

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-63

May 23, 2005

KENNETH HARLEY HAAS
REGISTERED REPRESENTATIVE

* * *

Caused a violation of Exchange Rule 401 when, acting as one of the independent pricing sources for the month-end valuation of a customer's portfolio, supplied prices that were dictated by the customer; engaged in unauthorized pricing activities at his member firm employer and concealed such activities from his member firm employer; caused a violation of Exchange Rule 342.16 by issuing fax communications to customer without submitting such communications to his firm for review or approval; caused a violation of SEC Reg. 240.17a-4 and Exchange Rule 440 in that he failed to preserve required books and records – Consent to censure and six month suspension.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Allen D. Boyer, Esq.
Michael B. Ettlinger, Esq.

For the Respondent
Ira L. Sorkin, Esq.

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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 Kenneth Harley Haas ("Respondent"), a registered representative with Credit Suisse First Boston (the "Firm"). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Caused a violation of Exchange Rule 401 when, acting as one of the independent pricing sources for the month-end valuation of a customer's portfolio, he supplied prices that were dictated by the customer.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that on one or more occasions, he:
 - A. Engaged in unauthorized pricing activities at his member organization employer.
 - B. Concealed such activities from his member organization employer.
- III. Caused a violation of Exchange Rule 342.16 by issuing fax communications to a customer of his member organization employer without submitting such communications to his member organization employer for review and/or approval.

- IV. Caused a violation of SEC Reg. 240.17a-4 and Exchange Rule 440 in that he failed to preserve required books and records.

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 1970. He entered the securities industry in July 1995 as a registered representative trainee with a member organization until October 1996. From October 1996 through January 1998, Respondent was employed with another member organization as a registered employee but working in a non-sales capacity. In January 1998 Respondent left the securities industry. In August 1999, Respondent became employed as a trainee with the Firm and was employed there as a registered institutional salesman until he was terminated on or about April 24, 2002. He obtained the Series 7 and Series 63 licenses in 1995 and the Series 3 license in 1999.
2. From September 2002, Respondent has been employed as a taxable fixed income salesman at three firms: from September 2002 to February 2004 at a non-member firm; from February to September 2004 at the Short Hills, New Jersey office of a non-member firm; and, from September 2004 to the present at Advest, Inc. (a member organization).
3. By letter dated November 6, 2002, which Respondent received, Enforcement notified Respondent that it was investigating the possibility that, during his employment with the Firm, he might have issued unapproved correspondence and improperly supplied a customer with price quotations.

Overview

4. On several occasions in the period from the Spring of 2001 through October 2001, as more particularly set forth below, in supplying month-end prices for a customer's securities portfolio, Respondent improperly supplied to the customer prices which were dictated to him by the customer, causing a violation of Exchange Rule 401; engaged in conduct inconsistent with just and equitable principles of trade, in that he engaged in unauthorized pricing activities and concealed such activities from his member organization employer; caused a violation of Exchange Rule 342.16 by issuing fax communications which he did not submit to his firm for review or approval; and caused a violation of SEC Reg. 240.17a-4 and Exchange Rule 440 by failing to preserve books and records.

Improper Pricing Activities **Supplying Prices Dictated by the Customer**

5. Shortly after joining the Firm, Respondent was assigned to the mortgage-backed sales desk. His primary function was to assist a senior institutional salesman on the desk.

6. In early 2001, Respondent began to service his own customers, one of which was a foreign-owned bank (the "Bank"). The Bank account which Respondent serviced was managed by a portfolio manager ("Portfolio Manager") who controlled a portfolio of collateralized mortgage obligations and other mortgage-backed securities. The Portfolio Manager's account became Respondent's largest-producing customer account.

The Bank's Pricing Procedures

7. The Bank required the Portfolio Manager to value, or "price," the positions in her portfolio on the last day of every month. The Bank required the Portfolio Manager to collect prices from three or four independent pricing sources, to which Bank personnel subsequently applied an averaging method to arrive at a final price for each securities position in the portfolio which the Portfolio Manager managed.
8. The Firm was one of the independent pricing sources for the positions in the Bank's portfolio. At the end of each month, from in or about March 2001 through October 2001, the Bank faxed to Respondent a list of positions for which the Portfolio Manager needed prices.
9. At all relevant times, the Firm's procedures required that traders, not salesmen like Respondent, derive the valuations needed to price such customer positions. Thus, at all times between March 2001 and November 2001, Respondent was required to forward the Bank's pricing requests to the Firm's traders so that the traders could accurately price the positions contained in the requests.
10. However, between March and May 2001, Respondent did not forward the Bank's pricing requests to the Firm's traders. Instead, without disclosure to or authorization from his Firm, Respondent priced the positions himself and then communicated these valuations back to the Bank.
11. In the period from June 2001 through October 2001, Respondent continued to receive the month-end pricing requests from the Bank. However, in these months, without disclosure to or authorization from the Firm, Respondent allowed the Portfolio Manager to verbally dictate to him the prices of securities in the Bank's portfolio. He then communicated these prices back to the Bank, thereby representing those prices as prices generated by the Firm.
12. In the period from March 2001 through October 2001, Respondent provided the Bank with prices for between five and nine securities per month.
13. During the summer and fall of 2001, the month-end prices for one of the positions in the portfolio managed by the Portfolio Manager, which Respondent supplied to the Bank based on prices dictated to him by the Portfolio Manager, increasingly diverged from a commonly available pricing source available on Bloomberg, as follows:

	<u>Price from Bloomberg</u>	<u>Price Supplied by Respondent</u>
Aug. 2001	93.63	96.00
Sept. 2001	89.09	95.00
Oct. 2001	74.63	96.00

14. In the period from June 2001 through October 2001, through his unauthorized and improper pricing activities, Respondent provided the Portfolio Manager with opportunities to improperly influence the valuation of her portfolio.

Books and Records Violation
Unapproved Correspondence
Concealment of Pricing Misconduct

15. Prior to July 2001, although the Firm did not permit its salesmen to price customer positions, the Firm permitted salesmen, with supervisory approval, to communicate to customers the prices derived by the Firm's traders. In this period, Respondent did not disclose to Firm supervisors that he was communicating prices to the Bank and did not obtain supervisory approval to do so.
16. After July 2001, the Firm changed its policy to prohibit salesmen from communicating prices to customers. The Firm required that all pricing of securities for customers be coordinated by the Firm's Product Control Department ("Product Control"). Under the new policy, all customer pricing requests were required to be relayed by sales staff to Product Control, which then obtained prices from traders and communicated these prices to customers, without further involvement of sales staff.
17. After July 2001, despite the Firm's new policy, Respondent continued to communicate prices to the Bank as set forth above. Respondent was aware of the new policy but disregarded it.
18. After July 2001, in compliance with the Firm's new policy, Respondent routinely forwarded to Product Control requests to price securities for customers other than the Portfolio Manager. The only positions that Respondent did not forward to Product Control for such pricing were the positions in the Portfolio Manager's portfolio. Instead, as set forth above, Respondent received pricing requests from the Bank and responded to them without disclosing this to the Firm.
19. Had Respondent forwarded the Bank's pricing requests to Product Control, as required by the Firm's new policy and procedures, Product Control would have requested that the Firm's traders, not Respondent, price the securities in the Portfolio Manager's portfolio and then send the traders' prices to the Bank without further involvement by Respondent. Respondent's failure to forward the Portfolio Manager's pricing requests to Product Control concealed his unauthorized pricing activities from the Firm.

20. Respondent did not supply to his Firm copies of the pricing communications which he had completed and returned to the Bank. The Firm did not otherwise have copies of these communications. This caused his Firm to fail to preserve records required by SEC Reg. 240.17a-4 and Exchange Rule 440.

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

For the Hearing Panel

Peggy Kuo - Chief Hearing Officer
Panelists:
John Caroli
Norman Marcus