

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

FURTHER LANE SECURITIES, L.P.
(CRD No. 38162),

Respondent.

Disciplinary Proceeding
No. 20120342425-01

Hearing Officer--KBW

DEFAULT DECISION

February 3, 2017

Respondent Further Lane Securities, L.P. charged excessive markups on bond transactions and failed to adequately supervise the activities of its registered representatives. For these violations, Further Lane is fined \$126,673.78.

For the Complainant: W. Kwame Anthony, Esq., Eric Brown, Esq., and James J. Nixon, Esq., for the Department of Market Regulation, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Further Lane Securities, L.P. ("Further Lane" or the "Firm"), formerly a FINRA member firm, charged excessive markups on 55 corporate bond transactions with customers, in violation of NASD Rules 2440, IM-2440-1, and IM-2440-2 and FINRA Rule 2010.¹ Also, the Firm failed to adequately supervise the markup activities of its registered representatives, in violation of NASD Rule 3010 and FINRA Rule 2010.

Market Regulation filed and served the Complaint in accordance with FINRA rules. The Firm did not file an answer or otherwise respond to the Complaint. Accordingly, Market Regulation filed a motion for entry of default decision ("Default Motion") together with counsel's declaration ("Decl.") and supporting exhibits. On December 19, 2016, Market Regulation filed a motion for leave to file a supplemental declaration in support of its Default

¹ This Decision refers to and relies on the FINRA and NASD Conduct Rules that were in effect at the time of the alleged misconduct. The applicable rules are available at <http://www.finra.org/industry/finra-rules>.

Motion (“Motion for Leave”). The Firm did not respond to the Default Motion or the Motion for Leave. On January 5, 2017, I granted the Motion for Leave.

For the reasons set forth below, the Default Motion is granted.

II. Findings of Fact and Conclusions of Law

A. Further Lane’s Background

Further Lane first became registered as a FINRA member firm in November 1995. The Firm’s headquarters were in New York City. The Firm had branches in three cities: San Francisco, California; Boerne, Texas; and East Hampton, New York. None of the branches was an Office of Supervisory Jurisdiction (“OSJ”).

The Firm filed a Uniform Request for Broker-Dealer Withdrawal (“Form BDW”) seeking to withdraw from FINRA registration in March 2014. FINRA terminated Further Lane’s registration effective May 20, 2014.²

B. Jurisdiction

The Firm remains subject to FINRA’s jurisdiction because it was a FINRA member when the alleged misconduct occurred and the Complaint was filed within two years of the effective date of the termination of the Firm’s registration.³

C. Origin of the Investigation

This investigation originated from a pricing sweep conducted by Market Regulation’s Fixed Income Investigations Group, which reviewed corporate bond transactions that the Firm executed from February 3, 2012, through June 30, 2012 (the “review period”).⁴

D. Further Lane’s Default

Market Regulation served the Complaint with the Notice of Complaint, and again with a Second Notice of Complaint, on the Firm by certified mail, return receipt requested, and by Federal Express to its address listed in the Central Registration Depository (“CRD address”) and four other addresses (“alternate addresses”) known to Market Regulation.⁵

The Firm failed to file an answer or otherwise respond to the Complaint. Accordingly, I grant the Default Motion.

² Decl. ¶¶ 5-6; Complaint (“Compl.”) ¶ 17; CX-1.

³ FINRA By-Laws, Article IV, Section 6.

⁴ Decl. ¶ 2.

⁵ Decl. ¶¶ 8-28.

E. Further Lane Violated NASD Rules 2440, IM-2440-1, and IM-2440-2 and FINRA Rule 2010

1. Pricing Rules

NASD Rule 2440 required a member who sold or bought a security, to or from a customer, to do so “at a price which is fair, taking into consideration all relevant circumstances.” The relevant circumstances enumerated by the Rule include: market conditions related to the security; the expense involved in executing the transaction; and the value of the member’s service to the customer based on the member’s experience and knowledge of the security, with consideration of the right of the member to profit. NASD IM-2440-1, applicable to debt securities, explicitly prohibited a member from charging a price “not reasonably related to the current market price of the security” or “a commission which is not reasonable.” IM-2440-1 also provided additional guidance on the factors that should be considered in determining the fairness of a markup, including the price of the security, the amount of money involved in the transaction, whether the markup was disclosed, the pattern of markups, and the nature of the member’s business. Additionally, NASD IM-2440-2 provided guidance on the factors that should be considered in determining the prevailing market price.

2. Excessive Markups

From October 2011 through November 2013, JC worked as a registered representative in Further Lane’s Texas branch. He was the representative for the account of ABC, a registered investment advisor. For each of ABC’s individual customers, JC gave ABC a proposal, which identified the bonds that would form the customer’s portfolio and the prices of the bonds to the customer.⁶

JC placed limit orders with one of the Firm’s traders to build the portfolios of ABC’s individual customers. The trader executed the trades, reported the execution price back to JC, and then used a journal entry to move the bonds from the trader’s account to JC’s account with a markup for the trader. JC then sold the bonds to ABC’s retail customers with an additional markup. JC told the trader what the trader’s markups would be for executing an order, and he set the markups that ABC’s retail customers were charged. Thus, JC caused the Firm to mark up twice each security that the Firm sold to an ABC customer.⁷

During the review period, the Firm charged excessive markups in 53 of JC’s transactions with ABC’s individual customers. In addition, the Firm charged excessive markups in 2 transactions that JC had with customers of another investment advisor, DEF.⁸ Markups on these 55 transactions ranged from 3.06% to 6.94%, while the median of the markups on these 55

⁶ Compl. ¶¶ 18-21.

⁷ Compl. ¶ 21.

⁸ Compl. ¶¶ 22-23.

transactions was 5.3%. In 32 of these transactions, the Firm's markup exceeded 5%, including eight transactions where the markup exceeded 6%.⁹

The markups on these 55 transactions exceeded reasonable markups by \$46,673.78.¹⁰ By charging excessive markups on these 55 transactions, Further Lane violated NASD Rules 2440, IM-2440-1, and IM-2440-2 and FINRA Rule 2010.¹¹

F. Further Lane Violated NASD Rule 3010 and FINRA Rule 2010

1. Supervision Rule

NASD Rule 3010 required members to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and FINRA rules, including NASD Rules 2440, IM-2440-1, and IM-2440-2.

2. Deficient Supervision

Further Lane failed to establish, maintain and enforce a supervisory system, including written supervisory procedures, reasonably designed to supervise the Firm's sales of corporate bonds to customers. The Firm's supervisory system and procedures did not set forth steps to provide reasonable assurance that Further Lane's markups were fair. The supervisory system and procedures did not require that the responsible supervisor conduct a reasonable review of the markups charged to customers that included consideration of: (a) the type of security involved in each transaction, (b) the security's availability in the market, (c) the security's price, (d) the amount of money involved in the transaction, (e) whether the markup was disclosed, (f) the pattern of markups, and (g) the nature of the Firm's business. In addition, the Firm's procedures did not address the practice in the Texas branch office of charging a markup between the trader and the registered representative and a second markup from the registered representative to the customer. Also, the Firm did not establish any exception reports or automated surveillance programs to monitor for excessive markups.¹²

The CEO of the Firm, JA, was JC's supervisor and had ultimate responsibility for reviewing and supervising markups. JA reviewed certain transactions by reviewing the Firm's trade blotters. However, the trade blotters did not explicitly identify the total markup being charged by the Firm. Rather, one blotter showed purchases and sales for the trader's account, and another blotter showed purchases and sales for the account of the registered representative.

⁹ Compl. ¶ 24.

¹⁰ Mot. for Leave ¶ 3.

¹¹ A violation of any FINRA rule is a violation of FINRA Rule 2010. *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *8 n.3 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

¹² Compl. ¶¶ 31-35.

Although JA knew of the practice of marking up a security twice, JA never calculated the sums of the two markups that the Firm charged.¹³

Thus, Further Lane violated NASD Rule 3010 and FINRA Rule 2010.

III. Sanctions

A. Pricing Violations

For charging excessive markups or markdowns, FINRA's Sanction Guidelines recommend a fine of between \$5,000 and \$146,000, plus the gross amount of the excessive markups and markdowns, if restitution is not ordered. In egregious cases, the Guidelines recommend considering suspension of any or all activities or functions for up to two years or expulsion.¹⁴

The Firm's violations of NASD Rules 2440, IM-2440-1, and IM-2440-2 are serious but not egregious. The Firm charged excessive markups on 55 bond transactions over a period of five months. The loss to customers from the excessive markups on these transactions was \$46,673.78. All of the excessive markups involved one registered representative. At the time of the violations, the Firm had not established, maintained, and enforced a supervisory system that was reasonably designed to detect excessive markups. JC set the markups, and there is not a sufficient evidentiary basis to determine whether JA was aware that the Firm was charging an excessive markup on JC's bond transactions. There is not a sufficient evidentiary basis to determine the percentage of the Firm's bond transactions that were unfairly priced. For these reasons, I conclude that a fine of \$96,673.78 (\$50,000 plus the gross amount of the excessive markups) is appropriate.¹⁵

B. Supervision

For failing to supervise, the Guidelines recommend imposition of a fine between \$5,000 and \$73,000. In egregious cases involving systemic failures of supervision, the Guidelines recommend considering a suspension of any or all activities or functions up to two years or expulsion.¹⁶ The Firm's violations of the supervision rules were serious, but not egregious. Accordingly, I conclude that a fine of \$30,000 is appropriate.

¹³ Compl. ¶¶ 36-39.

¹⁴ FINRA Sanction Guidelines at 89 (2016), <http://www.finra.org/industry/sanction-guidelines> ("Guidelines"). The current Guidelines supersede prior versions. They apply to all disciplinary matters, including matters pending when the current Guidelines were issued, such as this one. *Id.* at 8.

¹⁵ Complainant did not request that I order restitution to ABC's customers.

¹⁶ Guidelines at 102.

IV. Order

Respondent Further Lane Securities, L.P. charged excessive markups on bond transactions and failed to adequately supervise the activities of its registered representatives in violation of NASD Rules 2440, 3010, IM-2440-1, and IM-2440-2 and FINRA 2010. For these violations, Further Lane is fined \$126,673.78. The fine shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.



Kenneth Winer
Hearing Officer

Copies to:

Further Lane Securities, L.P. (via overnight courier and first-class mail)
W. Kwame Anthony, Esq. (via electronic mail)
Eric S. Brown, Esq. (via electronic mail)
James J. Nixon, Esq. (via electronic mail)