

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-82

June 12, 2003

TONY GANNAcone, III
FORMER REGISTERED REPRESENTATIVE

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Effected trades in certificates of deposit for customers of his employer at prices away from the market – Censure and three month bar.

Appearances:

For the Division of Enforcement
Steven J. Brostoff, Esq.
Howard A. Grinsberg, Esq.
Robert J. Meyers, Esq.

For the Respondent
Tony Gannacone III
pro se

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An Exchange Hearing Panel conducted a hearing on charges contained in a Charge Memorandum issued by the Exchange's Division of Enforcement against Tony Gannacone III, a former registered representative with Legg Mason Wood Walker, Incorporated ("Legg Mason" or the "Firm"), a member organization. Mr. Gannacone was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade by, on one or more occasions, effecting trades in certificates of deposit for customers of his member firm employer at prices away from the market.
- II. Caused violations of Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by causing his member organization employer to reflect inaccurate purchase and sale prices of certificates of deposit on its books and records.

Mr. Gannacone submitted an Answer to the Charge Memorandum by which he admitted some of the allegations contained in the Charge Memorandum and denied others.

After a hearing at which Mr. Gannacone, among others, appeared and testified, the Hearing Panel found as follows:

Background

1. Tony Gannacone III was born on October 1, 1968 and entered the securities industry in March 1995. He was employed by Legg Mason from March 1997 to November 1999.
2. In December 1999 the Exchange received a Form U-5 from Legg Mason stating that Gannacone had been terminated from his position as a trader on the Firm's Fixed

Income Securities Desk in November 1999 for executing trades of certificates of deposit (CDs) at prices away from the prevailing market prices.

Terms of the CD

3. The CDs were issued by nationally chartered banks and sold to customers by Legg Mason. They were “callable” in that the issuer had the right to buy them back from the purchaser prior to their maturity.
4. The CDs also had a “step down” provision by which an initially high interest rate would be reduced or “step down” to a lower rate after a period of time, usually a year or two.
5. The CDs were generally long term, 15 to 20 years. Prior to the “step down” the CDs were not callable. After the “step down” the CDs could be called by the issuer.
6. If called, the face value of the CD would be returned to the holder of the CD, plus any accrued interest. If the CD was not called, the holder of the CD had to wait until maturity to receive back the full face value unless a “flower provision” was triggered.
7. Under the “flower provision,” the CD could be redeemed prior to maturity for full face value if the holder died or became incapacitated.
8. There was a limited secondary market for the CDs. If the holder of the CD wanted to liquidate the CD at any time prior to maturity, the only means to do so was to sell it in the secondary market at the prevailing market price. The issues were thinly traded in the secondary market.

The Trades

9. In October 1999, Gannacone was employed as a trader at Legg Mason’s Fixed Income Desk at its headquarters in Baltimore, Maryland. In this position, he was responsible for executing trades of CDs submitted to the Fixed Income Desk.
10. At the request of a registered representative, Thomas Monahan (See EHPD 03-81), Gannacone executed 45 cross trades at par (\$100). Gannacone knew that the in-house cross trades were executed at a price that was more than the actual secondary market prices of the CDs.
11. The CDs at issue had initial interest rates of between 7 and 9%, with step down rates of between 6 and 7%. The maturity dates varied from 2018 to 2019. Despite the variations all the cross trades took place at the same price, par.
12. The Firm calculated corrected trade prices, based on the prevailing market prices and current interest rates, of between \$82 and \$96 per \$100 and reimbursed the purchasers accordingly.

13. At various times Gannacone offered conflicting explanations for effecting the crosses at par.
14. In his examination before the Exchange's Division of Enforcement in December 2000 Mr. Gannacone testified that he provided Mr. Monahan with bids for the CDs ranging from 81-99 and that Mr. Monahan persuaded him to cross the CDs at par as part of a tax strategy. This testimony was consistent with Gannacone's statement to the Firm and testimony before the Maryland State Unemployment Board.
15. Mr. Gannacone testified at the hearing that the cross trades of the CDs at par were in accordance with Firm policy.

Alleged Books and Records Violation

16. In its Charge Memorandum the Division of Enforcement alleged that the cross trades of the CDs created records that contained purchase and sale prices that were greater than the actual secondary market prices of the CDs.
17. At the hearing the parties agreed that the records accurately reflected the prices at which the transactions occurred.

DECISION

The Hearing Panel found that Mr. Gannacone effected trades in certificates of deposit for customers at prices away from the market. The Hearing Panel also found Mr. Gannacone's testimony as described in paragraph 14 more credible than his later recantation. Accordingly, the Hearing Panel found, by unanimous vote, that Mr. Gannacone was guilty of Charge I.

The Hearing Panel found that the books and records of Mr. Gannacone's employer accurately reflected the prices at which the CD transactions occurred even though the prices were not the prevailing market prices. Mr. Gannacone had an obligation to ensure that his employer's records accurately reflected the transaction prices. He fulfilled that obligation. Accordingly, the Hearing Panel, by unanimous vote, found Mr. Gannacone not guilty of Charge II.

PENALTY

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

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer