NYSE AMEX LLC

<u>HEARING BOARD DECISION 09-AMEX-8</u> **May 14, 2009**
STEVEN J. MARTINO
FORMER FLOOR BROKER

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Violated Amex Rule 950(c) – Commentary .03 and Article V, Section 4(h) of Amex Constitution in that he misrepresented order by misleading crowd to believe that same firm was on both sides of trade; violated Amex Rule 950(d) – Commentary .03 and Article V, Section 4(h) of Amex Constitution in that he misrepresented order by informing trading crowd that order was for unsolicited firm account – Consent to censure and ninety-day bar.

Appearances:

For the Division of Enforcement
David Rosenstein, Esq.
Michael Chasen, Esq.

For Respondent
Steven J. Martino, *pro se*

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A Hearing Officer on behalf of the NYSE Amex LLC ("NYSE Amex" or the "Exchange") considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.'s Division of Enforcement ("Enforcement") and Steven J. Martino ("Respondent"), a former broker dealer with D&D Securities, Inc., a former NYSE Amex[1] member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

I. Violated Amex Rule 950(c) – Commentary .03 and Article V, Section 4(h) of the Amex Constitution in that he misrepresented an order by misleading the crowd to believe that the same firm was on both sides of the trade.

II. Violated Amex Rule 950(d) – Commentary .03 and Article V, Section 4(h) of the

[1] On or about October 1, 2008, the American Stock Exchange ("Amex") was acquired by NYSE Euronext and was renamed NYSE Amex LLC. Thus, while the rules of NYSE Amex govern the procedural aspects of this Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of "Amex Rules" and the "Amex Constitution".

Amex Constitution in that he misrepresented an order by informing the trading crowd that the order was for an unsolicited firm account.

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. During all relevant periods herein, Martino was a floor broker at D&D Securities, Inc. ("D&D Securities") (CRD# 31470), a former member organization and former registered broker-dealer at the American Stock Exchange ("Amex"). Martino has not been working in the securities industry since terminating his employment with D&D Securities in March 2008.

Overview

2. On April 11, 2003, Martino failed to properly represent an order to the AAA[2] option crowd, in violation of Amex Rule 950(c) – Commentary .03, Amex Rule 950(d) – Commentary .03, and Article V, Section 4(h) of the Amex Constitution.

Failure to Properly Represent an Order

3. During all relevant periods herein, Amex Rule 950(c) – Commentary .03 provided that orders of broker/dealers must be appropriately identified.

4. During all relevant periods herein, Amex Rule 950(d) – Commentary .03 provided that upon entering a trading crowd to execute a solicited transaction, the member or member organization with the solicited order must announce to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party. The member must announce that he is crossing the order by stating the quantity and price after giving all other market participants a reasonable opportunity to accept the bid or offer. All orders subject to solicitation pursuant to this Commentary, and all tickets reflecting orders solicited pursuant to this Commentary, must be marked as specified by the Exchange.

5. During all relevant periods herein, Article V, Section 4(h) of the Amex Constitution provides that a member, member organization or approved person adjudged to have failed to adhere to just and equitable principles of trade may be suspended or expelled from Exchange membership for inequitable conduct.

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[*] Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 9 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.

[2] Generic identifier used to identify option.

6. On April 11, 2003, Floor Broker A[3] contacted Trading Analysis and reported a possible order misrepresentation by Martino. Floor Broker A claimed that Martino told the crowd that he had 10,000 AAA calls to sell and that he needed to facilitate 4,000 contracts on the buy side as an unsolicited firm order for Firm B[4]. Floor Broker A was later informed by his wire clerk that Firm B does not usually execute firm business.

7. Subsequently, the crowd asked Martino to verify that the 4,000 contracts on the buy side was an unsolicited Firm B order, and Martino informed the crowd that he had to cut back to 3,000 contracts because 1,000 contracts should have been represented by Martino as a solicited Firm account.

8. Trading Analysis Staff ("Staff") determined that in fact the entire 4,000 contracts were solicited and that a different Firm was on the buy side of the trade. Staff also determined that the buy side was misrepresented as a Firm B account, when it should have been represented as a Firm C account.

9. On April 15, 2003, Staff contacted Martino concerning the alleged order misrepresentation. Staff questioned Martino about the 4,000 contracts on the buy side and Martino admitted to the Staff that he misrepresented the entire 4,000 contract order by misleading the crowd to believe that the entire buy side was an unsolicited Firm order and that the same firm was on both sides of the trade.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondent committed the offenses 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 ninety-day 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

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[3] Generic identifier used to identify floor broker.

[4] Generic identifier used to identify firm.