

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
KELLOGG CAPITAL GROUP, LLC

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Case No. 04-222
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Hearing Officer – RSH
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DECISION
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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 980, Exchange Rule 320(b) and Exchange Rule 320(c), 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 Kellogg Capital Group, LLC, (“Kellogg”), 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 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 Kellogg entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Kellogg based upon or arising out of the facts set forth in the Stipulation.

II. Stipulated Facts

Kellogg, 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 times relevant herein, Kellogg was a Regular Member Organization of the Exchange.

1.1 During all times relevant herein, Spear, Leeds & Kellogg LP (“SLK”) was a Regular Member Organization of the Exchange.

1.2 Pursuant to Exchange Rule 980, firms with expiring options which seek to act contrary to the Options Clearing Corporation’s (“OCC”) Rule 805 Exercise Exception Procedures and either choose not to 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. A CEA may be submitted by a member or member organization by using the Exchange's Contrary Exercise Advice Form, OCC's Clearing Management and Control System (“C/MACS”), a CEA form of any other national securities exchange of which the firm is a member and where the option is listed, or such other method as the Exchange may prescribe. A CEA may be canceled by filing an "Advice Cancel" with the Exchange or resubmitted at any time up to the submission cut-off times specified below.

1.3 During all times relevant herein, Kellogg contracted with SLK to use SLK as its clearing firm for, among other things, the exercise of expiring equity options. Kellogg submitted instructions and contrary instructions to SLK regarding the exercise of expiring equity options. These instructions set forth that Kellogg was required to submit contrary instructions to SLK in the following situations: (a) when Kellogg determined not to exercise expiring equity options that would normally be exercised and (b) when Kellogg determined to exercise expiring equity options that would not normally be exercised. Final decisions to exercise or not exercise expiring equity options were to be made no later than 5:30 p.m., New York time on the business day immediately prior to the expiration date.

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

that:

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 [or] (ii) take no action and allow exercise determinations to be made in accordance with OCC’s Exercise-by-Exception procedure where applicable.

1.5 During all times relevant herein, Exchange Rule 320(b) provided, in relevant part,

that:

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.

1.6 During all times relevant herein, Exchange Rule 320(c) provided, in relevant part,

that:

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.

September 19, 2003 Violations:

2.0 During all times relevant herein, ABC September 55 put options were listed for trading on the Exchange.

2.1 During all times relevant herein, “JP” was the Kellogg specialist for ABC options on the Exchange Floor.

2.2 On September 19, 2003, “JP” caused contrary exercise instructions to be submitted to the OCC with respect to 27 ABC September 55 put options. Although contrary exercise instructions were submitted to the OCC, “JP” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.

2.3 During all times relevant herein, DEF September 40 put options were listed for trading on the Exchange.

2.4 During all times relevant herein, “JP” was the Kellogg specialist for DEF options on the Exchange Floor.

2.5 On September 19, 2003, “JP” caused contrary exercise instructions to be submitted to the OCC with respect to 92 DEF September 40 put options. Although contrary exercise instructions were submitted to the OCC, “JP” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.

2.6 On October 16, 2003, the Exchange’s Derivative Trading Analysis Department (“DTA”) sent a Reminder Notice to “JP,” advising “JP” of the rule regarding notification pursuant to Exchange Rule 980. A copy of the letter was also sent to Kellogg.

January 16, 2004 Violation:

3.0 During all times relevant herein, GHI January 20 call options were listed for trading on the Exchange.

3.1 During all times relevant herein, “JH” was the Kellogg specialist for GHI options on the Exchange Floor.

3.2 On January 16, 2004, “JH” caused contrary exercise instructions to be submitted to the OCC with respect to 33 GHI January 20 call options. Although contrary exercise instructions were submitted to the OCC, “JH” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.

3.3 On February 19, 2004, DTA sent a Reminder Notice to “JH,” advising “JH” of the rule regarding notification pursuant to Exchange Rule 980. A copy of the letter was also sent to Kellogg.

3.4 On February 19, 2004, DTA issued a separate Cautionary Letter to Kellogg. The Cautionary Letter alerted Kellogg of the Firm’s failure to supervise the previous submission of CEAs to the Exchange. Specifically, the letter cited the two occasions on September 19, 2003 (by “JP”) and January 16, 2004 (by ”JH”) when contrary exercise instructions were submitted to the OCC and no CEA notices were submitted to the Exchange. This letter advised Kellogg 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 19, 2004 letter was also sent to Kellogg’s Compliance Department.

May 21, 2004 Violation:

4.0 During all times relevant herein, JKL May 15 call options were listed for trading on the Exchange.

4.1 During all times relevant herein, “ML” was the Kellogg specialist for JKL options on the Exchange Floor.

4.2 On May 21, 2004, “ML” caused contrary exercise instructions to be submitted to the OCC with respect to 129 JKL May 15 call options. Although contrary exercise instructions were submitted to the OCC, “ML” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.

4.3 On June 16, 2004, DTA sent a Reminder Notice to “ML,” advising him of the rule regarding notification pursuant to Exchange Rule 980. A copy of the May 21, 2004 letter was also sent to Kellogg’s Compliance Department.

Failure to Supervise

5.0 Prior to February 2004, Kellogg did not have any written supervisory procedures regarding the submission of CEAs to the Exchange pursuant to Exchange Rule 980.

5.1 Prior to February 2004, Kellogg failed to reasonably delegate authority to a qualified individual to ensure compliance with Exchange Rule 980.

5.2 In February 2004, Kellogg amended its supervisory procedures, however, section 10 of Kellogg’s procedures, entitled “Options,” simply advised the specialist that instructions to the OCC were required when there was a contrary exercise. Kellogg’s procedures were silent on the issue of submission of CEAs to the Exchange.

5.3 Kellogg’s amended procedures failed to reasonably delegate authority to a qualified individual to ensure compliance with Exchange Rule 980.

5.4 As a result of Kellogg's deficient written supervisory procedures and the firm's failure to reasonably delegate authority to ensure compliance with Exchange Rule 980, a fourth CEA violation occurred subsequent to the February 2004 amendment to the firm's written supervisory procedures.

III. Violations

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

1. violated Exchange Rule 980 in that Kellogg specialists failed to submit CEAs to the Exchange;
2. violated Exchange Rule 320(b) by failing to develop, maintain and enforce written supervisory procedures with regard to submission of CEAs to the Exchange; and
3. violated Exchange Rule 320(c) by failing to establish a separate system of follow-up and review to ensure that the firm's CEA submissions were being properly exercised and by failing to establish adequate policies or procedures, or a system to implement such procedures, that would reasonably be expected to detect the failure to submit CEAs to the Exchange.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$7,500 on Kellogg. 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. During the hearing, Enforcement represented and Respondent's Counsel agreed that as a part of settlement, Kellogg had revised its policies and procedures regarding Exchange Rule 980 and dual notification to the Exchange and is now in compliance with the rule. 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 Kellogg Capital Group, LLC a censure and a fine of \$7,500.

FOR THE DISCIPLINARY PANEL

Rochelle S. Hall, Chair

Copies to: Thomas J. McCabe, Esq. (*via facsimile and first class mail*)
Kellogg Capital Group, 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*)

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.

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
KELLOGG CAPITAL GROUP LLC	X	CONSENT TO PENALTY
.....	X	Case # 04-222

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against KELLOGG CAPITAL GROUP LLC (“Kellogg” or the “Firm”) (CRD #35032), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Kellogg pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Kellogg based upon or arising out of the facts hereinafter stipulated. Kellogg, 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 to the imposition of the penalties hereinafter provided. Kellogg 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. Kellogg 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.

STIPULATED FACTS:

- 1.0 During all times relevant herein, Kellogg was a Regular Member Organization of the Exchange.
- 1.1 During all times relevant herein, Spear, Leeds & Kellogg LP (“SLK”) was a Regular Member Organization of the Exchange.
- 1.2 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. A CEA may be submitted by a member or member organization by using the Exchange's Contrary Exercise Advice Form, OCC's Clearing Management and Control System (C/MACS), a CEA form of any other national securities exchange of which the firm is a member and where the option is listed, or such other method as the Exchange may prescribe. A CEA may be canceled by filing an "Advice Cancel" with the Exchange or resubmitted at any time up to the submission cut-off times specified below.
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- required to submit contrary instructions to SLK in the following situations: (a) when Kellogg determines not to exercise expiring equity options that would normally be exercised, and (b) when Kellogg determines to exercise expiring equity options that would not normally be exercised. Final decisions to exercise or not exercise expiring equity options were to be made no later than 5:30 p.m., New York time on the business day immediately prior to the expiration date.
- 1.4 During all times relevant herein, Exchange Rule 980 provided, in relevant part, that:
- “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 [or] (ii) take no action and allow exercise determinations to be made in accordance with OCC’s Exercise-by-Exception procedure where applicable.
- 1.5 During all times relevant herein, Exchange Rule 320(b) provided, in relevant part, that:
- “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.”
- 1.6 During all times relevant herein, Exchange Rule 320(c) 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.

September 19, 2003 Violations:

- 2.0 During all times relevant herein, ABC September 55 put options were listed for trading on the Exchange.
- 2.1 During all times relevant herein, “JP” was the Kellogg specialist for ABC options on the Exchange Floor.
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- 2.3 During all times relevant herein, DEF September 40 put options were listed for trading on the Exchange.
- 2.4 During all times relevant herein, “JP” was the Kellogg specialist for DEF options on the Exchange Floor.
- 2.5 On September 19, 2003, “JP” caused contrary exercise instructions to be submitted to the OCC with respect to 92 DEF September 40 put options. Although contrary exercise instructions were submitted to the OCC, “JP” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.
- 2.6 On October 16, 2003, the Exchange’s Derivative Trading Analysis Department (“DTA”) sent a Reminder Notice to “JP,” advising “JP” of the rule regarding

notification pursuant to Exchange Rule 980. A copy of the letter was also sent to Kellogg.

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- 3.0 During all times relevant herein, GHI January 20 call options were listed for trading on the Exchange.
- 3.1 During all times relevant herein, "JH" was the Kellogg specialist for GHI options on the Exchange Floor.
- 3.2 On January 16, 2004, "JH" caused contrary exercise instructions to be submitted to the OCC with respect to 33 GHI January 20 call options. Although contrary exercise instructions were submitted to the OCC, "JH" failed to submit a CEA notice for this contrary exercise instruction to the Exchange.
- 3.3 On February 19, 2004, DTA sent a Reminder Notice to "JH," advising "JH" of the rule regarding notification pursuant to Exchange Rule 980. A copy of the letter was also sent to Kellogg.
- 3.4 On February 19, 2004, DTA issued a separate Cautionary Letter to Kellogg. The Cautionary Letter alerted Kellogg of the Firm's failure to supervise the previous submission of CEAs to the Exchange. Specifically, the letter cited to the two occasions on September 19, 2003 (by "JP") and January 16, 2004 (by "JH"), where contrary exercise instructions were submitted to the OCC and no CEA notices were submitted to the Exchange. This letter advised Kellogg 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 19, 2004 letter was also sent to Kellogg's Compliance Department.

May 21, 2004 Violation:

- 4.0 During all times relevant herein, JKL May 15 call options were listed for trading on the Exchange.
- 4.1 During all times relevant herein, “ML” was the Kellogg specialist for JKL options on the Exchange Floor.
- 4.2 On May 21, 2004, “ML” caused contrary exercise instructions to be submitted to the OCC with respect to 129 JKL May 15 call options. Although contrary exercise instructions were submitted to the OCC, “ML” failed to submit a CEA notice for this contrary exercise instruction to the Exchange.
- 4.3 On June 16, 2004, DTA sent a Reminder Notice to “ML,” advising him of the rule regarding notification pursuant to Exchange Rule 980. A copy of the May 21, 2004 letter was also sent to Kellogg’s Compliance Department.

Failure to Supervise:

- 5.0 Prior to February 2004, Kellogg did not have any written supervisory procedures regarding the submission of CEAs to the Exchange pursuant to Exchange Rule 980.
- 5.1 Prior to February 2004, Kellogg failed to reasonably delegate authority to a qualified individual to ensure compliance with Exchange Rule 980.
- 5.2 In February 2004, Kellogg amended its supervisory procedures. Section 10 of Kellogg’s procedures, entitled “Options,” however, simply advised the specialist that instructions to the OCC were required when there was a contrary exercise.

Kellogg's procedures were silent on the issue of submission of CEAs to the Exchange.

- 5.3 Kellogg's amended procedures failed to reasonably delegate authority to a qualified individual to ensure compliance with Exchange Rule 980.
- 5.4 As a result of Kellogg's deficient written supervisory procedures and the firm's failure to reasonably delegate authority to ensure compliance with Exchange Rule 980, a fourth CEA violation occurred subsequent to the February 2004 amendment to the firm's written supervisory procedures.

CONCLUSIONS:

By reasons of the above, a Disciplinary Panel may conclude that:

- 6.0 Kellogg violated Exchange Rule 980 in that Kellogg specialists, on four separate occasions during the period between September 19, 2003 and May 21, 2004, failed to submit CEAs to the Exchange, as set forth in above paragraphs 2.0 through 4.3.
- 6.1 Kellogg violated Exchange Rule 320(b) in that it failed to develop, maintain and enforce written supervisory procedures with regard to submission of CEAs to the Exchange pursuant to Exchange Rule 980, as set forth in above paragraphs 5.0, 5.2 and 5.4.
- 6.2 Kellogg violated Exchange Rule 320(c) in that it failed to establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the firm's submission of CEAs to the Exchange was being properly exercised as set forth in above paragraphs 5.1, 5.3 and 5.4.

6.3 Kellogg violated Exchange Rule 320(c) in that it failed to establish adequate policies or procedures, or a system to implement such procedures, that would reasonably be expected to detect the failure to submit CEAs to the Exchange, as set forth in paragraphs 5.0 to 5.4.

DISCIPLINARY ACTION:

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

- (a) a censure; and
- (b) a fine of \$7,500.

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.
