

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
ROBERT WALTZ

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: Case No. 03-35  
: Hearing Officer – DMF  
:  
: **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 Exchange Rule 924(a) and Exchange Rule 421(a), as stipulated, and as a penalty imposed a censure, a \$10,000 fine and a thirty (30) day bar from employment, or prospective employment, or association in any capacity with an Exchange member or member firm.**

**I. Introduction**

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Robert Waltz, a former Registered Representative and registered employee of Merrill Lynch, Pierce, Fenner & Smith, 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 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 Waltz entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Waltz based upon or arising out of the facts set forth in the Stipulation. Although Respondent Waltz had notice of the March 22, 2005 hearing, he did not attend.

## **II. Facts**

Waltz, 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 Waltz violated Exchange Rule 924(a) by exercising discretion in connection with the trading of options in a customer's account without the customer's written discretionary trading authorization. In addition, Waltz violated Exchange Rule 421(a) by accepting and executing an order from a third-party, the customer's wife, without first obtaining the customer's written authorization.

## **IV. Penalties and Publicity**

The Stipulation proposes that the Disciplinary Panel Chair impose a censure, a \$10,000 fine, and a thirty (30) day bar from employment, or prospective employment, or association in any capacity with an Exchange member or member firm. After considering the Stipulation and the statement of the Exchange, 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 Waltz a censure, a \$10,000 fine, and a thirty (30) day bar from

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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.

employment, or prospective employment, or association in any capacity with an Exchange member or member firm.

**FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to: Robert A. Waltz (*via overnight and first class mail*)  
Jennifer D. Kim, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel  
American Stock Exchange LLC

IN THE MATTER  
OF  
ROBERT WALTZ

STIPULATION OF FACTS  
AND  
CONSENT TO PENALTY  
Case No. 03-35

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against ROBERT WALTZ (“Waltz”) (CRD #458474), a former Registered Representative and registered employee of Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) (CRD #7691), a regular member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Waltz pursuant to Exchange Rule 345(k) in order to settle and conclude all disciplinary actions by the Exchange against Waltz based upon or arising out of the facts hereinafter stipulated. Waltz, 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. Waltz 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. Waltz 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.

## **STIPULATION OF FACTS**

- 1.0 During all relevant periods herein, Waltz was a registered representative at Merrill Lynch. Waltz is no longer employed in the securities business.
- 1.1 During all relevant periods herein, Merrill Lynch maintained a retail branch office in Cincinnati, Ohio to service public customer accounts.
- 1.2 During all relevant periods herein, Waltz was a registered representative employed in Merrill Lynch's Cincinnati, Ohio branch office and was authorized to service public customer accounts.
- 1.3 During all times relevant herein, Exchange Rule 924(a) provided, in pertinent part:
- No member and no partner or employee of a member organization shall exercise any discretionary power with respect to trading in options contracts in a customer's account unless such customer has given prior written authorization and the account has been accepted in writing by a Registered Options Principal who is qualified with respect to the category of options trading for which discretionary power is to exercised (debt or equity).
- 1.4 During all times relevant herein, Exchange Rule 421(a) provided:
- No member and no partner, officer or employee of a member organization shall exercise any discretionary power in any customer's account, or accept orders for an account from a person other than the customer, without first obtaining the written authorization of the customer.

### **Waltz's Handling of the Account of Michael Politis:**

- 2.0 On or about September 18, 1998, Waltz opened an options account at Merrill Lynch for public customer Michael Politis ("Politis").
- 2.1 During the period September 18, 1998 through June 3, 1999, Waltz, in the absence of securing the customer's prior written discretionary trading authorization and approvals by Merrill Lynch, initiated and effected numerous discretionary options trades in Politis' account.

- 2.2 During the period September 18, 1998 through June 3, 1999, Waltz, on eleven (11) occasions, used his discretion to roll over options positions that were about to expire in Politis' account into a new options position.
- 2.3 On or about September 23, 1998, Waltz also accepted and executed an order from Politis' wife to purchase 200 "XYZ" shares in Politis' account without obtaining Politis' prior written authorization to allow a third party to initiate or enter orders in the account.
- 2.4 On or about April 17, 2001, Exchange staff (the "Staff") interviewed Waltz about his handling of the Politis account.
- 2.5 During the Staff's investigative interview on or about April 17, 2001, Waltz stated that he began to trade covered calls in Politis' account in September 1998.
- 2.6 During this interview on or about April 17, 2001, Waltz stated that after being unable to reach Politis, on eleven (11) occasions, he decided to roll over the options that were about to expire in the account into new options positions. Waltz admitted that he did not have written discretionary trading authority from Politis and the approvals from Merrill Lynch to use his trading discretion in rolling over the options positions on these eleven (11) occasions and that he had acted without the prior authorization of Politis.
- 2.7 During Waltz' interview on April 17, 2001, Waltz also admitted that he did not have Politis' written authorization to accept and execute orders initiated by Politis' wife; however, after being unable to contact Politis by telephone, at his home or at his office, he accepted and executed the order initiated by Politis' wife on or about September 23, 1998, as described in paragraph 2.3 above.

**CONCLUSIONS:**

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

3.0 Waltz violated Exchange Rule 924(a) in that he exercised discretion in connection with the trading of options in Politis' account in the absence of securing Politis' written discretionary trading authorization, as set forth in above paragraphs 2.1, 2.2 and 2.6.

3.1 Waltz violated Exchange Rule 421(a) in that he accepted and executed an order from a third-party, Politis' wife, without first obtaining Politis' written authorization as set forth in above paragraphs 2.3 and 2.7.

**DISCIPLINARY ACTION:**

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

- (a) a censure;
- (b) a \$10,000 fine; and
- (c) a thirty (30) day bar from employment, or prospective employment, or association in any capacity with an Exchange member or member firm.

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.

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