

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-71

June 6, 2005

THOMAS MITCHELL FORBES

FORMER REGISTERED REPRESENTATIVE

\* \* \*

**Caused a violation of Exchange Rule 342.16 by issuing written communications to the public without the required review and approval of his member organization employer; continued to assist a customer in obtaining outside financing for a business venture and providing investment advice contrary to the Firm's directive to have no further contacts with the customer – Consent to censure and one year bar.**

**Appearances:**

For the Division of Enforcement

Linda S. Riefberg, Esq.

Myles L. Orosco, Esq.

Howard A. Grinsberg, Esq.

For the Respondent

Thomas Mitchell Forbes

*pro se*

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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 Thomas Mitchell Forbes ("Respondent"), a former registered representative with McDonald Investments, Inc. (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 342.16 in that, without the required review and approval of his member organization employer, he issued written communications to the public.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he continued to assist a customer in obtaining outside financing for a business venture and provided investment advice contrary to the Firm's directive to have no further contacts with the customer.

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 August 1939. He entered the securities industry in December 1999 as a registered representative with a member firm where he remained until June 2001.

Respondent joined the Firm in June 2001 and remained as a registered representative with the Firm until July 2002. In December 2003, Respondent joined a non-member firm, where he is currently employed.

2. On July 24, 2002, the Exchange received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from the Firm reporting that Respondent had been terminated on July 17, 2002 for "violation of Firm Policy relating to electronic communications with the public."
3. By letter dated March 19, 2003, which he received, Enforcement notified Respondent that it was investigating allegations that he was engaged in unapproved business activities with respect to a technology company (the "Company") while he was employed by the Firm.

#### **Summary of Violative Conduct**

4. In June 2002, after the Firm instructed Respondent to have no further contact with an outside business, the Company, Respondent sent a potential investor of the Company an unapproved e-mail from his home computer.

#### **Violative Conduct**

5. In November 2001, while Respondent was employed as a registered representative at the Firm, he was referred to the Company, which was interested in having the Firm's parent (the "Bank"), become its investment-banker.
6. The Company opened an account at the Firm and, over the next few months, Respondent attempted, without success, to have the Bank become the Company's investment-banker.
7. On or about June 11, 2002, the Firm's compliance department advised Respondent to cease doing business or having any further contacts with the Company because the Bank was not interested in extending financing to the Company.
8. After Respondent had been instructed by the Firm to cease contact with the Company, on July 10, 2002, the Firm received a copy of an e-mail dated June 21, 2002, that Respondent had sent to a potential investor of the Company from his home computer. The e-mail related to the Company's efforts to obtain financing for its business.
9. The Firm's policy prohibited employees from sending e-mails from personal or home computers for business purposes.
10. The Firm's policies also required that all correspondence with the public be pre-approved by the Firm.
11. In addition, Exchange Rule 342.16 requires member firms to review registered representatives' communications with the public.

12. On July 17, 2002 the Firm terminated Respondent for “violation of firm policy relating to electronic communication with the public.”
13. As a result of the foregoing, Respondent caused a violation of Exchange rules and violated the Firm’s policies and procedures relating to communications with the public.

**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 one year 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:  
Audrey LaBolle  
Robert P. Snyder