

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
THOMAS MCNAMARA

:
:
Case Nos. 03-53, 06-473
[AMXC06020]
:
Hearing Officer – RSH
:
Default Decision
:
June 19, 2007
:

Digest

A former registered member violated Exchange Rules 345(a)(4) and 345(a)(6) by intentionally deleting a customer’s limited price order from the specialist book, Exchange Rule 345(a)(6) by knowingly acting in the capacity of a specialist in a stock, even though, at that time, he was not a member and was not registered as a specialist in the security, Exchange Rule 345(c) and Article V, Section 4(k) of the Exchange Constitution by failing to cooperate with an Exchange investigation. For failing to cooperate, Respondent is permanently barred from associating with any Exchange Member or Member Organization in all capacities. In light of the permanent bar, no additional sanctions are imposed for the other violations.

Appearances

Jennifer D. Kim, Staff Attorney, NASD Amex Regulation Department, New York, NY and Eric S. Brown, Associate Chief Counsel, NASD Amex Regulation Department, New York, NY for the Enforcement Department.

/ No appearance by or for Thomas McNamara.

DECISION

I. Procedural Background

On August 30, 2006 and September 25, 2006, the American Stock Exchange (“Exchange”) issued a Statement of Charges against Thomas McNamara, a former registered member, charging that McNamara had executed trades and acted as a specialist in a security without being registered as a specialist in the security by the Exchange and that he had

intentionally deleted a customer order from the specialist display book.¹ The Exchange alleged that McNamara's conduct violated Exchange Rule 345(a)(4), which prohibits Exchange member employees from engaging in conduct inconsistent with just and equitable principles of trade and Exchange Rule 345(a)(6), which requires Exchange member employees to adhere to principles of good business practice. McNamara did not answer the Statement of Charges. On January 9, 2007, the Exchange issued an Amended Statement of Charges, which incorporated the charges in the first Statement of Charges and also charged that McNamara failed to appear to testify at a deposition, thereby failing to cooperate in an Exchange investigation and violating Exchange Rule 345(c) and Article V, Section 4(k) of the Exchange Constitution.² McNamara did not file an answer to the Amended Statement of Charges.

On February 12, 2007, the Exchange's Department of Enforcement filed a Request for a Default Hearing and Decision. Respondent did not file a response to the motion. The Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b)(1) of the Exchange Constitution, held a hearing on March 29, 2007. McNamara did not appear at the hearing and was not represented. To establish an evidentiary basis for the charges,³ and to demonstrate its efforts to serve McNamara, the Exchange submitted a Statement of Affirmation from Jennifer Kim, Senior Attorney for the Exchange, a Sanctions Memorandum, a Pre-Hearing Submission, and 38 supporting documents. For the reasons set forth below, the Exchange's Request is granted.

¹ Statement of Affirmation of Jennifer Kim ("Aff."), at ¶¶ 22, 25; Exhibits ("Exh.") 16, 22.

² Aff. at 35; Exh. 35.

³ See *James M. Russen, Jr.*, 1993 SEC LEXIS 2339, 51 S.E.C. 675, n. 12 (Sept. 14, 1993), where the SEC noted that because the NASD's disciplinary decision was based on record evidence rather than simply the complaint's allegations, the Commission had a basis for discharging its review function under Section 19 of the Securities Exchange Act.

II. Jurisdiction

Under Exchange Rule 345(c), the Exchange may retain jurisdiction over a formerly registered employee if, within one year of receipt of a notice of termination, it gives written notice to the person that the Exchange is investigating any specified matter that occurred prior to termination.

Respondent was employed as a specialist clerk by HBH Specialists, LLC (“HBH”) between November 25, 2002 and August 20, 2003.⁴ He was terminated from HBH on or about August 20, 2003.⁵ Respondent was employed as a specialist for Cohen Specialists from December 29, 2003 to December 20, 2004. On August 17, 2005, McNamara joined M&J Securities as a broker and registered member. He terminated his Amex membership and employment with M&J Securities on August 31, 2006.⁶

On January 6, 2004, the Exchange sent Respondent letters by certified and first-class mail to his Central Registration Depository (“CRD”) home address notifying him that it was retaining jurisdiction over him in connection with its investigation of his intentional deletion of a limited price order from the specialist display book. The certified letter was returned to the Exchange unclaimed. The first-class letter was not returned.⁷ On January 20, 2004, the Enforcement Staff received a letter from Jeffrey Rosen, advising that he had been retained to represent McNamara in the Staff’s investigation.⁸

In connection with a separate investigation by the Exchange’s Trading Analysis Department (“TAD”), the Exchange sent McNamara additional letters informing him that it was retaining jurisdiction over him in connection with his failure to cooperate with an investigation.

⁴ Aff. ¶¶ 1, 3; Exh. 1, 5.

⁵ Aff. ¶ 2; Exh. 2.

⁶ Aff. ¶ 2; Exh. 3, 4.

⁷ Aff. ¶ 19; Exh. 12, 13.

⁸ Aff. ¶ 20; Exh. 14.

These letters were sent by certified and first-class mail on September 16, 2006 and December 5, 2006.⁹ McNamara signed for the December 5 certified letter on December 8, 2006.¹⁰

Because the Exchange notified McNamara that it was retaining jurisdiction over him within one year of termination of his Exchange membership, the Exchange has jurisdiction over him.

III. Respondent's Default

The Exchange sent the Amended Statement of Charges to Respondent on January 9, 2007, by both certified and first class mail to his CRD residential address. The certified letter was returned unclaimed; however, the first class mailing was not returned.¹¹ Respondent did not file an answer to the Amended Statement of Charges and on February 12, 2007, the Exchange filed a Request for Default Hearing.¹² On February 8, 2007, a copy was sent to Respondent at his CRD address by certified and first class mail.¹³ Respondent did not respond to the Request for Default Hearing and did not participate in the default hearing that was held on March 29, 2007.

The Exchange's mailing of the Amended Statement of Charges to Respondent's CRD address constitutes proper service under Article V, Section 1(b)(6) of the Exchange Constitution.¹⁴ By failing to answer or otherwise respond to the Statement of Charges, Respondent defaulted.

⁹ Aff. ¶ 23, 29; Exh. 19, 28.

¹⁰ Aff. ¶30; Exh. 29.

¹¹ Aff. ¶ 35; Exh. 35, 36.

¹² Aff. ¶ 38; Exh. 38.

¹³ Exh. 38.

¹⁴ Under Article V, Section 1(b)(6), the Exchange may properly serve a Statement of Charges on a member "by mailing it to such member...at his...office address or place of residence."

IV. Findings of Fact and Conclusions of Law

A. Acting as a Specialist and Deletion of a Customer Order from the Specialist Display Book

Enforcement alleged, and McNamara testified in an interview with Enforcement staff, that on June 25, 2003, while only registered by the Exchange as a specialist clerk, he was performing the functions of a specialist in Advanced Photonix, Inc. (“API”), including executing trades in API.¹⁵ On that date, McNamara deleted a customer limited order to buy 2,800 shares of API without permission or consent from any HBH specialist or other authority.¹⁶ McNamara deleted the order after specifically being told by the Exchange’s Intermarket Trading Analysis Department (“ITAD”) not to delete the order and that doing so would violate Exchange rules.¹⁷

The Panel Chair finds that Enforcement has shown that Respondent violated the provisions of Exchange Rule 345(a)(6) by knowingly acting in the capacity of a specialist in API, although he was not a member and was not registered as a specialist in the security by the Exchange. The Panel Chair also finds that Respondent violated the provisions of Exchange Rules 345(a)(4) and 345(a)(6) by intentionally deleting a customer’s order from the specialist’s display book.¹⁸

B. Failure to Cooperate by Failing to Attend a Deposition

During a separate investigation conducted by the Exchange’s Trading Analysis Department (“TAD”), McNamara was identified as the individual specialist responsible for

¹⁵ Exh. 5, p. 38, lines 8-14, pp. 42-43.

¹⁶ Aff. ¶¶ 14, 15; Exh. 5, p. 66, lines 19-25, p. 67, lines 1-12.

¹⁷ Aff. ¶¶ 12, 13; Exh. 5, p. 67, lines 1-12.

¹⁸ Exchange Rule 345(a)(4) prohibits conduct that is “inconsistent with just and equitable principles of trade.” Exchange Rule 345(a)(6) requires all members to adhere to principles of good business practice in the conduct of their business affairs.

trading the Amex-listed security, Meredith Enterprises, Inc. (“MPQ”) on November 2, 2004.¹⁹ On January 31, 2006, TAD staff conducted an informal interview of McNamara regarding the trading activity in MPQ on November 2, 2004. As a result of information obtained during that interview, the staff requested that McNamara testify at a deposition on December 20, 2006.²⁰ McNamara failed to appear at the deposition.²¹

The Panel Chair finds that Enforcement has shown that Respondent failed to appear at a deposition as requested by the Exchange and thereby failed to cooperate in an Exchange investigation and violated Exchange Rule 345(c) and Article V, Section 4(k) of the Exchange Constitution.

V. Sanctions and Publicity

Amex Sanction Guidelines do not provide sanctions for failing to testify as required; however, Article V, Section 4(k) of the Amex Constitution provides, “if an approved person is required ...to appear and testify...and refused or failed to comply...such approved person may have his approval withdrawn.” In addition, the Amex Sanction Guidelines, Principal Consideration 12 directs adjudicators to consider “whether the named party engaged in the misconduct at issue notwithstanding prior warnings from Amex staff...that the conduct violated Amex rules...” In this case, Enforcement staff notified McNamara *twice*, in writing, that Amex Rule 31 required him to attend the deposition as requested and that he risked incurring a “permanent bar from the securities industry” if he failed to attend the deposition.²²

¹⁹ Aff. ¶ 28.

²⁰ Aff. ¶ 32; Exh. 31.

²¹ Aff. ¶34; Exh. 34.

²² Exh. 31, 32, 33.

Finally, when Amex has no sanction guidelines applicable to violations in a case, the Panel Chair may appropriately consider the NASD Sanction Guidelines.²³ NASD Procedural Rule 8210 is analogous to Amex Rule 31 and authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. Like Amex's Rule 31, NASD's Rule 8210 serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.²⁴ For failing to respond in any manner to NASD staff requests for information issued pursuant to Procedural Rule 8210 (including failing to testify), the NASD Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.²⁵ In this case, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Therefore, in accordance with relevant Amex and NASD Sanction Guidelines, Respondent will be permanently barred for failing to appear at the deposition.

Neither the NASD nor the AMEX Sanction Guidelines provide sanctions for acting as a specialist without being approved as a specialist or for the deletion of a customer order from the specialist display book; however, Principal Consideration 12 directs adjudicators to consider "whether the named party engaged in the misconduct at issue notwithstanding prior warnings from Amex staff...that the conduct violated Amex rules..." In this case, McNamara was specifically directed by Amex staff not to delete the order from the specialist book and he was told that doing so violated Amex rules. Despite being so informed, McNamara intentionally deleted the order. Such conduct evidences a complete disregard for Exchange rules and would

²³ *David Wong*, Exchange Act Release No. 45,426, 2002 SEC LEXIS 339, at *22 (Feb. 8, 2002).

²⁴ *See Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16; *DOE v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003), *aff'd*. 2004 NASD Discip. LEXIS 7 (NAC May 11, 2004) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

²⁵ NASD Sanction Guidelines at 35 (2006 Ed.).

justify a suspension. In light of the bar imposed for McNamara's failure to attend a deposition, any additional sanction would be redundant and unnecessary.

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.²⁶

VI. Conclusion

McNamara violated Exchange Rules 345(a)(4) and 345(a)(6) by intentionally deleting a customer's limited price order off the specialist book, Exchange Rules 170(a) and 345(a)(6) by knowingly acting in the capacity of a specialist in a stock, even though he was not a member and was not registered as a specialist in the security, and Exchange Rule 345(c) by failing to cooperate with an Exchange investigation. For failing to cooperate, Respondent is permanently barred from associating with any Exchange Member or Member Organization in any capacity. In light of the bar, no additional sanctions are imposed for the other violations.

FOR THE DISCIPLINARY PANEL


Rochelle S. Hall, Chair

Copies to: Thomas McNamara (*via overnight delivery and first class mail*)
David Rosenstein, Esq. (*electronically and via first class mail*)
Eric Brown, Esq. (*electronically and via first class mail*)
Arlene Collins-Day (*electronically and via first class mail*)

²⁶ 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.

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
THOMAS MCNAMARA

**AMENDED
STATEMENT OF CHARGES**
Case Nos. 03-53 and 06-473
January 9, 2007

Charges are hereby preferred pursuant to Article V, Section 1(b)(6) of the Constitution of the American Stock Exchange LLC (the “Amex” or the “Exchange”) against **THOMAS MCNAMARA** (“McNamara”) (CRD #4744716), a former Member of the Exchange.

STATEMENT OF FACTS:

- 1.0 During the relevant period through August 20, 2003, McNamara was employed by HBH Specialists, LLC (“HBH”), an Exchange member organization and specialist firm, as a specialist clerk on the floor of the Exchange.
- 1.1 During the relevant period from December 29, 2003 through December 20, 2004, McNamara was employed by Cohen Specialists (“Cohen”), an Exchange member organization and specialist firm, as a specialist on the floor of the Exchange.
- 1.2 McNamara joined M&J Securities, an Exchange member organization and broker-dealer firm, on August 17, 2005 as a registered member. McNamara terminated his Amex membership and employment with M&J Securities on August 31, 2006.
- 1.3 Upon information and belief, McNamara has not worked in the industry since ceasing employment with M&J Securities on August 31, 2006.
- 1.4 During all relevant periods herein, Exchange Rule 345(a)(4) provided that an employee of an Amex member or member organization not engage in any conduct or proceeding inconsistent with just and equitable principles of trade.

1.5 During all relevant periods herein, Exchange Rule 345(a)(6) provided that an employee of an Amex member or member organization adhere to the principles of good business practice in the conduct of his business affairs.

1.6 During all relevant periods herein, Exchange Rule 345(c) provided that:

If, during the period of one year immediately following receipt by the Exchange of (a) written notification of termination of a person's status as an allied member, approved person, or registered or non-registered employee of a member or member organization, or (b) any amendment to such termination notice, the Exchange gives written notice to such person that it is making inquiry into any specified matter or matters occurring prior to termination of such person's employment, the Exchange may thereafter require such person to appear and testify, submit records, respond to written requests, attend hearings, and accept disciplinary charges or penalties with respect to the matter or matters specified in such notice in every respect in conformance with the Constitution and Rules and practices of the Exchange, in the same manner and to the same extent as such person would have been required to do if such person had remained an employee. If such person refuses or fails to comply with any such request of the Exchange, such person agrees that such refusal or failure may, in the discretion of the Exchange, act as a bar to future Exchange approval of such person's employment until such time as the Exchange has completed its investigation into the matter or matters specified in such notice; has determined a penalty, if any, to be imposed against such person and until the penalty, if any, has been carried out.

1.7 During all relevant periods herein, Article V. Section 4(k) of the Exchange Constitution provided that:

If a member, member organization or approved person is required by the Board of Governors, by the Chairman, or the Chief Executive Officer if delegated by the Chairman, or by any committee authorized by the Board of Governors or by the Constitution, to submit his or its books, papers and records or the books, papers and records of his or its employees or the books, papers and records of any member associated with or approved person of such member organization, or to furnish any information to, or to appear and testify before, or to cause any of such persons to appear and testify before, the Board of Governors, the Chairman, or the Chief Executive Officer if delegated by the Chairman, any such committee, or such officers, employees or representatives of the Exchange as may be so designated, and such member, member organization or approved person shall be adjudged guilty in a proceeding under this Article or having refused or failed to comply with such requirement, such member or

member organization may be suspended or expelled from membership, and such approved person may have his approval withdrawn.

1.8 During all relevant periods herein, Exchange Rule 170(a) provided that to act as a specialist in any security, an individual must be a member of the Exchange and registered as a specialist in the security by the Exchange.

A. Deletion of Customer Order – June 25, 2003:

2.0 On the above-referenced trade date, McNamara, although only designated and approved by the Amex as a specialist clerk, was performing the functions of a specialist in Advanced Photonix, Inc (“API”), including executing trades in API.

2.1 During the relevant periods herein, McNamara was not registered as an Amex Interim Member, which would have given him authority to execute trades and conduct business as a specialist.

2.2 On the above-referenced trade date, at 12:49:04, the displayed market on the Amex in API reflected an offer of 200 shares at 1.00.

2.3 At 2:27:42, a PER¹ order was received in the Amex Display Book (“ADB”) to buy 1,000 shares at a limit price of 1.00.

2.4 At 2:27:54, the order was executed against the account of the specialist which decremented the offer of 200 shares at 1.00 down to 100

2.5 At 2:27:58, 200 shares were re-offered at 1.00.

2.6 At 2:28:41, the NASDAQ printed 2,600 shares at 1.01 through the displayed offer on the Amex of 200 shares at 1.00.

2.7 At 2:29:07, the NASDAQ printed 2,800 shares at 1.04 through the displayed offer on the Amex of 200 shares at 1.00.

2.8 At 2:29:12, a PER order (TA# DZ97) was received by the ADB to buy 2,800 shares with a limit price of 1.00.

2.9 At 2:29:42, a trade-through administrative message (X4453) was sent to the NASDAQ.

¹ The "PER" or Post-Execution Reporting System is the former Amex electronic system for order delivery and execution.

- 2.10 At 2:30:12, a second trade-through administrative message (X4486) was sent to the NASDAQ.
- 2.11 At 2:50, the Amex Service Desk followed up on the initial trade-through complaint lodged by McNamara at 2:29:42.
- 2.12 At approximately 2:30, McNamara called the Intermarket Trading Analysis Department (“ITAD”) of the Exchange to complain about the trade-throughs in API and that the party trading-through the Amex market in API had just entered a system order on to the ADB.
- 2.13 McNamara then told the ITAD staff that he was going to delete the limit order entered at 2:29:12 (TA# DZ97) off the book. ITAD staff directed McNamara not to delete the order from the ADB and that his trade-through complaint would be pursued with the NASDAQ.
- 2.14 Shortly after the telephone conversation with ITAD staff referenced in above paragraphs 2.12 and 2.13, McNamara, by his own admission, intentionally deleted the customer limit order to buy 2,800 shares at 1.00 received at 2:29:12 (TA# DZ87) from the ADB without permission or consent from any authority.
- 2.15 Despite being specifically instructed by Exchange regulatory staff to not delete the order from the specialist book, McNamara intentionally deleted this limit order (TA# DZ87) in the absence of any supervision, review or approval by an HBH specialist.
- 2.16 During the relevant period herein, McNamara was not being directly supervised by the HBH specialist assigned to API stock.

B. Failure to Cooperate

- 3.0 During the course of a separate investigation conducted by the Trading Analysis Department (“TAD”), McNamara was identified as the individual specialist responsible

- for trading Amex-listed security, Meredith Enterprises, Inc. (“MPQ”) on November 2, 2004.
- 3.1 On January 31, 2006, TAD staff conducted an informal interview of McNamara regarding the trading activity in MPQ on November 2, 2004.
 - 3.2 Based on the information obtained during this informal interview and subsequent investigation, TAD staff determined that a formal deposition of McNamara was required.
 - 3.3 Upon learning that McNamara was no longer a member of the Exchange as of August 31, 2006, TAD staff sent a letter asserting jurisdiction over McNamara on October 3, 2006. This letter was sent first-class mail and certified mail, return receipt requested to McNamara’s residential address as listed in CRD and provided by McNamara during a deposition conducted by the staff of McNamara in connection with the staff’s review of the June 25, 2003 API trade date as set forth in paragraphs 2.0 through 2.16. The first-class letter was not returned. Two attempts were made to deliver the certified copy of the letter and it was returned to NASD on October 19, 2006 as “unclaimed.”
 - 3.4 On October 4, 2006, TAD staff sent a letter to McNamara requesting his attendance for a deposition on October 12, 2006 at 2:00 p.m. This letter was sent first-class mail and certified mail, return receipt requested to McNamara’s residential CRD address. The first-class letter was not returned. Two attempts were made to deliver the certified copy of the letter and it was returned to NASD on October 27, 2006 as “unclaimed.”
 - 3.5 On October 11, 2006, TAD staff telephoned McNamara on a cell phone number that the staff had obtained from the Exchange’s Membership Department (“Membership”) in order to confirm McNamara’s attendance at this on-the-record interview. The cell phone number that had been provided by Membership was identical to a phone number provided by McNamara during the course of the deposition conducted by the staff of

- McNamara in connection with the staff's review of the June 25, 2003 API trade date as set forth in paragraphs 2.0 through 2.16.
- 3.6 Upon connection of the telephone call referenced in paragraph 3.5 above, the NASD Amex Regulation staff member identified himself as employed by NASD, but the individual who had answered the telephone immediately hung up, terminating the call. When the TAD staff member dialed the number again, the phone rang and ultimately went to voicemail. The TAD staff member left a voicemail message for McNamara, reminding him of his scheduled deposition on October 12, 2006.
- 3.7 On October 12, 2006 at 2:04 p.m., TAD and Enforcement staff appeared for McNamara's deposition. After a twenty-minute delay, it was noted on the record that McNamara had failed to appear for the deposition. The record was closed at 2:31 p.m.
- 3.8 On November 29, 2006, TAD staff referred this matter to Enforcement. On December 5, 2006, Enforcement sent another jurisdiction letter to McNamara. This letter was sent by first-class mail and certified mail, return receipt requested to McNamara's residential CRD address. A certified return receipt with the signature "T. McNamara" was received by Enforcement staff dated December 8, 2006.
- 3.9 On December 7, 2006, McNamara telephoned the Vice-President and Corporate Secretary of the Amex who transferred the phone call to Enforcement staff. During the course of this telephone conversation, McNamara acknowledged receipt of the jurisdiction letter sent by Enforcement on December 5, 2006. McNamara was advised by Enforcement staff that allegations of a failure to cooperate were being investigated against him.
- 3.10 On December 14, 2006, Enforcement staff sent a letter to McNamara requesting his attendance for a deposition on December 20, 2006 at 10:00 a.m. This letter was sent by first-class mail and certified mail, return receipt requested to McNamara's residential

CRD address. Additionally, this letter was sent via electronic correspondence (“e-mail”) to “thosmcnamara@hotmail.com” and carbon-copied to “mandymcnamara@hotmail.com.”² A certified return receipt dated December 15, 2006 with the signature “T. McNamara” was received by Enforcement. The first-class letter was not returned.

- 3.11 On December 18, 2006, Enforcement staff telephoned McNamara using the cell phone number that he had provided to Enforcement at his deposition on February 17, 2004. Enforcement staff identified themselves to McNamara, and he confirmed his identity. Enforcement advised McNamara about the staff’s request for his testimony which had been sent via certified mail, regular mail and electronic correspondence. McNamara acknowledged receipt of this deposition request. Enforcement then reminded McNamara that the deposition was scheduled for December 20, 2006, at 10:00 a.m., at the NASD offices at 65 Broadway, New York, New York 10006, and also reminded McNamara of the potential consequences for his failure to cooperate with this investigation. McNamara acknowledged this information and then hung up the phone.
- 3.12 On December 20, 2006 at 10:00 a.m., TAD and Enforcement staff appeared for McNamara’s deposition. After a thirty-minute delay, it was noted on the record that McNamara had failed to appear for the deposition. Enforcement confirmed that McNamara was not in the NASD offices nor had he left a voicemail message regarding his attendance at, or his failure to attend, the deposition. The record was closed at 10:40 a.m.

² These two e-mail addresses were used by McNamara in initiating correspondence with Enforcement staff. McNamara initiated emails from thosmcnamara@hotmail.com and carbon-copied mandymcnamara@hotmail.com on his e-mails to Enforcement.

CHARGES PREFERRED:

- 4.0 McNamara engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rule 345(a)(4), in that he intentionally deleted a customer's limited price order that had been entrusted to him as a specialist off the specialist's book, as set forth in paragraphs 2.0 through 2.16.
- 4.1 McNamara violated Exchange Rule 345(a)(6) in that he failed to adhere to the principles of good business practice in the conduct of his business affairs in that he intentionally deleted a customer's limited price order off the specialist's book, as set forth in paragraphs 2.0 through 2.16.
- 4.2 McNamara violated Exchange Rule 345(a)(6) in that he failed to adhere to the principles of good business practice in the conduct of his business affairs by knowingly acting in the capacity of a specialist in API, although he was not a member nor was he registered as a specialist in the security by the Exchange, in contravention of Exchange Rule 170(a), as set forth in paragraphs 2.0 through 2.16.
- 4.3 McNamara violated Exchange Rule 345(c) and Article V, Section 4(k) of the Exchange Constitution in that he failed to cooperate with an Exchange investigation by failing to appear for a deposition despite repeated requests by the Exchange after the Exchange had secured jurisdiction over him as set forth in paragraphs 3.0 through 3.12.

* * * * *

McNamara shall have 20 days from the date of service of this Amended Statement of Charges to answer such Charges in accordance with the provisions of the Exchange Constitution and Rules thereunder. The answer shall specifically indicate which statements, or portions thereof, are admitted and which are denied. Any statement, or portion thereof, not specifically denied shall be deemed admitted.

AMERICAN STOCK EXCHANGE

By: _____

David Rosenstein
Vice President and Chief Counsel
NASD Amex Regulation Division