In the Matter of	)	Requests for Review of
	)	NYSE Hearing Board
	)	Decision 07-131
William Donald Redfern	)	
	)	

Pending before the Board is the request for review of NYSE Hearing Board Decision 07-131 (the "Decision") by William Donald Redfern ("Respondent"), a former registered representative with Bear, Stearns & Co., Inc. ("Firm").

The Hearing Panel found that Respondent violated NYSE Rule 405 (Charges I and II) by failing to communicate to his Firm information about unusual or suspicious transactions in a customer's account that were indicative of money laundering. Rule 405(1) requires member organizations to "[u]se due diligence to learn the essential facts relative to every customer [and] every order … accepted or carried by such organization." The Hearing Panel imposed a penalty of censure, a four-month bar and a $75,000 fine.[1]

Respondent seeks a review of both the liability determination and the penalty imposed.

On May 13, 2008, the Committee for Review ("CFR") convened to hear oral argument of the parties. In accordance with NYSE Rule 476(f), after a consideration of the Record in this matter, written submissions filed by the parties and oral argument, the CFR recommended to the NYSE Regulation Board of Directors ("the Board") that the Hearing Panel's findings on Charges I and II be reversed, and the censure, fine and suspension imposed by the Hearing Panel be vacated. The Board voted to approve the CFR's recommendation.

In reversing, the Board notes the unique facts of this case. Here, the Firm identified the "red flags" presented by this customer when Respondent sought to open the accounts and notified Respondent that the Firm would be conducting due diligence before permitting the accounts to be opened. Moreover, the Firm told Respondent that the customer's accounts would be subject to heightened supervision. Indeed the Firm had systems (Compliance Department, Senior Management, Branch Managers, Legal Department, Lexis/Nexis Research) in place as well as

[1] Charge V was dismissed at the close of Enforcement's case and Respondent was found not liable for Charges III and IV.

written policies and procedures designed to detect the precise activity that Enforcement claims Respondent failed to report.

Given these specific facts, it is clear that the Firm either knew the essential facts about the customer and his accounts and chose not to act or, inexplicably, chose not to use its existing resources to fulfill its Rule 405 duties. Thus while Respondent certainly had his own obligations as a registered representative that he may not have fulfilled, Enforcement did not prove that Respondent “caused” the Rule 405 violation which is the charge at issue in this appeal.

May 28, 2008

By the Board of Directors
NYSE Regulation, Inc.

N E W   Y O R K   S T O C K   E X C H A N G E   L L C

<u>**NYSE HEARING PANEL DECISION 07-131**</u> **August 3, 2007**
WILLIAM DONALD REDFERN
FORMER REGISTERED REPRESENTATIVE

* * *

Caused violation of NYSE Rule 405 by failing to use due diligence to learn or communicate to his member firm employer essential facts relative to customer of member firm, customer's orders, or customer's accounts – Censure, four-month bar, and $75,000 fine.

Appearances:

For the Division of Enforcement
Susan Light, Esq.
Matthew L. Moore, Esq.
Margaret M. Tolan, Esq.
Aida Vernon, Esq.

For the Respondent
Michael F. Bachner, Esq.
Kevin T. O'Brien, Esq.

* * *

A Hearing Panel on behalf of the New York Stock Exchange LLC ("NYSE") conducted a hearing on charges brought by NYSE Regulation Inc.'s Division of Enforcement ("Enforcement") against William Donald Redfern ("Respondent"), a registered representative formerly employed by Bear, Stearns & Co., Inc. ("Bear Stearns" or the "Firm"), a member organization. Respondent was charged with having:

I. Caused his member firm employer to violate NYSE Rule 405, in that he failed to use due diligence to learn the essential facts relative to a customer of his member firm employer, the customer's orders and/or the customer's accounts.

II. Caused his member firm employer to violate NYSE Rule 405, in that he failed to communicate to his member firm employer the essential facts relative to a customer of his member firm employer, the customer's orders and/or the customer's accounts.

III. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade, in that he facilitated the purchase of United States Treasury Bills in a customer account to effect the appearance that the account had certain assets on its books to satisfy foreign tax authorities.

IV. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade, in that he facilitated the purchase and sale of money market funds in a manner intended to obscure the paper trail of those funds.

V. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade, in that he failed to inform his member firm employer of relevant negative information relating to a customer and the customer's accounts.

Respondent submitted an Answer, in which he denied each of the charges, but admitted many of the facts. Respondent also submitted a motion to dismiss and supporting brief. That motion was denied. Each party submitted a pre-hearing brief. The parties also submitted a Joint Statement of Uncontested Facts. Based on these pleadings and on the evidence and argument presented at the hearing, the Hearing Panel made the following findings:

Background and Jurisdiction

1. Respondent was born in 1957. He has been employed in the securities industry as a registered representative since 1986. He was employed at the Firm from May 1994 to August 2002.

2. Respondent is currently employed as a registered representative with a non-member organization, where he began working in November 2002.

3. On September 19, 2002, the Firm notified Enforcement by a Uniform Termination Notice for Securities Industry Registration ("Form U-5") that the Firm had terminated Respondent's employment on August 20, 2002 because he had violated Firm policies, by, among other things, withholding negative information regarding the background of a customer doing business with the Firm. The Firm previously notified Enforcement, by a "Submission of Required Information Pertaining to…Registered and Non-registered Employees" ("Form RE-3"), that on or about July 29, 2002, Respondent had been suspended without pay pending an internal investigation relating to possible violations of Firm policies in customer accounts handled by Respondent.

4. By letter dated October 16, 2002, which he received, Respondent was notified that the NYSE was investigating his termination from Bear Stearns and his handling of certain accounts.

Opening of Multiple Accounts Controlled by Foreign Customer Residing Overseas

5. In May 1994, SR opened a securities account in his own name at the Firm. Respondent was the registered representative assigned to SR's personal Firm account. On the new account form for this account, SR's occupation was listed as the Chairman of a certain Russian bank ("Russian Bank A"), which was chartered by the Central Bank of the Russian Federation. SR's annual income and net worth were listed as $3 million and $15 million, respectively. At the time, SR was 33 years old, a

citizen of Russia, and maintained a business address in Moscow, Russia and a residence in Luxembourg.

6. In July 1998, SR left his position at Russian Bank A. Subsequently, during 1998 to 2000, several other accounts besides SR's personal account were opened at the Firm, of which SR was the beneficial owner or had a beneficial interest (the "Accounts"). The Accounts included two accounts in the name of a commercial bank located in Russia ("Russian Bank B") and five accounts in the name of a private investment company ("Investment Co. A"). The opening dates of the Accounts are set forth in the chart below. During 1994 to 2002, Respondent was the registered representative at the Firm assigned to service the Accounts. The Accounts were closed around October 2002.

Account No.	**Account Name**	**Date Opened**
670	SR	5/16/94
808	Russian Bank B	8/20/98
672	Russian Bank B	2/02/99
494	Investment Co. A	9/28/98
193	Investment Co. A	4/13/99
014	Investment Co. A	10/18/99
110	Investment Co. A	6/20/00
557	Investment Co. A	12/6/00

7. Russian Bank B was a commercial bank with offices in Russia. SR's wife, who used a different last name from SR, was listed on the new account forms as the bank's President and had trading authorization for the two accounts, opened in August 1998 and February 1999. SR was listed as the bank's secretary. Russian Bank B's annual income was listed as $15 million and its net worth as $100 million. At the time Russian Bank B's accounts were opened at the Firm, Respondent was aware that SR controlled these accounts.

8. Investment Co. A was a limited liability company incorporated in Belize whose stated purpose was to invest in securities and real estate. The five Investment Co. A accounts at the Firm were opened between September 1998 and December 2000. At various times, Investment Co. A notified the Firm that its address of record was in Ireland, Belize, or the Channel Islands. SR was an officer of the company, as was his wife. During the period the Investment Co. A accounts were open at the Firm, other individuals not related to SR also were directors of the Investment Co. A accounts and had written authorization to give orders to buy and sell securities and to wire funds to and from the accounts. SR was the owner of and exerted control over the Investment Co. A accounts. Investment Co. A's annual income on the new account

forms was variously listed as $10 million and $20 million and its net worth as $100 million and $250 million.

9. During 1998 to 2002, the equity in the Accounts ranged from $50,000 to $12 million, and there were 20 or more wires to the Accounts, totaling over $20 million, and 95 or more wires from the Accounts, totaling over $18 million. On approximately 145 occasions, a total of over $15 million was journaled between the various Accounts at the Firm.

Unusual Wire and Journal Transactions

10. On or about October 7, 1998, approximately $9 million was wired from an account in Geneva, Switzerland to a Firm account in which SR had a beneficial interest. About $9 million was then transferred to an external bank on October 9, 1998 to effect the purchase of certain money market fund shares, which were then transferred to an Investment Co. A account at the Firm on October 19, 1998. The money market shares were then sold on October 26, 1998 from the Investment Co. A account.

11. On or about April 17, 2000, about $4 million was wired to an Investment Co. A account at the Firm from an account at a bank in Cyprus owned by an associate of SR. On or about April 20, 2000, another $3 million was wired to the same Investment Co. A account from a different account at the same Cypriot bank owned by the same associate. Then, about four days later, the entire $7 million was wired back to one of the Cypriot bank accounts owned by SR's associate.

12. Between March and May 2000, approximately $14.3 million was journaled between two Investment Co. A accounts at the Firm. Approximately $9.9 million was journaled from Investment Co. A account number 193 to account number 494 and approximately $4.4 million was journaled in the reverse direction during that time period. SR was the beneficial owner of both Investment Co. A accounts.

13. On or about November 10, 2000, $2 million was journaled from an Investment Co. A account at the Firm to a Russian Bank B account. Approximately four days later, on or about November 14, 2000, $2 million was wired from the Russian Bank B account to an account maintained at a different American bank. The external bank account was in the name of a private investment company ("Investment Co. B"), apparently based in Luxembourg, in which SR had an ownership interest.

14. On or about June 12, 2001, approximately $1.3 million was wired into a Russian Bank B account from an account at an external bank. Approximately three days later, on or about June 15, 2001, about $1.3 million was transferred out of the Russian Bank B account to an Investment Co. A account. This transaction involved the same Russian Bank B and Investment Co. A accounts discussed in paragraph 13.

15. On or about April 19, 2002, approximately $2.5 million was transferred into the Russian Bank B account from the Investment Co. A account. Subsequently, a corresponding sum of money was wired out of the Russian Bank B account to an

account maintained by Russian Bank B at an external bank: $1.3 million was wired on or about April 24, 2002 and an additional $1.2 million was wired on or about April 25, 2002.

16. At or about the date of each of the wires or journals into the Russian Bank B account referred to in paragraphs 13 to 15, there were no pending investment transactions in that account. In fact, there was little investment activity in that account during the three-and-a-half years it was open at the Firm, other than an occasional short-term purchase of United States Treasury Bills ("T-bills") near their maturity dates, as detailed below.

T-Bill Transactions

17. On May 24 and May 25, 2001, a total of $600,000 was journaled into a Russian Bank B account from the same Investment Co. A account discussed in paragraphs 13 to 15, to fund a margin purchase in the Russian Bank B account on May 25, 2001 of approximately $6 million worth of T-bills, with a maturity date of July 5, 2001. On May 29, 2001, an additional $625,000 worth of T-bills were purchased in that account. The T-bill positions were then liquidated on May 30, 2001 and June 4, 2001, resulting in a total profit of approximately $3,000. On or about June 5, 2001, approximately $601,000 was journaled from the Russian Bank B account into a different Investment Co. A account at the Firm. On June 15, 2001, an additional $1.3 million was transferred out of the Russian Bank B account and cycled back to the Investment Co. A account that had funded the T-bill purchases.

18. On or about December 27, 2001, approximately $5.5 million worth of T-bills with a due date of February 7, 2002 again were purchased in the Russian Bank B account. That same day, approximately $600,000 was wired into that account from an external bank account. The T-bills were then sold on or about January 9, 2002, resulting in a profit of approximately $3,000. On or about January 11, 2002, approximately $595,000 was wired out of the Russian Bank B account, back to the external bank.

19. On August 30, 2001, approximately $1.5 million worth of T-bills, with a due date of September 27, 2001, were purchased in an Investment Co. A account at the Firm. Those T-bills were redeemed in September 2001 for a profit of approximately $3,800.

Money Market Fund Transactions

20. During August 2000 to May 2002, on several occasions, shares of a certain money market fund (the "MM Fund") were purchased in the Investment Co. A accounts, and then transferred shortly thereafter to the MM Fund in the Cayman Islands or a third-party bank in Luxembourg, where the shares were then redeemed immediately and the proceeds wired to accounts at other banks.

21. A representative of the MM Fund contacted the Firm regarding the transactions in May 2002, questioning the reasoning behind the unusual transfer and immediate redemption of the funds.

Negative Information in the Russian Media

22. As early as 1995, SR was the subject of reports in the Russian media alleging fraud and financial improprieties at Russian Bank A while he was Chairman. Respondent, who was fluent in Russian, became aware of those allegations.

23. In June 1995, an article appeared in a Moscow newspaper, which discussed transactions totaling $27 million between a Russian Ministry and entities controlled by SR and other officers of Russian Bank A. The article characterized the transactions as "scandalous."

24. In April 1999, a weekly publication reported that prosecutors in Russia had information concerning SR's involvement in a stock fraud worth $27 million, and noted that SR recently had left Russia for Luxembourg. That article went on to state that in August 1995, a criminal case was opened against SR and the litigation was, at that time, ongoing. However, as of June 2000, it appeared that SR had not been found civilly or criminally liable by the Russian authorities in connection with that matter.

25. In May 2000, an article appeared in a Moscow newspaper stating that while SR was Russian Bank A's Chairman, the Central Bank in Russia had delivered $15 million in hard currency to Russian Bank A but never received Russian rubles in exchange, as a result of which the Central Bank revoked Russian Bank A's license (which subsequently was restored). That article quoted the Central Bank's Chairman, who characterized SR as being "on the lam" in Luxembourg.

26. In early 2002, the Firm commenced an internal investigation into activity in the Accounts and numerous other accounts that were handled by Respondent. In the course of that investigation the Firm interviewed Respondent, who told the Firm's legal and compliance staff that he had been aware of the rumors implicating SR in fraudulent activity in Russia.

DECISION

After presentation of Enforcement's case-in-chief, the Hearing Panel, by unanimous vote, partially granted Respondent's motion for a directed verdict and found Respondent not guilty of Charge V. At the conclusion of the hearing, the Hearing Panel, by unanimous vote, found Respondent guilty of Charges I and II and not guilty of Charges III and IV.

The Newspaper Articles

Charge V alleged that Respondent failed to inform his member organization employer of negative information concerning a customer, thus engaging in conduct inconsistent with just and equitable principles of trade, a violation of NYSE Rule 476(a)(6). Enforcement contended that

Respondent knew of the newspaper articles in the Russian press, described above in paragraphs 23 to 25, but that he failed to inform the Firm of the negative information regarding his customer SR's involvement in potentially criminal conduct.

The undisputed evidence presented during Enforcement's case-in-chief, however, showed that Respondent told BW, the Firm's lawyer assigned to conduct due diligence on the Accounts, of the negative rumors after Respondent became aware of them. See Hearing Transcript ("Tr.") at 674-77. When asked whether Respondent communicated the negative rumor in the Russian Press concerning SR to him, BW stated that he was made aware of the rumor and that Respondent "had gone to the prosecutor … and found out there were no charges." Id. at 688, 692-93. BW testified that Respondent went to his office and said, "[L]isten, in case you hear this don't worry about it. I heard rumors, checked him out with the prosecutor, there's nothing going on." Id. at 691. Enforcement did not dispute that Respondent made this statement to BW, but contended that Respondent failed to elevate the information "so that the firm has all relevant facts and circumstances to make informed decisions as to whether to do business with a customer," because he merely mentioned the rumors in a "casual, offhand manner." Id. at 1493.

The Hearing Panel found that Respondent, through his statement to BW, did inform the Firm of the negative information concerning his customer. BW did not tell Respondent that Respondent was required to report that information further, nor did he ask Respondent any follow-up questions that would have indicated any concern about the nature of the information. See Tr. at 674-77. Furthermore, contrary to Enforcement's contention that Respondent's view of the credibility of information was irrelevant, VD, a Firm manager, testified that a firm employee "would have no obligation to report something he knew to be false, if he was totally certain that it was false." Id. at 1084. VD also stated that brokers had some discretion to assess the credibility of the source of negative information before elevating it to the Firm. Id. at 1100-01. The evidence shows that Respondent relied on his communication with a Russian prosecutor in discounting the negative rumors, and that BW was satisfied with that conclusion when he was made aware of it. See id. at 711.

Under these circumstances, the Hearing Panel cannot say that Respondent acted "in bad faith or unethically," as required for a violation of NYSE Rule 476(a)(6). See Robert Cutter Matlock, Jr., Decision No. 06-19 (NYSE Hearing Board Mar. 27, 2006) at 8, quoting Calvin David Fox, Exchange Act Release No. 48,731, 81 S.E.C. Docket 1511, 2003 WL 22467374, at *3 (Oct. 31, 2003).

Respondent moved for directed verdict at the conclusion of Enforcement's case-in-chief. See Tr. at 1484-1485, 1494. Although NYSE Rules do not specifically provide for such a motion, the Hearing Panel considered Respondent's motion for directed verdict as analogous to a motion for summary disposition under NASD Rule 9264(b). A motion for summary disposition after the commencement of the hearing may be granted when "there is no genuine issue with regard to any material fact and the party that files the motion is entitled to summary disposition as a matter of law." NASD Rule 9264(e); see S.E.C. Rule 250, 17 C.F.R. § 201.250 (2006) (motion for summary disposition); see also Fed. R. Civ. P. 56(c) (federal standard for summary judgment). In assessing the record on a motion for summary disposition, "the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-

moving party." Currency Trading International, Inc., 83 S.E.C. Docket 3008, 2004 WL 2297418 (Oct. 21, 2004) (citations omitted).

Based on the evidence presented by Enforcement, and with all reasonable inferences made in its favor, there is no genuine issue with regard to any material fact pertaining to Charge V. Accordingly, the Hearing Panel dismissed Charge V upon Respondent's motion for directed verdict at the conclusion of Enforcement's case-in-chief.

Failure to Investigate and Inform Bear Stearns of Suspicious Trading Activity

Charge I charges Respondent with causing his member firm employer to violate NYSE Rule 405 by failing to use due diligence to learn the essential facts relative to his customer SR, SR's orders, and/or the Accounts. Charge II charges Respondent with failing to communicate to the Firm essential facts relative to his customer of which he did have knowledge during the relevant time period, causing his member firm to violate NYSE Rule 405.

NYSE Rule 405(1) states in relevant part that "[e]very member organization is required … to [u]se due diligence to learn the essential facts relative to every customer [and] every order … accepted or carried by such organization."

A member organization necessarily relies on its registered representatives and account managers to learn and elevate essential information about customers, because representatives are likely to have the most contact with customers and, therefore, have the best knowledge of those customers and their accounts. Respondent had a duty to investigate or learn of essential information which would have allowed his member firm employer to know its customer as required by NYSE Rule 405. He also had a duty to communicate to his member firm employer all essential and relevant information he did know. Information about the occurrence of unusual or suspicious transactions indicative of potential money laundering or other wrongful activity is essential information which firms are required to know in order to comply with NYSE Rule 405.

The Firm's "Policy Statement for the Prevention and Detection of Money Laundering" (the "Policy Statement"), dated February 5, 1997, which Respondent testified that he received, Tr. at 1562, stated explicitly that:

> Employees who are responsible for the supervision or management of customer accounts and have direct dealings with customers, play an especially important role in detecting and preventing money laundering. They are in the best position to "know your customer" including background, bona fides, and the intended purpose of their transactions.

Enforcement Exhibit ("Enf. Ex.") 42 at 1; Respondent Exhibit ("Resp. Ex.") 10 at 1. The Policy Statement required that due diligence regarding a customer be conducted prior to opening any account at the Firm, including taking reasonable steps to know and document the identity of the customer, the nature of his business, the source of his assets, and the intended purpose of his transactions. Id. at 3.

The Policy Statement also required ongoing monitoring of all customers for questionable activity that raised suspicions of money laundering. Id. at 4. The Policy Statement explicitly stated that, "Suspicions concerning the source of assets or the nature of a transaction may not be ignored," and that "[a]ll officers and employees must report any suspicious or questionable conduct relating to United States business or transactions to the Legal or Compliance Departments." Id. The ongoing monitoring and reporting required by the Policy Statement made it clear that the Firm considered knowledge of potential money laundering activity essential to its responsibility to know its customers.

In support of its contention that Respondent should have made further inquiry into the nature of several transactions that he effected on behalf of SR, Enforcement called an expert witness who examined those transactions and concluded that they were "suspicious."

Enforcement's expert, who had a law enforcement background in investigating financial fraud, see Tr. at 1107-08, relied in his analysis on the existence of "red flags," such as the nationality of the customer, the source of his funds, the location and nature of accounts, and any political ties. See id. at 1121-27. Enforcement's expert testified that there were several red flags relating to the Accounts at the Firm. Id. at 1121. For example, the fact that the Accounts were controlled by a Russian national who was involved in banking in Russia presented a red flag because Russia was a high-risk jurisdiction at the time due to a lack of banking controls and a supposed high level of corrupt activity. See id. at 1123-24. The expert also noted that SR had a connection to high-level political figures in Russia at the time, having met Respondent through an aide to Boris Yeltsin. See id. at 1124-26, 1517. He testified that the companies named on the Account documents were "established in secrecy or tax havens," such as Russia, Luxembourg, Lichtenstein, Ireland, Cyprus, and the Channel Islands, where the companies' beneficial ownership would be difficult to determine. Id. at 1126-34.

Enforcement's expert testified more specifically that some of the transactions were suspicious. See, e.g., Tr. at 1182. With regard to the movement of money described in paragraph 10 above, the expert testified that the transaction was an example of a "layering-type of activity," characteristic of transactions meant to "cloud a trail" because the transaction involved a very indirect route where funds made unnecessary stops and changed forms. Id. at 1178-79. Further, the use of "shell companies," which do not provide any goods or services or have a physical location from which they do business, also raised concerns about the transaction. See id. at 1179, 1312.

Enforcement's expert further testified that the wire activity described in paragraph 11 above was suspicious because "it is a classic circular transaction to just move money around, to wash it around, try to give it an appearance of some legitimate activity." Tr. at 1183. The money leaving and returning to a bank in Cyprus led to further suspicion because "Cyprus was and is a high risk for money laundering jurisdiction," given that it supports "shell offshore companies and secrecy laws." Id. The expert dismissed Respondent's contention that the parties involved in the transaction were testing the repayment of a prior loan, see id. at 1591-93, as an "explanation that does not really hold up in face of what the actual activity is." Id. at 1184.

With regard to the journal activity discussed in paragraph 12 above, Enforcement's expert testified that it was "[d]ifficult to determine any legitimate purpose for the nature of this activity going back and forth other than to create activity." Tr. at 1188-89. Similarly, the expert testified that the "circuitous" activity described in paragraph 13 was also suspicious. Id. at 1192. He explained that there did not appear to be a valid reason for the money to stop in the Russian Bank B account before moving on because all accounts were owned by SR. See id. The expert characterized the activity discussed in paragraph 15 as suspicious because it too seemed to be "a layered transaction" with "a very indirect route." Id. at 1202. He testified that the T-bill purchases and sales described in paragraphs 17 to 19 were suspicious because it was difficult to determine any legitimate purpose for the transactions, for the same reasons given above. See id. at 1227-35.

Respondent presented the testimony of an Anti-Money Laundering compliance expert to challenge Enforcement's expert's use of the word "suspicious" on the basis that "suspicious" activity was not defined until the enactment of the USA PATRIOT Act of 2001, which required that "suspicious" activity be investigated and reported to the U.S. Treasury Department. See Tr. at 1792-93. When cross-examined on the particular transactions, however, the expert conceded that "economically suspect" transactions would require further investigation by a broker-dealer because they may be consistent with money laundering activity. Id. at 1864-65. Thus, Respondent's expert testified that money transfers from one account to another account held by the same beneficial owner, patterns of such transactions taking place over a relatively short period of time, and other transactions that do not on the surface make commercial sense are consistent with potential money laundering activity and would require further investigation. See id. at 1852, 1864.

More specifically, Respondent's expert testified that the wire activity described in paragraph 10 above should prompt further investigation because "it doesn't seem to make a lot of sense standing alone." Tr. at 1852. Similarly, Respondent's expert characterized the transactions detailed in paragraphs 11 and 13 above as economically suspect because they appeared to be "transfers from one beneficial owner to the same beneficial owner," taking place over short periods of time, and "consistent with potential layering, which may be consistent with money laundering." Id. at 1864. Respondent's expert testified that because the activity "fits a pattern of at least one or more of the red flags, you would want to know is there something here that I need to know about." Id.

Except for the use of the word "suspicious," both experts essentially agreed with each other, and their testimony supported the conclusion that many of the transactions Respondent facilitated between 1998 and 2002 were of such an unusual or economically suspect nature that they would have required further investigation. Some of the transactions were so unusual that Respondent himself testified that "they needed some more explanation" because he wanted "to understand if there is a reasonable explanation because … you might be called by the compliance department at some point." Tr. at 1753-54. However, the evidence shows that Respondent failed to adequately investigate the unusual transactions in order to learn the essential facts required by the Firm under its Policy Statement and NYSE Rule 405. See id. at 1702, 1712, 1754.

Consequently, Respondent did not fulfill his obligation as a registered representative to learn all essential facts regarding his customer and his customer's orders.

To the extent that he did have information regarding the nature of some of the unusual or economically suspect transactions, Respondent had the duty to elevate that essential information to the Firm pursuant to NYSE Rule 405 and the Firm's Policy Statement. Respondent never told his superiors about the nature of the transactions. The evidence shows that to the extent SR gave Respondent explanations about the reasons underlying some of the transactions, Respondent did not relay any of them to the Firm. The Hearing Panel rejects Respondent's argument that the Firm "knew" of the nature of the transactions which Respondent effected because the Firm electronically monitored all transactions. See Tr. at 1919, 1923-24. A registered representative knows his customer best and has an obligation, as made explicit by the Policy Statement, to report "any suspicious or questionable conduct" to the Legal or Compliance Departments. See Enf. Ex. 42 at 4, Resp. Ex. 10 at 4. The Firm's failure to have an effective system for review of transactions and orders in the Accounts does not absolve Respondent of his independent duty to bring suspect transactions to the attention of the Firm.

Respondent testified that SR provided justifications for certain wire and journal transactions which occurred during the relevant time period. See Tr. 1606, 1705-07, 1715-20. For example, Respondent stated that SR explained that the transaction detailed in paragraph 15 above was effected as a loan to fund the purchase of securities in the Russian Bank B account. Id. at 1606. Respondent also testified that the seemingly unnecessary wire activity discussed in paragraph 13 above was effected because a major tax firm had advised SR that a loan from an established bank instead of an investment company would provide a tax advantage in Luxembourg, such that the funds had to go through Russian Bank B on their way out of the Firm. Id. at 1716-1717.

Enforcement's expert testified that Respondent's explanations for some of the transactions were not consistent with the activity or typical banking regulations. See Tr. at 1184, 1196, 1210-11. However, regardless of the legitimacy of the explanations provided at the hearing, the evidence establishes that Respondent did not timely communicate to the Firm these essential facts regarding the facially unusual or questionable transactions at the time they took place, so that the Firm would have been fully informed about the customer and the nature of his transactions. See id. at 1606, 1705-07, 1715-20. Thus, Respondent did not fulfill his obligation to report all essential information to the Firm, causing the Firm not to know its customer.

The Panel finds that Respondent's failure to use reasonable effort to learn essential facts regarding his customer and his customer's orders following the unusual account activity caused his member firm employer to violate NYSE Rule 405, as set forth in Charge I. Further, the Panel finds that Respondent's failure to communicate to his member firm employer essential information which he knew relative to his customer and his customer's orders caused his member firm employer to violate NYSE Rule 405, as set forth in Charge II.

Accordingly, the Hearing Panel, by unanimous vote, finds Respondent guilty of Charges I and II.

Facilitating Trades Intended to Deceive Foreign Tax Authorities

Charge III charges Respondent with conduct inconsistent with just and equitable principles of trade for facilitating the purchase of United States Treasury Bills in a customer account to effect the appearance that the account had certain assets on its books to satisfy foreign tax authorities.

Enforcement contends that the T-bill transactions described in paragraphs 17 to 19 above were effected in order to mislead foreign tax authorities as to the true position of the Russian Bank B accounts at the Firm. In support of its position, Enforcement relied on statements allegedly made by Respondent in interviews during the Firm's internal investigation of the trading activity that "[i]t was … to create some appearance in the minds of the Russian tax or banking authorities that the Bank had these assets in its portfolio." See Tr. at 124-25. Respondent disputed that he made such statements, instead testifying that he merely agreed with one of the Firm's representatives that tax evasion could have been one possible explanation for the transaction. Id. at 1732-33.

Enforcement did not produce any evidence to show what the applicable foreign tax laws were during the relevant time period. Lacking that information, the Hearing Panel cannot determine whether the transactions would, in fact, serve to unlawfully circumvent any tax law of a foreign country. We note that tax laws are often complex, and without further guidance, the Hearing Panel could draw no conclusion about the legitimacy of the T-bill transactions.

Enforcement failed to show that Respondent engaged in conduct inconsistent with just and equitable principles of trade in facilitating the T-bill transactions. Accordingly, the Hearing Panel, by unanimous vote, finds Respondent not guilty of Charge III.

Facilitating Trades Intended to Obscure the Paper Trail

Charge IV charges Respondent with conduct inconsistent with just and equitable principles of trade for facilitating the purchase and sale of money market funds in a manner intended to obscure the paper trail of those funds.

Relying on statements allegedly made by Respondent during interviews in the course of the Firm's internal investigation, Enforcement contends that Respondent facilitated trades, described in paragraph 20, which he knew at the time were meant to obscure the paper trail of the funds. Respondent denies stating that he had knowledge of the purpose for the transactions at the time they took place. See Tr. at 1622-23, 1723.

Enforcement did not present any independent evidence that Respondent knew or had access to information regarding what happened to the funds after they left the Accounts at the Firm. Enforcement's expert testified that "once the funds were transferred to the [MM Fund], [the Firm] wouldn't have any independent knowledge of where the … proceeds from the fund shares would have been sent to." Tr. at 1221. Moreover, Enforcement's expert testified that there is no compliance requirement which requires a broker to have knowledge of what a client does with funds after they leave the firm for which he works. Id. at 1369-70.

The undisputed evidence shows that Bear Stearns was only made aware that the transactions may have been unnecessary or unusual because of an email from the MM Fund itself. See Enf. Ex. 36; Tr. at 393-94. There is no evidence that Respondent had knowledge of what took place in the funds beyond the point when they were transferred out of Firm accounts, and he had no responsibility for obtaining that knowledge at the time. See Tr. at 1369-70.

Enforcement failed to show that Respondent acted inconsistently with just and equitable principles of trade by facilitating the money market transactions. Accordingly, the Hearing Panel, by unanimous vote, finds Respondent not guilty of Charge IV.

PENALTY

Enforcement urged the Hearing Panel to impose a penalty of a censure, a two-year bar, and a fine of $100,000. Enforcement acknowledged that this was a case of first impression, but cited precedents involving violations of NYSE Rule 405 in addition to other rules. See Scot Robert Harris, Decision 03-79 (NYSE Hearing Board Apr. 30, 2003) (censure and 8-month bar for Rule 405 violation, as well as violations of Rules 440 and 476(a)(6)); Judith K. Fehlig, Decision 01-19 (NYSE Hearing Board June 15, 2001) (censure and 2-month bar for violations of Rules 405 and 407(a)); Steven Bruce Leff, Decision 00-152 (NYSE Hearing Board Sept. 7, 2000) (censure and 3-year bar for violations of Rule 405 and of Rules 346(b) and 352(c) for engaging in outside business and profit-sharing).

Respondent countered that a bar of any length of time would unnecessarily punish him for conduct which has already been effectively deterred by the passing of new legislation. Instead, he proposed a penalty of a censure and a $50,000 fine, citing cases in which hearing panels imposed lower penalties for violations of NYSE Rule 405. See Kenneth John Kirsch II, Decision 05-82 (NYSE Hearing Board Aug. 5, 2005) (penalty reduced by hearing panel from agreed-upon penalty of censure and one-month supervisory suspension to censure only for violations of Rules 405 and 342, for failing to review wire transactions); James Howard Heffernan, III, Decision 03-47 (NYSE Hearing Board Mar. 21, 2003) (censure and $12,500 fine for violations of Rules 405 and 345); Joseph Miller, Decision 01-34 (NYSE Hearing Board Feb. 21, 2001) (censure and joint fine of $10,000, shared with member organization, for violations of Rules 405 and 345); Donald B. Conrad, Decision 96-84 (NYSE Hearing Board Aug. 14, 1996) (censure and 5-week suspension for violations of Rules 405 and 408(a)); Howard Charles Rosen, Decision 92-138 (NYSE Hearing Board Aug. 25, 1992) (censure and $5,000 fine for violations of Rule 405(1) and various other violations); Thu Nga Thi Nguyen, Decision 91-188 (NYSE Hearing Board Nov. 12, 1991) (censure and 2-month bar for violation of Rule 405 for providing false information).

In determining the appropriate penalty in this case, the Hearing Panel relied on McCarthy v. S.E.C., 406 F.3d 179 (2d Cir. 2005) and focused specifically on the following factors: (1) the seriousness of the offense; (2) the corresponding harm to the trading public; (3) the potential gain to Respondent for disobeying the rules; (4) the potential for repetition in light of the current regulatory and enforcement regime; and (5) the deterrent value to the offending broker and others. Id., 406 F.3d at 190. The Panel was also mindful that the purpose of a disciplinary

sanction is to "protect investors, not to penalize brokers." Thomas Woodley Heath III, Decision 07-25 (NYSE Hearing Board Mar. 15, 2007) (quoting McCarthy, 406 F.3d at 188).

Other factors taken into account were the degree of scienter or bad faith and Respondent's financial resources. See Factors Considered by the New York Stock Exchange Division of Enforcement in Determining Sanctions, Info. Memo. 05-77 (Oct. 7, 2005).

Although violations of Rule 405 have in previous cases not incurred severe penalties, see Nguyen, above, the conduct in this case was more serious than merely failing to convey information to an employer firm. By failing to inquire further into the suspicious trades or elevate information to the Firm, Respondent put the Firm at risk of facilitating fraudulent transactions. While Respondent was not found guilty of actual fraud, Respondent's conduct created a dark space where fraud might flourish undetected.

The transactions here also might have aided criminal activity. While it is unnecessary for the Hearing Panel to find that actual money laundering occurred, the transactions which Respondent facilitated are of the type that, absent a satisfactory explanation, could constitute illegal activity. The failure to offer the Firm an opportunity to inquire further into these transactions, thus, harmed the public good.

Furthermore, Respondent did not engage in only one act. He effected at least eight transactions for SR over a period of about 40 months which the Panel finds to have been suspect.

The Hearing Panel also finds that, far from acting altruistically, Respondent was, at least in part, motivated by the potential for monetary gain. The evidence shows that Respondent collected substantial commissions, including for facilitating the questionable or unusual trades, which might have been stopped had he informed the Firm of the unusual nature of the transactions. See Tr. at 1764.

On the other hand, the potential for repetition of this particular violation is somewhat diminished by the passing of the USA PATRIOT Act of 2001. The new stringent reporting requirements for suspicious activity minimize the risk that the type of transactions engaged in here will go undetected for long. See Tr. at 1797-98. Further, the Panel recognizes that, in his current position, Respondent's trading activities are carefully monitored and that his international business has been substantially reduced in light of this disciplinary action. See id. at 1979-82, 1993.

The Panel considered the precedents cited by both parties only for guidance in assessing a penalty, and focused on the specific facts of the instant case in reaching its decision. See Factors Considered by the New York Stock Exchange Division of Enforcement in Determining Sanctions, Info. Memo. 05-77 (Oct. 7, 2005). Specifically, the Panel found the conduct here to be more egregious than that in Fehlig, where the respondent was found guilty of violating NYSE Rule 405 for failing to inquire further of a customer who was evading questions about employment in the securities industry, because Respondent might have been facilitating criminal activity in his failure to learn and communicate essential information. On the other hand, the

cases cited by Enforcement all involved violations of other NYSE Rules, which may have resulted in higher penalties.

The Panel also recognized that the Firm bears some responsibility for not knowing its customer during the relevant time period by failing to supervise Respondent and conduct adequate due diligence on the customer and transactions taking place in the Accounts. The Firm has already been sanctioned by the NYSE for its supervisory failure. See Bear, Stearns & Co. Inc., Decision 05-163 (NYSE Hearing Board Dec. 22, 2005).

In view of the above findings, the Hearing Panel, by unanimous vote, determined to impose a penalty of a censure, four-month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, and a fine of $75,000.

For the Hearing Panel

Peggy Kuo
Chief Hearing Officer
Panelists:
Ruth Fialko
Peter Nastri, Jr.