

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
ALFRED MERENDINO,
RONALD MENELLO AND
GHM, INC.

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:
: Case Nos. 99-06, 00-32, 01-42 and 01-43
: Hearing Officer – DMF
:
: **DISCIPLINARY DECISION**
: December 16, 2004
:
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Digest

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Section 1(b)(1) of Article V of the Exchange Constitution, determined that (1) GHM and Merendino violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the Securities Exchange Act and SEC Exchange Act Rule 10b-5, and also violated Exchange Rule 100; (2) GHM and Menello violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the Securities Exchange Act and SEC Exchange Act Rule 10b-5; and (3) GHM violated Article V, Section 4(h) of the Exchange Constitution, SEC Exchange Act Rule 11Ac1-4 and Exchange Rule 320(b). As penalties, Merendino was censured and fined \$75,000, Menello was censured and fined \$200,000 and GHM was censured and fined \$475,000.

DECISION

I. Introduction

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against GHM, Inc., a former regular member and specialist organization of the Exchange, and Alfred Merendino and Ronald Menello, former specialists employed by GHM on the Exchange (collectively, Respondents). The Disciplinary Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on December 9, 2004, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (Stipulation), which is attached as Exhibit A. The Exchange and Respondents entered into that Stipulation for

the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Respondents based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Respondents, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel Chair 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 Chair concludes that:

1. GHM and Merendino violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the Securities Exchange Act and SEC Exchange Act Rule 10b-5, in that they effected purchases and sales in Thermo Ecotek (TCK) for GHM's proprietary account during the period between June 2, 1998 and June 25, 1998 that (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of the security during the period prior to the cancellation of an announced public equity offering, as stated in paragraphs 3.2 through 3.22 of the attached Stipulation.
2. GHM and Merendino violated Exchange Rule 100 on May 15, 2000 and on June 13, 2000, in that they transmitted commitments to sell a total of 5,100 shares of Advanced Photonix Inc. CL-A (API) through the Intermarket Trading System Plan (ITS) after the close of Amex trading, as stated in paragraphs 4.3 through 4.5 of the attached Stipulation.
3. GHM and Menello violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the Securities Exchange Act and SEC Exchange Act Rule 10b-5, in that they effected purchases and sales in Thermo BioAnalysis (TBA) for GHM's proprietary account

during the period between June 10, 1998 and June 17, 1998 that (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of TBA during the period prior to a public equity offering, as stated in paragraphs 5.5 through 5.16 of the attached Stipulation.

4. GHM and Menello violated Exchange Rule 3(a) and 170(d), and Section 10(b) of the Securities Exchange Act and SEC Exchange Act Rule 10b-5, in that they effected purchases and sales in Thermo Fibertek (TFT) for GHM's proprietary account during the period between July 22, 1998 and July 31, 1998, on August 11, 1998, and during the period between January 21, 1999 and February 2, 1999 that (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of TFT during these periods in an effort to facilitate company buy back orders in the security, as stated in paragraphs 6.2 through 6.20 of the attached Stipulation.
5. GHM violated Article V, Section 4(h) of the Exchange Constitution, in that, contrary to Exchange policy, the Firm failed to disclose to the Exchange that as of the date on which two equity products that were listed for trading on the Exchange were assigned to GHM as specialist, a number of the Firm's employees owned a total of nearly 400,000 shares and 150 warrants in those products, as stated in paragraphs 7.1 through 7.7 of the attached Stipulation.

6. GHM violated SEC Rule 11Ac1-4 (the Limit Order Display Rule), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period April 2000 through October 2000, in that the specialist unit failed to reflect 18 superior customer limit orders in a timely fashion in ten different equities, as stated in paragraphs 8.5 through 8.19 of the attached Stipulation.
7. GHM violated Exchange Rule 320(b), in that during the relevant period(s) and in connection with its Exchange-related activities, it failed to (i) develop, maintain and enforce reasonable written supervisory procedures for its specialist operations on the Floor of the Exchange so as to prevent the violations described in the attached Stipulation; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's specialist operations on the Floor of the Exchange were being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be expected to detect the violative conduct of Menello and Merendino, as stated in paragraphs 3.2 through 9.2 of the attached Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel Chair impose (1) a censure and a \$75,000 fine on Merendino; (2) a censure and a \$200,000 fine on Menello; and (3) a censure and a \$475,000 fine on GHM. At the hearing, the parties urged the Disciplinary Panel Chair to accept the proposed penalties as being appropriate to the facts and circumstances of this case.

The Stipulation covers several different types of violations over an extended period, some of which are quite serious. Prior to the hearing, the Exchange provided a precedent memorandum citing prior cases addressing similar violations, where such precedents exist, but

Exchange counsel acknowledged that, because of the combination of violations and specific circumstances addressed by the Stipulation, none of the precedents are entirely analogous to this case. Exchange counsel pointed out that the penalties imposed in this case are, in the aggregate, among the highest ever imposed by the Exchange, and also noted that if the charges were litigated, the Respondents might be able to raise certain defenses based upon the amount of time that has elapsed since the activities in question occurred. After considering the precedents cited by the Exchange, the particular facts and circumstances set forth in the Stipulation and the other circumstances cited by Exchange counsel, the Disciplinary Panel Chair finds that the proposed penalties are appropriate, and therefore will impose them.

The Disciplinary Chair 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.¹

V. Conclusion

The Disciplinary Panel Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties: Alfred Merendino is censured and fined \$75,000; Ronald Menello is censured and fined \$200,000; and GHM, Inc. is censured and fined \$475,000.

FOR THE DISCIPLINARY PANEL

David M. FitzGerald, Chair

Copies to: J. Wells Dixon, Esq. (*via facsimile and first class mail*)
Eric S. Brown, Esq. (*via electronic and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

¹ 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

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IN THE MATTER X STIPULATION OF FACTS
OF X AND
ALFRED MERENDINO, X CONSENT TO PENALTY
RONALD MENELLO X
AND X Case Nos. 99-06, 00-32, 01-42
GHM, INC. X 01-43
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange” or the “Amex”), against GHM, INC. (“GHM” or the “Firm”, a former regular member and specialist organization of the Exchange (CRD # 33294), ALFRED MERENDINO (“Merendino”) and RONALD MENELLO (“Menello”) former specialists employed by GHM on the Amex. This Stipulation of Facts and Consent to Penalty is entered into with the aforementioned parties pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against them based upon or arising out of the facts hereinafter stipulated. GHM, Merendino and Menello, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consent to the findings of violations of the Exchange Constitution and Rules and to the imposition of the penalties hereinafter provided. GHM, Merendino and Menello understand 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. Each of the aforementioned parties understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of its or his disciplinary records, and may be considered in any future proceeding brought by

the Exchange.

STIPULATED FACTS:**Background**

- 1.0 During the relevant period herein, GHM was an Exchange member organization and was registered with the Exchange as a specialist firm.¹
- 1.1 During the relevant period herein, Merendino was a specialist employed by GHM on the Exchange Floor.
- 1.2 During the relevant period herein, Menello was also a specialist employed by GHM on the Exchange Floor.

GHM and Merendino

- 2.0 During all relevant periods herein, GHM and Merendino were subject to Exchange Rule 3(a), which provided that no member or member organization shall effect on the Exchange purchases or sales for any account in which he is directly or indirectly interested, which purchases or sales are excessive in view of his financial resources or in view of the market for such security.
- 2.1 During all relevant periods herein, GHM and Merendino were subject to Exchange Rule 170(d), which provided, in pertinent part, that transactions on the Exchange for the specialist's own account effected by a specialist in the securities in which he is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated, in either the full lot or the odd-lot market.

¹ GHM ceased its membership with the Exchange on March 30, 2001.

2.2 During all relevant periods herein, GHM and Merendino were subject to Section 10(b) of the Securities Exchange Act of 1934 (the “SEA”) and SEA Rule 10b-5, which provided that it is unlawful for any person, directly or indirectly, by any facility of any national securities exchange, to employ any manipulative or deceptive device, scheme, or artifice to defraud in connection with the purchase or sale of a security.

A. Thermo Ecotek

3.0 During the period described herein, GHM was the registered specialist for Thermo Ecotek (“TCK”), an equity product listed for trading on the Exchange, and Merendino was the individual at GHM specializing in TCK on the Exchange.

3.1 On May 11, 1998, TCK announced plans to sell 4,500,000 shares of common stock for the purpose of raising capital.

3.2 At the opening of trading in TCK on June 2, 1998, the GHM proprietary account was long 14,142 shares, and TCK opened at 15 7/8. On that date, 8,400 shares of TCK traded. Of the 8,400 shares executed on that trade date, 8,200 shares (97.6%) traded at a price of 15 13/16. Merendino purchased 7,400 shares of those 8,200 and sold none, participating in 90.9% of all trades and 88.1% of the transacted share volume. Subsequent to the opening print, all transactions were effected at 15 13/16, with no change from the previous day’s closing price.

3.3 At the opening of trading in TCK on June 3, 1998, the GHM proprietary account was long 21,529 shares, and TCK opened at 15 13/16. On that date, 5,900 shares of TCK traded. Of the 5,900 shares executed on that trade date, 4,500 shares (76.3%) traded at a price of 15 13/16, with Merendino purchasing all of the shares traded at that price. Of these 4,500 shares, 4,200 shares (93.3%) were purchased

unchanged (zero minus tick) with the balance being effected within 1/16 of the last sale price. Merendino participated in 73.3% of all trades and 79.7% of the transacted share volume.

3.4 On June 2, 1998 and June 3, 1998, Merendino's participation in 93.7% of all share volume at a price of 15 13/16 was instrumental in maintaining TCK's stable price share.

3.5 At the opening of trading in TCK on June 4, 1998, the GHM proprietary account was long 26,426 shares, and TCK opened at 15 13/16. On that date, 26,000 shares of TCK traded. Of the 26,000 shares executed on that trade date, 18,100 shares (69.6%) traded at a price of 16, with Merendino purchasing 14,300 (79.0%) of the shares traded at that price. Of those 14,300 shares, 14,100 (98.6%) were purchased unchanged (zero minus tick), with the balance being effected within 1/16 of the last sale price. Merendino participated in 57.1% of all trades and 72.3% of the transacted share volume.

3.6 At the opening of trading in TCK on June 5, 1998, the GHM proprietary account was long 37,042 shares, and TCK opened at 16. On that date, three trades were executed in TCK for a total of 700 shares. Each of the 700 shares that traded that day was executed at 16, with Merendino participating in every trade and all of the transacted share volume. All trades were effected with no change from the last sale price.

3.7 At the opening of trading in TCK on June 9, 1998, the GHM proprietary account was long 31,195 shares, and TCK opened at 16 1/16. On that date, 5,700 shares of TCK traded. All 5,700 shares that traded that day were transacted at a price of either 16 or 16 1/16, with Merendino purchasing 1,100 shares (19.3%) and selling

- 3,900 shares (68.4%). Merendino participated in every trade and 87.7% of the transacted share volume.
- 3.8 At the opening of trading in TCK on June 10, 1998, the GHM proprietary account was long 28,363 shares and TCK opened at 16. On that date, 11,900 shares of TCK traded. All 11,900 shares that traded that day were executed at a price of 16, with Merendino purchasing 10,800 shares (90.8%) and selling 500 shares (4.2%). Merendino participated in 87.5% of all trades and 95.0% of the transacted share volume.
- 3.9 At the opening of trading in TCK on June 11, 1998, the GHM proprietary account was long 38,759 shares, and TCK opened at 16. On that date, 2,700 shares of TCK traded. All 2,700 shares that traded that day were executed at a price of 16, with Merendino purchasing 2,200 shares (81.5%) and selling 500 shares (18.5%). Merendino participated in every trade and all of the transacted share volume.
- 3.10 At the opening of trading in TCK on June 12, 1998, the GHM proprietary account was long 40,412 shares, and TCK again opened at 16. On that date, 8,200 shares of TCK traded. All 8,200 shares that traded that day were executed at a price of 16, with Merendino purchasing 5,200 shares (63.4%) and selling 1,100 shares (13.4%). Merendino participated in 50.0% of all trades and 76.8% of all transacted share volume.
- 3.11 At the opening of trading in TCK on June 15, 1998, the GHM proprietary account was long 44,562 shares and TCK opened, yet again, at 16. On that date, 3,100 shares of TCK traded. All 3,100 shares that traded that day were executed at a price of 16, with Merendino purchasing 2,100 shares (67.7%) and selling 1,000

shares (32.3%). Merendino participated in every trade and all of the transacted share volume.

3.12 At the opening of trading in TCK on June 16, 1998, the GHM proprietary account was long 45,633 shares, and TCK again opened at 16. On that date, 900 shares of TCK traded. All 900 shares that traded that day were executed at a price of 16, with Merendino selling 800 shares (88.9%).

3.13 During the period between June 9, 1998 and June 16, 1998, 29,600 shares (91.1%) of TCK traded at a price of 16, with 28,500 (96.3%) experiencing no change in price from the last sale. Merendino's participation in 88.9% of all share volume at a price of 16 was instrumental in maintaining TCK's stable share price during this time period.

3.14 At the opening of trading in TCK on June 17, 1998, the GHM proprietary account was long 44,933 shares, and TCK opened at 16. On that date, 2,400 shares of TCK traded. Although only 400 shares were executed at a price of 16, the remaining 2,000 shares were effected at a price of $15 \frac{15}{16}$. Merendino participated in every trade and 95.8% of all the transacted share volume.

3.15 At the opening of trading in TCK on June 18, 1998, the GHM proprietary account was long 45,065 shares, and TCK opened at $15 \frac{7}{8}$. On that date, 2,500 shares of TCK traded. All 2,500 shares that traded that day were executed at a price of $15 \frac{7}{8}$, with Merendino purchasing 1,000 shares and selling 1,000 shares. Merendino participated in 83.3% of the trades executed, and 80% of the transacted share volume.

3.16 At the opening of trading in TCK on June 19, 1998, the GHM proprietary account was long 44,915 shares, and TCK opened at $15 \frac{7}{8}$. On that date, 5,000 shares of

TCK traded. All 5,000 shares that traded that day were executed at a price of 15 7/8, with Merendino selling 3,800 shares. Merendino participated in every trade, and 76% of the transacted share volume.

- 3.17 At the opening of trading on June 22, 1998, the GHM proprietary account was long 41,041 shares, and TCK opened at 15 7/8. On that date, 7,800 shares of TCK traded. Of the 7,800 shares traded, 7,300 (93.6%) were executed at a price of 15 7/8, with the remaining 500 shares trading at 15 13/16. Merendino participated in 77.8% of all trades and 74.4% of the transacted share volume.
- 3.18 During the period between June 18, 1998 and June 22, 1998, 14,800 of the 15,300 shares traded in TCK (96.7%) were effected at a price of 15 7/8, with 14,400 (97.3%) experiencing no change in price from the last sale. Merendino's participation in 78.4% of all share volume at a price of 15 7/8 was instrumental in maintaining TCK's stable share price during this time period. Additionally, on those occasions in which purchasing interest in TCK did develop, Merendino sold shares to interested buyers from GHM's proprietary account with no change in price, thereby preventing short sellers present in the market from effecting any sales in TCK.
- 3.19 At the opening of trading on June 25, 1998, the GHM proprietary account was long 34,272 shares, and TCK opened at 15 13/16. On that date, 2,700 shares of TCK traded. All 2,700 shares that traded that day were executed at a price of 15 13/16, with Merendino selling all the shares and participating in each trade.
- 3.20 Each of the trading dates mentioned in above paragraphs 3.2 through 3.19 was notable as a result of uncharacteristic price stability and extensive specialist participation. Merendino's participation at price levels of 15 13/16, 15 7/8, and

16 demonstrated a marked willingness to purchase and sell substantial share volume in TCK within an extremely narrow range over an extended period of time without regard to market conditions. The preponderance of unchanged volume observed during these periods was not representative of typical continuity in the issue.

- 3.21 Merendino's extensive participation within such an extremely narrow price range created a misleading impression that material public support for TCK existed at such prices. To provide this unusual level of support to the security, Merendino acquired and maintained a substantial and atypical position in the security. When moderate buy interest in TCK did develop, Merendino sold shares to interested buyers from his proprietary account, again with no change in price, preventing short sellers present in the market from effecting sales in the security.
- 3.22 Merendino's pattern of transactions constituted excessive dealing, and supported the price of TCK shares during the period prior to July 6, 1998, the date on which TCK cancelled its previously announced public equity offering.

B. Advanced Photonix Inc.

- 4.0 During all relevant periods herein, GHM and Merendino were subject to Exchange Rule 100, which provided that dealings upon the Floor of the Exchange, including dealings effected through the System defined in Exchange Rule 230 ("ITS"), shall be limited to the hours when the Exchange is open for the transaction of business² except that (i) a specialist may issue and receive pre-opening notifications and responses, as provided in Exchange Rule 232, before

² Exchange Rule 1 provides that the Exchange is open for equity trading from 9:30 a.m. until 4:00 p.m.

- the official opening of the Exchange, and (ii) loans of money or securities may be made after the official closing of the Exchange.
- 4.1 During all relevant periods herein, Advanced Photonix Inc. CL-A (“API”) was a multiply listed stock eligible for trading through ITS.
 - 4.2 During all relevant periods herein, Merendino was the individual specialist assigned to handle stock API, which was listed for trading on the Exchange.
 - 4.3 On trade date May 15, 2000, at 4:01:14 p.m., after the close of equity trading on the Exchange, Merendino, in his capacity as specialist for API, sent a commitment to trade through ITS to another market center to sell 2,500 shares of API at $1 \frac{7}{8}$ in connection with or on behalf of an Exchange floor broker’s order on the Exchange. At 4:01:20 p.m., the other market center notified Merendino through ITS that 2,500 shares of API had been sold at the limit price of $1 \frac{7}{8}$.
 - 4.4 On trade date June 13, 2000, at 4:00:18 p.m., after the close of equity trading on the Exchange, Merendino, in his capacity as specialist for API, sent a commitment to trade through ITS to another market center to sell 1,000 shares of API at $4 \frac{1}{8}$ in connection with or on behalf of an Exchange floor broker’s order on the Exchange. At 4:01:04 p.m., the other market center notified Merendino through ITS that a partial execution of 500 shares of API had been sold at the limit price of $4 \frac{1}{8}$.
 - 4.5 Additionally, on trade date June 13, 2000, at 4:00:44 p.m., after the close of equity trading on the Exchange, Merendino, in his capacity as specialist for API, sent a commitment to trade through ITS to another market center to sell 1,600 shares of API at $4 \frac{1}{8}$ in connection with or on behalf of an Exchange’s floor broker’s order on the Exchange. At 4:00:48 p.m., the other market center notified

Merendino through ITS that a partial execution of 1,500 shares of API had been sold at the limit price of 4 1/8.

GHM and Menello

5.0 During all relevant periods herein, GHM and Menello were subject to Exchange Rule 3(a), as described in above paragraph 2.0.

5.1 During all relevant periods herein, GHM and Menello were subject to Exchange Rule 170(d), as described in above paragraph 2.1.

5.2 During all relevant periods herein, GHM and Menello were subject to Section 10(b) of the SEA and SEA Rule 10b-5, as described in above paragraph 2.2.

A. Thermo BioAnalysis

5.3 During the period described herein, GHM was the registered specialist for Thermo BioAnalysis (“TBA”), an equity product listed for trading on the Exchange, and Menello was the individual at GHM specializing in TBA on the Exchange.

5.4 On May 12, 1998, TBA announced plans to sell 4,500,000 shares of common stock for the purpose of raising capital.

5.5 At the opening of trading in TBA on June 10, 1998, the GHM proprietary account was long 48,500 shares, and TBA opened at 19 3/8. On that date, 55,100 shares of TBA traded during the regular trading session. Of the 55,100 shares that traded during the regular trading session,³ 40,900 shares (74.2%) traded at a price of 19, with Menello purchasing all 40,900 shares. Of these 40,900 shares, 23,000

³ An additional 35,000 shares traded in the after-hours trading session.

- shares (56.2%) were purchased unchanged (zero minus tick) with the balance being effected within 1/8 of the last sale price.
- 5.6 At the opening of trading in TBA on June 11, 1998, the GHM proprietary account was long 93,898 shares, and TBA opened at 19. On that date, 84,800 shares of TBA traded. All 84,800 shares that traded that day were executed at a price of 19, with Menello purchasing 65,500 shares (77.2%) and selling 19,300 shares (22.8%). Menello participated in every trade and all of the transacted share volume.
- 5.7 Although originally informed by TBA that the upcoming offering was to be priced after the close of trading on June 11, 1998, the underwriter for the offering informed the Exchange that the pricing of the offering would be postponed until June 15, 1998, subject to then current market conditions. The Exchange's Corporate Relations Department subsequently relayed this information to Menello prior to the opening on June 12, 1998.
- 5.8 At the opening of trading in TBA on June 12, 1998, the GHM proprietary account was long 140,098 shares, and TBA opened at 19. On that date, 50,000 shares of TBA traded. Of the 50,000 shares executed on that trade date, 22,500 shares (45.0%) traded at a price of 19, with Menello purchasing 9,000 shares (40.0%) and selling 11,000 (48.9%) of these shares. Two-thirds of the shares traded on that day were purchased unchanged (zero minus tick), with the balance being effected within 1/16 of the last sale price.
- 5.9 At the opening of trading in TBA on June 15, 1998, the GHM proprietary account was long 116,800 shares, and TBA opened at 19. On that date, 86,600 shares of

- TBA traded. All 86,600 shares that traded during the regular trading session⁴ traded at a price of 19, with Menello purchasing 79,500 shares (91.8%) and selling 6,000 shares (6.9%). Menello participated in every trade and 98.7% of the transacted share volume.
- 5.10 Prior to the opening of trading on June 16, 1998, the underwriter for the TBA offering contacted the Exchange's Corporate Relations Department to inform the Exchange that the issue was not, in fact, priced after the close on June 15, 1998. The Exchange promptly relayed this information to Menello prior to the opening of trading in TBA for the day.
- 5.11 At the opening of trading on June 16, 1998, the GHM proprietary account was long 190,300 shares, and TBA opened at 19 1/8. On that date, 137,900 shares of TBA traded. Of the 137,900 shares executed on that trade date, 18,000 shares (13.1%) were transacted at a price of 19, with Menello purchasing 10,000 shares (55.6%) and selling 2,500 shares (13.9%). Of these 18,000 shares, 13,000 shares (72.2%) were purchased unchanged (zero minus tick), with the balance being effected within 1/8 of the last sale price.
- 5.12 Prior to the opening of trading in TBA on June 17, 1998, TBA announced the price of its underwritten public offering of 4,000,000 shares at a price of 18 1/8 per share.
- 5.13 Each of the trading dates mentioned in above paragraphs 5.5 through 5.12 was notable as a result of uncharacteristic price stability and extensive specialist participation. During the regular trading sessions on the five days preceding the offering, of the 414,400 shares transacted, 252,800 shares (61.0%) were traded at

⁴ An additional 20,000 shares traded in the after-hours session.

- a price of 19, with Menello purchasing 204,900 shares (81.1%) and selling 38,800 (15.3%) of these shares. In total, Menello participated in 96.4% of the shares that traded at 19. His participation at this price level demonstrated a marked willingness to purchase substantial share volume in TBA at a single price without regard to market conditions. The preponderance of unchanged volume observed during the period was not representative of typical continuity in the issue.
- 5.14 Menello's extensive purchases at 19 created a misleading impression that material public support for TBA existed at the price of 19. To provide this unusual level of support to the security, Menello acquired and maintained a substantial and atypical position in the security. When moderate buy interest in TBA did develop, Menello sold shares to interested buyers from his proprietary account, again with no change in price, preventing short sellers present in the market from effecting sales in the security.
- 5.15 During periods not characterized by minimum fractional markets, as public market or marketable limit orders were entered, Menello consistently executed them between the quoted market at a price of 19 without regard to the then current market conditions.
- 5.16 Menello's pattern of transactions constituted excessive dealing, and supported the price of TBA shares during the period prior to the public equity offering on June 17, 1998.

B. Thermo Fibertek

- 6.0 During all relevant periods herein, Thermo Fibertek ("TFT") was a multiply listed stock eligible for trading through ITS.

- 6.1 During all relevant periods herein, Menello was the individual specialist assigned to handle stock TFT, which was listed for trading on the Exchange.
- 6.2 At the opening of trading in TFT on July 22, 1998, TFT opened at a price of 9. On that date, 48,700 shares of TFT traded. Of the 48,700 shares that traded on that date, 43,100 (88.5%) traded at the price of 9, with Menello purchasing 7,800 shares (18.1%) and selling 11,500 shares (26.7%).
- 6.3 Between 11:24 a.m. and 12:13 p.m. on that trade date, Menello purchased a total of 6,900 shares of TFT for GHM's proprietary account in four consecutive trades, all at a price of 9. The very next trade in TFT was for 11,000 shares, again at a price of 9, in which Menello now sold all 11,000 shares to a broker-dealer who was representing TFT's company buy back order.
- 6.4 At the opening of trading in TFT on July 27, 1998, TFT again opened at a price of 9. On that date, 21,000 shares of TFT traded. Of the 21,000 shares that traded on that date, 20,600 (98.1%) traded at the price of 9, with Menello purchasing 3,600 shares (17.5%) and selling 11,000 shares (53.4%).
- 6.5 At 9:31 a.m. on that trade date, Menello purchased 2,600 shares of TFT for GHM's proprietary account at the price of 9. Five minutes later, on the very next print, Menello sold 11,000 shares of TFT, at exactly the same price (on a zero minus tick), to a broker-dealer who was representing TFT's company buy back order.
- 6.6 At the opening of trading in TFT on July 28, 1998, TFT again opened at a price of 9. On that date, 34,500 shares of TFT traded. All 34,500 shares that traded that day were executed at a price of 9, with Menello purchasing 100 shares (0.2%) and selling 5,600 shares (16.2%).

- 6.7 At 3:07 p.m. on that trade date, Menello sold those 5,600 shares of TFT at a price of 9 (on a zero minus tick) to a broker-dealer who was representing TFT's company buy back order.
- 6.8 At the opening of trading in TFT on July 31, 1998, TFT again opened at a price of 9. On that date, 10,300 shares of TFT traded. All 10,300 shares that traded that day were executed at a price of 9, with Menello purchasing 2,800 shares (27.2%) and selling 7,500 shares (72.8%). Menello, who participated in every trade, purchased and sold TFT at the same price of 9 throughout the trading day.
- 6.9 At the opening of trading in TFT on August 11, 1998, TFT again opened at a price of 9. On that date, 10,600 shares of TFT traded. Of the 10,600 shares that traded on that day, 8,100 shares traded at the price of 9, with Menello purchasing 100 shares (1.2%) and selling 5,000 shares (61.7%).
- 6.10 At 10:23 a.m. on that trade date, Menello sold 5,000 shares of TFT at a price of 9 (on a zero minus tick) to a broker-dealer who was representing TFT's company buy back order.
- 6.11 On each of the five trade dates referred to in above paragraphs 6.2 through 6.10, GHM and Menello effected trades for the purpose of facilitating company buy back orders in TFT at advantageous prices for the company, rather than effecting the trades for the purpose of maintaining a fair and orderly market.
- 6.12 At the opening of trading in TFT on January 21, 1999, TFT opened at a price of 7 7/16. On that date, 19,800 shares of TFT traded. Of the 19,800 shares that traded on that day, Menello purchased 4,900 shares (24.7%) and sold 10,100 shares (51.0%).

- 6.13 At 10:16 a.m. on that trade date, Menello sold 9,800 shares of a 13,000 share print at $7 \frac{1}{2}$ on a zero plus tick to a broker-dealer who was representing another TFT company buy back order, despite the fact that other, much smaller orders were executed on that trade day with price variations of $\frac{1}{16}$ or $\frac{1}{8}$.
- 6.14 At the opening of trading in TFT on January 25, 1999, TFT opened at a price of $7 \frac{1}{2}$. On that date, 32,400 shares of TFT traded. Of the 32,400 shares that traded on that day, 25,900 shares (79.9%) traded at a price of $7 \frac{1}{2}$, with Menello purchasing 2,000 shares (7.7%) and selling 9,700 shares (37.5%). The 9,700 shares Menello sold on behalf of GHM's proprietary account traded on a zero plus tick and were purchased by the same broker-dealer that was representing TFT in their buy back order.
- 6.15 The same broker-dealer also purchased an additional 13,700 shares for TFT's buy back order on the same day. All 13,700 shares were purchased at a price of $7 \frac{1}{2}$ on zero plus ticks.
- 6.16 At the opening of trading in TFT on February 1, 1999, TFT opened at a price of $7 \frac{5}{8}$. On that date, 16,300 shares of TFT traded. Of the 16,300 shares that traded on that day, 16,200 shares (99.4%) traded at $7 \frac{1}{2}$, with Menello purchasing 3,200 shares (19.8%) and selling 10,000 shares (61.7%).
- 6.17 The 10,000 shares Menello sold on behalf of GHM's proprietary account traded on a zero minus tick and were purchased by the same broker-dealer that was representing TFT in their buy back order.
- 6.18 At the opening of trading in TFT on February 2, 1999, TFT opened at a price of $7 \frac{1}{2}$. On that date, 64,600 shares of TFT traded. Of the 64,600 shares that traded

- that day, 62,700 shares (97.1%) traded at the price of 7 ½, with Menello purchasing 18,700 shares (29.8%) and selling 38,000 shares (60.6%).
- 6.19 Of the 38,000 shares Menello sold on behalf of GHM's proprietary account, 35,000 shares were purchased, in three separate trades, at a price of 7 ½ by the same broker-dealer that was representing TFT in their buy back order at variations unchanged from the last sale.
- 6.20 On each of the four trade dates referred to in above paragraphs 6.12 through 6.19, GHM and Menello effected trades for the purpose of facilitating company buy back orders in TFT at advantageous prices for the company, rather than effecting the trades for the purpose of maintaining a fair and orderly market.

GHM: Undisclosed Specialist Equity Positions

- 7.0 During the relevant period herein, GHM was subject to Article V, Section 4(h) of the Exchange Constitution, which provided that a member, member organization or approved person who or which shall be adjudged guilty in a proceeding under this Article of a violation of the Constitution of the Exchange, of a violation of a rule adopted pursuant to the Constitution, of a violation of a resolution of the Board regulating the conduct or business of members or member organizations, or of conduct or proceeding inconsistent with just and equitable principles of trade, may, if a member or member organization, be suspended or expelled from membership or, if an approved person have his approval withdrawn, unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.

- 7.1 During the relevant period herein, Exchange procedures required an Exchange member organization competing for the opportunity to specialize in an equity listing to submit an interest form to the Exchange disclosing any proprietary positions in the equity sought.
- 7.2 On October 6, 1997, Hemispherx Biopharma (“HEB”) became an equity product listed for trading on the Exchange.
- 7.3 GHM, which had competed for the right to specialize in HEB, was assigned to be the registered specialist for HEB.
- 7.4 Despite the Exchange’s procedures as articulated in above paragraph 7.1, GHM failed to report that, as of the listing date, six GHM employees owned a total of 383,850 shares and 150 warrants in HEB.
- 7.5 On September 18, 1996, TBA became an equity product listed for trading on the Exchange.
- 7.6 GHM, which had competed for the right to specialist in TBA, was assigned to be the registered specialist for TBA.
- 7.7 Despite the Exchange’s procedures as articulated in above paragraph 7.1, GHM failed to report that, as of the listing date, two GHM employees owned a total of 7,500 shares in TBA.

GHM: Limit Order Display Violations

- 8.0 During all relevant periods herein, stocks A, B, C, D, E, F, G, H, I and J were listed for trading on the Exchange and registered with GHM as specialists.
- 8.1 Effective January 20, 1997, and during all relevant periods herein, SEC Rule 11Ac1-4 (“Display of Customer Limit Orders”), in part, required equity

- specialists to publish “immediately” a bid or offer that reflects the price and full size of each customer limit order that would improve the specialist’s bid or offer in the security (i.e., a buy order priced higher than the displayed bid or a sell order priced lower than the displayed offer). According to the SEC, “immediately” means displaying the order as soon as practicable, but under normal market conditions not later than 30 seconds after receipt of the order by the specialist.
- 8.2 Exchange Information Circular No. 97-30 (“SEC Limit Order Display Rule”), advising all members and member organizations, including all specialists, of the requirements of SEC Rule 11Ac1-4, was distributed by the Exchange on January 16, 1997.
- 8.3 On or about June 25, 1997, the Exchange introduced a “quote assist” enhancement to the Amex Display Book (“ADB”) to facilitate specialist compliance with SEC Rule 11Ac1-4. The “quote assist” feature of the ADB automatically updates the specialist’s quote within 30 seconds of receipt of a new limit order that either betters the market or increases the size. Since SEC Rule 11Ac1-4 requires “immediate” display of limit orders, the SEC has advised that routine use of the “quote assist” feature by the specialist is not deemed compliance with SEC Rule 11Ac1-4. Floor Member Circular No. 97-736 (“SEC Limit Order Display Rule/ADB Quote Assist Enhancement”), dated June 24, 1997, advised Exchange equity specialists and clerks of the incorporation of the “quote assist” feature to the ADB.

- 8.4 On or about June 16, 2000, the SEC approved the addition of Commentary .10 to Exchange Rule 170 to provide that a specialist may temporarily deactivate “quote assist” in limited circumstances⁵ with the approval of a Floor Official.
- 8.5 On April 13, 2000, the GHM specialist for stock A failed to display, either on a timely basis or display at all, two superior limit orders in stock A. One of these orders was never displayed at all; that order was executed one minute and 45 seconds after its entry. The second order was displayed 55 seconds after its entry into the ADB.
- 8.6 On April 19, 2000, one superior limit order entered for stock B was not properly displayed. The order was displayed one minute and 57 seconds after its entry.
- 8.7 On June 14, 2000, another superior limit order which had been entered for stock B was displayed only after 56 seconds had elapsed from its time of entry.
- 8.8 On April 27, 2000, a superior limit order entered for stock C was not properly displayed. This order was displayed one minute and 19 seconds after it had been entered into the ADB.
- 8.9 On June 16, 2000, two other superior limit orders entered for stock C were not properly displayed. One of those orders was displayed 48 seconds after its entry, and one minute and 21 seconds had elapsed before the second order was displayed in the quote.
- 8.10 On May 2, 2000, three superior limit orders entered for stock D were not timely displayed. One of those orders was never displayed at all; that order was executed one minute and one second after its entry. The other two orders were only displayed after 41 and 48 seconds had elapsed, respectively.

⁵ These limited circumstances include the following: (i) when there is an influx of orders resulting in gap pricing; (ii) when the specialist deactivates “quote assist” in connection with an Intermarket Trading

- 8.11 On May 9, 2000, one superior limit order entered for stock E was not properly displayed; in fact, it was never displayed at all. It was executed one minute and two seconds after its entry into the ADB.
- 8.12 On May 12, 2000, one superior limit order entered for stock F was not displayed in a timely fashion. This superior limit order was displayed 45 seconds after its entry.
- 8.13 On June 13, 2000, one superior limit order entered for stock G was never displayed at all. That order was executed one minute and 56 seconds after its entry into the ADB.
- 8.14 On June 20, 2000, two superior limit orders entered for stock H were not properly displayed. One order was displayed 51 seconds after its entry, while the other took 44 seconds to be displayed.
- 8.15 On July 12, 2000, one superior limit order entered for stock I was not displayed in a timely fashion, and was executed 46 seconds after its entry into the ADB.
- 8.16 On October 4, 2000, two superior limit orders entered for stock J were not properly displayed; in fact, they were never displayed at all. One of the orders was executed one minute and 32 seconds after its entry, while the other was executed one minute and nine seconds after its entry into the ADB.
- 8.17 The failure of the GHM specialists to reflect 18 superior customer limit orders during the period between April 13, 2000 and October 4, 2000, as required by SEC Rule 11Ac1-4, resulted, in part, from clerks in the specialist unit deactivating the “quote assist” feature of the ADBs used by the GHM specialists on the aforementioned dates.

- 8.18 On those occasions when “quote assist” was deactivated after June 16, 2000 (the effective date of the rule requiring Floor Official approval), neither GHM nor any of its specialists received approval from a Floor Official to temporarily deactivate the “quote assist” feature of the ADB.
- 8.19 All 18 superior customer limit orders that GHM specialists failed to display on a timely basis during the period between April 13, 2000 and October 4, 2000 were executed for customers at the limit price or better.

GHM’s Supervisory Failures

- 9.0 During the period May 11, 1998 to October 4, 2000, GHM failed to develop, maintain and enforce reasonable written supervisory procedures for its specialist operations on the Floor of the Exchange so as to prevent the foregoing violations.
- 9.1 During the period May 11, 1998 to October 4, 2000, GHM failed to establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm’s specialist operations on the Floor of the Exchange were being properly exercised.
- 9.2 During the period May 11, 1998 to October 4, 2000, GHM failed to establish adequate policies or procedures, or a system to implement such policies or procedures, which would reasonably be expected to detect the violative conduct of Menello and Merendino.

CONCLUSIONS:

By reason of the above, a Disciplinary Panel may conclude that:

- 10.0 GHM and Merendino violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the SEA and SEA Rule 10b-5 in that they effected purchases and sales in TCK for GHM's proprietary account during the period between June 2, 1998 and June 25, 1998 which (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of TCK during the period prior to the cancellation of its announced public equity offering, as stated in above paragraphs 3.2 through 3.22.
- 10.1 GHM and Merendino violated Exchange Rule 100 on May 15, 2000 and on June 13, 2000, in that they transmitted commitments to sell a total of 5,100 shares of API through ITS after the close of Amex trading, as stated in above paragraphs 4.3 through 4.5.
- 10.2 GHM and Menello violated Exchange Rules 3(a) and 170(d), and Section 10(b) of the SEA and SEA Rule 10b-5 in that they effected purchases and sales in TBA for GHM's proprietary account during the period between June 10, 1998 and June 17, 1998 which (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of TBA during the period prior to the public equity offering, as stated in above paragraphs 5.5 through 5.16.
- 10.3 GHM and Menello violated Exchange Rule 3(a) and 170(d), and Section 10(b) of the SEA and SEA Rule 10b-5 in that the effected purchases and sales in TFT for

- GHM's proprietary account during the period between July 22, 1998 and July 31, 1998, on August 11, 1998, and during the period between January 21, 1999 and February 2, 1999 which (i) were excessive given the market for said security, (ii) were not reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of temporary disparity between supply and demand, and (iii) manipulated the price of TFT during these periods in an effort to facilitate company buy back orders in the security, as stated in above paragraphs 6.2 through 6.20.
- 10.4 GHM violated Article V, Section 4(h) of the Exchange Constitution, in that, contrary to Exchange policy, the Firm failed to disclose to the Exchange that as of the date on which two equity products that were listed for trading on the Exchange were assigned to GHM as specialist, a number of the Firm's employees owned a total of nearly 400,000 shares and 150 warrants in those products, as stated in above paragraphs 7.1 through 7.7.
- 10.5 GHM violated SEC Rule 11Ac1-4 (the "Limit Order Display Rule"), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period April 2000 through October 2000, in that the specialist unit failed to reflect 18 superior customer limit orders in a timely fashion in ten different equities, as stated in above paragraphs 8.5 through 8.19.
- 10.6 GHM violated Exchange Rule 320(b), in that during the relevant period(s) and in connection with its Exchange-related activities, it failed to (i) develop, maintain and enforce reasonable written supervisory procedures for its specialist operations on the Floor of the Exchange so as to prevent the violations described herein; (ii)

establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's specialist operations on the Floor of the Exchange were being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be expected to detect the violative conduct of Menello and Merendino, as stated in above paragraphs 3.2 through 9.2.

DISCIPLINARY ACTION:

By reason of the above-stipulated facts, a Disciplinary Panel may impose the following penalties upon Merendino, Menello and GHM:

- (a) Merendino: (i) a censure; and
(ii) a fine of \$75,000.
- (b) Menello: (i) a censure; and
(ii) a fine of \$200,000.
- (c) GHM: (i) a censure; and
(ii) a fine of \$475,000.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President and Chief Counsel
NASD Amex Regulation Division

Agreed to this _____ day of November, 2004.

GHM, Inc.

Agreed to this _____ day of November, 2004.

Ronald Menello

Agreed to this _____ day of November, 2004.

Alfred Merendino