

HEARING PANEL DECISIONS 02-13 AND 14

APPEALED TO SEC

SEE RELEASE 34-48618 DATED OCTOBER 9, 2003

**NEW YORK STOCK EXCHANGE, INC.**

In the Matters of                    )  
  )  
AFC Partners, LLC                    )  
    and                                    )  
Anthony A. Adonnino                )

Requests for Review of  
Exchange Hearing Panel  
Decisions 02-12 and 02-13

In accordance with Exchange Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties, and oral argument, the Board affirms the decisions of the Hearing Panel in all respects.

October 3, 2002

By the Board of Directors  
New York Stock Exchange, Inc.

**NEW YORK STOCK EXCHANGE, INC.**

In the Matter of	)	Requests for Review of
	)	Exchange Hearing Panel
Thomas Cannizzaro	)	Decision 02-14

In accordance with Exchange Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties, and oral argument, the Board affirms the decisions of the Hearing Panel in all respects.

October 3, 2002

By the Board of Directors  
New York Stock Exchange, Inc.

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 02-12**

January 14, 2002

AFC PARTNERS, LLC  
MEMBER ORGANIZATION

\* \* \*

**Effected trades on the Floor of the Exchange for an account in which it had an interest; violated Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 by failing to create accurate records; did business with a public customer without complying with applicable rules; violated Exchange Rule 342 by failing to reasonably supervise and control business activities – Censure and \$75,000 fine.\***

**EXCHANGE HEARING PANEL DECISION 02-13**

ANTHONY A. ADONNINO  
EXCHANGE MEMBER

\* \* \*

**Effected trades on the Floor of the Exchange for an account in which he had an interest; violated Exchange Rule 476(a)(4) by making material misstatements to the Exchange; caused violations of Exchange Rule 401 by failing to adhere to principles of good business practice; caused Firm to do business with a public customer without complying with applicable rules; caused violations of Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 by failing to create accurate records; violated Exchange Rule 342 by failing to supervise and control Firm business activities – Censure, eighteen month suspension and \$200,000 fine.\***

**EXCHANGE HEARING PANEL DECISION 02-14**

THOMAS CANNIZZARO  
EXCHANGE MEMBER

\* \* \*

**Effected trades on the Floor of the Exchange for an account in which he had an interest; violated Exchange Rule 476(a)(4) by making material misstatements to the Exchange – Censure and six month suspension.\***

**Appearances:**

For the Division of Enforcement  
Joy A. Weber, Esq.  
Neil M. Berson, Esq.  
Kathleen M. Toner, Esq.  
Joseph A. Sack, Esq.

For the Respondents  
George Brunelle, Esq.  
(For AFC Partners, LLC and  
Anthony Adonnino)  
David M. Sobel, Esq.  
(For Thomas Cannizzaro)

\* See decision by the Board of Directors dated October 3, 2002.

\* \* \*

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against AFC Partners, LLC (the "Firm"), a member organization, and Anthony A. Adonnino and Thomas Cannizzaro, members of the Exchange. The Firm was charged with having:

- I. Violated Section 11(a)(1) of the Exchange Act, and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, it directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which it had an interest.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, it directly or indirectly effected, initiated and executed or caused to be executed, on the Floor of the Exchange one or more trades for an account in which it had an interest.
- III. Engaged in acts detrimental to the interest or welfare of the Exchange in that, on one or more occasions, it directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which it had an interest.
- IV. Violated Section 11(a)(1) of the Exchange Act, and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, it directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which it exercised discretion as to the time of execution, the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction was to be one of purchase or sale.
- V. Violated Exchange Rule 95(a) in that, on one or more occasions, it directly or indirectly executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which transactions it was vested with discretion as to the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction was to be one of purchase or sale.
- VI. Violated Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 promulgated under the Exchange Act in that, on one or more occasions, it failed to create and maintain accurate books and records as required, including order tickets and commission bills.
- VII. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, it issued bills for trade executions to, and received payment from, entities which did not enter orders for such trades and/or did not receive such trades.

- VIII. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, it facilitated the allocation of shares of executed trades from one customer's account to an unrelated account for which no valid order had been properly entered.
- IX. Did business with a public customer without complying with the requirements of Exchange rules and federal securities regulations.
- X. Violated Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 promulgated under the Exchange Act in that, on one or more occasions, it altered and/or created duplicate order tickets and/or reports of trade executions to facilitate the allocation of executed trades from one customer's account to an unrelated account for which no valid order for such trades had been properly entered.
- XI. Violated Exchange Rule 440B and SEC Regulation 240.10a-1 promulgated under the Exchange Act in that, on one or more occasions, it (a) failed to mark certain sell order tickets as short, and (b) caused short sales to be effected on a minus tick or zero minus tick.
- XII. Violated Exchange Rule 342(a) and (b) in that it failed reasonably to supervise and control the business activities of the Firm and its employees, to provide for appropriate procedures of supervision and control of the business activities of the Firm and its employees, and to establish a separate system of follow-up and review to assure compliance with applicable Exchange rules and federal securities laws and regulations, and to detect and prevent the foregoing violations.

Mr. Adonnino was charged with having:

- I. Violated Section 11(a)(1) of the Exchange Act and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
- III. Engaged in acts detrimental to the interest or welfare of the Exchange in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
- IV. Violated Section 11(a)(1) of the Exchange Act and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which he exercised discretion as to the time of execution, the choice of security to be bought or sold, the total amount of the

security to be bought or sold, or whether the transaction was to be one of purchase or sale.

- V. Violated Exchange Rule 95(a) in that, on one or more occasions, he directly or indirectly executed or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which transactions he was vested with discretion as to the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction was to be one of purchase or sale.
- VI. Violated Exchange Rule 476(a)(4) in that he made one or more material misstatements to the Exchange.
- VII. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he caused his member organization employer to issue bills for trade executions to, and receive payment from, entities which did not enter orders for such trades, and/or did not receive such trades.
- VIII. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he facilitated the allocation of shares of executed trades from one customer's account to an unrelated account for which no valid order had been properly entered.
- IX. Caused violations of Exchange Rule 401 in that he, acting on behalf of the Firm, failed to adhere to the principles of good business practice in the conduct of his business affairs.
- X. Caused his member organization employer to do business with a public customer without complying with the requirements of Exchange rules and federal securities regulations.
- XI. Caused violations of Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 promulgated under the Exchange Act in that he failed to create and maintain accurate books and records, including commission bills, and facilitated the creation of inaccurate order tickets.
- XII. Violated Exchange Rule 342(a) and (b) in that he failed reasonably to supervise and control the business activities of the Firm and its employees, to provide for appropriate procedures of supervision and control of the business activities of the Firm and its employees, and to establish a separate system of follow-up and review to assure compliance with applicable Exchange rules and federal securities laws and regulations, and to detect and prevent the foregoing violations.

Mr. Cannizzaro was charged with having:

- I. Violated Section 11(a)(1) of the Exchange Act and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, he directly or indirectly effected,

- initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
  - III. Engaged in acts detrimental to the interest or welfare of the Exchange in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account in which he had an interest.
  - IV. Violated Section 11(a)(1) of the Exchange Act, and SEC Regulation 240.11a-1(a) thereunder in that, on one or more occasions, he directly or indirectly effected, initiated and executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which he exercised discretion as to the time of execution, the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction was to be one of purchase or sale.
  - V. Violated Exchange Rule 95(a) in that, on one or more occasions, he directly or indirectly executed, or caused to be executed, on the Floor of the Exchange one or more trades for an account with respect to which transactions he was vested with discretion as to the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction was to be one of purchase or sale.
  - VI. Caused violations of Exchange Rule 440 and SEC Regulations 240.17a-3 and 240.17a-4 promulgated under the Exchange Act in that, on one or more occasions, he failed to create and maintain accurate books and records, including order tickets and commission bills.
  - VII. Violated Exchange Rule 476(a)(4) in that he made one or more material misstatements to the Exchange.

The respondents submitted Answers, through their respective attorneys, that denied the essential allegations against them, and denied the charges. Basically, with respect to those respondents alleged to have traded in an account in which they had an interest, and exercised discretion in their Floor trading (the Firm, Adonnino and Cannizzaro), they asserted that they did not have any profit-sharing agreement, and entered transactions only on orders received; they were paid in accordance with their services and their customer's ability to pay. As to those respondents alleged to have facilitated improper transactions for a person they should have known to be a public customer, trading for himself rather than for his member firm employer, (the Firm and Adonnino), they denied any knowledge that this customer was trading for himself, rather than for his firm. They asserted that the factual allegations against them were vague, circumstantial, and incorrect, and unreasonably delayed.

At the hearing, respondents appeared with counsel and testified on behalf of themselves and the Firm. On the basis of the testimony and evidence presented at the hearing, the Hearing Panel found as follows:

### **Background and Jurisdiction**

#### **The Firm**

1. The Firm is a New York limited liability company.
2. During all material times referred to herein, the Firm was, and is, a member organization of the New York Stock Exchange, Inc. (the "Exchange") engaged in business as a Floor brokerage firm on the Trading Floor of the Exchange (the "Floor").

#### **Anthony A. Adonnino**

3. During all material times referred to herein, Anthony A. Adonnino ("Adonnino") was, and is, a lessee member of the Exchange, a principal of the Firm, and a Floor broker.
4. Adonnino was born on December 9, 1960. He entered the securities industry in or about 1981. From 1981 to 1983, he was employed as a clerk on the Floor by a member organization. From 1983 to 1985, he was employed as a clerk on the Floor by another member organization. From 1985 to 1989, he was employed as a clerk on the Floor and Floor broker by another member organization. From 1989 to 1993, he was employed as a Floor broker for various member organizations. From 1993 to date, he has been a principal of the Firm and employed by it as a Floor broker.
5. During all material times referred to herein, Adonnino was the individual who had overall authority and responsibility for internal supervision and control of the Firm's activities and its employees, and for compliance with securities laws and regulations. As such, Adonnino had supervisory authority and responsibility for, among other things, the Firm's Floor brokers and other employees, Floor operations, books and records, billing matters, and compliance issues.

#### **Thomas Cannizzaro**

6. During all material times referred to herein, Thomas Cannizzaro ("Cannizzaro") was an employee of the Firm. From approximately 1995 to date, Cannizzaro has been a lessee member of the Exchange and a Floor broker.
7. Cannizzaro was born on July 18, 1957. He entered the securities industry in or about 1977. From 1977 to approximately 1984, he was employed as a clerk by various firms on the American Stock Exchange. From 1984 to 1988, 1988 to 1991 and 1991 to 1993, respectively, he was employed as a clerk on the Floor by member organizations. From 1993 to 1998, he was employed by the Firm; from approximately 1993 to June 1995, as a clerk on the Floor, and from approximately

July 1995 to 1998 as a Floor broker. From 1998 to date, he has been employed as a Floor broker by another member organization.

**The Profit-Sharing Account – Cannizzaro, Adonnino and the Firm**

8. From approximately August 1993 to May 1997, a particular customer of the Firm (the “Customer”) paid the Firm on a profit-sharing basis. The Customer’s initial relationship with the Firm was through another partner of the Firm. This partner disclaimed knowledge of any special billing arrangement with the Customer. The formal billing rate was established at the rate of one dollar per 100 shares executed; in fact, however, the Customer was paying his bills on the basis of profit-sharing. This partner, however, did very little trading on behalf of the Customer, and played a diminishing role in influencing the administration of the Firm. This partner left the Firm in mid-1994.
9. In late 1994, after a period of losses and non-payment in the account, there was a hiatus in the Customer’s relationship with the Firm. By the spring of 1995, the Customer, through Cannizzaro, renewed his relationship with the Firm. The Customer intended this to be a profit-sharing relationship and, while he could not recall his specific conversations with Cannizzaro or Adonnino, he generally informed Floor brokers he dealt with that he was willing to compensate them with a percentage of the profits. Here, however, the Customer was simply seeking renewal of what he assumed to be his prior relationship.
10. Cannizzaro became acquainted with the Customer independently of the Customer’s initial relationship with the Firm. In conversation, the Customer indicated his desire to trade through the Firm. Cannizzaro discussed bringing him in as a customer with Adonnino. Cannizzaro had no authority to negotiate billing rates. Adonnino, while considering the Customer a difficult customer, reluctantly agreed to deal with him, to provide Cannizzaro with some supplementary income. Adonnino then met with the Customer to discuss their trading arrangement.
11. Trading was renewed for the Customer in the spring of 1995, even though the Customer had not paid the Firm since the previous September. The Customer started paying again in June 1995, by which time his account showed a profit, and his September payment was based on one-half of the cumulative profits in his account at that time.
12. From June 1995 to March 1996, the Customer engaged in a high level of activity with the Firm. In this period, the Firm received, on a monthly basis, between approximately 50% to 64% of the cumulative profits resulting from trades executed by the Firm for the Customer’s account.
13. A comparison of the payments made out of the Customer’s account to the formal billing rates for that account indicates sizeable and disproportionate overpayments. These overpayments were not credited against future bills; monthly bills at the formal per-trade rate were regularly prepared for the Customer’s account despite substantial overpayments in previous months. These overpayments did not, by any measure,

represent efforts to correct billing oversights, to pay previous balances due or to gratuitously pay uncalled for sums to the Firm. But such repeated substantial overpayments were no mistake.

14. Cannizzaro, as the Firm's customer contact with the Customer, was credited with introducing the account, and was eligible for supplemental payments on commissions derived from the Customer's activities. These payments to Cannizzaro amounted to up to 50 percent of commissions received after Firm expenses. Cannizzaro received monthly statements indicating income received from his customers. Although the Customer's business with the Firm was very small compared to the Firm's overall business, it was a significant amount of supplemental payment for Cannizzaro.<sup>1</sup>
15. The Firm, as a general practice, tracked reports of aging bills, seeking to collect fees due to it within ninety days. Adonnino supervised the Firm's business very closely. He monitored aging bills carefully, demanding prompt payment. He would intervene personally with respect to bills aged over sixty days, and would cut off services if bills were not paid. With respect to the Customer, however, he tolerated non-payment.
16. As part of his careful supervision of the Firm's billing and receipts, Adonnino scrutinized accounts to be billed each month, and made notations, discounting as to the amount the Firm actually expected to be paid. In October 1995, he indicated an expected discount from the total to be paid by Cannizzaro's customers. In fact, the Customer overpaid for that month. But Adonnino could not estimate any overpayments for that month from these records since the formal billing records were based on straight commissions and were therefore inaccurate as to the Customer. These notations were for anticipated discounts only. They were available to other partners and to staff and were not intended to reflect off-the-book payment arrangements.
17. In April 1996 to August 1996, the Customer's account suffered cumulative losses, and no payments were made to the Firm. There was no activity in the account from September 1996 to January 1997. Trading in the account was renewed in February 1997 and for February, March and May 1997, payments were made to the Firm, measuring about 50% or more of profits.
18. In about July 1997, the Customer reverted to payment at the rate of one dollar per 100 shares executed, as formally billed by the Firm. He did so after a discussion with Adonnino, who informed the Customer that he was under scrutiny and that it would be better to do business at the formal rate.
19. The Firm took on an expanding role in trading foreign stocks for customers. Such trading required extreme rapidity, because trading in such stocks was frequently for

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<sup>1</sup> Cannizzaro testified that, noticing the overpayments, he mentioned them to Adonnino and then discussed them with the Customer. The Customer explained that he was happy with the Firm's service. It is not, however, credible that, in any such conversation, the Customer would not have pointed out that he was paying on a profit-sharing basis.

the purpose of arbitrage. Incoming orders were screamed out from the booth to the Floor broker. To receive orders for the major stock it bought and sold for its customers, the Firm operated with four to five clerks, in two small booths, with one time-stamp machine. Sometimes, orders would be executed before they were time-stamped in the booth. This staff was inadequate to keep up with necessary paper work in hectic trading periods.

20. A sampling of order tickets and Floor reports for trades executed for the Customer's account indicated a number of discrepancies. Specific instances during this period were examined, in which records showed such discrepancies as an apparent order for one security but an execution for another, or apparent purchases of additional stock without an order, or an apparent order to sell which changed to a buy order, or orders apparently time-stamped after their executions. These infrequent discrepancies, however, were the result of record-keeping errors in the course of hectic brokerage activity. There is no sufficient evidence that the Customer's account was especially favored by the Firm. Given the Firm's extremely active business, there was no need or opportunity to favor this customer; indeed, there were times when the Firm was too busy to accept his orders.<sup>2</sup>
21. Some daily Floor work for the Customer's account had notations of apparent gains obtained on completion of a buy-sell transaction. These calculations were too infrequent to be used for billing purposes, or to establish a pattern of discretionary trades. There is no evidence that Cannizzaro created false order tickets in order to favor the account, nor did he play a role in creating commission bills for the account.
22. During the investigation of this matter, Cannizzaro and Adonnino testified under oath before the Exchange's Division of Enforcement and each denied that he was aware of profit-sharing with respect to the Customer. That testimony was false and misleading.

### **Reallocations of Trades for a Public Customer – Adonnino and the Firm**

23. To conduct business with a public customer, a member organization must meet the requirements of certain Exchange rules and federal securities regulations; among such rules and regulations, Exchange Rule 319 requires member organizations doing business with the public to carry fidelity bonds; Exchange Rule 345 requires that the personnel of member organizations doing business with the public be properly registered with, and qualified by, the Exchange; Exchange Rule 382 requires that introducing and carrying member organizations enter into carrying agreements which must be submitted to and approved by the Exchange; Exchange Rule 405 requires member organizations doing business with the public to know their customer, supervise all accounts, and maintain documentation indicating supervisory approval of accounts; Regulation 240.17a-5 promulgated by the Securities and Exchange

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<sup>2</sup> Sometimes the Customer would receive executions before there was an order on the Floor. The Customer would accept these executions; he used blank order tickets, which had been pre-clocked. But there were occasions when others traded on his behalf, while he was away; the origin of such orders is, therefore, unclear and cannot be attributed to the Firm or its Floor brokers.

Commission (“SEC”) under Section 17a-5 of the Securities Exchange Act of 1934 (the “Exchange Act”) requires certain filings by member organizations doing business with public customers.

24. The Firm and Adonnino had been previously cautioned concerning rule violations by the Exchange for improperly doing business with public customers. In 1995, during an examination of the financial and operational procedures established and maintained at the Firm, examiners from the Exchange’s Division of Member Firm Regulation (“MFR”) found that the Firm was conducting business with public customers without meeting the requirements of certain Exchange rules, including Rules 319 (requiring a fidelity bond), 345 (requiring proper registration of employees), 382 (requiring Exchange approval of clearing agreements), and 405 (requiring proper customer account documentation). In or about June 1995, MFR issued its Report of Examination, dated June 19, 1995 (the “1995 Report”), to the Firm, which the Firm received. The 1995 Report set forth its findings which had been discussed in May 1995 with Firm personnel, including Adonnino. MFR issued to the Firm and Adonnino a cautionary letter, dated March 15, 1996, with respect to its finding in the 1995 Report that the Firm was doing business with public customers without meeting the requirements of the Exchange’s rules. In or about May 1995, the Firm represented to the Exchange that the Firm had ceased doing business with public customers and was in compliance with all rules and regulations. Notwithstanding such representation, the Firm and Adonnino conducted business with a public customer during the period of December 1995 through May 1996 (the “December-May period”).
25. The public customer, Carlos M. Gonzalez, was a close friend of Adonnino, with a long-standing business relationship. During the December-May period, Gonzalez was employed by a non-member Mexican broker-dealer and then by a member organization. Gonzalez also maintained a personal securities account (the “Gonzalez Account”) at a member organization other than his employer.<sup>3</sup>
26. On 39 trade dates in the December-May period, the Firm executed numerous trades in a particular stock (hereinafter, “XYZ”), which were allocated to Gonzalez’s personal account. Some of those trades were called in by Gonzalez and some by a friend of his at another securities firm.
27. An analysis of eight trading days during the December-May period indicated a series of changes in Floor tickets, reallocating trades into Gonzalez’s account. These transactions, originally entered on behalf of Gonzalez’s employer or former employer, both customers of the Firm, were billed to them by the Firm; they were altered, however, to “give up” the member organization where Gonzalez maintained his account, to the attention of Gonzalez’s broker. In accepting such reallocation

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<sup>3</sup> Gonzalez was censured and barred for three years after being found guilty by an Exchange Hearing Panel of trading for his own account without the consent of his member organization employer, and related violations; that decision was affirmed by the Exchange’s Board of Directors (Hearing Panel Decision 97-94). His broker, Judith K. Fehlig, was censured and barred for two months for failing to use due diligence in her handling of Gonzalez’s account (Hearing Panel Decision 01-19).

instructions, the Firm took on the risk of errors in transferring trades between accounts.

28. The Firm did a very large volume of trades in XYZ. Record-keeping on orders called into the Firm was very rushed, and subject to later correction. In this context, the Firm and its employees cannot be held culpable for knowingly participating in Gonzalez's improper reallocations of the orders; the overall trading in the stock was voluminous, the timing too quick for the staff executing these orders to discern an improper pattern of reallocation. Adonnino and the Firm, however, recklessly disregarded indications that Gonzalez was trading his personal account.
29. In conversations during the December-May period, Adonnino expressed his concerns about Gonzalez's problematic reallocations; he also was well aware that Gonzalez maintained a personal trading account. But he pursued no inquiry into inferences to be drawn from these two facts. In one conversation, Adonnino complained to Gonzalez that Gonzalez's belated order allocations were killing him, because "I have regulations I have to comply with ... I have to give up the names that I'm going to be giving up beforehand." In another conversation, Gonzalez mentioned that he had just "flipped a little for his own account." Adonnino asked Gonzalez "How are you going to continue trading your own account when you're working for the firm?"; Gonzalez indicated that it would have to get cleared up. Gonzalez went on to speak about his relationship with "Judy," the broker handling Gonzalez's personal account. The Firm's clerks had been instructed to use the "Attention Judy" description for Gonzalez's reallocation of trades, but Adonnino disregarded this connection in conversation with Gonzalez.
30. On one trading day, December 27, 1995, Gonzalez assured the Firm's clerk that he was about to buy the stock abroad, just as he sold ADRs of the stock through the Firm. The clerk, therefore, marked the sale as short exempt. This was an apparent violation of the short-sale rule, since Gonzalez had not yet purchased the stock. But we cannot, from this one instance, and given Gonzalez's assurances, attribute this violation to the Firm which accepted this clarification of its customer.
31. Of approximately 100 reallocations to Gonzalez's account, the Firm billed only 13 to the firm to which the transactions were reallocated; all other such transactions were billed to Gonzalez's employer, the source of the original orders. There is no indication, however, that the Firm's staff were instructed to deliberately avoid billing the firm to which the transactions were reallocated. Indeed, if Adonnino had actual knowledge that these were furtive transactions away from Gonzalez's employer, he might not have risked exposure of these improper transactions by billing the employer. The parties billed did not complain or otherwise alert the Firm to any misbillings.

### **DISCUSSION**

The respondents in this lengthy and vigorously contested hearing have strenuously asserted their innocence. However, while the evidence before the Hearing Panel does not demonstrate the

extensive violations set forth in the scope of the charges against them, the respondents must face up to a serious degree of culpability in the matters the Hearing Panel have considered.<sup>4</sup>

Mr. Cannizzaro and Mr. Adonnino and the Firm knowingly accepted as payment for their services a major share of the profits in a customer's account; on this basis, they knowingly tolerated a long period of non-payment by the customer. Although they did not treat their customer more favorably than others, their acceptance of this arrangement placed the Firm in a compromised position.

While the profit-sharing customer was not of significant consequence to the Firm's overall business, the respondents accepted the profit-sharing arrangement as an enhancement to Mr. Cannizzaro's income. Even assuming that they did not know that the customer intended to pay the Firm with a share of his profits when he renewed trading through the Firm, his gross overpayments were readily apparent soon thereafter.

The respondents would have us believe that the customer unilaterally determined to pay the Firm half of his profits and more, and never mentioned it to them. We cannot credit this story. Mr. Cannizzaro admittedly was aware of the gross overpayments; he also tolerated a long period of non-payment. Such gross overpayments, and failures to pay, are not explicable by normal commission arrangements; they can be understood only if payment was on a profit-sharing basis.

Respondents argue that the customer had, on his own initiative, undertaken to pay well beyond the billed amount as a reward for the special attention he required of them. But this is beyond credence. The customer's payments were well over any conceivable voluntary reward payments. Mr. Cannizzaro was in frequent contact with the customer. Mr. Cannizzaro claims that the customer simply expressed his happiness with the Firm's service and thanked them for their good work; Mr. Cannizzaro claims that he also mentioned this to Mr. Adonnino, who told Mr. Cannizzaro he was happy for him. However, since the customer was clearly calculating his payments on a percentage of profits, and was motivated to gain favored services through profit-sharing, we cannot credit Mr. Cannizzaro's claim that the customer never informed him of that fact.

Nor was Mr. Adonnino blind to this understanding. He closely monitored the Firm's receipts and, especially, non-payments. Yet, he tolerated non-payment from this customer, and let him back to trade again. Indeed, no such profit-sharing arrangement could have allowed without Mr. Adonnino's approval. At the end, Mr. Adonnino, under scrutiny, personally informed the customer that it would be better to revert to the formal commission rate.

Mr. Adonnino was also too tolerant of his friend, Carlos Gonzalez. His knowledge that his friend had a personal trading account, coupled with the problems his friend presented in reallocating orders, should at a minimum have alerted him, as a responsible professional charged

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<sup>4</sup> Respondents' Answer, and their penalty argument, included an assertion that the policy that independent Floor brokers could not share in profits in customers' accounts was being applied retroactively, but no evidence was offered in support of this contention. Indeed, at the hearing, a witness representing the Firm recognized that profit-sharing was always impermissible. Respondents also argued that the defense was prejudiced by unreasonable delay in bringing these proceedings. But the hearing involved two separate courses of conduct, ending only three years prior to the bringing of charges, after lengthy and complex investigations. Moreover, documentary evidence presented at the hearing was clear, and essential events were recalled in testimony.

with the Firm's compliance with regulatory requirements, to check further into the nature of those reallocations. In failing to do so, he put his Firm at risk and failed to adhere to the principles of good business practice.

The Firm's clerks were under intense pressure. In particular, they executed customer orders for one of the most actively traded stocks listed on the Exchange. For orders in this stock, it is not surprising, in the circumstances, that there were a number of time stamping and other errors on their order tickets. Of course, the Firm should have provided more time-stamp machines and other resources to assure accurate record-keeping. The Firm and Mr. Adonnino clearly bear responsibility for these record-keeping violations.

Mr. Adonnino is very much a "hands on" supervisor. But he had some weak spots. He trusted his friend on questionable transactions. He tolerated a customer's profit-sharing arrangement. He did not provide adequate resources or staff for accurate record-keeping and time-stamping. Despite his devoted and hard-working attention to Firm business, he put his Firm at significant risk.

In considering penalty, the Hearing Panel recognizes that the matters discussed here are not of the gravity found in recent precedents concerning profit-sharing by Floor brokers in customer accounts; those precedents involved the wholesale efforts of a non-member organization to totally corrupt a number of Floor brokers. The limited instance of profit-sharing in this matter, while serious, did not approach that level of misconduct. As to the matter concerning reallocation of trades for the Gonzalez Account, Mr. Adonnino acted recklessly, even if he did not knowingly facilitate the customer's misconduct.<sup>5</sup>

### **DECISION**

The Hearing Panel, by unanimous vote, found the Firm guilty of Charges I, II, III, VI, IX, and XII and not guilty of Charges IV, V, VII, VIII, X and XI.

The Hearing Panel, by unanimous vote, found Mr. Adonnino guilty of Charges I, II, III, VI, IX, X, XI and XII and not guilty of Charges IV, V, VII and VIII.

The Hearing Panel, by unanimous vote, found Mr. Cannizzaro guilty of Charges I, II, III and VII and not guilty of Charges IV, V and VI.

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that the Firm be censured and fined \$75,000.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Adonnino be censured, suspended for eighteen months from membership, allied

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<sup>5</sup> As an alternative to suspension, Mr. Adonnino suggests that he and the Firm undertake to reform their supervisory and compliance procedures. But the Firm's supervisory and compliance failings devolve from the past laxity of a particular individual, Mr. Adonnino. Further, the Firm represents that it has no continuing compliance problems. There would, therefore, be no purpose to requiring such undertakings.

membership, approved person status, and from employment or association in any capacity with any member or member organization, and fined \$200,000.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Cannizzaro be censured and suspended for six months from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Panel

Milton M. Stein  
Hearing Officer