

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 08-39

July 16, 2008

STEPHEN SKINNER

FORMER REGISTERED REPRESENTATIVE

\* \* \*

**Violated NYSE Rule 346(b) by engaging in outside business activity without receiving prior written consent of firm employer; violated NYSE Rule 476(a)(6) by making misstatements to firm employer concerning outside business activity; violated NYSE Rules 476(a)(11) and 477 by failing to comply with written requests for written statement concerning matters that occurred prior to termination of status as registered representative; violated NYSE Rules 476(a)(11) and 477 by failing to comply with written request that he appear and provide testimony – Censure and permanent bar.**

**Appearances:**

For the Division of Enforcement  
Linda Riefberg, Esq.  
Myles Orosco, Esq.  
Audra Acquavella, Esq.

For Respondent  
No Appearance

\* \* \*

A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Charge Memorandum issued by NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) charging Stephen Skinner (“Respondent”), a former registered representative with UBS Financial Services Inc. (the “Firm”), a member organization, with having:

- I. Violated NYSE Rule 346(b) by engaging in an outside business activity without receiving the prior written consent of his member firm employer.
- II. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that, on at least one occasion, he made misstatements to his member firm employer concerning his outside business activity.
- III. Violated NYSE Rules 476(a)(11) and 477 in that he failed to comply with one or more written requests by Enforcement for a written statement concerning matters that occurred prior to the termination of his status as a registered representative with a member organization.

- IV. Violated NYSE Rules 476(a)(11) and 477 in that he failed to comply with a written request by Enforcement that he appear and provide testimony.

Respondent failed to file an Answer as is required by NYSE Rule 476(d). Pursuant to NYSE Rule 476(d), Enforcement filed a motion requesting a default determination of guilt and recommending a penalty to be imposed (the "Motion"). Respondent did not file an opposition to the Motion. By Order dated July 16, 2008, the Hearing Officer granted the Motion and finds as follows:

### **Background and Jurisdiction**

1. Respondent was born in September 1964. He entered the securities industry in February 1995 when he commenced employment as a broker trainee at Firm A. In April 1995, Respondent passed the Series 7 examination and became a registered representative ("RR") with Firm A, where he remained until November 1995. From November 1995 to January 2001, he was employed as an RR with Firm B.
2. In January 2001, Respondent joined the Firm, where he remained employed as a RR until August 30, 2004, when he voluntarily resigned.
3. Respondent has not been employed in the securities industry since his resignation from the Firm in August 2004.
4. The Firm filed a Uniform Termination Notice of Securities Industry Registration ("Form U-5") dated September 21, 2004, reporting that Respondent voluntarily resigned from the Firm on August 30, 2004. When Respondent resigned from the Firm, he was under internal review for alleged financial dealings in an outside business away from the Firm.

### **Failure to Cooperate**

5. In October 2004, Enforcement's Preliminary Investigation Unit (PIU) sent a letter to Respondent's residential address in Amherst, New York, as reflected in his Central Registration Depository (CRD) records. This letter was returned to Enforcement as "undeliverable as addressed" and also could not be forwarded.
6. Upon obtaining Respondent's current residential address in Amherst, New York, Enforcement's PIU sent to Respondent a certified and first-class letter dated February 23, 2005 (the "February 23<sup>rd</sup> letter"), notifying him that PIU had initiated a preliminary investigation into the allegations that the Firm reported on the Form U-5 dated September 17, 2004. Enforcement requested that Respondent provide a written explanation and advised him that failure to comply with Enforcement's request could subject him to disciplinary action pursuant to NYSE Rules 476(a)(6) and 477.
7. The green card attached to the February 23<sup>rd</sup> certified letter reflected Respondent's signature and was returned to Enforcement, indicating that the letter was delivered on

- March 2, 2005. Respondent failed to respond to Enforcement's request for a written explanation.
8. By letter dated April 7, 2005, sent via certified and first-class mail (the "April 7<sup>th</sup> letter"), pursuant to the Firm's U-5 report dated September 17, 2004, Enforcement notified Respondent that a formal investigation had been initiated into the allegations that he had engaged in an outside business without the Firm's approval. Respondent signed the green card, which Enforcement received.
  9. On April 13, 2005, Enforcement received from Respondent a letter, dated March 2, 2005, which responded to the February 23<sup>rd</sup> letter from Enforcement's PIU.
  10. By letter dated April 13, 2005 (the "April 13<sup>th</sup> letter"), Enforcement requested that Respondent either supplement his initial response to the PIU or, in the alternative, provide Enforcement with written notice that his March 2, 2005 letter represented his complete written response concerning Enforcement's investigation of this matter. Enforcement sent the April 13<sup>th</sup> letter to Respondent's residential address via certified mail with an additional copy sent via first class mail. Respondent signed the green card, which Enforcement received. The copy of the April 13<sup>th</sup> letter sent via first class mail was not returned to Enforcement.
  11. To date, Respondent has not provided a written response to the April 13<sup>th</sup> letter, as requested by Enforcement.
  12. Thereafter, by letter dated May 23, 2005 (the "May 23<sup>rd</sup> letter"), sent to Respondent's residential address via first class mail, Enforcement requested that Respondent contact Enforcement by telephone regarding the April 13<sup>th</sup> letter, which requested his written statement. The May 23<sup>rd</sup> letter has not been returned to Enforcement. To date, Respondent has not contacted Enforcement, as requested.
  13. By letter dated June 14, 2005, sent to Respondent's residential address via certified mail, which Respondent received, Enforcement requested that Respondent appear and testify before Enforcement on June 28, 2005 (the "June 14<sup>th</sup> letter"). The June 14<sup>th</sup> letter also advised Respondent that his failure to appear and testify on the scheduled date could subject him to formal disciplinary action.
  14. On or about June 20, 2005, Enforcement sent a copy of the June 14<sup>th</sup> letter via first class mail to Respondent's residential address. The copy of the June 14<sup>th</sup> letter sent via first class mail was not returned to Enforcement.
  15. On June 28, 2005, Respondent failed to appear and testify before Enforcement as requested in the June 14<sup>th</sup> letter.
  16. To date, Respondent has not complied with Enforcement's requests for a written explanation, pursuant to the April 13<sup>th</sup> and May 23<sup>rd</sup> letters.

17. To date, Skinner has failed to appear and testify pursuant to Enforcement's June 14<sup>th</sup> letter.
18. In October 2005, Enforcement received notice from the U.S. Bankruptcy Court for the Western District of New York that Respondent filed for personal bankruptcy protection pursuant to Section 727 of Title 11 of the United States Code. Under the law at the time, Enforcement's investigation was effectively stayed by Respondent's personal bankruptcy filing.<sup>1</sup> On or about August 20, 2007, the Bankruptcy court notified Enforcement that Respondent was officially discharged from bankruptcy and, accordingly, Enforcement continued its investigation at that time.
19. From September through December 2007, Enforcement attempted to obtain Respondent's current telephone number to discuss the continuation of Enforcement's investigation. Enforcement's efforts to contact Respondent included several Internet searches, requests for information from local 411 directory assistance for the Amherst/Buffalo, New York area, LEXIS/NEXIS research and discussions with staff at the U.S. Bankruptcy Court and staff at the U.S. Bankruptcy Trustee's Office, who handled Respondent's personal bankruptcy matter. In December 2007, Enforcement obtained Respondent's current telephone number from the U.S. Bankruptcy Trustee's Office.
20. In December 2007 through February 2008, Enforcement made several unsuccessful attempts to contact Respondent by telephone and left voicemail messages for him.
21. By letter dated February 13, 2008, sent via certified mail to Respondent's current residential address in, Buffalo, New York,<sup>2</sup> Enforcement notified Respondent that the investigation had been recommenced and that Enforcement was authorized to issue a Charge Memorandum against him. Enforcement's February 13, 2008 letter also summarized the allegations as stated herein.
22. Enforcement's February 13, 2008 letter also requested that Respondent contact Enforcement by February 21, 2008 and advised him that if he failed to contact Enforcement by that date, Enforcement would immediately file with the NYSE Hearing Board charges against him pursuant to the allegations set forth in the February 13, 2008 letter.

---

<sup>1</sup> The Bankruptcy Code, 11 U.S.C. §362(d)(1), as amended in April 2005, provides for "the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power." This amendment, however, was not effective until October 17, 2005 and was enacted to have a *prospective* application. In this matter, the charges recommended in Enforcement's Action Memorandum were authorized in September 2005, prior to the effective date of the 11 U.S.C. §362(d)(1) amendment.

<sup>2</sup>According to information that Enforcement obtained from the United States Postal Service, Amherst, New York and Buffalo, New York are used interchangeably in the 14226 zip code.

23. On or about February 20, 2008, Enforcement sent a copy of the February 13, 2008 letter to Respondent's residential address via first class mail. The copy of the February 13, 2008 letter sent via first class mail was not returned to Enforcement.
24. To date, Respondent has not contacted Enforcement as requested pursuant to Enforcement's February 13, 2008 letter.

### **Outside Business**

25. Beginning in February 2002, Respondent solicited two of his Firm customers to invest in a private investment without the Firm's knowledge or approval. The private placement was in XYZ, a Buffalo, New York company, incorporated in the State of New York. The Firm did not offer the private placement as an investment product to its customers.
26. In or about February 2002, based upon Respondent's recommendation of the XYZ investment, one of his customers, Customer A, invested \$280,000.
27. In or about May 2003, also based upon Respondent's recommendation, another customer, Customer B invested \$91,000 in XYZ.
28. Respondent informed both customers that he had invested in XYZ and touted it as a promising low-risk investment. At the time of their respective investments, both customers had little to no investment experience.
29. In or about November 2003, Customer B received a \$3,185 interest payment relating to her investment in XYZ. She, however, received no further payments because XYZ filed for bankruptcy shortly thereafter.
30. In or about August 2004, Customer A contacted the Firm to freeze his account, complaining that he had neither received a stock certificate for XYZ nor received dividends or interest payments in connection with his investment. In addition, according to Customer A, Respondent was not returning his telephone calls.
31. Following Customer A's complaint, Respondent told the Firm that he attended meetings for potential XYZ investors and was compensated by XYZ in the range of \$100 to \$1,000.
32. Respondent neither sought nor obtained Firm approval for his outside business activities in XYZ.
33. On August 30, 2004, during the pendency of a Firm investigation of Respondent's involvement with XYZ, Respondent voluntarily resigned his employment with the Firm.

34. In or about December 2004, Customer A and Customer B filed arbitration claims against the Firm and Respondent. In January 2006, following a hearing, an arbitration award was rendered against the Firm in favor of Customer A in the amount of \$175,000.<sup>3</sup> In or about January 2006, the Firm settled the Customer B claim in the amount of \$85,000.

### **Misstatements to the Firm**

35. On at least one occasion, Respondent actively disguised his outside business activities by making misstatements to the Firm.
36. On or about January 23, 2004, Respondent completed his 2003 Certification of Compliance in which he stated that he did not “engage in any outside business or solicit any non-UBS PaineWebber products or investments,” which was not true.
37. On the Firm’s Certification of Compliance, Respondent neither disclosed his participation in the XYZ private placement nor his solicitation of investors in the private placement, as he was required to do.
38. In or about August 2004, based upon Customer A’s complaint, the Firm questioned Respondent about his involvement in XYZ and Customer A’s claims.
39. Respondent initially denied that he recommended XYZ to Customer A, told the Firm that Customer A brought the XYZ investment to his attention and also told the firm that, after researching the company, he told Customer A that he thought that the company was a good investment opportunity.
40. During subsequent meetings with the Firm, however, Respondent admitted that he had recommended the XYZ investment to Customer B and had also personally invested in the private placement.

### **DECISION**

The Hearing Officer found Respondent guilty as set forth above.

---

<sup>3</sup> As a result of the bankruptcy filing which stayed the arbitration claim against him, Respondent did not participate in the Customer A arbitration hearing.

**PENALTY**

In view of the above findings, the Hearing Officer imposed the penalty of a censure and a permanent 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