

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
FOGEL GROUP LLC

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: Case No. 04-253  
: Hearing Officer – RSH  
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: **DECISION**  
: July 22, 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 171, Exchange Rule 950(h) and Exchange Rule 320, as stipulated, and as a penalty imposed a censure and a fine of \$30,000.**

**I. Introduction**

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Fogel Group LLC, (“Fogel”), a 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 June 10, 2005, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (Stipulation). The Exchange and Fogel entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Fogel based upon or arising out of the facts set forth in the Stipulation.

**II. Stipulated Facts**

Fogel Group, LLC, without admitting or denying liability, stipulated to the facts set forth in the Stipulation. The Disciplinary Panel Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein, as follows:

1.0 During all relevant periods herein, Fogel was a Member Organization of the Exchange.

1.1 During all relevant periods herein, Ralph Fogel was the Managing Partner of Fogel.

1.2 During all relevant periods herein, Fogel was an options specialist firm conducting business on the trading floor of the Exchange. On or about February 8, 2005, Fogel ceased its options specialist operation on the Exchange.

1.3 During all relevant periods herein, Fogel was subject to Exchange Rules 171 and 950(h), which require a specialist firm to maintain “minimum net capital.” “Minimum net capital” is the dollar amount held by the specialist’s clearing firm in a clearing account. The firm’s “minimum net equity” level is calculated daily, and is a function of the number of options that the specialist firm serves as specialist. Exchange Rules 171 and 950(h) require a specialist firm to maintain a minimum of \$1 million in net equity, for a maximum of twenty-five (25) options held by the specialist. Exchange rules further require that the specialist firm maintain an additional \$25,000 per option, for each option for which it serves as specialist over the initial twenty-five (25) options.

1.4 During all relevant periods herein, Fogel was subject to Commentary .06 of Exchange Rule 171, which outlines the “early warning level” above which specialist firms must operate. The “early warning level” is calculated by multiplying the “minimum net equity” amount by 1.25 or 125%. Although a specialist firm’s dropping below the “early warning level” is not a violation, it does create obligations for the specialist firm. Commentary .07 to Exchange Rule 171 requires that if a specialist firm falls below the “early warning level,” then it must attempt to reach a written agreement with the Exchange’s Financial Regulation Department

(FRD) on a plan for raising the specialist unit's capital to an appropriate level within (5) days of falling below the "early warning level."

1.5 During all relevant periods herein, Fogel was subject to Exchange Rule 320, which required that Fogel develop, maintain and enforce a system of internal supervision and control to ensure compliance with securities laws and regulations.

### **Net Capital Violation**

2.0 As a consequence of a review by the Exchange of Fogel's daily net capital position for the period of August 26, 2004 to November 30, 2004, the Exchange determined that Fogel was under the "minimum net capital" requirements on four (4) dates during November 2004 as follows:

(i) On November 4, 2004, Fogel's minimum net capital requirement was \$3,975,000. The unit's actual equity was \$3,947,000, indicating that Fogel was under-capitalized by \$28,000.

(ii) On November 5, 2004, Fogel's minimum net capital requirement was \$3,975,000. The unit's actual equity was \$3,949,000, indicating that Fogel was under-capitalized by \$26,000.

(iii) On November 24, 2004, Fogel's minimum net capital requirement was \$3,675,000. The unit's actual equity was \$3,639,000, indicating that Fogel was under-capitalized by \$36,000.

(iv) On November 30, 2004, Fogel's minimum net capital requirement was \$3,575,000. The unit's actual equity was \$3,526,000, indicating that Fogel was under-capitalized by \$49,000.

### **Early Warning Level and Notice Requirement**

3.0 As a consequence of a review by the Exchange of Fogel's daily net capital for the period from August 26, 2004 to November 30, 2004, the Exchange determined that Fogel was under the "early warning level" for fifty-seven (57) days of the sixty-seven (67) day period.

3.1 As a consequence of a review by the Exchange of Fogel's daily net capital position for the period from December 1, 2004 to February 3, 2005, the Exchange determined that Fogel was below the "early warning level" for six (6) consecutive trading days starting on January 21, 2005.

3.2 Notwithstanding Fogel's falling below the "early warning level" on the dates specified in paragraphs 3.0 and 3.1 above, Fogel failed to attempt to reach a written agreement with the Exchange's Financial Regulation Department (FRD) on a plan for raising the specialist unit's capital to an appropriate level within (5) days of falling below the "early warning level."

### **Failure to Supervise**

4.0 During the relevant period from August of 2004 to February of 2005, Fogel failed to develop, maintain and enforce a system of internal supervision and control to ensure compliance with securities laws and regulations.

### **III. Violations**

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

- (1) violated Exchange Rule 171 and 950(h) by failing to maintain the appropriate minimum net capital;
- (2) violated Exchange Rule 171 in that, after falling below the "early warning level," Fogel failed to attempt to reach a written agreement with the Exchange's Financial Regulation

Department (FRD) on a plan for raising the specialist unit's capital to an appropriate level within five days of falling below the early warning level; and

(3) violated Exchange Rule 320 by failing to develop the necessary systems of internal supervision and control to ensure compliance with securities laws and regulations.

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

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$30,000 on Fogel. After considering the stipulated facts 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.<sup>1</sup>

#### **V. Conclusion**

The Disciplinary Panel Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Fogel LLC a censure and a fine of \$30,000.

**FOR THE DISCIPLINARY PANEL**

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Rochelle S. Hall, Chair

Copies to: Sheldon Goldstein, Esq. (*via facsimile and first class mail*)  
Fogel Group, LLC (*via overnight and first class mail*)  
Shawn R. Mallon, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*electronically and via 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." That exemption does not apply to the facts of this case.