

II. Facts

Timber Hill, 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 Timber Hill:

(1) violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30 and Amex Information Circular #95-136 by failing to accurately report mid-month short interest in Amex listed securities and Exchange Traded Funds (“ETFs”);

(2) violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30, Amex Information Circular #95-136, and ISG Regulatory Memorandum 95-01 by failing to accurately report mid-month short interest in NYSE listed securities;

(3) violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30 and Amex Information Circular #98-234 by failing to file accurate end-of-month short interest reports in ETFs; and

(4) violated Exchange Rule 320 by failing 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 position reporting violations.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose a censure and a fine of \$35,000 on Timber Hill. 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.¹

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Timber Hill, LLC a censure and a \$35,000 fine.

FOR THE DISCIPLINARY PANEL

Rochelle S. Hall, Chair

Copies to: Michael D. Wolk, Esq. (*via facsimile and first class mail*)
Timber Hill, LLC (*via overnight and first class mail*)
Sebastian Krawczyk, 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**

IN THE MATTER
OF
TIMBER HILL LLC

**STIPULATION OF FACTS AND
CONSENT TO PENALTY**
Case No. 03-50

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against TIMBER HILL LLC (“Timber Hill” or the “Firm”) (CRD # 33319), a former Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Timber Hill pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Timber Hill based upon or arising out of the facts hereinafter stipulated. Timber Hill, 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 Constitution, Rules and Federal securities laws, and the imposition of the penalties hereinafter provided. Timber Hill 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. Timber Hill 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 relevant periods herein, Timber Hill was an Exchange member organization. Timber Hill subsequently terminated its Exchange membership effective December 19, 2003. Jurisdiction was retained over Timber Hill pursuant to a letter delivered via certified mail/return receipt requested dated February 24, 2004, receipt of which was acknowledged on March 1, 2004.
- 2.0 During all relevant periods herein, Timber Hill was subject to Exchange Constitution Article V, Section 4(h), which prohibits conduct inconsistent with just and equitable principles of trade.
- 2.1 During all relevant periods herein, Timber Hill was subject to Exchange Rule 30, which requires that members and member organizations file with the Exchange such periodic reports or special reports as the Board of Governors may, by rule, or otherwise, from time to time authorize.
- 2.2 During all relevant periods herein, Amex Information Circular #95-136 (“Reporting of Monthly Short Interest Positions”), distributed by the Exchange to members and member organizations on May 8, 1995, 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.
- 2.0 During all relevant periods herein, Amex Information Circular #98-234 (“Additional Short Position Reporting of Amex Listed Securities”), distributed by the Exchange to members and member organizations on February 26, 1998, 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.

2.1 During all relevant periods herein, Timber Hill was subject to Exchange Rule 320, which requires member organizations to provide for appropriate supervisory control and designate a general partner, principal executive officer or trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. Exchange Rule 320 further requires that this designated person 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, including a system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.

2.2 During all relevant periods herein, Amex was Timber Hill's designated examining authority ("DEA").

2.3 During all relevant periods herein, Intermarket Surveillance Group ("ISG") Regulatory Memorandum 95-01 ("Consolidated Reporting of Short Interest Positions"), distributed by the Exchange to members and member organizations on March 8, 1995, provided that:

Firms that currently transmit short interest position data electronically to SIAC for securities that are listed on the American Stock Exchange will continue to do so as before. In addition, firms for which the AMEX is the DEA must transmit to SIAC short interest positions in ALL OTHER SECURITIES on their books, except for Nasdaq securities

Timber Hill's Short Interest Reporting Violations:

- 3.0 In or about May 2002, NASD staff made an inquiry to Timber Hill requesting that the Firm verify the accuracy of the Firm's s short interest position report for the month of May 2002. The May mid-month short interest position report required submission by firms no later than May 17, 2002.
- 3.1 On or about May 21, 2002, Timber Hill notified NASD that the Firm's mid-month short interest position reports in NASDAQ Stock Market, Inc. ("NASDAQ")¹, Amex and New York Stock Exchange, Inc. ("NYSE") listed securities for April and May 2002 were incorrect and transmitted corrected short interest position reports ("first corrected short interest position reports") to NASD via electronic mail which included revised short interest positions in Amex and NYSE listed securities.
- 3.3 On or about May 21, 2002, at or about 4:00 p.m. EST, the Amex and NYSE released for publication their respective mid-month short interest position reports which included the corrected short interest positions in Amex and NYSE listed securities provided by Timber Hill to NASD.
- 3.4 On or about May 23, 2002, Timber Hill contacted the NASD and Amex to advise that the Firm's first corrected short interest position reports for April and May 2002 in Amex and NYSE listed securities were also incorrect.

¹ NASD's Market Regulation Department is bringing concurrent disciplinary action against Timber Hill regarding inaccurate short interest position reports in NASDAQ listed securities during this identical review period. This Statement of Charges will only address the inaccurate short interest position reports in Amex and NYSE listed securities.

- 3.5 On or about May 23, 2002, Timber Hill also advised NASD that the Firm's short interest position reports in Amex and NYSE listed securities that had previously been filed for January, February and March 2002 were also incorrect.
- 3.6 On or about May 24, 2002, Timber Hill resubmitted the Firm's corrected short interest position reports in Amex and NYSE listed securities for April and May 2002 ("second corrected short interest position reports").
- 3.7 On or about May 24, 2002, Timber Hill submitted additional corrected short interest position reports in Amex and NYSE listed securities for April and May 2002 ("third corrected short interest position reports") after the Firm discovered that a formatting error caused the Firm's second corrected short interest position reports to reflect inaccurate data.
- 3.8 In a letter from the Exchange to Timber Hill dated June 18, 2002, Timber Hill was asked to verify the accuracy of four specific Amex listed short positions reported by the Firm for the May 15, 2002 and June 14, 2002 settlement dates.
- 3.9 On or about June 19, 2002, Timber Hill replied to the Exchange's request for verification via facsimile. Timber Hill's response indicated substantial adjustments to three of four short positions that the firm was asked to verify for the June 14, 2002 settlement date.
- 3.10 In a letter from Timber Hill to NASD dated July 7, 2003, the Firm stated that the incorrect short interest position reports resulted from Timber Hill's undertaking to redesign the Firm's clearing system in November 2001. Specifically, Timber Hill maintained that the program responsible for generating Timber Hill's short interest data was inadvertently programmed to retrieve data from a source that had

been used by Timber Hill's previous clearing system rather than the source in Timber Hill's new clearing system, which contained Timber Hill's correct short interest position data.

- 4.0 Due to the programming error in November 2001, Timber Hill submitted erroneous mid-month short interest position reports to the Exchange in Exchange-listed equity securities and Exchange Traded Funds ("ETFs") during the period December 2001 through June 2002. Timber Hill's inaccurate mid-month short interest position reports resulted in a total of 49 erroneously reported positions in 23 Exchange listed equity securities and ETFs that were subsequently disseminated to the general public by the Exchange.
- 4.1 Due to the programming change in November 2001, Timber Hill also submitted erroneous mid-month short interest position reports to the Exchange in NYSE listed equity securities during the period December 2001 through May 2002. Timber Hill's inaccurate mid-month short interest position reports resulted in over 300 misreported positions per month in NYSE listed securities that were subsequently disseminated to the general public by the NYSE.
- 4.2 Due to the programming change in November 2001, Timber Hill submitted erroneous end-of-month short interest position reports to the Exchange in ETFs during the period December 2001 through May 2002. Timber Hill's inaccurate end-of-month short interest position reports resulted in a total of 61 erroneously reported positions in 21 ETFs that were subsequently disseminated to the general public by the Exchange.

Timber Hill's Supervisory Deficiencies:

- 5.0 During the period December 2001 through June 2002, Timber Hill failed to develop, maintain and enforce reasonable written supervisory procedures with regard to the Firm's short interest position reporting so as to prevent the foregoing violations.
- 5.1 During the period December 2001 through June 2002, Timber Hill 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 position reporting was being properly exercised.
- 5.2 During the period December 2001 through June 2002, Timber Hill 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 position reporting violations.

CONCLUSION:

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

- 6.0 Timber Hill violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30 and Amex Information Circular # 95-136, in that, Timber Hill failed to file with the Exchange accurate mid-month short interest reports in Amex listed securities and ETFs at such time or times and in such form as the Exchange prescribed, as stated in above paragraphs 3.1 through 3.9 and 4.0.
- 6.1 Timber Hill violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30, Amex Information Circular # 95-136, and ISG Regulatory Memorandum

- 95-01, in that, Timber Hill failed to file with the Exchange accurate mid-month short interest reports in NYSE listed securities at such time or times and in such form as the Exchange prescribed, as stated in above paragraphs 4.1.
- 6.2 Timber Hill violated Exchange Constitution Article V, Section 4(h), Exchange Rule 30 and Amex Information Circular #98-234, in that, Timber Hill failed to file with the Exchange accurate 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 4.2.
- 6.3 Timber Hill violated Exchange Rule 320, 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 position reporting violations, as stated in above paragraphs 5.0 through 5.2.

DISCIPLINARY ACTION:

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

- (a) a censure; and
- (b) a \$35,000 fine.

AMERICAN STOCK EXCHANGE LLC

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

Agreed to this _____ day of _____, 2005.

Timber Hill LLC