

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
DAVID CHAN

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: Case No. 03-97  
: 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 Rule 100, as stipulated, and as a penalty imposed a censure and a fine of \$2,500.**

**I. Introduction**

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against David Chan, 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 December 30, 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 Chan entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Chan based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Chan, 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 Chan violated Exchange Rule 100 by sending one commitment to sell 2,500 shares of Western Silver

Corporation (WTZ) through the Intermarket Trading System (ITS) to the Pacific Stock Exchange (PCE) after the close of Exchange trading on July 8, 2003.

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

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$2,500 on Chan. At the hearing, Exchange counsel urged the Disciplinary Panel Chair to accept the proposed penalty as consistent with the violation and prior authority. Chan, although acknowledging his consent to the penalty, noted that he has been a Member of the Exchange for years without any prior disciplinary history. Exchange counsel stated that this circumstance, as well as the fact that the violation involved only a single trade, was considered by the Exchange in agreeing to the proposed penalty. 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. 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.<sup>1</sup>

#### **V. Conclusion**

The Disciplinary Panel Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon David Chan a censure and a fine of \$2,500.

#### **FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: E. Michael Bradley, Esq. (*via facsimile and first class mail*)  
Alison H. Mijares, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*via facsimile and first class mail*)

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<sup>1</sup> 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

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X  
IN THE MATTER X STIPULATION OF FACTS  
OF X AND  
DAVID CHAN X CONSENT TO PENALTY  
X  
X  
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against DAVID CHAN (“Chan”) (CRD # 1877369), a Regular Member of the Exchange and an employee of LaBranche & Co. This Stipulation of Facts and Consent to Penalty is entered into with Chan pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Chan based upon or arising out of the facts hereinafter stipulated. Chan, 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. Chan 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. Chan 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.

## **STIPULATED FACTS**

- 1.0 During all relevant periods herein, LaBranche & Co. (“LaBranche”) was an Exchange member organization and was registered with the Exchange as a specialist firm.
- 1.1 During all relevant periods herein, Chan was a Regular Member of the Exchange and was actively engaged as a specialist for LaBranche on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Chan 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>1</sup>
- 1.3 During all relevant periods herein, Chan was the individual specialist assigned to handle the stock Western Silver Corporation (“WTZ”), which was listed on the Exchange.
- 1.4 During all relevant periods herein, WTZ was a multiply listed stock eligible for trading through the Intermarket Trading System (“ITS”).<sup>2</sup>
- 1.5 On trade date July 8, 2003, stock WTZ had reported Exchange volume of 49,600 shares; the high for the day was 2.58, and the low for the day was 2.47. At 4:02:32 p.m., the Pacific Stock Exchange (“PSE”) quoted a market in WTZ of 2.50 – 10.00 (25 x 1). At 4:02:32 p.m., after the close of equity trading on the

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

<sup>2</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.

Exchange, Chan, in his capacity as specialist for stock WTZ, sent a commitment<sup>3</sup> to trade through ITS to the PSE to sell 2,500 shares of stock WTZ at 2.50 in connection with or on behalf of a PER<sup>4</sup> order entered at 3:58 p.m. At 4:02:34 p.m., the PSE notified Chan through ITS that the commitment had been executed and that 2,500 shares of stock WTZ had been sold at the price of 2.50.

## **CONCLUSION**

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

- 2.0 Chan violated Exchange Rule 100 by sending one commitment to sell 2,500 shares of WTZ through ITS to the PSE after the close of Exchange trading, as set forth in paragraph 1.5.

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<sup>3</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>4</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.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty upon David Chan:

- (a) a censure; and,
- (b) a \$2,500 fine.

On Behalf of the AMERICAN STOCK EXCHANGE LLC

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David Rosenstein  
Vice President and Chief Counsel  
NASD Amex Regulation Division

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

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David Chan