

NEW YORK STOCK EXCHANGE LLC

**HEARING BOARD DECISION 09-NYSE-13**

April 8, 2009

STEVEN M. PICKERING  
FORMER SPECIALIST

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**Violated NYSE Rule 54 by permitting individuals who were not members of NYSE to consummate transactions or otherwise transact business in certain securities on Floor of the NYSE; violated NYSE Rule 104 in that certain transactions effected for the Firm's dealer account, for which Respondent was the responsible specialist, were not reasonably necessary to maintain a fair and orderly market, and as a result he failed to effectively represent and execute agency orders entrusted to him – Consent to censure and a one-year Floor bar.**

**Appearances:**

For the Division of Enforcement  
Steven Brostoff, Esq.  
Kwame Anthony, Esq.  
Virginia Harnisch, Esq.  
Steven Tanner, Esq.

For Respondent  
Nina Beattie, 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 Steven M. Pickering (“Respondent”), a former specialist with Spear, Leeds & Kellogg Specialists LLC, an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

- I. Violated NYSE Rule 54 in that he permitted individuals who were not members of the NYSE to consummate transactions or otherwise transact business in certain securities on the Floor of the NYSE.

- II. Violated NYSE Rule 104 in that certain transactions effected for the Firm's dealer account, for which Respondent was the responsible specialist, were not reasonably necessary to maintain a fair and orderly market, and as a result he failed to effectively represent and execute agency orders entrusted to him

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. Respondent was born in [REDACTED]. He entered the securities industry in 1975, on the Floor of the New York Stock Exchange, Inc. (the "NYSE"), as a page and in 1976 became a reporter. Specialist firm Benjamin Jacobson & Sons LLC ("Jacobson") hired Respondent as a clerk in 1982. He continued as a clerk until April 1986 when he became a specialist and a member of the NYSE.
2. When specialist firm Spear, Leeds & Kellogg Specialists LLC ("SLK") acquired Jacobson (collectively to be referred to as the "Firm") in March 2001, Respondent continued as a specialist and member of the NYSE.
3. At all relevant times the Firm was a member organization engaged in business as a registered specialist on the Floor of the NYSE.
4. During the period January 2000 through June 2003 (the "Relevant Period"), Respondent was the registered specialist in ABC.
5. In January 2006, Respondent's employment with SLK was terminated and he is not currently employed in the securities industry.
6. By letter dated March 23, 2006, Enforcement notified Respondent that it was investigating his activities as a specialist in ABC.
7. On or about December 20, 2006, Enforcement issued a charge memorandum (the "Charge Memorandum") against Respondent. In the Charge Memorandum, Enforcement alleged that on certain occasions during the Relevant Period, executable buy and sell system orders (*i.e.*, DOT orders<sup>1</sup>) that became visible on the Display

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\* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 21 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.

<sup>1</sup> Orders transmitted through NYSE's Super Designated Order Turnaround System, Super DOT, which are known as DOT orders, appeared on Respondent's computer screen at his post on the Floor (the "Display Book"). The Display Book is an electronic workstation provided by the

Book following a freeze<sup>2</sup> were not always crossed or paired-off, and the Firm's dealer account was interpositioned between such orders, buying from (or selling to) a customer on one side of the market and then selling to (or buying from) a customer on the other side of the market ("Interpositioning" transactions). Enforcement also alleged that on certain occasions during the Relevant Period, the dealer account traded ahead of executable DOT orders, which were executed at an inferior price than the price received for the dealer account ("Trading Ahead" transactions).<sup>3</sup>

8. On or about March 2, 2007, Respondent filed an Answer to the Charge Memorandum.

### **Summary of Violative Conduct**

9. As set forth below, during the Relevant Period, Respondent improperly permitted his clerks to consummate certain transactions in his specialty securities. In addition, on certain occasions Respondent, as the specialist responsible for the dealer account, violated his agency obligations as a specialist to match executable customer orders at the best possible price. The public customer orders were transmitted to the Floor of the NYSE electronically using Super DOT. Instead of pairing buy and sell DOT orders, the Firm's dealer account was "interpositioned" between those orders, or the dealer account "traded ahead" of those orders, on certain occasions during the Relevant Period as described below.

### **The General Obligations and Role of Specialists**

10. Specialists are responsible for maintaining a fair and orderly market in the stocks assigned to them. Specialists have a general duty to cross or pair-off executable public customer or "agency" buy and sell system orders at the best possible price, and a duty not to fill customer orders through trades from their firm's own account (the "dealer account") when those customer orders could be matched with other customer orders.
11. The specialist's obligation to make purchases or sales of securities for their firm's dealer account only when necessary to maintain a fair and orderly market is referred to as a specialist's "negative obligation."

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NYSE to specialist firms on the trading Floor for the use of its specialists at their post panels, operated by a customized keyboard.

<sup>2</sup> During the trading day, the specialist can cause the Display Book to be "frozen" in a particular security. When the Display Book is frozen, new DOT Orders in that security cannot be seen on the Display Book, although they continue to queue in the system in Order Time priority. When the Display Book is "unfrozen," DOT Orders that queued during the freeze are immediately viewable on the Display Book.

<sup>3</sup> All of the trades that are the subject of this Stipulation were included within the trades covered by the orders Spear, Leeds & Kellogg Specialists LLC, 04-53 (NYSE Hearing Board Mar. 29, 2004), and Spear, Leeds & Kellogg Specialists LLC, SEC Release No. 34-49501 (Mar. 30, 2004).

12. The responsibilities of specialists are set forth in the NYSE Rules and the NYSE Floor Official Manual. As set forth in the Floor Official Manual, although a specialist is required to trade from his or her dealer account to maintain price continuity with reasonable depth (the specialist's "affirmative obligation"), all of the specialist's purchases and sales must meet the test of reasonable necessity.

### **NYSE Rule Violations**

#### **(i) NYSE Rule 54**

13. NYSE Rule 54 provides that "[o]nly members shall be permitted to make or accept bids and offers, consummate transactions or otherwise transact business on the Floor in any security admitted to dealings on the Exchange."
14. During the Relevant Period, Respondent gave certain of his specialist clerks who operated the Display Book keyboard authority to effect trades for the dealer account on the Display Book by permitting these specialist clerks to execute trades within certain price and volume parameters that Respondent would establish, without Respondent consummating each trade as the specialist.
15. By permitting specialist clerks who were not members of the NYSE to consummate transactions or otherwise transact business in certain securities on the Floor of the NYSE, Respondent violated NYSE Rule 54.

#### **(ii) NYSE Rule 104**

16. NYSE Rule 104 states, in part, that "[n]o specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he [or] his member organization ... is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market...."
17. NYSE Rule 104.10(3), which sets forth the specialist's "negative obligation," further states that transactions by a specialist for the dealer account "must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated. Transactions not part of such a course of dealings . . . are not to be effected."
18. During the Relevant Period, there were Interpositioning transactions on certain occasions in ABC. For example, on November 13, 2002 after the Display Book was unfrozen at 11:31:33, one DOT market buy order in ABC stock for 5,000 shares and four DOT market sell orders totaling 700 shares and one DOT limit sell order for 1,100 shares with a limit price of \$6.26 appeared on the Display Book for the first time. Instead of pairing those orders, the specialist bought 1,800 shares at a price of \$6.26 for his Firm's dealer account and then in a separate transaction sold 3,400

shares from his Firm's dealer account to the buy orders at a price of \$6.34, generating a \$144 profit for the dealer account on the 1,800 shares ( $$.08 \times 1,800 \text{ shares} = \$144$ ).

19. During the Relevant Period, there were Trading Ahead transactions on certain occasions in ABC. For example, on October 17, 2002 at 11:01:55 a DOT market order to sell 5,000 shares became viewable on the Display Book. Instead of that order being paired with a DOT market order to buy 9,700 shares, the dealer account sold 8,400 shares to the DOT market order to buy at a price of \$4.69. In a subsequent transaction, the DOT market order to sell 5,000 shares that was traded ahead of was executed at a price of \$4.63. As a result of these transactions, the 5,000 share sell order traded ahead of was disadvantaged by the amount of \$300 ( $5,000 \text{ shares} \times \$0.06 = \$300$ ).
20. The Interpositioning and Trading Ahead transactions for the dealer account in ABC during the Relevant Period were not reasonably necessary to maintain a fair and orderly market. This resulted in Respondent failing to effectively represent and execute agency orders entrusted to the Firm. Therefore, as the specialist responsible for the dealer account, Respondent violated NYSE Rule 104.

#### **Additional Factors Considered**

21. In arriving at the agreed upon penalty in this matter, Enforcement considered the unique facts and circumstances surrounding this case.

#### **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 one-year bar from employment in any capacity on the Floor of the NYSE.

For the Hearing Board

Edward W. Morris, Jr. - Hearing Officer