

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

FRANK PETER QUATTRONE,
CRD No. 1312126

RESPONDENT.

DISCIPLINARY PROCEEDING
No. CAF030008

COMPLAINT

During the course of an NASD investigation concerning research analyst conflicts and “spinning” practices at Credit Suisse First Boston LLC (CSFB), Respondent Frank Quattrone (Quattrone) refused to testify in accordance with NASD Procedural Rule 8210. He also refused to testify about his part in encouraging the destruction of documents relevant to separate, earlier investigations by NASD, Securities and Exchange Commission, and a federal Grand Jury concerning inflated commissions charged by CSFB in exchange for allocations of “hot” IPOs. Through this complaint, NASD Department of Enforcement (Department) charges Quattrone with violating NASD Procedural Rule 8210 and Conduct Rule 2110, and seeks to bar him from association with any NASD member firm. In support of its charges, the Department alleges the following:

RESPONDENT

1. Quattrone, age 47, has been employed in the securities industry since August 1981. He first became registered with an NASD member firm in October 1984 as a General Securities

Representative. In August 1991, he also registered as a General Securities Principal. Quattrone headed CSFB's investment banking Technology Group (Tech Group) as Managing Director from the summer of 1998 until February 3, 2003, when he was placed on administrative leave "pending further developments in the ongoing regulatory, governmental and internal investigations into certain of [his] activities." On March 4, 2003, Quattrone resigned from that position effective immediately.

THE FACTS

2. During or about April 2002, the Department commenced its investigation into "spinning" practices and research analyst conflicts at CSFB. That investigation focused on the activities of CSFB's Tech Group, then headed by Quattrone.

3. The investigation centered around three things. First, "spinning"—the practice of allocating hot IPO shares to certain customers, and their flipping of shares back to the firm in the immediate aftermarket for a profit, as a reward for, or as an inducement to, giving investment banking business to the firm. Second, conflicts of interest between research analysts and investment bankers that resulted in pressures on analysts to compromise the analysts' independence and objectivity in deciding whether to initiate or maintain coverage of an issuer and in the content of the recommendations in research reports. Finally, the investigation examined structural flaws in the organization of the Tech Group and the adequacy of supervision.¹

¹ Misconduct in connection with these subjects has led to the initiation of a separate disciplinary action filed this day by the Department against Quattrone for violations of NASD Conduct Rules 3060, 2110, and 3010.

4. This investigation examined the conduct of persons in addition to Quattrone.

5. On January 16, 2003, the Department advised Quattrone, through counsel, that it had made a preliminary determination to recommend that a disciplinary action be authorized against him for violations uncovered during its investigation. At that time, the Department also provided Quattrone with an opportunity to make a written submission to the staff to try and convince it to reconsider its position; *i.e.*, a “Wells submission.” The due date for Quattrone’s submission was February 13, 2003. The underlying investigation as to others, however, continued.

6. After Quattrone was extended the opportunity to make a Wells submission, but before it was filed, the Department learned that Quattrone, with knowledge of a federal Grand Jury investigation involving CSFB and certain of its employees, as well as with knowledge of other regulatory investigations (separate and distinct from the investigation referenced above in paragraphs 2 through 4, and involving allegations of IPO profit sharing in exchange for lucrative allocations of hot IPO shares),² encouraged the destruction of documents relevant to those investigations. In the weeks that followed this discovery, the Department learned the following:

- a. The Department began its earlier investigation concerning IPO profit sharing in May 2000. During the course of that investigation, formal requests for information were sent to CSFB.

² CSFB, on January 22, 2002, settled charges relating to these earlier investigations, paying NASD and the SEC a monetary sanction of \$100 million. For more details concerning that settlement, *see* http://www.nasdr.com/news/pr2002/release_02_005.html.

- b. On June 2, 2000, CSFB's Legal and Compliance Department (LCD) sent Quattrone and others in the Tech Group an e-mail, the subject of which was entitled, "Re: VA Linux Systems, Inc. ("LINUX") 12/9/99—Do Not Destroy Any Documents." The body of that e-mail read as follows:

Please be advised that the Legal Department is in receipt of an inquiry from the Enforcement Department of NASD Regulation in connection with the above-referenced matter. The Legal Department has retained [name] of [law firm] to assist in CSFB's response to the NASD. At this time, no documents of any kind (including e-mails, computer files, etc.) can be destroyed or altered. Everything responsive must be preserved for review by CSFB's outside counsel.

I will contact you once outside counsel is ready to review our documents. In the interim, if you have any questions, please feel free to contact me at x[extension] or our in-house attorney, [name] x[extension].

- c. Later that day, Quattrone responded to that e-mail, asking "What is this about?" On June 5, 2000, one of CSFB's in-house attorneys replied:

The VA Linux Systems inquiry from the NASD seems to direct its inquiry toward the allocation process. The request is extremely broad and requires production of all documents including e-mails and voice-mails relating to the allocation process. Please do not destroy any files related to the IPO. We will be in touch with your group shortly regarding the collection of responsive information.

- d. At some point in time, the SEC also began investigating this matter. Quattrone learned of the SEC's investigation as early as September 20, 2000 after receiving the following CSFB LCD e-mail, entitled, "Privileged and Confidential—SEC Investigation of Allocation Process":

We have been informed today that the SEC's examination of our IPO allocation process has been referred to the SEC's Division of Enforcement. We also understand that the SEC has contacted certain customers of the Firm in conjunction with this investigation.

You may be contacted by your customers regarding this matter. Please

refer the call to one of the LCD persons listed below and do not discuss the substance of this inquiry with your customers or forward this e-mail outside the Firm.

If you have any questions about this inquiry, please call one of the following LCD persons: [names and extensions listed].

- e. On Sunday, December 3, 2000, Quattrone was also told that another investigation concerning the IPO allocation process—this time by federal criminal authorities—had been instituted.
- f. More specifically, on November 22, 2000, federal Grand Jury subpoenas were issued to CSFB and eight individuals who had already testified before the NASD, asking for testimony and documents concerning CSFB's IPO allocation process. On or about Friday, December 1, 2000, CSFB's then-General Counsel—Americas (General Counsel) was assigned the task of telling those eight individuals about the subpoenas. That process continued throughout the weekend. On Sunday, December 3, however, CSFB's General Counsel brought Quattrone into the loop.
- g. On Sunday, December 3, 2000, at least eight e-mails were exchanged between CSFB's General Counsel and Quattrone through which the General Counsel told Quattrone about the expanded scope of the pending investigations. Each of these e-mails was marked, "PRIVILEGED AND HIGHLY CONFIDENTIAL." The first was sent at 2:04 p.m., in which the General Counsel said:

As you may know, there has been an inquiry going on by both the SEC and NASD into our allocation processes in the IPO market. There have been some recent developments that are of extreme concern that I need to speak with you about as soon as possible.

The General Counsel then urged Quattrone to call him at home that day, or at work on Monday if Quattrone was not available until then. The General Counsel also let Quattrone know that “My assistant knows to interrupt me if you call on Monday.”

- h. At 4:50 p.m., Quattrone responded: “Can you email me some details of your concerns? Tied up all day today but checking blackberry.” At 5:39 p.m., the General Counsel forwarded to Quattrone the following additional information:

Briefly, and this should absolutely not be passed on to anyone else, we have received Federal Grand Jury subpoenas [sic] asking for testimony and documents about the IPO allocation process from the firm and each of the nine people³ who has [sic] so far testified before the NASDR. I have retained [name] to represent us in this criminal investigation and he and I are meeting as early as tomorrow with the US Attorney in NY to try to prevent them [sic] from sending subpoenas [sic] for testimony and documents to the customers who received allocations in, among others, VA Lynux [sic], as well as subpoenas [sic] to the issuers, because of the inherent possibility of a leak which would be extremely detrimental. Please call me tonight up to 10pm or tomorrow.

- i. Quattrone’s reply, sent seven minutes later at 5:46 p.m., was brief: “Are the regulators accusing us of criminal activity?” Before waiting for a response, Quattrone sent the General Counsel another e-mail (one minute later, at 5:47 p.m.) asking, “Who are the nine people?” At 5:53 p.m., the General Counsel responded as follows:

The ones I have told so far are [three names mentioned]. Until I tell the others personally tomorrow, I don’t want to disclose their names yet. In answer to your other email, they are not formally accusing us or the individuals yet, but they are investigating because they think something bad happened. They are completely wrong but merely being investigated and having something leak could be quite harmful, so the idea is to get them to back off their inquiry, we educate them as to the entire IPO process, including [sic] the allocation [sic] issues and criteria, and urge them to back off.

³ Although the General Counsel referred to nine individuals, it was actually eight individuals and CSFB.

Three minutes later, at 5:56 p.m., the General Counsel added:

But please do not under any circumstances [sic] discuss these facts with anyone—however innocently—because everything we say now is going to come under a microscope. I know these people and how they work and I am controlling the flow of information on an extremely tight need to know basis with all sorts [sic] of privileges attached. This is serious and unless I can slow it down and curtail what they do, it will spread to others in the firm. That's why I do need to speak with you personally.

At 6:01 p.m., Quattrone acknowledged through a follow-up e-mail that he “Got it.”

- j. The following evening, Monday, December 4, at 6:20 p.m., Quattrone's subordinate and head of Global Execution for the Tech Group (Head of Global Execution)—who was also an attorney—sent the following e-mail to the head of Corporate Finance for the Tech Group and one of his subordinates, copying Quattrone:

With the recent tumble in stock prices, and many deals now trading below issue price [sic], I understand the securities litigation bar is mounting an all out assault on broken tech IPOs.

In the spirit of the end of the year (and the slow down in corporate finance work) you may want to send around a memo to all corporate finance bankers (and their assistants) reminding them of the CSFB document retention policy and suggesting that before they leave for the holidays, they should catch up on file cleanup.

Today, it's administrative housekeeping. In January, it could be improper destruction of evidence.

- k. Less than two hours later, at 8:13 p.m. that evening, the Head of Global Execution sent a modified version of the above-referenced e-mail to CSFB's Technology Group Investment Banking Department, entitled “Time to clean up those files.” In addition to highlighting specific language in CSFB's document retention policy, the Head of Global Execution instructed the recipients to cleanse their files by

destroying (among other things) all notes, drafts, valuation analyses, roadshow materials, selling memoranda, and internal memoranda.

- l. The next day, Tuesday, December 5, CSFB's General Counsel spoke on the phone with Quattrone. During that conversation, they discussed the federal Grand Jury subpoenas, as well as a soon-to-be-released *Wall Street Journal* article concerning them. Because of the potential adverse fallout from the subpoenas and article, the General Counsel recommended at that time that Quattrone hire his own independent legal counsel. Quattrone contacted independent legal counsel that day.
- m. Later that evening at 9:28 p.m., after his conversation with the General Counsel that afternoon, Quattrone added his voice to the Head of Global Execution's, attaching the following instruction to the Head of Global Execution's "Time to clean up those files" e-mail:

having been a key witness in a securities litigation case in south texas (miniscribe) i strongly advise you to follow these procedures.

Quattrone did this at a time when he knew about the pending NASD, SEC, and federal Grand Jury investigations, and shortly after he had contacted independent legal counsel to represent him personally.

- n. Four minutes later, at 9:33 p.m., the Head of Global Execution sent an e-mail to Quattrone telling him that CSFB's LCD called him earlier that day to say it had suspended its normal document retention policy at the specific request of NASD. That e-mail to Quattrone ended with the following statements: "They are aware that this leaves us exposed on the securities litigation front. I will stay on top of this." Notwithstanding the statements in that e-mail, Quattrone did nothing to withdraw the e-mail he had just sent encouraging others to "clean up [their] files." CSFB's LCD

did not countermand the two e-mails concerning the destruction of documents until after the close of business on December 6, 2000, at 9:04 p.m.

7. By letter dated February 3, 2003, the Department asked Quattrone, through his counsel and pursuant to NASD Procedural Rule 8210, to appear for an on-the-record interview on February 12, 2003, at the NASD's offices in Washington, D.C.

8. On February 5, 2003, Quattrone's counsel called the Department to ask that Quattrone's testimony be extended to a later date because of the work counsel needed to do on the Wells submission and because Quattrone was traveling. The Department granted that request. The following day, February 6, the Department sent Quattrone's counsel a letter pursuant to Procedural Rule 8210 rescheduling the testimony for February 26, 2003—a date suggested by Quattrone's counsel. That letter also contained the following statement: "It is our understanding that Mr. Quattrone intends to honor his testimonial obligation to appear for testimony, and the staff has granted this extension on that basis. We do not anticipate granting a further extension."

9. After further discussion between Quattrone's counsel and the Department, by letter dated February 7, 2003, the Department granted a second extension of Quattrone's testimony to February 28, 2003, in the NASD's offices in Washington, D.C. In discussing the requested postponement, Quattrone's counsel indicated that Quattrone intended to honor his obligation to appear on the rescheduled date of February 28, 2003, and the Department's letter contained the same statement as quoted above in paragraph 8.

10. On February 13, 2003, Quattrone, through counsel, filed the aforementioned Wells submission. In it, Quattrone advanced various legal and factual arguments against the authorization of a disciplinary action in the more recent of the two NASD investigations.

11. To ascertain facts concerning the potential destruction of documents, assess fully the merits of Quattrone's contentions made in his Wells submission, and to complete the "spinning" investigation with respect to the conduct of other individuals, the Department intended to question Quattrone about these matters, pursuant to NASD Procedural Rule 8210, on February 28, 2003.

12. On February 24, 2003, Quattrone's counsel orally advised the Department for the first time that Quattrone was now unsure if he would testify, given certain ongoing criminal investigations—of which he already knew when he agreed to the earlier postponement. Quattrone's counsel also added that, in any event, if Quattrone did testify on February 28, Quattrone would strongly prefer that his testimony be taken in San Francisco, California due to a newly developed respiratory ailment that made travel difficult for him.

13. On February 25, 2003, the Department notified Quattrone's counsel that the existence of an investigation by other authorities was not a valid basis for not complying with his obligation under NASD Procedural Rule 8210. In an effort to accommodate Quattrone, however, the Department agreed on short notice to send its staff to San Francisco at its expense to take his testimony on February 28. The Department also reiterated Quattrone's obligation to be interviewed without further delay. It further advised Quattrone's counsel that in the event Quattrone refused to testify on February 28, the Department would like to know that fact in advance so as not to incur the unnecessary expense of traveling across the country. Quattrone's counsel acknowledged that the Department's request was reasonable and agreed to tell the Department whether Quattrone would testify as soon as Quattrone made that decision.

14. The next day, February 26, 2003—two days before his scheduled testimony—Quattrone, through counsel, told the Department orally and later in writing of his

decision not to appear as scheduled on February 28. That letter also conditioned Quattrone's future testimony upon the completion of the pending criminal investigations—events beyond his or the Department's control.

15. By letter dated February 27, 2003, the Department advised Quattrone that it intended to recommend that a disciplinary action against him be authorized based on his refusal to appear for testimony on February 28, and by conditioning his refusal upon the completion of the pending criminal investigations. That letter further advised him that such action could result in fines and a suspension or permanent bar from association with any NASD member firm.

16. On February 28, 2003, Quattrone did not appear for his on-the-record interview. Quattrone has not participated in the on-the-record interview to date.

**VIOLATION OF NASD PROCEDURAL RULE 8210
AND NASD CONDUCT RULE 2110
(Failure to Testify)**

17. The allegations set forth above in paragraphs 1 through 16, above, are realleged and incorporated herein by reference.

18. As a result of the acts described in the paragraphs above, Quattrone violated NASD Procedural Rule 8210 and Conduct Rule 2110 by failing to appear for an on-the-record interview as properly requested in accordance with Procedural Rule 8210.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests:

- a. findings of fact and conclusions of law that Quattrone committed the violations alleged above;
- b. sanctions in accordance with NASD Procedural Rule 8310, including (but not limited to) Quattrone being barred from the securities industry;

- c. an order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- d. all further relief that is warranted under the circumstances.

Dated: March 6, 2003

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