



*United States Attorney
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**TWO FORMER NEW YORK STOCK EXCHANGE SPECIALISTS
PLEAD GUILTY TO FEDERAL SECURITIES FRAUD CHARGES**

MICHAEL GARCIA, the United States Attorney for the Southern District of New York, announced that JOSEPH BONGIORNO and PATRICK MCGAGH, former registered specialists on the New York Stock Exchange (the "NYSE"), pleaded guilty today to violating federal securities laws. The charges arise from the specialists' fraudulent and improper trading from approximately 1999 through early 2003.

As charged in the Indictment, purchases and sales of securities on the NYSE must generally 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. Both BONGIORNO and MCGAGH acted as specialists at Van der Moolen Specialists USA, LLC ("VDM") and were members of the management committee at VDM. During their tenure as specialists on the floor of the NYSE, each served as an NYSE floor official, responsible for supervising and regulating trading floor activities. BONGIORNO also served as one of twenty senior officials known as Floor Governors. During the relevant period, BONGIORNO was the specialist assigned to trade Hewlett Packard Co., and MCGAGH at various times was the specialist assigned to trade Nortel Networks Communications and Pfizer Inc..

According to the Indictment, orders to purchase or sell securities are presented to a specialist in one of two ways - either orally and in person by a floor broker on the floor of the NYSE, or electronically using the NYSE's Super Designated Order Turnaround System ("Super DOT").

As explained in the Indictment, after receiving an order to buy or sell a security, the specialist can execute or "fill" the order in one of two ways. 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 generally referred to as "agency" orders because the specialist simply acts as an agent who matches orders from willing buyers with willing sellers. If there is no matching order to buy and order to sell in the same price range at a given time, a specialist generally may execute an investor's order to buy by selling from the specialist's propriety account, or "inventory," and may execute an order to sell by buying the stock for the specialist's inventory. This method of executing an order is called trading on a "principal" or "dealer" basis. NYSE rules prohibit a specialist from buying or selling securities on a principal or dealer basis - in other words, by participating in the deal as a buyer or seller itself - if the specialist were aware of pending orders from investors at the same price.

According to the Indictment, the defendants systematically violated NYSE rules and breached their duties to refrain from buying and selling stock for their proprietary or dealer accounts while in the possession of executable customer buy and sell orders, in furtherance of a scheme to defraud purchasers and sellers of stock on the NYSE. Instead, the defendants effected improper proprietary trades at the expense of public orders by one of two means. By "trading ahead" of public orders - i.e., by filling customer buy and sell orders through principal trades from their dealer accounts in front of executable customer orders, the defendants trade from their dealer accounts at the most advantageous price, and then by executed agency orders with which they were entrusted at a less advantageous price than they had received for their proprietary accounts. By "interpositioning" themselves between these orders - i.e., either 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 fill customer buy orders, and then filling customer sell orders by buying for their proprietary accounts at a lower price. The defendants BONGIORNO and MCGAGH and their firm's proprietary account 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.

BONGIORNO and MCGAGH each pleaded guilty to one count of securities fraud in connection with their unlawful trading activities. At the plea hearing, the Government described the case as involving "securities fraud charges in an area where criminal charges have never before been brought" and the defendants' acknowledgment of guilt as "ground-breaking."

According to the Indictment, illegal trading profits earned for VDM's proprietary account as a result of BONGIORNO's interpositioning totaled approximately \$1.3 million, and customer harm caused as a result of BONGIORNO's trading ahead totaled approximately \$1.2 million.

As a result of their guilty pleas, BONGIORNO, 51, of Brooklyn, New York, and MCGAGH, 40, of Little Silver, New Jersey, each face a maximum sentence of 20 years in prison and a maximum fine of \$5,000,000 or twice the gross gain or loss resulting from the offense. The sentencings for BONGIORNO and MCGAGH are scheduled for August 10, 2006, at 2:00 p.m. and 3:00 p.m., respectively, before United States District Judge SIDNEY H. STEIN.

Mr. GARCIA praised the efforts of the Federal Bureau of Investigation. Mr. GARCIA also thanked the Securities and Exchange Commission and the NYSE for their continued assistance during the investigation.

Assistant United States Attorneys LAUREN GOLDBERG and ANTHONY S. BARKOW are in charge of the prosecution, together with CHRISTOPHER M. CASTANO of the Securities and Exchange Commission, who was designated as a Special Assistant United States Attorney for purposes of this case.

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