

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-77

April 30, 2003

DAVIS MARGOLD

FORMER EXCHANGE MEMBER

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**Violated Exchange Rule 95(c) in that having established a position while representing at the same time orders at the minimum valuation on both sides of the market he liquidated or covered the position without first obtaining a new order, and violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 in that he maintained, created or caused to be prepared inaccurate books and records – Consent to censure and a fine of \$50,000.**

**Appearances:**

For the Division of Enforcement  
Nancy Reich Jenkins, Esq.  
Robert J. Meyers, Esq.

For the Respondent  
David Sobel, 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 Davis Margold, a former Exchange member. Without admitting or denying guilt Mr. Margold consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 95(c) in that, on one or more occasions, having established a position for an account during a particular trading session while representing at the same time, on behalf of that account, market or limit orders at the minimum variation on both sides of the market, he liquidated or covered the position established during that trading session without first obtaining a new liquidating or covering order.
- II. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 in that, on one or more occasions, he maintained, created or caused to be prepared inaccurate books and records.

For the sole purpose of settling this disciplinary proceeding the Division of Enforcement and Mr. Margold stipulate to certain facts, the substance of which follows:

### **Background and Jurisdiction**

1. Margold was born on October 10, 1939. Margold entered the securities industry in 1967, working as a broker with Firm A, a member firm. In May of 1967, Margold purchased a seat on the Exchange.
2. Subsequently, Margold held other positions, including employment as a specialist on the Exchange Floor. In 1983, Margold became an independent “two-dollar broker”. Margold worked continuously on the Floor of the Exchange as an independent broker until April of 2000, when he ceased working on the Floor and began to lease his seat.
3. The Exchange’s Division of Enforcement (“Enforcement”) opened an investigation of Margold as the result of a referral from the Exchange’s Division of Market Surveillance.
4. By letter to Margold, dated January 31, 2002, which he received, Enforcement notified Margold that it was investigating matters relating to his Floor trading activity. Margold appeared and testified in connection with the investigation, and also produced documents relating to his Floor trading activities.

### **Summary of Violative Conduct**

5. From approximately 1996 through February 1998 Margold executed trading for eighths orders for XYZ Capital Corporation LLC (“XYZ”), a non-member firm. On at least ten trade dates, Margold used buy minus and sell short orders he simultaneously held to effect trades for XYZ without obtaining a new liquidating or covering order. Further, Margold recorded executions on the wrong order tickets and made changes to the information on original order tickets, all in violation of Exchange Rules.

### **Floor Trading Violations**

6. From approximately 1996 through February 1998 (the “relevant period”), Margold executed intra-day “trading for eighths” orders for XYZ. (“Trading for eighths”, also known as “flipping”, are terms used to describe a method of intra-day trading where brokers simultaneously represent market or limit orders at the minimum variation on both sides of the market and attempt to capture profits from price movements at the minimum variation.)
7. At all times relevant herein, XYZ was a non-member firm, engaged in trading for its own account, and was owned by TB.
8. At all times relevant herein, HL, an Exchange member, was President of ABC Securities, Inc. (“ABC”).
9. In or about 1996, HL approached Margold and asked Margold if he was interested in “trading for eighths” for ABC’s customers, TB and XYZ. Once Margold confirmed

- his interest, HL delineated for Margold the details of the arrangement, in which Margold would be responsible for order executions and ABC would handle all order processing and billing.
10. Orders were entered through the ABC booth and written on ABC's stationery and picked up each morning by Margold.
  11. Margold customarily received two orders simultaneously for TB and XYZ from ABC: typically a Buy (minus) order and a Sell Short (plus) order, each for the same stock and the same number of shares, with an "at-the-market not held" notation.
  12. On the majority of the trades for TB and XYZ, Margold would begin a particular trading session with simultaneous orders to buy minus and sell short the same amount of a certain security; Margold would then proceed to execute purchase and sale transactions in those securities using both tickets.
  13. Such orders are subject to the requirements of Exchange Rule 95(c), which, along with Information Memo 94-44 [*Amendments to Rule 95 Pertaining to Intra-Day Trading*] (dated September 14, 1994), states "[I]f a Floor broker acquires a position for an account during a particular trading session while representing at the same time, on behalf of that account, market or limit orders at the minimum variation on both sides of the market, the broker may liquidate or cover the position established during that trading session only pursuant to a new order (a liquidating order) which must be time-recorded upstairs and upon receipt on the trading floor. All liquidating orders as described above must be marked on the Floor as "BC" in the case of an order covering a short position, or "SLQ" in the case of the sell order liquidating a long position."
  14. The purpose of these restrictions is to remove the time and place advantage that brokers on the Floor possess and to prevent brokers from impermissibly exercising investment discretion on the Floor on behalf of their customers.
  15. While representing the orders described in paragraph 11, Margold would establish a position for the account on one side of the market by partially executing one of the orders. Subsequently, Margold would liquidate or cover the position established without obtaining a new order to liquidate (the "SLQ" order) or cover (the "BC" order) the position, as required by Exchange Rule 95(c).

### **Books and Records Violations**

16. On one or more occasions, Margold altered a trading for eighths order ticket he had initially received from ABC for TB and XYZ to reflect more shares for purchase or sale.

17. For example, on or about September 4, 1997, Margold altered a sell order ticket market "SLQ" to indicate an order to sell 3,100 shares, when the initial order was to sell 400 shares.
18. In addition, Margold's usual custom was to write trading execution information on the wrong order ticket(s).
19. By not following Exchange and SEC practice and procedures for noting and recording the orders, Margold failed to create and/or maintain complete and accurate books and records pertaining to each brokerage order, and any other instruction for the purchase or sale of securities in violation of Exchange Rule 440 and SEC Rules 17a-3 and 17a-4.

**DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Margold 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 Mr. Margold of a censure and a fine of \$50,000.

For the Hearing Panel

Vincent F. Murphy  
Hearing Officer