

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-4

January 13, 2004

THE WILLIAMS CAPITAL GROUP, L.P.
MEMBER ORGANIZATION

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Violated Exchange Rule 342 by failing to reasonably supervise its Trading Floor business activities; violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to preserve accurate Floor commission billing records – Consent to censure and \$25,000 fine.

Appearances:

For the Division of Enforcement
Julie H. Broderick, Esq.
Steven M. Tanner, Esq.

For the Respondent
Nancy Hirschmann, 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 The Williams Capital Group, L.P. (the "Firm"), a member organization. Without admitting or denying guilt with respect to any of the matters set forth herein, the Firm consents to findings by the Hearing Panel that it violated:

- I. Exchange Rule 342(a) and (b) by failing to reasonably supervise its business activities on the Trading Floor of the Exchange.
- II. Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to make and preserve certain books and records in connection with Floor commission billings.

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 has been a registered member of the Exchange since December 1999. At all times relevant hereto, the Firm had approximately 62 employees, including 42 registered representatives and one Floor broker who qualified the Firm on the Floor of the Exchange.
2. In 2001, the Exchange's Division of Member Firm Regulation ("MFR") conducted an examination of the Firm's financial and operational standards. This examination

resulted in MFR's Report of Examination dated May 31, 2001 (the "2001 Report"), which identified certain deficiencies in the Firm's procedures.

3. Thereafter, MFR referred the 2001 Report to Enforcement, and the Firm provided information and testimony by employees in connection with Enforcement's investigation of the matters in the 2001 Report.

Overview

4. From approximately December 1999 through 2002, the Firm failed to provide reasonable supervision of its business activities on the Trading Floor of the Exchange (the "Floor"). The Firm also failed to make and preserve certain books and records in connection with Floor commission billing.

Failure to Adequately Supervise Business Activities on the Trading Floor

5. When the Firm became a member organization in December 1999, it employed a Floor broker as its qualifying member on the Floor (the "Floor Broker"). The Firm employed the Floor broker pursuant to a dual employment agreement with another member firm for which the Floor broker had been employed as an independent Floor broker. Pursuant to that agreement, the Floor broker executed transactions for the Firm and for his own independent Floor business.
6. The 2001 Report noted that the Firm's procedures governing supervision of the Firm's business activities on the Floor did not include procedures for the review of certain aspects of its Floor broker's trading activities, including the review of Floor order tickets and execution reports, Floor employee-related securities accounts, and billing records, and review to ensure compliance with SEC and Exchange rules with respect to on-Floor trading, front running, intra-day trading, and multiple order representation.
7. In response to the 2001 Report, the Firm implemented in December 2001 certain revised procedures for supervision of its broker's Floor activity.
8. The revised procedures provided for the review of the Floor order tickets and execution reports, but such procedures were not adequate.
9. The Firm's procedures designated the Firm's upstairs Head Trader to monitor the Firm's Floor trading activities, which included a review of order tickets and execution reports.
10. The Firm's procedures designated the Head Trader, who placed orders to be executed on the Floor by the Floor Broker, to be responsible for supervising and reviewing the orders placed with the Floor Broker.

11. Under the Firm's procedures, the Head Trader was responsible for reviewing trades that he himself had placed with the Floor Broker and accordingly, such procedures were not adequate.
12. In June 2003, the Firm terminated the Floor Broker's employment and became an electronic access member, and thus no longer maintained any presence on the Floor.

Failure to Maintain, and to Reasonably Supervise for, Certain Books and Records

13. The Firm was responsible for supervising and reviewing the commission billing records issued by the Floor Broker to customers.
14. The 2001 Report noted that, upon review of commission bills for the Floor Broker's customers for January 2001, the amount paid by four customers did not correspond to the amount billed.
15. Similarly, from November 2000 through March 2001, on approximately 17 other occasions, customers did not pay the amount billed. Moreover, the Firm was not able to provide an invoice for one customer.
16. In almost all of the instances in which the customer paid an amount different from the amount billed, the Firm failed to maintain a written explanation for such difference.
17. By failing to maintain billing records which accurately reflected the negotiated commission rates of its Floor Broker, without explanation of the inconsistencies between the amount billed and the amount paid, the Firm failed to make and preserve books and records as required by SEC Rules 17a-3 and 17a-4 and Exchange Rule 440.
18. Additionally, the Firm did not have an adequate system of follow-up and review to ensure that billing records issued by its Floor Broker were accurate.

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 \$25,000.

For the Hearing Panel

Milton M. Stein
Hearing Officer