

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-102
D.H. BLAIR INVESTMENT BANKING CORP.
MEMBER ORGANIZATION

June 4, 2003

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Violated SEC Rules 17a-3(a)(6) and 17a-4 under the '34 Act and Exchange Rule 440 in that it failed to maintain a memorandum of each order given to a specialist for execution, violated Exchange Rule 342 in that it failed to provide for appropriate supervisory control by failing to establish and maintain adequate written supervisory procedures relating to review of its Floor broker's activities – Consent to censure and \$13,500 fine.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Michael C. Grey

For the Respondent
Jeffrey Roth, 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 D.H. Blair Investment Banking Corp. (the "Firm"), a member organization. Without admitting or denying guilt, the Firm consented to a finding by the Hearing Panel that it:

- I. Violated SEC Rules 17a-3(a)(6) and 17a-4 promulgated under the Securities Exchange Act of 1934 and Exchange Rule 440 in that it failed to maintain a memorandum of each brokerage order given by its Floor broker to a specialist for execution.
- II. Violated Exchange Rule 342 in that failed to provide for appropriate supervisory control to assure compliance with securities laws and regulations by failing to establish and maintain adequate written supervisory procedures relating to review of its Floor broker's activities.

For the sole purpose of settling this disciplinary proceeding and without admitting or denying any of the facts or matters set forth in the Stipulation of Facts and Consent to Penalty, the Division of Enforcement and the Firm stipulate to certain facts, the substance of which follows:

Background

1. The Firm has been a member organization of the Exchange since December 1991 and is primarily engaged in investment banking activities.

2. In March 2001, the Exchange's Division of Member Firm Regulation referred to Enforcement a report dated July 13, 2000 of an examination conducted by Exchange Examiners (the "Examiners") of the firm's financial, operational and supervisory standards/sales practices procedures ("the Report"). The Report specified deficiencies including failures to maintain certain required records and adequate written supervisory procedures applicable to the activities of its Floor broker.
3. By letter dated April 26, 2001, which the Firm received, Enforcement notified the Firm it was investigating the findings disclosed in the Report.

Overview

4. The Report of the 2000 Examination conducted by the Exchange's Division of Member Firm Regulation noted that the Firm failed to maintain a memorandum of each brokerage order given by its Floor broker to a specialist for execution on April 13 and 14, 2000 and that it failed to establish and maintain adequate written supervisory procedures for reviewing Floor broker activities.

Failure to Maintain a Memorandum of Each Brokerage Order

5. During all relevant times the Firm had a Qualifying Member on the Exchange Floor (the "Floor Broker"). The Floor Broker became employed by the Firm in late March 2000. He had been a Floor Broker on the Exchange since 1975.
6. During the 2000 Examination, the Examiners reviewed the Floor Broker's Floor records for April 13 and 14, 2000 and found 22 instances where he left an order with a specialist and failed to keep an adequate memorandum of each.
7. Rules 17a-3(a)(6) and 17a-4 promulgated under the Securities Exchange Act of 1934 (the "Act") and Exchange Rule 440 require that every member of a national securities exchange who transacts a business directly with other members of a national securities exchange and every broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange make, keep current and preserve a memorandum of each brokerage order given or received for the purchase or sale of securities, whether executed or unexecuted. The above rules require that the memorandum that is made and preserved, include, among other information, the terms and conditions of the order and the time of entry.
8. The failure to prepare and preserve memoranda containing all the required terms and conditions and the time of entry of orders as noted in paragraph 6 was in contravention of Rules 17a-3(a)(6) and 17a-4 promulgated under the Act and Exchange Rule 440.
9. Following the 2000 Examination, the Firm took corrective action to ensure that the Floor broker kept an adequate memorandum of each order he left with a specialist

Failure to Reasonably Supervise

10. The Report stated that the Firm failed to maintain adequate written supervisory procedures for reviewing its Floor broker's activities, which addressed the trading activity of the member. The procedures did not adequately address the methodology for reviewing Floor records and the evidencing of such reviews.
11. The Report stated that this was a repeat finding from the 1999 Exchange Examination, during which the Examiners determined that the Firm did not maintain written supervisory procedures related to its Floor brokerage activities.
12. Exchange Rule 342 requires, in pertinent part, that every member or member organization provide for appropriate procedures for supervision and control over their business activities and compliance with securities' laws and regulations.
13. By failing to establish and maintain adequate written supervisory procedures relating to Floor broker activities, as set forth in paragraph 10, the Firm was in violation of Exchange Rule 342.
14. Following the 2000 Examination, the Firm revised its supervisory policies and procedures relating to its Floor broker's activities.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found the Firm 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 the Firm of a censure and a fine of \$13,500.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer