

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 03-96**

May 22, 2003

KENNETH B. SAWYER  
FORMER REGISTERED REPRESENTATIVE

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**Violated Exchange Rule 346(b) in that he engaged in an outside business activity without making a written request and receiving the prior written consent of his member organization employer – Consent to censure and 2 month bar.**

**Appearances:**

For the Division of Enforcement  
Linda S. Riefberg, Esq.  
Kevin T. McDonald, Esq.

For the Respondent  
Cary S. Lapidus, 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 Kenneth B. Sawyer, a former registered representative with Prudential Securities, Inc. (the "Firm"). Without admitting or denying guilt, Mr. Sawyer consented to a finding by the Hearing Panel that he violated Exchange Rule 346(b) in that he engaged in an outside business activity without making a written request and receiving the prior written consent of his member organization employer.

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

**Background and Jurisdiction**

1. Sawyer was born on December 8, 1964.
2. Sawyer entered the securities industry with Firm A in 1986. In September 1990, he joined Firm B, an NASD firm, where he remained until January 1991. During the period January 1991 through June 1996, Sawyer was an associate and later a principal with Firm C, an NASD firm. In July 1996, Sawyer left Firm C and joined Firm D, a non-Exchange member firm, in an investment banking capacity, as a managing director. He remained with Firm D until December 1999, at which time Firm D was purchased by the Firm. From January 2000 until his termination in April 2000, Sawyer was jointly employed by the Firm, an Exchange member firm, and a wholly owned subsidiary of the Firm. Sawyer was approved by the Exchange as a registered representative with the Firm on February 15, 2000. Since April 2000, Sawyer has

been employed as a managing director of Firm E, a non-member, NASD registered broker-dealer.

3. On or about May 11, 2000 the Exchange received a Uniform Termination Notice for Securities Registration (“Form U-5”) from the Firm, reporting that Sawyer’s employment with the Firm had been terminated on April 14, 2000.
4. By letter dated October 23, 2000, which he received, the Exchange notified Sawyer that it was conducting an investigation into the possibility that he engaged in an unapproved outside business venture, without making a written request and receiving the prior written authorization of his employer.
5. Sawyer responded in a letter from his counsel.

### **Overview**

6. During the period January through April 2000, while employed by the Firm, Sawyer engaged in an outside business activity in that he established a venture capital fund, without making a written request and receiving the prior written consent of his member organization.

### **Unauthorized Outside Business Activity**

7. On December 13, 1999, Sawyer completed and signed an employment application for the Firm. On that same day, Sawyer also completed the standard Firm employee reporting questionnaire, listing among other things, outside business interests. On that form, Sawyer was asked the “Name of entity with which you are/will be affiliated”. In response, Sawyer listed ABC, a business supplier of petroleum products, as an outside business venture.
8. In an electronic mail communication sent from a supervisory employee of the Firm to Sawyer on January 7, 2000, in connection with a discussion of ABC, Sawyer was instructed that “Basically, any outside securities related activity must be approved by your employer”.
9. Beginning in January 2000, Sawyer began exploring with potential investors, the possibility of establishing a venture capital fund. Sawyer contacted some of these potential investors via e-mail, using his computer at the Firm.
10. On April 15, 2000, E Ventures, the venture capital fund, became funded, and closed in June 2000, with approximately \$10 million.
11. Several entities, including the Secretary of State for the State of California, listed the Firm office address where Sawyer was employed as the address of record for E Ventures.

12. Sawyer discussed with his supervisor, BOM, that he was going to solicit investors and raise money for E Ventures. However, Sawyer never requested, nor did he receive, written permission from BOM or anyone else at the Firm, with regard to his involvement in E Ventures.
13. Sawyer did not receive compensation from E Ventures while he was employed at the Firm and did not invest any customer funds from the Firm into E Ventures.
14. After Sawyer's employment with the Firm terminated, he became employed by Firm E.

**DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Sawyer 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. Sawyer of a censure and a two month bar 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

Vincent F. Murphy  
Hearing Officer