

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-67

June 3, 2005

ABN AMRO SECURITIES LLC
MEMBER ORGANIZATION

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Failed to properly compute its weekly Customer Reserve Formula and adequately fund its Reserve Account; improperly treated the erroneous report of a transaction as a bona fide error through the Firm's error account; failed to report to the Exchange a transaction in an Exchange-listed security that was not reported to the Consolidated Tape; and failed to provide for, establish, and maintain adequate procedures and controls, including a system of follow-up and review of certain of its business activities in order to ensure compliance with Exchange Rules and federal securities laws relating to its financial and operations areas. – Consent to censure and fine of \$75,000.

Appearances:

For the Division of Enforcement
Matthew L. Moore, Esq.
Ellen McCarthy, Esq.

For Respondent
John Paul Ketels, Esq.
Steven F. Gatti, 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 ABN AMRO Securities LLC ("Respondent"), a member organization. Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that it violated:

- I. Section 15(c) of the SEA and Rule 15c3-3 thereunder, by failing to properly compute its weekly Customer Reserve Formula and to adequately fund its Reserve Account;
- II. Exchange Rules 134(d)(v) and 411(a) by improperly treating the erroneous report of a transaction as a bona fide error through the Respondent's error account;
- III. Exchange Rule 410B by failing to report to the Exchange a transaction in an Exchange-listed security that was not reported to the Consolidated Tape; and
- IV. Exchange Rule 342, in that the Respondent failed to provide for, establish, and maintain adequate procedures and controls, including a system of follow-up and review of certain of its business activities in order to ensure compliance with

Exchange Rules and federal securities laws relating to its financial and operations areas.

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. In March 2002, Respondent merged into ABN AMRO Incorporated (“AAI”), an Exchange member organization and a wholly-owned subsidiary of ABN AMRO Holding N.V. (“ABN AMRO”). AAI, through its predecessor entities, has been an Exchange member organization since 1965. AAI is the successor firm to ABN AMRO Securities (USA) Inc. and The Chicago Corporation, both former Exchange member organizations, after the merger of those entities in January 1997. In April 2001, ABN AMRO acquired certain businesses of ING Barings LLC (“ING”), including its prime brokerage, corporate finance, and domestic equities businesses. Prior to the acquisition, ING was an Exchange member organization that principally engaged in investment banking, research, sales and trading, over-the-counter (“OTC”) market making, proprietary trading, and prime brokerage business, which entailed the provision of trade execution and administrative services to professional investment managers. The acquired firm, renamed ABN AMRO Securities, LLC, was an Exchange member organization that engaged primarily in the prime brokerage, market making, securities lending, proprietary trading, and investment banking businesses. In 2001, Respondent had approximately 860 employees and carried and cleared approximately 100,000 customer accounts. After the March 2002 merger of Respondent and AAI, AAI exited certain businesses in which Respondent was engaged, including the domestic equities business.
2. On January 16, 2002, the Exchange’s Division of Member Firm Regulation (“MFR”) issued a “Report on the Examination of Respondent (the “Examination Report”), which contained various findings of violations of the federal securities laws and Exchange rules. On March 12, 2002, Enforcement received a referral of the Examination Report and subsequently opened a formal investigation of Respondent.
3. By letter dated April 25, 2002, Enforcement notified Respondent that it was formally investigating the findings of violations contained in the Examination Report.

Summary of Violative Conduct

4. As set forth below, Respondent: failed, on multiple occasions, during the period from approximately August 2001 to approximately December 2001, to properly compute its weekly Customer Reserve Formula and adequately fund its Customer Reserve Account; improperly recorded non-bona fide errors in Respondent’s error account; failed to report off-Floor transactions in Exchange-listed securities as required during the period from approximately May 2001 to approximately December 2001; and failed to provide appropriate supervision to prevent the foregoing violations.

The 2001 Examination Report

Customer Reserve Formula Computation

1. Section 15(c) of the Securities Exchange Act of 1934 (“SEA”) and Rule 15c3-3 thereunder requires every broker or dealer to maintain a “Special Reserve Bank Account for the Exclusive Benefit of Customers” (“Reserve Account”) and to fund the Reserve Account in accordance with Section 15c of the SEA and Rule 15c3-3 thereunder, Exhibit A, which sets forth the “Formula for Determination of Reserve Requirement for Brokers and Dealers.”
2. MFR determined that Respondent failed to properly compute its weekly Customer Reserve Formula and adequately fund its Reserve Account, for the week of August 31, 2001, which resulted in a hindsight deficiency of \$50,458,950.
3. In addition, Respondent had hindsight deficiencies—ranging from approximately \$2.7 million to approximately \$118.9 million—in ten of the 13 weekly customer reserve formula computations after August 31, 2001.
4. Respondent sent notification of the hindsight deficiencies to the Securities and Exchange Commission (“SEC”) by letter dated December 17, 2001.

Improper Use of Firm’s Error Account

5. Pursuant to Exchange Rule 134(d)(v), no trading may take place in an error account that is not related to an error.
6. Exchange Rule 411(a) states, in relevant part, that the “price at which an order is executed shall be binding notwithstanding the fact that an erroneous report in respect thereto may have been rendered.”
7. Respondent effected three error account transactions in August 2001 that resulted from erroneous execution reports rendered to clients.

Failure to Report Transactions to the Exchange

8. Exchange Rule 410B(a) states in relevant part that “[t]ransactions in securities listed for trading on the Exchange...that are not reported to the Consolidated Tape, shall be reported...to the Exchange in the manner and within the timeframes required by this rule.”
9. Exchange Rule 410B(b) requires that such transactions be reported to the Exchange by the close of business on the next day that the Exchange is open.

10. From May 1, 2001 to December 5, 2001, Respondent executed 1,188 off-Floor transactions in Exchange-listed securities but failed to report these transactions to the Exchange in accordance with Exchange Rule 410B.

Supervision

11. Exchange Rule 342 requires member organizations to provide for, establish, and maintain adequate supervisory procedures and controls, including a system of follow-up and review of business activities, in order to ensure compliance with Exchange Rules and the federal securities laws, with respect to customer reserve formula computations and other financial and operational activities of Respondent.
12. Respondent did not have adequate supervisory systems in place to detect and prevent the violations set forth above.

Other Factors Considered

13. The principal cause of the Reserve Account deficiency related to Respondent's mistaken designation of related prime brokerage accounts as four separate customer accounts, instead of just one such account, for the purposes of Section 15(c) of the Securities Exchange Act of 1934 ("SEA") and Rule 15c3-3 thereunder. In December 2001, Respondent revised its designation of the accounts in all future weekly Reserve Formula classifications.

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 \$75,000.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer
Panelists:
Paul W. Brandow
William J. Burke, III