

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-31
STOCKCROSS FINANCIAL SERVICES, INC.
MEMBER ORGANIZATION

March 8, 2004

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Violated Exchange Rule 342(a) and (b) by failing to maintain and implement appropriate procedures for supervision and control with respect to: Floor brokerage activities, the hiring of new employees, and employee's compliance with the continuing education requirements of Exchange Rule 345A; violated Exchange Rule 440I by failing to preserve a written record of its Floor broker's negotiated commission rates for executions on the Floor; violated Exchange Rule 440 and Rule 240.17a-4 of the '34 Act by failing to preserve certain books and records in connection with Floor commission billings; violated Exchange Rule 345A by permitting registered persons with inactive registrations to perform duties and functions requiring registration – Consent to censure, \$30,000 fine, and an undertaking to retain an outside consultant to review, report and make recommendations on certain of the Firm's policies, procedures and supervisory systems.

Appearances:

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

For the Respondent
Martin H. Kaplan, Esq.
Cirino M. Bruno, Esq.
Robert Perez, 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 StockCross Financial Services, Inc., a member organization (the "Firm"). Without admitting or denying guilt the Firm consented to a finding by the Hearing Panel that it violated:

- I. Exchange Rule 342(a) and (b) by failing to maintain and implement appropriate procedures for supervision and control with respect to:
 - A. Floor brokerage activities;
 - B. The hiring of new employees; and

- C. Employee's compliance with the continuing education requirements of Exchange Rule 345A.
- II. Exchange Rule 440I by failing to preserve a written record of its Floor broker's negotiated commission rates for executions on the Floor of the Exchange.
 - III. Exchange Rule 440 and Rule 240.17a-4 of the Securities and Exchange Act of 1934 by failing to preserve certain books and records in connection with Floor commission billings.
 - IV. Exchange Rule 345A by permitting registered persons with inactive registrations to perform duties and functions requiring registration.

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 was founded in 1971, and has been a registered member of the Exchange since 1982. At all times relevant hereto, the Firm had approximately 20 employees, including one Floor broker who qualified the Firm on the Floor of the Exchange (the "Floor").
2. In 2000, the Exchange's Sales Practice Review Unit ("SPRU") of the Division of Member Firm Regulation ("MFR") conducted an examination of the Firm's supervisory and sales practice procedures. This examination resulted in MFR's Report of Examination dated November 6, 2000 (the "2000 SPRU Report"), which identified certain deficiencies in the Firm's procedures.
3. In 2002, MFR conducted an examination of the Firm's financial and operational standards. This examination resulted in MFR's Report of Examination dated June 28, 2002 (the "2002 Fin/Op Report"), which identified certain deficiencies in the Firm's procedures.
4. On or about April 24, 2002, ownership of the Firm changed, and thereafter, the Firm's management changed.
5. MFR referred the 2000 SPRU Report and the 2002 Fin/Op Report to Enforcement, and the Firm provided information and testimony by employees in connection with Enforcement's investigation of the matters in those reports.

Overview

6. From approximately 2001 through 2002 (the "Relevant Period"), the Firm failed to provide reasonable supervision of its business activities on the Floor, and failed to

preserve certain books and records in connection with Floor commission billing. Additionally, during 2000, the Firm failed to provide reasonable supervision with respect to the hiring of new employees and employees' compliance with the continuing education requirements, and permitted registered persons with inactive registrations to perform duties and functions requiring registration.

Failure to Adequately Supervise Business Activities on the Floor

7. From approximately March 2001 to September 2002 (the "Relevant Period"), the Firm retained EM as its qualifying member on the Floor ("EM" or the "Floor Broker"). The Firm employed EM pursuant to a dual employment agreement with a member firm for which EM had been employed as an independent Floor broker. Pursuant to that agreement, EM executed transactions for the Firm, and for his own independent Floor business.
8. In approximately September 2002, the Firm terminated its relationship with EM, and retained another floor broker as its qualifying member on the Floor.
9. In May 2001, MFR conducted an examination of the Firm's financial and operational standards. This examination resulted in MFR's Report of Examination dated June 21, 2001 (the "2001 Fin/Op Report"), which identified certain deficiencies in the Firm's procedures.
10. The 2001 Fin/Op Report reported that the Firm was not able to evidence how it supervised its Floor personnel with respect to on-Floor trading, front running, intra-day trading, and multiple order representation.
11. Similarly, the 2002 Fin/Op Report reported that the Firm failed to adequately supervise and review its Floor personnel with respect to front running, intra-day trading, and multiple order representation. The 2002 Fin/Op Report also reported that the Firm failed to adequately supervise and review its Floor broker's independent Floor business and Floor tickets.
12. Beginning in June 2001, the Firm conducted its review of Floor broker activity by reviewing the "Independent Broker Activity Report" ("IBAR") that it received from the Exchange, which provided certain information about the Floor Broker's executions.
13. The Firm did not conduct any review of Floor order tickets unless the review of the IBAR disclosed questionable transactions, and did not conduct any review of unexecuted orders. During the Relevant Period and thereafter, there was no review of Floor order tickets to determine items such as whether all tickets have been submitted for review, or that the tickets contained all of the necessary information.

14. During the Relevant Period, the Firm did not preserve commission agreements and commission bills for the independent Floor business of the Floor Broker.
15. In June 2003, the Firm engaged an outside consultant to review the Firm's written supervisory procedures with respect to its qualifying member on the Floor. In October 2003, following the recommendations of the outside consultant, the Firm adopted new written supervisory procedures relating to the supervision of its qualifying member on the Floor.

Hiring of New Employees

16. Under Exchange Rule 345.11, the Firm is required to thoroughly investigate potential employees.
17. The 2000 SPRU Report noted that the Firm did not have any written procedures pertaining to hiring RRs.
18. Shortly after the 2000 SPRU Report, the Firm implemented written procedures pertaining to the hiring of new employees.

Exchange Rule 345A – Continuing Education for Registered Persons

19. Pursuant to Exchange Rule 345A, if an RR is not in compliance with the continuing education requirements, that RR's registration is deemed to be inactive, and his member firm employer may not permit the RR to perform any duties that require registration. Also, pursuant to Exchange Information Memorandum 96-35, dated November 11, 1996, if a person's license has been suspended for failure to comply with the continuing education requirements, a member firm may not pay that person any compensation for activities that require a registration.
20. The 2000 SPRU Report noted that four registered employees had failed to complete their continuing education in a timely manner; the deficiencies lasted from approximately 17 to 62 days. At the time of the 2000 SPRU Report, the four RRs had completed the continuing education requirements.
21. During the time that their registrations were inactive, the four RRs performed duties that required an active registration, and received compensation from 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, a fine of \$30,000, and a requirement to comply with an undertaking that, within thirty days from the date that a decision by a Hearing Panel in this matter becomes final, the Firm shall retain an outside consultant, not unacceptable to the Exchange, to conduct a review of the Firm's policies, procedures and supervisory systems relating to the violations described herein, and prepare a report of its review, including recommendations for additional procedures and systems, if necessary, reasonably designed to ensure compliance with Exchange Rules and federal securities laws to prevent a recurrence of the violations described herein, and submit such report to the Exchange within 120 days that a decision by a Hearing Panel in this matter becomes final.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer