

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
ROBERT E. BOLEN

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Case No. 03-42  
Hearing Officer – DMF  
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**DECISION**  
April 19, 2005  
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**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Article V, Section 4(h) of the Exchange Constitution, Exchange Rule 345(a)(4), Exchange Rules 980(b) and (d)(i), and Exchange Rule 324, as stipulated, and as a penalty imposed a censure and a fine of \$65,000.**

**I. Introduction**

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Robert E. Bolen, a Registered Options Trader and 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 March 23, 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 Bolen entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Bolen based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Bolen, 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 Bolen:

(1) violated Article V, Section 4(h) of the Exchange Constitution on March 21, 2003, by submitting to his clearing firm contrary instructions to exercise certain expiring out-of-the-money put options, which normally would not be exercised, after the 5:30 p.m. exercise cut-off time established by Exchange Rule 980(c), in order to take advantage of a material news announcement that occurred after 5:30 p.m., from which Bolen realized a gain of approximately \$40,000;

(2) engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rule 345(a)(4), by submitting the contrary instructions after the 5:30 p.m. exercise cut-off time to take advantage of a material news announcement, rather than to remedy a good faith mistake;

(3) violated Exchange Rule 980(b) and (d)(i) by submitting the contrary instructions after the 5:30 exercise cut-off time in order to take advantage of a material news announcement, rather than to remedy a good faith mistake; and

(4) violated Exchange Rule 324 and Rule 17a-4 of the Securities and Exchange Act of 1934 by failing to maintain accurate and current books and records pertaining to the submission of his contrary instructions to his clearing firm on March 21, 2003.

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

The Stipulation proposes that the Disciplinary Panel Chair impose a censure and a fine of \$65,000 on Bolen. 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 Robert E. Bolen a censure and a fine of \$65,000.

**FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: Thomas J. McCabe, Esq. (*via overnight and first class mail*)  
Robert E. Bolen (*via overnight and via first class mail*)  
Jeffrey L. Brandt, 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	
IN THE MATTER	X	
OF	X	STIPULATION OF FACTS
ROBERT E. BOLEN	X	AND
	X	CONSENT TO PENALTY
	X	Case No. 03-42
	X	
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (“the Exchange”) against ROBERT E. BOLEN (“Bolen”) (CRD # 1046509), a Regular Member of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Bolen pursuant to Exchange Rule 345(k) in order to settle and conclude all disciplinary actions by the Exchange against Bolen based upon or arising out of the facts hereinafter stipulated. Bolen, 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, Rules and securities laws and to the imposition of the penalties hereinafter provided. Bolen 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. Bolen 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, Bolen was a Regular Member of the Exchange.

1.1 During all relevant periods herein, Bolen was self-employed as a Registered Options Trader on the floor of the Exchange.

2.0 At all times relevant herein, First Options of Chicago (“FOC”) was a Regular Member Organization of the Exchange.

2.1 During all relevant periods herein, Bolen contracted with FOC to use FOC as its clearing firm for, among other things, the exercise of expiring equity options. Bolen submitted instructions and contrary instructions to FOC regarding the exercise of expiring equity options. Bolen must submit contrary instructions to FOC in the following situations: (a) when Bolen determines not to exercise expiring equity options that would normally be exercised, and (b) when Bolen determines to exercise expiring equity options that would not normally be exercised. Final decisions to exercise or not exercise expiring equity options must be made no later than 5:30 p.m., New York time on the business day immediately prior to the expiration date.<sup>1</sup>

2.2 During all relevant periods herein, Exchange Constitution Article V Section 4(h) provided that:

“A member, member organization or approved person who or which shall be adjudged guilty in a proceeding under this Article of a violation of the Constitution of the Exchange, of a violation of a rule adopted pursuant to the Constitution, of a violation of a resolution of the Board regulating the conduct or business of members or member organizations, or of conduct

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<sup>1</sup> The Options Clearing Corporation “OCC” provides that “every option contract . . . that has an exercise price below (in the case of a call) or above (in the case of a put) the closing price of the underlying security by (i)  $\frac{3}{4}$  of a point or more, if the option contract is carried in the customers’ account, or (ii)  $\frac{1}{4}$  of a point or more, if the option contract is carried in any other account” shall be exercised (OCC Rule 805- Expiration Date Exercise Procedure).

or proceeding inconsistent with just and equitable principles of trade, may if a member or member organization, be suspended or expelled from membership or, if an approved person have his approval withdrawn, unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed”

2.3 During all relevant periods herein, Exchange Rule 345(a)(4) provided that if the Exchange determined that any employee of a member or member organization has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade, the Exchange may disapprove or suspend or withdraw its approval of his employment by a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specific capacities; and/or (c) assess a fine against them.

2.4 During all relevant periods 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.

2.5 During all relevant periods herein, Exchange Rule 980(b) provided, in relevant part, that:

“Final decision by option 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”).

- 2.6 During all relevant periods herein, Exchange Rule 980(d) provided, in relevant part, that:
- “Members and member organizations, may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice (i) in order to remedy mistakes made in good faith”.
- 2.7 Pursuant to Rule 17a-4 of the Securities and Exchange Act of 1934 and Exchange Rule 324, members and member organizations are required to maintain true and complete books of accounts and records of transactions for a period of three (3) years.
- 2.8 During all relevant periods herein, Altria Group, Inc. (“Altria”), option symbol MO, was listed for trading on the Exchange.<sup>2</sup>

**Contrary Exercise Violation:**

- 3.0 On March 21, 2003, the stock price in Altria closed at \$35.04.
- 3.1 On March 21, 2003, as of the close of Exchange trading, Bolen held 181 March 35 put options in MO.
- 3.2 On March 21, 2003, because the stock price closed at \$35.04, four cents above the strike price, Bolen’s 181 March 35 put options would not normally be exercised.
- 3.3 On March 21, 2003, at 5:36 p.m. Bloomberg news reported a negative ruling by a Circuit Court judge against Altria (“the news report”).<sup>3</sup>

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<sup>2</sup> Altria was formerly known as Philip Morris Inc. USA.

<sup>3</sup> Bloomberg news reported that Illinois Circuit Court Judge Nicholas G. Bryon ruled against Altria Group, Inc. (“Altria” or “MO”), formerly Philip Morris Inc. USA, in a class-action consumer fraud lawsuit deciding that Altria failed to “inform consumers that its “light” cigarettes were not less harmful than regular cigarettes.

- 3.4 On the basis of this news report, the stock price in Altria, which closed at \$35.04 on March 21, 2003 declined significantly, opening at \$32.35 on the following Monday, March 24, 2003.
- 3.5 At approximately 6:30 p.m. Eastern Standard Time, Bolen telephoned FOC's Option Balancing Department in Chicago from his home and instructed FOC to exercise his 181 March 35 put options.
- 3.6 FOC accepted Bolen's verbal instruction to exercise his 181 March 35 put options in MO.
- 3.7 Following Bolen's verbal instruction to FOC concerning his 181 March 35 put options in MO, Bolen did not submit any written contrary exercise instruction to FOC or the Exchange.
- 3.8 As a direct consequence of Bolen's submitted contrary exercise instructions regarding its position of 181 March 35 put options in MO, Bolen realized a gain of approximately \$40,000.
- 3.9 During investigative testimony before the Exchange on June 21, 2003, Bolen stated that he was aware that Altria was trading lower in after hours trading on March 21, 2003.
- 3.10 During investigative testimony before the Exchange on June 21, 2003, Bolen stated, in sum and substance, that the motivating factor for submitting the CEA to exercise his 181 March 35 put contracts, after learning of the March 21, 2003 negative news announcement concerning Altria, was to realize a gain of approximately \$40,000.

**Books and Records Violation:**

- 4.0 On March 21, 2003, Bolen failed to submit by the 5:30 p.m. cut-off time a CEA to the Exchange indicating his intent to submit a CEA to exercise 181 March 35 put options in MO.
- 4.1 On March 21, 2003, Bolen failed to submit a written contrary instruction to FOC indicating his intent to submit contrary instruction to exercise 181 March 35 put options in MO.
- 4.2 During investigative testimony before the Exchange on June 21, 2003, Bolen stated, in sum and substance, that he failed to keep any records or documentation concerning his exercise of the 181 March 35 put options in MO.<sup>4</sup>

**CONCLUSION:**

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

- 5.0 Bolen violated Article V, Section 4(h) of the Exchange Constitution, in that in order to take advantage of a material news announcement announced after the 5:30 p.m. exercise cut-off time, Bolen submitted contrary instructions to exercise his out-of-the-money put options, which normally would not be exercised, resulting in a realized gain of approximately \$40,000, as described in above paragraphs 3.0 through 3.10.
- 5.1 Bolen engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rules 345(a)(4), in that Bolen's decision to submit

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<sup>4</sup> More specifically, Bolen admitted that he did not keep any copies of Exchange letters and memorandum, order tickets, booth tickets, CEA tickets, or written confirmation from FOC that his March 21, 2003 CEA was received and processed.

- contrary instructions to FOC after the 5:30 p.m. cut-off time was not to remedy a good faith mistake, as described above in paragraphs 3.0 through 3.10.
- 5.1 Bolen violated Exchange Rule 980(b) and (d)(i), in that in order to take advantage of a material news announcement after the 5:30 p.m. exercise cut-off time, Bolen submitted contrary instructions to exercise his 181 March 35 put options and did so without the intent to remedy any mistake made in good faith, as stated in above paragraphs 3.0 through 3.10.
- 5.2 Bolen violated Exchange Rule 324, though a violation of Rule 17a-4 of the Securities and Exchange Act of 1934, in that Bolen failed to maintain accurate and current books and records pertaining to the submission of his CEA on March 21, 2003 to his clearing firm, as described in above paragraphs 4.0 through 4.2

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty upon Bolen:

- (a) A censure; and
- (b) A \$65,000 fine.

ON BEHALF OF THE  
AMERICAN STOCK EXCHANGE LLC:

By: \_\_\_\_\_

David Rosenstein  
Vice-President and Chief Counsel  
Enforcement Department  
NASD Amex Regulation Division

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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ROBERT E. BOLEN