

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-38

BRILL SECURITIES INC.

FORMER MEMBER ORGANIZATION

April 1, 2005

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Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to create and maintain certain books and records in connection with its Floor brokerage business; violated SEC Rule 17a-5 and Exchange Rule 476(a)(10) by filing inaccurate FOCUS Reports; violated SEC Rule 15c3-1(c)(2) by failing to use the accrual method of accounting with respect to its Floor brokerage income; violated Exchange Rule 35.50 in that it failed to submit Form U-4 applications to the Exchange for its Floor employees; violated Exchange Rule 345.17 in that it failed to report the termination of its Floor employees to the Exchange on Form U-5; violated Exchange Rule 401 in that it failed to adhere to the principles of good business practice by failing to notify the Exchange within 24 hours of the termination of employees, and failing to return the Exchange issued identification cards of terminated Floor employees; and violated Exchange Rule 342 in that it failed to supervise, failed to provide for reasonable procedures for supervision and control, and a separate system of follow-up and review with respect to its Floor brokerage activities and Floor personnel – Consent to censure and \$70,000 fine.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Jeanne R. Elmadany, Esq.

For the Respondent
Andrew E. Goldstein, 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 Brill Securities Inc., a former member organization ("Respondent" or the "Firm"). Without admitting or denying guilt, the Respondent consented to a finding by the Hearing Panel that it:

- I. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by failing to create and maintain books and records, including but not limited to a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, in connection with its Floor brokerage business.
- II. Violated SEC Rule 17a-5 and Exchange Rule 476(a)(10) by filing inaccurate FOCUS Reports with the Exchange.

- III. Violated SEC Rule 15c3-1(c)(2) by failing to use the accrual method of accounting with respect to its Floor brokerage income.
- IV. Violated Exchange Rule 35.50 in that it failed to submit Form U-4 applications to the Exchange for its Floor employees.
- V. Violated Exchange Rule 345.17 in that it failed to report the termination of its Floor employees to the Exchange on Form U-5.
- VI. Violated Exchange Rule 401 in that it failed to adhere to the principles of good business practice in the conduct of its business affairs by:
 - A. Failing to notify the Exchange within 24 hours of the termination of one or more of its employees.
 - B. Failing to return the Exchange issued identification cards of one or more of its terminated Floor employees.
- VII. Violated Exchange Rule 342 in that it failed to supervise and failed to provide for reasonable procedures for supervision and control, and a separate system of follow-up and review with respect to its Floor brokerage activities and Floor personnel to assure compliance with Exchange Rules.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and the Respondent stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. The Respondent became a member organization of the New York Stock Exchange, Inc. (the "Exchange") in January 1987. In late 2001, the Respondent, an introducing broker-dealer, had 18 branch offices in addition to its main office in New York City, and employed approximately 55 people. It derived its primary revenue from commissions on approximately 3,100 retail customer accounts.
2. The Respondent had three independent Floor brokers and seven Floor clerks associated with it during the period January 1999 to April 2002. FB, one of the three independent Floor brokers, qualified the Firm until April 15, 2002.
3. The Respondent voluntarily withdrew as an Exchange member as of May 5, 2002. The Firm continues as a registered broker-dealer and is a member of the NASD.
4. This matter originated with a referral from the Division of Member Firm Regulation ("MFR") of the Exchange on March 20, 2002, of findings from its 2001 examination of the Firm's financial, operational and sales practice supervisory procedures. MFR supplemented its referral on June 20, 2002, with information regarding FB's improper entry upon and transaction of business on the Floor after termination of his employment and membership.

Overview

5. During the period September 2000 to April 2002 (the “relevant period”), the Respondent failed to create and maintain required books and records relating to its Floor business, and to prepare an accurate net capital calculation and an accurate FOCUS report filing with regard to its Floor commission income.
6. In addition, the Respondent did not file and/or timely file Forms U-4 (Uniform Application for Securities Industry Registration or Transfer) and U-5 (Uniform Termination Notice for Securities Industry Registration) with the Exchange with regard to Floor personnel, and did not surrender their Exchange-issued Identification cards (“Exchange ID”) and notify the Security Office of the Exchange (“Security”) of their termination. As a result of the Respondent’s failure to surrender the Exchange ID of its former qualifying member and report his termination to Security, FB conducted business on the Floor as a member on at least four trading dates when he was not a member of the Exchange. Further, during this period, the Respondent did not have adequate policies and procedures to supervise its Floor business and Floor personnel, and failed to otherwise supervise these areas of its business.

Failure to Supervise the Respondent’s Floor Business

Failure to Have Supervisory Policies and Procedures

7. During the period of October 2000 to April 2002, the Respondent did not have adequate written policies and procedures for supervision of its Floor business.
8. The Respondent’s purported written policies and procedures for supervision of its Floor activities during the October 2000 to April 2002 period, essentially consisted of reprints of Exchange Rules 90, 92, 95, 111 and 123A.46, without any provision reflecting how compliance with these rules would be enforced.
9. The Respondent’s Procedures Manual did not contain any procedures or information covering the conduct of the Respondent’s Floor business, what records were to be created and/or maintained in connection with it, or how it was to be supervised.

Failure to Maintain Floor Related Books and Records

10. Exchange Rule 440 requires, in pertinent part, every member organization to make and preserve books and records as the Exchange may prescribe and as prescribed by Rules 17a-3 and 17a-4 promulgated by the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934 (the “Exchange Act”).
11. SEC Rule 17a-3(6) requires, in pertinent part, that certain Exchange members, brokers and dealers make and preserve a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.

12. The Respondent did not receive and maintain the commission billings and Floor order tickets for FB, its qualifying Floor broker, from April through October 2001.

Failure to Supervise Floor Business and Floor Personnel

13. During the period October 2000 through October 2001, the Respondent did not perform any supervisory review of its Floor business and Floor personnel.
14. During the period October 2001 through April 2002, when it ceased to be an Exchange member organization, the Respondent began to receive the required Floor records. However, it did not perform an adequate review of these records.

Inaccurate Net Capital Computation and FOCUS Reports

15. SEC Rule 15c3-1(c)(2) requires that all registered broker-dealers use the accrual method of accounting in order to ensure a proper matching of revenues and expenses and to provide an accurate reflection of a broker-dealer's financial condition.
16. SEC Rule 17a-5 and Exchange Rule 476(a)(10) provide, in pertinent parts, that each Exchange broker/dealer shall at specified times file accurate financial disclosure forms (FOCUS Report Form X-17-A-5, "FOCUS Reports") with the Exchange.
17. In 2001, the Respondent inaccurately accounted for its Floor brokerage income on a cash basis rather than on an accrual basis as required in accordance with generally accepted accounting principles, no net capital violation occurred as a result. In addition, it inaccurately reported its income on its FOCUS reports.

Other Floor Related Violations

Failure to Notify Security of Floor Member and Employee Terminations

18. The Exchange's Floor Conduct and Safety Guidelines provide, in pertinent part, that a member organization must notify Security within 24 hours of a Floor member's or employee's termination. In addition, the member organization must surrender the Exchange ID within five business days of such termination.
19. During the relevant period, the Respondent failed to notify Security of the termination of five Floor clerks. In addition, as discussed more fully below, the Firm failed to notify Security of FB's termination on April 15, 2002. (The Firm did however, inform its Surveillance director of FB's termination.)

Failure to Surrender Exchange-Issued Identification Cards

20. During the relevant period, the Respondent failed to surrender to Security the Exchange ID cards of three Floor clerks. In addition, as discussed more fully below, the Firm also failed to surrender FB's Exchange ID card to Security in April 2002.

Failure to Create and/or Maintain Floor Employee Records

21. Exchange Rule 35 provides, in pertinent part, that no employee of a member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange, and upon compliance of both employer and employee with such requirements as the Exchange may determine. Rule 35.50 requires that registration applications for all employees of member organizations for admission to the Floor shall be submitted to the Exchange on a Form U-4.
22. Exchange Rule 345.17 provides, in pertinent part, that the termination of any registered person shall be reported to the Exchange on a Form U-5.
23. During the relevant period, the Firm failed to timely create and/or maintain Forms U-4 and U-5 for four Floor clerks as follows:

	Employment Date	U-4 Filed	Termination Date	U-5 Filed
Clerk 1	NA	NA	May 2001	August 2001*
Clerk 2	February 1999	August 2000	January 2001	None Filed
Clerk 3	Unknown	None Filed	June 2000	None filed
Clerk 4	NA	NA	August 2001	None filed

* The Form U-5 filed by the Firm with respect to Clerk 1 inaccurately reported that his employment terminated in August 2001.

Failure to Supervise FB

24. Exchange Rule 54 provides, in pertinent part, that only members are permitted to transact business on the Floor.
25. Exchange Rule 303.40 provides:

All members who execute orders on the Floor must be provided with an identification badge and must wear the same while on the Floor.

Every member's badge must contain his name and a number, and if he is a participant in a member organization, the name of such organization [a "Floor trading badge."]
26. FB was the Respondent's qualifying member from April 2001 to the close of business April 15, 2002.
27. In connection with his employment as Respondent's qualifying member, FB had a seat lease agreement. By its terms, the lease terminated, *inter alia*, on the termination of FB's employment with the Respondent.

28. In connection with his employment as the Respondent's qualifying member, FB also had an Exchange ID and a Floor trading badge that indicated he was employed by the Respondent.
29. FB's employment with the Respondent terminated as of the close of business April 15, 2002. As a result of the termination of his employment with the Respondent, FB's lease also terminated and FB ceased to be a member. (Subsequent to the termination of his employment with the Respondent, FB remained employed by XYZ Securities Corp., then an Exchange member organization, in a non-member capacity pursuant to a previous dual employment arrangement.)
30. The Respondent did not surrender FB's Exchange ID to or notify Security of his termination. In addition, the Respondent did not retrieve from FB his Floor trading badge.
31. FB used his Exchange ID and Floor trading badge to enter the Exchange premises and the Floor on April 16 through 19, 2002. Further, though he was no longer a member, FB used the Floor trading badge issued to him in connection with his employment as the Respondent's qualifying member to transact business as a member on the Floor on these dates.
32. The Respondent's failure to notify Security of FB's termination, surrender his Exchange ID card to Security, and take his Floor trading badge enabled FB to improperly enter and transact business upon the Exchange Floor on these four trading dates.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Brill Securities Inc. 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 Brill Securities Inc. of a censure and a fine of the amount of \$70,000.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
Laurence A. Shadek
Thomas A. Tranfaglia