

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-106

June 5, 2003

NATIONAL BROKERAGE INC.  
MEMBER ORGANIZATION

\* \* \*

**Violated Rule 342 by failing to provide appropriate supervisory control with respect to its Floor brokerage activities; violated Rule 343(a) by occupying an office with another broker without Exchange permission and caused a violation of Rule 346(e) by permitting employees to devote less than their entire time during business hours to the Firm's business without Exchange permission – Consent to censure and \$30,000 fine.**

**Appearances:**

For the Division of Enforcement  
Martin S. Mazur, Esq.  
David H. Steiner, Esq.  
Robert J. Goerke, Esq.  
Michael C. Grey

For the Respondent  
Michael Simon Esq.  
Yuet Wong, Esq.

\* \* \*

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 National Brokerage, Inc. (formerly known as Sharpe Securities) (the "Firm"), a member organization. Without admitting or denying guilt, the Firm consents to findings by the Hearing Panel that it:

- I. Violated Exchange Rule 342 by failing to provide for appropriate supervisory control and establish a separate system of follow-up and review with respect to its brokerage activities on the Exchange Trading Floor.
- II. Violated Exchange Rule 343(a) by occupying an office jointly with another broker or dealer without the permission of the Exchange.
- III. Caused a violation of Exchange Rule 346(e) by permitting employees, who were assigned or delegated responsibility or authority pursuant to Exchange Rule 342, to devote less than their entire time during business hours to the business of the Firm, without the permission of the Exchange.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and the Firm stipulate to the following:

### **Background and Jurisdiction**

1. The Firm has been a member of the New York Stock Exchange (the “Exchange”) since approximately September 1989. The Firm conducts an independent brokerage business on the Exchange Trading Floor (the “Floor”), as well as a public brokerage business for direct access customers on the Floor.
2. As part of an investigation of the Floor brokerage activities of one of the Firm’s Floor brokers with respect to orders he executed for one of his individual customers, Enforcement investigated the Firm’s supervision of its Floor operations.
3. In June 2001, Enforcement notified the Firm that it had initiated a separate investigation of the Firm following receipt of a referral from the Exchange’s Division of Member Firm Regulation (“MFR”) of deficiencies concerning the contemporaneous employment of certain Firm employees and the joint use of the Firm’s offices with another broker or dealer.
4. Thereafter, the Firm responded and provided information in connection with Enforcement’s investigation.

### **Summary of Violative Conduct**

5. During the period 1996 through 1999 the Firm failed to reasonably supervise its Floor brokerage activity. From approximately October 2000 to April 2001, without the approval of the Exchange, the Firm occupied an office jointly with another broker-dealer and permitted certain of its supervisory employees to devote less than their entire time during business hours to the business of the Firm.

### **Violative Conduct**

6. Exchange Rule 342 requires, in relevant part, that each business activity shall be under the supervision and control of the member organization establishing it, and that the directors of each member organization shall provide for appropriate supervisory control and establish a separate system of follow-up and review to determine that delegated supervisory authority is being properly exercised.
7. Exchange Rule 343(a) provides, subject to exemptions not relevant here, that “[u]nless otherwise permitted by the Exchange, each office or foreign incorporated branch of a member or member organization shall not be occupied jointly with any other broker or dealer, investment advisor, or other person who conducts a securities or commodities business with the public ... ”
8. Exchange Rule 346(e) provides, in pertinent part, that “[u]nless otherwise permitted by the Exchange, every member, allied member, registered representative and officer of a member organization who is assigned or delegated any responsibility or authority pursuant to Rule 342 shall devote his entire time during business hours to the business of such member or member organization.”

**The Firm Failed to Provide for Appropriate Supervisory Control and Establish a Separate System of Follow-Up and Review with Respect to its Brokerage Activities on the Exchange Trading Floor**

9. From 1996 until 1998, the Firm had no specific written supervisory procedures governing its Floor brokerage activities.
10. The Firm's supervision of its Floor brokerage activities was reviewed as part of the 1999 examination of the Firm conducted by MFR examiners (which focused on a period of time during 1998). MFR's examination disclosed that the Firm's Compliance Manual did not include procedures for monitoring of Floor personnel and that the Firm failed to provide evidence of its review of Floor tickets.
11. As part of the 2000 examination of the Firm conducted by MFR examiners (which focused on a period of time during 1999), the Firm's supervision of its Floor brokerage activities was again reviewed. MFR's examination disclosed that the Firm's written procedures in effect at that time failed to address such areas as on-Floor and intra-day trading. In addition, the Firm was unable to provide evidence of reviews conducted by its Floor supervisory personnel.
12. Subsequent MFR examinations of the Firm did not disclose any deficiencies with regard to supervision of Floor brokerage activity.

**The Firm Failed to Obtain the Prior Authorization of the Exchange to Share Office Space and For Certain Senior Managers to be Dually Employed**

13. During October 2000, while visiting the Firm's New York City offices, MFR discovered that, without having obtained the authorization of the Exchange, the Firm was sharing office space with XYZ Corp., a non-member broker-dealer that conducted a securities business.
14. At that time, the Exchange also learned that the Firm employed in a supervisory capacity several individuals including AB (the Firm's Chairman and Chief Executive Officer), CD (the Firm's General Partner), and EF (the Firm's Director of Compliance), who contemporaneously were employed by XYZ, without Exchange approval for these individuals to devote less than their entire time during business hours to the business of the Firm.
15. Subsequently, the Firm requested and, in April 2001, the Exchange granted permission for the Firm to share office space with XYZ, and approved the contemporaneous employment of AB, CD and EF subject to certain undertakings by the Firm.

**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 \$30,000 fine.

For the Hearing Panel

Edward W. Morris, Jr.  
Chief Hearing Officer