

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 04-143**

September 14, 2004

CARMINE MILO

FORMER NON-REGISTERED EMPLOYEE

\* \* \*

**Violated Exchange Rule 477 by failing to comply with requests for information – Censure and bar until he complies, to become permanent if he does not comply within three months.**

**Appearances:**

For the Division of Enforcement  
Martin S. Mazur, Esq.  
Suzanne R. Elovic, Esq.

For the Respondent  
No Appearance

\* \* \*

An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Carmine Milo, a former non-registered employee with Merrill Lynch, Pierce, Fenner & Smith Inc. (the "Firm"). Mr. Milo was charged with having violated Exchange Rule 477 by failing to comply with written requests by the Exchange for information concerning a matter that occurred prior to the termination of his employment as a non-registered employee of a member organization.

Mr. Milo did not submit an Answer to the Charge Memorandum, and neither Mr. Milo or any person on his behalf appeared at the hearing in this matter. At the hearing, the Division of Enforcement moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted, since Mr. Milo did not submit an Answer. The motion was granted on proof of notice to Mr. Milo and, on that basis, and on evidence presented, the Hearing Panel found as follows:

**Background and Jurisdiction**

1. Carmine Milo ("Milo") was born on March 8, 1963. He entered the securities industry in October 1992, as a non-registered employee working in the Manhattan Funds Processing branch of the Firm. His employment with the Firm was terminated in November 21, 2002.
2. The Exchange has no record that Milo is currently employed in the securities industry.
3. The Division of Enforcement of the New York Stock Exchange, Inc. ("Enforcement") received a Form RE-3 filed by the Firm on or about December 20, 2002, indicating that Milo's employment had been terminated. According to the RE-3, the Firm

terminated Milo's employment after it came to the Firm's attention that Milo was involved in conducting improper transactions in his personal Firm account.

4. Specifically, the Firm alleged that Milo had drawn checks from his personal bank account and deposited them into his Firm account. He arranged for another Firm employee, who held a management-level position, to designate those personal checks as government checks. Therefore, once the checks were deposited, Milo and his fellow employee were able to immediately withdraw cash from the Firm account because of the government designation. Subsequently the checks deposited were returned for insufficient funds. In all, Milo and his fellow employee withdrew funds that exceeded his account's available balance totaling approximately \$21,656.60.

#### **Failure to Cooperate**

5. On August 29, 2003, Enforcement sent a letter to Milo's last known address notifying Milo that Enforcement was conducting a preliminary inquiry into whether Milo had conducted improper transactions in his personal account. In that letter, Enforcement requested that a written detailed explanation be submitted by September 28, 2003 and that failure to comply with Enforcement's request could subject Milo to formal disciplinary action. Milo never responded to this letter.
6. On November 10, 2003, Enforcement sent a letter by certified mail, return receipt requested, and a copy by first class mail, to Milo's last known address as indicated on Exchange records. In that letter Enforcement notified Milo that it was investigating the possibility that, while employed by the Firm, Milo had conducted improper transactions in his personal account at the Firm.
7. The letter also requested that Milo provide a detailed explanation about that matter and informed Milo that failure to respond by December 1, 2003 could result in formal disciplinary action based upon his failure to comply with the Exchange's request for information.
8. The letter sent by certified mail, return receipt requested, was received and signed for by Milo. The copy of the letter that had been sent first class mail was never returned to Enforcement. Milo did not respond to the November 10, 2003 letter.
9. On March 10, 2004, Enforcement sent a second letter by certified mail, return receipt requested, and a copy by first class mail, to Milo's last known address according to Exchange records. In that letter Enforcement made another request for information and advised Milo that failure to respond by April 1, 2004 could result in formal disciplinary action based upon his failure to comply with the Exchange's request.
10. The letter sent by certified mail, return receipt requested was received and signed for by Milo. The copy of the letter that had been sent first class mail was never returned to Enforcement.
11. On March 16, 2004, the member of Enforcement staff who signed the March 10, 2004 letter received a call from an individual who identified himself as Carmine Milo. Milo stated that he was in receipt of the March 10<sup>th</sup> letter; however, at the time

that he received the “other letter” (presumably referring to the November 10<sup>th</sup> letter), his attorney had advised him that since the matter was already “resolved” that he need not respond to the letter. Enforcement staff advised Milo that he may be subject to formal disciplinary action and asked Milo for his counsel’s name and contact information. Milo responded that he would have his attorney contact Enforcement and promptly hung up the phone without providing contact information for his attorney.

12. Since that date, neither Milo nor anyone on his behalf has contacted Enforcement.
13. To date, Milo has failed to cooperate with the Exchange’s requests for information.

### **DECISION**

The Hearing Panel, by unanimous vote, found Mr. Milo guilty as charged.

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Milo be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until he complies with the Exchange’s requests with which he has failed to comply. Given this most serious allegation of misconduct and the Exchange’s need for prompt investigation, the Hearing Panel, by unanimous vote, further determined that Mr. Milo be permanently barred from membership, allied membership, approved person status and from employment or association in any capacity with any member or member organization if he does not comply with the Exchange’s requests, with which he has failed to comply, within three months from the date this decision becomes final.

For the Hearing Panel

Milton M. Stein  
Hearing Officer