

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-64

May 23, 2005

MICHAEL PELHAM

REGISTERED REPRESENTATIVE

* * *

Engaged in conduct inconsistent with just and equitable principles of trade in that on one or more occasions he furnished an inaccurate price on a security in a customer's account – Consent to censure and six month bar.

Appearances:

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

For the Respondent
John T. McGuire, Esq.

* * *

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 Michael Pelham ("Respondent"), a registered representative and institutional salesman with Gruntal & Co. LLC (the "Firm"). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he engaged in conduct inconsistent with just and equitable principles of trade in that on one or more occasions he furnished an inaccurate price on a security in a customer's account.

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 1962. After working as a portfolio manager with a bank, he entered the securities industry at a non-member firm. During part of this time, Respondent was also associated with a different non-member firm. In April 1990, he became employed as a registered representative and institutional salesman at the San Francisco office of the Firm. Since May 2002, when that office was among the assets sold by the Firm to the non-member firm of Ryan, Beck & Co. LLC, Respondent has been employed there as an institutional salesman.
2. By letter dated April 28, 2003, 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

3. During the period from June 2001 through October 2001, Respondent was improperly influenced by a portfolio manager for a customer in quoting securities prices and on one or more occasions furnished an inaccurate price on a security in a customer's account.

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

4. While employed at the Firm, Respondent provided month-end price evaluations for collateralized mortgage obligations ("CMO's") and other mortgage-backed securities in the portfolio maintained at a foreign-owned bank (the "Bank"). This account was managed for the Bank by a portfolio manager ("Portfolio Manager"). Respondent was a former business associate of the Portfolio Manager and the two had maintained a professional and friendly relationship.
5. 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.
6. 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.
7. At all relevant times, the Firm allowed sales personnel such as Respondent to derive prices for securities and communicate them to customers who requested them.
8. During the period from June 2001 through October 2001, the Portfolio Manager suggested to Respondent the prices which she wanted to have submitted to the Bank. By supplying to the Bank prices consistent with the prices suggested to him by the Portfolio Manager, Respondent provided the Portfolio Manager with opportunities to improperly influence the valuation of her portfolio.
9. For the months from June through October 2001, Respondent discussed with the Portfolio Manager prices which she wanted to be stated on the pricing requests to be returned to the Bank. On these occasions, the Portfolio Manager stated to Respondent either the prices which she wished to have reported to the Bank for positions in her portfolio, or suggested a limited range within which Respondent should supply prices.
10. For each of these months, the Bank pricing requests which Respondent subsequently returned to the Bank bore securities valuations closely consistent with the prices which the Portfolio Manager had suggested that Respondent supply.

11. 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 following discussions with 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	101 ¹ / ₃₂ (101.03)
Sept. 2001	89.09	97 ³ / ₂₂ (97.09)
Oct. 2001	74.63	97 ³ / ₃₂ (97.09)

12. On October 31, 2001, the Portfolio Manager and Respondent discussed the pricing of this security. In this conversation, the Portfolio Manager suggested that Respondent supply the Bank with a price of approximately 98 for the security, because the benchmark price available from Bloomberg was 74 and the averaging method applied by the Bank would yield a value of 89 for the security. During the same conversation, the Portfolio Manager also told Respondent that another source priced the same security at 80.
13. Respondent subsequently supplied to the Bank a price quotation for that month of 97 ³/₃₂, or 97.09, for this security. The price which Respondent supplied for the security was inaccurate and inflated.

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 bar 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