

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
SAPPHIRE PARTNERS, LLC

Case No. 02-29
Hearing Officer – RSH

DECISION
October 18, 2005

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Rule 7 and Exchange Rule 320(b), as stipulated, and as a penalty imposed a censure and a \$15,000 fine.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Sapphire Partners, LLC (“Sapphire” or the “Firm”), a former Member Organization of the Exchange. The Disciplinary Panel Chair (“Chair”), presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on September 22, 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 Sapphire entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Sapphire based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Sapphire Partners, LLC, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein.

III. Violations

Based upon the stipulated facts, the Chair concludes that Sapphire:

(1) violated Exchange Rule 7 on two separate occasions, April 5, 2001 and April 17, 2001, by entering and executing short sales on direct minus or zero minus ticks, while maintaining a short position in FE in a firm proprietary account; and

(2) violated Exchange Rule 320(b) by failing to (i) develop, maintain and enforce reasonable written supervisory procedures to prevent the violative short sale activity described; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority for the daily review of trading activities to prevent violative short sale activity was 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 violative short sale violations.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose a censure and a fine of \$15,000 on Sapphire. During the hearing, Enforcement stated and Respondent's counsel agreed that shortly after the Exchange's notification in July 2002, Sapphire established adequate policies and procedures for control and supervision, which rendered them in compliance. Enforcement also noted during the hearing that these violations represent Sapphire's sole disciplinary action. 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.¹

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Sapphire Partners, LLC a censure and a \$15,000 fine.

FOR THE DISCIPLINARY PANEL

Rochelle S. Hall, Chair

Copies: Thomas J. McCabe, Esq. (*via facsimile 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

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IN THE MATTER X STIPULATION OF FACTS
OF X AND
SAPPHIRE PARTNERS, LLC X CONSENT TO PENALTY
X
.....X
Case No. 02-29

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against SAPPHIRE PARTNERS, LLC. (“Sapphire” or the “Firm”) (CRD # 45792), a former Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Sapphire pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Sapphire based upon or arising out of the facts hereinafter stipulated. Sapphire, 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. Sapphire 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. Sapphire 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 the relevant period herein, Sapphire was a Regular Member Organization of the Exchange. On or about August 29, 2003, Sapphire ceased its membership with the Exchange. Jurisdiction was retained over Sapphire by a certified letter dated February 20, 2004, receipt acknowledged.

1.1 During the relevant period herein, Sapphire was engaged in the business of buying and selling securities for its own accounts.

1.2 During all relevant periods herein, Exchange Rule 7 provided in pertinent part:

“No member or member organization shall for his or its own account or for the account of any other person effect on the Exchange any short sale of a security admitted to dealings on the Exchange unless such sale is based upon a sale in the unit of trading (1) at a price higher than the price at which the latest sale thereof, regular way, was effected on the Exchange, or (2) at such latest price and such price is above the latest different price at which a sale in the unit of trading of such security, regular way, was effected on the Exchange; provided, however, that transactions exempted by paragraph (e) of Rule 10a-1 under the Securities Exchange Act of 1934 are also exempted from this Rule 7.”

1.3 During all relevant periods herein, Exchange Rule 320(b) provided 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.

1.4 During the relevant period here, the common stock First Energy Corporation (First Energy” or “FE”) traded on the New York Stock Exchange (“NYSE”).¹

¹ Although FE is a NYSE listed stock, the NYSE referred Sapphire’s trading in FE to the Exchange since Sapphire was only a Member of the Exchange.

Sapphire's Short Sale Violations:

- 2.0 During the relevant period herein, Sapphire entered and executed trades in FE in a proprietary account of the firm. This proprietary account was managed by WT, the portfolio manager for the account, and JK, WT's assistant. WT and JK entered and executed FE trades in the Sapphire account through an automated order routing and execution system provided to the Firm by its clearing firm.
- 2.1 On April 5, 2001, while maintaining a short position in FE in its proprietary account, JK sold short a total of 6,600 shares of FE stock on a direct minus or zero minus ticks as follows: at 3:42:24, JK sold short 900 shares on a direct minus tick; at 3:43:58, JK sold 600 shares on a zero minus tick; and at 3:44:22, JK sold an additional 5,100 shares on a zero minus tick.
- 2.2 On April 17, 2001, JK, while maintaining a short position in FE in Sapphire's proprietary account of anywhere from 41,600 and 79,400 shares, entered and executed the following thirteen (13) sales in FE on direct minus or zero minus ticks:

| Existing Net Positions at Time of Sale | MDS Report Time | Trade Size | Price | NYSE Tick |
|--|-----------------|------------|-------|-----------|
| (79,400) | 10:11:07 | 1,000 | 29.05 | - |
| (54,500) | 11:00:53 | 1,000 | 28.85 | - |
| (55,500) | 11:01:13 | 600 | 28.80 | - |
| (56,100) | 11:01:32 | 1,000 | 28.70 | - |
| (44,500) | 11:06:20 | 3,000 | 28.65 | - |
| (47,500) | 11:08:02 | 3,000 | 28.61 | - |
| (50,500) | 11:08:27 | 1,000 | 28.50 | - |
| (34,500) | 11:09:12 | 5,000 | 28.51 | - |
| (39,500) | 11:10:12 | 2,000 | 28.50 | - |
| (41,500) | 11:10:17 | 500 | 28.50 | 0- |
| (40,600) | 11:11:20 | 100 | 28.56 | - |
| (40,700) | 11:11:58 | 900 | 28.50 | - |
| (41,600) | 11:12:36 | 900 | 28.41 | - |

2.3 None of the above transactions set forth in paragraphs 2.1 through 2.2 were exempt from Exchange Rule 7.

Sapphire's Supervisory Deficiencies:

- 3.0 Prior to April 2001, Sapphire failed to develop, maintain and enforce reasonable written supervisory procedures with regard to violative short sale activity so as to prevent the foregoing violations.
- 3.1 Prior to April 2001, Sapphire failed to establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility for the daily review of trading activities to prevent violative short sale activity was properly exercised.
- 3.2 Prior to April 2001, Sapphire failed to establish adequate policies or procedures, or a system to implement policies or procedures that would reasonably be expected to detect short sale violations.

Conclusion:

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

- 4.0 Sapphire violated Exchange Rule 7, in that on April 5, 2001 and April 17, 2001, while maintaining a short position in FE in a firm proprietary account, it entered and executed short sales on direct minus or zero minus ticks, as stated in above paragraphs 2.0 through 2.3.
- 4.1 Sapphire violated Exchange Rule 320(b), in that during the relevant period and in connection with its Exchange-related activities, it failed to (i) develop, maintain and enforce reasonable written supervisory procedures to prevent the violative short sale activity described herein; (ii) establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority and responsibility for the daily review of trading activities to prevent violative short

sale activity was 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 violative short sale violations as stated in above paragraphs 3.0 through 3.2.

DISCIPLINARY ACTION:

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

- (a) a censure; and
- (b) a \$15,000 fine.

ON BEHALF OF THE
AMERICAN STOCK EXCHANGE LLC

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

Agreed to this _____ day of _____, 2005.

Sapphire Partners, LLC