

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
GEORGE ALIERMO
AND
JRS TRADING LLC

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:
: Case No. 03-55
: Hearing Officer – RSH
:
: **DECISION**
: August 30, 2005
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In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent JRS Trading violated SEC Rule 15b3-1, SEC Rule 17a-4(b)(5), Exchange Rule 300(b), Exchange Rule 301, Exchange Rule 30, Exchange Rule 31, Article V, Section 4(i) and Article XI, Section 3 of the Exchange Constitution, Securities Exchange Act Rules 17a-3(a)(2), 17a-3(a)(11)(ii), 17a-4(a), 17a-4(b), 17a-11(d) and (g), and Amex Rule 324, as stipulated, and as a penalty imposed a permanent bar. Respondent George Aliermo violated Exchange Rule 320(c), as stipulated, and as a penalty imposed a censure, a 2-year supervisory bar, and a \$5,000 fine, which is waived.

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against George Aliermo, (“Aliermo”), a former managing member of JRS Trading LLC (“JRS” or the “Firm”) and JRS, a former member firm of the Exchange. 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 June 24, 2005, 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, JRS and Aliermo entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against JRS and Aliermo based upon or arising out of the facts set forth in the Stipulation.

II. Facts

JRS and Aliermo, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein.

III. Violations

Based upon the stipulated facts, the Disciplinary Panel Chair concludes that:

(1) JRS violated SEC Rule 15(b)3-1 by failing to accurately complete its Form BD reflecting all direct owners of the LLC;

(2) JRS violated Exchange Rule 300(b) by failing to prohibit the withdrawal of capital contribution from two investing partners without six months written notice to the Exchange and prior written Exchange approval;

(3) JRS violated Exchange Rule 301 by failing to submit to the Exchange approval changes to its LLC agreement;

(4) JRS violated Article V, Section 4(i) and Article XI, Section 3 of the Exchange Constitution, Securities Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11)(ii), 17a-4(a), 17a-4(b) and Amex Rule 324 by failing to make, prepare, maintain and preserve various financial statements, records and reports, including ledger accounts in the form of trial balances, and other records of assets and liabilities, income and expense, and capital accounts;

(5) JRS violated SEC 17a-4(b)(5) by failing to preserve all checkbooks, bank statements, cancelled checks and cash reconciliations, all bills receivable or payable, paid or unpaid relating to the business of the broker/dealer, and all trial balances and financial statements relating to the firm's business;

(6) JRS violated Article V, Section 4(i) of the Exchange Constitution, Securities Exchange Act Rule 17a-11(d) and (g) by failing to make proper notification to the Exchange and

SEC of its failure to make and keep current its books and records, and that JRS failed to file a report within the allowable time period to state what corrective actions are being taken;

(7) JRS violated Exchange Rule 30 by failing to file with the Exchange its monthly equity computations, annual FOCUS IIA and Schedule I Reports, and ITSFEA Forms 1 and 2 in a timely manner;

(8) JRS violated Exchange Rule 31 by failing to comply with repeated Exchange requests for books and records within a timely manner; and

(9) Aliermo violated Exchange Rule 320(c) by failing to provide for appropriate supervisory control to delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control and establish a separate system of follow-up and review to verify that the delegated authority and responsibility were being properly exercised.

IV. Penalties and Publicity

The Stipulation proposes that, regarding JRS, the Disciplinary Panel Chair impose a permanent bar from Exchange membership, including regular, options principal, associate, or allied membership, and from approved person or limited trading permit holder status, and from association in any capacity with an Exchange member or member organization. After considering the Stipulation and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case.

Regarding Aliermo, the Stipulation proposes that the Disciplinary Panel Chair impose a censure, a two-year bar from holding or performing any of the duties associated with a

supervisory, managerial or control position with an Exchange member or member organization, and a \$5,000 fine. During the hearing, Enforcement requested that the \$5,000 fine be waived due to Aliermo's demonstrated inability to pay. The Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case. The Chair also accepts Enforcement's representation that it had obtained adequate support documenting Aliermo's inability to pay. The 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 upon JRS a permanent bar from Exchange membership, including regular, options principal, associate, or allied membership, and from approved person or limited trading permit holder status, and from association in any capacity with an Exchange member or member organization. The Disciplinary Panel Chair hereby imposes upon Aliermo, a censure, a two-year bar from holding or performing any of the duties associated with a supervisory, managerial or control position with an Exchange member or member organization, and a \$5,000 fine, which is waived due to Aliermo's demonstrated inability to pay.

FOR THE DISCIPLINARY PANEL

Rochelle S. Hall, Chair

¹ Rule 12 exempts from publicity those cases in which 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." That exemption does not apply to the facts of this case.

Copies to: George S. Alierio, Jr. (*via overnight and first class mail*)
JRS Trading, LLC (*via overnight and first class mail*)
Jennifer D. Kim, Esq. (*electronically and via first class mail*)
Arlene Collins-Day (*electronically and via first class mail*)

Disciplinary Panel
American Stock Exchange LLC

IN THE MATTER
OF
GEORGE ALIERMO
AND
JRS TRADING LLC

STIPULATION OF FACTS
AND
CONSENT TO PENALTY
Case No. 03-55

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against GEORGE ALIERMO (“Aliermo”) (CRD# 2601144), a former Regular Member of the Exchange and Managing Member of JRS TRADING LLC (“JRS” or the “Firm”) (CRD # 120629), and JRS, a former Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Aliermo and JRS pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Aliermo and JRS based upon or arising out of the facts hereinafter stipulated. Aliermo and JRS, 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 Rules and Federal Securities laws and to the imposition of the penalties hereinafter provided. Aliermo and JRS 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. Aliermo and JRS understand and acknowledge that the Disciplinary Panel’s decision in this matter will become part of their disciplinary records and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

- 1.0 During all periods relevant herein, Aliermo was a Regular Member of the Exchange and the Managing Member of JRS.
- 1.1 During all relevant periods herein, JRS was engaged in options market making activities on the Floor of the Exchange. On or about June 12, 2003, JRS terminated its membership with the Exchange. Jurisdiction was retained over Aliermo and JRS pursuant to certified letters dated September 18, 2003, receipts acknowledged.
- 1.2 During all relevant periods herein, JRS was subject to Securities and Exchange Commission (“SEC”) Rule 15b3-1, which requires a broker-dealer (“BD”), including a limited liability company (“LLC”) broker-dealer, to accurately complete its Form BD to reflect all direct owners of the broker-dealer.
- 1.3 During all relevant periods herein, JRS was subject to Exchange Rule 300(b), which prohibits the withdrawal of the capital contribution of any partner without six months written notice to the Exchange and prior written Exchange approval.
- 1.4 During all relevant periods herein, JRS was subject to Exchange Rule 301, which required JRS to submit changes to its LLC agreement to the Exchange for approval.
- 1.5 During all relevant periods herein, JRS was subject to Article XI, Section 3 of the Exchange Constitution, SEC Rules 17a-3(a)(2), 17a-3(a)(11)(ii), 17a-4(a), 17a-4(b) and Exchange Rule 324, which required the Firm to make, prepare, maintain and preserve various financial statements, records and reports, including ledger accounts in the form of trial balances, and other records of assets and liabilities, income and expense, and capital accounts.

- 1.6 During all relevant periods herein, JRS was subject to SEC Rule 17a-4(b)(5) which required the Firm to preserve all checkbooks, bank statements, cancelled checks and cash reconciliations, all bills receivable or payable paid or unpaid relating to the business of the broker/dealer, and all trial balances and financial statements relating to the Firm's business.
- 1.7 During all relevant periods herein, JRS was subject to SEC Rules 17a-11(d) and (g), which required the Firm to make proper notification to the Exchange and SEC of its failure to make and keep current its books and records and to report within the statutory time period what corrective actions would be taken to bring the Firm's books and records into compliance.
- 1.8 During all relevant periods herein, JRS was subject to Exchange Rule 30, which required the Firm to file with the Exchange, its monthly equity computations, annual FOCUS IIA and Schedule I Reports, and ITSFEA Forms 1 and 2, in a timely manner.
- 1.9 During all relevant periods herein, JRS was subject to Exchange Rule 31, which required the Firm to comply with any Exchange request to produce its books and records within the time periods specified by the Exchange.
- 1.10 During all relevant periods herein, JRS was subject to Exchange Rule 320(c), which required the Firm to provide for appropriate supervisory control to (1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control; and (2) establish a separate system of follow-up and review to verify that the delegated authority and responsibility was being properly exercised.

JRS' Admission to the Exchange:

- 2.0 On May 29, 2002, in connection with its proposed admission as a member organization of the Exchange, Exchange Financial Regulation Department (“FRD”) staff conducted a telephonic financial entrance interview with Aliermo. During the course of this meeting, FRD staff explained to Aliermo all financial books and records keeping obligations, as well as filing requirements, for JRS.
- 2.1 On June 21, 2002, JRS was approved as a Regular Member organization of the Exchange.

Failure to Update JRS' Form BD:

- 3.0 At the time JRS was approved as a member organization of the Exchange, JRS was comprised of Aliermo, its Managing Member, who contributed \$120,000 in capital to the firm, and four investing members: Macario DelaPaz (“DelaPaz”), who contributed \$30,000 in capital; Michael Anthony Caggiano (“Caggiano”), who contributed \$30,000 in capital; Gregory Vilorio (“Vilorio”), who contributed \$30,000 in capital, and Steven A. Favato (“Favato”), who contributed \$30,000 in capital.
- 3.1 Notwithstanding the fact that individuals other than Aliermo made capital contributions to JRS, at the time that JRS was approved as a member organization of the Exchange, JRS' Form BD only reported Aliermo's financial interest in the firm.
- 3.2 On March 12, 2003, FRD staff conducted an initial examination of JRS, as a requirement for new Amex members. During this initial examination, FRD staff learned that the Firm's Form BD still had not been updated to reflect any of the additional investing members of JRS.

3.3 On June 12, 2003, JRS terminated its membership with the Exchange. At the time of its termination, JRS still had not updated its Form BD to reflect any of the additional investing members of JRS.

Failure to Provide Notice of Capital Withdrawals:

4.0 In December 2002, two of JRS' investing members, Caggiano and Favato, withdrew their remaining capital contributions, totaling approximately \$32,000, from JRS and ceased being investing members of the firm.¹

4.1 Notwithstanding the December 2002 withdrawal of capital by Caggiano and Favato, JRS failed to give six months notice to the Exchange that two of its investing members were withdrawing their capital contributions from the firm.

4.2 Notwithstanding the December 2002 withdrawal of capital by Caggiano and Favato, JRS failed to obtain written approval from the Exchange prior to two of its investing members withdrawing their capital contributions from the firm.

4.3 At the time JRS terminated its membership with the Exchange, it had not submitted to the Exchange for its approval changes to its LLC agreement to reflect the withdrawal of Caggiano and Favato as investing members of the firm.

JRS' Failure to Timely File Monthly Equity Computations:

5.0 A monthly equity computation report for JRS for the period June 2002 was due to be filed with the Exchange no later than July 24, 2002.

5.1 On July 29, 2002, FRD staff sent a warning letter to JRS advising the firm that prompt and timely submissions of its monthly equity computation reports was required and that the firm's June 2002 equity report was late. Accompanying its warning letter to the firm,

¹ By this time, as a consequence of trading losses incurred by JRS, the \$32,000 was the remaining balance of Caggiano's and Favato's capital contributions.

- FRD staff included a copy of Exchange Notice 02-2, which set forth the due dates for each monthly equity computation report to be filed with the Exchange during 2002. JRS filed its June 2002 equity computation report with the Exchange on August 2, 2002, seven (7) days late.²
- 5.2 A monthly equity computation report for JRS for the period August 2002 was due to be filed with the Exchange no later than September 25, 2002. The firm's equity computation report for the period September 2002 was due to be filed with the Exchange no later than October 23, 2002. JRS filed both its August and September 2002 monthly equity reports with the Exchange on November 25, 2002.
- 5.3 On December 9, 2002, FRD staff issued a Minor Fine notice to JRS in the amount of \$2,150, stemming from the firm's filing of its August 2002 monthly equity computation report 43 days late. On December 9, 2002, FRD staff issued a second Minor Fine notice to JRS in the amount of \$1,150, stemming from the firm's filing of its September 2002 monthly equity computation report 23 days late. JRS paid these fines.
- 5.4 A monthly equity computation report for JRS for the period February 2003 was due to be filed with the Exchange no later than March 25, 2003. JRS filed its February 2003 monthly equity computation report with the Exchange on March 26, 2003, one day late.
- 5.5 On April 3, 2003, FRD staff issued a Minor Fine notice to JRS in the amount of \$50, stemming from the firm's filing of its February 2003 monthly equity computation report one day late. JRS has failed to pay this fine to the Exchange.

² In determining the number of days a filing is late, it is FRD's procedure to use the number of *business* days a filing is late as opposed to the number of *calendar* days.

JRS' FOCUS Report Filings:

- 6.0 An annual FOCUS IIA Report and Schedule I Report for JRS for 2002 were due to be filed with the Exchange no later than March 3, 2003. JRS filed its FOCUS IIA Report and Schedule I Report for 2002 on April 8, 2003, twenty-six (26) days late.
- 6.1 On May 8, 2003, FRD staff issued a Minor Fine notice to JRS in the amount of \$1,300, stemming from the firm's filing of its FOCUS IIA Report and Schedule I Report for 2002 26 days late. JRS paid this fine.

JRS' Failure to Maintain Books and Records:

- 7.0 On March 26 and April 4, 2003, FRD staff conducted a routine financial examination of JRS' financial books and records.
- 7.1 During the course of FRD's examination, FRD determined that the Firm failed to maintain financial books and records in the form of trial balances, balance sheets, income statements and general ledgers. JRS advised FRD, via facsimile, that the Firm did not maintain balances sheets, income statements, trial balances and general ledgers at any time during the course of business.
- 7.2 As a consequence of JRS' failure to maintain required financial books and records, FRD staff was unable to adequately determine the Firm's financial position, or otherwise ensure the Firm's compliance with all financial and books and records keeping requirements.
- 7.3 On April 9, 2003, FRD staff sent a letter to JRS setting forth the deficiencies uncovered during the staff's routine financial examination and requesting the Firm's response within fifteen (15) days to the findings, as well as any corrective action taken to remedy the deficiencies uncovered. On April 29, 2003, JRS filed a general response that indicated

- that the Firm would correct the deficiencies noted by the staff and take appropriate steps in the future to ensure compliance with all financial filing and books and records keeping requirements but did not indicate how it would ensure compliance.
- 7.4 On April 30, 2003, FRD staff, as required by SEC Rule 17a-11(f), notified the SEC of JRS' failure to make and keep current its financial books and records. The notice, which was also sent to JRS, directed the Firm to notify the SEC and the Amex of the remedial measures taken by the Firm to bring the firm's books and records into compliance within forty-eight (48) hours. FRD also notified JRS, via e-mail, that the Firm was required to send telegraphic notice to the SEC in Washington, D.C., the SEC's Northeast Regional Office and the Amex within forty-eight (48) hours of FRD's notice to the SEC.
- 7.5 JRS submitted the required notice to the SEC on May 2, 2003, but failed to outline the remedial measures taken to bring the firm's books and records into compliance.

Failure to Supervise:

- 8.0 During the relevant period herein, Alierio, as the Managing Member of JRS, failed to (i) develop, maintain and enforce reasonable written supervisory procedures 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 financial filing and books and records keeping requirements 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 prevent violations of the Firm's financial filing and books and records keeping requirements.
- 8.1 During the relevant period herein, Alierio did not delegate any responsibility to ensure compliance with financial filing and books and records keeping requirements, nor

executed any delegation document reflecting any delegation of responsibility for financial filing and books and records keeping requirements to the investing members of JRS.

CONCLUSION:

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

- 9.0 Aliermo and JRS violated SEC Rule 15b3-1 (made applicable to Exchange members and member firms pursuant to Article V, Section 4(i) of the Exchange Constitution) by failing to accurately complete its Form BD reflecting all direct owners of the LLC as set forth in paragraphs 3.0 to 3.3.
- 9.1 Aliermo and JRS violated Exchange Rule 300(b) by failing to prohibit the withdrawal of capital contribution from two investing partners without six months written notice to the Exchange and prior written Exchange approval as set forth in paragraphs 4.0 to 4.2.
- 9.2 Aliermo and JRS violated Exchange Rule 301 by failing to submit to the Exchange, for its approval, changes to its LLC agreement as set forth in paragraph 4.3.
- 9.3 Aliermo and JRS violated Article XI, Section 3 of the Exchange Constitution, SEC Rules 17a-3(a)(2) and 17a-3(a)(11)(ii), 17a-4(a), 17a-4(b) (made applicable to Exchange members and member firms pursuant to Article V, Section 4(i) of the Exchange Constitution) and Amex Rule 324, by failing to make, prepare, maintain and preserve various financial statements, records and reports, including ledger accounts in the form of trial balances, and other records of assets and liabilities, income and expense, and capital accounts as set forth in paragraphs 7.0 to 7.5.
- 9.4 Aliermo and JRS violated SEC 17a-4(b)(5) (made applicable to Exchange members and member firms pursuant to Article V, Section 4(i) of the Exchange Constitution) by failing to preserve all checkbooks, bank statements, cancelled checks and cash reconciliations,

- all bills receivable or payable paid or unpaid relating to the business of the broker/dealer, and all trial balances and financial statements relating to the firm's business as set forth in paragraphs 7.0 to 7.5.
- 9.5 Aliermo and JRS violated SEC Rule 17a-11(d) and (g) (made applicable to Exchange members and member firms pursuant to Article V, Section 4(i) of the Exchange Constitution), by failing to make proper notification to the Exchange and SEC of its failure to make and keep current its books and records, and failing to file a report within the required time period to state what corrective actions would be taken, as set forth in paragraphs 7.0 to 7.5.
- 9.6 Aliermo and JRS violated Exchange Rule 30, by failing to file with the Exchange, its monthly equity computations, annual FOCUS IIA and Schedule I Reports, and ITSFEA Forms 1 and 2, in a timely manner as set forth in paragraphs 5.0 to 5.5 and 6.0 to 6.1.
- 9.7 Aliermo and JRS violated Exchange Rule 31, by failing to comply with repeated Exchange requests for JRS to produce its books and records within the time periods required by the Exchange, as set forth in paragraphs 7.0 to 7.5.
- 9.8 Aliermo violated Exchange Rule 320(c) in that during the relevant period and in connection with its Exchange-related activities, the Firm failed to (i) develop, maintain and enforce reasonable written supervisory procedures concerning financial books and records keeping obligations and filing requirements 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 financial books and records keeping obligations and filing requirements 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 books and records keeping and financial filing violations, as set forth in paragraphs 8.0 to 8.1.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may impose the following penalties upon JRS and Aliermo:

JRS:

- (a) a permanent bar from Exchange membership, including regular, options principal, associate, or allied membership, and from approved person or limited trading permit holder status, and from association in any capacity with an Exchange member or member organization.

Aliermo:

- (a) a censure;
- (b) a two-year bar from holding, or performing any of the duties associated with, a supervisory, managerial or control position with an Exchange member or member organization; and
- (c) a \$5,000 fine (which fine is deemed waived due to the Respondent's demonstrated financial inability to pay).

ON BEHALF OF:
AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice-President and Chief Counsel
Enforcement Department
NASD Amex Regulation Division

Agreed to this _____ day of _____, 2005.

George Aliermo