

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-90

August 22, 2005

HOWARD A. ROSENCRANS
FORMER REGISTERED REPRESENTATIVE
AND SUPERVISORY ANALYST

* * *

Engaged in conduct inconsistent with just and equitable principles of trade and caused a violation of Exchange Rule 401 in that, on one or more occasions, he selectively pre-released or caused to be pre-released research reports to various parties including the Subject Companies, their competitors, and clients and employees of his member organization employer prior to the reports' public dissemination. – Consent to a censure and three month bar.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Jeanne R. Elmadany, Esq.
Kevin T. McDonald, Esq.

For the Respondent
Steven Altman, Esq.
Eric P. Rosenberg, 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 Howard A. Rosencrans (“Respondent”), former registered representative and Supervisory Analyst with HD Brous & Co., Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that, on one or more occasions, he selectively pre-released or caused to be pre-released research reports to various parties including the Subject Companies, their competitors, and clients and employees of his member organization employer prior to the reports' public dissemination.
- II. Caused a violation of Exchange Rule 401 in that, on one or more occasions, he selectively pre-released or caused to be pre-released research reports to various parties including the Subject Companies, their competitors, and clients and employees of his member organization employer prior to the reports' public dissemination.

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

Background and Jurisdiction

1. Respondent was born in March 1961. He entered the securities industry in November 1983 at a member firm. Respondent was approved as a registered representative ("RR") in July 1984 while employed by that Firm and remained there until October 1985 at which time he joined another member firm. Respondent was employed there until July 1988 when he joined the Firm. Respondent became qualified as a Supervisory Analyst in December 1989, and was the Firm's Supervisory Analyst and Head of Research until the termination of his employment at the Firm in February 2003. Respondent is not currently employed in the securities industry.
2. By letter dated June 14, 2001, the Exchange notified Respondent that it was conducting an investigation regarding, among other things, his activities as the Firm's Supervisory Analyst and Head of Research.
3. On May 3, 2004, Enforcement issued charges against Respondent based upon the matters described herein. Respondent filed an Answer on May 27, 2004 and an Amended Answer on September 10, 2004.

Overview

4. Enforcement's investigation revealed that on numerous occasions during the period January 2001 through July 2002, Respondent selectively pre-released or caused to be pre-released, via electronic mail ("e-mail") and/or other means, research reports which disclosed the rating, target price and estimates he planned to assign the stock and/or the projected date of publication of the report. Respondent selectively pre-released these research reports or caused them to be pre-released to the companies that were the subject of the research reports, competitors of the companies that were the subject of the research reports, institutional clients of the Firm, a former employee of the Firm, and various Firm employees including registered representatives.

Selective Pre-Release of Research Reports

5. During the period January 2001 through July 2002 ("relevant period"), Respondent was the Firm's Supervisory Analyst and Head of Research. (In July 2002, certain amendments to Exchange Rule 472 were enacted which specifically dealt with the pre-release of research reports. Respondent conduct occurred prior to these amendments).
6. During the relevant period, Respondent, on numerous occasions, selectively pre-released, via electronic mail ("e-mail") and/or other means, the research reports discussed below, which disclosed the rating, target price and estimates he planned to assign the stock and/or the projected date of publication of the report.

7. On numerous occasions, Respondent selectively pre-released research reports to executive officers of the companies that were the subjects of the research reports (“Subject Companies”).
8. On a few occasions, Respondent selectively pre-released research reports to competitors of the Subject Companies.
9. On a few occasions, Respondent, selectively pre-released research reports to institutional clients of the Firm. In addition, on a few occasions, Respondent selectively informed institutional clients of the Firm of the imminent release of reports.
10. On one occasion Respondent selectively pre-released a research report to a former Firm employee from whom he solicited comments on the report.
11. On numerous occasions, Respondent selectively pre-released research reports to various Firm employees including registered representatives.
12. Respondent pre-released the research reports and or information regarding their imminent release referred to above between 30 minutes and 13 days prior to the public dissemination of the reports.
13. The pre-released research reports provided the recipients with the potential to use the information contained therein in their trading decisions. However, Enforcement’s investigation found no trading based upon the pre-released reports with the exception of one trade, possibly based on such information, which was detected and cancelled on the trade date.

Other Factors Considered

14. Enforcement has considered that certain members of Brous’ senior management were aware of Respondent’s selective pre-release of research reports outside the research department, and did not prohibit or discourage the release of those reports. In many instances, senior management was copied on the reports.
15. Enforcement has considered Respondent’s contention that he pre-released certain of the research reports to solicit comments for the purposes of fact verification and improvement of report quality. The pre-release of reports to Brous employees, was to allow these parties to better familiarize themselves with the reports in anticipation of questions from clients once the reports had been publicly disseminated.
16. In approximately one-quarter of the instances, the pre-release occurred after the close of regular trading in the stock’s primary trading market and the research report was publicly disseminated prior to the resumption of regular trading in that market. In certain instances, the cover e-mails and/or pre-released research reports were marked “draft” and/or “confidential.”

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 three month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization. In support of the penalty, Enforcement relies on In the Matter of David W. Jonsson, HPD 87-53 (“October 1, 1987”). In which the Respondent disclosed to a customer that he was preparing a favorable report on a stock (Respondent consented to a censure, a \$5,000 fine and a six-month suspension as an analyst). Enforcement also relies on In the Matter of Peter John Caruso, HPD 04-83 (“May 19, 2004”) in which the respondent disclosed information to clients prior to the public release of his report, leading some to believe that he was going to downgrade his rating, lower his estimates of earnings per share (Respondent consented to a censure, a four month bar and a \$25,000 fine). In addition, Enforcement relied on other factors which are set forth in paragraphs 14-16 above. These paragraphs provide important background and context which were helpful to the hearing panel in evaluating the consented to penalty.

For the Hearing Panel

Vincent F. Murphy - Hearing Officer
Perry Scopelliti
Stewart J. Teichman