

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-3

January 13, 2004

HELFANT GROUP, INC.  
MEMBER ORGANIZATION

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**Violated Exchange Rule 123C by failing to comply with market-on-close and limit-on-close order requirements; violated market-on-close and limit-on-close order entry and cancellation procedures and policy; violated Exchange Rule 440C by failing to evidence steps taken to determine that security was available for borrowing, prior to effecting customer short sales; violated SEC Rule 17a-4(b)(1) and Exchange Rules 123, 410(a) and 440 by failing to retain original Floor order tickets; violated Exchange Rule 134(d)(ii) by failing to maintain record of trading errors; violated Exchange Rule 411(a) by improperly treating erroneous reporting of a transaction on the Floor for a member organization customer as a bona fide error; violated Exchange Rule 440I by failing to maintain accurate written record of compensation arrangements for customers for whom it effected transactions on the Floor; violated SEC Rule 17a-4(b)(7) and Exchange Rule 382 by failing to have an appropriate carrying agreement for a customer; violated Exchange Rule 35 by admitting employees to the Floor who did not comply with registration requirements; violated Exchange Rule 35.50 by failing to submit a Form U-4 for an employee working on the Floor; violated Exchange Rule 401 by testing its electronic order routing system in a manner contravening Exchange policy, failing to promptly notify the Exchange of employee terminations, and failing to return employee identification badges; violated Exchange Rule 342 by failing to reasonably supervise certain business activities – Consent to censure, \$225,000 fine and an undertaking.**

**Appearances:**

For the Division of Enforcement  
Susan F. Axelrod, Esq.  
Simon Swidler, Esq.  
Craig P. Hammond, Esq.  
Michael B. Ettlinger, Esq.

For the Respondent  
Michael J. Missal, Esq.  
Lloyd H. Feller, Esq.  
Rebecca L. Kline, 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 Helfant Group, Inc. (the

“Firm”), a member organization. For the sole purpose of settling this disciplinary proceeding, without admitting or denying guilt, the Firm consents to findings by the Hearing Panel that it:

- I. Violated Exchange Rule 123C by failing to comply with requirements governing the entry and cancellation of Market-on-Close and Limit-on-Close orders.
- II. Violated the Exchange’s Market-on-Close and Limit-on-Close order entry and cancellation Procedures and Policy approved by the Securities and Exchange Commission and set forth in Exchange Information Memoranda 98-20 and 99-51.
- III. Violated Exchange Rule 440C in that the Firm failed to maintain a written record to evidence the steps taken by the Firm, prior to effecting one or more customer short sales, to determine that the security was available to be borrowed.
- IV. Violated SEC Rule 17a-4(b)(1) and Exchange Rules 123, 410(a) and 440 in that the Firm failed to retain original Floor order tickets.
- V. Violated Exchange Rule 134(d)(iii) in that the Firm failed to maintain records of trading errors.
- VI. Violated Exchange Rule 411(a) in that the Firm improperly treated its erroneous reporting of a transaction effected on the Floor of the Exchange for a member organization customer as a bona fide error.
- VII. Violated Exchange Rule 440I in that the Firm failed to maintain an accurate written record of its compensation arrangement with one or more of its customers for whom it effected transactions on the Floor of the Exchange.
- VIII. Violated SEC Rule 17a-4(b)(7) and Exchange Rule 382 in that the Firm failed to have and retain an appropriate carrying or execution agreement with respect to transactions that the Firm effected for a customer.
- IX. Violated Exchange Rule 35 in that the Firm admitted to the Floor of the Exchange one or more employees for whom the Firm had not complied with the registration requirements of the Exchange.
- X. Violated Exchange Rule 35.50 in that the Firm failed to submit to the Exchange a Uniform Application for Securities Industry Registration or Transfer (Form U-4) for an employee working on the Floor.
- XI. Violated Exchange Rule 401 by failing to adhere to the principles of good business practice in the conduct of its business affairs by:
  - A. Testing its electronic order routing system connectivity to the Exchange’s systems in a manner that was in contravention of Exchange policy.

- B. Failing to notify the Exchange within 24 hours of the termination of one or more of its employees.
  - C. Failing to return identification badges of one or more of its terminated employees.
- XII. Violated Exchange Rule 342 (a) and (b) in that the Firm failed to reasonably supervise and control its business activities and employees to ensure compliance with Exchange rules and federal securities laws in that the Firm failed to:
- A. Establish and/or maintain appropriate internal control procedures for the entry and cancellation of MOC/LOC orders by its affiliated companies and non-member customers.
  - B. Establish and/or maintain appropriate internal control procedures for the testing of its electronic order routing system's connectivity to the Exchange's systems.
  - C. Establish and/or maintain appropriate internal control procedures for its electronic order flow with respect to one or more of its customers.
  - D. Have written procedures reasonably designed to ensure that securities subject to a short sale were available to be borrowed.
  - E. Establish an appropriate system of follow-up and review relating to the collection and retention of original Floor order tickets.
  - F. Establish an appropriate system of follow-up and review relating to its registration and qualification of its Floor employees.
  - G. Establish an appropriate system of follow-up and review relating to its compliance with Exchange requirements for notification to the Exchange of Floor employee terminations and the return of identification badges of terminated Floor employees.

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

### **Background and Jurisdiction**

1. The Firm, an Exchange member organization, was created on or about January 11, 2002, when Jefferies Group, Inc. ("Jefferies") merged Lawrence Helfant, Inc., a former member organization that Jefferies acquired in September 2001, with W&D Securities, Inc. ("W&D"), a former member organization and Jefferies subsidiary. Through its predecessor entities, the Firm has been an Exchange member organization since 1927.

2. At all relevant times, the Firm's primary business has been to provide agency-only execution services through both electronic and Exchange Floor facilities to its institutional customers, a significant portion of whom are broker/dealers.
3. Following a referral from the Exchange's Division of Market Surveillance ("Market Surveillance") in September 2002, Enforcement notified the Firm it was investigating the Firm's failure to comply with the order entry and cancellation provisions of the Exchange's Market-on-Close/Limit-on-Close Policy ("MOC/LOC Policy").
4. Enforcement's investigation involved a subsequent referral from Market Surveillance concerning the Firm's failure to have an effective system of supervision and control designed to comply with Exchange Information Memo 02-48, dated November 7, 2002, regarding the Exchange's prohibition against improper testing of electronic system connectivity to the Exchange by member and member organizations.
5. The Exchange's Division of Member Firm Regulation ("MFR") conducted an examination of the Firm that resulted in the issuance of an Examination Report (the "Examination Report"). The Examination Report contained various exceptions found by MFR examiners during the course of their 2002 examination of the Firm's financial and operational standards (Fin/Op), including Floor-related and books and records deficiencies. The Examination Report was referred to Enforcement for investigation.
6. By separate letters dated September 26, 2002, January 22, 2003, and January 23, 2003, Enforcement notified the Firm of its investigation into these matters.

### Overview

7. As set forth below, from April 2002 through May 2003 (the "Relevant Period"), the Firm, on numerous occasions, violated the Exchange's MOC/LOC Policy and Exchange Rule 123C by failing to comply with the requirements governing the entry and cancellation of Market-on-Close and Limit-on-Close orders. In addition, the Firm failed to adhere to the principles of good business practice in the conduct of its business affairs on January 3, 2003, when it improperly tested its electronic order routing system connectivity with the Exchange's systems.
8. In addition, as set forth below, during various periods in 2002 as covered in the Examination Report (the "Relevant Examination Period") the Firm failed to: maintain written evidence of affirmative determinations of stock availability prior to effecting customer short sales; have either a carrying or an execution agreement for conducting its public business for one of its customers; maintain original Floor order tickets including order tickets for error transactions; maintain appropriate internal control procedures for its electronic order flow; properly treat its erroneous reporting of a trade; maintain an accurate written record of compensation arrangements for Floor trading; ensure that certain Floor employees had complied with applicable registration and qualification requirements; file a Form U-4 with the Exchange;

timely notify the Exchange of the termination of Floor employees; and timely return identification badges of terminated employees.

9. The Firm also failed to reasonably supervise or control certain of its business activities and provide for appropriate procedures of supervision and control with respect to: compliance with MOC/LOC order submission and cancellation requirements; the testing of its electronic order routing system connectivity to the Exchange; short sales for its prime brokerage activities; collection and retention of original Floor order tickets; internal control procedures for its electronic order flow; registration and qualification of its Floor employees; notification to the Exchange of Floor employee terminations; and the return of terminated Floor employee identification badges.

**The Firm's Failure to Comply With the  
Exchange's MOC/LOC Policy and Exchange Rule 123C**

10. An MOC order guarantees an execution for the purchase or sale of a stock at the closing price, provided that trading in the stock was not halted before the close. A guarantee of execution can greatly impact the closing price of a stock. In an effort to minimize volatility at the close, the Exchange set forth a policy that encourages early entry of MOC orders so that offsetting orders may be entered. An LOC order is one that is entered for execution at the closing price provided that the closing price is at or within the limit specified. LOC orders with prices that are better than closing prices in the subject security are guaranteed an execution, unless there is a trading halt. LOC orders at the closing price are not guaranteed an execution.
11. Exchange Rule 123C, approved by the U.S. Securities and Exchange Commission ("SEC") without change on October 1, 2002, (*See*, SEC Release No. 34-46579, 2002 SEC LEXIS 2522 (October 1, 2002) codified relevant Exchange policies regarding the entry and cancellation of MOC and LOC orders, which were previously filed with and approved by the SEC and had the force and effect of a rule. Prior to the codification of Exchange Rule 123C, the Exchange's MOC/LOC Policy was set forth in Information Memo 96-34, effective November 8, 1996; Information Memo 98-20, effective June 24, 1998, and Information Memo 99-51, effective November 22, 1999. (Exchange Rule 123C was approved while Enforcement was conducting its investigation of this matter. The Firm was responsible for improperly entering and canceling numerous MOC/LOC orders both before and after the codification of the Exchange's MOC/LOC Policy in Rule 123C. For the sake of convenience, reference in this Stipulation and Consent will be made to the "MOC/LOC Policy" regardless of whether the violative behavior occurred before or after October 1, 2002.) Under these policies, among other things:
  - All MOC/LOC orders, unless entered to offset a published imbalance, must be entered by 3:40 p.m. in any stock on any trading day.

- After 3:40 p.m., entry of MOC/LOC orders is permitted only on the contraside of the last published imbalance, regardless of size. No MOC/LOC orders may be entered after 3:40 p.m. if no imbalance is published.
  - No MOC/LOC order in any stock may be canceled or reduced in size after 3:40 p.m., except in case of legitimate error or to comply with the provisions of Exchange Rule 80A (index arbitrage trading restrictions). Legitimate errors include errors in “side, size, symbol, price and/or duplication of an order.” (If Rule 80A goes into effect, any MOC index arbitrage order without the appropriate tick restriction that is related to a derivative index product that is not expiring must be canceled by 3:50 p.m.)
  - After 3:50 pm, cancellation or reduction in size of MOC/LOC orders is not permitted for any reason, including legitimate errors or to comply with the provisions of Rule 80A. Members and member firms are required to ensure, by 3:50 p.m., that MOC/LOC orders entered are accurate.
12. In addition, Information Memo 98-20, and now Exchange Rule 123C, set forth the parameters for the publication of imbalances for MOC and marketable LOC orders. The publication of imbalances is provided in order to facilitate offsetting trades and limit volatility at the close. Between 3:00 and 3:40 p.m., imbalances of any size may be published with Floor Official approval. These published imbalances are for informational purposes and do not limit MOC/LOC order entry before 3:40 p.m. As soon as practicable after 3:40 p.m., imbalances are published for stocks with imbalances of 50,000 shares or more and imbalances of any size are published for any stock that had an earlier informational imbalance publication. There will not be a “no imbalance” publication for any stock at 3:40 p.m., nor at 3:50 p.m., unless there had been a prior imbalance publication. At 3:50 p.m., or as soon as practicable thereafter, an additional publication is made for any stock that had an imbalance publication at 3:40 p.m. if the imbalance is for 50,000 shares or more. If at 3:50 p.m. however, an imbalance of less than 50,000 shares exists, then a “no imbalance” status is published for any stock that had an imbalance publication at 3:40 p.m. unless the specialist seeks Floor Official approval to publish the size and side of the imbalance. (Imbalances of less than 50,000 shares, where there has been no earlier publication, may be published with the approval of a Floor Official.)
13. Between June 1999 and April 2002, the Exchange took regulatory action against the Firm for violating the MOC/LOC Policy as follows:
- On **June 4, 1999**, a summary fine in the amount of \$1,000 was issued against W&D for the late entry of MOC orders;
  - On **October 26, 2001**, a Letter of Admonition was issued against W&D for the late entry of a total of 36 MOC orders on two trade dates in June and August 2001;

- On **January 16, 2002**, a summary fine in the amount of \$2,000 was issued against W&D for the late entry of a total of 162 MOC/LOC orders on two trade dates in December 2001;
  - On **February 7, 2002**, a summary fine in the amount of \$2,000 was issued against the Firm for the late entry of a total of 27 MOC/LOC orders on four trade dates in August and November 2001 and the late cancellation of a total of 18 MOC orders on nine trade dates in December 2000, and January and October 2001;
  - On **April 22, 2002**, a summary fine in the amount of \$2,500 was issued against the Firm for the late cancellation of a total of three MOC orders on three trade dates in March and April 2002.
14. During the period of April 2002 through May 2003, the Firm entered a total of **70** MOC/LOC orders in a variety of securities on **27** trade dates in violation of the Exchange's MOC/LOC Policy. Of the 70 orders, 67 were submitted after the designated cutoff time of 3:40 p.m. or after a 3:50 p.m. publication of "no imbalance." The three remaining violative orders were entered on the same side of a published imbalance.
  15. During the period of May 2002 through May 2003, the Firm cancelled a total of **93** MOC/LOC orders in a variety of securities on **21** trade dates between 3:40 p.m. and 3:50 p.m. when it did not have authority to do so under any of the recognized exceptions.
  16. During the period of May 2002 through May 2003, the Firm cancelled a total of **652** MOC/LOC orders in a variety of securities on **28** trade dates after 3:50 p.m., when cancellation of an MOC/LOC order is not permitted for any reason.

#### **The Firm's Improper Testing of its System Connectivity to the Exchange**

17. Exchange Rule 401 provides, "Every member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs."
18. Exchange Information Memo 02-48 sets forth a number of member and member organization responsibilities in connection with the use of electronic order routing systems. One responsibility is the requirement by members or member organizations to use appropriate established testing procedures, which includes clearly denoting test messages as such and not sending test messages in the guise of actual orders, when performing a test of their respective electronic order routing system's connectivity to the Exchange.
19. On January 3, 2003, the Firm improperly tested its electronic order entry system used to submit Super Designated Order Turnaround System ("SuperDOT") orders to the Securities Industry Automation Corporation ("SIAC"). (SuperDOT provides

automated order routing and reporting services to facilitate the timely and efficient transmission, execution, and reporting of market and limit orders on the Exchange.) Specifically, at various intervals between 9:31 a.m. and 2:31 p.m., the Firm entered approximately 3,129 orders in three securities traded at Post 2 on the Exchange's Trading Floor – each with a buy limit of \$1, when each of the stocks were trading well outside that price. The Firm canceled the vast majority of the orders within minutes of the orders' entry time. (An order submitted by a member firm for execution on the Exchange via SuperDOT is not technically transmitted directly from the firm to the point of sale. Rather, the member firm transmits the order from its own electronic order entry system to SIAC, which uses the Common Message Switch (CMS), a store-and-forward message-switching device that connects member firms to Exchange systems, to forward the order to SuperDOT, where it is ultimately routed to the appropriate Display Book.)

20. The above constituted a failure to adhere to the principles of good business practice on the part of the Firm.

**Failure to Maintain Written Evidence of Affirmative Determinations of  
Stock Availability Prior to Effecting Customer Short Sales**

21. The SEC issued a no-action letter dated January 25, 1994 (the "No-Action Letter"), adopted by the Exchange in Information Memo 94-6 dated February 28, 1994, which specifies conditions that must be met by prime brokers, executing brokers and customers in prime broker arrangements.
22. A prime brokerage arrangement enables full-service firms to facilitate the clearance and settlement of securities trades of institutional investors and certain high net worth retail investors who are active market participants. The prime broker acts as a clearing facility and record keeper for all of the customer's securities transactions, wherever executed, as well as a central custodian for the customer's securities and funds and extends margin to its prime broker customer for trades executed at the executing broker.
23. Exchange Information Memo 94-6 adopts the SEC's No-Action Letter which specifies, among other things, that the executing broker in prime broker arrangements has the responsibility to ascertain that shares will be available for borrowing in order to effect a timely delivery, including requiring that such a member firm make an affirmative determination, prior to effecting the short sale, that the security is or will be available, referencing this requirement under Exchange Rule 440C.
24. Exchange Information Memo 91-41 provides that member organizations must document their efforts in locating securities for short sales, stating that member organizations must maintain written documentation of the actions taken by them in fulfilling the requirements of Exchange Rule 440C.

25. During the Relevant Examination Period, the Firm was an executing broker in a number of prime broker arrangements in which Jefferies was the clearing broker. The Firm failed to maintain a written record of any affirmative determinations that the Firm undertook prior to effecting a short sale for its prime brokerage customers in violation of Exchange Rule 440C.

**Exchange Rule 382 – Failure to Have Required Agreement for Public Business**

26. Exchange Information Memo 91-25 sets forth several requirements for doing business with the public from the Floor of the Exchange. In particular, where a member or member organization accepts orders from a public customer that maintains an account at another organization, the member or member organization executing the public customer's order is considered an "introducing member" and it must be party to an appropriate carrying agreement filed for prior approval by the Exchange pursuant to Exchange Rule 382.
27. Exchange Information Memo 01-18 provides a member organization with an alternative to an Exchange Rule 382 carrying agreement. The member organization executing the customer orders may instead be a party to a written execution agreement with the member or non-member broker-dealer where the customer's account is maintained and the clearing/carrying organization. (A clearing/carrying organization is one that both clears customer transactions and carries the accounts of those customers on its books.)
28. During the Relevant Examination Period, the Firm executed transactions in listed securities for one of its customers and gave up another member organization for clearance of such transactions. However, the Firm did not file a carrying agreement with the Exchange as required by Exchange Rule 382 or, in the alternative, have a written execution agreement.
29. In addition, the Firm stated that it was a party to a written execution agreement with the other member organization but was unable to produce it to the Exchange. Consequently, during the Relevant Examination Period, the Firm violated Exchange Rule 440 and SEC Rule 17a-4(b)(7) by failing to maintain in its books and records an appropriate carrying or execution agreement for its public business.

**Books and Records Violations and Failure to Maintain  
Appropriate Internal Control Procedures for the Firm's Electronic Order Flow**

30. Exchange Rule 410(a) requires, in part, that every member organization "preserve for at least three years and for the first two years in an easily accessible place", a record of every order transmitted directly or indirectly to the Floor of the Exchange.
31. Exchange Rule 440 requires that every member and member organization make and preserve books and records as the Exchange may prescribe and as prescribed by SEC

Rules 240.17a-3 and 240.17a-4 promulgated pursuant to the Securities Exchange Act of 1934.

32. Exchange Rule 123 requires every member to preserve for at least three years a record of, among other things, every order received by that member on the Floor originating off the Floor.
33. Exchange Rule 134(d)(iii) requires a member organization to maintain records as to all errors.
34. During the course of the 2002 MFR examination, the Exchange requested the Firm to provide Floor order tickets for certain trades effected on the Floor during 2002. The Firm failed to produce various original order tickets, execution reports and original order tickets for orders given to specialists for execution.
35. During the course of the 2002 MFR examination, the Exchange also requested the Firm to produce order tickets for certain error transactions that occurred on the Floor during 2002. The Firm failed to produce the requested records.
36. The failures set forth above violated SEC Rules 17a-4(b)(1) and Exchange Rules 410(a), 440, 123 and 134(d)(iii).
37. Exchange Information Memos 92-15 and 92-43 require that a member organization either obtain and maintain as part of its books and records a correspondent firm's written internal control procedures for supervision and control of its electronic order flow or establish its own system-driven internal controls or limits addressing order accuracy and size. Where the member organization obtains and maintains a correspondent firm's written internal control procedures, the member organization is responsible for ensuring that the procedures are adequate. (A correspondent firm is a member or non-member broker/dealer which has its transactions executed for and/or cleared through another broker/dealer.)
38. During the course of the 2002 MFR examination, the examiners found that, with respect to two of the Firm's non-member broker/dealer (correspondent) customers who send electronic orders via SuperDot through the Firm, the Firm was not in compliance with the Exchange's requirements as set forth in Information Memos 92-15 and 92-43.
39. As to one of the Firm's customers noted above, the Firm failed to obtain and maintain that customer's internal control procedures. As to the other of the Firm's customers noted above, the Firm did maintain that customer's internal control procedures, but those procedures were inadequate in that they did not address certain required elements, namely, authorized system access, validation of trade accuracy and conformity of orders with established credit and order size limits.

40. The Firm violated Exchange Rule 342 in that it failed to reasonably supervise its business activities with respect to maintaining appropriate procedures for controlling electronic order flow with respect to two of its customers, as more particularly required by Exchange Information Memos 92-15 and 92-43.

**Improper Treatment of an Erroneous Report as a Bona Fide Error**

41. Exchange Rule 411(a) and Exchange Information Memo 01-38 require that, when a member executes a trade for another member but gives an erroneous report to that member, the execution price shall be binding upon that member. Accordingly, the executing member cannot treat the erroneous report as a bona-fide error.
42. During the Relevant Examination Period, the Firm gave an erroneous report to another member and treated that execution as an error (processing it through its error account). Even though the customer was a member and the Firm was required to give the member the actual execution price, the Firm allowed the member to have the trade at the erroneously reported price, in violation of Exchange Rule 411(a), and the Firm accepted the resulting loss.

**Accurate Written Record of Compensation Arrangements for Floor Trading**

43. Exchange Rule 440I requires member organizations that are primarily engaged in executing agency transactions on the Floor to maintain a written record of the compensation arrangement with its customers in connection with transactions it executes on the Floor for those customers.
44. In twelve instances during April, May and June of 2002, the Firm overbilled two of its customers a total of \$5,384 by using commission rates that differed from the rates specified in the Firm's written compensation arrangements with those customers.
45. During the Relevant Examination Period, the Firm violated Exchange Rule 440I by failing to maintain an accurate written record of its compensation arrangements with those customers.

**Exchange Rule 35 – Failure to Have Series 25 Qualified Floor Employees**

46. Exchange Rule 35 provides that no employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange.
47. Exchange Information Memos 99-05 and 99-12 further require that all Floor employees of member organizations who function as trading assistants must satisfy the prerequisite training requirements and pass the Series 25 examination before they can perform their functions on the Floor.

48. During the Relevant Examination Period, two of the Firm's employees were working as Floor clerks without having timely completed the Series 25 examination, in violation of Exchange Rule 35. Both of these Firm employees had failed to timely complete the Series 25 examination for more than a year.

**Exchange Rule 35.50 – Failure to File Form U-4**

49. Exchange Rule 35.50 provides that registration applications for all employees of members and member organizations for admission to the Floor shall be submitted to the Exchange on the Uniform Application for Securities Industry Registration or Transfer ("Form U-4").
50. During the Relevant Examination Period, the Firm failed to file a Form U-4 for one of its Floor brokers to reflect that the Floor broker had become dually employed with another member firm, in violation of Exchange Rule 35.50.

**Failure to Timely Notify the Exchange of Employees' Terminations and Failure to Timely Return Badges of Terminated Floor Employees**

51. Exchange Rule 35 states that no employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange.
52. Exchange Floor Conduct and Safety Guidelines, the Exchange's Floor Official Manual, Member Education Bulletin #2001-18 (November 13, 2001) and Exchange Information Memo 99-20 require member organizations to notify the Exchange's security office within 24 hours of a Floor employee's termination. In addition, the member organization must surrender the employee's badge within 5 business days of such termination.
53. In seven instances during the Relevant Examination Period, the Firm failed to notify the Exchange's Security Department within 24 hours of an employee's termination.
54. Further, during the Relevant Examination Period, Exchange identification badges for five employees of the Firm were not returned to the Exchange Security Department within five days of being terminated as required.
55. The Firm's failures set forth above did not adhere to the principles of good business practice.

**Failure to Supervise**

56. Exchange Rule 342(a) provides, in pertinent part:

Each office, department or business activity of a member or member organization...shall be under the supervision and control of the

member or member organization establishing it and of the personnel delegated such authority and responsibility.

57. Exchange Rule 342(b) provides, in pertinent part:

The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall:

- 1) delegate to qualified principals or employees responsibility for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.
- 2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

58. During the Relevant Period, the Firm failed to reasonably supervise and implement adequate supervisory controls over certain of its business activities, including a separate system of follow-up and review, with respect to the entry and cancellation of MOC/LOC orders by its affiliated companies and non-member customers and the testing of its electronic order routing system connectivity to the Exchange's systems in violation of Exchange Rule 342.

59. As set forth above, during the Relevant Examination Period, the Firm failed to reasonably supervise or control its employees and business activities and implement adequate supervisory controls in that, with respect to the Firm's prime brokerage activities, it failed to have written procedures reasonably designed to ensure that securities subject to short sales were available to be borrowed, in violation of Exchange Rule 342.

60. As set forth above, during the Relevant Examination Period, the Firm failed to reasonably supervise or control its employees and business activities and implement adequate supervisory controls in that it failed to establish an appropriate system of follow-up and review relating to the collection and retention of original Floor order tickets to ensure that such original Floor order tickets were being preserved as required, in violation of Exchange Rule 342.

61. As set forth above, during the Relevant Examination Period, the Firm failed to reasonably supervise or control its employees and business activities and implement adequate supervisory controls in that it failed to establish an appropriate system of follow-up and review relating to its registration and qualification of its Floor

employees by allowing two of its employees to act in the capacity of Floor clerks without completing the Series 25 examination and by failing to file a Form U-4 for one of its Floor brokers, in violation of Exchange Rule 342.

62. As set forth above, during the Relevant Examination Period, the Firm failed to reasonably supervise or control its employees and business activities and implement adequate supervisory controls in that it failed to establish an appropriate system of follow-up and review relating to its compliance with Exchange requirements for notification to the Exchange of Floor employee terminations and the return of identification badges of terminated Floor employees, in violation of Exchange Rule 342.

### **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, a fine in the amount of \$225,000, and a requirement that the Firm comply with the following undertaking:

- a. Within 30 days from the date that the Hearing Panel decision becomes final, the Firm shall retain an outside consultant (the "Consultant"), not unacceptable to the Exchange, to perform a review and prepare a report (the "Report") of the Firm's systems, policies and procedures, relating to the submission and review of at-the-close orders, and cancellation of such orders, by the Firm, or any affiliate, member firm, non-member firm or customer which it grants access or use of the Exchange's SuperDot system, the Firm's proper maintenance of required books and records relating to the matters contained herein, the Firm's adoption and implementation of written procedures reasonably designed to ensure that securities subject to short sales are available to be borrowed, and the Firm's compliance with registration and qualification requirements for its Floor employees, including the appropriate restriction of the functions of all Floor employees prior to the time that they are properly licensed and the Firm's compliance with all Exchange requirements for denial of access to the Floor of all terminated Floor employees, including recommendations for different or additional systems, policies or procedures, if necessary.
- b. Within 120 days from the date that the decision becomes final the Consultant shall provide the Firm's Board of Directors and the Exchange's Division of Enforcement with a copy of the Report.
- c. The Firm shall adopt and implement all policies, procedures, and practices recommended in the Report; provided, however, that as to any recommendation

which the Firm, with the consent of its Board of Directors, determines is, in whole or part, unduly burdensome, the Firm may adopt alternative procedures designed to achieve the same objective or purpose as that recommended in the Report (“Alternative Procedures”). The Firm shall provide the Exchange with a written representation that such Alternative Procedures have been presented to the Consultant with a description of how such Alternative Procedures achieve the same objective or purpose as the Report’s original recommendation. In the event the Consultant is not satisfied that such Alternative Procedures achieve the same objective or purpose as the Report’s original recommendations, the Consultant shall so advise the Firm in writing, stating the reasons for the Consultant’s views, and the Firm shall file such writing with the Exchange.

- d. Within 60 days of delivery of the Report to its Board of Directors, the Firm shall submit to Enforcement a written representation, signed by the Chief Executive Officer, setting forth the details of the Firm’s implementation of the recommendations contained in the Report or the Alternative Procedures.

For the Hearing Panel

Milton M. Stein  
Hearing Officer