

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER OF
OF
MAI N. NGUYEN

:
:
Case No. 03-30
Hearing Officer – JN

:
:
Disciplinary Panel Decision
December 24, 2003
:

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rule 345(c) and Rule 17a-3(12) of the Securities Exchange Act of 1934, as stipulated, and as a penalty imposed a censure and an eighteen-month bar.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Mai N. Nguyen (“Nguyen”), a former employee of First Union Securities, Inc., a former Regular Member organization of the Exchange. A Disciplinary Panel held a hearing on December 19, 2003, pursuant to Exchange Rule 345(k), to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Nguyen entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Nguyen based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Nguyen, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that:

- 1.) Nguyen violated Exchange Rule 345(c) in that she failed to comply on a timely basis with the requests sent by the Exchange's Sales Practice Investigations Department and Enforcement to provide a written statement addressing the complaint of Public Customers A & B, and failed to appear on a timely basis for investigative testimony, as described in paragraphs 1.4 through 3.1 of the Stipulation.¹
- 2.) Nguyen also violated Rule 17a-3(12) of the Securities Exchange Act of 1934 (made applicable to registered employees pursuant to Article V, Section 4(i), of the Exchange Constitution and Exchange Rule 345(a)(1)) by failing to maintain a current address on her CRD.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose (a) a censure, and (b) an eighteen-month bar from functioning as a regular member or regular options principal, holding associated or allied membership, or holding the status of approved person or limited permit holder, and from employment or association in any capacity with an Exchange member or member organization for the violations described above. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

¹ The Stipulation recites that Nguyen ultimately submitted an on-the-record interview (Stipulation, par. 3.3).

The Disciplinary Panel 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.²

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Nguyen a censure and an eighteen-month bar from functioning as a regular member or regular options principal, holding associated or allied membership, or holding the status of approved person or limited permit holder, and from employment or association in any capacity with an Exchange member or member organization.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: December 24, 2003
Washington, DC

Copies to: Brian Carlis, Esq. (*via facsimile and first class mail*)
Paula A. Bosco, Esq. (*via facsimile, electronic mail and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

² Rule 12 exempts from publicity those cases where 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." Those exemptions do not apply to the facts of this case.

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
MAI N. NGUYEN	X	CONSENT TO PENALTY
.....	X	Case No. 03-30

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against MAI N. NGUYEN (“Nguyen”) (CRD # 868545), a former employee of First Union Securities, Inc. (“FUSI” or the “Firm”), a former Regular Member organization of the Exchange.¹ This Stipulation of Facts and Consent to Penalty is entered into with Nguyen pursuant to Exchange Rule 345(k) in order to settle and conclude all disciplinary actions by the Exchange against Nguyen based upon or arising out of the facts hereinafter stipulated. Nguyen, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Constitution and Rules and Federal Securities Laws and to the imposition of the penalties hereinafter provided. Nguyen 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 that may not be appealed by the parties. Nguyen understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of her disciplinary record and may be considered in any future proceeding brought by the Exchange.

¹ On September 1, 2001, FUSI merged with Wachovia to form Wachovia Securities, Inc., a current regular member of the Exchange.

STIPULATED FACTS:

- 1.0 In February 2000, Nguyen joined FUSI as a registered representative of the Firm. Nguyen voluntarily resigned from her employment with the Firm in March 2001. Between March 2001 and October 2002, Nguyen was employed by several NASD member firms as a registered representative. Currently, upon information and belief, Nguyen is not employed in the securities business.
- 1.1 During all relevant periods herein, Exchange Rule 345(c) provided that:
- “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 it such person remained an employee.”
- 1.2 During all relevant periods herein, the Securities Exchange Act of 1934, Rule 17a-3(12) (made applicable to registered employees pursuant to Article V, Section 4(i) of the Exchange Constitution and Exchange Rule 345(a)(1)) provided that each associated person of a member, broker or dealer, shall maintain current contact information, including a current residential address, on his/her CRD.
- 1.3 On or about July 2, 2002, the Exchange’s Sales Practice and Investigations Department (“SPID”) initiated an investigation into Nguyen upon SPID’s receipt of a Uniform Termination Notice for Securities Industry Registration (“Form U-5”), which stated that Nguyen was the subject of a customer complaint initiated by Public Customers A & B. Specifically, Public Customers A & B, joint account

- holders, alleged on March 5, 2001, that Nguyen effected unauthorized, unsuitable and excessive trades in their joint and individual accounts during the period between February 2000 and April 2000.
- 1.4 On July 2, 2002, SPID sent Nguyen letters (the “First Request Letters”), via certified mail, to her residential and business addresses as listed on the CRD advising her that the Exchange was retaining jurisdiction over her in connection with the Exchange’s investigation of matters specified in above paragraph 1.3. SPID’s jurisdiction letters also specifically requested that Nguyen submit to the Exchange a detailed written response to the complaint of Public Customers A & B by July 16, 2002, and that Nguyen provide the Exchange with her current home and business telephone numbers and addresses.
- 1.5 In the absence of receiving a response to its letters of July 2, 2002 to Nguyen, on August 26, 2002, SPID sent Nguyen letters (the “Second Request Letters”), via certified mail, to her residential and business addresses as listed on the CRD. The Second Request Letters advised Nguyen that the Exchange was retaining jurisdiction over her in connection with the Exchange’s investigation and specifically requested that Nguyen submit to the Exchange a detailed written response to the complaint of Public Customers A & B by September 13, 2002. The Second Request Letters also requested that Nguyen provide the Exchange with her current home and business telephone numbers and addresses.
- 1.6 The certified mail receipt card for the Second Request Letter sent to Nguyen’s residential address was not returned to the Exchange, and at no time did Nguyen respond to the Exchange’s Second Request Letter. On August 31, 2002, the

- Second Request Letter sent to Nguyen's business address was returned to the Exchange marked, "Refused", since Nguyen was no longer employed at the Firm.
- 1.7 On September 30, 2002, SPID sent Nguyen letters (the "Third Request Letters"), via certified mail, to the residential and business addresses as listed on the CRD. The Third Request Letters advised Nguyen that the Exchange was retaining jurisdiction over her, and specifically requested that Nguyen submit to the Exchange a detailed written response to the complaint of Public Customers A & B by October 31, 2002. The Third Request Letter was also sent to the compliance officer at Nguyen's most recent employer as listed on the CRD.
- 1.8 On October 4, 2002, the certified mail receipt cards for the letters addressed to Nguyen, and the compliance officer at the Nguyen's most recent employer, as described in above paragraph 1.7 were returned to the Exchange as delivered.
- 1.9 On October 10, 2002, the Third Request Letter addressed to Nguyen's residential address was returned to the Exchange with the mailing address listed on the face of the envelope crossed out and an updated address hand-written in its place.
- 2.0 On October 17, 2002, the compliance officer at Nguyen's most recent employer contacted SPID to inform the Exchange that he was in the process of terminating Nguyen's employment with the firm based on Nguyen's failure to complete certain paperwork required by the firm. The compliance officer also sent Nguyen a letter, via Federal Express, to her residential address as listed on the CRD informing her of the Exchange's request for a written response to the allegations made by Public Customers A & B.

- 2.1 On October 22, 2002, SPID sent Nguyen a fourth letter (the “Fourth Request Letter”), via certified mail, to the updated residential address listed on the return envelope as noted in above paragraph 1.9. The Fourth Request Letter advised Nguyen that the Exchange was retaining jurisdiction over her in connection with the Exchange’s investigation, and specifically requested that Nguyen submit to the Exchange a detailed written response to the complaint of Public Customers A & B by November 5, 2002. The Fourth Request Letter also requested that Nguyen provide the Exchange with her current home and business telephone numbers and addresses. A certified mail receipt card was received by the Exchange indicating that the letter had been delivered.
- 2.2 On November 5, 2002, SPID received a letter from counsel for Nguyen requesting an extension to submit a written response to the complaint initiated by Public Customers A & B. At no time prior to November 5, 2002, was SPID aware that Nguyen retained counsel in connection with the Exchange’s investigation.
- 2.3 At counsel’s request, on November 5, 2002, SPID granted a three-day extension to submit Nguyen’s written response to the complaint initiated by Customers A & B.
- 2.4 On November 8, 2002, counsel for Nguyen faxed a statement to SPID, which consisted of two sentences addressing the complaint initiated by Public Customers A & B, specifically, that, “...the handling of the account was suitable...” and “a vigorous defense will be asserted.” SPID immediately contacted counsel for Nguyen and left a message that Nguyen’s statement did not meet the Exchange’s request.

- 2.5 Between November 8, 2002 and November 18, 2002, the Exchange contacted Nguyen's counsel and left several telephone messages for him to contact the Exchange, all without receiving a response.
- 2.6 On November 19, 2002, counsel for Nguyen contacted SPID to advise the staff that he no longer represented Nguyen. Counsel stated he had been unsuccessful in contacting Nguyen and speculated she may have left the country. A review of Nguyen's CRD records revealed she has not been employed in the industry since October 2002.
- 2.7 On April 17, 2003, SPID referred the matter to the Exchange's Enforcement Department ("Enforcement").
- 2.8 On April 26, 2003, Enforcement sent Nguyen a fifth and final letter (the "Fifth Letter"), via certified and regular mail, to the updated residential address listed on the return envelope as noted in above paragraph 1.9 informing Nguyen of the Exchange's continued retention of jurisdiction over her,² and requesting that Nguyen appear for an on-the-record ("OTR") interview at the Exchange's offices located at 65 Broadway, 17th Floor, New York, New York on May 5, 2003, at 10:00 a.m. Nguyen was advised that disciplinary proceedings would be initiated against her pursuant to Exchange Rule 345(c) in the event that she failed to contact Enforcement on or before that date.
- 2.9 On April 28, 2003, Enforcement performed a number of Internet searches in an effort to ascertain a current address for Nguyen. Specifically, Enforcement performed a review of ALLFIND Combined Person and Business Locator Files

² As previously mentioned, this address was not listed on Nguyen's CRD. The address appeared in a handwritten note on the face of a jurisdiction letter that was previously sent to Nguyen on September 30, 2002, and which was returned to the Exchange without having been delivered.

- on Lexis. In performing the search one name matched the search term “Mai N. Nguyen,” and was the address at which both SPID and Enforcement sent their latest jurisdiction letters. Lexis listed no telephone contact numbers for Nguyen at that time. Enforcement also contacted directory assistance in an attempt to ascertain a contact number for Nguyen. Although there were two listings under the last name “Nguyen”, neither of them were the individual for whom Enforcement sought to locate.
- 3.0 On April 30, 2003, Enforcement was contacted telephonically by Nguyen’s son-in-law, who stated he was in receipt of Enforcement’s April 26, 2003 letter addressed to Nguyen, and who also indicated that Nguyen no longer lived at that address. The individual refused to provide a current address or phone number for Nguyen, but stated that he had spoken to Nguyen just prior to contacting Enforcement and that he had read the April 26, 2002 letter to Nguyen over the phone. According to the individual, Nguyen would not be able to attend the Exchange OTR scheduled for May 5, 2002. Enforcement instructed the individual to have Nguyen contact Enforcement directly to discuss the investigation, but also informed the individual that absent Nguyen contacting Enforcement prior to the interview, Enforcement would commence a proceeding to permanently bar Nguyen from the securities industry.
- 3.1 On May 5, 2003, Nguyen failed to appear for the scheduled OTR interview or otherwise contact Enforcement to reschedule the interview.
- 3.2 On May 7, 2003, Nguyen contacted the Exchange to request that she be allowed to participate in an OTR interview, via conference call, based on her inability to

afford travel to New York City. Enforcement acquiesced to Nguyen's request and an OTR was scheduled for June 10, 2003.

- 3.3 On June 10, 2003, Enforcement telephonically deposed Nguyen, in the presence of new counsel. While Nguyen had asserted in May 2003, that she did not receive any of the Exchange's letters, she admitted during her June 2003 investigative testimony that she did not request that her mail be forwarded to her newest address once she moved from her CRD address. Nguyen also admitted that she was aware of the Exchange's September 30, 2002 and October 22, 2002 letters.

CONCLUSION:

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

- 3.4 Nguyen violated Exchange Rule 345(c) in that she failed to comply on a timely basis with the requests sent by SPID and Enforcement to provide a written statement addressing the complaint of Public Customers A & B, and failed to appear on a timely basis for investigative testimony, as described in paragraphs 1.4 through 3.1.
- 3.5 Nguyen also violated Rule 17a-3(12) of the Securities Exchange Act of 1934 (made applicable to registered employees pursuant to Article V, Section 4(i), of the Exchange Constitution and Exchange Rule 345(a)(1)) by failing to maintain a current address on her CRD.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Nguyen:

- (a) a censure;
- (b) an eighteen-month bar from functioning as a regular member, regular options principal, holding associated or allied membership, holding the status of approved person or limited permit holder, and from employment or association in any capacity with an Exchange member or member organization.

AMERICAN STOCK EXCHANGE LLC

By: _____
David Rosenstein
Vice President

Agreed to this _____ day of November 2003.

Mai N. Nguyen