

MEMO# 22495

May 5, 2008

FINRA's National Adjudicatory Council Affirms Judgment Against Fund Distributor For Directed Brokerage Violations

[22495]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 13-08
BROKER/DEALER ASSOCIATE MEMBERS No. 2-08
SEC RULES MEMBERS No. 41-08
SMALL FUNDS MEMBERS No. 30-08 RE: FINRA'S NATIONAL ADJUDICATORY COUNCIL
AFFIRMS JUDGMENT AGAINST FUND DISTRIBUTOR FOR DIRECTED BROKERAGE VIOLATIONS

The National Adjudicatory Council (“NAC”), the appeals body of the Financial Industry Regulatory Authority (“FINRA”) affirmed the decision of a FINRA Hearing Panel (the “Panel”) that the principal underwriter and distributor of a large mutual fund family (the “Respondent”) violated FINRA’s Anti-Reciprocal Rule. [\[1\]](#) The Panel had found that the Respondent violated Rule 2830(k)(3), as it existed prior to amendment in 2004, by directing directed brokerage commissions to securities firms that were top sellers of the fund family’s funds. The Panel censured the distributor and imposed a \$5 million fine. [\[2\]](#)

The NAC found that the Respondent’s conduct was intentional, not negligent as the Panel had concluded, and found only two mitigating factors, compared to the six discussed by the Panel. It agreed with the Panel that there was insufficient evidence to demonstrate the Respondents were unjustly enriched, or that the funds’ shareholders were harmed by the

Respondent's misconduct. Based on these mitigating factors, the NAC affirmed the \$5 million fine and censure originally imposed by the Panel.

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endnotes

[1] See Department of Enforcement v. American Funds Distributors, Inc., National Adjudicatory Council Decision, Complaint No. CE3050003 (April 30, 2008), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p038405.pdf>; FINRA's National Adjudicatory Council Affirms \$5 Million Fine Against American Funds Distributors for Violating FINRA's Anti-Reciprocal Rule (press release issued by FINRA, April 30, 2008), available at <http://www.finra.org/PressRoom/NewsReleases/2008NewsReleases/P038404>.

[2] See Investment Company Institute Memorandum to Broker/Dealer Advisory Committee No. 35-06, Broker/Dealer Associate Members No. 5-06, SEC Rules Members No. 75-06, Small Funds Members No. 60-06 [20340], dated Sept. 1, 2006.

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