

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61562 / February 22, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-12596

In the Matter of

SALVATORE F. SODANO,

Respondent.

**ORDER MAKING FINDINGS PURSUANT
TO SECTION 19(h) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

On March 22, 2007, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Section 19(h)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) against Salvatore F. Sodano (“Sodano” or “Respondent”), the former Chairman and Chief Executive Officer of the American Stock Exchange LLC (“Amex”).

II.

Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Sodano and the subject matter of these proceedings, which are admitted, Sodano consents to the entry of this Order Making Findings Pursuant to Sections 19(h) of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. SUMMARY

This matter arises out of the failure by the Amex adequately to enforce certain order handling rules and to comply with its record keeping obligations. As the Amex's Chairman and Chief Executive Officer ("CEO"), Sodano was one of the individuals who had an obligation to enforce compliance during the relevant period by the Amex's members and associated persons with the Exchange Act, the Exchange Act rules and regulations, and the Amex's own rules. From at least 1999 through June 2004, the Amex had critical deficiencies in its surveillance, investigative, and enforcement programs for assuring compliance with its rules as well as the federal securities laws. These regulatory deficiencies resulted in part from Sodano's failure to take adequate steps to ensure that he and the Amex were meeting their regulatory obligations. As a result of the Amex's failure adequately to surveil for and investigate violations of, and to enforce, certain options order handling rules, the Amex violated Section 19(g) of the Exchange Act. In addition, the Amex failed to furnish accurate records and, as a result, violated Section 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-1. As CEO, Sodano, without reasonable justification or excuse, failed to enforce compliance by Amex's members and associated persons with the Exchange Act, the Exchange Act rules and regulations, and the Amex's own rules, within the meaning of Section 19(h)(4) of the Exchange Act.

B. RESPONDENT

Salvatore F. Sodano, age 54, resides in Nissequogue, New York. In March 1999, Sodano, while serving as the Chief Financial Officer and Chief Operating Officer of NASD, Inc. ("NASD"), began serving as the Amex's acting President. In September 1999, Sodano was appointed Chairman and CEO of the Amex. Sodano resigned as Amex's CEO in January 2005 and as Chairman in April 2005.

C. RELEVANT ENTITY

American Stock Exchange LLC (previously known as American Stock Exchange, Inc. and now known as NYSE Amex LLC), located in New York, New York, was and is a national securities exchange registered with the Commission pursuant to Section 6 of the Exchange Act. From 1998 until December 2004, the Amex was a subsidiary of NASD, Inc. ("NASD"). At all relevant times, the Amex was its own self-regulatory organization ("SRO") with all of an SRO's attendant obligations under the Exchange Act. The Amex's Member Firm Regulation department

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

("MFR") was the business unit primarily responsible for executing the Amex's regulatory responsibilities. On March 22, 2007, the Commission filed a settled Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, a Censure, and a Cease-and-Desist Order Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934 ("Order") against the Amex for violations of Sections 17(a)(1) and 19(g)(1) of the Exchange Act and Exchange Act Rule 17a-1. On October 1, 2008, the Amex was acquired by NYSE Euronext and initially renamed NYSE Alternext US LLC.

D. FACTS

In November 1998, the NASD purchased the Amex and began to integrate certain Amex operations. In 1999, the NASD sought to sell the Amex. As part of the sale process, the Amex was required to dis-integrate itself from the NASD's operations and to rebuild the departments and functions that had been impacted by the acquisition and consolidation, including MFR. Notwithstanding the NASD's ownership of the Amex, the Amex and Sodano retained their own independent obligations to enforce compliance by the Amex's members and associated persons with the securities laws and the Amex's rules.

From at least 1999, Sodano, as the Amex's CEO and Chairman, was on notice that Amex's surveillance, investigatory, and enforcement programs were not adequate to meet its regulatory obligations. In July 1999, the Commission's Office of Compliance Inspections and Examinations ("OCIE") issued an inspection report in which the staff concluded that the Amex had failed to fulfill its regulatory responsibility effectively to enforce compliance by its members with Exchange rules and federal securities laws relating to order handling practices. Then, in November 1999, the OCIE issued an additional inspection report finding additional problems with the Amex's derivatives and equities surveillance programs.

On September 11, 2000, the Commission issued a settled Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions ("September 2000 Order") finding, in relevant part, that the Amex had failed effectively to enforce compliance by its members with exchange rules, policies, or procedures relating to options order handling.² Specifically, the Commission found that the Amex had failed to surveil for, or to take appropriate action with respect to evidence of, violations of firm quote,³ customer priority,⁴ limit order display,⁵ and

² See In the Matter of Certain Activities of Options Exchanges, Exchange Act Rel. No. 43268 (Sept. 11, 2000). The Commission issued its order against the Amex and three other options exchanges. The violative conduct charged in the September 2000 Order largely predated Sodano's tenure at the Amex.

³ The firm quote rule generally requires options specialists to trade options at the prices and in the amounts that they quote. During most of the period relevant to this Order, the firm quote rule for options was set forth in Exchange Act Rule 11Ac1-1, which had a compliance date of April 2001, and Amex Rule 958A. With the Commission's adoption of Regulation NMS in August 2005, the Commission's firm quote rule was redesignated as Exchange Act Rule 602. During the period relevant to this Order, under Exchange Act Rule 602, its predecessor Exchange Act Rule 11Ac1-1, and Amex Rule 958A, responsible brokers or dealers were required, with a few

trade reporting rules⁶. These rules were designed to protect investors and provide some of the primary safeguards against execution abuses by specialists.

In the September 2000 Order, the Commission ordered the Amex to enhance and improve its regulatory programs for surveillance, investigation, and enforcement of the options order handling rules, including compliance with the limit order display, priority, trade reporting, and firm quote rules. The Commission further required the Amex to provide Commission staff with annual affirmations detailing its progress in complying with the September 2000 Order. The Amex failed to fully comply with these obligations. As late as 2003, there remained significant deficiencies in the Amex's surveillance, investigatory, and disciplinary programs regarding the firm quote, customer priority, trade reporting, limit order display, as well as other options order handling rules. In addition, the Amex failed adequately to surveil for compliance with certain equity trading rules by its specialists and trading by its floor brokers.

In June 2003, the OCIE issued another inspection report to the Amex. In that report, the OCIE detailed serious deficiencies in the enforcement and surveillance programs related to the firm quote rule, trade reporting, trading ahead, limit order display, and best execution. The report also detailed deficiencies with respect to the documentation maintained in the Amex's surveillance and investigative files.

As an SRO, the Amex was responsible for enforcing compliance with the Exchange Act, Exchange Act rules and regulations, and the Amex's rules by the Amex's members and associated persons. The NASD, as owner of the Amex during the relevant time, also had responsibilities for enforcing compliance with these provisions. Those responsibilities, however, in no way lessened the Amex's independent obligation to enforce compliance.

Sodano, as CEO of the Amex, shared the Amex's obligation to enforce compliance with the Exchange Act, Exchange Act rules and regulations, and Amex rules by the Amex's members and

exceptions, to execute options transactions with customers at prices at least as favorable as their published bids or offers at the time the orders were presented and in any amount of contracts up to their published sizes.

⁴ With certain exceptions, the priority rules generally require that a customer limit order be executed prior to the execution of any other order if it has the best price, i.e., the highest bid or lowest offer. During the period relevant to this Order, the Amex's priority rules were set forth in Amex Rules 126 and 950(d). If there was more than one customer order at the best price, the customer order that arrived first had priority.

⁵ The obligation to display limit orders generally requires that a customer limit order that is priced better than the highest bid or the lowest ask price currently quoted on the exchange immediately be displayed in the quotations. At the time of the September 2000 Order, specialists were required to display such limit orders as part of their due diligence obligations. In January 2005, the Commission approved, and the Amex thereafter implemented, a limit order display rule specifically applicable to options.

⁶ The trade reporting rule generally requires that transactions be reported within a specified time after execution. During the period relevant to this Order, the Amex's trade reporting rule, Amex Rule 992, adopted in August 2000, required that options transactions be reported to the Amex Options Market Data System within 90 seconds of execution and that transactions not reported within that time were to be designated as late.

associated persons. Enforcing compliance, in fact, was one of Sodano's primary responsibilities. While serving as CEO, Sodano received the July and November 1999 OCIE inspection reports, the September 2000 Order, and the June 2003 OCIE inspection report. The OCIE reports, the September 2000 Order, and internal information at the Amex provided Sodano with multiple red flags of ongoing deficiencies in the surveillance, investigative, and enforcement programs of the Amex. Although these deficiencies began at the Amex before Sodano became CEO, Sodano had an affirmative obligation to take steps to correct these deficiencies. Sodano failed to establish procedures or a structure sufficient to monitor for, and to enforce, compliance with the applicable statute, rules, and regulations by the Amex's members and associated persons.

Sodano received information that suggested that the Amex would be addressing certain regulatory issues identified in the September 2000 Order, the OCIE reports, and otherwise. Sodano, however, received other information that showed that the Amex was continuing to fall short of meeting its regulatory obligations. Notwithstanding this conflicting information, he did not take affirmative steps to ensure that the Amex met those obligations. Instead Sodano, who lacked a regulatory background, unreasonably relied on MFR and others to correct the Amex's deficiencies without sufficiently following up on their efforts. For example, Sodano did not request or receive regular detailed reports regarding certain of the Amex's significant regulatory activities. Without this type of information, Sodano had no meaningful way personally to determine whether he and the Amex were correcting the deficiencies specified in the September 2000 Order and the OCIE reports or otherwise were fulfilling their regulatory responsibilities.

The deficiencies in carrying out these regulatory responsibilities were exacerbated by hiring freezes and budget restrictions. Sodano was responsible for approving personnel budgets and, during the relevant time, ordered and/or approved hiring freezes and other budgetary restrictions that impacted the Amex's regulatory function. Notwithstanding the September 2000 Order and the OCIE reports, as well as normal regulatory responsibilities of an SRO, Sodano did not exempt the Amex department primarily responsible for the Amex's regulatory program, MFR, from budget and hiring restrictions. These restrictions were a disincentive to managers in MFR to seek additional personnel. Although they could seek to hire individuals, MFR managers had to demonstrate how hiring an individual would save the Amex costs or generate revenues. As a consequence, MFR remained understaffed throughout the relevant time. This lack of staff contributed to the MFR's failure adequately to perform its regulatory responsibilities.

E. LEGAL ANALYSIS

Section 19(h)(4) of the Exchange Act authorizes the Commission, among other things, to issue an order as to any officer or director of an SRO who, without reasonable justification or excuse, has failed to enforce compliance with any provision of the Exchange Act, the rules or regulations of the Exchange Act, or the rules of the SRO by a member of the self-regulatory organization or a person associated with a member. As a result of the conduct described above, Sodano failed, without reasonable justification or excuse, to enforce compliance with the Exchange Act, the Exchange Act rules and regulations, and the Amex's rules.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors to issue this Order agreed to in Respondent Sodano's Offer.

Accordingly, the Commission hereby finds that Respondent Sodano, without reasonable justification or excuse, failed to enforce compliance with the Exchange Act, Exchange Act rules and regulations, and Amex rules by Amex members and associated persons within the meaning of Section 19(h)(4) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy
Secretary