

Ms. Nancy Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549-9303

September 18, 2006

Regarding Release No. 34-54154; file No S7-12-06  
Subject: Reg. SHO Comments on Enforcement

I am a long-term investor in a heavily naked shorted stock NFI, and a signer of the NCANS letter Reg SHO comment letter describing our recommended revisions. I have one additional item I believe the SEC needs to implement which the NCANS letter falls short of mentioning.

Myself and many others over the past four years, have sent in numerous letters and emails to the SEC, DOJ, NYSE and NASD pointing out what we believe to be market manipulations involving the NFI and OSTK stocks. We have each received reply letters saying those items were investigated and there were no infractions involved. Yet a year or two later we find out the SEC possessed FTD information on both of these stocks which demonstrated there were no less than 2- 12% FTD daily positions in the NFI Stock. The NFI infractions were 2400 multiples of Reg SHO maximum trigger point, so high they should have automatically justified SEC "enforcement" without our letters. Twenty months into this regulation we have yet to see the first SEC Reg SHO violation enforcement, yet the NYSE has evidenced many violations.

It has come to the attention of many outside the SEC that the NYSE has fined or penalized a large number of firms that have either violated the current Reg. SHO directly, or for filing fraudulent blue sheets, or found them not performing record keeping that could have shown they were illegally shorting companies that were on the Reg. SHO list.

Given that the NYSE has collected the needed evidence on these firms and/or some specific individuals violating Re SHO I find it particularly concerning that there has not been even one single action taken by the SEC to punish them using these NYSE evidence packages.

While I find the NYSE efforts useful, the token fines and/or penalties that have been imposed are laughably too low. They do not even amount to as much as the transaction fees buyers paid to be naked shorted these shares in those illegal transactions. There isn't sufficient punishment in the NYSE fines/penalties; they are not even coming within the same order of magnitude of the gain these firms received for violating this rule.

The Diawa case fines amount to about 4 cents/share naked shorted have been handed out by the NYSE. That same firm charged probably no less than twice that for a transaction fee to that naked shorted buyer. The financial harm to those buyers and the gain for the seller continues to be unrecovered and unrefunded.

JPM, was fined \$0.4MM for 52 MM short sales, booked as long sales. A fine per share of what, 0.8 cents per share sold. They had to have charged more than 0.8 ct/s just for that sale! Then violated the down tick rule to gain more shorting those stocks. Now that 0.8 ct/s whopping size fine is going to put a dead stop to naked shorting. By the size of that fine you can be sure the NYSE never determined how much JPM made on those shares while they remained short. Nor did the NYSE make sure the penalty was multiple times JPM's gain on this action. Or better yet pulled somebody's license for 52 million il-booked short sales! And nobody has yet made sure JPM compensated the financially harmed buyers?

There aren't sufficient penalties in that fine to prevent firms from doing this over and over again, in fact in JPM's case the practice remains profitable even after paying their fine. Reg SHO in whatever revised form, whatever results from these comments, will continue to be violated until these crimes are enforced and punitive fines handed out and paid.

In addition those shares recorded incorrectly that went to the brokers books as long sales, are a significantly large number of re-loanable shares, to either the DTCC or legal shorts. Double bang for their fine, with no penalty from the NYSE what so ever.

There are now 25 firms (see the appended violation citations), containing the who's who of the brokerage industry grossly inadequately fined by the NYSE in 2005-2006. Not in one of these has the SEC stepped in to deliver a fine so punitive these offenders could not consider it profitable to continue to naked short or incorrectly keep records so illegal naked shorting is hidden within the company accounts. Citations for these 25 NYSE fined companies were obtained from: <http://www.nyse.com/DiscAxn/discAxnIndex.html> are attached for your consideration and reference, with the text citing the above mentions shown in bolded text.

These citations name 25 firms fined by the NYSE for shorting and Reg SHO related violations; highest definable fines was 4 cts/share, with JPM's being the lowest at 0.8 cts/share. I would think JPM thought their fine was a bargain from heaven!

Also understand, these short sales they have been ill-recording as other than short sales, makes them a long sale or purchase probably ex-clearing, which means there was a companion purchase within that firm's accounts. Recorded incorrectly to their books as long sales, these are a significantly large number of re-loanable shares, to either the DTCC or legal shorts. These are short sales in stocks they helped drop in price, those same stocks needed more borrow to further the shorts objective. Some of these transactions were not recorded as SOLD but as shares BOUGHT, or LONG rather than SHORT, so they became eligible for reloaning these errantly recorded shares. Neat trick double bang, for a miniscule fine from the NYSE.

Borrow fees range between what 3% to as high as 22% on an average share price of say \$30/s these violators gain more on the avoided borrow fee, than they were alone fined, and they harvested the shorted gain on top of that!

There is an obscene lack of punishment by the SEC, and there is no way this naked shorting is going to be stopped without punitive punishment levels, the fines have to be

many times the potential gain, and some security licenses need to get pulled for the folks who signed for these control systems and those fraudulently prepared blue slips!

Why are these firms allowed to be fined far less than they gained, and where are the SEC actions upon any of them? How can Chairman Cox make the absurd enforcement statements I find in his 30th Annual Southwest Regional Enforcement Conference speech? In true facts the SEC has YET to punish any firm for violating Reg SHO, despite the NYSE publicly citing 25 evidences of it happening.

I read Chairman Cox's 30th Annual Southwest Regional Enforcement Conference speech presented Sept 14. <http://www.sec.gov/news/speech/2006/spch091406cc.htm>

I find these words and phrases most interesting of all:

"The SEC's mission is to protect investors, to ensure fair and orderly markets, and to promote capital formation. .... Fair and orderly markets, in turn, have lower transaction costs, which promotes capital formation. ....

So we should all take pride in knowing that tough, predictable enforcement is not only an essential aspect of investor protection, but also an important contributor to our nation's economic health. And by collaborating in our daily efforts — and taking advantage of opportunities such as this conference — we can make our mutual efforts even more effective, and give America's investors even more protection for their hard earned money.

.....Knowing that you're doing everything you can to protect America's savings and investment has to make you feel good about the job you do.

.....The coming years are going to be a time of continuing aggressive enforcement — because the health and prosperity of our markets depends on it.

**Hearing Chairman Cox claim later in this speech** ".....And you all may have heard of our most recent demarche in the area of cooperation: the Senior Summit we held in Washington on July 17. That brought together representatives and leaders from NASAA, the NASD, NYSE Regulation, the AARP and the California Department of Corporations."

**So how does Chairmen Cox explain the SEC refusing to participate in last November's NASAA conference on Naked Shorting and how to fix this problem?**

In reflection I dare say Chairmen Cox has spent more SEC manhours writing the bravado in his 30th Annual Southwest Regional Enforcement Conference speech, practicing it, and demonstrated more gall delivering this speech than all the rest of the SEC has spent enforcing Reg SHO violations.

Please enforce punitive penalties on the 25 current violations, and put specific rules for punitive fines and penalties that are multiples times the gains in any revisions to the Reg SHO, then punish those violating the old and new rules.

Donald Miller

## **Member Firm Disciplined for Violation of SEC Rule on Short Sales, NYSE Order Rules, Books and Records and Supervisory Violations**

J.P. Morgan Securities Inc.

Hearing Board Decision: 06-139

13 Sep 2006

JPM, is fined \$0.4MM for 52 MM short sales, booked as long sales. A fine per share of what, 0.8 cents per share sold. They had to have charged 10 times or more than for that sales transaction fee alone!

Information source citation <http://www.nyse.com/pdfs/06-139.pdf>

## **Member Firm Disciplined for Violation of SEC Rule on Short Sales, NYSE Order Rules, Books and Records and Supervisory Violations**

**J.P. Morgan Securities Inc.**

Hearing Board Decision: 06-139

13 Sep 2006

Summary Citation taken from: <http://www.nyse.com/pdfs/06-139.pdf>

### Case Note

Violated Rule 10a-1 of Securities Exchange Act of 1934 and NYSE Rules 440B(a), 440B.13, 440B.20 and 410A (a) by erroneously executing sell orders on minus tick for securities in which a short position was held, (b) by failing to accurately mark sell orders as either long, short, or short exempt, (c) by erroneously mismarking sell orders as short exempt, and (d) by submitting inaccurate trading information that caused certain short sales to be reported as long and certain long sales to be reported as short; violated Rule 200(f) of Regulation SHO under Securities Exchange Act of 1934 by utilizing independent trading unit aggregation to determine net position when it did not have adequate written plan of organization; violated Rule 200(g) of Regulation SHO by failing to ensure that all sell orders were properly marked as “long,” “short,” or “short exempt,” violated Rule 203(a) of Regulation SHO by effecting customer and/or proprietary sales pursuant to orders marked long when it did not know or have reasonable grounds to believe (a) that it would be able to deliver security on date delivery was due, and (b) that its customers were not misrepresenting short sales as long sales; violated Rule 203(b)(1) of Regulation SHO by effecting short sale orders without having reasonable grounds to believe that securities could be borrowed so that they could be delivered on dates delivery was due; violated Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-3 thereunder and NYSE Rules 123 and 440 in that firm’s books and records did not accurately capture trading data resulting from short sale orders and the firm failed to report trades to NYSE in timely fashion and retain records of error transactions; violated NYSE Rule 123C by failing to comply with requirements governing entry and cancellation of Market-on-Close and Limit-on-Close orders; violated NYSE Rule 476(a)(11) by failing to timely and accurately file Daily Program Trading Reports; violated NYSE Rule 342 by failing to establish and maintain appropriate procedures for supervision and control, including separate system of follow-up and review, for compliance with Regulation SHO, Rule 10a-1 under Securities Exchange Act of 1934, NYSE Rules 440B et seq., and NYSE Rules relating to entry and cancellation of Market-On-Close and Limit-On-Close orders – Consent to censure and \$400,000 fine.

### Case Summary

J.P. Morgan Securities Inc. of New York, New York, a member firm, consented without admitting or denying guilt to findings of operational deficiencies concerning Regulation SHO, violating NYSE order rules, and books and records and supervisory violations. An NYSE hearing officer found that from 2001 to 2005 the firm failed to comply with NYSE Rules and, for part of this period, the requirements of Regulation SHO as a result of numerous deficiencies in the firm's technological, operational, compliance and supervisory systems and procedures.

Specifically, the firm had a number of programming and other systems errors, which caused the firm to: incorrectly designate transactions; improperly enter orders, thereby failing to adhere to the "up tick" rule on numerous occasions over a nearly five-year period; fail to report trades as short sales; and to have inconsistencies regarding the computation of positions arising out of various aggregation units.

After January 3, 2005, the date of compliance with Reg. SHO, in addition to NYSE Rules, these errors also constituted a violation of the provisions of that regulation.

For example, from July 2003 through January 2004, the firm had a system programming error involving several of the firm's equity desks that caused approximately 63,000 short sales orders, with an aggregate volume of over 52 million shares, to be improperly entered as long sales orders through the NYSE's DOT system. The trades were not properly designated as short, the up-tick rule was not followed, and the trades were not reported as short sales to the NYSE.

In addition, because of inconsistencies in the manner in which the firm's systems defined aggregation units, traders were mapped to additional desks beyond the traders' particular aggregation units. These inconsistencies had the potential to cause inaccurate position calculations and possible errors in marking a sale as long or short. The firm also violated NYSE requirements governing entry and cancellation of Market "At-The-Close" and Limit "At-The-Close" orders because of technological deficiencies and trader errors; and failed to submit complete and accurate program trading data on the firm's Daily Program Trade Report.

The NYSE hearing officer noted that the firm had provided substantial and meaningful cooperation with the Division of Enforcement's investigation and self-reported nearly all of the initial violations. In addition, the firm hired an outside consulting firm to conduct an audit of the trade reporting systems and procedures used by the firm's equity desks, which audit revealed additional violations. The firm has also made significant changes to its systems and procedures, including the creation of a new compliance technology department.

The NYSE imposed the penalty of a censure and a \$400,000 fine. J.P. Morgan Securities Inc. consented to the penalty.

## NYSE Regulation Announces Settlements with 20 Firms for Systemic Operational Failures and Supervisory Violations

Information source citation <http://www.nyse.com/pdfs/06-139.pdf>  
<http://www.nyse.com/Frameset.html?nyserref=http%3A//www.nyse.com/DiscAxn/discAxnIndex.html&displayPage=/press/1138361407523.html#05-142>

Firms Will Pay \$5.85 million for Inaccurate “Blue Sheet” Submissions; Two Additional Firms Charged  
NEW YORK, January 31, 2006 – NYSE Regulation (“NYSE”) announced today it has censured and fined 18 Member Firms and two former Member Firms a total of \$5.85 million for failing to submit accurate electronic blue sheets containing trading information requested by the NYSE and other regulators, and for failing to establish and maintain appropriate systems and procedures for the supervision and control of this reporting requirement. In addition, the Member Firms agreed to validate their trade reporting processes and confirm the validations to the NYSE.

“Blue sheets are an essential component of NYSE investigations into insider trading, market manipulation and other potential violations. Firms must get their operations in order, then periodically test their internal systems to be sure this vital information is accurate,” said Susan L. Merrill, chief of enforcement, NYSE Regulation. “We cannot allow the failure of firms to respond accurately and completely to regulatory requests for information to impede our investigations.”

.....  
**These actions concern submissions by the Firms of inaccurate electronic blue sheets in violation of the requirements of NYSE Rules 410(A) and 401, and the failure of the Firms to properly supervise the preparation of their blue sheet submissions in violation of NYSE Rule 342. The Firms also failed to establish a separate system of follow-up and review to reasonably ensure compliance with NYSE rules relating to the preparation and submission of electronic blue sheets.**

The inaccurate blue sheets were submitted over a significant period of time and resulted from deficiencies that were systemic in nature. **Inaccuracies included the reporting of short equity sales as long sales.** Additionally, some Firms continued to have ongoing deficiencies in blue sheet reporting even though NYSE Regulation alerted them to these problems.

As referenced in the Hearing Panel

The settling Firms also agreed to conduct a validation of all required blue sheet data elements in accordance with the Intermarket Surveillance Group (“ISG”) Regulatory Memorandum ISG 2005-01, issued September 7, 2005 (see also NYSE Information Memo 05-64 ). Issued by the self-regulatory organizations (including the NYSE) who are members of the ISG, this Memorandum requires Firms to validate all required electronic blue sheet data elements by March 31, 2006 to ensure that electronic blue sheet transmissions are consistent with current standards and accurately reflect Firms’ books and records.

NYSE Regulation worked cooperatively with the NASD Amex Regulation Division, on behalf of the American Stock Exchange, in the action against Merrill Lynch, Pierce, Fenner & Smith Incorporated. The American Stock Exchange will receive one-half of the \$500,000 fine in connection with its own settlement with this Firm.

In settling these charges brought by NYSE Regulation, the Firms neither admitted nor denied the charges.

Hyperlinks to the cases against these firms and the fines:

1	<a href="#">Calyon Securities (USA) Inc. of New York, New York</a>	\$500,000
2	<a href="#">Merrill Lynch, Pierce, Fenner &amp; Smith Incorporated of New York, New York</a>	\$500,000
3	<a href="#">Neuberger Berman, LLC of New York, New York</a>	\$500,000
4	<a href="#">NF Clearing, Inc. f/k/a Fiserv Securities, Inc. of New York, New York</a>	\$500,000
5	<a href="#">UBS Securities LLC of Stamford, Connecticut</a>	\$500,000
6	<a href="#">Wachovia Capital Markets LLC of Charlotte, North Carolina</a>	\$500,000
7	<a href="#">Charles Schwab &amp; Co., Inc. of San Francisco, California</a>	\$300,000

8 National Financial Services LLC of New York, New York	\$300,000
9 Pershing LLC of Jersey City, New Jersey	\$300,000
10 Piper Jaffray & Co. of Minneapolis, Minnesota	\$300,000
11 Southwest Securities, Inc. of Dallas, Texas	\$300,000
12 Credit Suisse First Boston of New York, New York	\$150,000
13 E*Trade Clearing LLC of Arlington, Virginia	\$150,000
14 Goldman, Sachs & Co. of New York, New York	\$150,000
15 LaBranche Financial Services, Inc. of New York, New York	\$150,000
16 Lazard Capital Markets LLC of New York, New York	\$150,000
17 Lehman Brothers Inc. of New York, New York	\$150,000
18 Preferred Trade Inc. of San Francisco, California	\$150,000
19 Sanford C. Bernstein & Co., LLC of New York, New York	\$150,000
20 SunGard Global Execution Services LLC of New York, New York	\$150,000
	<u>\$5,850,000</u>

Firm Fined for Failure to Supervise Suspicious Accounts, Improper Communications During a Road Show and Trading Violations  
Bear, Stearns & Co. Inc.  
Hearing Board Decision: 05-163  
09 Feb 2006

Case Summary Citation source <http://www.nyse.com/pdfs/05-163.pdf>

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Case Note

Violated NYSE Rule 80A by permitting agency index arbitrage basket orders to be executed without required "plus tick" notation when collar was in place; violated Rules 17a-3 and 17a-4 under Securities Exchange Act of 1934 and NYSE Rule 440 by having books and records that did not reflect index arbitrage trading with specificity and failed to timely report index arbitrage trades; violated NYSE Rule 440B and Rule 10a-1 under Securities Exchange Act of 1934 by transmitting index arbitrage basket in which certain issues violated short sale rule; **violated NYSE Rule 342 by failing to have adequate systems and written procedures regarding index arbitrage trading, trading collars, short sales and derivatives trading, to adequately supervise activities in customer's accounts**, and to detect and prevent research analyst's videotaped appearance on Internet road show, sales literature, or similar communications from being made available to public without advance supervisory approval; violated NYSE Rule 405 by failing to: (a) use due diligence to learn essential facts relative to every customer and every order; and (b) diligently supervise all accounts handled by registered representative; violated Exchange Rule 472 by making available, to customers or public, sales literature or similar type of communications without prior supervisory approval and by utilizing communication in connection with investment banking transaction that was not fair and balanced – Consent to censure and \$1.5 million fine.

Member Firm Disciplined for Regulation SHO Violations  
Credit Suisse Securities (USA) LLC  
Hearing Board Decision: 06-112  
24 Jul 2006

Summary citation source <http://www.nyse.com/pdfs/06-112.pdf>

Case Note

**Violated Rule 203(b)(1) of Regulation SHO by accepting short sale orders and effecting those orders without having borrowed securities or entered into bona-fide arrangements to borrow them or without having reasonable grounds to believe that securities could be borrowed so that they could be delivered on dates delivery was due;** violated Rule 203(a) of Regulation SHO by effecting sales pursuant to orders marked long when it did not know or have reasonable grounds to believe that it would be able to deliver security on date the delivery was due or that customers were not representing short sales as long sales; violated NYSE Rule 342 by failing to provide for appropriate procedures of supervision and control to ascertain that prior to effecting customer short sale orders it had borrowed securities, (a) **entered into bona-fide arrangements to borrow them, or had reasonable grounds to believe that securities could be borrowed so that they could be delivered on dates delivery was due and (b) when effecting customer sell orders marked long, it knew or had reasonable grounds to believe that (i) it would be able to deliver security on date delivery was due and (ii) short sales were not misrepresented as long sales** – Consent to censure and \$250,000 fine.

Former Member Firm Disciplined for Financial and Operational Deficiencies and Books and Records Violations  
Man Financial Inc., n/k/a Man Securities Inc.  
Hearing Board Decision: 05-162  
08 Feb 2006

Summary Citation from <http://www.nyse.com/pdfs/05-162.pdf>

Violated Section 15(c) of Securities Exchange Act of 1934 and Rule 15c3-3(e)(1) thereunder by creating overdraft in operating account and permitting deposits to be made for special reserve bank account for customers' exclusive benefit; violated Section 15(c) of Securities Exchange Act of 1934 and Rule 15c3-3(a)(1) thereunder by inaccurately coding non-customer accounts and proprietary accounts of introducing brokers; violated NYSE Rule 342 by failing to supervise Floor clerks and qualifying Floor broker member; violated Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-3(a)(11) thereunder and NYSE Rule 440 by failing to maintain an accurate customer trial balance; violated Section 17(a) of Securities Exchange Act of 1934 and Rule 17a-4(a)(5) thereunder and NYSE Rules 440 and 440.20 by failing to maintain formal reconciliations for intercompany accounts and affiliates' account balances; violated NYSE Rule 401 by failing to (a) identify beneficial owner of certain prime broker accounts, (b) ensure that prime brokers not managed by registered investment advisors were maintaining required minimum net equity, (c) have procedures to identify short sales in prime broker customer accounts, and (d) have procedures to determine whether securities were available prior to effecting short sales in prime broker customer accounts or that securities in question could be borrowed for delivery by settlement date; violated NYSE Rule 431(f)(8)(B) by employing improper formula to determine day-trading margin calls; violated NYSE Rule 132 by submitting inaccurate account type indicators – Consent to censure and \$100,000 fine.

#### Case Summary

Man Financial Inc., n/k/a Man Securities Inc. of Chicago, IL, a former Exchange member firm, consented without admitting or denying guilt to findings of financial and operational deficiencies and books and records violations.

During the year 2002, the firm permitted deposits for its special reserve bank account for the exclusive benefit of customers to be made by creating an overdraft in an operating account, inaccurately coded non-customer accounts and proprietary accounts of introducing brokers, failed to supervise its five Floor clerks and its qualifying Floor member, did not ensure that its customer trial balance was accurate, failed to maintain formal reconciliations and account balances for some of the firm's affiliates, **did not identify the beneficial owners of certain prime broker accounts, did not ensure that its prime broker accounts maintained the minimum net equity, failed to have procedures to determine whether securities were available prior to effecting short sales in its prime broker accounts or that the firm could borrow the securities for delivery by the settlement date, failed to have policies and procedures that allowed the firm to accurately calculate customers' day trading margin requirements and submitted inaccurate account type indicators.**

The NYSE imposed a penalty of a censure and a \$100,000 fine. The firm consented to the penalty.

Member Firm Disciplined for Regulation SHO Violations

Daiwa Securities America Inc.

Hearing Board Decision: 06-113

24 Jul 2006

Summary citation from <http://www.nyse.com/pdfs/06-128.pdf>

And the NYSE press release

<http://www.nyse.com/Frameset.html?nyseref=http%3A//www.nyse.com/DiscAxn/discAxnIndex.html&displayPage=/press/1153476520386.html#06-113>

Case Note

**Violated Rule 200(f) of Regulation SHO by utilizing independent trading unit aggregation to determine its net position when it did not have written plan of organization; violated Rule 200(g) of Regulation SHO by failing to mark certain sell orders as “long,” “short,” or “short exempt;” violated Rule 203(b)(1) of Regulation SHO by effecting short sales for its own account without having borrowed securities, or entered into bona-fide arrangements to borrow securities, or having reasonable grounds to believe that securities could be obtained for delivery when due and without having documented that it had borrowed security, or entered into bona-fide arrangements to borrow security, or had reasonable grounds to believe that securities could be obtained for delivery when due; violated NYSE Rule 342 by (a) failing to provide for appropriate procedures of supervision and control, and establish separate system of follow-up and review to determine that delegated authority and responsibility for compliance with Regulation SHO was being properly exercised, (b) failing to have adequate controls regarding manner in which it effected short sales for certain of its own accounts to prevent such trades from occurring without having (i) borrowed securities, or entered into bona-fide arrangements to borrow securities, or having reasonable grounds to believe that securities can be obtained for delivery when due, and (ii) documented that it had borrowed security, or entered into bona-fide arrangements to borrow security, or had reasonable grounds to believe that securities could be obtained for delivery when due; violated Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and NYSE Rule 440 by not properly marking sell orders as “long,” “short,” or “short exempt” – Consent to censure and \$400,000 fine.**

**From January 3 through April 15, 2005, one of the firm’s proprietary trading desks effected approximately 103,000 short sales without obtaining locates and the firm did not prevent it from doing so. In addition, another proprietary trading desk, which acted as the firm’s stock loan desk, failed to document compliance with the locate requirement; and the firm failed to mark certain proprietary orders “long”, “short” or “short exempt”.**

**The firm utilized independent trading unit aggregation to determine its net position prior to effecting a sell order without having a written plan of organization identifying each trading aggregation unit as required by Reg. SHO and therefore improperly calculated its net positions. The firm also failed to reasonably supervise its business activities because it did not have adequate**

**policies and procedures. The hearing board decision noted certain corrective measures taken by the firm. The NYSE imposed a censure and a \$400,000 fine. Daiwa Securities America Inc. consented to the penalty without admitting or denying the allegations.**

Member Firm Disciplined for Regulation SHO Violations  
Goldman Sachs Execution & Clearing, L.P.  
Hearing Board Decision: 06-128  
24 Jul 2006

Case Citation : <http://www.nyse.com/pdfs/06-128.pdf>

Case Note

Violated NYSE Rule 200(g) of Regulation SHO in that it failed to ensure that all sell orders were properly marked as "long," "short," or "short exempt"; violated Rule 203(a) of Regulation SHO in that it effected customer sell orders marked long when it did not know or have reasonable grounds to believe that it would be able to deliver the security on the date the delivery was due and that short sales were not misrepresented as long sales; violated Rule 203(b)(1) of Regulation SHO in that it accepted customer short sale orders and effected those orders without having reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery was due; violated Rule 203(b)(3) of Regulation SHO in that it failed to accurately account for its fails to deliver in threshold securities at registered clearing agencies by failing to aggregate its fails which occurred under separate clearing numbers and by inaccurately redesignating certain fails as one day old after a buy-in occurred in a security; violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and NYSE Rule 440 in that it did not accurately record the age of its fails in threshold securities at registered clearing agencies and did not properly mark proprietary sell orders as "long," "short," or "short exempt"; violated NYSE Rule 342 in that it failed to provide for appropriate procedures of supervision and control to ascertain that **(a) customer and proprietary sell orders were properly marked as "long," "short," or "short exempt," (b) it only effected customer sell orders marked long when it knew or had reasonable grounds to believe that it would be able to deliver the security on the date the delivery was due and short sales were not misrepresented as long sales, (c) when it accepted and effected short sale orders it had reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the dates delivery was due, (d) it accurately accounted for its fails to deliver in threshold securities at registered clearing agencies, and (e) it maintained accurate books and records with respect to the age of its fails in threshold securities at registered clearing agencies and with respect to marking proprietary sell orders as "long," "short," or "short exempt" – Consent to censure and \$350,000 fine.**