

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
NOMURA SECURITIES  
INTERNATIONAL, INC.

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: Case No. 04-130  
: Hearing Officer – DMF  
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: **DECISION**  
: March 29, 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 30 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 (the “Exchange”) instituted a formal disciplinary proceeding against Nomura Securities International, Inc., 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 March 4, 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 Nomura entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Nomura based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Nomura, 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 Nomura violated Exchange Rule 30 by filing inaccurate mid-month short interest reports in Exchange-listed securities during the period October 2001 through July 2002. These reports included a total of 62 incorrectly reported positions that were subsequently disseminated to the public by the Exchange. In addition, Nomura violated Exchange Rule 30 by filing inaccurate mid-month and end-of-month short interest reports for Exchange Traded Funds (ETFs) during the period December 1999 through December 2002. Further, Nomura violated Exchange Rule 320(b) during the relevant periods and in connection with its Exchange-related activities, by failing to (i) develop, maintain and enforce reasonable written supervisory procedures concerning short interest reporting so as to prevent the violations described above; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with Nomura's short interest reporting was being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be expected to detect the short interest reporting violations.

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

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

**V. Conclusion**

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

**FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: Faron Webb, Esq. (*via facsimile and first class mail*)  
David Leibowitz, Esq. (*via facsimile and via first class mail*)  
Sebastian Krawczyk, 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

.....X	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
NOMURA SECURITIES	X	CONSENT TO PENALTY
INTERNATIONAL, INC.	X	Case No. 04-130
	X	
.....X		

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against NOMURA SECURITIES INTERNATIONAL, INC. (“Nomura” or the “Firm”) (CRD # 4297), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Nomura pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Nomura based upon or arising out of the facts hereinafter stipulated. Nomura, 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. Nomura 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. Nomura 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, Nomura was a Regular Member Organization of the Exchange.

2.0 During all relevant periods herein, Exchange Rule 30 provided that:

“Every member and member organization shall file with the Exchange such periodic or special reports as the Board of Governors may, by rule or otherwise, from time to time authorize. All such reports shall be filed at such time or times and in such form as the Exchange may prescribe.”

2.1 During all relevant periods herein, Amex Information Circular #95-136 provided that:

Pursuant to Exchange Rule 30, members and member organizations shall continue to file monthly short interest positions in Amex-listed securities directly with SIAC. Commencing with the May 1995 short interest reporting period, the Exchange will require the reporting of short positions in all securities carried by member organizations, irrespective of where the securities are listed.

2.2 During all relevant periods herein, Amex Information Circular #98-234 provided that:

Commencing with the April 30, 1998 settlement date, all Exchange member organizations will be required to report short positions in certain derivative securities as prescribed by the Exchange as of the close of the settlement date falling on the last business day of each month.

2.3 During all relevant periods herein, Exchange Rule 320 provided that:

- (a) No office shall be established by a member or member organization without the prior approval of the Exchange. Applications for permission to establish an office must be in a form approved by the Exchange.
- (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.
- (c) 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.

(d) Only persons meeting the Exchange's qualification requirements for such positions shall be in charge of:

- (1) any office of a member or member organization,
- (2) any regional or other group of offices, and
- (3) any other organizational group of registered representatives.

(e) The amounts and types of credit extended by a member organization shall be supervised by general partners, principal executive officers, or trustees qualified by experience for such control in the types of business in which the member organization extends credit.

3.0 In or about July 2002, Nomura discovered that the Firm's short interest reports were being reported for the wrong settlement date when the Firm was asked by the National Association of Securities Dealers ("NASD") to verify a short interest position Nomura reported to NASD for July 2002.

3.1 During the period October 2001 through July 2002, Nomura submitted erroneous mid-month short interest reports to the Exchange in Exchange-listed securities. These inaccurate short interest reports submitted by Nomura during the relevant period resulted in a total of 62 incorrectly reported positions that were subsequently disseminated to the general public by the Exchange.

3.2 In or about January 2003, Nomura discovered that the Firm's short interest positions in Exchange Traded Funds ("ETFs") were not included in the Firm's mid-month and end-of-month short interest reports to the Exchange due to a coding change made in 1998. As a result of this coding change, Nomura submitted erroneous mid-month and end-of-month ETF short interest reports from December 1999 through December 2002 that were subsequently disseminated to

- the general public by the Exchange. While the erroneous ETF short interest reports resulted from a coding change in 1998, Nomura did not have any reportable ETF short interest positions until December 1999.
- 4.0 During the period December 1999 to December 2002, Nomura failed to develop, maintain and enforce reasonable written supervisory procedures for the Firm's short interest reporting so as to prevent the foregoing violations.
- 4.1 During the period December 1999 to December 2002, Nomura 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 short interest reporting was being properly exercised.
- 4.2 During the period December 1999 to December 2002, Nomura failed to establish adequate policies or procedures, or a system to implement such policies or procedures, which would reasonably be expected to detect short interest reporting violations.

## **CONCLUSION**

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

- 5.0 Nomura violated Exchange Rule 30 and Amex Information Circular # 95-136, in that, Nomura failed to file accurate mid-month short interest reports in Amex-listed securities at such time or times and in such form as the Exchange prescribed, as stated in above paragraphs 3.0 and 3.1.
- 5.1 Nomura violated Exchange Rule 30 and Amex Information Circular #98-234, in that, Nomura failed to file accurate mid-month and end-of-month short interest

reports in ETFs at such time or times and in such form as the Exchange prescribed, as stated in above paragraph 3.2.

- 5.2 Nomura violated Exchange Rule 320(b), in that during the relevant period and in connection with its Exchange-related activities, the Firm failed to (i) develop, maintain and enforce reasonable written supervisory procedures concerning short interest reporting so as to prevent the violations described herein; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility in connection with the Firm's short interest reporting was being properly exercised; and (iii) establish adequate policies or procedures, or a system to implement such policies or procedures, that would reasonably be expected to detect the short interest reporting violations, as stated in above paragraphs 3.0 through 4.2.

**DISCIPLINARY ACTION:**

By reason of the foregoing stipulated facts, a Disciplinary Panel may impose the following penalties upon Nomura:

- (a) a censure; and
- (b) a \$30,000 fine.

AMERICAN STOCK EXCHANGE LLC

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

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

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Nomura Securities International, Inc.