N E W   Y O R K   S T O C K   E X C H A N G E, I N C.

EXCHANGE HEARING PANEL DECISION 05-81 **August 5, 2005**
BREAN MURRAY & CO., INC.
MEMBER FIRM

> **Violated Exchange Rule 405 by failing to use due diligence to learn the essential facts relative to a customer and supervise diligently an account, Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and Exchange Rule 440 by failing to properly preserve e-mail communications, SEA Rule 17a-3(a)(9) and Exchange Rule 440 by failing to make and preserve required books and records, SEA Rules 17a-3(a)(6) and 17a-4(b) and Exchange Rule 401 by failing to have syndicate orders properly time stamped, SEA Rules 17a-3(a)(6) and 17a-4(b) and Exchange Rule 410 by failing to properly time stamp order tickets, mark order tickets as long/short sale, maintain error reports, and maintain cancel and rebill reports, Exchange Rule 342 by failing to reasonably supervise and control the actions of its employees and establish and maintain appropriate procedures for supervision and control with respect to specified functions and having at all times a qualified person to direct the firm's compliance activity. – Consent to censure and a fine of $175,000.**

EXCHANGE HEARING PANEL DECISION 05-82
KENNETH JOHN KIRSCH II
ALLIED MEMBER

> **Violated Exchange Rule 405 (2) by failing to diligently supervise an escrow account handled by a registered representative, and Exchange Rule 342 by failing to take reasonable steps to review and approve wire instructions, and to reasonably supervise the movement of funds into and out of an escrow account. – Penalty reduced to censure.**

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Appearances:

For the Division of Enforcement
Marin S. Mazur, Esq.
Simon Swidler, Esq.
Felix M. Hester, Esq.
Clarence E. Sanders, Jr., Esq.

For Respondent
Bob E. Lehman, Esq.
Scott D. Stechman, 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 Brean Murray & Co, Inc. ("Respondent Firm") and Kenneth

John Kirsch II ("Respondent"), allied member and CFO of Respondent Firm. Without admitting or denying guilt, Respondent Firm consented to a finding by the Hearing Panel that it violated:

I. Exchange Rule 405 in that Respondent Firm failed to use due diligence to learn the essential facts relative to a customer; and supervise diligently an account handled by a registered representative.

II. Section 17(a) of the Securities Exchange Act of 1934 ("SEA") and Rules 17a-3 and 17a-4 thereunder and Exchange Rule 440, in that Respondent Firm failed to preserve e-mail communications in the required format and for the required retention period.

III. SEA Rule 17a-3(a)(9) and Exchange Rule 440 in that Respondent Firm failed to make and preserve required books and records relating to a customer account.

IV. SEA Rules 17a-3(a)(6) and 17a-4(b) and Exchange Rule 401 in that Respondent Firm failed to have syndicate orders properly time stamped.

V. SEA Rules 17a-3(a)(6) and 17a-4(b) and Exchange Rule 410 in that Respondent Firm failed to properly time stamp order tickets, mark order tickets as long/short sale, maintain error reports, and maintain cancel and rebill reports.

VI. Exchange Rule 342, in that Respondent Firm failed to reasonably supervise and control the actions of its employees, and establish and maintain appropriate procedures for supervision and control, including a separate system of follow-up and review to ensure compliance with Exchange rules and federal securities laws, with respect to investment banking functions relating to the management of corporate finance transactions; the establishment and management of, and disbursement of funds from escrow accounts; review of correspondence of a registered representative; approval of employee communications with the public; having written procedures regarding employee communications with the media; ensuring compliance with requirements governing the maintenance of outside accounts by employees; having written procedures concerning customer accounts maintaining uncovered short option positions; obtaining the required Exchange approval of allied members and approved persons; ensuring compliance with requirements governing outside business activities and outside employment of employees; evidencing compliance by registered employees with continuing education requirements; review of wire fund transfers; and having at all times a qualified person to direct Respondent Firm's compliance activity.

Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he violated:

VII. Exchange Rule 405 (2) in that Respondent failed to diligently supervise an escrow account handled by a registered representative.

VIII. Exchange Rule 342 in that Respondent failed to take reasonable steps to review and approve wire instructions, and to reasonably supervise the movement of funds into and out of an escrow account.

For the sole purpose of settling this disciplinary proceeding, Enforcement and Respondent Firm and Enforcement and Respondent stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Respondent Firm, a New York based corporation, has been a member of the Exchange since 1974. Respondent Firm is a wholly owned subsidiary of BMI Holdings Corp. Founded in 1973, Respondent Firm is a full-service broker-dealer that engages in institutional research, investment banking, institutional trading and sales, and Floor brokerage. Respondent Firm maintains two branch offices, including its main office located at 570 Lexington Avenue in New York City. The other branch office is located in Seattle, Washington. Respondent Firm's founder and Chief Executive Officer ("CEO"), A. Brean Murray ("CEO Murray"), died in December 2003. Respondent Firm has no prior disciplinary history.

2. Respondent was born in [redacted]. He entered the securities industry in August 1983 with a non-member organization, where he was employed until November 30, 1997, in non-registered capacities as a staff accountant and later as its controller. From December 1997 through January 1998, Respondent was employed as the Chief Financial Officer ("CFO") of a non-member organization. In February 1998, Respondent joined Respondent Firm as its controller. In or about March 2000, he was promoted to CFO and approved as an Allied Member by the Exchange in June 2000. Respondent currently serves as Respondent Firm's CFO. He has no prior disciplinary history.

3. During 2002, the Exchange's Division of Member Firm Regulation's ("MFR") Sales Practice Review Unit ("SPRU") conducted an examination of Respondent Firm. As a result of the examination, MFR issued a "Report on the Examination of Respondent Firm dated May 7, 2002 (the "2002 Report"), which set forth various exceptions regarding Respondent Firm's failure to comply with Exchange Rules and federal securities laws.

4. During 2002, MFR conducted a special examination of Respondent Firm which focused on the activities of a registered employee, Lorne J. Caplan ("Caplan") [1], relating to a corporate finance transaction on behalf of ABC Company. As a result, MFR issued a Report of Special Examination ("Special Exam Report") dated June 5, 2002, which set forth various exceptions regarding Respondent Firm's failure to comply with Exchange Rules and federal securities laws.

5. During the period of May 2001 through January 2002, Respondent served as Respondent Firm's CFO. His responsibilities included the supervision of escrow

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[1] On November 7, 2002, Caplan was censured and barred by the Exchange for failing to comply with requests for information and testimony with respect to transactions relating to the an escrow account and the possibility that he may have misappropriated client's funds. The Hearing Panel imposed the sanction of a censure and bar until he complied, with the bar to become a permanent bar if he did not comply in six months, and the bar has now become permanent. In the Matter of Lorne Joel Caplan, HPD 02-211 (Nov. 7, 2002).

accounts. CEO Murray was responsible for the supervision of Respondent Firm's investment banking department and Caplan.

6. By letters dated August 13, 2002, and January 10, 2003, Respondent Firm was notified of the matters set forth below.

Overview

7. As set forth below, during the period November 1999 through February 2002, Respondent Firm failed to adequately supervise its employees and business activities with respect to: the opening of and transactions in an escrow account; customer accounts; communications with the public; wire fund transfers; continuing education requirements; the activities of a registered employee; and Respondent Firm's business activities. Respondent Firm also failed to make and preserve required books and records; failed to review employee communications with the public; and failed to have at all times a Series 14 qualified compliance officer. During the period May 2001 through January 2002, Respondent failed to supervise an escrow account and failed to take reasonable steps to approve wire instructions in connection with disbursements of funds from an escrow account.

Failures to Supervise an Employee and an Escrow Account

8. Exchange Rule 342, in pertinent part, requires that a member organization: (a) reasonably supervise and control its business activities; (b) provide for appropriate procedures of supervision and control; and (c) establish a separate system of follow-up and review to determine that delegated authority and responsibility was being exercised.

9. Exchange Rule 405(2) requires that a member organization through a general partner, a principal executive officer or a person or persons designated under the provisions of Rule 342(b)(1) supervise diligently all accounts handled by registered representatives of the organization.

10. SEC Regulation §240.17a-3(a)(9), promulgated under the 1934 Act and Exchange Rule 440, in pertinent part, require that a member organization make and preserve certain records relating to customer accounts.

11. Exchange Rule 405(1) requires that a member organization use due diligence to learn the essential facts relative to every customer.

12. As set forth below, Respondent Firm and Respondent failed to comply with these requirements.

Deficiencies Relating to Establishment of an Escrow Account

13. As set forth below, Respondent Firm established escrow accounts in connection with corporate finance transactions, solely upon the oral request(s) of senior investment

banking staff, without creating or obtaining an escrow agreement or other account documentation.

14. In or about April 2001, Caplan joined Respondent Firm's investment banking group as Managing Director, Healthcare Investment Banking and was responsible for originating and managing corporate finance transactions. Caplan reported directly to CEO Murray.

15. In or about May 2001, at Caplan's request, Respondent, with CEO Murray's approval, established an escrow account for ABC Company ("ABC").

16. Respondent Firm utilized escrow accounts to hold funds raised in connection with corporate finance transactions. In May 2001, when Respondent Firm and Respondent opened the ABC escrow account, Respondent Firm had not been engaged by ABC to manage any corporate finance transaction.

17. Respondent established the ABC escrow account without obtaining an escrow agreement or other documentation which set forth the terms and conditions of escrow, without documentation as to whose instructions were required to release funds from escrow, and without adequate information relating to ABC. Respondent also failed to obtain sample signatures of the ABC authorized representative(s).

<u>Deficiencies Relating to the Acceptance of Deposits into the Escrow Account</u>

18. Between June and July 2001, at the request of Caplan, funds totaling $889,975 were received by wire into the ABC escrow account as follows: on June 28, 2001, $350,000; on July 10, 2001, $289,975; and on July 11, 2001, $250,000.

19. Respondent Firm and Respondent accepted the deposits of funds into the escrow account without taking reasonable steps to ascertain the facts or details relating to each such deposit. Respondent Firm had no documentation on file setting forth who was authorized to approve the disbursement of the funds or under what circumstances funds could be released from escrow.

20. At the times of these deposits, Respondent Firm had not been engaged by ABC to manage any corporate finance transaction and had no other business relationship with ABC.

21. The $289,975 wired into the escrow account on July 10, 2001, was received from ABC. Unbeknownst to Respondent Firm, these funds were previously delivered by four potential investors in connection with a corporate finance transaction which had not been managed by Respondent Firm.

22. At the time of each deposit, Respondent Firm had not been advised why the funds were wired into the ABC escrow account.

Deficiencies Relating to Disbursements of Funds

23. Respondent Firm's practice was to disburse funds from escrow accounts solely in connection with the closing of corporate finance transactions. However, during the time period of June 2001 through July 2001, when Respondent Firm and Respondent disbursed funds from the ABC escrow account, no such transaction existed.

24. It was also Respondent Firm's practice to direct all disbursements from escrow accounts to the client at the instruction of the client's authorized representative.

25. Respondent Firm also required that all instructions for the disbursement of funds from escrow accounts be in writing, be signed by the senior investment banking staff responsible for managing the corporate finance transaction, and be signed by an authorized representative of the client. Verification of the client's authorized representative's signature was required.

26. Between June and July 2001, at the request of Caplan, funds totaling $889,975 were wired from the ABC escrow account to the accounts of third parties who had no known relationship to the potential investors or ABC and who were not entitled to receive the funds.

27. Respondent Firm did not obtain sample signatures of the client's authorized representative(s) in connection with the establishment of escrow accounts or with the disbursement of funds therefrom. To verify the signature(s) of the client's authorized representative(s), Respondent Firm and Respondent relied on senior investment banking staff to provide documents containing purported samples of the client's authorized representative's signatures.

28. On or about June 29, 2001, Caplan prepared and signed wire instructions which were purportedly countersigned by the President and CEO of ABC ("ABC's CEO"). The instructions authorized the wiring of $350,000 to the account of "H". Respondent reviewed and approved the wire instructions.

29. On or about July 11, 2001, Caplan prepared and signed wire instructions which were allegedly countersigned by ABC's CEO. The wire instructions authorized the wiring of $289,975 to the account of "J" at Bank A. Respondent reviewed and approved the wire instructions.

30. On or about July 25, 2001, Caplan prepared and signed wire instructions which were allegedly countersigned by ABC's CEO. The wire instructions authorized the wiring of $250,000 to the account of "K" at Bank Z. Respondent reviewed and approved the wire instructions.

31. Respondent relied solely on documents and information provided by Caplan to approve each of the wire instructions.

32. Respondent approved each such wire instruction without taking additional steps to ensure that the transaction was legitimate.

33. In January 2002, Respondent Firm first learned that there may be questions about the legitimacy of the wires of funds to third parties.

34. At the request of the Exchange, Respondent Firm has recently made reimbursements to those whose funds comprised the $289,975 referred to in paragraph 29 above.

Failure to Supervise Caplan and Escrow Accounts

35. Respondent Firm and Respondent allowed Caplan to establish an escrow account, caused funds to be deposited into the account and to be wired out without taking reasonable steps and without adequate controls to ensure that the transactions were proper and authorized.

36. At all relevant times, Respondent Firm failed to take reasonable steps to supervise Caplan with respect to his activities relating to the ABC escrow account and corporate finance transactions.

Failure to Review E-Mail Communications

37. Exchange Rule 342.17 requires that member organizations have policies and procedures for the review of employees' communications with the public relating to their business, customer accounts and transactions.

38. From April 2001 to January 2002, Caplan used Respondent Firm's e-mail systems to send and receive e-mail communications relating to corporate finance transactions.

39. Between June 2001 and January 2002, Caplan exchanged e-mail communications with an investor.

40. Respondent Firm failed to conduct reasonable supervisory reviews of Caplan's electronic communications with the public. Such supervisory reviews of Caplan's e-mail communications may have disclosed this complaint.

Approval of Interviews

41. At the time set forth below, Exchange Rule 472(a), provided: "Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public shall be approved in advance by a member, allied member, supervisory analyst or person designated under the provisions of Rule 342(b)(1)." [2]

42. Exchange Rule 472.20, stated in pertinent part:

> Other communications activities are deemed to include...***conducting interviews with the media***,…writing newspaper or magazine articles

[2] Exchange Rule 472 was amended on July 9, 2002; because these acts occurred prior to that date, the provisions of the pre-amended rule control this matter.

> and making radio/TV appearances...***Member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions which require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1)***. These types of activities are subject to the general standards set forth in .30. In addition, any activity which includes discussion of specific securities is subject to the specific standards in .40. (Emphasis added.)

43. Respondent Firm failed to establish a supervisory system of follow-up and review which ensured that its employees had prior approval for their interviews with the media as required by Exchange Rules 472(a) and 472.20. Exchange Rule 472.20 specifies that Respondent Firm must have written procedures requiring prior approval for all interviews. Respondent Firm did not have written procedures in place regarding such media contact, in violation of Exchange Rule 472.20.

44. During the Exchange examination, seven employees of Respondent Firm, employed as research analysts or registered representatives, disclosed that they had provided interviews to the media without obtaining the required supervisory pre-approval.

Unapproved Outside Accounts

45. Exchange Rule 407(b) states in relevant part that no employee associated with a member organization shall have a securities account with respect to which such person has either a financial interest or the power, directly or indirectly, to make investment decisions at another member organization or domestic or foreign non-member broker-dealer, investment adviser, bank or other financial institution without the prior written consent of another person designated by the member organization under Exchange Rule 342(b)(1) to sign such consents and review such accounts.

46. Respondent Firm failed to have in place a system of follow-up and review to ensure that duplicate account statements or trade confirmations were requested for accounts held away from Respondent Firm by two of its employees. Additionally, Respondent Firm failed to approve an account held away from Respondent Firm by another employee.

Storage of Electronic Communications

47. SEC Regulation §240.17a-4 requires members, brokers and dealers to preserve records of electronic communications for a period of three years by means of electronic storage media which must be in a non-rewritable, non-erasable format.

48. Prior to 2002, Respondent Firm was not maintaining external and internal e-mail communications in a "write once read many" ("WORM") format.

Recordkeeping Violations

49. SEC Regulations §§240.17a-3 and 17a-4 require members, brokers and dealers to create, keep current, and preserve certain books and records which include time stamped records of customer orders.

50. Exchange Rule 410(a)(1) states in pertinent part that:

> "Every member or his organization shall preserve for at least three years…a record of : (1) every order transmitted directly or indirectly by such member or organization to the Floor, which record shall include the name and amount of the security, the terms of the order, the time when it was so transmitted, and the time at which a report of execution was received. *** (4) the time of entry of every cancellation of an order …."

51. During July 2001 and January 2002, Respondent Firm failed to adhere to the books and records requirements set forth above in that syndicate order tickets and/or trade tickets for all final allocations were not properly time stamped.

52. During the period February 4 and February 5, 2002, review of Respondent Firm's main office branch daily trade tickets disclosed that:

- Seventeen order tickets were not properly time stamped for partial executions.
- Ten order tickets were not properly marked as Long/Short sale.
- Four error tickets did not have error reports to properly detail the reason for the error.
- One cancel rebill did not have a CXL/Re-bill Report to properly detail the reason for the cancellation, as required by Exchange Rule 410(a)(4).

Failure to Supervise Continuing Education ("CE") Requirement

53. Exchange Rule 345A prohibits member organizations from permitting registered persons to perform their duties unless they comply with a Continuing Education program, consisting of two elements: a Regulatory Element, which requires registered persons to periodically complete a computer-based training program, and a Firm Element, which requires registered persons to complete ongoing training, provided by their member firms, tailored to their specific business.

54. With regard to Respondent Firm's 2001 Firm Element sessions, Respondent Firm failed to have in place a system of follow-up and review to ensure that attendance sheets were maintained for continuing education sessions held, that needs analysis surveys were also maintained, and that Respondent Firm conducted any follow-up for employees who did not attend a continuing education session.

Supervision of Accounts

55. Exchange Rule 722(a) requires in pertinent part that every member organization develop and implement specific written procedures concerning the manner of

supervision of customer accounts maintaining uncovered short (written) options positions and specifically providing for frequent supervisory review of such accounts.

56. Review of Respondent Firm's policies and procedures disclosed that it did not have such written procedures.

Approved Person

57. Exchange Rule 304(h) requires in part that, "any person who controls a member, or member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member or member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person…."

58. Respondent Firm's parent organization, BMI Holding Corp. was not registered with the Exchange as an Approved Person. Thus, Respondent Firm failed to provide a system of follow-up and review to ensure the approval of Approved Persons pursuant to Exchange Rule 304(h).

Outside Business Activities by Employees

59. Exchange Rule 346(b) states in pertinent part that no member, allied member, or employee of a member or member organization shall engage in an outside business activity without making a written request and receiving the prior written consent of his member organization employer.

60. Two employees maintained positions outside Respondent Firm without prior approval from Respondent Firm. One had outside employment as General Partner of an organization and as Joint Portfolio Manager of a hedge fund. The other was Managing Member of one limited partnership, General Partner of another limited partnership and Director of a corporation.

61. Both employees disclosed their outside business activities to Respondent Firm upon the commencement of their employment in 1996 and 1993, respectively. However, Respondent Firm was unable to document that it had approved such outside employment.

62. Respondent Firm failed to provide a supervisory system of follow-up and review to ensure compliance with Exchange Rule 346(a) regarding employees' outside business interests.

Review of Wire Fund Transfers

63. Respondent Firm's wire fund transfer records contained a deficiency in that one account wired out $609,847 without evidence of any supervisory review or approval. Respondent Firm had neither written procedures nor documentation to evidence review of the wire fund transfers.

64. Respondent Firm failed to provide a supervisory system requiring follow-up and review with respect to wire fund transfers.

Failure to Have a Qualified Compliance Officer

65. Exchange Rule 342.13(b) requires, in pertinent part, that member organizations have a qualified person to direct day-to-day compliance activity.

66. During the period of May through October 2001, Respondent Firm did not have a designated Series 14 qualified compliance official.

67. In or about October 2001, Respondent Firm hired a Series 14 qualified individual as its Chief Compliance Officer to direct its day-to-day compliance activity.

68. Respondent Firm failed to provide a supervisory system of follow-up and review to ensure compliance with Exchange Rule 342.13 relating to qualified compliance officer.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent Firm and 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 Firm of a censure and a $175,000 fine. In support of this penalty, Enforcement cited the following precedents: In the Matter of The Seidler Companies Incorporated, HPD 04-136 (Aug. 11, 2004) (censure and $150,000 fine for failure to maintain procedures for supervision and review of e-mails and record reports); In the Matter of Raymond James & Associates, Inc., HPD 01-207 (Nov. 20, 2001) (censure and $150,000 fine for failure to maintain procedures for supervision, books and records violation, failure to review and retain communications with public); and In the Matter of Sands Brothers and Co., Ltd., HPD 03-136 (July 22, 2003) (censure and $225,000 fine for violations relating to three MFR exams, including violating directive regulating expansion of business operations, allowing unqualified branch office supervisors, failure to report customer complaints, violation regarding communications with public, failure to use due diligence on accounts participating in initial public offerings).

The Hearing Panel by 2-1 vote, imposes a penalty on Respondent of a censure. In reducing the agreed upon penalty of a censure and one month supervisory suspension, a majority of the Hearing Panel found that a suspension of any length of the time would be punitive and excessive in light of the circumstances surrounding Respondent's actions.

At the hearing, counsel for Respondent Firm and Respondent, in response to a question from the Hearing Panel, stated that "there weren't specific procedures on what he should have done, so he didn't consult. He just followed what he understood to be past protocol at the firm the way things were handled by his predecessor in the same position." Counsel noted, however, "but it is no excuse. He should have done more, FINOP should have known better." Transcript of

Hearing, July 6, 2005 ("Tr."), at 45. In determining whether a penalty is appropriately remedial rather than excessive and punitive, the Hearing Panel considers the "seriousness of the offense, the corresponding harm to the trading public, the potential gain to the broker for disobeying the rules, the potential for repetition in light of the current regulatory and enforcement regime, and the deterrent value to the offending broker and others…." McCarthy v. S.E.C., 406 F.3d 179, 190 (2d Cir. 2005) (request for rehearing denied June 30, 2005).

Enforcement relies on the precedents, In the Matter of Michael Fasciglione, HPD 04-152 (Sept. 28, 2004) and In the Matter of Melinda Rose Trocano, HPD 04-99 (July 14, 2004), in support of the agreed upon penalty of a censure and one-month supervisory suspension. In Fasciglione, the respondent consented to a censure, one month bar and an undertaking to re-take qualifying exams, for failing to supervise a customer account in which the registered representative made unsuitable trades, for signing error reports and correction notices without supervisory approval, for charging losses against his commissions, and for failing to notify the firm of a customer complaint. In Trocano, the respondent, an Operations Manager, consented to a censure and two month bar for facilitating the improper disbursement of funds between her supervisor's customer accounts, failing reasonably to supervise third party transfers and failing to supervise diligently accounts handled by the producing branch office manager, who was eventually criminally convicted of fraud and sentenced to seven years imprisonment.

A majority of the Hearing Panel finds that the Respondent's violation in this case was less severe than in Fasciglione or Trocano. He failed in a single instance to obtain an escrow agreement or other documentation before setting up an escrow account, and then failed to take reasonable steps to review and approve wire instructions and reasonably supervise the movement of funds into and out of the escrow funds. The Respondent Firm lacked proper procedures and failed to offer Respondent proper guidance in the execution of his obligations.

The dissenting member of the Panel finds that the agreed upon one month supervisory suspension is appropriate and not excessive or punitive, in light of Respondent's clear violation, and especially as it is a short period of time and not likely to result in a loss of income for Respondent. The dissenting member also finds that although Respondent Firm failed to provide clear guidance on protocol, Respondent knew or should have know what his obligations were, and therefore bears responsibility for his actions. Furthermore, a censure alone does not provide sufficient deterrence to others against taking improper shortcuts when setting up or supervising escrow accounts.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer
Panelists:
John Cirrito
George H. Howard