

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-93

June 16, 2004

KARL ZACHAR

FORMER REGISTERED REPRESENTATIVE

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Delayed allocation of trades until post-execution, which resulted in the ability to grant preferential treatment to certain customers or his account; caused a violation of Exchange Rule 410 by failing to make required records regarding customer orders; caused violations of Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to make and preserve required records – Consent to censure and 15 month bar.

Appearances:

For the Division of Enforcement
Allison A. Bishop, Esq.
Robert J. Meyers, Esq.

For the Respondent
David L. Ward, 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 Karl Zachar, a former registered representative with Goldman Sachs & Co. (the "Firm"). Without admitting or denying guilt, Mr. Zachar consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he delayed allocation of trades until post-execution, which resulted in the ability to grant preferential treatment to certain customers or his personal account.
- II. Caused violations of Exchange Rule 410 by failing to make required records regarding customer orders.
- III. Caused violations of Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to make and preserve required records relating to the designation and execution of customer orders.

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

Background and Jurisdiction

1. Zachar was born on June 11, 1967. Zachar entered the securities industry in 1989, working as a registered representative with Firm A, a member firm.

2. In 1993, Zachar became employed with the Firm, and he worked as a registered representative in the Firm's Boston branch office from the summer of 1997 until his termination in May of 2001. According to Exchange records, Zachar is not currently employed in the securities industry.
3. On or about June 21, 2001, Enforcement received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") reporting that Zachar had been terminated from the Firm. On August 2, 2001, the Firm filed an amended Form U-5 which reported that following an internal review, Zachar was terminated for violations of Firm policies and regulatory requirements concerning records of orders, and possible conflicts of interest between personal trading and trading for discretionary customer accounts.
4. By letter dated July 3, 2001, which Zachar received, the Exchange notified Zachar that it was formally investigating the allegations set forth in the Form U-5.

Summary of Violative Conduct

5. During the period of January through May 2001 (the "relevant period"), Zachar failed to promptly provide account number designations, for transactions involving Exchange listed securities, which he placed by telephone to his Firm's Merchandising Desk. Specifically, Zachar delayed trade allocations for time periods ranging up to 5 hours and 52 minutes. Such delays gave Zachar inordinate latitude in choosing whether to allocate the transactions to customers' discretionary accounts or to his own personal accounts, in violation of Exchange Rules and federal securities laws. In addition, Zachar caused violations of Exchange Rules and federal securities laws by failing to make and preserve required records relating to the receipt and execution of customer orders, as set forth below.

Improper Post Execution Allocation of Trades

6. Zachar was employed in the Firm's Boston branch office and was part of the Private Client Services Group ("the Group" or the "Private Group"). The Group included customers whose average account had net assets of two million dollars. Shortly thereafter, he joined a "sales team" of other Private Group registered representatives and support personnel.
7. The sales team ranked as one of the highest production teams in the entire Firm, and Zachar was one of the top producers in the Boston branch office.
8. Zachar's team responsibilities included soliciting new business, managing client accounts and trading for the "Opportunistic Portfolio", which were pools of funds from approximately 30 to 40 wealthy individuals and families (of the team's 700-800 clients) who wanted to take part in buying and selling securities on an opportunistic basis.
9. The Opportunistic Portfolio utilized a small percentage of clients' assets, typically less than five percent, in order to create a number of discrete trading groups for which

the team would effect transactions on a discretionary basis. The usual holding period for stocks in the Opportunistic Portfolio was between one week and one month. Participation required not only sufficient liquid wealth to qualify financially, but also written authorization to allow the team to use discretion. The trades were effected by bunched orders, the use of which required signed client consent forms. (A bunched order combines a number of customer orders for the same stock, and is entered as one large order, with the proviso that a list specifically allocating the trades is provided on the trade date.)

10. The Firm created a trading desk known as the Merchandising Desk in order to provide services to the Group's clients similar to those provided to institutional and investment company clients. At all relevant times, Zachar's team was taking part in a pilot program to increase Merchandising Desk usage. The Firm's goal was to market the Merchandising Desk's enhanced communication with trading desk personnel as a means to permit salespersons to more easily follow the progress of large buy and sell orders entered with the Firm's trading desks.
11. During the relevant time period, Zachar entered trades for the Opportunistic Portfolio and his personal account by utilizing the Merchandising Desk.
12. According to Firm rules, a spreadsheet or order ticket time-stamped at or prior to the time the order was telephoned into a trading desk such as the Merchandising Desk was required to accompany all orders called into the Merchandising Desk. When utilizing a spreadsheet, Zachar was required to identify each customer for whom an order was entered and the amount or percentage ordered for each customer, so that the accounts for which the trades were entered was timely identified. Further, after verbally entering an order, Zachar was to give his spreadsheet and blotter to the sales assistants working with his sales team, who were responsible for ensuring that trades were properly and timely allocated to client accounts.
13. A Firm internal investigation disclosed that Zachar, while trading for his personal account as well as for client accounts, failed to timely identify the accounts for which he placed orders with the Merchandising Desk and did not follow the Firm's procedures relating to entering orders and time-stamping on numerous occasions.
14. It was further determined that during the period of January 1, 2001 through May 8, 2001, there were irregularities with respect to Zachar's trading blotter in that Zachar failed to timely time-stamp his trading blotter when he placed orders with the Merchandising Desk on a number of occasions. Specifically, the time stamps on Zachar's trade blotter were hours later than the time Zachar had called the orders into the Merchandising Desk.
15. By placing orders with the Merchandising Desk for both customer and his personal account, and not simultaneously having spreadsheets or order tickets time-stamped at or before the time he telephoned the Merchandising Desk, Zachar managed to enter orders without providing the required account information necessary to identify the accounts receiving the securities.

16. SEC Regulations 17a-3(a)(6) and (7), promulgated pursuant to the Securities Exchange Act of 1934 (the “34 Act”), requires in relevant part that a memorandum of each brokerage order be made that includes the time of entry and the account for which the order is entered.
17. Exchange Rule 410(a) requires, in part, that every member organization shall preserve, for at least three years, the first two years in an easily accessible place, a record of every order transmitted directly or indirectly to the Floor of the Exchange, which record shall include the name and amount of the security, the terms of the order, the time that the order was so transmitted, and the time at which a report of execution was received. Prior to such orders being executed, an order slip or other record must be prepared showing the name or designation of the account for which the order is to be executed.
18. Exchange Rule 440 requires that member organizations make and preserve books and records as the Exchange may prescribe and as prescribed by SEA Regulations 240.17a-3 and 240.17a-4.
19. Pursuant to Exchange Rules and federal securities laws stated above, Zachar should have provided the Merchandising Desk with account information and/or contemporaneously presented a time-stamped order ticket or spreadsheet to the sales assistants or Regional Compliance Manager to identify the accounts to which the orders were entered.
20. On approximately nine occasions during the relevant period, Zachar entered orders for various quantities of stock without timely identifying the accounts for which the stocks would be allocated. Zachar did not give the Firm the requisite account information for these orders for various time periods, with several in excess of five hours. These orders were ultimately allocated to the Opportunistic Portfolio. For example:

Trade Date	Trade Type	Security Symbol	Quantity	Delay Time
03/07/01	Purchase	ABC	50,000 shares	2 hours, 27 minutes
03/10/01	Purchase	DEF	20,000 shares	4 hours, 45 minutes
04/11/01	Purchase	GHI	70,000 shares	5 hours, 52 minutes
04/23/01	Purchase	JKL	50,000 shares	1 hour, 54 minutes
04/24/01	Purchase	MNO	30,000 shares	5 hours, 20 minutes
04/26/01	Purchase	PQR	30,000 shares	5 hours, 12 minutes

21. Further, by not providing account information for these trades for time periods up to 5 hours and 52 minutes or more, Zachar had the opportunity to watch the securities’ price movement throughout the day, giving him the ability to allocate unprofitable trades to the Opportunistic Portfolio and profitable trades to his personal accounts, if he were so inclined, in violation of Exchange Rules and SEC regulations.
22. In addition, as mentioned above, during the relevant period, Zachar phoned in his personal orders to the Merchandising Desk without identifying them as personal

orders. By failing to differentiate between personal and customer orders at the time he phoned orders to the Merchandising Desk, and not timely providing account information, Zachar had the ability to determine the profitability of trades and allocate profitable trades to his personal accounts if he were so inclined.

23. In failing to timely submit account information for allocation purposes, Zachar caused violations of Exchange Rules and federal securities laws, which require that the accounts for which the orders were executed be promptly identified.
24. The manner by which Zachar entered trades through the Firm's Merchandising Desk, as described above, did not comply with the requirements of Exchange Rules 410 and 440, as well as SEC Rules 17a-3 and 17a-4, and thereby caused violations related to the maintenance and preservation of accurate books and records.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Zachar 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 Mr. Zachar of a censure and a 15-month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange Member or member organization.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer