

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 07-162

December 20, 2007

ADAM GALEON

RESEARCH ANALYST

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Violated NYSE Rule 476(a)(6) by obtaining information from CEO of NYSE-listed public company that company was lowering estimate of earnings per share day before official public release and then selectively disseminating such information to certain Firm employees and clients – Consent to censure, four-month bar and \$50,000 fine.

Appearances:

For the Division of Enforcement
Linda Riefberg, Esq.
Tracy Timbers, Esq.
Marianne Paoli, Esq.

For Respondent
John K. Carroll, 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 Adam Galeon (“Respondent”), a research analyst with Credit Suisse First Boston, LLC, an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he violated NYSE Rule 476(a)(6), by obtaining information from the CEO of an NYSE-listed public company that the company was lowering its estimate of earnings per share the day before its official public release and then selectively disseminated such information to certain Firm employees and clients.

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:*

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 25 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.

Background and Jurisdiction

1. Galeon was born in 1977. He entered the securities industry in October 1999 as a research associate with Member Firm A where he remained until August 2002. In August 2002, Galeon joined Member Firm B as an associate analyst where he remained until October 2003. In November 2003, Galeon joined Credit Suisse First Boston, LLC (“Credit Suisse” or the “Firm”) which is now known as Credit Suisse Securities, (USA) LLC, as a research analyst where he remained until he was permitted to resign in July 2005.
2. Since leaving Credit Suisse in July 2005, Galeon has been employed as a research analyst at a non-member firm in New York.
3. On August 5, 2005, Enforcement received a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) reporting that Galeon was permitted to resign on July 7, 2005, and had violated Firm policy and demonstrated poor judgment in sending emails to Firm colleagues and clients.
4. By letter dated August 29, 2005, which Galeon received, NYSE notified Galeon that it was formally investigating the allegations reported by the Firm and requested that he submit a written statement.
5. Thereafter, Galeon, through his counsel, submitted the requested statement to Enforcement.
6. During the investigation, Galeon appeared with counsel and provided testimony concerning the NYSE investigation.

Summary of Violative Conduct

7. At the time of the relevant events, Galeon was a research analyst at Credit Suisse. Galeon covered a number of publicly traded medical companies, including an NYSE-listed company (“XYZ”). On May 24, 2005, Galeon obtained certain information from the CEO of XYZ relating to XYZ’s expected updated earnings guidance, the day before the official public release of the company’s updated earnings guidance. Galeon selectively disseminated emails to 17 Firm clients and 31 Firm sales personnel, conveying the information the CEO had disclosed to him. All but one email contained an admonition to keep the information confidential. Subsequently, Credit Suisse and two clients of Credit Suisse who received the information in Galeon’s email traded in shares of XYZ, prior to the public release of such information. By selectively disseminating the information he obtained from the CEO, Galeon engaged in conduct inconsistent with just and equitable principles of trade.

Galeon Solicited and Received Updated Earnings Guidance

8. On February 1, 2005, XYZ publicly announced its initial earnings per share (“EPS”) guidance for 2005 in the range of \$2.00 to \$2.20 per share. XYZ was expected to announce updated second quarter and full year 2005 EPS guidance in April 2005, in connection with its first quarter 2005 results.
9. However on April 19, 2005, XYZ deferred providing updated second quarter and full year 2005 EPS guidance until its scheduled May 25, 2005 research analyst meeting at an annual conference held in Paris focusing on scientific and business developments in the cardiovascular medicine industry.
10. During the week of May 24, 2005, Galeon was in Paris for the annual conference. On May 24th, while at the conference, Galeon approached the CEO of XYZ and had a brief conversation with him. During the conversation, Galeon asked the CEO if there were going to be “any surprises tomorrow,” referring to the scheduled XYZ analyst meeting. The CEO responded that there would be no surprises and that market share was still up.
11. Galeon then asked the CEO, in violation of Firm policy, whether earnings guidance was going to go below \$2.00, to which, according to Galeon, the CEO responded “that’s the number I’m shooting for, give or take a penny.” The CEO also stated that XYZ had recently made some acquisitions that were increasing its spending.

Galeon Selectively Disseminated XYZ’s Updated EPS Guidance to Clients and Sales Personnel

12. Immediately following his conversation with the CEO, Galeon called the members of his research team, consisting of a lead research associate (the “lead associate”) and a junior research associate, and briefed them on his conversation with the CEO, including the CEO’s comments regarding XYZ’s expected updated EPS guidance.
13. Galeon instructed the lead associate to draft a short preview research note containing the EPS guidance information with the intent to publish it that evening before the XYZ analyst meeting the next day.
14. After speaking with his research team, Galeon quickly sent 23 separate emails from his Blackberry to 19 individuals at 17 Firm clients, and to 31 sales personnel at the Firm and its Canadian and European affiliates disclosing the EPS guidance information that he had learned from the CEO, warning in all but one email to keep the information quiet.
15. All but one of the emails had the subject line “[XYZ] analyst meeting tomorrow.” Many of the emails included the phrase “quick heads up ahead of tomorrow’s analyst

meeting” in the opening paragraph. With a few small variations in wording, all of the emails contain the following core statements:

Just sat down with [CEO] here in Paris. Sounds like they’re going to bring down 2005 EPS guidance to \$1.98-2.02 (vs current consensus of \$2.06). They’re going to talk about DES share back up at 58-59%, but spend (mostly) R&D goes up since they made those 4 acq’ns this year (...), 3 of which came with burn.

16. All but one of the emails - and all of the emails sent directly by Galeon to Firm clients - contained some sort of admonition to keep the information confidential.

- 15 of the emails contain the following closing statement “Don’t want to get in trouble...keep btwn us for now.”
- 4 of the emails contain the following closing statement “Don’t want to get on his bad side...keep btwn us for now.”
- 1 email sent to four Credit Suisse sales personnel has an opening paragraph that includes the statement: “Pass around but tell them to keep it on QT – don’t want to get on CEO’s bad side.”

A Firm Trader and Clients Who Received Galeon’s Disclosure Regarding XYZ’s Updated EPS Guidance Traded Shares of XYZ

17. Shortly after speaking with Galeon, the lead associate called the Firm’s healthcare trader and conveyed the information he had received from Galeon. After speaking with the lead associate, the healthcare trader, who asserts he had planned to do the trades already, sold short 50,000 shares of XYZ at the following times:

- At 12:59 p.m., a short sale of 25,000 shares of XYZ for a Credit Suisse proprietary account. The order was filled by 1:01 p.m.
- At 1:01 p.m., the healthcare trader placed a second order for a short sale of 25,000 shares of XYZ for the same Credit Suisse proprietary account. The order was filled within six minutes.

18. The Firm’s healthcare trader also received and executed several XYZ related client orders on May 24th. These client orders were placed after telephone conversations between a Credit Suisse sales trader who received one of Galeon’s emails regarding XYZ and representatives from the clients, wherein the sales trader disclosed the XYZ earnings guidance information he received from Galeon. The healthcare trader placed the following XYZ orders on behalf of these customers:

- At 1:42 p.m. the healthcare trader placed an order to sell long 25,000 shares of XYZ

from customer ABC. The order was filled within minutes.

- At 2:14 p.m., customer DEF placed an order for the healthcare trader to sell long 82,500 shares of XYZ. The order was filled within minutes.
- At 2:15 p.m., customer DEF placed a second order that day for the healthcare trader to sell short 31,000 shares of XYZ.

Firm Approves and Publishes Galeon's Team's Research Note

19. On May 24th at approximately 8:01 pm, Galeon and the lead associate submitted a note for Firm approval and publishing. The Firm approved the note and published the note at 1:48 a.m. on May 25, 2005. The note read, in part, as follows:

- [XYZ] will host an analyst meeting tomorrow morning at 8am EST at EuroPCR in Paris. The hot topics will be updated 2005 guidance and ... market share recovery in the wake of March's ACC.
- New guidance. On [XYZ] 1Q05 earnings call, mgmt deferred updating guidance until tomorrow's analyst meeting, although it seemed the bottom end [of] the \$2.00-2.20 EPS range was realistic. We now expect the 2005 range to be revised to \$1.98-2.02, which compares to Street consensus of \$2.06.

May 25, 2005 XYZ Issued Updated EPS Guidance

20. On May 25, 2005, at the analyst conference in Paris, XYZ publicly announced its updated guidance for 2005. The updated EPS guidance was \$1.85-\$2.00 rather than \$2.00 "give or take a penny" that the CEO had communicated to Galeon the day before. The press release containing the updated XYZ EPS guidance hit the wires at 9:00 a.m.

21. On May 24, 2005, XYZ's stock price opened at \$ 30.32. On May 26, 2005, XYZ's stock price closed at \$ 28.16

Firm's Policies and Procedures

22. At the time that Galeon solicited the updated earnings guidance information from the CEO, the Firm maintained a policy pursuant to Regulation Fair Disclosure ("Regulation FD"), prohibiting analysts from seeking updates or reconfirmations of earlier earnings estimates or other forecast information.

23. The Firm also maintained a policy to prevent the misuse of market-sensitive

information relating to research reports by any person associated with it. Specifically, Firm policy prohibited material research communications from being disseminated to Sales and Trading personnel or Firm clients on a preferential or selective basis.

24. In order to avoid any appearance of selective dissemination, Firm policy required that all written equity research be cleared by the Firm's Legal and Compliance Department, and posted to First Call and Research & Analytics, prior to going to the Firm's sales force.
25. Despite these clear guidelines from the Firm, Galeon improperly solicited and received information regarding XYZ's updated earnings guidance from the CEO the day before XYZ officially publicly released the updated guidance, and then selectively disclosed the information that same day.

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, a 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 \$50,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer