

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 07-39

March 22, 2007

ANN I. ALLEN

FORMER REGISTERED REPRESENTATIVE

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**Violated NYSE Rule 408(a) by exercising discretion in accounts of customers without prior written authorization of customers; violated NYSE Rule 408(b) by exercising discretionary power in accounts of customers without first notifying and obtaining approval of person with authority to approve handling of such accounts; violated NYSE Rule 476(a)(6) by effecting unauthorized transactions in account of customer – Consent to censure and six-month bar.**

**Appearances:**

For the Division of Enforcement  
Linda S. Riefberg, Esq.  
James D. O'Donnell, Esq.  
David Camuzo, Esq.

For Respondent  
Robert A. Giacovas, Esq.

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Ann I. Allen (“Respondent”), a former registered representative with Morgan Stanley DW Inc., an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that she:

- I. Violated NYSE Rule 408(a) in that she exercised discretion in the accounts of one or more customers of her member organization employer without the prior written authorization of the customer;
- II. Violated NYSE Rule 408(b) in that she exercised discretionary power in the accounts of one or more customers of her member organization employer without first notifying and obtaining the approval of another person delegated

under NYSE Rule 342(b)(1) with authority to approve the handling of such accounts; and

- III. Violated NYSE Rule 476(a)(6) in that she engaged in conduct inconsistent with just and equitable principles of trade by effecting five unauthorized transactions in the account of one customer.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:\*

### **Background and Jurisdiction**

1. Allen was born in September 1958 and entered the securities industry in 1982 as a registered representative (“RR”) with a non-member firm. In 1983, she joined Member Firm A as an RR in its Great Neck, New York branch office. Allen resigned from Member Firm A in November 1997 to join Morgan Stanley DW Inc.’s (the “Firm”) Garden City, New York branch office, where she remained employed until she was discharged on April 13, 2005.
2. This investigation was opened based upon the receipt of a Form U-5 (Uniform Termination Notice for Securities Industry Registration) from the Firm on or about May 12, 2005 reporting that Allen was discharged from employment on April 13, 2005 for “accepting from a customer oral discretion to place certain trades in his account.” By letter dated January 6, 2006, Enforcement notified Allen that it was formally investigating the facts reported in the Form U-5, as well as the complaint of another customer, and requested a written explanation. Allen responded by letter dated January 17, 2006.
3. In 2006, upon request by Enforcement, Allen appeared and testified before Enforcement on three occasions.

### **Overview**

4. During the period from approximately November 1997 through April 2005, Allen, exercised discretion in the accounts of 15 customers of her member organization employer without prior written authorization of the customers or prior supervisory approval and engaged in conduct inconsistent with just and equitable principles of trade in that, in January 2005, she effected five unauthorized transactions in one other customer account.

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\* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 20 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer, except that pseudonyms have been provided to protect the privacy of non-parties.

**NYSE Rules Applicable to Discretionary and Unauthorized Trading**

5. NYSE Rule 408(a) provides that “[n]o member, allied member or employee of a member organization shall exercise any discretionary power in any customer’s account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer.”
6. NYSE Rule 408(b) provides, in pertinent part, that “[n]o member, allied member or employee of a member organization shall exercise any discretionary authority in any customer’s account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts.”
7. As set forth in greater detail below, from November 1997 through April 2005, Allen effected discretionary transactions in 15 customer accounts in contravention of both NYSE Rules 408(a) and 408(b).
8. In addition, as described below, by effecting five unauthorized transactions in one customer account, Allen engaged in conduct inconsistent with just and equitable principles of trade in violation of NYSE Rule 476(a)(6).

**Discretionary Trading Violations In Fifteen Customer Accounts**

9. At various times between November 1997 and April 2005, while employed at the Firm’s Garden City, New York branch office, Allen exercised discretion in the accounts of the 15 customers identified below without prior written authorization of the customers or prior supervisory approval:
 

a. Customer A	i. Customer I
b. Customer B	j. Customer J
c. Customer C	k. Customer K
d. Customer D	l. Customer L
e. Customer E	m. Customer M
f. Customer F	n. Customer N
g. Customer G	o. Customer O
h. Customer H	
10. Allen obtained verbal discretionary authority from each of the 15 customers. None of the customers executed a written authorization permitting Allen to exercise discretion in their accounts.
11. In addition, Allen did not notify or seek approval from her branch office manager or any other supervisor prior to her exercise of discretion in these customer accounts.

12. From on or about November 1997 to her termination on April 13, 2005, on more than one occasion, Allen exercised discretion in effecting one or more transactions in the accounts of each of the 15 customers without first discussing the trades with the customers, without obtaining written authorization to effect such discretionary trades, and without obtaining prior supervisory approval to do so.
13. Allen's failure to obtain written authorization to effect discretionary trades in these 15 customer accounts was in violation of NYSE Rule 408(a).
14. Allen's exercise of discretion in the accounts of 15 customers also violated NYSE Rule 408(b), in that she did so without first notifying and obtaining the approval of another person delegated under NYSE Rule 342(b)(1) with authority to approve the handling of such accounts.

#### **Unauthorized Trading in One Customer Account**

15. In 2001, Customer P opened a Cash Management Account with Allen at the Firm.
16. On or about January 3, 2005, Allen telephoned Customer P to solicit the purchase of several securities, but Customer P declined to make any of the solicited purchases.
17. On or about January 3, 2005, without Customer P's approval, Allen effected the purchase of one stock and four mutual funds in Customer P's account totaling \$16,000.
18. On or about January 5, 2005, Customer P received trade confirmations showing that on January 3 and 4, 2005, Allen made purchases of one stock and four mutual funds in Customer P's account.
19. Immediately upon receiving the trade confirmations, Customer P called the Firm to advise that she did not authorize the purchases reflected on the confirmations.
20. On or about January 7, 2005, the Firm transferred the purchases to the Firm's branch error account and did not charge Customer P with the costs associated with the trades.

#### **DECISION**

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent guilty as set forth above.

**PENALTY**

In view of the above findings, the Hearing Officer, imposed the penalty consented to by Respondent of a censure and a six-month 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 Board

Peggy Kuo - Chief Hearing Officer