

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 01-149

August 9, 2001

H.D. BROUS & CO., INC.
MEMBER ORGANIZATION

* * *

Violated Rule 342 by failing to reasonably supervise and provide for appropriate procedures of supervision and control; violated Rule 342(d) by failing to employ a qualified person as branch office manager; violated Rule 342.13 by employing a Compliance Director who was not Series 14 and Series 8 qualified; violated Rules 342.16 and 342.17 by failing to review certain correspondence and supervise communications with the public; violated Rule 345(a) by permitting a person not registered with the Exchange to perform the duties of an RR; violated Rule 345(b) by permitting an individual who was not a member or allied member to assume the duties of an officer; violated Rule 345.11 by hiring a Compliance Director without conducting an adequate background investigation; violated Rule 346(b) by failing to obtain requests and grant consents for employees for outside business activities; violated Rule 350 by failing to obtain consents to use the services of and compensate Floor clerks of another member organization; violated Rule 351 in that its compliance report did not address all required areas; violated Rule 401 by failing to adhere to good business practices; violated Rule 472 by issuing unapproved research reports; and violated SEC Regs. 240.17a-3 and a-4 and Exchange Rule 440 by failing to maintain certain Floor order tickets – Consent to censure, \$225,000 fine and an undertaking.

EXCHANGE HEARING PANEL DECISION 01-150

HOWARD D. BROUS
ALLIED MEMBER

* * *

Violated Rule 342 by failing to reasonably supervise; violated Rule 342(d) by failing to employ a qualified branch office manager; violated Rule 342.13 by employing a Compliance Director who was not Series 14 and Series 8 qualified; violated Rules 342.16 and 342.17 by failing to review certain

correspondence and communications; caused a violation of Rule 345(a) by permitting an unregistered person to perform the duties of an RR; caused a violation of Rule 345(b) by permitting a person who was not a member or allied member to assume the duties of an officer; caused a violation of Rule 345.11 by hiring a Compliance Director without a background investigation; and violated Rule 401 by failing to adhere to the principles of good business practices – Consent to censure, \$25,000 fine, a 9 month supervisory suspension, and a requirement to re-take and pass the Series 9 and 10 examinations.

Appearances:

For the Division of Enforcement
Susan F. Axelrod, Esq.
Jeanne R. Elmadany, Esq.

For the Respondents
Kevin T. Rover, Esq.
Ben A. Indek, Esq.
David Stoelting, Esq.

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An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and H.D. Brous & Co., Inc. ("Brous & Co." or the "Firm"), a member organization, and Howard D. Brous ("Brous"), an allied member. Without admitting or denying guilt as to any of the matters set forth below, the Firm consents to findings by the Hearing Panel that it:

- I. Violated Exchange Rule 342 by failing to reasonably supervise, and provide for appropriate procedures of supervision and control, including a separate system of follow-up and review to assure compliance with applicable Exchange rules and Securities Exchange Act regulations regarding:
 - A. Policies and procedures relating to its Firewall in that, among other things, the Firm:
 1. Did not timely add and delete securities from its restricted list, did not place securities on the restricted list as required; and did not maintain a watch list.
 2. Failed to monitor and restrict trading at the Firm and in one or more employee/related accounts maintained away from the Firm, particularly with respect to securities which were the subject of Firm research reports, both during preparation and after dissemination of the reports.
 - B. Investment Banking activities in the Phoenix office.

- C. Research Department and proprietary and employee/related trading.
 - D. Employee/related accounts away from the Firm.
 - E. Supervision of registered representatives.
 - F. Correspondence and communications.
 - G. Employees' outside business activities.
 - H. Registration of supervisory personnel and employees.
 - I. Allocation of block orders.
 - J. Active accounts.
 - K. Annual branch office supervisory inspections.
 - L. Floor brokerage activities.
- II. Violated Exchange Rule 342(d) by failing to employ a qualified person acceptable to the Exchange as BOM in one or more branch offices.
 - III. Violated Exchange Rule 342.13 by employing a Compliance Director who was not Series 14 and Series 8 qualified.
 - IV. Violated Exchange Rules 342.16 and 342.17 in that it failed to review certain correspondence and supervise the contents of certain communications with the public.
 - V. Violated Exchange Rule 345(a) by permitting a person, who was not registered with the Exchange, to perform the duties customarily performed by an RR.
 - VI. Violated Exchange Rule 345(b) in that, on one or more occasions, it permitted an individual who was not a member or allied member of the Exchange, to assume the duties of an officer with the power to legally bind the Firm.
 - VII. Violated Exchange Rule 345.11 by hiring a Compliance Director without conducting an adequate background investigation.
 - VIII. Violated Exchange Rule 346(b) by failing to obtain written requests and grant written consents for employees' outside business activities.

- IX. Violated Exchange Rule 350 by failing to obtain prior written consent of a member organization and the Exchange to use the services of and compensate Floor clerks of that member organization.
- X. Violated Exchange Rule 351 in that its annual compliance report for 1998 did not address all required areas.
- XI. Violated Exchange Rule 401 for failing to adhere to the principles of good business practice in that it failed to adequately:
 - A. Investigate a complaint.
 - B. Assure disclosure and monitoring of employees' outside business activities and compensation.
- XII. Violated Exchange Rule 472 in that, it:
 - A. Issued four research reports which had not been approved by a supervisory analyst.
 - B. Failed to supervise certain electronic communications with customers and the public from its Phoenix office.
 - C. Issued communications which contained inaccurate information regarding an employee's registration status.
- XIII. Violated SEC Regulations 240.17a-3 and 240.17a-4 and Exchange Rule 440 in that the Firm failed to maintain certain Floor order tickets.

Without admitting or denying guilt as to any of the matters set forth above, Brous consents to findings by the Hearing Panel that he:

- I. Violated Exchange Rule 342(a) and (b) by failing to reasonably supervise, and provide for appropriate procedures of supervision and control, including a separate system of follow-up and review to prevent and detect the violations described herein and to assure compliance with applicable Exchange rules and federal securities laws.
- II. Violated Exchange Rule 342(d) by failing to employ a qualified person acceptable to the Exchange as BOM in one or more branch offices.
- III. Violated Exchange Rule 342.13 by employing a Compliance Director who was not Series 14 and Series 8 qualified.

- IV. Violated Exchange Rules 342.16 and 342.17 by failing to review certain correspondence and supervise the contents of certain communications with the public from the Phoenix office.
- V. Caused a violation of Exchange Rule 345(a) by permitting a person, who was not registered with the Exchange, to perform the duties customarily performed by an RR.
- VI. Caused a violation of Exchange Rule 345(b) by permitting an individual who was not a member or allied member of the Exchange, to assume the duties of an officer with the power to legally bind the Firm.
- VII. Caused a violation of Exchange Rule 345.11 by hiring a Compliance Director without conducting the required background investigation.
- VIII. Violated Exchange Rule 401 by failing to adhere to the principles of good business practice in that he failed to adequately:
 - A. Investigate a complaint.
 - B. Inquire with respect to an employee's outside business activities.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement, the Firm and Howard D. Brous stipulate to the following:

Background and Jurisdiction

The Firm

1. The Firm, a privately held corporation, was formed in 1988 and became a member organization at that time. The Firm's principal place of business is in Great Neck, New York ("main office"). The Firm currently has three branch offices and employs approximately 85 people.
2. The Firm's business activities include retail and institutional securities brokerage, underwriting, proprietary trading, market making and research.

Howard D. Brous

3. Brous was born on March 17, 1944. He entered the securities industry in 1968. During the period of approximately August 1968 to June 1988, he was employed as a registered representative ("RR"), branch office manager ("BOM") and/or principal by 14 member and non-member broker-dealers. In June 1988, Brous founded the Firm and became its Chief Executive Officer, Chief Financial Officer, President and Treasurer, and a Director. He became an Allied Member of the Exchange in June 1989.

4. At all times discussed below, Brous was the person with overall supervisory responsibility for the Firm, and was directly responsible for supervising the Firm's Phoenix, Arizona branch office (the "Phoenix office"), and the Firm's Investment Banking activities.
5. By letters dated October 29, 1998 and December 23, 1998 the Exchange advised the Firm of its investigation of these matters.

Overview

6. During the period 1996 through 2000, the Firm had deficiencies in certain of its systems, policies, and procedures relating to the supervision of its member organization's business activities and operations. Because of these deficiencies, Brous & Co. did not reasonably supervise the Investment Banking activities conducted in the Firm's Phoenix office. Moreover, certain sales practices occurring in that office were not adequately supervised. In addition, as noted in the findings of the Examination Reports of the Division of Member Firm Regulation, Brous & Co. failed to have an effective Firewall; failed to have adequate procedures for supervision of its Floor personnel; failed to adequately monitor and restrict trading at the Firm and in one or more employee/related accounts maintained away from the Firm, particularly with respect to securities which were the subject of Brous & Co. research reports; failed to maintain certain original Floor order tickets; issued four research reports without proper approval; and did not evidence or perform certain compliance functions, such as branch visits to some of the Firm's offices and review of active and other customer accounts.
7. As set forth above, Brous was the person who had overall supervisory authority and responsibility for the Firm. Brous failed to reasonably discharge certain of his supervisory obligations with respect to, among other things, the Investment Banking activities and certain sales practices in the Phoenix office, and the Firm's Firewall policies and procedures, compliance and Floor brokerage activities.

The Phoenix Office

Violative Conduct by Certain Phoenix Office Employees

8. During the period July 1994 through October 1998, AB was the Firm's Executive Vice President-Managing Director of Investment Banking. AB worked out of the Phoenix office.
9. Beginning in or about March 1997 and throughout the remainder of his employment at Brous & Co., without the knowledge or consent of the Firm or Brous, AB owned, controlled and/or was an employee, officer and/or director

of several corporate entities, including XYZ.¹ From March 1997 until his termination from the Firm, AB was the owner and Chairman of XYZ.

10. AB did not disclose his ownership of and business affiliations with XYZ or certain other entities to the Firm or Brous at any time during his employment.
11. In or about October 1997, CD was employed as an RR by a non-member broker-dealer in Phoenix, AZ. AB and CD had worked together in 1994 at another firm.
12. In approximately October 1997, AB, acting on behalf of XYZ, and CD entered into an arrangement whereby CD received a finder's fee of approximately 10% of the funds he raised for investment in XYZ.
13. In March 1998, CD became employed by the Firm in the Phoenix office.
14. During the period July 1997 through October 1998, AB and/or CD, without the knowledge and consent of the Firm or Brous, solicited and obtained investments of approximately \$855,000 in XYZ from approximately six (6) Brous & Co. future and then-current retail customers. In addition, during this same period, AB, without the knowledge or consent of the Firm or Brous, solicited and obtained investments of approximately \$530,000 in XYZ from approximately three (3) Firm investment banking contacts.

Failure to Supervise the Phoenix Office

15. Exchange Rules 342(a) and (b), in pertinent parts, require that each office of a member organization be under the supervision and control of the member organization, and that the member organization delegate responsibility for supervision and control to qualified employees, provide for appropriate procedures of supervision and control, and establish systems of follow-up and review to determine delegated responsibility is being properly exercised.
16. During the period March 1997 through October 1998, the Firm and Brous failed to reasonably supervise the Investment Banking activities and certain sales practices in the Phoenix office. Neither AB nor CD made an effort to conceal their conduct due to the fact that no supervisory personnel were present in or visited the Phoenix office to detect or prevent their activities.

Failure to Designate Branch Office Manager

17. Exchange Rule 342(d)(1), in pertinent part, requires that a person acceptable to the Exchange be in charge of any office of a member organization.

¹ XYZ, located in Tempe, Arizona, designed and manufactured automated testing and assembly equipment.

18. Exchange Rule 342.13(a), in pertinent part, requires that an individual have a creditable record as an RR or equivalent experience and pass either the Allied Member Examination or the Branch Office Manager Examination to be acceptable to the Exchange to be in charge of any office of a member organization.
19. Prior to late October 1998, Brous did not designate a qualified BOM for the Phoenix office, nor did he delegate a person to perform the supervisory responsibilities normally performed by a BOM in the Phoenix office.
20. Brous personally maintained supervisory responsibility for employee and customer accounts in the Phoenix office. However, prior to late October 1998, neither Brous nor any other person performed certain supervisory responsibilities normally performed by a BOM in the Phoenix office.

Failure to Supervise AB and CD with Respect to Outside Business Activity

21. Exchange Rule 346(b), in pertinent part, provides that without making a written request and receiving the prior written consent of his member organization no employee shall at any time be engaged in any other business, or be employed or compensated by any other person, or serve as an officer, director, partner or employee of another business organization.
22. On April 16, 1998, CD faxed a memo (the "April 16th Memo") to Brous which stated that in January 1998, EF, a customer of CD's, had invested \$50,000 in XYZ at the request of AB, XYZ's President, and that the repayment of EF's investment was overdue. The contents of the April 16th Memo were accurate.
23. On April 17, 1998, Brous received another fax signed by CD (the "April 17th Memo") in which CD stated that AB was not the President of XYZ and generally recanted the allegations in the April 16th Memo. The representations made by CD in the April 17th Memo were false.
24. In April 1998, AB had not made a written request to nor received the written consent of Brous & Co. to be an officer, director or employee of XYZ.
25. In connection with the April 16th and 17th Memos, Brous questioned AB who falsely denied being an officer of XYZ and having any relationship with XYZ other than being an informal advisor to the company.
26. On notice of AB's outside business activities with XYZ, neither the Firm nor Brous performed a reasonable inquiry to determine the nature and scope of AB's relationship with XYZ.
27. Moreover, the Firm failed to have adequate procedures to assure the disclosure and monitoring of employees' outside business activities and compensation.

Failure to Adequately Investigate a Complaint

28. On notice that AB had solicited EF to invest in XYZ, neither the Firm nor Brous adequately investigated EF's complaint sufficiently to learn the facts underlying such complaint.

Permitting an Unregistered Person to Function as an RR

29. Exchange Rule 345, in pertinent part, provides that no member organization shall permit a person to perform regularly the duties customarily performed by an RR unless such person shall have been registered with, qualified by and is acceptable to the Exchange.
30. As noted above, CD became employed by the Firm in March 1998. However, due to several customer complaints against him reported by his prior employer, the Exchange did not approve CD as an RR of the Firm until early June 1998.
31. Notwithstanding that he was not approved by the Exchange, immediately after joining Brous & Co. in March 1998, CD continued to service his customers from prior firms who opened accounts at Brous & Co. and also solicited new customers.

Failure to Supervise Investment Banking Activities in the Phoenix Office

32. Exchange Rules 342(a) and (b), in pertinent parts, require that each business activity of a member organization be under the supervision and control of the member organization, and that the member organization delegate responsibility for supervision and control to qualified employees, provide for appropriate procedures of supervision and control, and establish systems of follow-up and review to determine delegated responsibility is being properly exercised.
33. Throughout AB's employment at the Firm, Brous was his only supervisor.
34. Brous visited the Phoenix office on approximately three occasions during the period 1996 through October 1998. During such visits, he did not adequately conduct a review of AB's activities.
35. During the period 1996 through October 1998, neither the Firm nor Brous adequately reviewed AB's correspondence, the contents of his files or the contents of his computer which had electronic mail capability.
36. In November 1997, AB, without the Firm's or Brous' knowledge or authorization, executed a document purporting to commit the Firm as guarantor of repayment of approximately \$2,500,000 to investors in a private

placement transaction for UVW, a corporate finance client of Brous & Co. (the “UVW Guarantee”).

37. On October 13, 1998, AB, without the Firm’s or Brous’ knowledge or authorization, executed a Financing Agreement purporting to commit the Firm to arranging approximately \$6,000,000 in bridge financing for RST, a corporate finance client of Brous & Co. (the “RST Financing Agreement”).
38. AB was not an Allied Member of the Exchange and did not have authority to bind the Firm in any corporate finance transaction at any time during his employment at Brous & Co.
39. AB maintained the UVW Guarantee and other documents which revealed his execution of the UVW Guarantee in the Firm’s investment banking files. Brous did not discover AB’s execution of the UVW Guarantee until February 1998, approximately three months after it was executed.
40. In February 1998, Brous did not increase his supervision of AB subsequent to discovering that AB had acted beyond the scope of his authority in purporting to bind the Firm.
41. AB maintained the RST Financing Agreement and other documents which revealed his execution of the RST Financing Agreement in the Firm’s investment banking files. AB’s execution of the RST Financing Agreement was not discovered until shortly after the Firm suspended AB on October 20, 1998. Shortly thereafter, AB was terminated by the Firm.
42. Brous and the Firm failed to reasonably supervise AB’s activities in connection with the Firm’s investment banking business, particularly to prevent and detect AB’s unauthorized commitment of Firm capital and his soliciting and obtaining investments in XYZ from the Firm’s investment banking clients and contacts without the Firm’s knowledge or authorization.

Exchange Examinations of the Firm

43. The Exchange’s Division of Member Firm Regulation (“MFR”) conducted an examination of the Firm’s financial, operational, and supervisory standards in 1998 (the “1998 Fin/Op Examination”) and set forth various findings in a report to the Firm (the “1998 Fin/Op Report”) including findings that the Firm was not in compliance with various Exchange rules. The Firm received and responded to the 1998 Fin/Op Report.
44. MFR’s Sales Practice Review Unit (“SPRU”) conducted a sales practice examination of the Firm in 2000 (the “2000 SPRU Examination”) and set forth certain findings in a report to the Firm (the “2000 SPRU Report”).

including findings that the Firm was not in compliance with various Exchange rules. The Firm received and responded to the 2000 SPRU Report.

45. MFR conducted an examination of the Firm's financial, operational, and supervisory standards in 2000 (the "2000 Fin/Op Examination") and set forth certain findings in a report to the Firm (the "2000 Fin/Op Report") including findings that the Firm was not in compliance with various Exchange rules and federal securities laws. The Firm received and responded to the 2000 Fin/Op Report.
46. As detailed below, during 1998 through 2000, the Firm failed to have adequate Firewall policies and procedures and failed to adequately monitor and restrict trading at the Firm and in one or more employee/related accounts maintained away from the Firm, particularly with respect to securities which were the subject of Brous & Co. research reports. In addition, during 1998, the Firm failed to perform or evidence certain compliance activities and other supervision of sales practices. Moreover, during 2000, the Firm failed to reasonably supervise its active customer accounts, and the allocation of block orders. In addition, the Firm failed to have adequate procedures to supervise its Floor brokerage activities, failed to maintain certain original Floor order tickets and failed to obtain the prior written consent of the Exchange and another member organization to use the services of and compensate Floor clerks of that member organization.
47. As set forth above, Brous had overall supervisory authority and responsibility for the Firm, and he failed to reasonably discharge his supervisory obligations with respect to certain of the deficiencies noted in the 1998 and 2000 Fin/Op Examinations and the 2000 SPRU Examination.

Firewall Policies and Procedures Supervisory Deficiencies

48. Section 21A(b)(1) of the Insider Trading and Securities Fraud Enforcement Act of 1988 requires that firms establish and maintain adequate policies and procedures reasonably designed to limit or contain the flow of non-public information to employees. Exchange Information Memo 91-22, which was distributed to all Exchange members and member organizations, states that adequate procedures include the use of accurate "restricted" and "watch" lists.
49. During 1998 through 2000, the Firm failed to have reasonable policies and procedures concerning its Firewall.
50. Specifically, the Firm did not have adequate policies and procedures for the addition and deletion of securities from the Restricted List; did not place securities on the Restricted List as required; and did not maintain a Watch List.

51. GH, the Firm's Compliance Director, who performed the daily trading review, was unaware of which securities were on the Restricted List and did not perform the review on a timely basis.

Review of Employee and Proprietary Trading Supervisory Deficiencies

52. The Firm failed to evidence its review of one or more employee and employee-related accounts maintained away from the Firm.
53. The Firm failed to monitor and restrict trading at the Firm and in one or more employee/related accounts maintained away from the Firm, particularly with respect to securities which were the subject of Brous & Co. research reports, both during preparation and after dissemination of the reports. In addition, the Firm failed to have adequate policies and procedures regarding the monitoring of such trading.

Firewall Conflicts of Interest

54. JK acted as both Director of Research and the head of Institutional Sales creating a conflict of interest.
55. The Firm did not have adequate policies and procedures to supervise trading by JK, Director of Research, who also serviced accounts as an RR.

Issuing Unapproved Research Reports

56. Exchange Rule 472(b), in pertinent part, requires that research reports be approved, in advance, by a supervisory analyst acceptable to the Exchange.
57. The Firm issued four research reports which had not been approved by a qualified supervisory analyst.

Failure to Evidence Review of Monthly Account Statements

58. Exchange Rule 405(2), in pertinent part, requires that every member organization shall supervise diligently all accounts handled by registered representatives of the organization.
59. In 1998, the Firm failed to evidence review of monthly account statements.

Failure to Evidence Review of Active Accounts

60. The Firm failed to evidence any supervisory review of approximately 20 active customer accounts during the period September 1999 through August 2000.

61. The Firm did not have any written procedures addressing supervisory review of active accounts.

Failure to Have Qualified Compliance Officer

62. Exchange Rule 342.13(b), in pertinent part, requires that the Compliance Director of a member organization must pass the Compliance Official Qualification Examination (Series 14) and General Securities Sales Supervisor Qualification Examination (Series 8), if the member organization does business with the public.
63. Exchange Rule 345.11(a)(1), in pertinent part, requires that members and member organizations thoroughly investigate the previous record of persons required to be registered with the Exchange whom they contemplate employing.
64. During the period May 1997 through July 1998, GH, the Firm's Compliance Director was not Series 14 and Series 8 qualified.
65. Brous hired GH as the Firm's Compliance Director in April 1997 and at that time did not make adequate inquiry regarding his prior experience and qualifications to learn that GH was not qualified to hold such position.

Failure to Have a Qualified Branch Office Manager

66. As noted above, Exchange Rule 342(d)(1), in pertinent part, requires that a person acceptable to the Exchange be in charge of any office of a member organization.
67. As noted above, Exchange Rule 342.13(a), in pertinent part, requires that an individual have a creditable record as an RR or equivalent experience and pass either the Allied Member Examination or the BOM Examination to be acceptable to the Exchange to be in charge of any office of a member organization.
68. Prior to May 1998, the Firm did not have a qualified BOM in its 80 Cuttermill Road branch office which employed six (6) registered representatives.

Incomplete Compliance Report and Failure to Perform Branch Visits

69. Exchange Rule 342.30, in pertinent part, requires that by April 1 of each year a member organization must prepare and submit to its chief executive officer a report, including specified items of information, on its supervision and compliance efforts during the previous year.

70. The Firm's 1998 annual compliance report did not address all required areas, such as: identification and analysis of compliance problems and future plans to prevent and detect such violations; and a discussion of the preceding year's compliance efforts in various areas including: investment banking activities, sales practices, books and records, finance and operations, and supervision.
71. At least annual branch inspections are required under Exchange Interpretation Handbook 342(a)(b)/03.
72. A compliance visit was not made to the Tampa, Florida, Bala Cynwyd, Pennsylvania and Cincinnati, Ohio branch offices at least annually as required during 1997.
73. A compliance visit was not made to the Phoenix office at least annually as required during 1996 through late October 1998.
74. Brous, the Firm's Compliance Director from January 1996 through April 1997, did not conduct a compliance visit of the Phoenix office during that time.
75. From May 1997 through October 1998, Brous failed to reasonably supervise the Firm's Compliance Director and National Sales Manager to whom he delegated compliance responsibilities to assure that the annual branch compliance visits noted above were performed as required.

Misleading Communications with the Public

76. Exchange Rule 472.30, in pertinent part, provides that no member organization shall utilize any communication which contains any untrue statement.
77. During the period March 1998 to early June 1998, the Firm sent letters to CD's former customers stating CD had "joined [H.D.] Brous & Co., Inc. as an investment representative," despite the fact that he had not yet been approved by the Exchange as an RR.

Failure to Timely Prepare Records of Orders

78. Exchange Rule 410 requires, in pertinent part, that prior to execution of any order in an Exchange listed security the member organization must designate upon the order slip or other record of the member organization the account for which such order is to be executed.
79. During the period January 1999 through October 2000, the Firm did not have adequate written procedures requiring that customer account allocations of block orders be identified on a memorandum prior to the execution of block trades by the trading desk.

Floor Brokerage Activity Supervisory Deficiencies

80. Exchange Rule 342(b), in pertinent part, requires that a member organization shall delegate responsibility and provide appropriate procedures of supervision and control for each of its business activities, and establish a system of follow-up and review to determine delegated responsibility is being properly exercised.
81. During 2000, the Firm did not have adequate procedures for supervision of its Floor personnel in that its procedures did not adequately address areas including, on-Floor trading, intra-day trading, multiple order representation, and front-running, among other things.
82. During 2000, the Firm failed to conduct and evidence reviews of its Floor brokerage operations for compliance with applicable Floor rules regarding, on-Floor trading, intra-day trading, multiple order representation, and front-running, and other Floor related activities.

Failure to Maintain Original Floor Order Tickets

83. Exchange Rule 440 and Regulations 17a-3 and 17a-4 promulgated under the Securities and Exchange Act of 1934, as amended, in pertinent parts, require that every member and registered broker-dealer shall make, and preserve for a period of not less than three years, a memorandum of each brokerage order given or received for the purchase or sale of securities.
84. During 2000, the Firm's qualifying member, a Floor broker, conducted a two-dollar Floor brokerage business as well as executing orders for the Firm.
85. During 2000, the Firm's Floor broker did not maintain the original Floor order tickets for certain orders he gave-up for execution to other Floor brokers or specialists.

Failure to Obtain Prior Written Consent to Employ/Compensate a Floor Employee

86. Exchange Rule 350, in pertinent part, prohibits a member, member organization or employee thereof from employing or compensating a Floor employee of another member organization without the prior written consent of the employer and the Exchange.
87. During 2000, the Firm used the services of four (4) Floor clerks employed by another member organization and compensated each clerk \$50 per month for those services.

88. The Firm failed to obtain the prior written consent of the other member organization and the Exchange to use the services of and compensate the clerks employed by the other member organization.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found the Firm and Mr. Brous guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by the Firm of a censure, a fine of \$225,000 and a requirement to comply with the following:

- a. Within 30 days from the date this decision becomes final, the Firm shall retain an independent consultant, not unacceptable to the Exchange (the "Consultant"), to conduct a review of the Firm's policies, procedures, and supervisory systems (the "Review") relating to the violations described herein. The Consultant shall prepare a report of its Review including recommendations for additional policies, procedures and supervisory systems reasonably designed to assure compliance with applicable Exchange rules and federal securities laws to prevent recurrence of the violations described herein (the "Report").
- b. Within 120 days from the date this decision becomes final, the Review shall be completed and the Report shall be delivered to the Firm's Chief Executive Officer and to the Exchange's Division of Enforcement.
- c. The Firm shall adopt and implement any and all policies, procedures and supervisory systems recommended by the Report; provided however, that as to any recommendation of the Report which the Firm determines is, in whole or in part, unduly burdensome, the Firm may adopt, with the Consultant's written consent and approval, an alternative procedure designed to achieve the same objective or purpose as that of the recommendation in the Report ("Alternative Procedures"). The Firm shall provide the Exchange with a written representation that such Alternative Procedures have been presented to and approved by the Consultant with a description of how such Alternative Procedures achieve the same objective or purpose as the Report's original recommendations.
- d. The Firm shall, within 60 days of delivery of the Report to its Chief Executive officer, submit to the Division of Enforcement a letter signed by the Chief Executive Officer setting forth the details of the Firm's implementation of the recommendations contained in the Report or Alternative Procedures.

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Brous of a censure, a fine of \$25,000, a suspension from employment or association in any supervisory capacity with any member or member organization for a period of 9 months, and a requirement that he re-take and pass the Series 9 and 10 examinations prior to the end of the supervisory suspension period.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer