

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-91

May 14, 2003

ROGER LYNN OVERBY
FORMER REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 346(h) by engaging in outside business activities without employer consent; solicited customers to invest in outside business without disclosing his involvement in such business; failed to disclose involvement in outside business to employer – Consent to censure and nine months bar.

Appearances:

For the Division of Enforcement
David H. Steiner, Esq.
Jennifer Lobato-Church, Esq.

For the Respondent
William J. Schifino, Jr., Esq.

* * *

An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Roger Lynn Overby, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and with Prudential Securities Inc. ("Prudential"). Without admitting or denying guilt, Mr. Overby consents to findings by the Hearing Panel that he:

- I. Violated Exchange Rule 346(b) by engaging in outside business activities without receiving the prior written consent of his member firm employers.
- II. Engaged in conduct inconsistent with just and equitable principles of trade by soliciting customers of one or more member firm employers to invest in an outside business without disclosing to some of the customers his involvement in such business.
- III. Engaged in conduct inconsistent with just and equitable principles of trade by making misstatements and/or failing to disclose to one or more member firm employers his involvement or affiliation with an outside business.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Overby stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Roger Lynn Overby ("Overby") was born on October 22, 1956. He entered the securities industry in December 1988, working as a financial consultant trainee for

Merrill Lynch, and became a registered representative (“RR”) approximately four months later. The Exchange approved Overby’s registration in April 1989. Overby remained at Merrill Lynch until June 1997, and then worked as an RR at Prudential until February 2000. He was employed by another member organization from February 2000 until November 2000, when that firm terminated his employment.

2. Overby has not been employed in the securities industry in a registered capacity since November 2000.
3. On or about February 14, 2000, Enforcement received from Prudential a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) reporting that it was investigating Overby in connection with outside business activities.
4. By letter dated October 5, 2000, which Overby received, the Exchange notified Overby that it was investigating allegations involving his conduct while he was employed as an RR at Merrill Lynch and then at Prudential, and requested his written explanation.
5. Thereafter, Overby responded and, represented by counsel, testified in connection with Enforcement’s investigation.

Summary of Violative Conduct

6. From 1996 through 2000, Overby engaged in outside business activities, and received compensation in connection with these activities, without the knowledge or approval of his two member firm employers during that time period. Overby also solicited customers of his member firm employers, and other individuals, to invest in outside businesses without disclosing to some customers his involvement in and connection with the outside businesses. Overby made misstatements and failed to disclose facts to his member firm employers concerning his outside business activities.

Overby’s Relationship With, and Compensation Received From, an Outside Business

7. Exchange Rule 346(b) provides, in pertinent part, that: “[w]ithout making a written request and receiving prior written consent of his...member organization employer, no...employee of a ...member organization shall at any time be engaged in any other business; or be employed or compensated by any other person....”
8. In the summer of 1996, while employed at Merrill Lynch, Overby engaged in business activities with a private medical technology corporation (the “Corporation”), without Merrill Lynch’s knowledge or approval.
9. In September 1996 and again in January 1999, without the knowledge or approval of his member firm employers, Overby entered into consulting agreements with the Corporation, pursuant to which he performed services for the Corporation and received as compensation a total of \$290,000 and stock options, which he exercised.

10. In the summer of 1997, while employed at Prudential but without Prudential's knowledge or approval, Overby assisted the Corporation in entering an agreement with an OTC listed company. In July 1999, following that company's purchase of a controlling interest in the Corporation pursuant to this agreement, Overby became a shareholder representative for Corporation shareholders without Prudential's knowledge or approval.
11. In 1998, without Prudential's knowledge or approval, Overby loaned an affiliated company of the Corporation \$100,000 in exchange for a small ownership interest. Thereafter, he became a member of the Board of Directors of that affiliate.

Overby's Solicitation of Member Firm Customers and His Misstatements and/or Failures to Disclose His Involvement with Outside Businesses

12. In 1996 and 1997, while employed at Merrill Lynch, Overby solicited Merrill Lynch customers to invest in the Corporation outside their accounts at Merrill Lynch. Several of these customers made investments in the Corporation, which did not appear in their Merrill Lynch account statements. He also solicited various individuals who were not Merrill Lynch customers to invest in the Corporation. Overby solicited these investments without the knowledge or approval of Merrill Lynch.
13. Overby failed to disclose to some of the Corporation investors information about his relationship with the Corporation, including information concerning his first consulting agreement and the monetary compensation and stock options he received from the Corporation.
14. In February 1997, Overby signed a Merrill Lynch Compliance Disclosure Form, which asked if he had any outside employment, business interests or investments. Overby answered "no" to this question, which was not true.
15. In June 1997, Overby completed an application for employment at Prudential, which asked about involvement with outside businesses. Overby failed to disclose such involvement.
16. In May 1999, Overby filled out a form at Prudential requesting approval to solicit Prudential customers to purchase stock of the company purchasing a controlling interest in the Corporation. He stated to Prudential on that form that he did not have any affiliation with that company, which was not true.
17. After May 1999, Overby solicited and obtained investments in the company purchasing a controlling interest in the Corporation from various Prudential customers. Overby failed to disclose to some of these investors information about his relationship with that company, including his participation in, and compensation for, takeover negotiations between that company and the Corporation.
18. In December 1999, when the company declared bankruptcy, its investors realized significant losses.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Overby guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Overby of a censure and a bar for a period of nine months from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.

For the Hearing Panel

Milton M. Stein
Hearing Officer