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FOR IMMEDIATE RELEASE
January 19, 2007

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TWO FORMER SPECIALISTS ON NEW YORK STOCK
EXCHANGE FLOOR SENTENCED TO 6 MONTHS
IN PRISON FOR SECURITIES FRAUD

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced that MICHAEL HAYWARD and MICHAEL STERN, former registered specialists on the New York Stock Exchange ("NYSE"), were each sentenced today to 6 months' imprisonment on charges of federal securities fraud. United States District Judge SIDNEY H. STEIN, who imposed the sentences, also ordered HAYWARD and STERN each to serve two years of supervised release, 320 hours of community service, and to pay a \$250,000 fine.

In sentencing HAYWARD, Judge STEIN described the fraudulent trading conduct as "undermining the fairness, transparency and efficiency of trading on the New York Stock Exchange."

During STERN's sentencing, Judge STEIN emphasized that he did not "want lost the fact this was intentional criminal conduct," and stated that STERN was "part of a group of people who rigged the securities system."

On July 14, 2006, at the conclusion of a one-month jury trial, HAYWARD and STERN were both found guilty of one count of securities fraud stemming from HAYWARD's fraudulent and improper trading in the stock of Apache Corporation from approximately March 2002 through April 2003, and from STERN's fraudulent and improper trading in the stock of Duke Energy Corporation from approximately October 2002 through April 2003. As established by the evidence at trial:

HAYWARD and STERN both previously acted as specialists at Van der Moolen Specialists USA, LLC ("VDM"), and both previously served on the Management Committee of the firm and as NYSE floor officials, responsible for supervising and regulating trading floor activities.

Purchases and sales of securities on the NYSE must be executed through a specialist who works on the floor of the exchange. Each security listed for trading on the NYSE is assigned to a particular specialist and is traded through an assigned "post" on the floor of the exchange. Orders to purchase or sell securities are presented to a specialist in one of two ways: orally and in person by a floor broker on the floor of the NYSE, or transmitted to the specialist electronically using the NYSE's Super Designated Order Turnaround System ("Super DOT"). Orders transmitted over Super DOT appear on a special computer screen, often referred to as the "display book," which is present at every specialist's trading post.

After receiving an order to buy or sell a security, the specialist can execute or "fill" the order in one of two ways: by matching it with a corresponding customer order or by taking the trade into the specialist's own account. Generally, the specialist must match any open orders to buy from one investor with an open order to sell from another investor within the same price range. Orders executed in this manner are referred to as "agency" orders because the specialist simply acts as an agent matching orders from willing buyers with willing sellers. Specialists are required by rules of the United States Securities and Exchange Commission and the NYSE to execute trades on an agency basis whenever possible.

NYSE rules prohibit specialists from buying or selling securities on a principal or dealer basis if the specialist is aware of pending orders from investors at the same price. In other words, specialists are prohibited from trading in front of public orders by buying or selling stock for their proprietary accounts at prices that are more advantageous than the prices they would then give to existing public orders.

In this case, the defendants violated NYSE rules and breached their obligations to refrain from buying and selling stock for their proprietary or dealer accounts while in the possession of executable customer buy and sell orders. HAYWARD did this with stock of the Apache Corporation and STERN with the stock of Duke Energy Corporation. Specifically, the defendants effected improper proprietary trades at the expense of public orders by "trading ahead" of those orders and by "interpositioning" themselves between these orders, either by purchasing stock for their proprietary accounts from customer sell orders, and then filling customer buy orders by selling from their proprietary accounts at a higher price; or selling stock from their proprietary accounts to customer buy orders, and then filling customer sell orders by buying for their proprietary accounts at a lower price. Thus, the defendants and their firm's proprietary accounts profited by capturing the

spread between the lower price at which they bought stock from customer sell orders and the higher price at which they sold stock to customer buy orders. The defendants profited by effectively interpositioning and buying or selling stock for the proprietary account at the most advantageous price at the cost of at least one of the customers who was a party to the transaction.

HAYWARD, 53, currently resides in Ramsey, New Jersey.
STERN, 56, currently resides in New Canaan, Connecticut.

Mr. GARCIA praised the efforts of the Federal Bureau of Investigation. Mr. GARCIA also thanked the SEC for its assistance in the investigation and prosecution of this case, as well as the NYSE, which cooperated with the Government in its investigation and prosecution.

Assistant United States Attorneys LAUREN GOLDBERG and ANTHONY S. BARKOW are in charge of the prosecution and were assisted at trial by former Special Assistant United States Attorney CHRISTOPHER CASTANO.

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