

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 05-54**

April 21, 2005

JOHN C. GENNA, JR.  
EXCHANGE MEMBER AND SPECIALIST

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**Violated Exchange Rule 104.10 in that he failed to maintain a fair and orderly market in an Exchange listed security with respect to which he acted as the specialist by failing to maintain a liquid and continuous two-way auction market and failing to effectively represent agency orders – Consent to censure and \$50,000 fine.**

**EXCHANGE HEARING PANEL DECISION 05-55**

SIG SPECIALISTS, INC.  
MEMBER ORGANIZATION

**Violated Exchange Rule 104.10 in that, through a member associated as a specialist with it, it failed to maintain a fair and orderly market in an Exchange listed security by failing to maintain a liquid and continuous two-way auction market and failing to effectively represent agency orders; and violated Exchange Rule 342 in that it failed to maintain appropriate procedures for supervision and control of its specialist activities and failed to reasonably supervise its specialist activities to prevent market maintenance violations – Consent to censure, \$100,000 fine and an undertaking relating to supervision and control.**

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**Appearances:**

For the Division of Enforcement  
Linda S. Riefberg, Esq.  
Penny Rosenberg, Esq.  
Suzanne R. Elovic, Esq.  
Michael C. Grey

For the Respondent  
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 John C. Genna, Jr. ("Respondent"), an Exchange member and specialist and SIG Specialists, Inc. (the "Firm"), a

member organization. Without admitting or denying guilt, Respondent consents to a finding by the Hearing Panel that he violated Exchange Rule 104.10 in that he failed to maintain a fair and orderly market in an Exchange listed security with respect to which he acted as the specialist by failing to maintain a liquid and continuous two-way auction market and failing to effectively represent agency orders.

Without admitting or denying guilt, the Firm consented to a finding by the Hearing Panel that it violated:

- I. Exchange Rule 104.10 in that, through a member associated as a specialist with it, it failed to maintain a fair and orderly market in an Exchange listed security by failing to maintain a liquid and continuous two-way auction market and failing to effectively represent agency orders.
- II. Exchange Rule 342 in that it failed to maintain appropriate procedures for supervision and control of its specialist activities and failed to reasonably supervise its specialist activities to prevent market maintenance violations.

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

#### **Background and Jurisdiction**

1. The Firm has been a member organization of the Exchange since 1994. It was originally incorporated in February 1988 under the name Susquehanna Brokerage Services, Inc. The Firm changed its name to Susquehanna Specialists, Inc. in September 1999, and acquired its current name in November 2003.
2. Respondent was born on October 21, 1963. He entered the securities industry in December 1982 as a page on the Floor of the Exchange. In 1983, he became a specialist clerk with Firm A. In 1989, he went to Firm B, first as a specialist clerk and, when he became a member of the Exchange a year later, as a specialist. In 1992, Respondent joined Firm C and, in May 1992, he joined Firm D. Respondent moved to his current position as a specialist at the Firm when it acquired certain of the assets of Firm D in July 2001.
3. By letter dated December 10, 2003 Respondent and the Firm were informed that the Exchange was investigating trading in XYZ on August 19, 2003.
4. The Firm and Respondent responded by letter dated January 29, 2004.

#### **Relevant Prior Discipline**

5. Through the conduct of one of its specialists on February 22, 2001, the Firm failed to maintain a fair and orderly market in a stock for which it was acting as the specialist, executed a transaction that resulted in a price decrease of one point without obtaining

prior Floor Official approval, and failed to obtain the required Floor Official approval to participate in the election of a stop order in violation of Exchange Rules 104.10, 79A.30 and 123A.40, respectively. Susquehanna Specialists, Inc., HPD 04-07 (January 20, 2004), aff'd, N.Y.S.E. Board of Directors (October 7, 2004). The Hearing Panel imposed a sanction of a censure and a \$25,000 fine against the Firm.

6. The Firm was held to have violated Rule 342 based upon a finding that a senior partner of the Firm failed to exercise adequate supervision during a 17-minute gap in trading in XYZ on June 25, 2002. In its decision, the Hearing Panel also found that the Firm did not have formal written organization charts or procedures including a chart delineating the Firm's supervisory structure and a list of the members of the Firm's "SWAT" team to deal with break-out situations. The Hearing Panel noted, however, that "[e]ven though there was an absence of written material, Firm personnel seemed aware of the necessary information. This may have been due to the relatively small size of the Firm or the Firm's regular weekly meetings." Susquehanna Specialists, Inc., HPD 04-95 (September 8, 2004). The Hearing Panel imposed a sanction of a censure and a \$25,000 fine.

### Overview

#### Failure to Maintain a Fair and Orderly Market

7. During an approximate six-minute period between 3:53 p.m. and 3:59 p.m. on August 19, 2003, there was no trading in XYZ on the Exchange. During that same six-minute period, approximately 125 market and marketable limit orders totaling over 86,000 shares were entered through the Exchange Designated Order Turnaround ("DOT") System and appeared on the Display Book. Respondent and the Firm were not adequately monitoring the XYZ Display Book due to the distraction of assisting a floor broker with a malfunctioning handheld and, accordingly, Respondent and the Firm did not execute any of those orders at the time they were entered.

### Supervision

8. The Firm failed to maintain appropriate procedures for supervision and control of its specialist activities and failed to reasonably supervise its specialist activities.

#### Failure to Maintain a Fair and Orderly Market

9. Respondent was the specialist in XYZ on August 19, 2003.
10. At 3:52:19 p.m., on August 19, 2003, 800 shares of XYZ traded at a price of 50.10, on a zero plus tick. From 3:52:22 p.m. until 3:53:34 p.m., there were four XYZ transactions executed via the NYSE Direct Plus procedure.
11. At 3:53:35 p.m. that day, XYZ was quoted 50.10-50.11 3 X 1. The next transaction in XYZ was at 3:59:45 p.m. when 13,000 shares traded at a price of 50.19.

12. Between 3:53:35 p.m. and the trade at 3:59:45 p.m., approximately 125 market and marketable limit orders totaling in excess of 86,000 shares were entered through the Exchange's DOT system. Of these orders, approximately 50 totaling almost 25,000 shares were cancelled.
13. Respondent did not adequately review the XYZ Display Book screen during this six-minute period and was unaware of the marketable interest in the XYZ Book because of the distraction of a floor broker with a malfunctioning handheld, who had sought specialist assistance to confirm the broker's trade reports for his customer. This occurred during busy trading activity in another issue on Respondent's panel.
14. On August 19, 2003, Respondent did not seek or receive assistance from any supervisor or other member of his Firm during this six-minute trading hiatus in XYZ.

### **Supervision**

15. As of August 19, 2003, the Firm had not adopted adequate written procedures to timely prevent the recurrence of market maintenance violations, including written procedures concerning supervisory responsibilities or requiring specialists to seek the assistance of a supervisor in unusual situations on the Floor.

### **DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found the Respondent and 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 Respondent of a censure and a \$50,000 fine.

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by the Firm of a censure, a \$100,000 fine and an undertaking to retain an independent consultant, not unacceptable to the Exchange, to:

- a. conduct a review of the Firm's policies, systems and procedures for supervision and control of the Firm's activities as a specialist on the Floor of the Exchange;
- b. prepare a report of such review and make recommendations for appropriate policies, systems, procedures and the number and kind of employees required to perform supervisory functions, reasonably designed to ensure compliance with federal securities laws and Exchange Rules regarding the Firm's obligation to maintain fair and orderly markets in the Exchange listed securities for which it acts as specialist and to prevent recurrence of the foregoing violations;
- c. adopt such recommendations; and

- d. submit such report with respect to the review, recommendations and adoption of recommendations to the Exchange within 120 days from the date of the decision rendered by the Exchange Hearing Panel in this matter becomes final.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer

Panelists:

Peter E. Kann

John Eric Smith