NEW YORK STOCK EXCHANGE LLC

NYSE HEARING PANEL DECISION 06-38 **May 10, 2006**
QUICK & REILLY, INC.
FORMER MEMBER ORGANIZATION

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Violated NYSE Rule 440, Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve electronic communications; violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, including separate system of follow-up and review, with respect to retention of electronic communications – Consent to censure and $200,000 fine.

NYSE HEARING PANEL DECISION 06-39 **May 10, 2006**
FLEET SPECIALISTS, INC.
MEMBER ORGANIZATION

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Violated NYSE Rule 440, Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve electronic communications; violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, including separate system of follow-up and review, with respect to retention of electronic communications – Consent to censure and $200,000 fine.

NYSE HEARING PANEL DECISION 06-40 **May 10, 2006**
FLEET SECURITIES, INC.
MEMBER ORGANIZATION

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Violated NYSE Rule 440, Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve electronic communications; violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, including separate system of follow-up and review, with respect to retention of electronic communications; violated NYSE Rules 342.16 and 342.17 by failing to adequately review, monitor, and supervise certain electronic communications between firm employees and public – Consent to censure and $350,000 fine.

Appearances:

For the Division of Enforcement
Craig Hammond, Esq.
Lara M. Posner, Esq.

For Respondents (Quick & Reilly, Inc., Fleet Specialists Inc., and Fleet Securities Inc.)
Paul F. McCurdy, Esq.

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A Hearing Panel of the New York Stock Exchange ("NYSE" or "Exchange") met to consider a Stipulation of Facts and Consent to Penalty entered into between, on one hand, the NYSE's Division of Enforcement ("Enforcement") and, on the other, Quick & Reilly, Inc., Fleet Specialists, Inc. ("Fleet Specialist"), and Fleet Securities, Inc. (collectively "Respondents" or the "Firms").

Without admitting or denying guilt, Quick & Reilly, Inc. consented to a finding by the Hearing Panel that it:

I. Violated NYSE Rule 440, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve for a period of three years electronic communications relating to the business of the firm.

II. Violated NYSE Rule 342 in that it failed to reasonably supervise and implement adequate controls, including a separate system of follow-up and review, with respect to the retention of electronic communications relating to the business of the firm.

Also, without admitting or denying guilt, Fleet Specialist consented to a finding by the Hearing Panel that it:

I. Violated NYSE Rule 440, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve for a period of three years electronic communications relating to the business of the firm.

II. Violated NYSE Rule 342 in that it failed to reasonably supervise and implement adequate controls, including a separate system of follow-up and review, with respect to the retention of electronic communications relating to the business of the firm.

Finally, without admitting or denying guilt, Fleet Securities, Inc. consented to a finding by the Hearing Panel that it:

I. Violated NYSE Rule 440, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder by failing to preserve for a period of three years electronic communications relating to the business of the firm.

II. Violated NYSE Rule 342 in that it failed to reasonably supervise and implement adequate controls, including a separate system of follow-up and review, with respect to the retention of electronic communications relating to the business of the firm.

III. Violated NYSE Rules 342.16 and 342.17 in that it failed to adequately review, monitor and supervise certain electronic communications between its employees and the public relating to its business.

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

Background and Jurisdiction

1. Prior to its merger with Bank of America Corporation ("BAC") in April 2004, FleetBoston Financial Corporation ("FBF") was a public holding company. Quick & Reilly/Fleet Securities, Inc. ("Q&R/FSI") operated as an intermediate holding company wholly-owned by FBF.

2. At all times relevant, Q&R, Fleet Specialist and FSI were broker-dealer subsidiaries of Q&R/FSI and NYSE member organizations. Debt Capital Markets ("DCM") was a division of FSI. After the merger with BAC, Fleet Specialist changed its name to Banc of America Specialist, Inc. and is still currently a member organization. Q&R combined with Banc of America Investment Services Inc. and is no longer a member firm organization. FSI and its U.S. Clearing division were purchased by Automatic Data Processing, Inc. (ADP) in November 2004. At that time, FSI became known as ADP Clearing and Outsourcing Services, Inc., which is a subsidiary of ADP and a member firm organization. FSI's DCM division was transferred to Banc of America Securities LLC, which is a member organization.

3. Q&R was formed in 1974 and at all relevant times, was primarily engaged in retail securities brokerage and maintained more than 100 branches nationwide.

4. At all relevant times, Fleet Specialist was the registered specialist for over 400 NYSE-listed securities.

5. FSI became a member organization of the NYSE in 1984 and was, at all relevant times, a broker-dealer that executed and cleared transactions for correspondent broker-dealers and affiliated companies.

6. The Firms discovered the electronic mail ("e-mail") retention problem, described below, in December 2002. After determining the extent of the problem and the remediation plan, the Firms reported the retention problem to the Division of Member

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* Hearing Panel Note: The facts, allegations, and conclusions contained in paragraphs 1 to 36 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondents. No changes have been made to the stipulated paragraphs by the Hearing Panel, except that certain names have been deleted to protect the privacy of non-parties.

Firm Regulation ("MFR") in May 2003. Enforcement opened its investigation of the Firms based upon three related referrals from the MFR dated July 8, 2003 (the "Referrals"). The Referrals stated that Q&R, Fleet Specialist, and FSI failed to retain e-mail during certain time periods from 2000 to 2003, in violation of NYSE Rules and the federal securities laws.

7. By letters dated July 18, 2003, Enforcement separately notified each firm that the NYSE was formally investigating their failure to retain e-mail, as described in the Referrals.

Overview

8. The Firms violated NYSE Rule 440 and Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4(b)(4) thereunder by failing to preserve for a period of three years electronic communications relating to the business of the Firms. In addition, the Firms violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls with respect to the retention of electronic communications relating to their business as such.

9. Additionally, the DCM business of FSI violated NYSE Rules 342.16 and 342.17 by failing to review e-mail correspondence with customers.

Failure to Properly Retain Employees' Electronic Communications - NYSE Rule 440 and Exchange Act Rule 17a-4

10. Section 17(a) of the Exchange Act requires members of a national securities exchange to make and preserve certain books and records. Exchange Act Rule 17a-4(b)(4) requires member organizations to preserve originals of all communications received and copies of all communications sent by such member relating to its business, including e-mail communications, for a period of not less than three years, the first two years in an easily accessible place.

11. NYSE Rule 440 also requires that member organizations retain their e-mail communications relating to its business for the period prescribed by Exchange Act Rule 17a-4.

12. As set forth below, Q&R, Fleet Specialist, and FSI (excluding DCM) failed to retain certain internal e-mail from approximately April 2001 to November 2002, while DCM, a division of FSI, failed to retain a portion of internal and external e-mail during the time period September 2000 to November 2002, and from January 14 to February 15, 2003.

Non-Retention at Q&R, Fleet Specialist, and FSI (excluding DCM)

13. During the time period September 2000 to October 2002, FSI's information technology support group ("IT") was responsible for providing e-mail retention and support services to Q&R, Fleet Specialist, and FSI (excluding DCM).

14. In January 2000, the Firms retained an outside vendor (the "Vendor") to provide e-mail-retention support. The Vendor's software was installed and programmed to retain all internal and external e-mail generated on the Firms' e-mail system. Because the Firms determined that there was no practical way to filter and retain only those e-mails related to the Firm's "business as such," the Firms' procedures required the retention of all e-mail.

15. To properly archive internal e-mail messages using the Vendor's system, two actions had to be taken. First, the servers must be set up to "journal," or forward, all internal e-mail messages to the Vendor's system. Second, the Vendor's systems must be configured to archive the e-mail that it receives.

16. From April 11, 2001 to September 10, 2001, certain e-mails were not retained because, either inadvertently or due to a lack of understanding of applicable record retention requirements by IT personnel, the "journaling" feature on the servers was not functioning, and/or the Vendor's system was not programmed to archive the internal e-mail that was delivered to it. After September 11, 2001, the journaling function was inadvertently not enabled.[1]

17. As a result of the foregoing, "purely internal" e-mail, or e-mail that was sent between employees, was not retained. However, e-mail that was addressed, forwarded, or copied to an address outside of each of the Firms, including one of the other Firms or a sister or parent company of the Firms, was retained.

Non-Retention at DCM

18. DCM was a division of FSI and operated two primary institutional business lines during the relevant period: Loan Syndication and High Yield. Loan Syndication dealt in the loan market, which principally consisted of a network of major banks and institutional investors. The High Yield Debt Securities Group consisted of a team of professionals who underwrote, arranged, distributed and traded high yield debt securities in and with institutional marketplaces. On a smaller scale, DCM also offered acquisition finance, mergers & acquisitions and asset securitization services to the same types of clients targeted by Loan Syndication and High Yield.

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[1] From Sept. 11, 2001 to Oct. 15, 2001, the Firms' e-mail system was disabled due to the terrorist attacks. All of the Firms' servers were relocated to a disaster recovery site in Carlstadt, NJ, and the Firms' e-mail system was not available to users until Oct. 15, 2001.

19. DCM operated primarily from FBF's Boston Headquarters. FBF, through its wholly owned subsidiary, Fleet National Bank, maintained a separate department known as Global Technology Services ("GTS"). This department functioned separately from FSI's IT group until approximately November 2002 when the two groups merged.

20. From September 2000 to November 2002, the server used to operate and manage DCM's e-mail system was located in Boston and was supported by GTS. The server was shared with other business units, which were not subject to the e-mail retention requirements applicable to broker-dealers. Thus, this server was not configured to retain external or internal e-mail messages for any extended period.

21. As a result, DCM failed to retain certain internal and external e-mail during the time period September 2000 to November 2002. However, external e-mail that was sent through the "Bloomberg Mail" system ("Bloomberg") was retained. According to FSI, Bloomberg served as the primary customer interface for the Sales, Trading, and Research Departments at DCM. FSI relied on Bloomberg to retain all communications received or sent through the system.

22. In November 2002, FSI began retaining e-mail for DCM. However, from January 14 to February 15, 2003, FSI failed to retain external and internal e-mail for DCM because it failed to allocate sufficient storage capacity for e-mail that should have been retained.

23. Accordingly, as set forth above, the Firms failed to retain certain electronic communications in violation of NYSE Rule 440 and Exchange Act Rule 17a-4.

Failure to Supervise

24. NYSE Rule 342(a) provides, in pertinent part, that: "[e]ach office, department or business activity of a …member organization … shall be under the supervision and control of the…member organization establishing it and of the personnel delegated such authority and responsibility."

25. NYSE Rule 342(b) provides, in pertinent part, that: "[e]ach member organization shall provide for appropriate supervisory control…and provide for appropriate procedures of supervision and control…[and] establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised."

26. During all relevant times, FSI and Q&R had their own policies in place concerning the retention of correspondence, including e-mail, as required by Exchange Act Rule 17a-4(b)(4), while Fleet Specialist incorporated the policies and procedures of FSI and Q&R.

27. The Firms' procedures required that employee electronic communications be retained and reviewed on a spot-check basis by a person designated by their respective

compliance areas. In addition, the policies provided that business units dealing with the public must have written supervisory procedures, which require the post-use reviews of e-mail communications. DCM, which had dealings with the public, also had such written procedures.

28. Although the Firms had policies and procedures in place to retain electronic communications, the Firms failed to reasonably supervise and implement adequate controls over their operational and technological systems. As discussed above, for a period of 19 months, the Firms were unaware that internal e-mails were not being preserved. There were no systems in place to notify Firm personnel if there were any problems with either the journaling or archiving feature of the e-mail retention system. Additionally, the Firms did not ensure that their IT personnel understood the record retention requirements and had properly programmed the servers to retain the required e-mails.

29. Additionally, the Firms failed to establish an adequate system of follow-up and review to ensure that delegated responsibilities with regard to electronic communications were being properly carried out. For example, the Firms did not conduct any testing to establish that the servers were retaining the required electronic communications.

30. Accordingly, Fleet Specialist, FSI and Q&R violated NYSE Rule 342.

FSI's Failure to Review Communications with the Public - NYSE Rules 342.16 and 342.17

31. NYSE Rule 342.16 provides, in relevant part, that supervision of registered representatives ordinarily includes "reasonable procedures for review of registered representatives' communications with the public relating to their business, and customer accounts and transactions. Such policies and procedures should be in writing and be designed to reasonably supervise each registered representative." Additionally, the Rule provides that "[e]vidence that these supervisory policies and procedures have been implemented and carried out must be maintained and made available to the Exchange upon request."

32. NYSE Rule 342.17 provides, in relevant part, that:

> [M]ember organizations must develop written policies and procedures that are appropriate for their business, their size, structure and customers in connection with the review of communications with the public relating to their business . . . .
>
> Where such policies and procedures for the review of public communications do not require pre-use review, they must . . . provide for surveillance and follow-up to ensure that such policies and procedures are implemented and adhered to.

33. DCM, which had dealings with the public, maintained written supervisory procedures for the review of registered representatives' communications with the public that required the post-use review of e-mail. However, DCM failed to properly implement those procedures in that they failed to designate a supervisor with responsibility for reviewing registered representatives' e-mail communications with the public and therefore, e-mail communications with the public were not properly monitored and reviewed. DCM's failure to designate a supervisor also demonstrated that its system of follow-up and review to ensure the implementation of and adherence to its written procedures for the review of registered representatives' e-mail communications with the public was inadequate.

34. Accordingly, FSI violated NYSE Rules 342.16 and 342.17 by failing to comply with NYSE requirements that communications with the public relating to its business, customer accounts, and transactions be reasonably supervised.

Remedial Changes Made at the Firms

35. To ensure that these e-mail retention problems did not recur, the Firms implemented the following: (i) a "Change Control Policy" requiring that all changes to the e-mail system be approved and documented; (ii) automatic notifications to detect when the e-mail journaling feature is disabled; (iii) an internal audit unit that is dedicated to inspecting the activities and operations of the e-mail systems; and (iv) routine upgrades of critical software, including an upgrade of the Vendor's software that will, among other things, maintain an audit trail of all changes made to the system.

36. After FBF merged with and into BAC in April 2004, BAC commissioned a comprehensive project to ensure that all firms and individuals covered by e-mail retention requirements were supported by a compliant server. The formal name of the project was the Tactical E-mail Retention and Retrieval Project ("TERRP"). In addition to the two dozen employees assigned to the project from various areas of BAC, a major consulting firm was retained for approximately nine months to work on the project. TERRP ensured that over 24,000 applicable individual e-mail accounts were supported by regulated servers – *i.e.,* servers which retain e-mails in compliance with Exchange Act Rule 17a-4(b)(4).

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondents 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 Respondents Q&R and Fleet Specialist of a censure and a fine of $200,000 each.

The Hearing Panel, also by unanimous vote, imposed the penalty consented to by Respondent FSI of a censure and a fine of $350,000.

For the Hearing Panel

Vincent F. Murphy - Hearing Officer
Panelists:
John C. Caminiti
John S. French