

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-147

September 21, 2004

NATEXIS BLEICHROEDER, INC.  
MEMBER ORGANIZATION

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**Violated SEC Rule 15c3-3(g) by causing hindsight deficiencies in withdrawing funds from its special reserve account; violated SEC Rules 17a-3(a)(6) and 17a-4(b)(1) and Exchange Rules 410, 411 and 440 by failing to maintain certain required records of customer orders and errors; violated Exchange Rule 134(d) by processing transactions through an error account which were not related to errors; violated Exchange Rules 342(a) and (b) by failing to prevent the aforementioned violations – Consent to censure and \$60,000 fine.**

**Appearances:**

For the Division of Enforcement  
Steven F. Korostoff, Esq.  
Laura A. Cooper, Esq.

For the Respondent  
Joshua Laterman, Esq.  
Robert C. Mendelson, 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 Natexis Bleichroeder, Inc. (the "Firm"), a member organization of the Exchange. Without admitting or denying guilt, the Firm consents to findings by the Hearing Panel that it:

- I. Violated SEC Rule 15c3-3(g) by, on one or more occasions, withdrawing funds from its special reserve account for the exclusive benefit of customers leaving less than the amount required to be on deposit, thereby causing hindsight deficiencies.
- II. Violated SEC Rules 17a-3(a)(6) and 17a-4(b)(1) and Exchange Rules 410, 411 and 440 by failing to make, maintain and preserve certain required records of customer orders and errors.
- III. Violated Exchange Rule 134(d) by, on one or more occasions, processing transactions through an error account that were not related to errors.
- IV. Violated Exchange Rules 342(a) and (b) by failing to provide for appropriate procedures of supervision and control and to establish a system of follow-up and review to prevent the aforementioned violations.

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, a member organization of the Exchange since 1973, was acquired by Natexis Banques Populaires in 2002. The Firm has three branch offices in three states and currently employs a total of approximately 229 individuals. The Firm engages in various businesses including institutional securities brokerage.
2. In 2003, the Exchange's Division of Member Firm Regulation ("MFR") conducted an examination of the Firm's financial and operational procedures. During the 2003 examination, MFR noted certain deficiencies that were referred to Enforcement for further review.
3. By letter dated June 24, 2003, Enforcement notified the Firm that it was investigating matters that were referred to Enforcement by MFR following the 2003 examination and referral.
4. Thereafter, the Firm appeared, represented by counsel, and provided documents, information and testimony in connection with the Exchange's investigation.

### **Summary of Violative Conduct**

5. The Firm violated Securities and Exchange Commission Rule 15c3-3(g) by, on one or more occasions, withdrawing funds from its special reserve account for the exclusive benefit of customers leaving less than the amount required to be on deposit, thereby causing hindsight deficiencies; violated SEC Rules 17a-3(6) and 17a-4(b)(1) and Exchange Rules 410, 411 and 440 by failing to make, maintain and preserve certain required records of customer orders and errors; violated Exchange Rule 134(d) by, on one or more occasions, processing transactions through an error account that were not related to errors; and violated Exchange Rules 342(a) and (b) by failing to provide for appropriate procedures of supervision and control and to establish a separate system of follow-up and review to prevent the aforementioned violations.

### **The Firm Withdrew Funds From Its Reserve Account for the Exclusive Benefit of Customers, Leaving Less Than The Amount Required**

6. SEC Rule 15c3-3(g) provides that "a broker or dealer may make withdrawals from his Reserve Bank Account [for the Exclusive Benefit of Customers ("Reserve Account")] if and to the extent that at the time of the withdrawal the amount remaining in the Reserve Bank Account is not less than the amount then required" according to a specific formula in Rule 15c3-3(e). In other words, a broker or dealer must make a calculation of the required minimum level in the Reserve Account, and maintain that minimum level by depositing cash or assets prior to making a withdrawal from the Reserve Account.

7. Exchange Rule 342 requires each member or member organization to supervise each of its offices, departments or business activities, to provide for appropriate procedures of supervision and control and to establish a separate system of follow-up and review.
8. During its 2003 examination, MFR noted certain hindsight deficiencies in the Firm's Reserve Account. Pursuant to SEC Rule 15c3-3(i), by letter dated January 29, 2003, the Firm notified the SEC and the Exchange that on November 29, 2002, a clerk withdrew collateral from the Reserve Account prior to the receipt of new collateral prior to the 10 a.m. deadline for funding the Reserve Account. The Firm further stated that similar occurrences of the substitution of assets occurred over a period of twelve months, leaving the Reserve Account not fully funded for a matter of minutes to approximately one half an hour.
9. During the course of Enforcement's investigation additional hindsight deficiencies in the Firm's Reserve Account, arising from the same conduct described above, were identified on the following dates and in these approximate amounts:

<u>Date</u>	<u>Amount of Deficiency</u>
April 30, 2002	\$24,776,600
May 21, 2002	\$12,584,300
May 29, 2002	\$16,871,620
June 4, 2002	\$9,005,340
June 11, 2002	\$8,008,670
June 25, 2002	\$27,270,360
July 9, 2002	\$10,730,670
August 20, 2002	\$14,470,400
August 27, 2002	\$13,967,700
October 1, 2002	\$6,087,500
October 15, 2002	\$20,083,000
October 22, 2002	\$22,304,700

**The Firm Failed to Create and Maintain Certain Required Books and Records**

10. SEC Rules 17a-3(a)(6) and 17a-4(b)(1) require member firms to create and maintain records of orders, including the time the order was received and the quantity of securities, for a period of three years. Exchange Rule 440 requires member firms to “make and preserve books and records . . . as prescribed by [SEC] Rule 17a-3.”
11. Exchange Rule 410 requires member firms to create and maintain records of orders transmitted to the Floor. Exchange Rule 134(d) requires that members and member organizations create and maintain records of all errors, including a time stamped ticket indicating that the transaction is to cover an error, the nature and amount of the error, the means by which the member resolved the error, and the aggregate amount of liability incurred as a result of the error.
12. Exchange Rule 411 provides that the price at which an order is executed is binding, notwithstanding an erroneous report to the customer of the execution price or quantity, unless the customer is a non-member and a number of requirements are fulfilled, including, among other things, that the member documents, on a trade-by-trade basis, the name of the individual authorized to accept and who rejected the erroneous report, the amount of the error, and whether the error was in the non-member’s or executing broker’s favor.
13. MFR noted during its 2003 examination that, during December 2002, certain order tickets for error transactions were not maintained.
14. A review of a sample of three months (October 2002 through December 2002) of orders that resulted in errors disclosed: (a) order tickets and/or time stamps were missing for approximately eight orders relating to errors; (b) out of the twenty-eight errors reviewed, approximately nine were erroneous reports of execution price or quantity to a non-member, but the Firm did not document the name of the customer authorized to accept the erroneous report and who rejected the correction; (c) approximately four of the error reports contained inaccurate information concerning the error.
15. Rule 134(d) provides that no trading may take place in an error account that is not related to an error.
16. In October 2002, the Firm processed a transaction through the error account which was not related to an error.
17. In December 2002, the Firm processed a transaction through its error account that was not related to an error. The transaction was not to offset a transaction made in error, but rather was effected because the Floor broker executed an order that the customer refused to accept.

**Other Factors Considered**

18. The Firm has informed Enforcement, and Enforcement has considered, the circumstances described below relating to the matters covered in the Stipulation and Consent.
19. The Firm has revised its policies and procedures to require that every withdrawal from the Reserve Account be reviewed and approved by two Vice Presidents.
20. The Firm has changed its procedures with respect to errors: specifically, the head of the trading desk on the Floor sends an e-mail to the Firm's head of the upstairs trading desk and the head of compliance for review. The Firm has adopted written procedures and created a new report form for errors which has a box for each of the specifically required items of information.

**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 of \$60,000.

For the Hearing Panel

Milton M. Stein  
Hearing Officer