered as an agent of Citigroup Global Markets, Inc. (CRD #7059) ("Citigroup") from July 1993 through March 2004.

7. In or about February 2004, Jones met with Barber and an AGE regional manager about the possibility of employment with AGE. Also around this time, Jones' Citigroup associate, Jerette L. Lerner (CRD #2336016) ("Lerner"), met with Barber and the regional

[1] Effective October 2007, after the events at issue in this Order, Wachovia Securities and AGE merged, and Wachovia Securities acquired the retail brokerage and financial advisory assets of AGE. The assets of AGE were contributed to Wachovia Securities on January 1, 2008. Wells Fargo & Company, parent company of Wells Fargo Advisers, LLC, completed an acquisition of Wachovia Corporation, parent company of Wachovia Securities, on December 31, 2008. Subsequent references to Wells Fargo refer to these consolidated entities, unless otherwise noted.

manager of AGE. The goal of the meetings was to determine whether or not Jones and Lerner could be hired as a production team of agents for AGE.

8. In March 2004, Jones was permitted to resign from Citigroup amid allegations surrounding a failed short selling strategy.

9. AGE declined to hire Jones for the Short Hills Branch due to its concern over customer complaints related to the Citigroup allegations. At Barber's request, Lerner was hired as an agent for AGE in the Short Hills Branch in March 2004.

10. AGE's Branch Manager Supervisory Manual ("BMS Manual") provided that branch office managers were responsible to ensure that all AGE resources, including offices, telephones, fax machines, and computers were used for A.G. Edwards business only, unless prior approval had been obtained from the regional manager, director of branches and the Compliance Department. Despite this obligation, Barber allowed Jones to use certain AGE resources.

11. Barber did not supervise Jones' access nor know the extent to which Jones was accessing such resources.

12. Commencing with Lerner's employment with AGE in March 2004, Barber, as a way of lending moral support to Lerner, allowed Jones to occupy a desk in Lerner's office at the Short Hills Branch, despite AGE's decision to deny employment to Jones.

13. In addition to allowing the use of office space in the Short Hills Branch, Barber sent an email to his assistant branch manager requesting a modem line for Jones' use. A modem line was not installed for Jones, who used an existing fax line to access an external internet connection with his own computer to communicate, through email, with clients of Lerner without Barber's knowledge or consent.

14. AGE's clients called the main telephone number at the Short Hills Branch to have its receptionist connect them to Jones through one of two telephone extensions in Lerner's office.

Approximately one month into Lerner's employment with AGE, Barber was aware that Jones received calls at the Short Hills Branch from clients. Barber instructed personnel that anyone calling in for Jones should be told that he did not work there. Barber never contacted these clients to determine if they were aware that Jones was not an agent of AGE because Lerner told him they were old-time clients of hers and Jones who were confused in thinking she and Jones were still associated.

15. In a deposition conducted by the Bureau, Barber claimed that, upon hiring, Lerner requested that Jones be allowed to sit in her office with her to lend "moral support" to Lerner during the transition.

16. Additionally, Barber claimed he was accommodating Jones as a client since Jones had at least two accounts with AGE, each listing Lerner as broker of record.

17. Barber did not contact AGE's compliance or legal departments to discuss allowing Jones to access Lerner's office because Barber was unaware of the extent of his use of her office.

18. The Bureau found that Jones maintained regular business office hours during the workweek in the Short Hills Branch.

19. The BMS Manual indicates that branch managers are directly responsible for monitoring the activities of all employees under their supervision and the activity they perform in client accounts and prohibits the use of non-firm email accounts to communicate with clients. Further, the BMS Manual designated branch managers as accountable for "investigating activity that appears questionable and/or does not meet regulatory guidelines and firm policy and procedures."

20. Barber did not supervise Jones' activities when Jones was present in the Short Hills Branch

21. Jones met and spoke with Lerner's clients in the Short Hills Branch. In fact, certain clients believed Jones was an agent of AGE. Additionally, Barber knew that Jones was present in at least one meeting between an AGE client and Lerner in the Short Hills Branch in a client referral capacity.

22. Jones had access to copies of AGE confidential client information statements, trade confirmations, positions, and cash runs.

23. Without Barber's knowledge or consent, Jones accepted orders from AGE clients, without being registered through AGE. These orders were executed by Lerner through the AGE system.

24. Jones received correspondence addressed to him from AGE clients at the Short Hills Branch office address. The correspondence included new account opening documentation, account information, and Christmas cards. Barber was aware of this correspondence.

25. AGE's BMS Manual required branch office managers to retain a copy of all client correspondence with evidence of the branch office manager's review in a branch file. After Barber became aware of and reviewed some of the incoming correspondence address to Jones, he instructed the back office operations for the Short Hills Branch to make a copy of all this correspondence, place it in a file, and return the correspondence to the sender with a note "return to sender, does not work here" on the envelope. Barber did not review all of the incoming correspondence addressed to Jones.

26. Without Barber's knowledge or consent, Jones received a portion of Lerner's commissions for his securities activities and dealings with AGE clients, and concealed his portion of commissions from Barber and AGE in the form of loans which were created by Lerner and Jones outside of the Short Hills Branch office.

27. At no time during or after Jones' presence in the Short Hills Branch did Barber place any heightened supervision on the activities of Jones or Lerner.

28. In or around the summer of 2004, Barber became increasingly uncomfortable with Jones' presence in the Short Hills Branch. In or around September 2004, Barber again told Jones, after at least one prior request, to leave the premises of the Short Hills Branch. Jones complied.

29. In or around the fall of 2004, Barber became aware of a complaint against Lerner alleging unauthorized trading in a client account – approximately 12 months after the purchase – while Lerner was employed at Citigroup. AGE's Compliance Department recommended issuing a Letter of Education to Lerner concerning the allegation.

30. After issuing the Letter of Education to Lerner, Barber failed to impose any special supervision of Lerner, or institute any firm heightened supervision.

31. In or around March 2006, Barber suspected improper trading activity by Lerner and instructed his assistant branch manger to review a series of unsolicited trades for the same stock issue for certain of Lerner's clients. The review of the trading activity disclosed unauthorized trades executed by Lerner.

32. On or about May 19, 2006, as a result of these unauthorized trades, Barber terminated Lerner's employment with AGE.

33. Subsequent to Lerner's termination from AGE, Barber learned that Lerner was taking files from the Short Hills Branch when she was employed with AGE. Unbeknownst to Barber and AGE, Jones occupied office space on the first floor of the building in which the Short Hills Branch was located and Lerner delivered documents to Jones at that location. This location served as office space for MKJ Capital, an investment consultancy firm run by Jones.

34. After his expulsion from the Short Hills Branch in or around September 2004, Jones hand wrote and delivered weekly investment recommendations to Lerner. These recommendations, which Barber and AGE learned about after Lerner's termination, were consistent with trades made in Lerner's client accounts.

35. Jones made investment recommendations to some of Lerner's AGE clients that were unsuitable for their investment profile and resulted in over-concentration in their AGE securities accounts. These clients traded on these recommendations. As a result, some clients incurred significant losses in their accounts. Certain customers were offered compensation by AGE for their losses although none had complained about those purchases before Lerner was terminated.

36. During Lerner's two year employment at the Short Hills Branch, activity in her clients' accounts generated approximately $850,000 (exclusive of margin interest) in revenue for AGE.

37. By (i) allowing an unregistered person to maintain a presence in the Short Hills Branch, during which that person provided investment advice to clients of AGE, (ii) providing Jones with access to AGE resources, (iii) failing to implement reasonable supervision of the activities of Jones and Lerner in the Short Hills Branch, and (iv) failing to prevent unsuitable trading strategies to be recommended to clients, Barber created an environment where violations were likely to occur and failed to establish and enforce reasonable supervisory procedures to prevent and detect conduct in violation of the Securities Law.

CONCLUSIONS OF LAW

Solely for the purpose of this Consent Order, and without admitting or denying the Findings of Fact and Conclusions of Law, Barber consents to the Bureau Chief making the following Conclusions of Law:

1. In connection with (i) allowing an unregistered person to maintain a presence in the Short Hills Branch during which that person provided investment advice to clients of AGE, (ii) providing Jones with access to AGE resources, (iii) failing to implement reasonable supervision of the activities of Jones and Lerner in the Short Hills Branch, and (iv) failing to prevent unsuitable trading strategies to be recommended to clients, Barber created an environment where violations were likely to occur and failed to establish and enforce reasonable supervisory procedures to prevent and detect conduct in violation of the Securities Law, in violation of his duties under N.J.S.A. 49:3-58(a)(2)(xi).

3. In connection with (i) allowing an unregistered person to maintain a presence in the Short Hills Branch during which that person provided investment advice to clients of AGE, (ii) providing Jones with access to AGE resources, (iii) failing to implement reasonable supervision of the activities of Jones and Lerner in the Short Hills Branch, and (iv) failing to prevent unsuitable trading strategies to be recommended to clients, Barber, in the conduct of his business, did not observe the high standards of commercial honor and just and equitable principles of trade in violation of FINRA Conduct Rule 2110.

2. Violations of FINRA Conduct Rules constitute dishonest or unethical practices in the securities business pursuant to N.J.A.C. 13:47A-6.3(28) and N.J.S.A. 49:3-58(a)(2)(vii).

3. The activities set forth herein are grounds, pursuant to N.J.S.A. 49:3-58(a)(1), N.J.S.A. 49:3-58(a)(2)(vii), and N.J.S.A. 49:3-58(a)(2)(xi) for the initiation of administrative proceedings; and further, pursuant to N.J.S.A. 49:3-70.1, to assess a civil monetary penalty, and pursuant to

N.J.S.A. 49:3-67, to impose such other appropriate remedial measures as may be necessary in the public interest.

ORDER

NOW THEREFORE, it is on this 7th day of ~~AUGUST~~ SEPTEMBER 2010,

ORDERED that, Barber is permanently prohibited from acting in any supervisory capacity for any registered broker-dealer or investment adviser as defined by N.J.S.A. 49:3-47 et seq.; and it is

FURTHER ORDERED that, as a condition of registration with the Bureau, Barber will be required to enter into an agreement with the Bureau for heightened supervision, terms of which will be determined at the time of application for registration; and it is

FURTHER ORDERED that, pursuant to N.J.S.A. 49:3-70.1, Barber is assessed and shall pay a civil monetary penalty in the amount of $10,000.00, due and payable within ten days of the entry of this Consent Order to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or to be received at "Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

Richard M. Barber hereby consents to the form and entry of this Consent Order without admitting or denying the Findings of Fact and Conclusions of Law set forth herein.

RICHARD M. BARBER

By: _____

Name:

DATED: 8/25/10

NEW JERSEY BUREAU OF SECURITIES

By: _____
Marc B. Minor
Chief, Bureau of Securities

DATED: 9/7/10