

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-22

January 28, 2005

MURIEL SIEBERT & CO., INC.  
MEMBER ORGANIZATION

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**Violated Exchange Rule 342 in that the Firm failed to establish and maintain appropriate procedures for supervision and control, through a separate system of follow up and review with respect to specified conducts; SEC Rule 15c3-1(c)(2) in that it incorrectly calculated its required Net Capital computation by misclassifying assets, SEC Rules 17a-3 and 17a-5 in that it created and maintained inaccurate records and reports by understating its assets and liabilities on its general ledger and a FOCUS report, Exchange Rule 440 in that it failed to make and preserve its books and records by maintaining incomplete files of institutional customer account documentation and completing and submitting an inaccurate FOCUS report, Exchange Rule 405 in that it failed to diligently supervise all institutional customer accounts in that it was unable to evidence that a qualified person approved the opening of accounts and failed to maintain all essential account documentation, Exchange Rule 304(b) and (h) in that it failed to obtain the required Exchange approval for control persons, Allied Members and approved persons, and Exchange Rule 35 in that it failed to ensure that a Floor clerk was properly qualified and approved. – Consent to censure and a \$45,000 fine.**

**Appearances:**

For the Division of Enforcement  
Anthony J. Cavallaro, Esq.  
Cynthia Kitay, Esq.

For the Respondent  
Muriel Siebert  
Jeanne M. Rosendale, Esq.  
Richard T. Sharp, 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 Muriel Siebert & Co., Inc. (the "Firm"). Without admitting or denying guilt, the Firm consented to a finding by the Hearing Panel that it violated:

- I. Exchange Rule 342 in that the Firm failed to establish and maintain appropriate procedures for supervision and control, through a separate system of follow up and review, to ensure compliance with Exchange and federal securities laws, with respect to:

- A. supervisory procedures relating to its Floor activities and personnel;
  - B. supervisory approval in the opening of accounts and review of institutional order tickets; and
  - C. electronic communications with the public;
- II. SEC Rule 15c3-1(c)(2) in that it incorrectly calculated its required Net Capital computation by misclassifying assets;
  - III. SEC Rules 17a-3 and 17a-5 in that it created and maintained inaccurate records and reports by understating its assets and liabilities on its general ledger and a FOCUS report;
  - IV. Exchange Rule 440 in that it failed to make and preserve its books and records by maintaining incomplete files of institutional customer account documentation and completing and submitting an inaccurate FOCUS report;
  - V. Exchange Rule 405 in that it failed to diligently supervise all institutional customer accounts in that it was unable to evidence that a qualified person approved the opening of accounts and failed to maintain all essential account documentation;
  - VI. Exchange Rule 304(b) and (h) in that it failed to obtain the required Exchange approval for control persons, Allied Members and approved persons; and
  - VII. Exchange Rule 35 in that it failed to ensure that a Floor clerk was properly qualified and approved by the Exchange.

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 discount brokerage with a capital markets division, has been a member of the Exchange since 1967. It has seven offices nationwide with its main office in New York City. The Firm is wholly owned by Siebert Financial Corporation, a public holding company.
2. In 2002, the Exchange's Division of Member Firm Regulation ("MFR") conducted an examination of the financial, operational and sales practice procedures ("FIN/OP") established and maintained at the Firm as of February 28, 2002. In a letter dated October 3, 2002, which the Firm received, Enforcement advised the Firm that MFR had referred certain findings of the 2002 Report of Examination (the "2002 Report") to Enforcement.
3. In 2003, MFR conducted an annual FIN/OP examination of the Firm as of July 28, 2003. In a letter dated October 31, 2003, Enforcement advised the Firm that MFR had referred findings of the 2003 Report of Examination (the "2003 Report") to Enforcement.

### **Overview**

4. As set forth in detail below, during the period 2002 and 2003, the Firm failed to establish and maintain appropriate procedures for supervision and control, through a separate system of follow up and review with respect to its supervisory procedures relating to its Floor activities and personnel, supervision of institutional customer accounts and communications with the public. During this same period, the Firm also incorrectly calculated its required net capital, resulting in the understatement of its assets and liabilities on a general ledger and FOCUS report and maintained incomplete files of institutional customer account documentation. Additionally, during the same 2002 and 2003 period, the Firm did not obtain approval for Allied Membership for two Firm officers, request approval from the Exchange for an affiliated broker and did not properly qualify a Floor clerk. Similar deficiencies to those described above were discovered during the 1999, 2000 and 2001 MFR Examinations of the Firm and the 2002 MFR/Sales Practice Review Unit Examination of the Firm.

### **Books and Records Violations**

5. Exchange Rule 440 requires, in pertinent part, that every member organization shall make and preserve records as the Exchange may prescribe and as prescribed by SEC Rule 17a-3. SEC Rule 17a-3(a)(2) provides, in pertinent part, that every member organization keep current a ledger or other record reflecting all assets and liabilities, income and expense and capital accounts. SEC Rule 17a-5 provides, in pertinent part, that every member organization file monthly and quarterly reports to its designated examining authority. SEC Rule 15c3-1(c)(2)(iv) and (vi) requires, in pertinent part, that for a net capital computation, a firm's net worth must be adjusted by assets not readily converted into cash and by deducting the securities haircuts specified in the rule.
6. As of January 31, 2003, the Firm misclassified \$1.5 million due from its clearing broker as a deposit as an allowable asset which resulted in adjustments totaling \$976,864 to the Firm's Net Capital computation and reduced the Firm's excess net capital by approximately \$1 million.
7. In computing its December 31, 2002 trial balance, the Firm improperly netted certain unrelated assets and liabilities on its trial balance and FOCUS Report. As a result of the netting, the Firm understated its assets and liabilities by \$882,781 for the period.

### **Supervisory Violations**

8. Exchange Rule 342 requires, in pertinent part, that each office, department or business activity of a member organization shall be under the supervision and control of the member organization establishing it and of the personnel delegated such authority.
9. The Firm's written supervisory manual for the supervision of its Exchange Floor activities and personnel as of February 28, 2002 was not adequate in that it did not

include procedures or references to applicable Exchange and Securities and Exchange Commission (“SEC”) rules, including on-Floor trading, front-running, intra-day trading and multiple order representation.

10. As of February 28, 2002, the Firm could not evidence the review of the Floor broker error account activity and the error log provided by the Firm did not contain sufficient information.
11. As of July 28, 2003, the Firm did not maintain written procedures for the review of: incoming faxes; communications pursuant to Exchange Rule 472; monitoring of customers’ use of P.O. Box addresses and for confirming P.O. Box addresses with customers; Letters of Authorization; monitoring employees’ use of their own passwords, e-mail addresses or web sites on the internet or the Firm’s intranet or e-mail system; and monitoring for the unauthorized use of the Firm’s corporate name on the internet.
12. Exchange Rule 405 requires, in pertinent part, that every member organization is required to use due diligence to learn the essential facts relative to every customer.
13. As of July 28, 2003, a sampling review of customer accounts revealed that except for delivery versus payment instructions, the Firm was unable to demonstrate that a qualified person approved the opening of four institutional accounts and that essential account documentation was maintained for these customer accounts.
14. As of July 28, 2003, a sampling review of upstairs order tickets revealed that there was no record of review and approval of four upstairs institutional order tickets.
15. As of July 28, 2003, the Firm did not conduct a full pre-use review of all its electronic communication. In the alternative, the Firm did not: design or develop supervisory procedures for electronic communications; monitor and test the policies and procedures to ensure that they are being implemented and complied with; provide education and training to all appropriate employees concerning the organization’s current policies and procedures governing communications; ensure that training is updated as policies and procedures are changed; and maintain records documenting how and when employees are educated and trained.

#### **Other Violations**

16. Exchange Rule 304(b)(i) requires, in pertinent part, that any person, not a member of the Exchange, shall become an allied member of the Exchange by pledging himself to abide by the Constitution and Exchange Rules and by being either a general partner in a member firm or an employee who controls such member firm. Exchange Rule 304(h) requires, in pertinent part, that any person who controls a member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person.

17. During 2001 and 2002, the Firm did not obtain approval for Allied Membership for the Firm's Executive Vice President, Chief Operating, Operations and Compliance Officer and for the Firm's Chief Financial Officer.
18. As of December 31, 2002, the Firm did not obtain approval from the Exchange for approved person status for an affiliated broker/dealer, DEF Invest, Inc. Siebert Financial Corp., the parent company of the Firm acquired DEF on November 3, 2000. DEF owned 100% of DEF Invest, Inc., an inactive broker/dealer.
19. Exchange Rule 35 provides, in pertinent part, that no employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange. Information Memo 99-5 outlined approved amendments to Exchange Rule 35. Any new trading assistant candidate must complete three months training and pass the Series 25 Examination before functioning as a trading assistant without the specialized supervision by a member.
20. As of July 28, 2003, one of the Firm's six Floor clerks was not properly Series 25 qualified.

#### **Other Factors Considered**

21. Enforcement has also taken into account that none of the deficiencies resulted in a loss to any Firm customers and that the Firm has no prior disciplinary history. The Firm has represented to the Exchange, and the Exchange has considered, that the Firm has implemented appropriate policies and procedures to prevent recurrence of the findings discussed above by, among other things, revising and improving its written policies and procedures; increasing the supervision and frequency of reviews of its financial computations and financial reporting process; increasing its compliance resources; and instituting enhanced training for its staff.

#### **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 \$45,000.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer  
Panelists:  
Barry J. Cohen  
Frank J. DeCongelio