

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
BKI ASSOCIATES

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:
Case No. 04-223
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Hearing Officer – DMF
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DECISION
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April 19, 2005
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In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Rule 470 and SEC Exchange Act Rule 15c3-1, SEC Exchange Act Rule 17a-11 and Exchange Rule 320, as stipulated, and as a penalty imposed a censure and a fine of \$10,000.

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against BKI Associates, a Regular Member 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 March 22, 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 and BKI Associates entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against BKI Associates based upon or arising out of the facts set forth in the Stipulation.

II. Facts

BKI Associates, 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 BKI Associates:

(1) violated Exchange Rule 470 and SEC Rule 15c3-1 by failing to maintain a minimum net capital of \$100,000 for ten (10) days during the period June 22, 2004 to July 23, 2004;

(2) violated SEC 17a-11 by failing to give prompt notice to the Securities and Exchange Commission and the Exchange that its total net capital was less than 120 percent of its required minimum net capital at various times during the period June 22, 2004 to July 23, 2004;

(3) violated SEC 17a-11 by failing to give prompt notice to the SEC and the Exchange that its net capital declined below \$100,000 at various times during the period June 22, 2004 to July 23, 2004; and

(4) violated Exchange Rule 320 by failing to develop, maintain and enforce appropriate policies, systems and procedures of supervision and control, including written supervisory procedures governing both timely submission of financial reports and notices to the Exchange, and the receipt and review by the firm of its net capital computation reports.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$10,000 on BKI Associates. 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, and therefore it will be imposed. 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 BKI Associates a censure and a fine of \$10,000.

FOR THE DISCIPLINARY PANEL

David M. FitzGerald, Chair

Copies to: BKI Associates (*via overnight and first class mail*)
 Ira Koondel (*via overnight and first class mail*)
 Jennifer D. Kim, Esq. (*electronically and via first class mail*)
 Arlene Collins-Day (*via facsimile and first class mail*)

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.” Those exemptions do not apply to the facts of this case.

Disciplinary Panel
American Stock Exchange LLC

IN THE MATTER
OF
BKI ASSOCIATES

STIPULATION OF FACTS
AND
CONSENT TO PENALTY
Case No. 04-223

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against BKI ASSOCIATES (“BKI”) (CRD #32367), a Regular Member of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with BKI pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against BKI based upon or arising out of the facts hereinafter stipulated. BKI, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Rules and federal securities laws and to the imposition of the penalties hereinafter provided. BKI 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 that may not be appealed by the parties. BKI understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of its disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATION OF FACTS

- 1.0 During all periods relevant herein, BKI was a Member of the Exchange. During all periods relevant herein, Ira Koondel (“Koondel”) was the General Partner of BKI.
- 1.1 During all relevant periods herein, BKI engaged in on-Floor options market-making, as well as trading from off the Floor.
- 1.2 During all relevant periods herein, BKI was subject to Securities and Exchange Commission (“SEC”) Rule 15c3-1 and Exchange Rule 470, which required the firm to maintain minimum net capital of not less than \$100,000.
- 1.3 During all relevant periods herein, BKI was subject to SEC Rule 17a-11 which required the firm to give prompt notice to the SEC and the Exchange if its total net capital was less than 120 percent of its required minimum net capital. Pursuant to SEC Rule 17a-11, BKI was also required to give prompt notice to the SEC and the Exchange if its net capital declined below \$100,000.
- 1.4 During all relevant periods herein, BKI was subject to Exchange Rule 320 which required that BKI develop, maintain and enforce appropriate policies, systems and procedures of supervision and control, including written supervisory procedures, to ensure compliance with all applicable SEC and Exchange rules and regulations.

Net Capital Violation

- 2.0 As a Member of the Exchange, BKI was required to file a Financial and Operational Combined Uniform Single Report Part IIA (“FOCUS” Report) on a quarterly basis per annum. On July 21, 2004, BKI filed with the Exchange its quarterly FOCUS Report.
- 2.1 Thereafter, the Exchange conducted a review of BKI’s daily net computation reports for the time period from June 22, 2004 to July 23, 2004. Pursuant to the Exchange’s review,

- BKI was under the early warning rule requirement for fifteen (15) days during this period and was deficient in its net capital for ten (10) of these days.
- 2.2 BKI fell below its minimum net capital requirement of \$100,000 for ten (10) days in violation of Exchange Rule 470 and SEC Rule 15c3-1.
 - 2.3 BKI failed to give prompt notice to the SEC and the Exchange that its total net capital was less than 120 percent of its required minimum net capital for any of the fifteen (15) day that it was under the early warning rule as required by SEC Rule 17a-11.
 - 2.4 BKI failed to give prompt notice to the SEC and the Exchange that its net capital declined below \$100,000 as required by SEC Rule 17a-11.
 - 2.5 During the relevant period herein, BKI failed to develop, maintain and enforce written supervisory procedures governing timely submission of financial reports and notices to the Exchange as well as receipt and review by the firm of its net capital computation.

CONCLUSION

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

- 3.0 BKI violated Exchange Rule 470 and SEC Rule 15c3-1 by failing to maintain a minimum net capital of \$100,000 for ten (10) days between the time period from June 22, 2004 to July 23, 2004 as set forth above in paragraphs 2.1 and 2.2.
- 3.1 BKI violated SEC 17a-11 by failing to give prompt notice to the SEC and the Exchange that its total net capital was less than 120 percent of its required minimum net capital between the time period from June 22, 2004 to July 23, 2004 as set forth above in paragraph 2.3.
- 3.2 BKI failed to give prompt notice to the SEC and the Exchange that its net capital declined below \$100,000 between the time period from June 22, 2004 to July 23, 2004 as required by SEC Rule 17a-11 as set forth above in paragraph 2.4.

3.3 BKI violated Exchange Rule 320 by failing to develop, maintain and enforce appropriate policies, systems and procedures of supervision and control, including written supervisory procedures governing timely submission of financial reports and notices to the Exchange as well as the receipt and review by the firm of its net capital computation reports as set forth above in paragraph 2.5.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may impose the following penalties upon BKI Associates:

- (a) a censure; and
- (b) a \$10,000 fine.

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.

BKI Associates