

**Disciplinary Panel  
American Stock Exchange LLC**

---

IN THE MATTER  
OF  
HEADWATERS CAPITAL, LLC

Case No. 04-198  
Hearing Officer – RSH

**DECISION**  
September 29, 2005

---

**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Constitution Article V, Section 4(h), SEC Rule 15c2-11, and Exchange Rule 320(b), as stipulated, and as a penalty imposed a censure and a \$10,000 fine.**

**I. Introduction**

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Headwaters Capital LLC (“Headwaters” or the “Firm”), a former Regular Member Organization of the Exchange. The Disciplinary Panel Chair (“Chair”), presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on August 11, 2005, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”), which is attached as Exhibit A. The Exchange and Headwaters entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Headwaters based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Headwaters Securities, LLC, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein.

### **III. Violations**

Based upon the stipulated facts, the Chair concludes that Headwaters:

(1) violated Exchange Constitution Article V, Section 4(h) and SEC Rule 15c2-11 by failing to review and maintain specified information concerning HealthSouth prior to publishing quotations in an interdealer quotation medium; and

(2) violated Exchange Rule 320(b) by failing to (i) develop, maintain and enforce reasonable written supervisory procedures concerning compliance with SEC Rule 15c2-11 so as to prevent violations; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's compliance with SEC Rule 15c2-11 was being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be expected to detect SEC Rule 15c2-11 violations.

### **IV. Penalties and Publicity**

The Stipulation proposes that the Chair impose a censure and a fine of \$10,000 on Headwaters. After considering the stipulated facts and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case, and therefore it will be imposed. The Chair further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.<sup>1</sup>

### **V. Conclusion**

The Chair accepts the Stipulation of Facts and Consent to Penalty and

---

<sup>1</sup> Rule 12 exempts from publicity those cases in which the Panel finds that the offense "related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors." That exemption does not apply to the facts of this case.

hereby imposes upon Headwaters Capital LLC a censure and a \$10,000 fine.

**FOR THE DISCIPLINARY PANEL**

---

Rochelle S. Hall, Chair

Copies to: Morris N. Simkin, Esq. (*via facsimile and first class mail*)  
Headwaters Capital, LLC (*via overnight and first class mail*)  
Sebastian Krawczyk, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*electronically and via first class mail*)

**Disciplinary Panel  
American Stock Exchange LLC**

IN THE MATTER  
OF  
HEADWATERS CAPITAL, LLC

**STIPULATION OF FACTS AND  
CONSENT TO PENALTY**  
Case No. 04-198

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against HEADWATERS CAPITAL, LLC (“Headwaters” or the “Firm”) (CRD # 37728), a former Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Headwaters pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Headwaters based upon or arising out of the facts hereinafter stipulated. Headwaters, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Constitution, Rules and Federal securities laws, and the imposition of the penalties hereinafter provided. Headwaters understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Headwaters understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of its disciplinary record and may be considered in any future proceeding brought by the Exchange.

**STIPULATED FACTS:**

- 1.0 During all relevant periods herein, Headwaters was an Exchange member organization. Headwaters subsequently terminated its Exchange membership effective May 4, 2005. Jurisdiction was retained over Headwaters pursuant to a letter delivered via certified mail/return receipt requested dated May 16, 2005, receipt of which was acknowledged on May 19, 2005.
- 2.0 During all relevant periods herein, Headwaters was subject to Exchange Constitution Article V, Section 4(h), which prohibits conduct inconsistent with just and equitable principles of trade.
- 2.1 During all relevant periods herein, Headwaters was subject to Securities and Exchange Commission (“SEC”) Rule 15c2-11 which requires brokers and dealers to review and maintain specified information about the issuer of certain non-Nasdaq over-the-counter equity securities prior to publishing a quotation for that security.
- 2.2 During all relevant periods herein, Headwaters was subject to Exchange Rule 320, which requires member organizations to provide for appropriate supervisory control and designate a general partner, principal executive officer or trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. Exchange Rule 320 further requires that this designated person delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate

procedures of supervision and control, including a system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.

**Headwaters' SEC Rule 15c2-11 Violations:**

- 3.0 On or about March 19, 2003 the SEC announced the temporary suspension of trading of the securities of HealthSouth Corporation ("HealthSouth") at 9:30 a.m. E.S.T., terminating at 11:59 p.m. E.S.T. on March 20, 2003, due to questions regarding the accuracy and adequacy of publicly disseminated information by HealthSouth concerning the company's earnings and assets, and the company's current financial condition.
- 3.1 On or about March 21, 2003, the New York Stock Exchange ("NYSE") announced that it would continue the trading halt of HealthSouth while it reviewed the suitability for continued listing on the NYSE.
- 3.2 On or about March 25, 2003, HealthSouth was delisted from the NYSE and assigned the over-the-counter symbol "HSLH" so that it could begin trading on the National Quotation Bureau, Inc.'s Pink Sheets LLC quotation medium after 12:00 p.m. E.S.T. on March 25, 2003.
- 3.3 On or about March 25, 2003, Headwaters submitted two orders in HLSH through Instinet, LLC ("Instinet"): at or about 1:11 p.m. E.S.T., Headwaters entered an order to buy 10,000 shares of HLSH at 0.40; at or about 1:13 p.m. E.S.T., Headwaters entered an order to sell 10,000 shares of HLSH at 0.55.
- 3.4 In a letter dated June 24, 2003, the Exchange's Market Investigations Department ("MID") requested documentation from Headwaters evidencing the Firm's

compliance with the requirements of SEC Rule 15c2-11 prior to the Firm's submission of quotations through Instinet in HLSH on or about March 25, 2003.

- 3.5 In a letter dated October 23, 2003, Headwaters conceded that the Firm did not obtain the documents required by SEC Rule 15c2-11 with regard to the Firm's submission of quotations in HLSH on or about March 25, 2003.

**Headwaters' Supervisory Deficiencies:**

- 4.0 On November 15, 2002, following an unrelated investigation concerning potential SEC Rule 15c2-11 violations by Headwaters on April 2, 2002 in the common stock of ACLN Communications ("ACLNF"), MID sent an admonitory letter to Headwaters warning the Firm that any recurrence of the Firm placing quotations on an interdealer quotation medium in violation of SEC Rule 15c2-11 might result in more stringent disciplinary action against the Firm, including a censure and/or a fine. Additionally, MID's November 15, 2002 letter also advised Headwaters of the requirement to have policies and procedures in effect to ensure compliance with the federal securities laws and regulations, including SEC Rule 15c2-11.
- 4.1 During the period April 2002 through June 2003, Headwaters failed to develop, maintain and enforce reasonable written supervisory procedures with regard to the Firm's compliance with SEC Rule 15c2-11 so as to prevent the foregoing violations.
- 4.2 During the period April 2002 through June 2003, Headwaters failed to establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's compliance with SEC Rule 15c2-11 was being properly exercised.

- 4.3 During the period April 2002 through June 2003, Headwaters failed to establish adequate policies or procedures, or a system to implement such policies or procedures, which would reasonably be expected to detect violations of SEC Rule 15c2-11.
- 4.4 Headwaters subsequently submitted to the Exchange revised Written Supervisory Procedures concerning SEC Rule 15c2-11, dated July 1, 2003 to address the supervisory deficiencies set forth above.

**CONCLUSION:**

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 5.0 Headwaters violated Exchange Constitution Article V, Section 4(h) and SEC Rule 15c2-11, in that on or about March 25, 2003, Headwaters failed to review and maintain specified information concerning HealthSouth prior to publishing quotations in an interdealer quotation medium, as stated in above paragraphs 3.0 through 3.5.
- 5.1 Headwaters violated Exchange Rule 320(b), in that during the relevant period April 2002 through June 2003, and in connection with its Exchange-related activities, the Firm failed to: (i) develop, maintain and enforce reasonable written supervisory procedures concerning compliance with SEC Rule 15c2-11 so as to prevent the violations described herein; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's compliance with SEC Rule 15c2-11 was being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be

expected to detect the SEC Rule 15c2-11 violations, as stated in above paragraphs 3.0 through 4.4.

**DISCIPLINARY ACTION:**

By reason of the foregoing stipulated facts, a Disciplinary Panel may impose the following penalties upon Headwaters:

- (a) a censure; and
- (b) a \$10,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_  
David Rosenstein  
Vice President and Chief Counsel  
NASD Amex Regulation Division

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Headwaters Capital, LLC