

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 05-50**

May 9, 2005

STEVEN JAMES ZELLERS

FORMER REGISTERED REPRESENTATIVE

\* \* \*

**Engaged in an outside business activity without written employer consent violation of Exchange Rule 346(b) – Consent to penalty of censure and six month bar.**

**Appearances:**

For the Division of Enforcement  
Martin S. Mazur, Esq.  
Scott M. Andersen, Esq.  
George Tidona, Esq.

For Respondent  
*Pro Se*

\* \* \*

A Hearing Panel of the New York Stock Exchange, Inc. (“Exchange”) met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange’s Division of Enforcement (“Enforcement”) and Steven James Zellers (“Respondent”), a former registered representative with Morgan Stanley DW Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he violated Exchange Rule 346(b) by engaging in an outside business activity without written employer consent.

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

**Background and Jurisdiction**

1. Respondent was born in March 1976. He entered the securities industry when he joined the Firm on September 13, 1999, where he was approved as a general securities representative by the Exchange. He remained there until April 19, 2001. Respondent worked for two more firms in succession until January 4, 2002. Respondent is no longer employed in the securities industry.
2. Enforcement commenced its investigation on February 11, 2002 after receiving a Uniform Termination Notice for Securities Industry Representatives (“Form U-5”) from the Firm, that notified the Exchange that a co-worker of Respondent was discharged, on April 19, 2001, based upon the Firm’s determination that he engaged in outside employment without prior written employer consent, and as a result of his refusal to cooperate with the Firm’s internal investigation. Enforcement concurrently investigated the conduct of Respondent and others, all of whom worked with the

terminated employee, to determine whether they also engaged in an outside business activity without prior written Firm consent. Respondent voluntarily left the Firm prior to the completion of the Firm's internal investigation.

3. By letter dated February 27, 2002, Enforcement notified Respondent that it commenced a formal investigation. Enforcement received Respondent's written response on April 26, 2002.

#### **Overview**

4. On or about September 2000 through February 2001, Respondent engaged in an outside business activity without receiving prior Firm authorization to do so.

#### **Outside Business Activity**

5. Accounting firm "AF" offered its clients programs in tax solutions, tailored to the financial circumstances of individual clients, with the purpose of reducing or deferring their tax liabilities.
6. Respondent, a registered representative at the Firm's Cupertino (Silicon Valley) branch office (the "branch office"), was encouraged, at the branch office level, to network with, and refer, in appropriate circumstances, clients to professionals such as accountants and financial planners. In the course of his dealings with the "AF" accountant who frequently received referrals from the branch office's registered representatives, Respondent and others learned that referral fees could be paid to those referring clients for tax solutions.
7. The Firm had a clear policy, consistent with Exchange Rules, that engagement in outside business activity, without prior employer approval, was prohibited. Under Exchange Rule 346(b), no employee may be engaged in any other business, or be employed or compensated by any other person, without receiving prior written consent of his member firm.
8. After Firm management heard rumors that some branch office employees were engaged in the outside business activity of referring clients to the "AF" accounting firm in exchange for referral fees, the Firm opened up an internal investigation. The Firm learned from its internal review that two payments totaling \$125,000 were made to Respondent's company.

#### **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 bar for six months from membership, allied

membership, approved person status, and from employment or association in any capacity with any member or member organization.

In addition, Respondent agreed to cooperate with the Exchange as follows:

- A. Respondent shall fully, fairly and truthfully disclose all information and produce all records in his possession and other evidence relevant to the inquiries by Enforcement concerning any violations of the federal securities laws or Exchange rules by co-workers of Respondent during his tenure at the Firm's Cupertino branch office of which he has any knowledge or information.
- B. Respondent shall fully, fairly and truthfully testify at any contested hearing brought by the Enforcement, concerning any matter falling within paragraph A above.
- C. Respondent shall actively cooperate with Enforcement's investigation and prosecution of any matter within paragraph A above, including meeting with Enforcement staff when requested in order to prepare Respondent to testify at any contested hearing.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer  
Panelists:  
Joan McGrath  
Lisa E. Waters