

II. Facts

Berke, 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 Berke violated Exchange Rules 153(a) and 324 on three occasions in March 2000 by filling out order tickets indicating that an options transaction was a closing transaction, instead of correctly identifying it as an opening transaction, thereby causing the creation of inaccurate books and records.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose on Berke a censure, a \$6,250 fine, and an undertaking to re-take the Regulatory Element of the Continuing Education Program within 120 days from when this disciplinary action becomes final. If Berke does not complete the Regulatory Element of the Continuing Education Program within the prescribed time frame, his registration will be deemed inactive and he must cease all activities as a registered person.

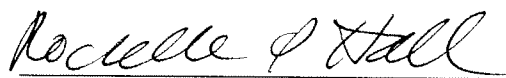
After considering the stipulated facts and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case, and therefore it will be imposed. The Chair further 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 Berke a censure, a fine of \$6,250 and an undertaking for Berke to re-take the Regulatory Element of the Continuing Education Program, as described in the Disciplinary Action section of the Stipulation.

FOR THE DISCIPLINARY PANEL


Rochelle S. Hall, Chair

Copies to: Steven D. Berke (*via overnight and first class mail*)
Carrie L. Chelko, Esq. (*via facsimile and first class mail*)
Jacqueline Gorham, Esq. (*electronically and via first class mail*)
David Rosenstein, 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.

EXHIBIT A

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	
OF	X	STIPULATION OF FACTS
STEVEN D. BERKE	X	AND
	X	CONSENT TO PENALTY
	X	Case No. 05-148
	X	
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (“the Exchange”) against Steven D. Berke (“Berke”) (CRD # 1973864), a former employee of Citigroup Global Markets (f/k/a Solomon Smith Barney, Inc.) (“Citigroup” or the “Firm”), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Berke pursuant to Exchange Rule 345(k) in order to settle and conclude all disciplinary actions by the Exchange against Berke based upon or arising out of the facts hereinafter stipulated. Berke, 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. Berke understands that this settlement is subject to approval by an Exchange Disciplinary Panel and can be the subject of review by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Berke 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 the year 2000, the Firm was a Regular Member organization of the Exchange.
- 1.1 During the year 2000, Berke was employed as a Registered Representative for the Firm in its Shrewsbury, New Jersey branch office.
- 2.0 During the year 2000, Exchange Rule 153(a) required every member or member organization to maintain a record of every order and every modification and cancellation of such order transmitted to the Floor of the Exchange, including the name, amount and price of the security and the time when such order, modification or cancellation was so transmitted.
- 2.1 During the year 2000, Exchange Rule 324 required all members and member organizations to keep true and complete books of account and records adequately setting forth the transactions of such members and member organizations in accordance with the requirements of the Constitution and rules of the Exchange and the Securities Exchange Act of 1934 and the rules thereunder.
- 2.2 During the year 2000, Exchange Rule 345(a)(4) provided that the Exchange may disapprove or suspend or withdraw its approval of the employment of an employee of a member or member organization and the Exchange may, in addition to or in lieu of any other such action (a) censure him; (b) declare him ineligible for employment in specified capacities; and/or (c) assess a fine against him if the Exchange determines that such employee has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade.

Background:

- 3.0 In October 1994, Customer A opened six accounts with Berke at the Firm, including a joint account (the "Account") with his son, Customer B.
- 3.1 In December 1994, the Firm approved Customers A and B to purchase puts and calls and sell covered calls in the Account. The Firm mailed Customers A and B a copy of the approved option application and disclosure and risk documents and asked that Customers A and B sign and return the acknowledgement at bottom of the option application indicating that they had received the documents. Customers A and B signed and returned the acknowledgement.
- 3.2 On March 10, 2000, the Firm approved Customers A and B to sell puts in their account. On the same day, the Firm mailed (via regular mail) Customers A and B a copy of the approved application and a copy of disclosure and risk documents and requested that Customers A and B sign and return the acknowledgement at bottom of the application indicating that they had received the documents. Customers A and B did not return the acknowledgement.
- 3.3 After not receiving the completed acknowledgement, the Firm again mailed Customers A and B a copy of the option application and disclosure of risk documents on March 20, 2000 (via regular mail), April 4, 2000 (via regular mail) and May 18, 2000 (via facsimile and overnight mail), and asked that Customers A and B sign and return the acknowledgement at the bottom of the application indicating that they had received the documents. Again, neither Customer A nor B returned the application.

Creation of Inaccurate Books and Records:

- 4.0 On March 10, 2000, Customers A and B sold five Clarus Corporation April 2000 \$130 put contracts. Although this transaction was an opening options transaction, Berke filled out the order ticket indicating the order was a closing transaction.
- 4.1 On March 15, 2000, Customers A and B sold three Clarus Corporation April 2000 \$115 put contracts. Although this transaction was an opening options transaction, Berke filled out the order ticket indicating the order was a closing transaction.
- 4.2 On March 24, 2000. Customers A and B sold twenty Ogden Golf Corporation August 2000 \$15 put contracts. Although this transaction was an opening options transaction, Berke filled out the order ticket indicating the order was a closing transaction.
- 4.3 At all times referred to in paragraphs 4.0 through 4.2 above, Customers A and B were approved by the Firm to sell puts in their account.

CONCLUSION:

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

- 5.0 Berke violated Exchange Rules 153(a) and 324 in that he caused the creation of inaccurate books and records, in violation of the requirements of the Constitution and rules of the Exchange and the Securities Exchange Act of 1934 and the rules thereunder as set forth in paragraphs 4.0 through 4.2 above.

DISCIPLINARY ACTION:

6.0 A Disciplinary Panel may impose the following penalty upon Berke:

- (a) a censure; and
- (b) a \$6,250 fine.

Steven D. Berke hereby acknowledges that he has read carefully this Stipulation and has consulted with counsel and understands all of the provisions contained herein: that he has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to Steven D. Berke by the Exchange, its staff or representatives to induce him to enter into this Stipulation, aside from the prospect of settling this disciplinary proceeding based on the terms and conditions set forth in this Stipulation rather than adjudicating this matter by way of a hearing on a Charge Memorandum as provided by Exchange rules.

By signing this stipulation, Steven D. Berke understands and acknowledges that Amex Rule 341A, which concerns the continuing education requirements for registered persons, requires him to re-take the Regulatory Element of the Continuing Education Program within 120 days from when this disciplinary action becomes final. If Steven D. Berke does not complete the Regulatory Element of the Continuing Education Program within the prescribed time frame, his registration will be deemed inactive until such time as the requirements of the program have been satisfied. Steven D. Berke understands and acknowledges that if his registration is deemed inactive under Rule 341A, he must cease all activities as a registered person.

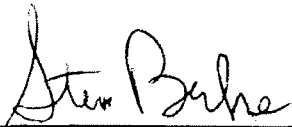
Further, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation of Facts and Consent to Penalty (including to a Hearing Officer acting alone, a Hearing Panel or any reviewing body authorized by the Amex Constitution and/or Rules), neither Enforcement nor Steven D. Berke shall offer any argument that is inconsistent with the stipulated facts or the agreed-upon penalty, nor shall either party ask for the imposition of any penalty other than that agreed upon in this Stipulation of Facts and Consent to Penalty.

ON BEHALF OF THE
AMERICAN STOCK EXCHANGE LLC:

By: 

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

8/10/06
Agreed to this _____ day of July, 2006.



Steven D. Berke