

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-130

August 4, 2004

BRIAN RIGNEY  
REGISTERED REPRESENTATIVE

\* \* \*

**Effected transactions that had the effect of artificially influencing the price of an Exchange listed security; caused a violation of Exchange Rule 401 in that he effected transactions on behalf of the Firm which artificially influenced the price of a security; caused a violation of Rule 97(a)(iii) in that he caused a purchase transaction to be effected at a plus tick when his Firm held a long position from a block transaction earlier that day – Consent to censure and \$75,000 fine.**

**Appearances:**

For the Division of Enforcement  
Allison A. Bishop, Esq.  
Melissa G. Gable, Esq.  
Deanna G. W. Logan, Esq.

For the Respondent  
Robert Mendelson, Esq.

\* \* \*

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 Brian Rigney, a registered representative and block trader with Morgan Stanley & Co., Inc. (the "Firm"). Without admitting or denying guilt, Mr. Rigney consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 476(a) that he effected transactions that had the effect of artificially influencing the price of an Exchange-listed security.
- II. Caused a violation of Exchange Rule 401 in that he effected one or more transactions on behalf of the Firm which artificially influenced the price of an Exchange-listed security.
- III. Caused a violation of Rule 97(a)(iii) in that he caused a purchase transaction to be effected on the floor of the Exchange at a plus tick at a time when his member organization employer held a long position of the same security in its proprietary account, which resulted from a block transaction earlier that day.

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

### **Background and Jurisdiction**

1. Rigney was born on June 11, 1971. Rigney entered the securities industry in 1998, working as a listed block trader with the Firm where he remains employed. His supervisor on the listed block trading desk was, at all relevant times, David Memmott (“Memmott”), the Managing Director in charge of the Listed Block Trading Desk. (See Exchange Hearing Panel Decision 04-63.)
2. On or about April 10, 2002, the Firm reported to the New York Stock Exchange’s Division of Market Surveillance that on April 4, 2002, Rigney violated Exchange Rule 97(a)(iii) through the improper entering of a proprietary trade.
3. The Division of Market Surveillance subsequently referred the matter to the Division of Enforcement. Rigney, represented by counsel, appeared for on-the-record testimony regarding this matter.
4. On November 25, 2003, a Charge Memorandum was issued to Rigney and Memmott by the Division of Enforcement. On April 2, 2004, an amended Charge Memorandum was issued to Rigney by the Division of Enforcement.
5. Memmott has entered into a Stipulation of Facts and Consent to Penalty with the Division of Enforcement.

### **Overview**

6. On April 4, 2002, David Memmott approved a customer facilitation for approximately 4.8 million shares of XYZ Corp. (“XYZ”) at \$9 per share. The price was at a premium to the market since the stock at that time was trading at approximately \$8.95. Subsequent to the customer facilitation, the price of XYZ began to decline and Rigney entered a series of \$9 limit orders via SuperDOT to purchase XYZ at Memmott’s instruction. The multiple \$9 limit orders had the effect of artificially influencing the price of an Exchange-listed security. In addition, one of the orders entered by Rigney was a market order which was executed at \$9.03, on a plus tick higher than the price at which the block was acquired by the Firm that day, thus causing a violation of Exchange Rule 97(a)(iii).

### **Artificially Influencing the Price of an Exchange-listed Security**

7. On April 4, 2002, Rigney was a trader on the Firm’s Listed Block Trading desk. His responsibilities included trading and making markets in specific stocks in industries including utilities, gaming and lodging and Real Estate Investment Trusts (“REITs”). Additionally, Rigney was responsible for managing risk and committing Firm capital for those stocks in both facilitation and proprietary forms.

8. On April 4, 2002 Rigney facilitated a block transaction involving the sale of approximately 4.8 million shares of XYZ Corporation at the request of a customer.
9. Prior to the facilitation, Rigney and his supervisor Memmott initially proposed to the customer that it sell its shares of XYZ at a price of \$8.75, a discount to the current market.
10. At the time, XYZ was trading at approximately \$8.95.
11. The customer rejected the proposal of selling the shares at \$8.75 and indicated that another firm had expressed a willingness to purchase the entire block of 4.8 million shares of XYZ at \$9 per share.
12. In the face of losing the transaction, Memmott and Rigney agreed to go forward with the facilitation at \$9 and at approximately 2:03 p.m. the customer gave Rigney the order to sell 4.8 million shares of XYZ at \$9 per share.
13. In agreeing to take part in the 4.8 million-share facilitation, the Firm purchased approximately 2.8 million shares of XYZ as principal. The remainder of the block, approximately 2 million shares, was purchased by other Firm customers who had earlier that day indicated to the Firm a willingness to participate in the transaction.
14. Subsequent to the 4.8 million-share print, the price of XYZ began to decline. For example, at approximately 2:12:15 p.m., a transaction took place at \$8.95, and at that time XYZ was being quoted as \$8.94 bid for 100 shares; 1,100 shares were being offered at \$8.97.
15. Subsequently, Memmott instructed Rigney to buy XYZ at \$9, although the market was below that level.
16. Rigney did not want to disclose to the market that the Firm was long XYZ as a result of the earlier block transaction.
17. Therefore, in carrying out Memmott's instructions, Rigney placed buy orders for XYZ via SuperDOT since it lent a degree of anonymity to the identity of the buyer. According to Rigney, had he used a Floor broker to execute the buy orders, he would have been required to disclose the Firm's long position in XYZ in executing the order.
18. For example, at 2:13:05 p.m., Rigney placed a limit order via SuperDOT to purchase 6,000 shares of XYZ at the limit price of \$9. At that time, the market was quoting an \$8.93 bid for 200 shares; 100 shares offered at \$8.94. This order was executed in two transactions, one at 2:13:17 p.m. at \$8.94 and the second at 2:13:21 p.m. at \$8.96. The two transactions resulted in an aggregate uptick of XYZ + .03, bringing the price of the stock to \$8.96.

19. Rigney was uncertain as to Memmott's objective in continuing to purchase XYZ. Thus, after several minutes he approached Memmott to determine what the "game plan" or strategy was regarding the purchase of XYZ.
20. At that time, Memmott instructed Rigney to continue to buy the stock and "let me know if you hit 200,000 shares." Memmott also instructed Rigney to place the buy orders at \$9 per share.
21. Memmott later increased that 200,000-share limit to a quantity somewhere between 300,000 and 500,000 shares of XYZ.
22. Rigney continued to enter \$9 limit orders for XYZ over the course of approximately the next two hours. During that time period, the price of XYZ rose to and remained at or above \$9.
23. For example, at 2:14:04 p.m., with the market quoting an \$8.95 bid for 2,600 shares and 9,800 shares offered at \$9, Rigney placed a limit order to purchase XYZ shares at \$9, this time for 15,000 shares. The order was executed over two transactions, at 2:14:15 p.m. at \$8.99 and at 2:14:24 p.m. at \$9, which upticked XYZ + .01. The second execution resulted in a total uptick of +.01 in the price of XYZ, bringing the price of the stock to \$9.
24. In total, after the facilitation, Rigney entered at least 16 orders through SuperDOT to purchase 300,000 shares of XYZ as principal, of which 223,200 shares were executed. On April 4, XYZ closed at \$9.06.
25. The total volume of trading in XYZ on the Exchange on April 4, 2002 was approximately 6.5 million shares. The transactions effected by Rigney through SuperDOT represent approximately 1/8 of the volume of trading in XYZ on the NYSE floor for the day, not including the 4.8 million-share block transaction.
26. Included in the orders set forth above was a market order which Rigney placed that was executed at \$9.03 and resulted in a violation of Exchange Rule 97(a)(iii) due to the fact that the purchase was effected on a plus tick higher than the lowest price at which any block was acquired in a previous transaction on that day.
27. At the time of the transaction, the Firm held a long position in XYZ resulting from a block transaction it facilitated for its customer earlier that day.
28. As a result of a computer programming error in the Firm's systems, the account identifiers attached to orders effected via SuperDOT by Rigney were sent to the trading Floor as agency rather than proprietary orders. Thus, this programming defect further resulted in the appearance of market interest in the purchase of XYZ.

**DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Rigney 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. Rigney of a censure and a fine of \$75,000.

For the Hearing Panel

Vincent F. Murphy  
Hearing Officer