

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 04-135**

August 11, 2004

STANDARD & POOR'S SECURITIES, INC.  
MEMBER ORGANIZATION

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**Violated SEC Rule 15c3-1 and Exchange Rule 325 by failing to properly compute net capital, and conducting its securities business while failing to maintain the required net capital; Violated Exchange Rule 476(a)(10) and SEC Rule 17a-5 by filing an inaccurate FOCUS Report; Violated Exchange Rule 132.30 by failing to submit accurate account type indicators – Consent to censure and \$50,000 fine.**

**Appearances:**

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

For the Respondent  
Tai H. Park, Esq.  
Chad M. Yohn, Esq.  
Anita L. Whelan, 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 Standard & Poor's Securities, Inc. (the "Firm"), a member organization. Without admitting or denying guilt the Firm consented to a finding by the Hearing Panel that it:

- I. Violated SEC Rule 15c3-1 and Exchange Rule 325 by failing to properly compute its net capital, and conducting its securities business while failing to maintain its net capital at the required level.
- II. Violated Exchange Rule 476(a)(10) and SEC Rule 17a-5 by filing an inaccurate FOCUS Report with the Exchange.
- III. Violated Exchange Rule 132.30 by failing to submit accurate account type indicators on system orders.

For the sole purpose of settling this disciplinary proceeding, and without admitting or denying any of the facts or matters referred to in the Stipulation of Facts and Consent to Penalty, the Firm consents to findings, the substance of which follows:

### **Background and Jurisdiction**

1. The Firm has been a registered member of the Exchange since 1984. Its principal place of business is in New York City, and it currently maintains two branch offices.
2. At all relevant times, the Firm's business included the execution of unsolicited orders placed by professional, institutional money managers.
3. In May 2003, the Exchange's Division of Member Firm Regulation ("MFR") conducted a financial, operational and supervisory standards/sales practice examination of the Firm. This examination resulted in MFR's Report of Examination (the "2003 Report"), which identified certain deficiencies. Thereafter, the deficiencies noted by MFR in the 2003 Report were referred to Enforcement for further review.
4. Enforcement notified the Firm that it was investigating matters referred to Enforcement by MFR relating to the 2003 Report.
5. Thereafter, the Firm appeared and provided information and testimony in connection with Enforcement's investigation.

### **Overview**

6. During certain times in 2003, the Firm violated Securities and Exchange Commission ("SEC") Rule 15c3-1 and Exchange Rule 325 by failing to properly compute its net capital and conducting its securities business while failing to maintain its net capital at the required level. The Firm also violated Exchange Rule 476(a)(10) and SEC Rule 17a-5 by filing an inaccurate FOCUS Report with the Exchange, and violated Exchange Rule 132.30 by failing to submit accurate account type indicators on system orders

### **Net Capital Violations**

7. SEC Rule 15c3-1 and Exchange Rule 325 obligate member organizations to properly compute their net capital and to maintain their net capital at a certain required level when securities transactions are effected.
8. SEC Rule 17a-5 and Exchange Rule 476(a)(10) obligate member organizations to file with the Exchange accurate Financial and Operational Combined Uniform Single Reports ("FOCUS Reports").
9. In performing its net capital computation, a broker-dealer may treat assets in a proprietary account that are maintained at another broker-dealer as allowable assets for computing its net capital, provided that both parties adhere to certain procedures, among which is the maintenance of an executed PAIB (Proprietary Accounts of Introducing Brokers and Dealers) agreement.

10. As of January 31, 2003, the Firm conducted its securities business while failing to maintain its net capital at the required level. At that time, the Firm had a net capital deficiency of approximately \$9.8 million, which resulted from the Firm's failure to maintain an executed PAIB agreement with another broker-dealer where the Firm maintained a proprietary account (Firm A). At that time, the Firm held approximately \$21 million in commercial paper on deposit at Firm A, and had treated such deposit as an allowable asset in computing its net capital which was not permitted because the Firm did not maintain an executed PAIB Agreement with Firm A.
11. Because the Firm had a net capital deficiency, its FOCUS Report dated January 31, 2003 was not accurate.
12. By letter dated April 2, 2003, the Firm notified the Securities Exchange Commission of the net capital deficiency, as required by SEC Rule 17a-11.

#### **Failure to Submit Accurate Account Type Indicators**

13. Exchange Rule 132.30 requires each clearing member that is a party to a securities contract to submit to the Exchange certain information, including whether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization, and to identify the type of beneficial owner of every trade executed on the Exchange (*e.g.*, "P" for principal/proprietary, "A" for agency).
14. During February to March 2003, on various occasions, the Firm submitted to the Exchange inaccurate account type indicators.
15. A review of the 15 trades that were executed in the Firm's error account between February 10, 2003 and March 7, 2003, all of which were executed to liquidate positions, disclosed that each trade was inaccurately entered with an "A" account type indicator, rather than a "P" account type indicator.

#### **Other Factors Considered**

16. The Firm has informed Enforcement, and Enforcement has considered, the circumstances described below relating to the matters covered in the Stipulation and Consent.
17. On April 1, 2003, the date that the net capital deficiency was brought to the Firm's attention by MFR, the Firm executed a PAIB agreement with Firm A that covered the Firm's positions held at Firm A.
18. Upon notification by MFR that the Firm has used incorrect account type indicators, the Firm instructed its traders to use the correct account type indicator. The Firm also amended its written procedures to ensure that transactions are submitted to the Exchange with the correct account type indicator.

**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 in the amount of \$50,000.

For the Hearing Panel

Vincent F. Murphy  
Hearing Officer