

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54434 / September 13, 2006

Admin. Proc. File No. 3-12151

In the Matter of the Application of

PENNMONT SECURITIES
c/o Lynanne B. Wescott, Esq.
The Wescott Law Firm, P.C.
239 S. Camac Street
Philadelphia, PA 19107

For Review of Disciplinary Action Taken by the
PHILADELPHIA STOCK EXCHANGE, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE - REVIEW OF DISCIPLINARY
PROCEEDINGS

Failure to Maintain Accurate Books and Records

Filing Inaccurate Financial Reports

Registered broker-dealer and member firm of national securities exchange failed to keep accurate books and records and filed inaccurate periodic financial reports with national securities exchange. Held, the exchange's findings of violations and the sanctions it imposed are sustained.

APPEARANCES:

Lynanne B. Wescott, of The Wescott Law Firm, P.C., for PennMont Securities.

Mark Schepps, for the Philadelphia Stock Exchange, Inc.

Appeal filed: January 18, 2006
Last brief received: May 15, 2006

I.

PennMont Securities ("PennMont"), a registered broker-dealer and member firm of the Philadelphia Stock Exchange, Inc. ("PHLX"), appeals from PHLX disciplinary action. In a December 2005 decision, PHLX found that PennMont had violated Section 17(a) of the Securities Exchange Act of 1934, 1/ Exchange Act Rules 17a-3 and 17a-5, 2/ and PHLX Rules 703 and 760. 3/ PHLX found that PennMont failed to keep accurate books and records, causing its August 2002 financial condition report to be inaccurate, 4/ when PennMont: (1) understated charges by \$301,729 by understating equity haircuts by \$257,749 and understating option haircuts by \$43,980; (2) understated a positive adjustment to net worth by \$10,807; and (3) overstated its net capital by \$290,922, or 4.38%. PHLX also found that PennMont failed to keep accurate books and records, causing PennMont's September 2002 FOCUS Report to be inaccurate, 5/ in that PennMont: (1) understated charges by \$21,357 by understating equity haircuts by \$21,468 and overstated options haircuts by \$111; (2) understated allowable assets by \$109 by understating the balance of a money market account; and (3) overstated its net capital by

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- 1/ 15 U.S.C. § 78q(a). Under Section 17(a) of the Exchange Act, every member of a national securities exchange, such as PennMont, is required to "make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title."
- 2/ 17 C.F.R. §§ 240.17a-3 and 17a-5. Rule 17a-3 mandates the particular records required to be made and kept current by member firms of national securities exchanges. Rule 17a-5 specifies the periodic unaudited financial reports, as well as annual reports, that registered broker-dealers must file with regulators.
- 3/ PHLX Rule 703 prescribes the record and reporting requirements of PHLX member firms and requires that PHLX member firms report their net capital position to PHLX on a monthly and quarterly basis. PHLX Rule 760 requires PHLX member firms to maintain such books and records as are required under the Exchange Act and the Rules thereunder.
- 4/ Under PHLX Rule 703, PennMont was required to file monthly financial condition reports, which included, among other things, a net capital calculation.
- 5/ Filing a FOCUS (or Financial and Operational Combined Uniform Single) Report, Form X-17A-5, fulfills the obligation, under Exchange Act Rule 17a-5, of PHLX member firms who are registered broker-dealers to report their financial condition to PHLX on a quarterly basis. FOCUS Reports, among other things, include a calculation of a firm's net capital.

\$21,248, or 0.30%. PHLX censured PennMont and fined the firm \$5,000. 6/ We base our findings on an independent review of the record.

II.

Since shortly after the firm's inception in 1981, PennMont has been a registered broker-dealer and member organization of PHLX. PennMont conducts its business as an equity specialist and a proprietary trader.

Before the events at issue here, regulators had criticized the accuracy of PennMont's records and reports. By letter dated January 12, 2001, PHLX's Examinations Department informed PennMont that the firm had improperly calculated its net capital in its August 2000 financial condition report and in its September 2000 FOCUS Report. PHLX staff concluded that PennMont had understated its net capital, by \$289,547 or 5.16% in the August 2000 financial condition report and by \$100,465 or 1.85% in the September 2000 FOCUS Report. In both reports, PHLX staff found that PennMont had miscalculated the firm's haircuts. The letter explained, "[T]he firm took 15% deduction of long and short for all stock, thereby overstating the haircuts on both the long stock positions and short stock positions . . ." 7/ By letter dated January 30, 2001, PennMont informed PHLX staff that it had adjusted its net capital calculations in accordance with PHLX's letter. On May 4, 2001, PHLX's Business Conduct Committee issued a letter of caution "warning [PennMont's General Partner] and [PennMont] that compliance with the above referenced violations and all the rules and regulations are necessary for future membership at [PHLX]."

By letter dated December 17, 2001, PHLX's Examinations Department informed PennMont that, as a result of another routine examination of PennMont, PHLX staff had determined that PennMont had violated Exchange Act Rules 17a-3 and 17a-5, and PHLX Rules 703 and 760, by improperly calculating its net capital in its FOCUS Report for the month ending June 29, 2001, and in its financial condition report for the month ending August 31, 2001. The PHLX staff stated that PennMont, by miscalculating both the firm's equity and options haircuts, had overstated its net capital, by \$352,973 or 5.47% in June 2001 and by \$236,184 or 3.36% in August 2001. PennMont responded by letter to PHLX's December 2001 letter, saying, "Per your request, PennMont Securities has noted the inaccuracies itemized in the [December 2001] letter. The firm's accountant has been directed to correct the net capital computations and to compute net capital with greater care in the future. He has been further directed to consult with the

6/ On March 16, 2006, we denied PennMont's request for a stay of the sanctions PHLX imposed, while this appeal was pending. PennMont Securities, Order Denying Stay (Mar. 16, 2006).

7/ PennMont responded to PHLX's January 2001 letter by requesting that PHLX provide PennMont with copies of its "arithmetic" used in the PHLX calculations. It appears that PHLX did not respond to this request.

Examinations Department in the event that any questions regarding net cap computations arise to avoid inaccuracies." On February 12, 2002, PHLX's Business Conduct Committee issued a second letter of caution to PennMont for these violations. In the letter, PHLX notified PennMont that ". . . repeat violations will be taken into consideration in determining any future matter."

Subsequently, the staff of our Philadelphia District Office conducted an examination of PennMont. By letter dated August 9, 2002, our staff informed PennMont that it had found violations of Exchange Act Rules 17a-3 and 17a-5, as well as PHLX Rules 703 and 760. Our staff concluded that PennMont had overstated its net capital by \$414,732, as of April 30, 2002, by, among other things, miscalculating the haircuts it applied on its equity/ money market account and on its options positions. In its response, PennMont informed our staff that, "The firm's accountant has been advised of his inaccurate calculation of the firm's net capital and he has been directed to calculate the firm's net capital with the proper haircuts in accordance with your staff's analysis."

The violations at issue arose from a third routine examination by PHLX's Examinations Department. The PHLX staff stated in a letter dated January 17, 2003, that PennMont had overstated its net capital, by \$290,222 or 4.19% in August 2002 and by \$21,248 or 0.30% in September 2002. In its descriptions of both violations, PHLX stated, "The difference primarily resulted from the firm's failure to apply the correct haircut charges." PennMont responded to PHLX, stating, "With regard to the inaccuracies in net capital computation, PennMont has taken the following action: The General Partner has directed . . . the firm's accountant to contact our examiner . . . for instruction for future calculations of PennMont's net capital. For the month of December the net capital report was first prepared and then reviewed with the examiner. In each succeeding month, the firm's net capital will be calculated and reviewed until such time as the firm's accountant feels confident that he can deliver the precise results required by the rule." 8/

On April 28, 2003, PHLX issued the statement of charges leading to these proceedings. Before the PHLX Hearing Panel, PennMont presented two witnesses, Richard Feinberg, a

8/ In a January 20, 2003, letter, PennMont's General Partner, Joseph Carapico, stated to Jack Sandoski, the firm's accountant, "It was explained to me that even though the firm's net capital approximates 7 million dollars, for the purposes of reporting, close is not good enough and precision is required." This letter encouraged the accountant to work with the PHLX examiner assigned to the review "to guide you through necessary calculations to produce the accurate results necessary and through that communication the results will meet the standards required which are mandatory in this circumstance."

In a reply letter, dated February 1, 2002, Sandoski states that he worked with PHLX's examiner to correct the inaccuracies in PennMont's reports. The accountant also stated, "It might be worthy of note that on the two previous occasions when inaccuracies have occurred, although requested, I was unable to obtain the help and assistance afforded me during this recent exam recap."

PennMont limited partner, a certified public accountant, and a financial and operations principal for another firm, and Jack Sandoski, PennMont's accountant who prepared the reports at issue here. Neither Feinberg nor Sandoski attempted to explain or defend the methodology PennMont used to arrive at the net capital calculations included in the reports at issue. Feinberg stated that he personally had calculated PennMont's net capital in preparation for his testimony before the Hearing Panel. 9/ Feinberg testified that his calculations produced different results from both PHLX's and PennMont's calculations of PennMont's net capital because he apparently had used closing prices from a different source of market data than those used by PHLX and PennMont. However, he also acknowledged that PennMont's calculation in the reports included what he termed "deviations" from the correct results and that PennMont's net capital calculation methodology was incorrect. Both Feinberg and Sandoski emphasized that PennMont maintained significantly greater net capital than it was required to maintain throughout the period at issue here. 10/ Feinberg and Sandoski also asserted that the violations charged against PennMont were immaterial and not worthy of disciplinary sanctions. 11/ PHLX found that PennMont had violated the reporting and recordkeeping requirements and imposed the sanctions described above. This appeal followed.

III.

Section 17 of the Exchange Act requires member firms of national securities exchanges and registered broker-dealers, such as PennMont, to keep such records and make such reports as the Commission specifies by rule. In relevant part, Exchange Act Rule 17a-3(a)(11) requires broker-dealers to maintain "a record of the computation of aggregate indebtedness and net capital, as of the trial balance date" 12/ Exchange Act Rule 17a-5 requires broker-dealers to file periodic financial reports, which include a calculation of the member firm's net capital, with PHLX. 13/ PHLX Rule 703 requires member firms to file the periodic reports required by

9/ Feinberg's work papers for his personal calculations of PennMont's net capital are not in the record.

10/ Along these lines, Sandoski asked during his testimony, "How could somebody that has \$7 million worth of capital – what difference does a couple hundred thousand dollars make?"

11/ Feinberg ultimately conceded that PHLX had the disciplinary authority to bring the charges at issue in this proceeding, but characterized the charges as an "injudicious" use of the authority.

12/ 17 C.F.R. §§ 240.17a-3(a)(11).

13/ PennMont argues that it could not have violated books and records provisions because, according to PennMont, net capital calculations are not actually books and records, but

(continued...)

Exchange Act Rule 17a-5, and PHLX Rule 760 contains a general requirement that PHLX member firms maintain all books and records required by the Exchange Act.

The requirements to make and keep required records encompass the requirement that such records be accurate. ^{14/} As we have previously stated, "The reporting and recordkeeping provisions of the securities laws are 'important both to monitor the financial status of broker-dealers and [to protect] public investors.' Violations of these provisions are serious, and adversely impact the monitoring function exercised by regulatory authorities." ^{15/}

PennMont is required to calculate and preserve its calculations of its net capital and to report the results of these calculations. Exchange Act Rule 15c3-1 sets forth the correct methodology for the calculation of a firm's net capital. ^{16/} That rule requires broker-dealers, such as PennMont, to hold a minimum level of net capital, so that, if the broker-dealer fails financially, it can liquidate in an orderly fashion without formal proceedings, such as bankruptcy or liquidation under the Securities Investor Protection Act. ^{17/} The amount of net capital held by the broker-dealer cannot be less than certain minimums specified in the rule. In the process of calculating its net capital, a broker-dealer must deduct specified percentages of the market value of its proprietary securities to determine its net capital. These deductions are generally referred to as "haircuts," and it is PennMont's calculation of its haircuts in its August and September 2002 reports that is at issue here.

^{13/} (...continued)
rather are calculations derived from books and records. However, the net capital calculations at issue are required to be recorded and maintained under Exchange Act Rule 17a-3(a)(11) and reported under Exchange Act Rule 17a-5.

^{14/} See, e.g. James S. Pritula, 53 S.E.C. 968, 976 (1998)(finding that the failure of firm to provide an accurate calculation of its net capital in its reports violates Rule 17a-3); First Colorado Fin. Serv. Co., Inc., 53 S.E.C. 843, 847 (1998)(same); Dillon Secs., 51 S.E.C. 142, 147 (1992)("To reliably ascertain the accuracy of a firm's net capital computation, examiners need an accurate statement not only of net worth but also of all deductions to net worth and other line items").

^{15/} First Colorado, 53 S.E.C. at 847.

^{16/} 17 C.F.R. § 240.15c3-1.

^{17/} 15 U.S.C. § 78aaa et seq.

We find that PennMont improperly calculated haircuts on both its long and short equity positions and its options positions. 18/ For example, in the firm's August 31, 2002, financial condition report, PennMont calculated a firm equity haircut of approximately \$450,000 on approximately \$3,000,000 in short positions and \$2,500,000 in long positions. Under subparagraph (c)(2)(vi)(J) of the net capital rule, 19/ the proper haircut calculation for total long equity positions of \$2,444,062 20/ and total equity short positions of \$3,092,868, after adjustments, would be as follows:

- A) 15% multiplied by \$3,092,868 (greater of long and short equity positions) = \$463,930
- B) 15% multiplied by (\$2,444,062 less \$773,217 (25% of \$3,092,868)) = \$250,627
- C) Total subparagraph (J) haircut = (\$463,930(A) + \$250,627(B)) = \$714,557

18/ PennMont does not dispute other inaccuracies in its net capital calculations: it understated a positive adjustment to its net worth by \$10,807 in its August 2002 financial condition report and it understated its allowable assets by \$109 by understating the balance of a money market account in its September 2002 FOCUS Report.

19/ 17 C.F.R. 240.15c3-1(c)(2)(vi)(J). Haircut percentages vary by type of security and reflect the liquidity and volatility of the various classes of securities. Equity securities with a ready market generally fall within subparagraph (c)(2)(vi)(J), which specifies a 15% haircut. 17 C.F.R. § 240.15c3-1(c)(2)(vi)(J). A broker-dealer, however, may hold long and short positions that offset one another. In that situation, the rule requires a broker-dealer to apply the 15% haircut to only the greater of the aggregate long or short equity security positions. However, the rule also requires that, if the lesser position exceeds 25% of the greater position, the broker-dealer must apply a 15% haircut to the market value of this excess. Id.

For example, the haircut calculation for total long equity positions of \$100,000 and total short equity positions of \$50,000, after adjustments, would be as follows:

- A) 15% multiplied by \$100,000 (greater of long and short equity positions) = \$15,000
- B) 15% multiplied by (\$50,000 less \$25,000 (25% of \$100,000)) = \$3,750
- C) Total subparagraph (J) haircut = (\$15,000 (A) + \$3,750 (B)) = \$18,750

20/ In its calculation of PennMont's net capital, PHLX adjusted the \$2,500,000 total long positions to \$2,444,062, as permitted by the net capital rule, which allows a broker-dealer to exclude certain positions from the calculation. See 17 C.F.R. 240.15c3-1(c)(2)(vi)(J)(1) and (2).

Instead, it appears that PennMont incorrectly applied a 15% haircut to the market value of the \$2,500,000 total long positions. This calculation did not comply with the equity haircut formula for two reasons. The net capital rule required that PennMont, in calculating its capital position, deduct 15% of the market value of the \$3,000,000 in total short positions (rather than the \$2,500,000 in long positions) because the short position was the greater of the two amounts. Moreover, PennMont did not complete the remaining part of the required computation: namely, the 15% haircut on the total long positions exceeded 25% of the value of the short position. The haircut on this long position should have been added to the haircut on the short position. Joseph Cusick, the head of the PHLX Examinations Department during the relevant period, testified that PennMont erred similarly in the calculation of its net capital in the September 30, 2002, FOCUS Report.

PennMont also improperly calculated haircuts for its option positions under Appendix A to the net capital rule. In calculating its net capital for the August 31, 2002, financial condition report, PennMont appears to have netted twenty uncovered listed Fannie Mae call options and twenty uncovered Fannie Mae put options and made no deductions to its net capital with respect to these positions. The alternative strategy-based method, which PennMont employed, does not permit offsets between uncovered calls and uncovered puts. 21/ Therefore, Appendix A to the net capital rule required the firm to value these positions individually and add them together to calculate the required haircut, rather than netting them against each other. 22/ The correct calculation for these positions consequently results in a reduction of PennMont's net capital, rather than a neutral net capital impact as calculated by the firm. Cusick testified that PennMont made a similar mistake in its September 30, 2002, FOCUS Report.

21/ 17 C.F.R. § 240.15c3-1a. Broker-dealers use Appendix A to the net capital rule to calculate haircuts for options positions. Under Appendix A, a broker-dealer may choose to employ one of two methodologies - a theoretical pricing model or an alternative strategy-based method. PennMont employed the alternative strategy-based method. See 17 C.F.R. § 240.15c3-1a(b)(2)(iii).

Appendix A allows offsets for certain spread positions, but it was not permissible to offset this straddle composed of the uncovered calls with the uncovered puts under the rule. See 17 C.F.R. § 240.15c3-1a(b)(2)(iii)(E)(1) and (2).

22/ See 17 C.F.R. § 240.15c3-1a(b)(2)(iii)(A) and (B).

Although PennMont asserts that its books and records were properly maintained during the period at issue here, PennMont has not attempted to explain or defend the methodology it used in reaching the net capital calculations included in the relevant filings. ^{23/} PennMont did not introduce any countervailing evidence either to refute PHLX's analysis of its improper calculation or to explain how PennMont had, in fact, calculated its net capital. As Feinberg acknowledged, PennMont's net capital calculations in these reports included "deviations" from the correct numbers, and Sandoski did not defend the accuracy of his calculations in his testimony. We are satisfied that the record establishes, by a preponderance of the evidence, that PennMont improperly maintained its records and improperly calculated its net capital in its August 2002 and September 2002 reports. ^{24/}

PennMont stresses that it maintained sufficient net capital, approximately \$7,000,000, during the period relevant to this proceeding. However, PHLX did not charge PennMont with having insufficient net capital, but with improperly recording and reporting its capital level. Although PennMont argues that its reporting and recordkeeping violations do not merit discipline, the reporting and recordkeeping provisions of the securities laws are necessary to permit firms and the self-regulatory organizations that supervise them to assure adherence to financial and operational requirements. As we have indicated, the reporting and recordkeeping provisions are "important both to monitor the financial status of broker-dealers and [to protect] public investors." ^{25/} Furthermore, PennMont's repeated use of an incorrect net capital calculation methodology in the future would result in varying net capital calculations depending on the firm's equity and options positions at any given point in time. Because PHLX could not rely on the calculations produced by PennMont's incorrect methodology, PHLX also could not confidently assess whether PennMont was in net capital compliance.

PennMont complains that PHLX refused PennMont's requests for guidance concerning the correct calculation of its net capital and suggests that this was a denial of PennMont's "due process rights." Here, the correct methodology for calculating net capital is set forth in Exchange Act Rule 15c3-1. Member firms are charged with knowing the applicable regulations, including

^{23/} Compare Dillon, 51 S.E.C. at 146-47 (pointing out that firm did not dispute that its net capital calculations were inaccurate in rejecting firm's argument that errors in calculation were "inconsequential").

^{24/} See DMR Securities, Inc., 47 S.E.C. 180, 182 (1979).

^{25/} Palm State Equities, Inc., 52 S.E.C. 333, 338 (1995).

rules governing the computation of net capital, 26/ and cannot shift their responsibility for compliance to a self-regulatory organization. 27/

This is especially true given the facts here. While PennMont initially asked PHLX for assistance after the two 2001 examinations, PennMont thereafter assured PHLX that PennMont had made the required adjustments to comply with the rules. PHLX reasonably could have concluded that PennMont had resolved its confusion and was in a position to fulfill its responsibility.

For PennMont, the repeated citations for improperly computing haircuts should have led PennMont to seek additional professional assistance with its net capital calculations, rather than simply "papering over" the issue by sending response letters asserting that it had addressed the problem. We note that Feinberg, a PennMont limited partner and a financial and operations principal with a different firm since 1990, testified that he had a great deal of experience calculating net capital for other firms; yet there is no indication in the record that PennMont asked Feinberg to advise Sandoski. 28/

PennMont argues that, even if its net capital calculations were incorrect, the differences between PennMont's calculations and the correct numbers were immaterial. We agree with PHLX that what matters is the fact that PennMont's calculation of its haircuts was incorrect, rather than by what percentage PennMont's numbers deviated from the correct results. With improper methodology, as PennMont's equity and options positions change, the net capital calculations could deviate by a much greater amount than they did in the reports at issue here and

26/ See Litwin Securities, Inc., 52 S.E.C. 1339, 1344 (1997) (citing Wallace G. Conley, 51 S.E.C. 300, 303 (1993)).

27/ See Litwin Securities, 52 S.E.C. at 1344 (citing Thomas C. Kocherhans, 52 S.E.C. 528, 531 (1995))(member firm cannot shift to NASD responsibility for compliance); G.K. Scott & Co., Inc., 51 S.E.C. 961, 966 n.21 (1994), aff'd, 56 F.3d 1531 (D.C. Cir. 1995) (Table)(same).

28/ PennMont also complains that PHLX did not make the PHLX staff examiner who conducted the examination at issue here available to testify. Cusick supervised the examinations staff and was the PHLX officer ultimately responsible for authorizing the statement of charges, and he testified knowledgeably and fully about the PHLX work papers that led to the charges. See Allesandrini & Co., 45 S.E.C. 322, 327 n.9 (rejecting applicant's argument that it was denied due process where NASD examiner who conducted the investigation at issue did not testify and pointing out that examiner's supervisor, who had assigned and supervised the investigation, testified probatively).

could result in PennMont and PHLX failing to know whether PennMont satisfied the net capital requirement. 29/

PennMont also suggests that reasonable persons could calculate these haircuts in different ways. PennMont cites as an example Feinberg's testimony that he used different closing prices from those used by PHLX in Feinberg's personal computation of PennMont's net capital in preparation for the hearing. However, Feinberg admitted that the "deviations" in PennMont's equity and options haircut calculations went beyond these pricing differentials and were a result of PennMont's flawed methodology. 30/

PennMont asserts that our staff told PennMont that the violations were not an "important matter" and that, given PennMont's overall net capital position, the staff would not recommend an enforcement action against PennMont. As we have repeatedly stated, "A regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." 31/ This principle applies equally to PHLX's two prior caution letters issued to PennMont for similar violations.

29/ This potential variance is illustrated by the fact that PennMont's flawed methodology was off by over 4% in August 2002 and by 0.3% in September 2002. PHLX and the Commission cannot rely on such widely varying and inaccurate filings.

30/ PennMont asserts, "There is no better illustration of the fluidity of these numbers than footnotes one through three in the Decision of the [PHLX] Board of Governors dated December 19, 2005. As late as the oral argument before the Appeals Advisory Committee, PHLX was still changing the numbers." PennMont contends that net capital calculations are, by their very nature, imprecise. While we do not accept this premise, it is especially troubling that PennMont would attempt to cite these particular changes as evidence in support of this argument.

Cusick explained before the Hearing Panel that the PHLX staff had mistakenly classified a put option as a call option in its initial calculation of PennMont's net capital and that this error led to an incorrect statement of the firm's net capital in PHLX's statement of charges. Again on appeal, before the Board of Governors, PHLX's attorney identified this error in transposition, and the Board of Governors made the correction in its opinion.

The suggestion that such a ministerial error somehow supports PennMont's contention that net capital calculations, such as PennMont's, that apply an incorrect methodology are acceptable is without merit.

31/ First Colorado, 53 S.E.C. at 847 (citing W.N. Whelan & Co., 50 S.E.C. 282, 284 (1990)); Sherman, Fitzpatrick & Co., 51 S.E.C. 1048, 1052 (1994).

PennMont also asserts that it had "conformed its net capital calculations in accordance with" our staff's August 2002 letter's recommendations. PennMont further suggests that, since "the calculation directions of the S.E.C. had been complied with in the fall of 2002," this proceeding should be dismissed. However, PennMont introduced no evidence to support its contention that it had altered its methodology as a result of our staff's letter to ensure that its methodology was in compliance. As a result, the record does not suggest any conflict between our staff's conclusions and PHLX's allegations in this proceeding.

PennMont also alleges that PHLX's charges were politically motivated, because PennMont has been involved in a number of different litigation matters against PHLX and its senior officials. PennMont complains that PHLX's witness did not testify about any discussions he had with PHLX officials prior to bringing the charges. Cusick testified that he discussed the alleged violations with unspecified PHLX officials prior to bringing the charges. However, when PennMont's attorney asked additional questions about the nature of these discussions, PHLX's attorney objected, arguing that the questions were irrelevant because PennMont's net capital calculations were inaccurate regardless of any discussions Cusick may have had with other PHLX officials. The Hearing Panel sustained PHLX's objection. From Cusick's testimony that he had spoken with other PHLX officials prior to filing the charges at issue, PennMont concludes that the PHLX officials may have pressured the Enforcement Department to file charges as punishment for PennMont's outside litigation against PHLX and certain of its senior officers. Other than its assertion, PennMont introduces no evidence to support this theory. Moreover, as we have described, PHLX issued letters of caution, rather than filing charges, on two earlier occasions when it found that PennMont had committed very similar violations. PennMont's litigation against PHLX had begun already at the time of these earlier violations.

Accordingly, we sustain PHLX's findings that PennMont violated Section 17 of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and PHLX Rules 703 and 760.

IV.

Under Exchange Act Section 19(e)(2), we may reduce or set aside sanctions imposed by PHLX if we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary burden on competition. ^{32/} PennMont suggests that another letter of caution may be a more appropriate sanction for its violations than the \$5,000 fine. As PennMont repeatedly notes, the firm's net capital was \$7,796,000 at the time of the reports at issue here. Nevertheless, PennMont had received two prior letters of caution from PHLX for similar violations of the same rules and regulations, as well as a letter from our examination staff finding violations of the same provisions. We find that, for these repeated instances of failures correctly to record and report the firm's net capital position, PHLX's censure of PennMont and its imposition of a \$5,000 fine on PennMont, without

^{32/} 15 U.S.C. § 78s(e)(2). PennMont does not claim, and the record does not show, that PHLX's action imposed an undue burden on competition.

the imposition of a suspension, bar, or other similar sanction, is not excessive or oppressive. 33/ While the magnitude of the inaccuracies in PennMont's calculations as a percentage of PennMont's total net capital were not great, the repeated nature of the violations and the failure by PennMont to remedy its flawed calculation of its haircuts warrant the imposition of a fine by PHLX. PHLX had exercised its prosecutorial discretion by issuing letters of caution, without any monetary or other penalty, for PennMont's violations in 2000 and 2001. When PennMont repeated similar violations a fourth time, PHLX was well within its authority to impose a \$5,000 fine on PennMont.

An appropriate order will issue. 34/

By the Commission (Chairman COX and Commissioners ATKINS, CAMPOS, NAZARETH and CASEY).

Nancy M. Morris
Secretary

33/ As noted above, PHLX's February 2002 letter of caution warned PennMont that its earlier violations would "be taken into consideration in determining any future matter."

34/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54434 / September 13, 2006
Admin. Proc. File No. 3-12151

In the Matter of the Application of

PENNMONT SECURITIES
c/o Lyanne B. Wescott, Esq.
The Wescott Law Firm, P.C.
239 S. Camac Street
Philadelphia, PA 19107

For Review of Disciplinary Action Taken by the
PHILADELPHIA STOCK EXCHANGE, INC.

ORDER SUSTAINING DISCIPLINARY ACTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action by the Philadelphia Stock Exchange, Inc. against PennMont Securities be, and it hereby is, sustained.

By the Commission.

Nancy M. Morris
Secretary