

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-41

April 15, 2002

LOUIS MICHAEL OLERIO, JR.
REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 472(a) by posting an electronic communication to the public concerning securities on an Internet message board without the knowledge and approval of his member firm employer; without his employer's approval he posted an electronic communication to the public that contained speculative and/or misleading statements; without his employer's approval he posted an electronic communication to the public which might have reasonably been expected to have affected investor interest in a security; without his employer's approval he posted an electronic communication to the public which purported to divulge his employer's current recommendation for a security when he knew that his employer was prohibited from making such a recommendation – Censure and one month suspension.

Appearances:

For the Division of Enforcement
Steven J. Brostoff, Esq.
Maryann Wong, Esq.
Daniel M. Labovitz, Esq.

For the Respondent
Norton Rosenthal, Esq.

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An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Louis Michael Olerio, Jr., a registered representative formerly with Morgan Stanley Dean Witter & Co. (the "Firm"). Mr. Olerio was charged with having:

- I. Violated Exchange Rule 472(a) on one or more occasions by posting an electronic communication to the public concerning securities on an Internet message board without the knowledge and approval of his member firm employer.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, without his member firm employer's approval, he posted an electronic communication to the public that contained speculative and/or misleading statements.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, without his member firm employer's approval, he posted an

electronic communication to the public which might have reasonably been expected to have affected investor interest in a security.

- IV. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, without his member firm employer's approval, he posted an electronic communication to the public which purported to divulge his member firm employer's current recommendation for a security when he knew that his member firm employer was prohibited at the time from making such a recommendation.

The respondent, through his counsel, submitted an Answer to the Charge Memorandum which admitted certain of the facts alleged and denied others. The respondent denied each of the charges. After a hearing, an Exchange Hearing Panel found that:

Background and Jurisdiction

1. Louis Michael Olerio, Jr. ("Olerio") was born on July 6, 1977. His securities industry employment is as follows:

The Firm	July 1999 to January 20, 2000
Member Organization A	January 31, 2000 to present

2. On or about February 9, 2000, the Exchange received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from the Firm reporting that it had terminated Olerio's employment for violating the Firm's policies on electronic communications.
3. By letter dated May 19, 2000, which Olerio received, the Exchange's Division of Enforcement advised Olerio of its investigation.

Unapproved and Improper Communications with the Public Over the Internet

4. From on or about January 6 to January 17, 2000 (the "relevant period"), Olerio, a registered representative at the Firm's branch office in Dallas, Texas, posted ten electronic messages concerning securities over the Internet on Yahoo Finance message boards ("Yahoo Finance") from his home computer.
5. In the ten electronic messages he posted on Yahoo Finance, Olerio identified himself by his Yahoo screen name.
6. In the ten electronic messages he posted, Olerio made references to these securities: ABC, DEF, GHI, and/or JKL.
7. In July 1999 Olerio signed the Firm's "Electronic Communications User Acknowledgement Agreement." This agreement covered Olerio's use of the Firm's computer and information resources including electronic communications. That agreement included the following paragraph:

“I understand and agree that the Internet or commercial online networks may only be used to disseminate electronic communications with existing clients, individually identified prospects, or follow-up contact with leads. Electronic communications resources may not be used to establish contact with leads.”

8. A shortened reminder version of this policy appeared on office computer screens and required an indication of agreement with the policy to continue.
9. The Firm maintained an online compliance manual which included material on electronic communications. Five screens from the manual were entered into evidence at the hearing. Most of this material seems to apply to use of the Firm’s computer system.
10. None of the ten messages that Olerio posted were sent from or through the Firm’s computer system. They were sent by Olerio from home through his personal computer. When first questioned by the Firm about these matters and then fired shortly thereafter, Olerio was genuinely surprised. He had not connected the Firm’s written policies with his use of his home computer. Firm management employees understood that the Firm policy applied to what Olerio did. But he did not. The policy was not clear. As written the focus of the policy was the use of the Firm’s computer system and other electronic resources and not personal home computers.
11. Several of the items in the online compliance manual would have led an experienced broker to at least ask his supervisors about the application of the policy. Olerio never asked them. He never made the connection and thus he never told them what he did and he never sought the Firm’s approval.
12. The online compliance manual contained a list of items that were prohibited in electronic communications. Several of these could be deemed to apply to the postings that Olerio made. Also included in the compliance manual was a prohibition of the use of electronic bulletin board systems as a sales marketing tool. Several of his messages could have been viewed as an attempt to market himself. Again, an experienced broker would have known to ask questions. Olerio did not.
13. Olerio’s postings often had the nature and substance of playground bragging. Some are responses to others on the website with whom he disagreed or who did not take him seriously. In one of the messages he posted on January 8, 2000, at 2:03 p.m., Olerio identified himself as a financial advisor at the Firm: “First of all, just because of my age please don’t discredit me. I am an FA for MSDW ...”
14. Exchange Rule 472(a) states that: “Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a ... member organization to customers or the public shall be approved in advance” by an appropriate supervisor. Exchange Rule 472.10(1) defines the term “communication” to include, among other items, electronic communications that are distributed to the public.

15. Olerio caused violations of Exchange Rule 472(a) by posting securities-related electronic communications to the public on the Internet without supervisory knowledge or approval, particularly here where he identified himself as a Firm financial advisor, made references to the Firm's technology analyst and her recommendations, and to the Firm's role in the proposed merger of two companies.
16. During the relevant period, without the Firm's knowledge or approval, Olerio made speculative and/or misleading statements in the messages he posted that might have reasonably been expected to have affected investor interest in that security. Examples of such messages can be found in at least half of the postings he made. Yet it seems clear that Olerio never considered the impact of his remarks, nor did he act willfully to disadvantage investors.
17. Olerio's statements might have reasonably been expected to have affected investor interest in the stocks he touted in that, in support of his recommendations, he: (i) identified himself as a Firm broker; (ii) investors could have believed that information in some of his statements came from the Firm's January 2000 technology conference; (iii) referred to a report by analysts at the Firm; and (iv) referred to an analyst's recommendations about ABC and GHI. There is however no evidence that any investors were actually influenced by Olerio's comments.
18. At all times relevant herein, the Firm was the financial advisor to JKL in its proposed merger with ABC.
19. At all times relevant herein, an analyst at the Firm analyzed and rated technology stocks, including ABC.
20. On or about January 7, 2000, because of its role as financial advisor to JKL, the Firm restricted that analyst to a "facts-only review" of ABC and JKL stocks, and prohibited the analyst from making any recommendations for the aforementioned stocks.
21. On or about January 10, 2000, subsequent to the announcement of a proposed merger, the Firm placed ABC on a "No Solicitation" list, effectively prohibiting its sales staff from soliciting or recommending that security.
22. From on or about January 10, 2000, Olerio, as a financial advisor at the Firm, was aware or should have been aware that ABC had been placed on the "No Solicitation" list, and that he was prohibited from soliciting or recommending that security to his customers.
23. In spite of this prohibition and without the knowledge or approval of the Firm, the purchase of ABC was recommended in at least three messages of Olerio's on-line social conversations.
24. The above messages were speculative and misleading, in that Olerio: (i) had no actual knowledge as to how the analyst would rate ABC; (ii) created the appearance that he might have based his recommendation to purchase ABC on non-public inside

information; and (iii) divulged to the public what might appear to be the Firm's proprietary, non-public information, namely, the analyst's purported recommendation of ABC. Again, there is no evidence that anyone was actually misled.

25. With the exception of some information from previously published research reports, the source of Olerio's information was a cable television financial information channel. He had no inside information. The bragging nature of his comments might indicate that he had a close business relationship with the analyst. This was not true. He had never met, spoken to or telephoned the analyst. Here again his "knowledge" came from the cable television channel.
26. At the time of these events Olerio was a 22-year old broker who had just recently passed his registered representative examination and commenced sales activities. His conduct was not intended to mislead or defraud the public. There was no premeditation. That was in fact part of the problem. He acted without thinking about the impact and the possible consequences of his actions.

DECISION

The Hearing Panel, by unanimous vote, found Mr. Olerio guilty as charged. We find that his actions caused him to be technically guilty of the charges. Yet we find that his frivolous, unthinking conduct was not intended to violate the rules or adversely impact investors. An experienced broker would or should have avoided Olerio's problems. This does not excuse Olerio's rule violations but does mitigate the penalty.

PENALTY

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

In determining that this penalty was adequate we considered Olerio's then lack of knowledge and experience as well as his excess of enthusiasm. We also considered the specifics of the Firm's policies which as written contributed to his confusion. After considering all of the factors we find this penalty to be adequate for Olerio. However this penalty would not be appropriate in different circumstances.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer