

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-31

March 15, 2005

SETH WILHELM CHADBOURNE

FORMER REGISTERED REPRESENTATIVE

* * *

Sold short securities from his personal securities account prior to the execution of an order to sell short such securities by an asset management fund managed by his member firm employer, when he knew or was reckless in not knowing that the fund's order had not been executed – Consent to censure and two and a half month bar.

Appearances:

For the Division of Enforcement

Julie Han Broderick, Esq.

Danielle I. Schanz, Esq.

For the Respondent

Howard W. Goldstein, 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 Seth Wilhelm Chadbourne, a former registered representative with Nomura Securities International, Inc. (the "Firm"). Without admitting or denying guilt, Mr. Chadbourne consented to a finding by the Hearing Panel that he engaged in conduct inconsistent with just and equitable principles of trade in that he sold short securities from his personal securities account prior to the execution of an order to sell short such securities by an asset management fund managed by his member firm employer, when he knew or was reckless in not knowing that the fund's order had not been executed.

For the sole purpose of settling this disciplinary proceeding, and without Mr. Chadbourne admitting or denying any of the facts or matters referred to in the Stipulation of Facts and Consent to Penalty, the Division of Enforcement and Mr. Chadbourne consent to finding by the Hearing Panel, the substance of which follows:

Background and Jurisdiction

1. Seth Wilhelm Chadbourne ("Chadbourne") was born in July 1973. He entered the securities industry in June 1995 when he commenced employment at the Firm as a telecommunications analyst for the Nomura Corporate Research and Asset Management group ("NCRAM"). NCRAM was a subsidiary of the Firm, and it managed several asset management funds, including the XYZ Fund (the "Fund").
2. In May 2000, Chadbourne became a vice president and portfolio manager with NCRAM. From May 2000 until his discharge from the Firm in April 2002,

Chadbourne was co-manager of several of the funds managed by NCRAM and was an analyst for the Fund.

3. From July 2003 to the present, Chadbourne has been working as an investment advisor for his own company.
4. The Exchange's Division of Enforcement ("Enforcement") initiated an investigation following receipt from the Firm of a Uniform Termination Notice for Securities Industry Registration ("Form U-5"), dated May 13, 2002, reporting the termination of Chadbourne's employment for conduct inconsistent with Firm policy.
5. By letter dated November 14, 2002, which he received, Chadbourne was notified of Enforcement's investigation of the matters reported by the Firm.
6. Thereafter, Chadbourne appeared and, represented by counsel, testified in connection with Enforcement's investigation.
7. On October 26, 2004, a charge memorandum was issued against Chadbourne relating to the matters set forth herein. Chadbourne filed an Answer on November 18, 2004 denying any violative conduct.

Violative Conduct

8. On April 5, 2002 at approximately 9:00 a.m., Chadbourne attended a meeting with the Fund in connection with his duties as the Fund's analyst (the "morning meeting").
9. At the morning meeting, Chadbourne learned that the Fund intended to transact short sales that day in three equity securities: ABC, DEF, and GHI.
10. Following the morning meeting, Chadbourne completed an application which sought approval from the Firm to sell, in his personal securities account maintained at another firm, 1,000 shares of ABC, 1,000 shares of DEF, 2,000 shares of GHI, and 1,000 shares of JKL.
11. Chadbourne's application did not disclose that he intended to sell short the securities, and did not disclose that the Fund intended to transact short sales that same day in ABC, DEF and GHI.
12. At all times relevant, under Firm policy, Chadbourne was required to complete a two-step approval process before orders for personal trades could be entered in his personal securities account. The first step required employees to obtain the written approval of their group head or supervisor. The second step required the employee to obtain the approval of the Firm's compliance department.
13. On April 5, 2002, Chadbourne completed the first step of the approval process and obtained the approval of a manager at the Firm, to sell ABC, DEF, GHI and JKL in his personal securities account. Chadbourne did not seek approval for short sales of these securities.

14. At approximately 12:26 p.m. on April 5, 2002, Chadbourne initiated the second step of the approval process by sending an electronic communication to CDP of the Firm's compliance department advising him that Chadbourne was approved to sell ABC, DEF, GHI and JKL in his personal account. Chadbourne then forwarded the same communication to CDD, also of the compliance department, at 12:50 p.m.

ABC

15. At 12:35 p.m., the Fund entered and executed its order to sell short 5,000 shares of ABC.
16. At approximately 1:13pm, before receiving approval from the compliance department for his personal trades, Chadbourne entered and executed his order to sell short 1,000 shares of ABC in his personal securities account away from the Firm.

DEF

17. At 12:38 p.m., the Fund entered its order to sell short 5,000 shares of DEF. The order was executed at 12:39 p.m.
18. At approximately 1:18 p.m., before receiving approval from the compliance department for his personal trades, Chadbourne entered and executed his order to sell short 1,000 shares of DEF in his personal securities account away from the Firm.

GHI

19. At approximately 1:14 p.m., before receiving approval from the compliance department for his personal trades, Chadbourne entered his order to sell short 1,000 shares of GHI in his personal securities account away from the Firm.
20. Chadbourne's order to short sell GHI was executed at approximately 1:29 p.m. at a price of \$7.47 per share.
21. At 1:36 p.m., the Fund entered its order to sell short 15,000 shares of GHI. The Fund's order to sell short GHI was entered after Chadbourne's GHI order was executed.
22. The Fund's order in GHI was executed at 1:57 p.m., at a price of \$7.49 per share.
23. Chadbourne traded ahead of the Fund's short sale of GHI.
24. Chadbourne knew or was reckless in not knowing that the Fund's short sale trades of GHI had not been executed prior to entering his personal trades in the same securities.
25. At approximately 1:46 p.m., CDD responded to Chadbourne's electronic communication by requesting more information about the ABC transaction. Chadbourne responded by electronic communication at 2:09 p.m.

26. At or about 2:11 p.m., the Firm's compliance department responded affirmatively to Chadbourne's request for approval, based on the information provided by Chadbourne.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Chadbourne 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. Chadbourne of a censure and a bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization for a period of two and a half months.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
Domitilia M. dos Santos
Christopher E. Raney