

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 09-NYSE-04

March 10, 2009

RICHARD FOERSTER REYNOLDS
FORMER REGISTERED REPRESENTATIVE

* * *

Violated NYSE Rule 346(b) by engaging in outside business activity without making written request and receiving prior written consent of member firm employer; violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade by: soliciting firm customers and others to invest in private securities transaction away from firm without approval of member firm employer, making misstatements and/or misrepresentations to firm customers, and making misstatements to member firm employer in order to conceal outside business activities; caused a violation of NYSE Rule 472(a)(1) by sending correspondence to one or more customers and/or members of public from office of member-firm employer without prior supervisory review and approval. – Consent to censure and five-month bar.

Appearances:

For the Division of Enforcement
Susan Light, Esq.
Richard Chin, Esq.
Donald Sullivan, Esq.
Josefina Martinez, Esq.

For Respondent
Martin H. Kaplan, Esq.
Robert L. Herskovits, Esq.
Robyn Roditi, 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 Richard Foerster Reynolds (“Respondent”), a former registered representative with Janney Montgomery Scott, LLC, an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

- Janney Montgomery Scott, LLC April 2001 – July 2005
 - Non Member Firm D July 2005 – present
2. In April 2001, Reynolds joined Janney Montgomery Scott, LLC (“Janney” or the “Firm”), where he worked as an RR until his discharge in July 2005. During his tenure with the Firm, Reynolds worked at the Firm’s Melville, Long Island branch office.
 3. On or about July 29, 2005, the Firm filed with the NYSE a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) reporting that Reynolds’ employment had been terminated for failing to disclose and request approval for an outside business activity which occurred in 2001.
 4. By letter dated November 15, 2005, which he received, Enforcement notified Reynolds that it had commenced an investigation into, among other things, allegations that he engaged in an outside business activity in which he held an interest without the Firm’s knowledge or approval and solicited clients to invest in that outside business activity away from the Firm.
 5. On November 14, 2007 a Charge Memorandum alleging that Respondent engaged in violative conduct on these facts was filed with the Hearing Board and served upon the Respondent. On June 12, 2008, an Amended Charge Memorandum was filed with the Hearing Board and served upon the Respondent.**

OVERVIEW

6. As set forth below, from October 2001 through December 2001 (the “Relevant Period”), Reynolds engaged in outside business activities by soliciting individuals, including Firm customers, to participate in private securities transactions away from the Firm. Without the prior approval of his member firm employer, Reynolds also mailed to prospective customers sales literature related to the private securities transactions in Janney envelopes and attaching his Janney business card, thus misrepresenting that the private securities transactions were a Janney-sponsored product. Reynolds also submitted to his member-firm employer inaccurate statements which misstated his outside business activities.

ENGAGING IN OUTSIDE BUSINESS ACTIVITIES IN CONNECTION WITH PRIVATE SECURITIES TRANSACTIONS

7. NYSE Rule 346(b) prohibits any employee of a member organization from being engaged in any other business or employed or compensated by any other person

** Hearing Officer Note: With the acceptance of the Stipulation of Facts and Consent to Penalty, the Amended Charge Memorandum is dismissed.

without “making a written request and receiving the prior written consent of his member or member organization employer.”

8. NYSE Rule 476(a)(6) calls for the imposition of disciplinary sanctions if a member, member organization, allied member or person otherwise subject to the jurisdiction of the NYSE engages in conduct “inconsistent with just and equitable principles of trade.”
9. In or around October 2001, Reynolds invested \$50,000 of his own money in a private company called XYZ. This investment was made by purchasing \$50,000 worth of common stock from a XYZ shareholder. XYZ, a British company, was a retailer, importer and exporter of alcoholic beverages.
10. Thereafter, Reynolds solicited certain of his Firm customers to make an investment in XYZ. Reynolds also provided the names of other prospective investors to a third party associated with XYZ.
11. Reynolds called prospective investors, including his Firm customers, by telephone, discussed the merits of XYZ and advised customers that he had also invested in XYZ.
12. Reynolds did not inform prospective investors that Janney did not sponsor or recommend investments in XYZ.
13. Reynolds also sent prospective investors, including his customers, sales literature/kits concerning XYZ. In at least one instance, Reynolds forwarded a XYZ prospectus to a potential investor.
14. Subsequently, two of Reynolds’ Firm customers invested in XYZ.
15. Reynolds frequently communicated by e-mail and telephone with SW, a XYZ sales representative.
16. Reynolds had an expectation of receiving compensation for soliciting his Janney customers to invest in XYZ. On November 28, 2001, SW sent Reynolds an e-mail stating, “Rich, Can we work out how much I owe you from the [customer names] deals. If you give me your bank wire details I will send the money.” Reynolds’ sales assistant provided the wiring instruction to SW by e-mail later the same day. The e-mail provided account numbers and other pertinent information and stated, “Hey [SW]!! Here are the wiring instructions that you will need for Rich.” Reynolds did not receive any such compensation.
17. In early 2002, XYZ filed for receivership and the XYZ securities became worthless.
18. During the Relevant Period, Firm policy prohibited employees from being engaged in any other business; being employed, with or without compensation by any other person; or owning any stock or having, directly or indirectly, any financial interest in

any other organization engaged in any securities, financial or associated business without the prior written approval of the Branch Manager and an Executive Committee Member.

19. Reynolds did not submit a written request for approval and did not receive the prior consent of his member organization employer regarding his XYZ-related activities.
20. By the conduct described above, Reynolds violated NYSE Rules 346(b) and 476(a)(6).

UNAPPROVED CORRESPONDENCE

21. NYSE Rule 472(a)(1) states, in pertinent part, “Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public shall be approved in advance by a member, allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).”¹
22. Reynolds and/or his sales assistant at Reynolds’ direction placed XYZ sales literature into envelopes bearing the Firm’s name and attached a copy of Reynolds’ Janney business card. The envelopes were then addressed by Reynolds’ sales assistant, and mailed from the branch office as per Reynolds’ instructions.
23. During the Relevant Period, Firm policy held the Financial Consultant responsible for having branch managers review all outgoing correspondence including handwritten notes, facsimile (FAX) transmissions, e-mails, earnings reports and financial reports generated within the office before transmission.
24. Supervisory approval was not obtained before some or all of the XYZ sales literature was mailed.
25. By the conduct described above, Reynolds caused a violation of NYSE Rule 472(a)(1).

MISREPRESENTATIONS AND MISSTATEMENTS

26. By directing the mailing of XYZ sales literature to prospective investors, including Firm customers, in envelopes bearing the Firm’s name and attaching his Janney business card to the materials, Reynolds implicitly represented that Janney was involved with or otherwise endorsed the XYZ solicitation.
27. This implied representation was not true.

¹ This version of NYSE Rule 472(a) was in effect from December 31, 1997 through July 9, 2002. It has been amended several times since with the last amendment on February 25, 2009.

28. In December 2001, staff of Reynolds' Janney branch office discovered a letter to Reynolds containing a certificate of shares for a Janney customer's investment in XYZ and subsequently notified the Firm's Compliance Department.
29. At the direction of Firm counsel, the BOM instructed Reynolds to write a memorandum to Firm counsel, describing (i) Reynolds' own investment in XYZ; (ii) whether Reynolds solicited clients to invest in XYZ and if so, how many and who invested in XYZ and (iii) whether Reynolds received any compensation for introducing customers to XYZ.
30. In response, Reynolds submitted to the Firm a memorandum dated December 20, 2001 stating, "After speaking with [customer name] and he informed me that he been involved with [XYZ] for years. I had no knowledge of his purchase (or any other purchases) nor did I recommend that he buy the stock. I have no business (and or relationship) with this company Last and foremost, I do not recommend clients to buy any sort of private placements that are outside the firm."
31. The assertions in the above-referenced memorandum were misstatements.
32. During the Relevant Period, Firm procedures required Reynolds to complete and submit to his BOM an "Acknowledgment and Disclosure Statement" ("ADS") requesting updated information regarding, among other things, outside business activities.
33. On or about January 29, 2002, Reynolds completed, signed and submitted to the Firm a 2002 ADS (the "Reynolds 2002 ADS").
34. In the Reynolds 2002 ADS, Reynolds indicated that he did not have any outside business affiliations.
35. At the time that Reynolds submitted the Reynolds 2002 ADS to the Firm, he was actively engaged in activities related to XYZ.
36. Reynolds' assertion in the Reynolds 2002 ADS was a misstatement.
37. The conduct described above violated NYSE Rule 476(a)(6).

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 five-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