

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: BARBARA R. KAPLAN
a/k/a BARBARA R. ISRAEL

FILE NO. 0400580

CONSENT ORDER OF SUSPENSION

TO THE RESPONDENT: Barbara R. Kaplan a/k/a Barbara R. Israel
(CRD#: 264030)
180 East Pearson
Chicago, Illinois 60611

C/o Gregg M. Rzepczynski & Associates, Inc.
Attorney at Law
175 W. Jackson Boulevard Suite 750
Chicago, Illinois 60604

WHEREAS, Respondent on the 21st day of December 2004 executed a certain Stipulation to Enter Consent Order of Suspension (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State, Securities Department, dated October 14, 2004, in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Suspension ("Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, while neither admitting nor denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act until July 31, 2003.
2. That on June 12, 2003, an Exchange Hearing Panel of the New York Stock Exchange Inc. (NYSE) accepted a Stipulation of Facts and Consent

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to Penalty entered into between the Exchange's Division of Enforcement and the Respondent (Decision) in File No. 03-115 which imposed the following sanctions:

- a. Censure;
 - b. One year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization; and
 - c. A \$100,000 fine
3. That the Decision found:
- a. On or about May 14, 1999, the New York Stock Exchange (the "Exchange") received a Uniform Notice of Termination (hereinafter the "Form U-5") from CIBC, which indicated that The Respondent had been "permitted to resign" on April 16, 1999. The Form U-5 stated, in essence, that at the time of her resignation she was under investigation for facilitating the allocation of certain transactions that had been executed at a more favorable price for the individual account of a relative rather than to the account of an investment partnership controlled by this relative but in which other investors were participating."
 - b. The individual referred to in paragraph a is a relative of The Respondent's and is hereinafter referred to as the "Relative" and the "Relative's individual account as the "Account." The Partnership account referred to in paragraph a is for an investment partnership of ABCD (hereinafter the "Partnership") and the account for the Partnership is hereinafter referred to as the "Partnership Account".
 - c. CIBC acted as an executing broker for the Partnership Account, which was a Delivery Versus Payment/Receipt Versus Payment ("DVP/RVP") prime brokerage account. The relevant period for the transactions referred to hereinafter is November 18, 1998 through April 16, 1999 (the "relevant period"), when The Respondent was employed by CIBC.
 - d. By letter dated February 17, 2000, which The Respondent received, the Enforcement notified The Respondent that she was the subject of an investigation into the matter described in the Form U-5. Thereafter, The Respondent appeared with counsel and testified before the Exchange.

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- e. During the period November 18, 1998 through April 16, 1999, The Respondent, on approximately 375 occasions, effected improper post-execution allocation of trades in a manner which she knew, or should have known, would result in more favorable prices being allocated to the account of her relative to the detriment of an account with public investors. The benefit to the Account from the allocations of these executions totaled in excess of \$450,000. The Respondent failed to identify by name or account number the identity of the customers for whom trades were being entered and executed. Further, The Respondent caused her member firm's books and records to be inaccurate regarding trade entry and execution; failed to disclose the essential facts of an account she serviced; performed the duties of a registered representative without Exchange or blue-sky approval; made misstatements or omissions of fact on Form U-4 submissions filed with the Exchange; and failed to comply with the Exchange's request for information.
- f. During the relevant period, The Respondent's two largest accounts were the Account and the Partnership Account. The remainder of The Respondent's business involved a small number of family-related accounts for herself and her husband, Individual Retirement Accounts for herself and her husband, and a handful of other accounts that were relatively inactive.
- g. During the relevant period, the Relative and CD were the two general partners of the Partnership who, along with multiple public investors, had interests in the Partnership Account. The Relative and, to a lesser extent, traders for ABCD gave orders to The Respondent for the Partnership Account.
- h. Both the Account and the Partnership Account were actively traded. The number of transactions in the Partnership Account ranged from a monthly low of eight transactions in November 1998 to a monthly high of approximately 95 transactions in April 1999. The number of transactions on the Account ranged from a monthly low of approximately 95 in November 1998 to a monthly high of approximately 700 in December 1998. The combined gross commissions from the two accounts for the approximately five months encompassed in the relevant period were approximately \$793,269 with approximately \$115,240 representing commissions paid by the Partnership Account.
- i. The Account, a margin account, had substantial equity, with long market value ranging from a low month-end value on or about February 26, 1999 of \$191,010,135, with a debit balance of

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\$110,680,823, to a high month-end value on or about December 31, 1998 of approximately \$245,074,038, with a debit balance of \$148,129,032.

- j. Since the Partnership Account was a DVPIRVP prime brokerage account, for the most part securities were delivered out. However, the monthly account statements at CIBC did reflect net buy transactions executed at CIBC that ranged from \$15,900,016 in November 1998 and \$19,040,443 in April 1999, and net sell transactions executed at CIBC of \$5,840,039 in November 1998 to \$4,544,387 in April 1999.
- k. Exchange Rule 410(a)(1) states in essence and in pertinent part that every order transmitted directly or indirectly by a member or organization to the Floor, shall make a record of every order reflecting the name and amount of the security, the terms of the order, the times when it was so transmitted, and the time at which a report of execution was received. Rule 410 also states in essence and pertinent part that a member or organization is to make a record of every order prior to its execution reflecting the name or designation of the amount for which such order is to be executed and that no change in the account name or designation shall be made without the written approval of a designated supervisor.
- l. During the relevant period, the Firm's written procedures tracked the requirement of Exchange Rule 410 and stated in relevant part that: "When entering an order, the registered representative must indicate either the customer's name or account number. Any change in the name of the account made subsequent to the entry of an order must be approved by a supervisory person via a trade correction from."
- m. During the relevant period, on numerous occasions, the Relative gave The Respondent orders to purchase and sell the same securities on the same day for the Account and the Partnership Account. As the Partnership Account at CIBC was only one of many executing brokerage accounts for the Partnership, the monthly account statements did not reflect the total long market value and portfolio value as that would have had to include all accounts with other executing brokers utilized by ABCD and would be reflected on statements created by the prime broker.
- n. While at CIBC, The Respondent advised her supervisors and order room personnel that both the Account and the Partnership Account were the Relative's accounts.

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- o. After receiving such order from the Relative, The Respondent telephoned the order room and gave the order room personnel instructions to buy and sell certain securities. With few exceptions, The Respondent did not identify to order room personnel the name of the customer or the account number for which for orders were being placed prior to the orders being transmitted to the Floor of the Exchange. The orders were transmitted to the Floor of the Exchange, usually via SuperDot, without the Firm's records reflecting the account number or name of the customer for whom the order was being transmitted and executed.
- p. After giving order room personnel instructions, The Respondent called the order room for execution reports. After receiving the details of executions, including a breakdown by the various prices at which the orders had been executed, The Respondent instructed the order room personnel on how to allocate the securities between the Account and the Partnership Account.
- q. In addition, on one or more occasions, before the end of a trading day, The Respondent also reallocated previously allocated securities without creating any written record of the desired change(s) on a change of account designation i.e. trade correction from and without obtaining supervisory approval.
- r. A comparison of execution prices fro approximately 375 executions of the same securities purchased and sold for the Account ad the Partnership Account on approximately 60 trade dates during the relevant period, revealed that the Account received more favorable execution prices totaling over \$450,000.
- s. For example, on trade date December 8, 1998 (settlement date December 11, 1998), the following sell allocations were made between the Account and the Partnership Account in Circuit City Stores Inc. ("CC") securities:

The Account

200 shares @ 41.500
10,000 shares @ 41.5000
7,700 shares @ 41.6250
2,100 shares @41.6250
10,000 shares @ 41.8750
10,000 shares @ 42.5000
10,000 shares @ 42.5000
10,000 shares @ 42.5000
4,500 shares @ 42.5000

Partnership Account

3,000 @ 39.875
3,000 @ 40.5625
10,000 @ 41.000

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10,000 shares @ 42.6250
5,000 shares @ 42.6250
50000,000 shares @ 42.6875
10,000 shares @ 42.7500

- t. The tickets and statements for the Partnership Account reflect that this account received an average price of \$40.7070 for the 16,000 shares allocated to this account. Based on the executions described above, each individual execution allocated to the Partnership Account was lower than any of the executions allocated to the Account. As indicated in paragraph s above, the Account received all of the 13 more favorable prices than the Partnership Account regarding the sale of XYZ securities on trade date December 8, 1998.
- u. Also, for example, on trade date December 11, 1998 (settlement December 16, 1998), the following buy allocations were made between the Account and the Partnership Account in UVW securities:

| <u>The Account</u> | <u>Partnership Account</u> |
|--------------------|----------------------------|
| 10,000 @ 93.7500 | 5,000 @ 95.7500 |
| 10,000 @ 94.4375 | 3,000 @ 96.125 |
| 3,200 @ 95.4375 | 2,000 @ 96.375 |
| 6,800 @ 95.5000 | |

- v. The tickets and statements for the Partnership Account reflect that this account received an average price of 95.9875 for the 10,000 shares allocated to this account. Based on the executions described above, each individual execution allocated to the Partnership Account was higher than any of the executions allocated to the Account. As indicated in paragraph u above, the Account received more favorable buy executions than the Partnerships Account in UVW securities on trade date December 11, 1998.
- w. The Respondent knew or should have known that on numerous occasions while she was employed at CIBC during the relevant period, she was allocating more favorable execution prices to the Account and disadvantaging the investors participating in the Partnership Account.
- y. Exchange Rule 345.12 states, in pertinent part, that: "Applications for all natural persons required to be registered with the Exchange shall be submitted to the Exchange on the Uniform Application for Securities Industry Registration or Transfer Form ("Form U-4"). Rule 345.12 further states that: "The information contained on

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form U-4 must be kept current and shall be updated by the filing with the Exchange of an amendment to that form.”

- z. As stated above in paragraph d, on or about February 17, 2000, The Respondent received a letter from Enforcement notifying her that she was the subject of an investigation.
- aa. On or about August 1, 2000 the Respondent filed an application on Form U-4 in connection with her employment with Morgan Stanley.
- bb. Question 14G(2) of the Form U-4 asked, in pertinent part: “Have you been notified, in writing, that you are now the subject of any investigation that could result in a “yes” answer to any part of 14A, B, C, D, or E?” Question 14E(4) asks: “Has any self-regulatory organization or commodities exchange ever disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?” The Respondent replied “no” to these questions.
- cc. On or about February 4, 2003, The Respondent completed an application on Form U-4 in connection with her employment with A.G. Edwards, which asked the identical questions as set forth in paragraph bb above. The Respondent replied “no” to these questions as well.
- dd. The Respondent's “no” reply to question 14G(2) on the Form U-4 filed in connection with her employment with Morgan Stanley and A.G. Edwards constitutes misstatements to the Exchange as she had been advised on or about February 17, 2000 by letter from Enforcement that she was the subject of an Exchange investigation.
- ee. Further, The Respondent's “no” reply to Question 14E(4) on the Form U-4 she filed in connection with her employment with A.G. Edwards also constitutes a misstatement to the Exchange as Enforcement had advised her in December 2002, through her then counsel, that Enforcement intended to bring formal disciplinary proceedings against her that could result in her suspension from the securities industry.
- ff. Exchange Rule 345(a) states, in pertinent part, that no member or member organization shall permit any natural person to perform regularly the duties customarily performed by a registered representative unless such person shall have been registered with and qualified by, and is acceptable to the Exchange.

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- gg. The Exchange approved The Respondent's registration as a registered representative with CIBC on December 21, 1998.
- hh. From approximately November 18, 1998 to December 21, 1998, The Respondent performed the duties customarily performed by a registered representative without first being registered, qualified and found acceptable by the Exchange to perform such duties.
- ii. During the relevant period, the Firm's records reflected the Relative's address as being in New Jersey. The Partnership Account's address on the Firm's records was reflected as also being in New Jersey.
- jj. During the relevant period, The Respondent was required to be "blue-sky" registered in each state where clients whose accounts she serviced resided.
- kk. While The Respondent's registration in New Jersey was being processed, the Firm assigned the servicing of the Account and the Partnership Account to a supervisor and to The Respondent's assistant.
- ll. Beginning on or about November 18, 1998, The Respondent, disregarding the Firm's arrangements, began servicing the Account and the Partnership Account even though her "blue-sky" registration with the State of New Jersey was not approved until January 20, 1999.
- mm. In servicing the Account and the Partnership Account prior to being registered in New Jersey, as described in paragraphs hh through kk above, The Respondent subjected her member firm employer to rescission of any/or all transactions in these accounts, which could have resulted in considerable liability to the Firm.
- nn. On September 27, 2002, October 4, 2002 and February 27, 2003, Enforcement requested that The Respondent provide Enforcement with certain information including, among other things, a list of investors participating in the Partnership and Partnership Account. To date, The Respondent has failed to comply with the Exchange's requests.
- oo. That by virtue of the foregoing the Respondent:
 - (i) Effected improper post-execution allocation of trades;
 - (ii) Caused violations of Exchange Rule 410 by failing to provide required information to order room personnel;

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- (iii) Caused a violation of Rule 440 and SEC Reg. 240.17a-3 and a-4 by causing her employer's books and records to be inaccurate;
 - (iv) Caused a violation of Rule 405 by failing to disclose essential facts of an account;
 - (v) Caused a violation of Rule 345 by regularly performing the duties of a registered representative while she was not registered;
 - (vi) Caused violation of Rule 401 by performing duties customarily performed by a registered representative without being blue-sky registered;
 - (vii) Violated Rule 345.12 by making misstatements on Forms U-4;
 - (viii) Violated Rule 476(a)(10) by making a misstatement on an application filed with the Exchange; and
 - (ix) violated Rule 477 by failing to comply with the Exchange's request for information
4. That Section 8.E(1)(j) of the Act provides, inter alia, that the registration of a salesperson may be suspended or revoked if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
5. That NYSE is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
6. That Section 8.E (3) of the Act provides, inter alia, withdrawal of an application for registration or withdrawal from registration as a salesperson, becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

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WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to suspension or revocation pursuant to Sections 8.E(1)(j) and 8.E(3) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that:

1. Her registration as a salesperson in the State of Illinois shall be suspended effective July 31, 2003 through February 28, 2005;
2. She shall pay the sum of Two Thousand Five Hundred dollars (\$2,500.00) to the Office of the Secretary of State, Investors Education Fund as reimbursement to cover the cost of investigation of this matter. Said sum shall be payable by means of certified or cashiers check and made to the order of the Office of the Secretary of State, Investors Education Fund and shall be due within thirty (30) days from the entry of this Consent Order; and
3. She will participate in a program of enhanced supervision for a period of one (1) year from the date she is employed by a registered dealer as a salesperson in the State of Illinois.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:


1. Barbara R. Kaplan a/k/a Barbara R. Israel's registration as a salesperson in the State of Illinois shall be suspended, effective July 31, 2003 through February 28, 2005.
2. Barbara R. Kaplan a/k/a Barbara R. Israel shall pay the sum of Two Thousand Five Hundred dollars (\$2,500.00) to the Office of the Secretary of State, Investors Education Fund as reimbursement to cover the cost of investigation of this matter. Said sum shall be payable by means of certified or cashiers check and made to the order of the Office of the Secretary of State, Investors Education Fund and shall be due within thirty (30) days from the entry of this Consent Order.

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3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERER: This 7th day of January 2005.



JESSE WHITE
Secretary of State
State of Illinois