

proceeding and concluding all disciplinary actions by the Exchange against CDM based upon or arising out of the facts set forth in the Stipulation.

II. Facts

CDM, 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 CDM:

(1) By failing to use due diligence in handling customer limit orders, violated Exchange Rule 156(b) and Article V, Section 4(h) of the Exchange Constitution as follows: (a) On 75 occasions during the period June 3, 2002 through May 30, 2003, the Firm failed to execute or display customer option limit orders immediately. (b) On 50 occasions during the period June 3, 2002 through May 30, 2003, CDM Specialist A failed to execute or display customer option limit orders immediately;

(2) violated Exchange Rule 958A, SEC Rule 11Ac1-1, and Article V, Section 4(h) of the Exchange Constitution as follows: (a) On 25 occasions during the period January 2, 2003 through May 30, 2003, orders were presented to CDM Specialist B and Specialist C at their published bid or offer in an amount up to their published quotation size. CDM Specialist B and Specialist C failed to execute these orders upon presentment and thereby failed to honor their published quotations. (b) On 25 occasions during the period January 2, 2003 through May 30, 2003, orders were presented to CDM Specialist D, Specialist E and Specialist F at their published bid or offer in an amount up to their published quotation size. CDM Specialist D, Specialist E and Specialist F failed to execute these orders upon presentment and thereby failed to honor their published

quotations. (c) On 75 occasions during the period of January 2, 2003 through May 30, 2003, orders were presented to the Firm at the Firm's published bid or offer in an amount up to its published quotation size. The Firm failed to execute these orders upon presentment and thereby failed to honor its published quotation;

(3) violated Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution on 30 occasions between July 2003 and December 2003, by creating a Locked or Crossed Market and failing to unlock or uncross that market or failing to direct a Principal Order through Linkage to trade against the bid or offer that the Firm locked or crossed;

(4) violated Exchange Rule 109 and Article V, Section 4(h) of the Exchange Constitution on 20 occasions between November and December 2003 by failing to comply with Exchange requirements regarding stopping options in accordance with Exchange Rule 109; and

(5) violated Exchange Rule 320 between June 2002 and December 2003 by failing to have written supervisory procedures providing for: a) identification of the person(s) responsible for supervision with respect to the applicable rules; b) a statement of the supervisory step(s) to be taken by the identified person(s); c) a statement as to how often such person(s) should take such step(s); and d) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose a censure and a \$65,000 fine.

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 Cohen Duffy & McGowan, LLC a censure and a fine of \$65,000.

FOR THE DISCIPLINARY PANEL

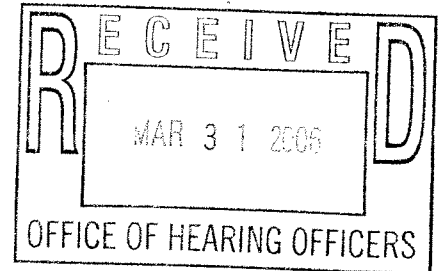

Rochelle S. Hall, Chair

Copies to: Cohen, Duffy & McGowan, LLC (*via overnight and first class mail*)
Thomas McCabe, Esq. (*via facsimile and first class mail*)
Sebastian Krawczyk, Esq. (*electronically and via first class mail*)
David E. Rosenstein, Esq. (*electronically and via first class mail*)
Eric S. Brown, 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



IN THE MATTER
OF
COHEN, DUFFY & MCGOWAN, LLC

STIPULATION OF FACTS AND
CONSENT TO PENALTY
Case Nos. 04-44, 04-56, 04-61, 04-78, 04-79,
04-84, 05-63 and 05-328

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange") against Cohen, Duffy & McGowan, LLC ("CDM" or the "Firm") (CRD No. 33563), a former Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with CDM pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against CDM based upon or arising out of the facts hereinafter stipulated. CDM, 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 and Rules, and the Federal securities laws, and the imposition of the penalties hereinafter provided. CDM 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 ("AAC") and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. CDM 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, CDM was a Regular Member Organization and a registered options specialist organization of the Exchange. CDM subsequently terminated its Exchange membership effective December 31, 2003.
- 1.1 During all relevant periods herein, CDM served as a specialist for various options that traded on the Floor of the Exchange.
- 2.0 **Option Limit Order Display Violations**
- 2.1 Exchange Rule 156(b)¹ requires an Exchange specialist to use due diligence in handling limited price orders.
- 2.2 On 75 occasions during the period of June 3, 2002 through May 30, 2003, the Firm failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 04-44).
- 2.3 On 50 occasions during the period of June 3, 2002 through May 30, 2003, CDM Specialist A failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case Nos. 04-78 and 04-79).
- 2.4 The conduct described in paragraphs 2.2 through 2.3 constitutes separate and distinct violations of Exchange Rule 156(b) and Article V, Section 4(h) of the Exchange Constitution.

¹ As of August 20, 2003, the Exchange notified option specialists that, subject to certain exceptions, failures to execute or display customer option limit orders immediately, but in no event later than 30 seconds from the time of receipt, would be enforced pursuant to Exchange Rule 156 and Article V, Section 4(h) of the Exchange Constitution. See Amex Notice – Immediate Display of Customer Options Limit Orders (August 20, 2003).

3.0 Option Firm Quote Violations

- 3.1 Subject to certain exceptions, Exchange specialists are required to execute orders to buy or sell options presented to them at a price at least as favorable to the published bid or offer, in accordance with SEC Rule 11Ac1-1 and Exchange Rule 958A.
- 3.2 On 25 occasions during the period of January 2, 2003 through May 30, 2003, an order was presented to CDM Specialist B and Specialist C at their published bid or offer in an amount up to their published quotation size. CDM Specialist B and Specialist C failed to execute these orders upon presentment and thereby failed to honor their published quotations (Amex Case No. 04-56).
- 3.3 On 25 occasions during the period of January 2, 2003 through May 30, 2003, an order was presented to CDM Specialist D, Specialist E and Specialist F at their published bid or offer in an amount up to their published quotation size. CDM Specialist D, Specialist E and Specialist F failed to execute these orders upon presentment and thereby failed to honor their published quotations (Amex Case No. 04-61).
- 3.4 On 75 occasions during the period of January 2, 2003 through May 30, 2003, an order was presented to the Firm at the Firm's published bid or offer in an amount up to its published quotation size. The Firm failed to execute these orders upon presentment and thereby failed to honor its published quotation (Amex Case No. 04-84).

3.5 The conduct described in paragraphs 3.2 through 3.4 constitutes separate and distinct violations of SEC Rule 11A01-1, Exchange Rule 958A and Article V, Section 4(h) of the Exchange Constitution.

4.0 Linkage Locked/Crossed Market Violations

4.1 Subject to certain exceptions, Exchange Rule 943(a) requires that an Eligible Market Maker that creates a Locked or Crossed Market unlock or uncross that market or direct a Principal Order through Linkage to trade against the bid or offer that the Eligible Market Maker locks or crosses.

4.2 On 30 occasions during the period of July 1, 2003 through December 31, 2003, the Firm created a Locked or Crossed Market and failed to unlock or uncross that market or failed to direct a Principal Order through Linkage to trade against the bid or offer that the Firm locked or crossed (Amex Case No. 05-328).

4.3 The conduct described in paragraph 4.2 constitutes separate and distinct violations of Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution.

5.0 Stopped Order Violations

5.1 Subject to certain exceptions, Exchange Rule 109² requires an Exchange specialist to take certain steps when stopping stock and prohibits a specialist from stopping stock against the book or for his own account at a price at which he holds an order capable of execution at that price.

² The provisions of Exchange Rule 109 and Commentary thereto regarding "stopping" stock apply to Exchange options transactions. See Exchange Rule 950(o).

5.2 On 20 occasions during the period of November 3, 2003 through December 31, 2003, the Firm failed to comply with Exchange requirements regarding stopping options in accordance with Exchange Rule 109 (Amex Case No. 05-63).

5.3 The conduct described in paragraph 5.2 constitutes separate and distinct violations of Exchange Rule 109 and Article V, Section 4(h) of the Exchange Constitution.

6.0 Supervision

6.1 During the period of June 2002 through December 2003, the Firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Exchange Constitution and rules, concerning limit order display, firm quotes, Linkage locked and crossed markets and stopped orders. Specifically, the Firm's supervisory system did not include written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

6.2 The conduct described in paragraph 6.1 constitutes a violation of Exchange Rule 320.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts and violations, a Disciplinary Panel may impose the following penalties against CDM:

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

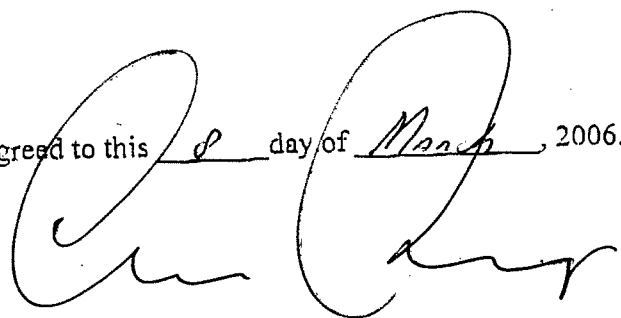
CDM hereby acknowledges the Firm has read carefully this Stipulation and understands all of the provisions contained herein; CDM agrees to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to CDM by the Exchange, its staff or representatives to induce CDM 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.

AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein
Vice President and Chief Counsel
NASD Amex Regulation Division

Agreed to this 8 day of March, 2006.


On behalf of Cohen, Duffy & McGowan, LLC