

NEW YORK STOCK EXCHANGE, INC.

In the Matters of)
)
Thomas A. Caterina)
 and)
SIG Specialists, Inc. [f/k/a)
Susquehanna Specialists, Inc.])

Requests for Review of
Exchange Hearing Panel
Decisions 04-6 and 04-7

In accordance with Exchange Rule 476(f), after a consideration of the record in these matters, written submissions filed by the parties, and oral argument, the Board affirms the decisions of the Hearing Panel in all respects.

October 7, 2004

By the Board of Directors
New York Stock Exchange, Inc.

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-6

January 20, 2004

THOMAS A. CATERINA
EXCHANGE MEMBER

* * *

Violated Exchange Rule 104.10 by failing to maintain a fair and orderly market as a specialist in an Exchange listed security and failing to effectively represent and execute agency orders in the security; violated Exchange Rule 79A.30 by executing a transaction that resulted in a one-point price decrease without obtaining prior Floor Official approval; violated Exchange Rule 123A.40 by failing to obtain Floor Official approval for election of a sell stop order more than 0.10 point away from the prior transaction – Censure and \$40,000 fine.

EXCHANGE HEARING PANEL DECISION 04-7

SUSQUEHANNA SPECIALISTS, INC.
MEMBER ORGANIZATION

* * *

Through a member associated as a specialist with it, violated Exchange Rule 104.10 by failing to maintain a fair and orderly market in an Exchange listed security and failing to effectively represent and execute agency orders in the security; violated Exchange Rule 79A.30 by executing a transaction that resulted in a one-point price decrease without obtaining prior Floor Official approval; violated Exchange Rule 123A.40 by failing to obtain Floor Official approval for election of a sell stop order more than 0.10 point away from the prior transaction – Censure and \$25,000 fine.

Appearances:

For the Division of Enforcement
Linda S. Riefberg, Esq.
Penny Rosenberg, Esq.
Michael C. Grey

For the Respondents
Andrew E. Tomback, Esq.
Richard T. Sharp, Esq.
Stephanie D. Shuler, Esq.
David Sieradzki, Esq.
Richard J. McDonald, Esq.
Todd L. Silverberg, Esq.
Michelle M. Campana, Esq.

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An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Thomas A. Caterina, a member of the Exchange, and Susquehanna Specialists, Inc. (the "Firm"), a member organization. Mr. Caterina was charged with having:

- I. Violated Exchange Rule 104.10 in that he failed to maintain a fair and orderly market in an Exchange listed security with respect to which he acted as the specialist by failing to provide adequate price continuity.
- II. Violated Exchange Rule 104.10 in that he failed to effectively represent and execute agency orders in an Exchange listed security with respect to which he acted as the specialist.
- III. Violated Exchange Rule 79A.30 by executing a transaction in an Exchange listed security with respect to which he acted as a specialist, that resulted in a price decrease of one point without obtaining prior Floor Official approval.
- IV. Violated Exchange policy regarding block transactions at significant premiums/discounts from the last sale as set forth in Information Memo 94-32 by failing to wait a sufficient period of time for contra side interest to develop after publishing a widened quotation and by executing a transaction in an Exchange listed security with respect to which he acted as a specialist, without obtaining the required prior Floor Official approval.
- V. Violated Exchange Rule 123A.40 by failing to obtain Floor Official approval for the election of a sell stop order when he was a party to the electing transaction which was more than 0.10 point away from the prior transaction.

The Firm was charged with having:

- I. Violated Exchange Rule 104.10 in that, through a member associated as a specialist with it, the Firm failed to maintain a fair and orderly market in an Exchange listed security by failing to provide adequate price continuity.
- II. Violated Exchange Rule 104.10 in that, through a member associated as a specialist with it, the Firm failed to effectively represent and execute agency orders in an Exchange listed security.
- III. Violated Exchange Rule 79A.30, through a member associated as a specialist with it, by executing a transaction in an Exchange listed security that resulted in a price decrease of one point without obtaining prior Floor Official approval.
- IV. Violated Exchange policy regarding block transactions at significant premiums/discounts from the last sale as set forth in Information Memo 94-32, through a member associated as a specialist with it, by failing to wait a sufficient period of time for contra side interest to develop after publishing the widened

quotation and by executing a transaction in an Exchange listed security without obtaining the required prior Floor Official approval.

- V. Violated Exchange Rule 123A.40 in that, through a member associated as a specialist with it, the Firm failed to obtain the required Floor Official approval to participate in the election of a stop order when he was a party to the electing transaction which was more than 0.10 point away from the prior transaction.

Mr. Caterina and the Firm submitted an Answer to the Charge Memorandum through their attorneys which, generally, denied the charges and, while admitting underlying facts, denied the allegations drawn from those facts. Generally, respondents contended that Mr. Caterina had acted in good faith in dealing with a large sell order in a low volume security. Mr. Caterina lowered the quoted price in order to generate buy side interest, and sought to contact a broker who had expressed interest in the Stock earlier that day. Mr. Caterina admitted that he had mistakenly executed a small part of the order at a lower bid than had been posted, but noted that he had compensated the seller for his error. He further admitted that he had inadvertently failed to obtain Floor Official approval before executing a purchase at a price one point below the previous sale price, but noted that, realizing his mistake, he reported his error on his own initiative. Basically, Mr. Caterina asserted that he had acted throughout reasonably and in good faith under unusual and difficult circumstances and the Firm asserted that it had adequate supervisory procedures in place, and had reasonably discharged its duties in supervising Mr. Caterina. Respondents argued that the allegations against them were not set forth with precision and clarity, and that the violations alleged as a result of this incident could more appropriately be addressed through the Exchange's Minor Rule Plan.

The Firm and Mr. Caterina appeared at the hearing, represented by counsel, and Mr. Caterina testified. On the basis of the testimony and evidence presented at the hearing, the Hearing Panel found as follows:

Background and Jurisdiction

1. Thomas A. Caterina ("Caterina") was born on June 22, 1959. He entered the securities industry in February 1982, first as a Clerk and then as a Floor broker for a securities firm. From 1985 until 1992, he was a Floor broker for another employer, which he left in 1992 to become a Floor broker at the Firm. In 1995, Caterina became a Specialist with the Firm. He served as a Floor Official from 1996 to 2001. Caterina is recognized as a trustworthy and respected specialist. He has, however, once previously been cautioned for inappropriately moving a stock price without required Floor Official approval.
2. The Firm became a member organization of the New York Stock Exchange, Inc. (the "Exchange") in 1994.
3. On April 4, 2002, the Exchange's Division of Enforcement ("Enforcement") opened a formal investigation based on a referral from the Division of Market Surveillance

dated March 26, 2002 regarding Caterina's activities as the acting Specialist in a particular common stock (the "Stock") on February 22, 2001.

4. By letters dated April 18, 2002 and May 6, 2002, with copies to the Firm's Compliance Department, Enforcement notified Caterina of its investigation. Caterina responded through his attorney by letter dated May 23, 2002 and gave on-the-record testimony to Enforcement and Market Surveillance staff on November 6, 2002.

Trading in the Stock

5. On February 22, 2001, Caterina was working as a specialist at his regular post/panel, as well as covering for the specialist who was regularly assigned to an adjoining post/panel. The Stock was one of the 14 securities listed on the adjoining post/panel. The Stock was one of the smaller issues for which the Firm was a specialist.
6. At 12:39:08 p.m., the market in the Stock was quoted at 5.55 – 5.61 (500 x 1,000 shares). At 12:53:03 p.m., a customer order was entered to sell 86,900 shares of the Stock at the market. The order was entered through the Exchange's automated "DOT" system.
7. At that time, Caterina held a CAP-DI sell percentage order for the Stock with 29,300 shares remaining of an original 54,100-share order at a price of 4.00 that had been entered earlier that day. (CAP-DI is an "immediate execution or cancel election" instruction which requires the specialist to cancel an elected portion of percentage order unless the elected portion is executed immediately [in whole or in part] at the price of the electing transaction or better. Any elected portion which is not immediately executed reverts to its status as an unelected percentage order, subject to subsequent election or conversion. The CAP-DI order guides the specialist to represent the order to ensure that the elected portion will go along with the market, by either not initiating a significant price change, or lagging behind the market.) There was also a stop order to sell 2,000 shares at an electing price of 5.38 that had been entered on January 9, 2001. In addition, three previous orders totaling 12,300 shares that bid 5.50 (the "three buy orders") were in Caterina's possession on the Display Book.
8. Caterina had instructed his clerk to show the bid at 5.50. Mistakenly believing that the changed bid had been published, Caterina, at 12:53:23 p.m. executed 12,300 shares of the Stock from the sell market order at a price of 5.50. That price was down 11 cents (2%) from the price of the previous transaction (5.61).
9. At 12:53:26 p.m., with 74,600 shares of the market order for the Stock remaining, Caterina widened the quotation to 4.00 – 5.61 (500 x 1,000 shares). When Caterina came in to cover for the regularly assigned specialist in the Stock, he had been informed that there was an interested buyer. After widening the quotation, he paged a Floor broker for that potential buyer once. Focused on prompt execution of the sell order, he made no further effort to contact the interested buyer.

10. At 12:54:19 p.m., 53 seconds after displaying the widened quotation, Caterina executed a transaction for the remaining 74,600 shares at a price of 4.50, down one point or approximately 18% of the Stock's value. He purchased 74,200 of those shares as a dealer. He did not seek Floor Official approval or give adequate notice to the known interested buyer before this transaction.
11. The 74,600-share transaction elected the stop order and the percentage order. At 12:54:25 p.m., Caterina purchased the 2,000 shares of the stop order at a price of 4.50 on a zero minus tick as a dealer. Caterina did not obtain Floor Official approval or give adequate notice to the known interested buyer before this transaction.
12. At 12:54:31 p.m., Caterina purchased the remaining 29,300 shares of the Stock on behalf of the CAP-DI percentage order at a price of 4.50 on a zero minus tick as dealer. He did not give adequate notice to the known interested buyer before this transaction.
13. There was an interested buyer in the Stock, who had been interested in the Stock for some weeks. The Floor brokers representing that customer would have been expected to be informed by the specialist of availability of the Stock. As soon as the customer noticed the specialist's transaction, the customer expressed strong displeasure. The Floor broker representing the customer complained to Caterina. (The Floor broker recalled that Caterina initially explained to him that he had not known the Floor broker was interested in the Stock. The Hearing Panel accepts, however, Caterina's subsequent recollection that he had been informed of the potentially interested buyer, but had made only one attempt to page the Floor broker.) Caterina offered to give the customer whatever of the purchase at 4.50 that the customer wanted. The customer took 30,000 shares; Caterina would have given him the entire amount he had purchased as dealer.
14. Caterina was so focused on his effort to promptly execute the large sell order that he did not realize his mistake in not obtaining Floor Official approval until the end of the day. Then, he called Exchange Market Surveillance staff and self-reported the matter.

Violation of Exchange Rule 104.10 by Failing to Maintain Price Continuity and to Effectively Represent an Agency Sell Order and Three Agency Buy Orders

15. Exchange Rule 104.10 provides, in pertinent part, that one of the functions of a specialist is "the maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he is so acting."
16. Caterina, acting as the Specialist in the Stock for the Firm, failed to make an adequate effort to attract contra side interest when he widened the quote to 4.00 – 5.61 at 12:53:26 p.m. and executed a transaction for the 74,600 shares, 74,200 of which were for his dealer account, at a price of 4.50 53 seconds later.

17. Caterina, acting as the Specialist in the Stock for the Firm, also failed to effectively execute commission orders entrusted to him, within the meaning of Exchange Rule 104.10 in that he: (a) did not effectively represent an agency sell order when he sold shares from the sell market order at a price of 5.50 when the exposed bid was actually 5.55; and (b) did not effectively represent the three agency buy orders when he executed them at a price of 5.50 – a price inferior to the 4.50 price at which he purchased stock for his dealer account 53 seconds later.

**Violation of Exchange Rule 79A.30
by Failing to Obtain Floor Official Approval for a One-Point Price Change**

18. Exchange Rule 79A.30 provides that “[a]ll transactions in stocks ... that are made ... at one point or more away from the last previous sale when such previous sale is under \$20 per share ... may not be published on the tape without the prior approval of a Floor Official....”
19. Caterina, acting as the Specialist for the Stock for the Firm, executed the 74,600-share transaction at a price of 4.50, a price that was one point, and approximately 18%, below the previous sale, without the required Floor Official approval.

Violation of Exchange Rule 123A.40 by Failing to Obtain Floor Official Approval for the Election of a Stop Order When Caterina Was Party to the Electing Transaction

20. Exchange Rule 123A.40 prohibits a specialist from executing a transaction for his own account in a stock in which he is registered “that would result in putting into effect any stop order he may have on his book.” The rule does permit a specialist to “be party to the election of a stop order” under certain circumstances including where the bid or offer betters the market and he guarantees that the stop order will be executed at the same price as the electing sale. However, even under those circumstances, a specialist must have Floor Official approval if the transaction is 0.10 point away from the prior transaction.
21. Caterina’s execution of the 74,600 shares of the Stock for the market order at a price of 4.50 elected the stop order to sell 2,000 shares. Caterina’s purchase of the 2,000 shares as a dealer at that price, which was more than 0.10 point away from the prior transaction, required Floor Official approval. Caterina failed to obtain that approval.

Alleged Violation of Exchange Policy Regarding Block Transactions at Significant Premiums/Discounts Set Forth in Information Memorandum 94-32

22. Exchange Information Memo 94-32 states, in relevant part, that when a specialist seeks to effect a block transaction at a significant premium and is aware of contra side interest, it may be appropriate for the specialist and Floor Official(s) to gap the quotation for a brief period, generally not exceeding five minutes, in order to contact and or attract contra market interest. In addition, Exchange Information Memo

94-32, also requires specialists to consult with a Floor Governor, or a Senior Floor Official or two Floor Officials whenever a block cross is proposed that would result in a more significant price change. These specific procedures, however, while they represent good practice for dealing with order imbalances, are specifically addressed to block cross transactions. The Information Memo also alludes to situations in which there are an influx of orders, but does not specifically apply to the situation faced by Caterina in this instance.

DISCUSSION

In little more than a minute of trading, faced with a large order to sell a stock without sufficient outstanding orders to buy, Mr. Caterina committed errors that led to a series of rule violations. Mr. Caterina concedes that, in the course of dealing with an imbalance created by a large sell order, he committed some errors, and violated some rules, but that his conduct generally was reasonable, as he sought prompt execution of the order before him. The Firm further contends that it made every effort to educate and supervise its individual specialists, and should not be held strictly liable for the singular errors of Mr. Caterina.

Mr. Caterina is recognized as a trustworthy and honorable specialist. There is no issue here of intentional misconduct. But the errors he committed in this particular moment of this particular day implicate the vital duties of an Exchange specialist. Faced with an unusually large sell order in a small stock, with no Floor broker representing the order with whom he could negotiate, Mr. Caterina became entirely focused on prompt execution of the entire order.

Specialists are more than computers; their skills in permitting the market to find a fair price for a stock must come into play when there is no immediate market for a stock. There are procedures established at the Exchange to slow down execution, when necessary, in order to maintain price continuity and avoid significant price changes. These procedures require an effort to bring buyers and sellers together and to obtain the objective advice of Floor Officials.

Mr. Caterina's haste led him to neglect established procedures to allow the market to find a fair price. To begin with, Mr. Caterina sold to buyers at 5.50, when the quoted bid was 5.55 for 500 shares of the Stock. Here, Mr. Caterina admittedly acted in error, in the mistaken belief that the clerk had updated the bid to the 5.50 price.

But the mistake was compounded, to the disadvantage of the buyers. Given that the bid had not in fact been quoted at 5.50, Mr. Caterina disadvantaged the buyers when he sold the entirety of the outstanding buy orders, 12,300 shares, at that price. His duty was to seek the best price for the entire order.

Then, faced with the imbalance of 74,600 shares for sale and no outstanding buy orders, Mr. Caterina "gapped the quote," widening the bid-offer quotation to signal a special situation in the Stock; he thereby alerted the market that there was a significant amount of stock for sale. He then was under a duty to seek out buyers known to be interested in the Stock.

There was an interested buyer, but Mr. Caterina had made minimal efforts to contact that Floor broker. He had sought to page the Floor broker, but the Floor broker never got that message. It may be that Mr. Caterina had pressed the wrong page buttons. But, knowing there was a potentially interested buyer, and receiving no immediate response to his beeper message, he could have taken additional steps to notify the potential buyer. Indeed, had he fulfilled his duty to obtain Floor Official approval before purchasing the order at a heavily reduced price as a dealer, he would have been advised to seek out the potential buyer before doing so. And Mr. Caterina himself recognized his failure when he subsequently sold the interested buyer shares of the Stock at the low price at which he had purchased it. While this indicates Mr. Caterina's good faith in seeking to correct his mistake, it does not excuse his neglect of his duties to maintain a fair and orderly market. Mr. Caterina notes that the 30,000-share purchase by the interested buyer would not have changed the pricing of the sell order. But, this is an after-the-fact conclusion. Mr. Caterina failed in his duty to check on the extent of outside buying interest before purchasing the entire order for the dealer account. Seeking out the interested buyer, and checking with a Floor Official, might have reached the same pricing result, but Mr. Caterina had to meet these requirements before doing so.

Respondents strenuously argue that they cannot be held to a duty to follow the established practices of specialists on receipt of a sell order imbalance, in slowing down execution of the order to seek out buyer interest, since these practices are not precisely spelled out in Exchange rules. But Rule 104.10, setting forth the basic duties of a specialist, does require "the effective execution of commission orders entrusted to him" and the "maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange," including "the maintenance of price continuity with reasonable depth, and the minimizing of the effects of temporary disparity between supply and demand." These standards reasonably imply an effort to correct a sell order imbalance by seeking out buyer interest. Mr. Caterina failed this duty, not because he did not follow every step of customary procedure, but because he did not, overall, make enough of an effort to fulfill his obligations under Exchange Rule 104.10.

While acknowledging Mr. Caterina's mistake in failing to obtain Floor Official approval before purchasing the sell order at a substantially reduced price, the respondents argue against the further obligation to get Floor Official approval before electing to purchase a stop order as dealer, pursuant to Exchange Rule 123A.40. They contend that, with respect to the stop order, Mr. Caterina was properly "facilitating completion of a member's order at a single-price, where the depth of the current bid or offer is not sufficient to do so," within the meaning of the rule. We disagree. The quoted exemptive language of the rule by its terms applies when there is a "current bid" for the customer's order. Here, Mr. Caterina took almost the entirety of the remaining order; he was not merely rounding out the order. The rule required him to get the objective opinion of a Floor Official before doing so. Indeed, that is the very purpose of the rule, which otherwise plainly forbids a specialist for making a transaction for his own account that would result in putting into effect any stop order he may have on his book.

As to the Firm's responsibilities in the matter, the Firm notes that it has ample supervisory controls and a well-trained staff, but could not reasonably have prevented this error by one of its specialists. But the Firm is a specialist unit. Its performance is measured, as an entity, by the work of its individual specialists and it is wholly responsible for the actions of its specialists.

Indeed, it is surprising that the Firm, despite the gapping of the quote and despite the lowering of the Stock's price by almost twenty percent, provided little help at the time to remedy this difficult situation.

In sum, we recognize that this was an isolated mistake, by an able and well-respected specialist, that resulted in a number of violations of a specialist's duties. He reported his error and sought to make amends. The Firm, too, has since recognized its obligations to provide a remedy. But, in itself, this was a serious mistake –neglecting some basics for establishing a fair price.

DECISION

The Hearing Panel, by unanimous vote, found Mr. Caterina guilty of Charges I, II, III and V, and not guilty of Charge IV.

The Hearing Panel, by unanimous vote, found the Firm guilty of Charges I, II, III and V, and not guilty of Charge IV.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Caterina be censured and fined in the amount of \$40,000.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that the Firm be censured and fined in the amount of \$25,000.

For the Hearing Panel

Milton M. Stein
Hearing Office