

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51867 / June 17, 2005

Admin. Proc. File No. 3-11731

In the Matter of the Application of

SIG SPECIALISTS, INC.,
f/k/a Susquehanna Specialists, Inc.,

and

THOMAS A. CATERINA
c/o Andrew E. Tomback, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005

For Review of Disciplinary Action Taken by the

NEW YORK STOCK EXCHANGE, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE -- REVIEW OF DISCIPLINARY
PROCEEDINGS

Failure to Maintain a Fair and Orderly Market in an Exchange-Listed Security by
Failing to Provide Adequate Price Continuity

Failure to Effectively Represent and Execute Agency Orders in an Exchange-
Listed Security

Failure to Obtain Requisite Floor Approval Prior to Executing Transaction in an
Exchange-Listed Security that Resulted in Price Decrease of One Point

Failure to Obtain Requisite Floor Approval for Election of Sell Stop Order 0.10
Point Away from Prior Transaction

Member of national securities exchange and member organization: (1) failed to maintain a fair and orderly market in an exchange-listed security for which member acted as specialist by failing to provide adequate price continuity; (2) failed to represent and

execute agency orders properly in that security; (3) failed to obtain requisite exchange floor official approval prior to executing a transaction in that security, which resulted in a price decrease of one point; and (4) failed to obtain requisite exchange floor official approval for election of a sell stop order which was more than 0.10 point away from the prior transaction when member was a party to the electing transaction. Held, exchange findings of violations and the sanctions it imposed are sustained.

APPEARANCES:

Andrew E. Tomback, David Sieradzki, Michael A. Berg, Michelle M. Campana, and Kendra Huard Fershee, of Milbank, Tweed, Hadley & McCloy LLP, for SIG Specialists, Inc. and Thomas A. Caterina.

Linda Riefberg, Penny Rosenberg, Allen D. Boyer, and Michael Grey, for the New York Stock Exchange, Inc.

Appeal filed: November 8, 2004

Last brief received: February 2, 2005

I.

Applicants Thomas A. Caterina, a New York Stock Exchange (“NYSE” or “Exchange”) specialist, and his firm, SIG Specialists, Inc., f/k/a Susquehanna Specialists, Inc. (“SIG” or the “Firm”), appeal from NYSE disciplinary action. The NYSE found that Caterina violated Exchange Rule 104.10 in that he failed to maintain a “fair and orderly market” by failing to provide adequate price continuity in an Exchange-listed security for which he acted as the specialist. The NYSE also found that Caterina violated Exchange Rule 104.10 when he failed to represent and execute agency orders effectively in that security. The NYSE further found that Caterina violated Exchange Rule 79A.30 by executing a transaction in that security that resulted in a price decrease of one point, without obtaining prior floor official approval for the transaction. In addition, the NYSE found that Caterina violated Exchange Rule 123A.40 by failing to obtain prior floor official approval for the election, as dealer, of a sell stop order which was more than 0.10 point away from the prior transaction. The NYSE held SIG liable for these violations based on Caterina’s actions. ^{1/} It censured Applicants and fined Caterina \$40,000 and SIG \$25,000.

^{1/}The NYSE dismissed an additional charge against Caterina, and a parallel charge against SIG, alleging that Caterina had violated Exchange policy regarding block transactions executed at significant premiums or discounts from the last sale, as articulated in NYSE Information Memo 94-32. The NYSE determined that Information Memo 94-32 applied specifically to block cross transactions, which were not at issue here. We note that the Exchange’s determination to dismiss this charge is not now before us.

Caterina appeals only the finding that he violated Exchange Rule 104.10, requiring the maintenance of a fair and orderly market, by failing to provide adequate price continuity, and seeks a proportionate reduction in the sanctions imposed. He concedes the NYSE's other findings of violations and the sanctions imposed for them. SIG appeals all of the NYSE's findings of violations against it and the sanctions imposed. We base our findings on an independent review of the record.

II.

The facts of this case are largely undisputed. Caterina entered the securities industry in 1982, joined SIG as a floor broker in 1992, and became a specialist for SIG in 1995. From June 1995 to June 2001, Caterina also served as an NYSE floor official. On March 29, 2000, the NYSE issued a Letter of Caution ("LOC") to Caterina for executing a transaction in a stock at a price that was more than one point away from the last previous sale price without having obtained prior floor official approval for the transaction, and for failing to obtain prior floor official approval for executing a trade, as dealer, that triggered the election of certain sell stop orders. 2/

On February 22, 2001, Caterina was working at his regular trading post on the Exchange floor and also covering for Russ Brummond, a fellow SIG specialist who normally handled Bay View Capital Corp. ("BVC") for the Firm. Caterina was responsible for his own list of stocks, and BVC was not a stock that he typically covered. As Caterina prepared to assume responsibility as specialist for BVC that day, Brummond informed him that John French, a floor broker at JSF Securities Corp. ("JSF"), was a regular buyer of BVC stock. 3/

At 12:39:08 PM, the market in BVC stock was quoted at 5.55 - 5.61 (500 x 1,000 shares), which means that the displayed bid was 500 shares at \$5.55 per share. Caterina also had several BVC orders on the Display Book. 4/ At 12:53:03 PM, Caterina received a customer order via the Exchange's automated designated order turnaround ("DOT") system to sell 86,900 shares of

²At the hearing, Caterina testified that the LOC caused SIG to establish internal procedures to avoid repetition of the violations identified in the LOC.

³At the hearing, French testified that JSF represented a customer who "was always focused on" BVC stock, had been interested in the stock for "[w]eeks definitely" prior to February 22, 2001, and would "[s]ometimes . . . respond with orders" for BVC stock. Additionally, at 10:17:18 AM on February 22, 2001, shortly before Caterina assumed Brummond's trading post, a JSF floor broker other than French purchased 15,000 BVC shares at \$5.90 per share.

⁴The Display Book is an electronic workstation provided by the NYSE to firms for use by their specialists at their trading posts.

BVC common stock at the market (the “BVC Sell Order”). ^{5/} The BVC Sell Order was unusually large for a stock like BVC. ^{6/} At the hearing, Caterina testified that he had never before seen such a large order - - in terms of percentage of overall daily volume - - transmitted through the DOT system.

At the time the BVC Sell Order was entered, Caterina held a CAP-DI sell percentage order ^{7/} for BVC with 29,300 shares remaining out of an original 54,100 share order that a broker-dealer had entered earlier that day. Also on the Display Book was a stop order to sell 2,000 BVC shares at an “electing,” or trigger, price of \$5.38 that another broker-dealer had entered several weeks before. In addition, there were three previous buy orders for BVC in the Display Book, totaling 12,300 shares, at a bid price of \$5.50 per share. Caterina executed the BVC Sell Order in the manner described below:

- ! At 12:53:23 PM, with a displayed bid of \$5.55, Caterina executed 12,300 shares of the 86,900 share BVC Sell Order at \$5.50, down eleven cents from the \$5.61 price of the previous transaction. The execution matched the three previous buy orders in the Display Book, totaling 12,300 shares, that had bid \$5.50.
- ! At 12:53:26 PM, with 74,600 shares of the BVC Sell Order remaining, Caterina “gapped” ^{8/} the quotation to 4.00 - 5.61 (500 x 1,000 shares). The purpose of the gapped quote was, according to Caterina, to “give [himself] enough leeway for where the print [was] actually going to take place” and to “alert [the floor] that there was stock for sale.”

⁵The DOT system is an automated order processing system employed by the NYSE, through which customers can transmit orders electronically to the floor via Exchange member organizations.

⁶The average daily volume for BVC stock during the month of February 2001 was 122,747 shares.

⁷A CAP-DI is an “immediate execution or cancel election” instruction that directs the specialist to represent an order in such a way that it will follow the market without any significant deviation from the prevailing market price.

⁸Before Caterina gapped the quote, the market in BVC stock was quoted at 5.55 -5.61, i.e., a bid price of \$5.55 and an ask price of \$5.61. Caterina gapped the quote by lowering the bid price from \$5.55 to \$4.00, so that the resultant quote was 4.00 - 5.61. According to NYSE Information Memo 94-32, the gapping of a quote is “an alternative to a trading halt” where “exceptional circumstances may warrant continued trading.” NYSE Information Memo 04-27 states that, “[w]hen an [order] imbalance exists, gap quote procedures provide that the specialist widens the spread between the bid and offer, a process known as ‘gapping.’”

- ! After gapping the quote, Caterina purportedly paged French, the prospective BVC buyer, in an attempt to generate buy-side interest in BVC. ⁹/
- ! At 12:54:19 PM, fifty-three seconds after displaying the gapped quotation, and without any further effort to reach French or any other potential buyer of BVC stock, Caterina executed a transaction for the remaining 74,600 shares of the BVC Sell Order (the “Block Transaction”) at \$4.50 per share, down one dollar from the previous transaction of \$5.50 per share.
- " Caterina purchased 74,200 shares of the Block Transaction for SIG’s dealer account at the discounted price of \$4.50 per share. He paired the remaining 400 shares of the Block Transaction with an existing bid for 400 BVC shares entered by another firm, which had bid \$5.00 per share, but executed that transaction at the improved price of \$4.50 per share.
- ! The \$4.50 price at which Caterina executed the Block Transaction was a price more favorable than the electing price of \$5.38 for the sell stop order on the Display Book. The \$4.50 price of the Block Transaction triggered the election of the 2,000 share sell stop order (which required prior floor official approval) and the 29,300 share CAP-DI sell percentage order on the Display Book.
- " At 12:54:25 PM, Caterina purchased the 2,000 sell stop order shares at \$4.50 per share as dealer, without obtaining the requisite prior floor official approval.
- " At 12:54:31 PM, Caterina purchased 29,300 shares of BVC stock on behalf of the 29,300 share CAP-DI sell percentage order at \$4.50 per share as dealer.

As a result of these transactions (collectively, the “BVC Trades”), Caterina accumulated for SIG’s dealer account a total of 105,500 shares of BVC stock at a price of \$4.50 per share. ¹⁰/

⁹Caterina testified that he paged French by using “an Exchange annunciator pad [to summon French] by badge number” and that French “did not” respond to his page. French testified that he did not receive a page from Caterina.

¹⁰BVC stock closed at \$5.38 per share that day. Before the BVC Sell Order was executed, SIG had been long 31,500 shares in BVC stock. After executing the BVC Trades, Caterina sold a total of 45,900 BVC shares at various prices above \$4.50 between 12:54:45 PM and 1:59:19 PM when BVC stock had rebounded in price. The Exchange introduced a profit analysis exhibit estimating that SIG’s profit in BVC stock after the execution of the Block Transaction initially was \$72,662. According to that exhibit, SIG’s estimated profit after taking

(continued...)

Between 12:55 and 1:00 PM, French approached Caterina looking, as Caterina testified, “crazy, kind of loud, . . . panicked, almost embarrassed” as though French had been “alerted to something by a client” By that time, BVC stock was trading above \$4.50 per share. Caterina testified that French’s “expression was, what the heck happened, what’s going on” In response, Caterina offered French “whatever you want.” ^{11/} At 1:01:06 PM, when BVC stock was quoted at 4.6 - 5.01 (2 x 2), Caterina sold French 30,000 shares of BVC stock at \$4.50 per share. ^{12/}

At approximately 4:55 PM, Caterina contacted NYSE Market Surveillance to self-report what he believed to be NYSE rule violations. As Caterina acknowledged at the hearing, he reported himself because he “knew [he] kind of, you know, blew through a rule or two” ^{13/} More than two years later, on May 29, 2003, SIG issued explanatory letters and price adjustment checks in amounts ranging from twenty-five dollars to \$10,000 to customers it identified as having been disadvantaged by Caterina’s handling of the BVC Trades. In its explanatory letters, SIG informed those customers that, “based upon our review of this matter we have determined to provide you with a price adjustment of one dollar per share.” ^{14/}

III.

^{10/}(...continued)

into account the sale of 30,000 BVC shares to French at \$4.50 per share (discussed below) was \$45,662. Adjusting for SIG’s long position in BVC shares prior to the execution of the BVC Sell Order, the Firm’s estimated profit from the BVC Trades, according to the Exchange exhibit, was \$39,047.

^{11/}French testified before the Hearing Panel that “the first recollection I have is I was in my booth and my clerk told me something happened, a piece of BVC went in the hole[,]” meaning that the “stock traded down fairly significantly . . . [at] a discount from the last sale, not down a penny or two pennies or something like that.” French recounted that his BVC customer was “probably freaking out” over the BVC Sell Order. French testified that Caterina “offered to make me whole, he took care of everything and that was the end of the conversation.”

^{12/}That trade was flagged as an error on the NYSE’s Market Analysis and Reconstruction System report.

^{13/}Caterina testified before the Hearing Panel that he “knew I went through a couple of rules on that trade[,]” and that “the important thing to me was just to make sure I made the phone call” to NYSE Market Surveillance. Caterina identified those “couple of rules” as his failure to obtain prior floor approval for dropping the value of BVC stock by one dollar, and his failure to obtain prior floor approval for the election of the sell stop order.

^{14/}Those customers were the source of the three buy orders for BVC stock that were on the Display Book, totaling 12,300 shares, which Caterina had matched with 12,300 shares of the BVC Sell Order at \$5.50 per share instead of at the discounted price of \$4.50 per share.

Caterina, as discussed, admits three of the four violations found by the NYSE and does not challenge them in this appeal. ^{15/} Caterina appeals only the finding that he did not maintain a fair and orderly market by failing to provide adequate price continuity in BVC stock, in violation of Exchange Rule 104.10. While SIG, which filed a joint brief with Caterina, does not separately address the NYSE's findings of violations against Caterina, it challenges the Exchange's determination to hold the Firm liable for those violations.

Price Continuity. The NYSE found that Caterina violated Exchange Rule 104.10 by not maintaining a "fair and orderly market" by failing to provide adequate price continuity in BVC stock. Exchange Rule 104.10, as relevant here, requires a specialist to maintain "in so far as is reasonably practicable, a fair and orderly market on the Exchange in the stocks in which he is so acting." Exchange Rule 104.10(1) provides that "[t]he maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, and the minimizing of the effects of temporary disparity between supply and demand." ^{16/} According to the Exchange, these rules "reasonably imply an effort to correct a sell order imbalance by seeking out buyer interest." ^{17/}

¹⁵Caterina concedes one of the two findings of Exchange Rule 104.10 violations. He concedes that he violated Exchange Rule 104.10 when he failed to represent effectively an agency sell order and three agency buy orders as specialist for BVC. He concedes that he violated Exchange Rule 79A.30 when he executed the BVC Sell Order at a price that was one point away from the price of the last sale without obtaining prior floor official approval for doing so. He concedes that he violated Exchange Rule 123A.40 when he failed to obtain prior floor official approval for the election of the 2,000 share sell stop order which was more than 0.10 point away from the previous transaction.

¹⁶We note that the basis for this rule is well-established. On June 20, 1936, the Commission transmitted to Congress its Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker ("Segregation Report"), which recommended, among other things, certain restrictions on specialists' activities. See Segregation Report at 111. On March 30, 1937, the Commission issued an interpretation known as the "Saperstein Interpretation" (authored by David Saperstein, then director of the Commission's Trading and Exchange Division) that embodied the restrictions on specialists' activities recommended in the Segregation Report and stated that "a transaction can not be deemed reasonably necessary for the maintenance of a fair and orderly market . . . if it is not reasonably calculated to contribute to the maintenance of price continuity and to the minimizing of the effects of temporary disparity between supply and demand." See Securities Exchange Act Rel. No. 1117 (Mar. 30, 1937).

¹⁷This analysis was part of the Exchange's Hearing Panel Decision, which was affirmed "in all respects" by the NYSE's Board of Governors.

We previously have held that price continuity “means that the price of each transaction in a given stock should bear a close relationship to the preceding transaction.” ^{18/} In finding a violation, the Exchange considered hearing testimony from John Dolan, a highly-experienced specialist and a former governor of the Exchange. ^{19/} Dolan indicated that “depth and continuity” in the instance at issue would require “a consistent aftermarket with repetitive sales at different prices to justify moving the stock 18 percent.” According to Dolan, Caterina did not follow floor practices that would have enabled the market to discover a fair price for the BVC Sell Order. Dolan explained that, “when an order comes in . . . that can’t readily be absorbed within the marketplace . . .,” one of the things “you do is decide . . . can I trade it down a quarter of a dollar and clean everybody up.” Dolan emphasized that “you would have the floor official come in . . . to make sure that the procedure has been followed correctly. So that if in fact \$4.50 is the right price, it can be justified by not only [Caterina] but by the floor official as well.” Dolan asserted that, by gapping the quote to the extent that Caterina did, Caterina was “taking the value of a company and taking it down close to 20 percent,” which should have made him “somewhat cautious.” ^{20/}

Dolan also did not think that paging one known potential buyer - - French - - once and waiting fifty-three seconds before executing a transaction for the Firm’s dealer account was an adequate effort. Dolan testified that “I wouldn’t imagine [that fifty-three seconds] is enough time” to involve a floor official who would review the process and determine whether the specialist “contacted all known buyers and they had a chance to respond . . .” because “[i]t doesn’t appear to be enough time to get all that done.” ^{21/} Dolan added that, under the

¹⁸Irwin Schloss, 47 S.E.C. 317, 320 n.16 (1980).

¹⁹Dolan had also served a six-year term as a floor official and, in his words, “chair[ed] every educational committee in the [NYSE] building.” At the time of the hearing, Dolan sat on the Exchange’s “Market Performance Committee, which is the highest oversight board of the committee which all governors . . . and directors sit on.” Dolan, who was personally acquainted with Caterina, stated that he knew Caterina “[v]ery well” and that he and Caterina were “good friends.” Caterina thought highly of Dolan’s expertise and described him as “a master of the rules” and “a master of procedure” who “knows floor procedure and . . . knows how to get things done and . . . is a master specialist.”

²⁰Dolan described Caterina’s gapping of the stock as “a hell of a move . . .” for “a \$5 stock.”

²¹When French was asked whether fifty-three seconds would have given French enough time to communicate the gapped quote to his customer and for the customer to respond to that information, French replied, “I don’t think so.”

circumstances, “[m]ore than one beep [to page a buyer] would be appropriate, yes.” ^{22/} Dolan stated that “there are six or seven things in every circumstance that need[] to be done, [and] in this particular circumstance, none of those things had been done.” ^{23/} As the Exchange held, Caterina violated the rule “not because he did not follow every step of customary procedure, but because he did not, overall, make enough of an effort to fulfill his obligations under Exchange Rule 104.10.” ^{24/}

Applicants challenge the NYSE’s finding that Caterina failed to maintain a fair and orderly market by arguing that the Exchange’s determination was based not on the text of Exchange Rule 104.10, but on interpretations of floor practices that were not stated or implied by any Exchange rule. Applicants also contend that the NYSE’s determination that Caterina “should have done more” to execute the BVC Sell Order was based entirely on “its subjective and previously unannounced view of preferred floor practices” rather than on the text of the applicable rule or any fair or reasonable interpretation of that rule. They argue that Exchange Rule 104.10 does not state what specific steps a specialist must take in order to attract buy-side interest when faced with a large market sell order, nor does it state how much effort is required to track down a buyer. Applicants point to the “ten numbered paragraphs” that supplement the rule, claiming that “[n]one of these provisions imposes or implies any mandate to attract contra-side interest that is not present in the crowd” nor requires Caterina to “pag[e] a broker any particular number of times or wait[] any particular period of time for interest to emerge.” According to Applicants, specialists can be sanctioned for rule violations, but not, as here, for “deviating from [the NYSE’s] Enforcement Division’s (or its expert’s) post hoc explanation of preferred floor practices.” Applicants further assert that the Exchange action, in holding Caterina liable, conflicts with our recent decision in Bloomberg L.P., ^{25/} where we set aside certain restrictions

²²Dolan emphasized that “you need to make every effort to get a hold of a person. Sometimes what we do is even send a clerk into the booth to go and get them.” Although Caterina claims that he had “waited enough time” to hear back from French after paging him, he conceded that it normally was his practice to “page someone a second time or a third time when you get a nonresponding interested buyer.” Caterina added that “[t]here have been times in those days . . . that, you know, I probably made a more conscious effort.”

²³As Dolan testified, “if you told me one or two of the things that were done wrong were not done properly . . . it wouldn’t be so bad. But the fact that there are six or seven things that weren’t followed, it is a bit of a disaster.”

²⁴Carol Krusik, an Exchange employee responsible for, among other things, the education of floor officials on rules governing specialists, also testified as an expert at the hearing. Echoing Dolan’s testimony, she asserted that, in a “brief period of time, [Caterina] took the stock down 20 percent of its value, which I did not see [as] being in the interest of the seller.”

²⁵Exchange Act Rel. No. 49076 (Jan. 14, 2004), 81 SEC Docket 4163.

that had been imposed on Exchange data vendors because the restrictions had not been approved as part of a related rule filing.

We agree with Applicants that, as we held in Bloomberg, “‘a stated policy, practice, or interpretation that prescribes extensive and specific limitations on particular types of transactions or conduct that are not apparent from the face of [an] existing rule is not ‘reasonably and fairly implied’ by the rule’” ²⁶and, for that reason, cannot provide the basis for Exchange disciplinary action. We find, however, that the obligations to which Caterina was subject were reasonably and fairly implied by Exchange Rule 104.10 and, therefore, gave fair notice of what was required of Caterina under the circumstances. ²⁷

²⁶Id. at 4169-70. Applicants also cite General Bond & Share Co. v. SEC, 39 F.3d 1451 (10th Cir. 1994). In that case, the court found that a determination by NASD to prohibit firms from accepting compensation for making a market in a security constituted a “rule change” that could not provide the basis for disciplinary proceedings until it had Commission approval. Id. at 1458. Unlike the prohibition at issue in General Bond, we do not view this case as involving the kind of “new standard of conduct” that would implicate the Exchange Act’s rule change requirements. Id. at 1459. We also note that the court in General Bond cautioned that its “ruling should not be taken to mean that every disciplinary action taken by the NASD or SEC will be considered a ‘rule change’ unless an interpretation has been previously submitted to the SEC showing that identical conduct has been held to violate an NASD rule.” Id. at 1460 n.4. Nor do we find persuasive Applicants’ argument that this case is controlled by our determination in William J. Higgins, 48 S.E.C. 713 (1987), to set aside NYSE action prohibiting members from installing telephones on the Exchange floor. We acted in Higgins because “the provisions of the NYSE Constitution and rules cited as a basis for the Exchange’s alleged rule, viewed either separately or in combination, d[id] not constitute a rule prohibiting such telephone communication between members and non-members.” Id. at 715. Here, as discussed, we believe that an existing NYSE rule, Exchange Rule 104.10, covers Caterina’s misconduct. Applicants’ citation of Lek Securities Corp., Exchange Act Rel. No. 50324 (Sept. 7, 2004), 83 SEC Docket 2538, 2546 (holding that the term “agency orders” was too ambiguous to support a finding of violation) is also inapposite. Applicants argue that Lek illustrates the principle that the obligations imposed by a rule of a self-regulatory organization must be “reasonably and fairly implied by the text of such a [r]ule.” Applicants make no claim that Exchange Rule 104.10 is ambiguous. As we discuss above, the obligations imposed by Exchange Rule 104.10 and the floor practices it governs are common knowledge among specialists and are reasonably and fairly implied by the rule.

²⁷Applicants concede that rules requiring adherence to “just and equitable principles of trade,” see, e.g., Exchange Rule 476(a)(6), have been upheld as not impermissibly vague, but claim that Exchange Rule 104.10 is distinguishable and should be narrowly construed. We reject that distinction. The floor practices at issue fit within the more general provisions of that rule and its first subsection, which are necessarily informed by the accepted floor practices that are

(continued...)

At the hearing, Dolan testified that the price continuity obligations at issue here were common knowledge among specialists, who were responsible for knowing Exchange rules. ^{28/} Dolan asserted that “[p]retty much every specialist down there is pretty much aware that’s how we do things” NYSE Information Memo 94-32 provides that, in certain situations “it may be . . . appropriate for the specialist” and one or more floor officials to “gap the quotation in a security for [up to] five minutes, with a view toward contacting and attracting contra market interest.” ^{29/} Information Memo 94-32 provides further that “[t]he same principles would also apply to a situation where there is a sudden influx of market orders on one side of the market which would be likely to result in a significant price change.” ^{30/} Information Memo 94-32 also recommends that the specialist consult a floor official in these situations. We believe that, under the circumstances, it was incumbent on Caterina to gap the BVC quote for a period longer than fifty-three seconds to permit a more extensive effort to consult with floor officials and to locate French or other prospective buyers of BVC stock.

^{27/}(...continued)

common knowledge among specialists.

^{28/}See Stephen Michael Sohmer and Spyder Securities, Inc., Exchange Act Rel. No. 49052 (Jan. 12, 2004), 81 SEC Docket 4066, 4082 (observing that Exchange rules are sufficiently specific to provide notice of prohibited conduct). See also Robert D. Potts, 53 S.E.C. 187, 205 (1997) (stating that “professionals are deemed to know the standards that govern their conduct”); Smith Barney, Harris Upham & Co., 48 S.E.C. 11, 15 (1984) (finding that respondent “was sufficiently apprised that the actions it was taking could run afoul of applicable ethical standards”).

^{29/}See also NYSE Information Memo 04-27, issued on June 9, 2004 (modifying Information Memo 94-32 by providing that a “gapped quotation . . . generally should not exceed two minutes, unless circumstances require otherwise.”).

The Exchange’s floor official manual, which tracks the language of Information Memo 94-32 on this point, advises that, in certain situations, the floor governor or senior floor official will determine whether to “maintain the widened quotation for a reasonable period of time (not to exceed five minutes) to allow contra side interest to come in.” At the time in question, Caterina had been a floor official for six years and admittedly was familiar with the floor official manual.

^{30/}Applicants dispute that the single BVC Sell Order constituted an “influx of orders.” Krusik testified, however, that a single order could constitute an influx of orders depending “on the size of the [sell-side] interest, not the number of orders.” The size of the BVC Sell Order was 86,900 shares, which was an unusually large volume for a stock like BVC. See supra note 6 and accompanying text. We consider Krusik’s position persuasive.

Applicants support their argument that Caterina's actions did not violate the price continuity obligation of Exchange Rule 104.10 with the testimony of Howard Kramer, an attorney in private practice and former member of the staff of the Commission who testified on Applicants' behalf at the hearing. Kramer opined that Caterina made an adequate effort to generate buy-side interest in the BVC Sell Order. Kramer described the BVC Sell Order as "an extremely abnormal type of order to be submitted through [DOT]." He asserted that "[m]arket orders submitted through [DOT] are expected to be executed almost immediately" and noted the increased emphasis on speed of execution at the NYSE and the other exchanges. Kramer opined that Caterina "gapped the quote and waited for almost a minute. That's more than enough time."

While we do not dispute Kramer's view that it was unusual to transmit the BVC Sell Order through the DOT system and that market orders submitted through that system normally are expected to be executed almost immediately, we agree with the Exchange that, under the circumstances, Caterina should have better utilized established Exchange procedures "to slow down execution . . . in order to maintain price continuity and avoid significant price changes." As the Exchange further noted, "[t]hese procedures require an effort," largely absent here, "to bring buyers and sellers together and to obtain the objective advice of [f]loor [o]fficials." We find that Caterina failed to make an adequate effort to provide the price continuity required for the maintenance of a fair and orderly market.

In sum, we agree with the NYSE that Caterina's "haste [in effecting execution] led him to neglect established procedures" intended to minimize "the effects of temporary disparity between supply and demand" and to "allow the market to find a fair price."^{31/} We find that Caterina failed to maintain price continuity when he failed to consult with floor officials, paged French once, and purchased BVC stock at a discount for his dealer account fifty-three seconds later.^{32/}

³¹We note that the Exchange did not base its holding on a finding that Caterina's failures necessarily produced an inferior pricing result. As it observed, "[s]eeking out the interested buyer, and checking with a [f]loor [o]fficial, might have reached the same pricing result, but Mr. Caterina had to meet these requirements before doing so."

³²Applicants further contend that Caterina's "admitted inadvertent errors . . . should never have given rise to an enforcement proceeding, but should have been addressed under the NYSE's Minor Rule Violation Plan . . ." The NYSE may exercise discretion in selecting the means available to it to prosecute a proceeding. Exchange Rule 476A provides that "[i]n lieu of a 'disciplinary proceeding' . . . the Exchange may" impose a fine of up to \$5,000 on any member "for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature." Under the circumstances, we believe the Exchange acted within its discretionary authority in instituting disciplinary proceedings against Applicants, rather than treating this misconduct as minor rule violations.

Applicants do not dispute that Caterina is liable for the remaining three violations. We briefly discuss those violations below.

Failure to Represent Agency Orders Properly. The NYSE found that Caterina further violated Exchange Rule 104.10 by, among other things, failing to represent an agency sell order and three agency buy orders properly as specialist for BVC. When the BVC Sell Order was entered, the displayed bid was 500 shares at \$5.55 per share. Dolan testified that Caterina should have traded the first 500 shares of the BVC Sell Order at the published price of \$5.55, instead of matching 12,300 shares of the BVC Sell Order with the three buy orders totaling 12,300 shares at the arbitrary price of \$5.50. Caterina disadvantaged the seller by not trading the first 500 shares of the BVC Sell Order at the prevailing quote of \$5.55, which deprived the seller of the best price.^{33/} Conversely, Caterina disadvantaged the buyers when he matched 12,300 shares of the BVC Sell Order with the 12,300 shares comprising the three buy orders at a price of \$5.50, instead of at the improved price of \$4.50 that resulted when he gapped the quote immediately after executing those buy orders.

Execution One Point Away from Previous Sale. The NYSE also found that Caterina violated Exchange Rule 79A.30 when he failed to obtain prior floor official approval for discounting the price of BVC stock by one dollar. Exchange Rule 79A.30 provides that “[a]ll transactions in stocks . . . which are made . . . at one point or more away from the last previous sale when such previous sale is under \$20 per share” may not be “published on the tape without the prior approval of a [f]loor [o]fficial” The record indicates that Caterina did not obtain prior floor official approval for executing a transaction in BVC stock at \$4.50 per share, down from the last previous sale of \$5.50 per share that he had executed fifty-three seconds before. Dolan testified that, “the minute you get an order that’s unusual and you go through the gap quote scenario, if you are going to push up against the one- and two-point rule, you should be getting a floor official involved.”

Election of Sell Stop Order. The NYSE further found that Caterina violated Exchange Rule 123A.40, which generally prohibits a specialist from making a transaction “for his own account in a stock in which he is registered that would result in putting into effect any stop order he may have on his book.” One exception to that rule, as applicable here, is where “the transaction is more than 0.10 point away from the prior transaction” and the specialist obtains floor official approval before executing that transaction for his own account. Specifically, the NYSE found that Caterina, as dealer, failed to obtain prior floor official approval for the election of the 2,000 share sell stop order which, at \$4.50 per share, was more than 0.10 point away from the prior transaction which had occurred at \$5.50 per share. Exchange expert witness Krusik testified that Caterina should have sought floor official approval for executing that transaction “because he had on his book . . .” the sell stop order “to sell 2,000 shares”

³³Krusik agreed with Dolan that Caterina “should have traded the sell order against the prevailing quote. But he did not do so.” Instead, she asserted, “[h]e proceeded outside of the Exchange rules to trade, other than in terms of the public market.”

IV.

Applicants argue that the NYSE erred in holding SIG liable for Caterina's actions. Applicants assert that no statute or rule authorized the NYSE to hold SIG "strictly vicariously liable" for Caterina's alleged violations because SIG acted in good faith and there is no evidence that SIG or its management "committed a single wrongful act." 34/

We believe that the Exchange was correct in holding SIG liable for Caterina's violations. It is well-established that a firm may be held accountable for the misconduct of its associated persons because it is through such persons that a firm acts. 35/ We thus agree with the Exchange that a specialist firm is responsible for the actions of its specialists. 36/ Moreover, the record

³⁴Applicants assert that, if the Exchange had wished to hold SIG liable for Caterina's actions, the NYSE should have charged the Firm with supervisory failure. We disagree. As discussed below, supervisory failure is not the only possible basis for holding SIG liable for Caterina's misconduct.

³⁵See AT&T Co. v. Winback and Conserve Prog., Inc., 42 F.3d 1421, 1431 (3d Cir. 1994) (distinguishing Central Bank of Denver v. First Interstate Bank of Denver, 511 U.S. 164 (1994), on the basis that, in some instances, "liability cannot be imposed without reference to agency principles - - a corporation can only act through its agents"); Hollinger v. Titan Capital Corp., 914 F.2d 1564 (9th Cir. 1990); Merrill Lynch, Pierce, Fenner & Smith, Inc., 1977 SEC LEXIS 412 (1977); A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977); Armstrong, Jones & Co. v. SEC, 421 F.2d 359, 362 (6th Cir. 1970) ("The fact that Congress enacted an additional provision giving the Commission the power to sanction" firms for inadequate supervision "does not limit the Commission's power to discipline a [firm] for its employees' acts."). Cf. Vento & Co. v. Metromedia Fiber Network, Inc., 1999 U.S. Dist. LEXIS 3020 at *34 (S.D.N.Y. 1999) (finding persuasive the reasoning of those courts that found an agency theory of liability viable after Central Bank).

³⁶See In the Matter of SIG Specialists, Inc., Exchange Act Rel. No. 50076 (July 26, 2004), 83 SEC Docket 1414, 1426 (settlement in which member firm agreed to be held liable for, among other things, the trading violations of its specialists); SIG Specialists, Inc., Exchange Hearing Panel Dec. 04-116 (July 13, 2004) (stipulation and consent by member firm to, among other things, violation of Exchange Rule 104.10 by executing transactions "through certain of its registered specialists" in its dealer account that were unnecessary to maintain a fair and orderly market); Fleet Specialist, Inc., Exchange Hearing Panel Dec. 03-114 (June 5, 2003) (stipulation and consent by member firm to, among other things, violation of Exchange Rule 104.10 "through a member associated with [the member firm] as a specialist"); Corroon, Liechtenstein & Co., Exchange Hearing Panel Dec. 00-150 (Sept. 6, 2000) (stipulation and consent by member firm to, among other things, violation of Exchange Rule 104.10); M.J. Meehan & Co., Exchange Hearing Panel Dec. 96-98 (Sept. 18, 1996) (stipulation and consent by member firm and two of

(continued...)

contains evidence implicating SIG in Caterina's misconduct. For example, the evidence indicates that the BVC Sell Order was transmitted over DOT and was broadcast to the entire floor, including to SIG. As Dolan testified, Caterina's gapping of the BVC stock quote was tantamount to "send[ing] up a flare that something unusual ha[d] happened." By gapping the quote, Caterina alerted the market, and SIG, that there was a significant amount of stock for sale that would probably require extraordinary Exchange trading procedures. Despite the high profile of the BVC Sell Order, and the resulting extraordinary market imbalance in BVC stock, and despite, according to Caterina's testimony, the presence of SIG floor supervisors in close proximity, ^{37/} SIG stood by while Caterina mishandled, in various ways, execution of the BVC Trades. ^{38/} In this connection, we note that Caterina's handling of the BVC Trades, while potentially detrimental to the seller and other market participants, was profitable to SIG by, at a minimum, \$39,047, ^{39/} because of Caterina's accumulation of BVC stock at the discounted price of \$4.50 per share for the Firm's account. ^{40/} We consider SIG's failure to intervene particularly

^{36/}(...continued)

its specialists to failure to maintain fair and orderly markets in certain Exchange-listed securities). Although these are settled cases that have limited precedential value, they are consistent with our determination to hold SIG liable for the misconduct at issue here. See George J. Kolar, Exchange Act Rel. No. 46127 (June 26, 2002), 77 SEC Docket 3400, 3406 (noting that the Commission has cited John H. Gutfreund, 51 S.E.C. 93 (1992), although a settled case, in various Commission opinions and asserting that the Commission "may use an opinion issued in connection with a settlement to state views on the issues presented in that case that [the Commission] would apply in other contexts"); Carl L. Shipley, 45 S.E.C. 589, 591-92 n.6 (1974).

^{37/}A SIG supervisor was present on the floor, in close proximity to Caterina, at all times during Caterina's handling of the BVC Trades. Caterina testified that "[w]e always had our supervisor who was a specialist also. He was on the floor with us all the time." When asked at the hearing whether he lacked access to a floor supervisor at any time, Caterina replied, "I did not." Caterina noted that he should have "reach[ed] out" for help in executing the BVC Sell Order because "[m]y supervisor wasn't far"

^{38/}The Exchange, in holding the Firm liable, expressed "surpris[e] that the Firm, despite the gapping of the quote and despite the lowering of the stock's price by almost twenty percent, provided little help at the time to remedy this difficult situation."

^{39/}See supra note 10.

^{40/}SIG eventually appeared to accept responsibility for Caterina's mishandling of the BVC Trades when, more than two years after the fact, it reimbursed those customers who were disadvantaged by the BVC Trades.

troubling in light of the fact that Caterina had previously been cautioned by the Exchange for similar misconduct. ^{41/}

Applicants argue that the only possible basis for holding SIG liable is Section 20(a) of the Securities Exchange Act of 1934, which holds that a controlling person will be held jointly and severally liable with the controlled person “unless the controlling person acted in good faith and did not directly or indirectly induce the acts constituting the violation” ^{42/} According to Applicants, SIG cannot be held liable for Caterina’s actions under Exchange Act Section 20(a) because the Firm acted in good faith and could not have prevented Caterina’s mistakes. ^{43/} We disagree with Applicants that Exchange Act Section 20(a) is applicable here. Its coverage is limited to persons “who . . . control[] any person liable under any provision of [the Exchange Act] or of any rule or regulation thereunder . . . ,” ^{44/} and would not appear to apply to this proceeding brought pursuant to NYSE rules. In addition, even if Exchange Act Section 20(a) applied here, we do not believe the record supports SIG’s claim of good faith, for the reasons discussed previously concerning SIG’s liability for Caterina’s misconduct.

V.

SIG challenges all of the sanctions imposed by the Exchange, and Caterina challenges only the sanction imposed for his price continuity violation. We review sanctions imposed by the Exchange to determine whether they are excessive and oppressive, or whether they impose an

⁴¹See supra note 2 and accompanying text.

⁴²15 U.S.C. § 78t(a).

⁴³Applicants support their argument that Exchange Act Section 20(a) is the only basis for holding SIG liable for Caterina’s violations by citing to Central Bank of Denver v. First Interstate Bank of Denver, 511 U.S. 164 (1994). We disagree that Central Bank, which involved a private claim based on allegations of aiding and abetting, is applicable here. We note moreover that several circuits have held that Exchange Act Section 20(a) “was intended to supplement, and not to supplant” common law principles holding a firm strictly liable for the misconduct of its employees. Hollinger, 914 F.2d at 1576-77 (citing, inter alia, In re Atlantic Fin. Management, Inc., 784 F.2d 29, 32-34 (1st Cir. 1986), cert. denied, 481 U.S. 1072 (1987); Commerford v. Olson, 794 F.2d 1319, 1322-23 (8th Cir. 1986)); see also SEC v. Management Dynamics, Inc., 515 F.2d 801, 812-13 (2d Cir. 1975) (agreeing with the Commission that Exchange Act Section 20(a) “was not intended as the sole measure of employer liability . . . [and was intended] to expand, rather than restrict, the scope of liability under the securities laws.”).

⁴⁴15 U.S.C. § 78t(a).

unnecessary or inappropriate burden on competition. ^{45/} We have consistently held that the appropriate sanction depends on the facts and circumstances of each case and cannot be calibrated by comparison with action taken in other proceedings. ^{46/} Applying this standard, we see no basis for reducing the sanctions.

As we have held, the “obligation to maintain fair and orderly markets goes to the very heart of the specialist’s responsibility.” ^{47/} The record demonstrates that Caterina failed to satisfy that obligation, and that SIG should be held responsible for Caterina’s violations. We have long recognized the unique position that a specialist occupies at the center of the exchange markets. ^{48/} Applicants’ mishandling of the BVC Trades threatened the integrity of the Exchange’s pricing mechanism by disrupting the price continuity required for the maintenance of a fair and orderly market. Where, as here, there is a market trading imbalance, it is the specialist’s responsibility to restore that balance and ensure proper price discovery. As Dolan testified, Applicants’ failure to follow the requisite “checks and balances” jeopardized the “pricing mechanism,” which goes to the core of the Exchange’s function as an institution.

The Exchange, in assessing sanctions, characterized Caterina’s misconduct as “isolated” and noted that both Applicants eventually sought to make amends with the parties adversely

⁴⁵Exchange Act Section 19(e)(2), 15 U.S.C. § 78s(e)(2). Applicants do not assert, and the record does not show, that the Exchange’s action imposes an undue burden on competition.

⁴⁶See, e.g., Butz v. Glover Livestock Comm’n Co., 411 U.S. 182, 187 (1973); John R. D’Alessio, Exchange Act Rel. No. 47627 (Apr. 3, 2003), 79 SEC Docket 3627, 3651, aff’d, 380 F.3d 112 (2d Cir. 2004); Anthony A. Adonnino, Exchange Act Rel. No. 48618 (Oct. 9, 2003), 81 SEC Docket 981, 998-99, aff’d, 111 Fed. Appx. 46 (2d Cir. 2004); Jonathan Feins, Exchange Act Rel. No. 41943 (Sept. 29, 1999), 70 SEC Docket 2116, 2131 n.36.

⁴⁷Irwin Schloss, 47 S.E.C. 317, 324 (1980).

⁴⁸Id.

affected. Nevertheless, the Exchange described the violations as “serious.” We agree. Under

the circumstances, we do not find the sanctions imposed by the Exchange - - censure, a \$40,000 fine on Caterina, and a \$25,000 fine on SIG - - to be excessive or oppressive.

An appropriate order will issue. 49/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, ATKINS and CAMPOS).

Jonathan G. Katz
Secretary

⁴⁹We have considered all of the contentions advanced by the parties. We have rejected or sustained these contentions 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. 51867 / June 17, 2005

Admin. Proc. File No. 3-11731

In the Matter of the Application of

SIG SPECIALISTS, INC.,
f/k/a Susquehanna Specialists, Inc.,

and

THOMAS A. CATERINA
c/o Andrew E. Tomback, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005

For Review of Disciplinary Action Taken by the

NEW YORK STOCK EXCHANGE, INC.

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY NATIONAL SECURITIES
EXCHANGE

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

ORDERED that the disciplinary action taken by the New York Stock Exchange, Inc. against SIG Specialists, Inc., f/k/a Susquehanna Specialists, Inc., and Thomas A. Caterina be, and it hereby is, sustained.

By the Commission.

Jonathan G. Katz
Secretary