

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
ANTHONY PERGOLA

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Case Nos. 03-79 and 03-98  
Hearing Officer – DMF

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**DISCIPLINARY PANEL DECISION**  
June 24, 2004  
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*Digest*

**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rule 100, as stipulated, and as a penalty, imposed a censure and a fine of \$6,000.**

**DECISION**

**I. Introduction**

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Anthony Pergola, a Regular Member of the Exchange. A Disciplinary Panel held a hearing on June 14, 2004, pursuant to Exchange Rule 345(k), to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Pergola entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Pergola based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

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

- 1.) Pergola violated Exchange Rule 100 by purchasing 2,900 shares of Diomed Holdings through the Intermarket Trading System (“ITS”) from the Pacific Stock Exchange (“PSE”) after the close of Exchange trading, as set forth in paragraph 1.5 of the Stipulation.
- 2.) Pergola violated Exchange Rule 100 by purchasing 100 shares of NTN Communications through ITS from the PSE after the close of Exchange trading, as set forth in paragraph 1.8 of the Stipulation.
- 3.) Pergola violated Exchange Rule 100 by purchasing 1,000 shares of Urecoat Industries through ITS from the PSE after the close of Exchange trading, as set forth in paragraph 1.11 of the Stipulation.

#### **IV. Penalties and Publicity**

The Stipulation proposes that the Disciplinary Panel impose upon Pergola a censure and a fine of \$6,000. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

The Disciplinary Panel 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.<sup>1</sup>

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<sup>1</sup> 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.

**V. Conclusion**

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Pergola a censure and a fine of \$6,000.

**FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: Thomas J. McCabe, Esq. (*via facsimile and first class mail*)  
Alison H. Mijares, Esq. (*electronically and first class mail*)  
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel  
American Stock Exchange LLC

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X  
IN THE MATTER X STIPULATION OF FACTS  
OF X AND  
ANTHONY PERGOLA X CONSENT TO PENALTY  
X Case Nos. 03-79 &  
X 03-98  
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against ANTHONY PERGOLA (“Pergola”) (CRD # 4705631), a Regular Member of the Exchange and an employee of Performance Capital Group.<sup>1</sup> This Stipulation of Facts and Consent to Penalty is entered into with Pergola pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Pergola based upon or arising out of the facts hereinafter stipulated. Pergola, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Rules and the imposition of the penalties hereinafter provided. Pergola understands 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, which may not be appealed by the parties. Pergola understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

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<sup>1</sup> Performance Capital Group has since changed its name to Kellogg Capital Group, effective January 2, 2004.

## **STIPULATED FACTS**

- 1.0 During all relevant periods herein, Performance Capital Group (“Performance”) was an Exchange member organization and was registered with the Exchange as a specialist firm.
- 1.1 During all relevant periods herein, Pergola was a Regular Member of the Exchange and was actively engaged as a specialist for Performance on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Pergola was 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 business.<sup>2</sup>
- (a) Pergola and Diomed Holdings (Case No. 03-79)**
- 1.3 During all relevant periods herein, Pergola was the individual specialist assigned to handle the stock Diomed Holdings (“DIO”), which was listed on the Exchange.
- 1.4 During all relevant periods herein, DIO was a multiply listed stock eligible for trading through the Intermarket Trading System (“ITS”).<sup>3</sup>
- 1.5 On trade date June 27, 2003, stock DIO had reported Exchange volume of 578,300 shares; the high for the day was .52, and the low for the day was .43. At 4:00:03 p.m., the Pergola quoted a market in DIO of .44 - .46 (1 x 30), after a

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

<sup>3</sup> ITS is an electronic communications network which links all U.S. markets, enabling market professionals to interact with their counterparts in other markets whenever the nationwide composite quotation system shows a better price.

trade of 6,000 DIO shares had printed at 4:00:02 p.m. The Pacific Stock Exchange (“PSE”) then quoted a market of .01 - .44 (1 x 30) at 4:00:32 p.m. At 4:00:57 p.m., after the close of equity trading on the Exchange, Pergola, in his capacity as specialist for stock DIO, sent a commitment<sup>4</sup> to trade through ITS to the PSE to buy 2,900 shares of stock DIO at .44 in connection with or on behalf of a PER<sup>5</sup> order entered at 3:59:19 p.m. At 4:01:01 p.m., the PSE notified Pergola through ITS that 2,900 shares of stock DIO had been purchased at the price of .44.

**(b) Pergola and NTN Communications (Case No. 03-98)**

- 1.6 During all relevant periods herein, Pergola was the individual specialist assigned to handle the stock NTN Communications (“NTN”).
- 1.7 During all relevant periods herein, NTN was a multiply listed stock eligible for trading through ITS.
- 1.8 On trade date July 2, 2003, stock NTN had reported Exchange volume of 65,700 shares; the high for the day was 1.99, and the low for the day was 1.91. Pergola quoted a market in NTN of 1.96 – 2.00 (1 x 100) at 3:59:00 p.m. At 4:07:41 p.m., the PSE quoted a market of .01 – 1.96 (1 x 9), its first quote since 8:16:03 a.m. At 4:07:55 p.m., after the close of equity trading on the Exchange, Pergola, in his capacity as specialist for the stock NTN, sent a commitment to trade with the PSE to buy 100 shares of stock NTN at 1.96 in connection with or on behalf of a PER

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<sup>4</sup> A “commitment” is a firm commitment to purchase or sell a specified number of shares of a specified ITS eligible security which is transmitted between participating market centers.

<sup>5</sup> A “PER” order is an electronic customer order received by the specialist through the Exchange’s **Post Execution Reporting System**. It is a system whereby customer orders are routed from member firms directly to the specialists’ posts.

order entered at 3:48:35 p.m. At 4:07:58 p.m., the PSE notified Pergola that 100 shares of NTN had been bought at the price of 1.96.

**(c) Pergola and Urecoat Industries (Case No. 03-98)**

1.9 During all relevant periods herein, Pergola was the individual specialist assigned to handle the stock Urecoat Industries (“URT”).

1.10 During all relevant periods herein, URT was a multiply listed stock eligible for trading through ITS.

1.11 On trade date August 25, 2003, the stock URT had reported Exchange volume of 13,500 shares; the high for the day was .65, and the low for the day was .60.

Pergola quoted a market in URT of .62 - .70 (87 x 69) at 3:54:32 p.m. At 4:04:08 p.m., the PSE quoted a market of .01 - .62 (1 x 10), its first quote since 8:20:42 a.m. At 4:04:36 p.m., after the close of equity trading on the Exchange, Pergola, in his capacity as specialist for the stock URT, sent a commitment to trade through ITS to the PSE to buy 1,000 shares of stock URT at .62 in connection with or on behalf of a PER order entered at 2:24:13 p.m. At 4:04:37 p.m., the PSE notified Pergola through ITS that 1,000 shares of stock URT had been purchased at the price of .62.

**CONCLUSION**

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 2.0 Pergola violated Exchange Rule 100 by purchasing 2,900 shares of DIO through ITS from the PSE after the close of Exchange trading, as set forth in paragraph 1.5.
- 2.1 Pergola violated Exchange Rule 100 by purchasing 100 shares of NTN through ITS from the PSE after the close of Exchange trading, as set forth in paragraph 1.8.
- 2.2 Pergola violated Exchange Rule 100 by purchasing 1,000 shares of URT through ITS from the PSE after the close of Exchange trading, as set forth in paragraph 1.11.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty upon Anthony Pergola:

- (a) a censure; and,
- (b) a \$6,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_

David Rosenstein  
Vice President and Chief Counsel

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Anthony Pergola