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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
MAY 19 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT JUDGE BUCKLO

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)
SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
DAVID COLKER,)
)
Defendant.)

CIVIL ACTION
NO. **05C-2977**
MAGISTRATE JUDGE MASON

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges for its Complaint against defendant as follows:

SUMMARY

1. This case concerns the conduct of David Colker ("Colker"), the chief executive officer of National Stock Exchange ("NSX"), who aided and abetted NSX's failure to enforce compliance with an exchange rule. The conduct at issue is described in the Commission's Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions, which was issued on or about May 19, 2005 with regard to NSX and Colker.

2. Colker has consented, without admitting or denying the allegations of this Complaint, except as to personal and subject matter jurisdiction, which Colker admits, to

the entry of a Final Judgment ordering him to pay a civil penalty of \$100,000 pursuant to Section 21(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Sections 21(d)(3) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78aa].

4. This Court properly has venue over this action because certain of the conduct at issue occurred in the Northern District of Illinois.

DEFENDANT

5. David Colker, age 53, resides in Evanston, Illinois. Colker is the president and chief executive officer of NSX. Colker has been employed at NSX since 1984 and, since 1992, has had ultimate responsibility for the day-to-day operations of the Exchange. Colker was previously NSX's vice president of regulation and general counsel.

FACTUAL ALLEGATIONS

6. NSX is a self-regulatory organization located in Chicago, Illinois and registered with the Commission as a national securities exchange pursuant to Section 6(a) of the Exchange Act.

7. From 1996 to late 2003, NSX had a rule known as the market order exposure rule ("MOE rule"), which required NSX dealers to provide customer market orders with the opportunity for price improvement whenever the spread between the national best bid and offer ("NBBO") was greater than the minimum price variation ("MPV"). In 1996, when NSX adopted the MOE rule, the MPV was 1/8 of a point and, as a result, the rule required an opportunity for price improvement at 1/4-point spreads or greater.

8. In 1997, the MPV was decreased from 1/8 to 1/16 of a point. The NSX's Board of Trustees decided that the MOE rule should continue to be enforced only at spreads of 1/4 point or greater, and delegated to the NSX staff responsibility to implement that policy decision by filing, if necessary, a proposed rule amendment with the Commission. Because the language of the MOE rule referred to the MPV and not to spreads of 1/4 point or greater, NSX should have filed a proposed rule amendment seeking Commission approval prior to changing the circumstances under which it enforced the MOE rule. At Colker's direction, NSX did not file a proposed rule amendment. Instead, Colker instructed the NSX staff to issue a regulatory circular to NSX member firms announcing that it would continue applying the MOE rule only at NBBO spreads of 1/4 point or greater. NSX issued that circular in June 1997, and included that circular in certain routine Commission filings beginning in July 1997 without drawing attention to its MOE rule interpretation.

9. In October 2000, the MPV was decreased from 1/16 to \$.01. Pursuant to the MOE rule, NSX should have begun requiring dealers to provide the opportunity for price improvement when the NBBO spread was \$.02 or greater. Nevertheless, NSX and Colker continued to enforce the MOE Rule only when the NBBO spread was at 1/4 of a point (\$.25) or greater. In August 2003, NSX filed a proposed rule change seeking to eliminate the MOE rule, and the Commission approved the change in December 2003.

10. By its actions, NSX violated Section 19(g)(1) of the Exchange Act [15 U.S.C. § 78s(g)(1)] by failing to enforce compliance with its MOE rule from July 1997 through August 2003 without reasonable justification or excuse.

CLAIM FOR RELIEF

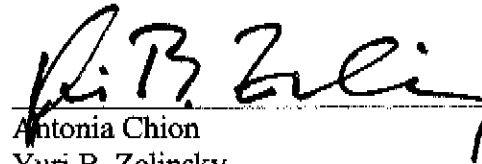
Aiding and Abetting Section 19(g)(1) of the Exchange Act
[15 U.S.C. § 78s(g)(1)]

11. Paragraphs 1 through 10 are hereby realleged and incorporated by reference.
12. Colker, without first obtaining Commission approval through a proposed rule amendment, implemented NSX's decision to limit its enforcement of the MOE Rule. Accordingly, Colker aided and abetted NSX's violations of Section 19(g)(1) of the Exchange Act [15 U.S.C. § 78s(g)(1)] by knowingly providing substantial assistance to NSX with respect to these violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court enter a Final Judgment ordering defendant Colker to pay a civil monetary penalty in the amount of \$100,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Respectfully submitted,



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