

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-68

June 13, 2005

MERCER COOK, III
FORMER REGISTERED EMPLOYEE

* * *

Caused his firm to violate Exchange Rule 345(a) in that he performed the duties of a supervisor without being properly qualified and made a material misrepresentation to his member firm employer. – Consent to a Censure and two year bar.

Appearances:

For the Division of Enforcement
Linda S. Riefberg, Esq.
Cynthia Kitay, Esq.

For Respondent
Antoinette Bush, 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 Mercer Cook, III (“Respondent”), a former registered representative with Citigroup Global Markets, Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Caused his firm to violate Exchange Rule 345(a) in that he performed the duties of a supervisor without being properly qualified; and
- II. Engaged in a conduct inconsistent with just and equitable principles of trade in that he made a material misrepresentation to his member firm employer.

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 December 1958. His employment in the securities industry has been as follows: Firm A 6/89 – 8/90, non-member firm, Firm B 8/90 – 5/93 non-member firm and the Firm 10/94 – 2/04. Respondent is not currently employed in the securities industry.
2. The Exchange received a Form RE-3 (“RE-3”) dated November 26, 2003 from the Firm reporting that in September 2003, a Division of the Firm (“the Division”) had reason to suspect that Respondent, head of its North American Institutional Sales

Team (the “Sales Team”) had not taken or passed the Series 24 Examination despite assertions from Respondent that he had. The Firm reported that the Division began an internal investigation which was completed on October 24, 2003. As a result, on October 28, 2003, the Division suspended Respondent from all of his supervisory duties. The Firm further reported that effective November 18, 2003, the Division demoted Respondent to a position that had no supervisory duties and required Respondent to pay a fine in the amount of \$50,000 as well as imposing on him a probationary status.

3. By letter dated February 12, 2004, which Respondent received, Enforcement notified him that it was investigating the circumstances of the allegations.

Summary of Violative Conduct

4. During the period June 2002- September 2003, Respondent, a former head of the Firm’s North American Institutional Sales Team, falsely represented to the Firm that he had taken and passed the Series 24 Examination (General Securities Principal), which qualifies a registered individual to supervise or manage branch activities such as corporate securities, variable contracts and venture capital.

Violative Conduct

5. In July 2000, Respondent, a registered representative with the Division was appointed as the acting head of the Sales Team unit. The Sales Team, a group of approximately 14 institutional investment management sales people, primarily offered and sold investment advisory services to institutional customers. A relatively small portion of the Sales Team’s activities involved the offer and sale of securities, including institutional share classes of registered mutual funds.
6. In January 2001, Respondent was named Head of the Sales Team for the Division. As Head of the Sales Team, Respondent’s primary duties involved supervising both the investment advisory activities and the occasional securities activities of the team.
7. At the time that Respondent was named acting head of the Sales Team, the Sales Team was under the direct supervision of the then Chief Operating Officer (“COO”) of the Firm’s Institutional Asset Management business who was also a Series 40 registered principal of the Firm. This person continued to have the ultimate supervision of the Sales Team after Respondent was appointed its Head in 2001.
8. In March 2002, the Firm requested that Respondent take the Series 24 examination to assist the COO in the supervision of the occasional securities activities of the Sales Team. Immediately after June 28, 2002, he represented to the Firm that he had sat for and passed the Series 24 examination on June 28, 2002. As of that date, Respondent reviewed and signed-off as registered principal on two pieces of institutional sales literature and on 11 pieces of correspondence that discussed institutional funds.

9. After June 28, 2002, when asked several times by the Compliance department for the Division for evidence that he had passed the Series 24 exam, Respondent informed them on several occasions that he had a copy of the certificate evidencing that he passed the Series 24 exam but that he had forgotten to bring it into the office.
10. In early September 2003, Respondent, through his assistant, contacted Compliance and requested that a Series 24 exam window be opened for him. He explained that he had decided to re-take the Series 24 exam since he was unable to find the certificate evidencing his passing the exam in June 2002. A few days earlier, Respondent, on his own, ceased signing off as registered principal on some institutional fund sales literature. At that time, the Firm checked external sources and discovered that he had not taken the Series 24 exam in June 2002, as he had represented.
11. As a result of its investigation, on October 28, 2003, the Firm suspended Respondent from all supervisory duties. On November 18, 2003, the Firm demoted Respondent to a position that had no supervisory duties, required him to pay a \$50,000 fine and placed him on probationary status. Respondent voluntarily resigned from the Division in February 2004 to take a job with the Firm's Human Resource Department.
12. Respondent left the employ of the Firm's Human Resource Department in on or about November 2004.

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 of two years 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

Vincent F. Murphy – Hearing Officer
Panelists:
Paul Giappone, Esq.
William J. Taft