

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
BEAR WAGNER SPECIALISTS, LLC

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Case No. 03-08  
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Hearing Officer – DMF  
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**DECISION**  
:  
January 6, 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 Rules 980, 320(b) and 320(c)(1) and (2), as stipulated, and as a penalty imposed a censure and a fine of \$7,500.**

**I. Introduction**

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against Bear Wagner Specialists, LLC (Bear), a Regular Member Organization 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 December 29, 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 Bear entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Bear based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Bear, 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 Bear violated Exchange Rule 980 on five separate occasions during the period between April 20, 2001 and March 15, 2002, when Bear specialists, despite acting contrary to the Options Clearing Corporation's (OCC) Rule 805 Exercise Exception Procedures, failed to submit a Contrary Exercise Advice (CEA) to the Exchange. In addition, Bear violated Exchange Rule 320(b) by failing to have reasonable supervisory policies and procedures in place concerning the submission of CEAs to the Exchange, and violated Exchange Rule 320(c)(1) and (2) by failing to have appropriate procedures in place, and failing to establish a separate system of follow-up and review, to ensure compliance with Exchange Rule 980.

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

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$7,500 on Bear, \$5,000 of which relates to the violations of Exchange Rule 320 and the remaining \$2,500 of which relates to the violations of Exchange Rule 980. At the hearing, the Parties urged the Disciplinary Panel Chair to accept the proposed penalty as being appropriate to the facts and circumstances of this case.

After consideration of the Stipulation and the representations of the parties during the hearing, as well as the decisions cited in the precedent memorandum filed by the Exchange, the Chair finds that the proposed penalty is appropriate based on the facts and circumstances, and therefore it will be imposed.

Rule 12 of the Exchange Rules on Disciplinary Proceedings provides that whenever an Exchange Disciplinary Panel finds a person guilty of an offense and such determination has become final, the Exchange shall announce publicly the results of such disciplinary proceeding, including the basis for the Panel's determination and the penalty imposed. Rule 12 further

provides that these requirements “shall not be applicable if the Disciplinary Panel finds in its determination that the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” During the hearing Bear urged the Chair to make such a finding in this case. In support, Bear pointed out that in each case in which it violated Rule 980, it had made the proper filing with OCC. Bear urged that its failure also to file a CEA with the Exchange, as required by Rule 980, was a minor administrative requirement that did not materially affect the public interest or the interest of investors. Bear further argued that because they related to the Rule 980 violations, the supervisory violations also involved minor administrative requirements and did not materially affect the public interest or the interest of investors.

The Disciplinary Panel Chair disagrees. There were five Rule 980 violations over a period of several months. In each case the Exchange staff notified the specialist and Bear of the violation, and on one occasion Exchange staff issued a separate cautionary letter to Bear. Bear stipulated that in connection with these violations, it failed to have reasonable and appropriate supervisory policies and procedures in place. Under these circumstances, the Chair finds that the results of this disciplinary proceeding should be publicly disclosed as provided in Rule 12.

## **V. Conclusion**

The Disciplinary Panel Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Bear Wagner Specialists, LLC a censure and a fine of \$7,500.

### **FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: Irwin Wertz, Esq. (*via facsimile and first class mail*)  
Eric S. Brown, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel  
American Stock Exchange LLC

IN THE MATTER  
OF  
BEAR WAGNER SPECIALISTS, LLC

STIPULATION OF FACTS  
AND  
CONSENT TO PENALTY  
Case Number 03-08  
December 15, 2004

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against BEAR WAGNER SPECIALISTS, LLC (“Bear”, or the “Firm”) (CRD #32691), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Bear pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Bear based upon or arising out of the facts hereinafter stipulated. Bear, 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 Constitution and Rules and to the imposition of the penalties hereinafter provided. Bear 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. Bear understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of the Firm’s disciplinary record and may be considered in any future proceeding brought by the Exchange.

**STIPULATED FACTS:**

1.1 At all periods relevant herein, Bear was a Regular Member Organization of the Exchange.

1.2 During all relevant periods herein, Exchange Rule 320(b) provided, in relevant part:

(b) Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility. The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations.

1.3 During all relevant periods herein, Exchange Rule 320(c)(1) and (2) provided, in relevant part:

The general partners, directors, trustees of each member organization shall provide for appropriate supervisory control and shall designate a general partner, principal executive officer, trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall: (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 is being properly exercised.

1.4 During all relevant periods herein, Exchange Rule 980 provided, in relevant part:

(b) Final decisions by options holders to either exercise or not exercise expiring equity options must be made by members or member organizations not later than 5:30 P.M., New York time on the business day immediately prior to the expiration date (“the

exercise cut-off time”). In this regard, members and member organizations must either:

(i) submit a Contrary Exercise Advice to the Exchange. A Contrary Exercise Advice is a form prescribed by the Exchange for use by a member or member organization to indicate a final exercise decision committing an options holder to not exercise an equity options position which would automatically be exercised pursuant to OCC’s Rule 805 Exercise-by-Exception procedure, or to exercise an equity option position which would not automatically be exercised pursuant to OCC’s Exercise-by-Exception procedure. Contrary Exercise Advices can be submitted by any member or member organization at a place designated for that purpose by any national options exchange of which they are a member and where the option is listed, or may be transmitted to the Exchange via OCC in a format prescribed by OCC.

- 1.5 Pursuant to Exchange Rule 980, firms with expiring options who seek to act contrary to the Options Clearing Corporation’s (“OCC”) Rule 805 Exercise Exception Procedures and either choose to not exercise a position which would normally be automatically exercised by OCC, or choose to exercise a position that otherwise would not be automatically exercised by OCC, must submit a Contrary Exercise Advice (“CEA”) to a designated location on the Exchange floor before 5:30 p.m. Eastern time.
- 1.6 During all relevant periods herein, Bear failed to have written supervisory policies and procedures concerning the submission of CEAs.

#### April 20, 2001 Violation

- 2.1 During all relevant periods herein, Option A was listed for trading on the Exchange.

- 2.2 During all relevant periods herein, Specialist A was a specialist for Bear on the Exchange Floor.
- 2.3 On April 20, 2001, Specialist A failed to submit a CEA to the Exchange for the exercise of 15 Option A April 10 call options. Contrary exercises were effected by OCC for the Option A call options; however, the Exchange received no such notice.
- 2.4 On May 9, 2001, the Exchange's Derivative Trading Analysis Department ("DTA") sent Specialist A a Reminder Notice, advising him of the rule regarding notification pursuant to Exchange Rule 980. A copy of the letter was sent to Bear.

#### January 18, 2002 Violations

- 3.1 On January 18, 2002, Bear Specialist A again failed to submit a CEA notice to the Exchange for the exercise of 400 Option A January 7 ½ call options. Contrary exercises were effected by OCC for the Option A call options; however, the Exchange received no such notice.
- 3.2 On January 31, 2002, DTA spoke to Specialist A about his failure to submit a CEA notice to the Exchange for the exercise of 400 Option A January 7 ½ call options. DTA verbally reminded Specialist A about the rules concerning submissions of CEA notices.
- 3.3 On February 4, 2002, following Specialist A's second failure to submit a CEA notice to the Exchange in connection with the January 18, 2002 contrary exercise

of 400 Option A January 7 ½ call options, DTA issued Specialist A a Cautionary Letter. A copy of the letter was also sent to Bear.

#### Additional January 18, 2002 Violations

- 4.1 During all relevant periods herein, Option B was listed for trading on the Exchange.
- 4.2 During all relevant periods herein, Option C was listed for trading on the Exchange.
- 4.3 During all relevant periods herein, Specialist B was a specialist for Bear on the Exchange Floor.
- 4.4 On January 18, 2002, Bear Specialist B failed to submit a CEA for the exercise of Option B call options and Option C call options. Contrary exercises were effected by OCC for Option B and Option C call options; however, the Exchange received no such notice.
- 4.5 On February 4, 2002, DTA sent Specialist B a Reminder Notice for the January 18, 2002 violation, advising Specialist B of the rule regarding notification pursuant to Exchange Rule 980. A copy of the February 4, 2002 letter was also sent to Bear.
- 4.6 On February 6, 2002, DTA issued a separate Cautionary Letter to Bear. The Cautionary Letter alerted Bear of the Firm's failure to supervise the previous submission of CEAs to the Exchange on April 20, 2001 and January 18, 2002 by Bear Specialist A and on January 18, 2002 by Bear Specialist B. The February 6, 2002 letter advised Bear that a subsequent violation of Rule 980 would result in a

referral to the Enforcement Department for failure to supervise. A copy of the February 6, 2002 letter was also sent to Bear's Compliance Department.

- 4.7 The letters issued on February 4, 2002 and February 6, 2002 to Bear Specialist B and Bear, respectively, restated the requirements under Rule 980 concerning the submission procedures for CEA notices.

#### March 15, 2002 Violation

- 5.1 During all relevant periods herein, Option D was listed for trading on the Exchange.
- 5.2 During all relevant periods herein, Specialist C was a specialist for Bear on the Exchange Floor.
- 5.3 On March 15, 2002, Bear Specialist C failed to submit a CEA to the Exchange for the exercise of 5 Option D March 35 call options. Contrary exercises were effected by OCC for the Option D call options; however, the Exchange received no such notice.
- 5.4 On April 5, 2002, DTA sent Specialist C a Reminder Notice for the failure to submit a CEA with the Exchange. A copy of the April 5, 2002 letter was sent to Bear and Bear's Compliance Department.
- 5.5 On April 12, 2002, DTA informed Bear of the Rule 980 violation in connection with the March 15, 2002 contrary exercise of 5 Option D March 35 call options. The March 15, 2002 violation of Exchange Rule 980 was Bear's fourth violation of the rule in a rolling twelve-month period.

**CONCLUSION:**

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

- 6.1 Bear violated Exchange Rule 980 in that Bear specialists, on five separate occasions during the period between April 20, 2001 and March 15, 2002, despite acting contrary to OCC Rule 805 Exercise Exception Procedures, failed to submit CEAs to the Exchange, as set forth in above paragraphs 2.1 through 5.5.
- 6.2 Bear violated Exchange Rule 320(b) in that Bear failed to have reasonable supervisory policies and procedures in place concerning the submission of CEAs to the Exchange, as set forth in above paragraphs 1.6 through 5.5.
- 6.3 Bear violated Exchange Rule 320(c)(1) and (2) in that Bear failed to have appropriate procedures in place and failed to establish a separate system of follow-up and review to ensure compliance with Exchange Rule 980, as set forth in above paragraphs 1.6 through 5.5.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty on Bear:

- (a) a censure; and
- (b) a \$7,500 fine (\$5,000 of which relates to violations of Exchange Rule 320, and the remaining \$2,500 relates to the violations of Exchange Rule 980).

On Behalf of: AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_  
David Rosenstein  
Vice President and Chief Counsel  
NASD Amex Regulation Division

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

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Bear Wagner Specialists, LLC