

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-107

June 5, 2003

LL PARTNERS, INC.
MEMBER ORGANIZATION

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Violated SEC Rule 15c3-1 and Exchange Rule 325(a) by failing to properly compute its net capital and effecting transactions while failing to maintain its net capital; violated Exchange Rules 134(d)(ii), and 411(a) and 440 and SEA Regs. 240.17a-3 and a-4 by improperly processing non bona fide errors through its error account and failed to maintain and preserve records of such error trades; violated Exchange Rule 132.30(a) by failing to submit accurate account type indicator codes on Super Dot orders; and violated Exchange Rule 342(a) and (b) by failing to reasonably supervise and provide appropriate procedures of supervision and control – Consent to censure and \$75,000 fine.

Appearances:

For the Division of Enforcement
Allison A. Bishop, Esq.
Joy A. Weber, Esq.
Myles L. Orosco, Esq.

For the Respondent
Andrew J. Goodman, 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 LL Partners, Inc. (the "Firm"), a member organization. Without admitting or denying guilt, the Firm consents to findings by the Hearing Panel that the Firm:

- I. Violated SEC Rule 15c3-1 and Exchange Rule 325(a) in that it failed to properly compute its net capital and effected transactions while failing to maintain its net capital.
- II. Violated Exchange Rules 134(d)(ii), 411(a) and 440 and SEA Regulations 240.17a-3 and 17a-4, in that the Firm improperly processed non-bona fide errors through its error accounts and failed to maintain and preserve written records of such error trades.
- III. Violated Exchange Rule 132.30(9) in that the Firm failed to submit accurate account type indicator codes on orders entered via SuperDot.

- IV. Violated Exchange Rule 342(a) and (b), in that the Firm failed reasonably to supervise and control the business activities of the Firm and provide for appropriate procedures of supervision and control to ensure compliance with securities laws and regulations.

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, headquartered in New York, NY and incorporated in April 1990, is an Exchange member organization primarily engaged in business as an independent \$2 Floor broker.
2. In October 2000, the Division of Member Firm Regulation (“MFR”), referred the findings of a 2000 Financial and Operational Procedures (“FinOp”) examination of the Firm, to the Division of Enforcement for further review. In addition, in October 2000, MFR referred findings relating to the Firm’s error account to the Division of Market Surveillance (“MKS”) for further review.
3. In May 2002, MFR also referred to Enforcement a FinOp examination relating to a net capital deficiency. In July 2002, Enforcement received a referral from MKS with respect to the findings that MFR had referred in October 2000 relating to the Firm’s error account transactions. Both of the 2002 referrals were combined into this investigation.

Overview

4. At various times between October 2000 and February 2003, the Firm failed to adequately control certain financial, operational and audit trail facets of its business. Specifically, during the period between October and November 2000, the Firm improperly processed non-bona fide errors through its error accounts and failed to maintain and preserve written records of such error trades. Between March and April 2002, the Firm failed to properly compute its net capital and effected transactions while failing to maintain its net capital. In addition, for the period from December 2001 through February 2003, the Firm failed to identify a percentage of its account type indicator codes for trades executed through its SuperDot subscription.

Failure to Properly Compute Net Capital

5. In May 2002, the Firm filed an amended FOCUS Report with the Exchange for the reporting period ending March 31, 2002.
6. According to the amended FOCUS Report, based upon the Firm’s failure to properly classify non-allowable floor commissions receivable over 30 days, for which the Firm

could not receive a credit toward its net capital due to the aged status of the receivables, the Firm had a net capital deficiency in the amount of \$1,171.

7. In addition, the Firm failed to include \$641,248, representing additional aggregate indebtedness from guarantees on lease rentals.
8. After including the \$641,248, the Firm's total aggregate indebtedness was \$1,751,574, which caused a minimum net capital requirement of \$116,772 (6^{2/3} % of the total aggregate indebtedness), and a net capital deficiency of 1,171.
9. As a result of the above, for several weeks during the period from March to April 2002, the Firm effected transactions while failing to maintain its required minimum net capital, in violation of SEC Regulation 240.15c3-1 and Exchange Rule 325(a).

**Failure to Properly Process Error Account Transactions and
Maintain Required Business Records**

10. The Firm, as a member of the Floor Members Emergency Fund ("Emergency Fund"), utilized the Emergency Fund omnibus error account at AB, Inc.
11. In addition, pursuant to an introducing broker arrangement, the Firm maintained an error account with CD Clearing Corporation, through which the Firm processed errors that occurred in customer accounts relating to CD.

The AB Error Account

12. In September 2000, as part of the Exchange's Membership Continuing Education Program, the Exchange initiated mandatory training with a component that focused on the handling of errors and erroneous reports by Floor brokers. Two of the Firm's Floor brokers participated in and completed this component of the mandatory training.
13. In October 2000, subsequent to the Firm's participation in the Exchange's mandatory continuing education program regarding processing errors and erroneous reports, a review of nine of the Firm's error account transactions in the AB omnibus error account revealed that certain transactions were not bona fide errors.
14. For example, the review of an error account transaction disclosed that on October 26, 2000, one of the Firm's customers placed a sell limit order of 20,000 shares of a security. The Firm's Floor broker transferred the order for execution to another Floor broker, who at 12:23 p.m. placed the order with a specialist for execution. At 1:04 p.m., the specialist sold 3,200 shares from the order, leaving 16,800 shares.
15. After the 3,200-share execution, the Firm's customer cancelled the original sell limit order of 20,000 shares. The Firm agreed to cancel the original 3,200-share order and

process the transaction in the AB error account, although that part of the order had been executed in accordance with the terms of the original order.

16. Further review of the transaction revealed that 3,200 shares of the security were oversold and that the error was discovered the following day. The cancellation at 1:30 p.m. occurred after the 3,200 shares had already been sold within the terms of the original order. As a result, the trade was a binding transaction and the resulting error account transactions were not bona-fide errors.
17. Other transactions reviewed from the AB error account revealed books and records violations, including the Firm's failure to maintain any Floor work, record, or memoranda relating to the error account transactions, and that the Firm failed to create documentation with accurate explanations of the nature and circumstances of the trades processed through the error account.

The CD Error Account

18. As stated, in September 2000, two of the Firm's Floor brokers participated in and completed the Exchange's Membership Continuing Education Program relating to the handling of errors and erroneous reports.
19. During the period October 2000 to November 2000, despite the Firm's Floor broker's participation in the error account continuing education program, 68 trades were processed through the CD error account, which were not bona-fide error transactions.
20. Specifically, among 68 transactions reviewed, it was disclosed that the Firm accommodated customers on numerous occasions, specifying "clerk errors" as the cause of all of the error account transactions. For example, in numerous transactions, the Firm erroneously reported prices to customers. Thereafter, the customers refused to accept the actual execution of the orders although the transactions had been executed within the terms of the orders.
21. Further, in some of the transactions among the 68 that were reviewed, customers refused a better price than the price that had been erroneously reported. In addition, in one error account transaction, the Firm honored the customer's request for a better price on a not held order based on prints on the tape.

Failure to Submit Accurate Account Type Indicator Codes

22. Exchange Rule 132.30(9), requires clearing member firms, when making submissions to a qualified clearing agency, to submit an accurate account type indicator code on every order entered via SuperDot to identify the type of beneficial owner of every trade executed on the Exchange.
23. In December 2001, March 2002, June 2002, September 2002, December 2002, and February 2003, the Firm failed to identify a percentage of its account type indicator

codes for trades executed through its SuperDot subscription, in violation of Exchange Rule 132.30(9).

24. In December 2001, the Firm executed 59% of its orders without account type indicators, in March 2002, 48% of its orders without account type indicators, and in June 2002, 65.5% of its orders without account type indicators.
25. Similarly, in September 2002, the Firm submitted approximately 63% of its orders without account type indicators, in December 2002, the Firm submitted approximately 60% of its orders without account type indicators, and in February 2003, the Firm submitted 43% of its orders without account type indicators.

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 \$75,000 fine.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer