

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

**SECURITIES ACT OF 1933
RELEASE NO. 8566 / April 12, 2005**

**SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 51525 / April 12, 2005**

**ADMINISTRATIVE PROCEEDING
FILE NO. 3-11893**

**COMMISSION INSTITUTES ADMINISTRATIVE AND CEASE-AND-DESIST
PROCEEDING AGAINST 20 FORMER NEW YORK STOCK EXCHANGE
SPECIALISTS**

**DIVISION OF ENFORCEMENT ALLEGES THAT THE SPECIALISTS
ENGAGED IN A PERVASIVE COURSE OF FRAUDULENT TRADING**

The Securities and Exchange Commission today announced the institution of administrative and cease-and-desist proceedings against twenty former New York Stock Exchange specialists: David A. Finnerty, Donald R. Foley II, Scott G. Hunt, and Thomas J. Murphy – formerly of Fleet Specialist, Inc.; Kevin M. Fee and Frank A. Delaney IV of Bear Wagner Specialists LLC; Freddy DeBoer – formerly of LaBranche & Co. LLC; Todd J. Christie, James V. Parolisi, Robert W. Luckow, Patrick E. Murphy and Robert A. Johnson, Jr. – formerly of Spear Leeds & Kellogg Specialists LLC; and Patrick J. McGagh, Jr., Joseph Bongiorno, Michael J. Hayward, Richard P. Volpe, Michael F. Stern, Warren E. Turk, Gerard T. Hayes and Robert A. Scavone, Jr. – formerly of Van der Moolen Specialists USA, LLC.

The Division of Enforcement alleges that between 1999 and mid-2003 these specialists pervasively engaged in fraudulent and other improper trading by executing orders for their firms' proprietary accounts ahead of executable public customer or "agency" orders that were placed through the Exchange's electronic trading system, known as the DOT system. Through these transactions, these specialists violated their basic obligation to match executable public customer buy and sell orders and not to fill customer orders through trades from their firms' proprietary accounts when those customer orders could be matched with other customer orders.

The Division of Enforcement further alleges that the specialists engaged in at least two forms of fraudulent trading, "interpositioning" and "trading ahead." In the first form of trading, the specialists "interpositioned" their firms' proprietary accounts between customer orders by trading into both of them in succession – for example, buying into a customer sell order first, and then selling, at a higher price, into the opposite market buy order. In this fashion, the specialists were able to make guaranteed, riskless profits for their firms' proprietary accounts at the expense of customer orders. In the second form of

trading, the specialist filled one agency order through a proprietary trade for the specialist firm's proprietary account – and thereby improperly “stepped in front” of, or “traded ahead” of, the other agency order – simply to allow the specialist firm to take advantage of market conditions promptly. When “trading ahead,” the specialist would lock in a better price for the proprietary trade, and then later fill the agency order at an inferior price, thus disadvantaging the agency order. By virtue of these two forms of improper trading, these specialists caused customer losses in the millions of dollars during the years in question.

The order also alleges that several of the specialists engaged in particularly egregious conduct. For example, in several instances of “interpositioning,” the specialists not only disadvantaged both a buy and a sell order, but also moved the price up or down from the last sale price to further advantage the specialist firm's proprietary account. In other instances, several of the specialists punctuated their improper trading with statements such as “f—k the DOTs” and “screw the DOTs” as they were in fact disadvantaging agency orders.

The Division of Enforcement alleges that through this course of fraudulent trading, the specialists willfully violated Section 17(a) of the Securities Act, Sections 10(b) and 11(b) of the Exchange Act, and Rules 10b-5 and 11b-1 thereunder, and Rules 104, 92, 123B, and 401 of the New York Stock Exchange. The proceedings will determine what relief is in the public interest against the specialists, including disgorgement, prejudgment interest, civil penalties, and other remedial relief. The order requires the Administrative Law Judge to issue an initial decision no later than 300 days from the date of service of the order.

Last year, the Commission brought settled enforcement actions against all seven specialist firms operating on the New York Stock Exchange in connection with unlawful proprietary trading at the firms. Those enforcement actions resulted in payments to date of over \$243 million in disgorgement and penalty payments, which have been placed in fair funds to be distributed to customers disadvantaged by improper specialist trading. *See In the Matter of Bear Wagner Specialists LLC*, Rel. No. 34-49498 (March 30, 2004); *In the Matter of Fleet Specialist, Inc.*, Rel. No. 34-49499 (March 30, 2004); *In the Matter of LaBranche & Co. LLC*, Rel. No. 34-49500 (March 30, 2004); *In the Matter of Spear, Leeds & Kellogg Specialists LLC*, Rel. No. 34-49501 (March 30, 2004); *In the Matter of Van der Moolen Specialists USA, LLC*, Rel. No. 34-49502 (March 30, 2004); *In the Matter of SIG Specialists, Inc.*, Rel. No. 34-50076 (July 26, 2004); *In the Matter of Performance Specialist Group LLC*, Rel. No. 34-50075 (July 26, 2004).

The staff acknowledges the assistance of the U.S. Attorney's Office for the Southern District of New York, the Federal Bureau of Investigation and the NYSE Division of Enforcement in this matter.

The Commission's investigation of individual misconduct is continuing.