

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 07-26

February 23, 2007

DAVID ANTONIO MIRANDA  
FORMER MEMBER

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**Violated NYSE Rule 104.10 by failing to maintain fair and orderly market in NYSE-listed security with respect to which he acted as specialist by improperly freezing display book for excessive amount of time, which prevented customer orders from entering auction market and being effectively represented; violated Rule 11Ac1-4 of Securities Exchange Act of 1934 and NYSE Rule 79A.15 by failing to timely publish price and/or full size of customer limit orders that would have improved specialist's bid or offer in such security; violated NYSE Rule 476(a)(6) by freezing display book for excessive amount of time, failing to timely publish price and full size of customer limit orders that would have improved specialist's bid or offer in such security, and failing to effectively represent agency orders – Consent to censure and \$50,000 fine.**

**Appearances:**

For the Division of Enforcement  
Steven Brostoff, Esq.  
Neil M. Berson, Esq.  
Kenneth R. Bozza, Esq.  
Lara M. Posner, Esq.  
John Roussel

For Respondent  
Joseph A. Sack, Esq.

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s (“NYSE Regulation”) Division of Enforcement (“Enforcement”) and David Antonio Miranda (“Respondent”), a former member with Van der Moolen Specialists USA, an NYSE member

organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

- I. Violated NYSE Rule 104.10 in that, on approximately 409 occasions, he failed to maintain a fair and orderly market in an NYSE-listed security with respect to which he acted as specialist by improperly freezing the display book for an excessive amount of time, which prevented customer orders from entering the auction market and being effectively represented.
- II. Violated Rule 11Ac1-4 of the Securities Exchange Act of 1934 and NYSE Rule 79A.15 in that, on certain occasions, he failed to timely publish the price and/or full size of customer limit orders that would have improved the specialist's bid or offer in such security.
- III. Violated NYSE Rule 476(a)(6) in that he engaged in conduct inconsistent with just and equitable principles of trade on certain occasions, by engaging in a pattern of activity whereby he improperly froze the display book for an excessive amount of time, failed to timely publish the price and full size of certain customer limit orders that would have improved the specialist's bid or offer in such security, and failed to effectively represent agency orders.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:\*

### **Background and Jurisdiction**

1. Miranda was born in 1963. Miranda was approved as a member of the NYSE on September 3, 1997 and was employed at Van der Moolen Specialists USA, LLC and its predecessor firms ("VDM") from September 1994 until January 2007. Prior to VDM, Miranda was employed at Firm A from January 1987 through September 1994.
2. By letter dated October 13, 2005, which he received, Miranda was notified that NYSE Regulation was reviewing the possibility that he may have violated NYSE Rules 104.10 and 79A.15 and Rule 11Ac1-4 of the Securities Exchange Act of 1934 ("Exchange Act").

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\* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 20 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer, except that pseudonyms have been provided to protect the privacy of non-parties.

### Overview

3. During the period July 2004 through November 2006 (the “Relevant Period”), Miranda “froze” the display book for excessive periods of time on more than 400 occasions in violation of the specialist’s obligation to maintain a fair and orderly market as mandated by NYSE Rule 104.10, which prevented customer orders from entering the auction market and being effectively represented. On many of these occasions, customer limit orders, received while the display book was “frozen,” which would have improved the published bid or offer were not published in accordance with the requirements of Exchange Act Rule 11Ac1-4 and NYSE Rule 79A.15 (collectively the “Limit Order Display Rules”).

### Regulatory Framework

#### Fair and Orderly Market

4. NYSE Rule 104.10, states in pertinent part that “[t]he function of a member acting as regular specialist on the Floor of the [NYSE] includes, in addition to the effective execution of commission orders entrusted to him, the maintenance, in so far as reasonably practicable, of a fair and orderly market on the [NYSE] in the stocks in which he is so acting.”
5. In addition, the NYSE “Floor Official Manual”<sup>1</sup> provides, among other things, that “[t]he specialist is responsible for fostering and acting to maintain liquid and continuous two-sided agency auction markets by acting as agent and principal in those securities on the [NYSE] Floor” in which the specialist is registered.

#### Limit Order Display Rules

6. Exchange Act Rule 11Ac1-4 provides, in pertinent part, that “[e]ach member of an exchange that is registered by that exchange as a specialist...shall publish immediately a bid or offer that reflects:
  - (i) The price and full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and
  - (ii) The full size of each customer limit order held by the specialist that:
    - (A) Is priced equal to the bid or offer of such specialist for such security;

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<sup>1</sup> Floor Official Manual, issued by the Division of Market Surveillance, June 2004 Edition at 7.

- (B) Is priced equal to the national best bid or offer; and
  - (C) Represents more than a de minimis change in relation to the size associated with the specialist's bid or offer.”
7. NYSE Rule 79A.15 provides that “[w]ith respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects;
- (i) the price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and
  - (ii) the full size of each limit order that
    - (A) is priced equal to the specialist's bid or offer for such security;
    - (B) is priced equal to the national best bid or offer; and
    - (C) represents more than a de minimis change (i.e., more than 10 percent) in relation to the size associated with the [NYSE's] bid or offer.”

#### The Display Book Freeze Mode and Autoquote Feature

8. The display book is an electronic workstation provided by the NYSE to specialist firms for use by their specialists at their trading post. It is operated by means of a customized keyboard. The display book allows specialists to, among other things, receive, view, and process orders, disseminate trade and quote information, report trade executions, research order and execution status, manage positions, and view profit and loss in the dealer account.
9. In order to assist specialists in their responsibility to achieve compliance with the Limit Order Display Rules, the NYSE implemented Autoquote as a feature of the display book in May 2003. Through this tool, as set forth in NYSE Rule 60(e), the display book generally updates the NYSE's published bid or offer automatically when a customer limit order improves the price or size of the displayed quotation or when a customer cancels a limit order that made up all or part of such quotation. When the NYSE's highest bid or lowest offer has been traded within its entirety, Autoquote will quote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price.

10. Moreover, Autoquote immediately adds size to the best bid/offer as additional limit orders at the best bid/offer are received and reduces the size of the best bid/offer as limit orders at the best bid/offer are executed or cancelled.
11. During the trading day, the specialist can cause the display book to be "frozen" in a particular security. This is necessary on occasion for a short period of time in order to report trades, among other things. A specialist may cause the display book to be "frozen" either "explicitly," by depressing the freeze key on the display book keyboard, or "implicitly," by entering the display book's "report mode," among others, which is used to report trades to the Consolidated Tape.
12. During the time that the display book is "frozen," whether "explicitly or implicitly," new orders that have been transmitted through the NYSE's Super Designated Order Turnaround System ("SuperDOT")<sup>2</sup> cannot be viewed on the display book's display screen. Therefore, while the display book remains "frozen," these orders cannot be represented in the auction market, cannot be quoted, and continue to queue in "order time" priority. Significantly, when the display book is "frozen," Autoquote functionality is disabled, thereby preventing the automatic updating of quotations.
13. When the display book is "unfrozen," system orders that queued during the "freeze" are immediately displayed and viewable on the display book's display screen, and Autoquote functionality resumes.

Member Education Bulletin 2004-10

14. Member Education Bulletin 2004-10 (August 9, 2004), distributed to all specialists and specialist firms, informed, in pertinent part, that "inappropriate use of the explicit freeze mode of the Display Book ... that ha[s] the effect of not displaying or quoting a limit order (unless executed or cancelled) until after 30 seconds may result in violations of the [Limit Order Display] Rule."

**Miranda's Violative Conduct**

15. During the Relevant Period, Miranda "froze" the display book for excessive periods of time in violation of NYSE Rule 104.10, which prevented customer orders from entering the auction market and being effectively represented. For example, during the period July 2004 through April 2005, Miranda "froze" the display book in excess

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<sup>2</sup> "SuperDOT," is an electronic order-routing system used by NYSE member firms to send market and limit orders directly to the trading post where the security is traded.

of 30 seconds (including both explicit and implicit freezes) on approximately 409 occasions.<sup>3</sup>

16. On many of these occasions, customer limit orders, received while the display book was “frozen,” which would have improved the published bid or offer, were not published in accordance with the requirements of the Limit Order Display Rules.
17. For example, on February 28, 2005, Miranda was the assigned specialist in XYZ. At 1:33:39 p.m., Miranda *implicitly froze* the display book in XYZ by entering the report mode. Then, at 1:34:41 p.m., Miranda *explicitly froze* the display book in XYZ. The display book remained “frozen” in XYZ until 1:34:45 p.m., approximately 66 seconds.
18. The published quotation in XYZ prior to the “freeze” was 25.05 – 25.17 (13 x 1). During the “freeze,” two limit orders were entered through SuperDOT and remained in queue. For example, the first, entered through SuperDOT at 1:33:58 p.m., was an order to sell 100 shares of XYZ at a limit price of 25.16. This sell limit order was a .01 below the published offer. Had the display book not been “frozen,” this order would have improved the published offer and the published quotation should have been reflected as 25.05 – 25.16 (13 x 1). However, this sell limit order remained queued and undisplayed for approximately 47 seconds, until the display book in XYZ was “unfrozen.”
19. The example depicted above is illustrative of the violations that occurred during the Relevant Period. In the above example, Miranda “froze” the display book in XYZ for an excessive period of time (66 seconds). As a result of this excessive “freeze,” Miranda failed to effectively represent the two agency orders. In addition, Miranda failed to immediately publish the above 100-share limit order that would have improved the published quotation.

### **Other Factors Considered**

20. In arriving at the agreed-upon penalty in this matter, Enforcement considered certain additional factors including: (i) that during its investigation, Enforcement found no evidence that Miranda’s use of the freeze key advantaged the Firm’s dealer account; and (ii) that the incidents of freezes for excessive periods of time represented a small percentage of the total number of trades executed by Miranda during the Relevant Period.

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<sup>3</sup> These occasions exclude all “freezes” during which time the opening trade was executed. In addition, also excluded were “freezes” which lasted 60 seconds or less in duration and during which time in excess of 100,000 shares were executed, an outgoing ITS commitment was issued (including two seconds prior to the start of the “freeze”), or a reported trade involved the participation of a Floor broker.

**DECISION**

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent guilty as set forth above.

**PENALTY**

In view of the above findings, the Hearing Officer, imposed the penalty consented to by Respondent of a censure and a \$50,000 fine.

For the Hearing Board

Vincent F. Murphy - Hearing Officer