

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-46

May 25, 2005

PREFERRED TRADE, INC.
MEMBER ORGANIZATION

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Violated SEC Rule 15c3-3 by, on numerous occasions, failing to fund its special reserve account for the exclusive benefit of customers in the amount required to be on deposit, thereby causing hindsight deficiencies – Consent to censure and \$100,000 fine.

Appearances:

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

For the Respondent
James L. Sanders, 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 Preferred Trade, Inc. ("Respondent"), a member organization. Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that it violated Securities and Exchange Commission ("SEC") Rule 15c3-3 by, on numerous occasions, failing to fund its special reserve account for the exclusive benefit of customers in the amount required to be on deposit, thereby causing hindsight deficiencies.

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

Background and Jurisdiction

1. Respondent has been a member organization of the Exchange since 1997. Respondent currently has its home branch office in San Francisco, CA and branch offices in New York, NY, Chicago, IL and Philadelphia, PA and currently employs a total of approximately 100 individuals. It engages in various businesses including options brokerage.
2. By letter dated June 27, 2002, Enforcement notified Respondent that it was investigating matters that were referred to Enforcement by the Exchange's Division of Member Firm Regulation relating to financial and operational issues.

3. Thereafter, Respondent appeared, represented by counsel, and provided documents, information and testimony in connection with the Exchange's investigation.

Summary of Violative Conduct

4. Respondent violated Securities and Exchange Commission ("SEC") Rule 15c3-3 by, on numerous occasions, failing to fund its special reserve account for the exclusive benefit of customers ("Reserve Account") in the amount required to be on deposit, thereby causing hindsight deficiencies.

Respondent Failed to Fund Its Reserve Account For The Exclusive Benefit of Customers, Thereby Causing Hindsight Deficiencies

5. SEC Rule 15c3-3(e) requires, in relevant part, that a broker or dealer maintain a special reserve bank account for the exclusive benefit of customers. The Reserve Account is to be funded through deposits by the broker or dealer of cash and/or qualified securities in amounts computed weekly in accordance with the reserve requirement formula set forth in Exhibit A of SEC Rule 15c3-3.
6. SEC Rule 15c3-3(a)(9) requires that certain customer credits be included in the reserve formula. The Interpretation Handbook, SEC Rule 15c3-3(Exhibit A)/08, page 617 (which is published), provides a chart of the credits and debits that must be included in the reserve formula, which includes a line item for dollar amounts for customer short sales in the credit column and the value of securities borrowed by Respondent to cover the customer short sales in the debit column.
7. During the period January 19, 2001 to April 26, 2002, Respondent did not include customer short sale transactions as credits in the reserve formula. Pursuant to SEC Rule 15c3-3(a)(9), such short sale transactions should have been included in the reserve formula as customer credits.
8. Respondent included in the debit column the value of securities borrowed by Respondent to cover the customer short sale transactions.
9. As a result, during the period January 19, 2001 to April 26, 2002, Respondent had seventy hindsight deficiencies in the Reserve Account, ranging from approximately \$1.6 million to \$16.5 million.
10. Pursuant to SEC Rule 15c3-3(i), by letter dated May 6, 2002, Respondent notified the SEC and the Exchange of the hindsight deficiencies.
11. In or about May 2002, Respondent advised the Exchange that as of April 26, 2002, it had taken corrective action and was including customer short sale transactions as credits in the computation of the reserve formula.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent 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 Respondent of a censure and a fine of \$100,000.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
John Cirrito
Joseph C. Gawronski, Esq.