

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER	:	Case Nos. 03-59, 03-60, 04-59, 04-88,
	:	04-110, 04-178, 04-255, 04-247,
OF	:	04-271, 05-20, 05-51, 05-52, 05-60,
	:	05-65, 05-75, 05-94, 05-121, 05-126,
	:	05-152, 05-164, 05-178, 05-181, 05-182,
	:	05-188, 05-218, 05-220, 05-221,
KELLOGG CAPITAL GROUP LLC	:	05-228, 05-241, 05-248, 05-252, 05-322,
	:	05-345, 05-347, 05-369, 05-386,
F/K/A	:	05-389, 05-391, 05-401, 05-412, 05-454,
PERFORMANCE CAPITAL	:	05-473, 05-497, 05-506, 05-527,
GROUP LLC	:	05-547, 05-554, 06-01, 06-22, 06-23,
	:	06-24, 06-25, 06-26, 06-44, 06-50, 06-56
	:	
	:	Hearing Officer – RSH
	:	
	:	DECISION
	:	July 6, 2006

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent Kellogg Capital Group LLC violated Exchange Rule 156(b), Article V, Section 4(h) of the Exchange Constitution, SEC Rule 11Ac1-4, Exchange Rule 958A, Exchange Rule 941(e), Exchange Rule 109, Exchange Rule 942(a), Exchange Rule 231(e), Exchange Rule 131A, Exchange Rule 1, SEC Rule 11Ac1-1, Exchange Rule 943(a), Exchange Rule 1 and Exchange Rule 320, as stipulated, and as a penalty imposed a censure, a \$275,000 fine and an undertaking for Respondent to revise the Firm’s written supervisory procedures.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Kellogg Capital Group LLC (“Kellogg” or the “Firm”), a Regular 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 May 5, 2006, 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 Kellogg entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Kellogg based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Kellogg, 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 Kellogg:

(1) violated Exchange Rule 156(b), Exchange Rule 958A(e) and Article V, Section 4(h) of the Exchange Constitution on multiple occasions between February 2004 and February 2005 by failing to use due diligence in handling customer limit orders;

(2) violated SEC Rule 11Ac1-4 (currently known as Rule 604 of Regulation NMS) and Article V, Section 4(h) of the Exchange Constitution on numerous occasions between November 2004 and June 2005 by failing to handle customer limit orders in accordance with Rule 604;

(3) violated SEC Rule 11Ac1-1, Exchange Rule 958A, and Article V, Section 4(h) of the Exchange Constitution on multiple occasions between January 2003 and April 2005 by either failing to execute orders upon presentment or executing orders at prices inferior to the Firm’s published quoted market;

(4) violated SEC Rule 11Ac1-1, Exchange Rule 231(e) and Article V, Section 4(h) of the Exchange Constitution on multiple occasions between April 2004 and February 2005 by failing to execute orders on presentment or executing orders at prices inferior to the Firm's published quoted market or failing to accept commitments to trade at the Firm's quoted markets prior to the expiration or cancellation of commitments;

(5) violated SEC Rule 11Ac1-1, Exchange Rule 941(e), Exchange Rule 958A and Article V, Section 4(h) of the Exchange Constitution on 50 occasions between November 2004 and April 2005 by failing to execute orders entitled to an execution at the Firm's quoted markets in Linkage;

(6) violated Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution on 100 occasions during the period of July 2003 through October 2004 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;

(7) violated Exchange Rule 109 and Article V, Section 4(h) of the Exchange Constitution on 57 occasions during the period between February and October 2004 by failing to comply with Exchange requirements regarding stopping options;

(8) violated Exchange Rule 942(a) and Article V, Section 4(h) of the Exchange Constitution on 23 occasions between May 2004 and July 2004 by failing to avoid trading through the posted bid or offer of a Participant Exchange;

(9) violated Exchange Rule 1 and Article V, Section 4(h) of the Exchange Constitution on 143 occasions between January 2003 and February 2005 by failing to timely open equities;

(10) violated Exchange Rule 131A and Article V, Section 4(h) of the Exchange Constitution on 10 occasions between September 2003 and November 2004 by failing to publish MOC (“Market-On-Close”) order imbalances in accordance with Exchange Rule 131A; and

(11) violated Exchange Rule 320, during the period between January 2003 and June 2005, 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, a \$275,000 fine, and an undertaking for Kellogg to revise the Firm’s written supervisory procedures as described in the attached Stipulation. 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

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.

hereby imposes upon Kellogg Capital Group LLC a censure, a \$275,000 fine, and an undertaking for Kellogg to revise the Firm's written supervisory procedures.

FOR THE DISCIPLINARY PANEL

Rochelle S. Hall, Chair

Copies to: Thomas J. McCabe, Esq. (*via facsimile and first class mail*)
Kellogg Capital Group, LLC (*via overnight 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*)

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER

OF

KELLOGG CAPITAL GROUP LLC f/k/a
PERFORMANCE CAPITAL GROUP LLC

**STIPULATION OF FACTS AND
CONSENT TO PENALTY**

Case Nos. 03-59, 03-60, 04-59, 04-88, 04-110, 04-178, 04-255, 04-247, 04-271, 05-20, 05-51, 05-52, 05-60, 05-65, 05-75, 05-94, 05-121, 05-126, 05-152, 05-164, 05-178, 05-181, 05-182, 05-188, 05-218, 05-220, 05-221, 05-228, 05-241, 05-248, 05-252, 05-322, 05-345, 05-347, 05-369, 05-386, 05-389, 05-391, 05-401, 05-412, 05-454, 05-473, 05-497, 05-506, 05-527, 05-547, 05-554, 06-01, 06-22, 06-23, 06-24, 06-25, 06-26, 06-44, 06-50 and 06-56

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against Kellogg Capital Group LLC f/k/a Performance Capital Group LLC (“Kellogg” or the “Firm”) (CRD No. 35032), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty (“Stipulation”) is entered into with Kellogg pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Kellogg based upon or arising out of the facts hereinafter stipulated. Kellogg, without admitting or denying the facts, allegations and conclusions contained in this Stipulation, 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. Kellogg 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. Kellogg

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, Kellogg was a Regular Member Organization and a registered options and equities specialist organization of the Exchange.

1.2 During all relevant periods herein, Kellogg served as a specialist for various options and equities that traded on the Floor of the Exchange.

2.0 Option Limit Order Display Violations

2.1 Exchange Rule 156(b)¹ requires Exchange specialists to use due diligence in handling limited price orders.

2.2 Subject to certain exceptions, Exchange Rule 958A(e)² requires Exchange specialists to publish immediately, but in no event later than 30 seconds from the time of receipt, the price and size of each customer option limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order.

2.3 On 25 occasions during the period of February 2, 2004 through February 27, 2004, 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. 04-178).

¹ As of August 20, 2003, the Exchange notified options specialists that, subject to certain exceptions, failures to execute or display customer options 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).

² Exchange Rule 958A(e) became effective January 21, 2005.

- 2.4 On 30 occasions during the period of April 1, 2004 through August 31, 2004, Kellogg 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 No. 05-20).
- 2.5 On 24 occasions during the period of April 1, 2004 through August 31, 2004, Kellogg Specialist B failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 05-94).
- 2.6 On 58 occasions during the period of September 1, 2004 through February 28, 2005, Kellogg Specialist C failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case Nos. 05-152 and 05-527).
- 2.7 On 25 occasions during the period of December 1, 2004 through February 28, 2005, Kellogg Specialist D failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 05-241).
- 2.8 On 25 occasions during the period of December 1, 2004 through February 28, 2005, Kellogg Specialist E failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 05-252).
- 2.9 The conduct described in paragraphs 2.3 through 2.8 constitutes separate and distinct violations of Exchange Rules 156(b), Exchange Rule 958A(e) and Article V, Section 4(h) of the Exchange Constitution.

3.0 Equity Limit Order Display Violations

- 3.1 Subject to certain exceptions, SEC Rule 11Ac1-4 (currently known as Rule 604 of Regulation NMS) requires an Exchange specialist to immediately display customer limit orders in its public quotation, when each such order is at a price that would improve the specialist's bid or offer in each such security; or when the order is priced equal to the specialist's bid or offer and the national best bid or offer for each such security, and the size of the order represents more than a de minimis change in relation to the size associated with the specialist's bid or offer in each such security.
- 3.2 On 66 occasions during the period of November 1, 2004 through March 31, 2005, the Firm failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case Nos. 05-401 and 05-547).
- 3.3 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist F failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-01).
- 3.4 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist G failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-22).
- 3.5 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist H failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-23).

- 3.6 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist I failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-24).
- 3.7 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist J failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-25).
- 3.8 On 25 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist K failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-44).
- 3.9 On 26 occasions during the period of April 1, 2005 through June 30, 2005, Kellogg Specialist L failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-50).
- 3.10 The conduct described in paragraphs 3.2 through 3.9 constitutes separate and distinct violations of SEC Rule 11Ac1-4 and Article V, Section 4(h) of the Exchange Constitution.

4.0 Option Firm Quote Violations

- 4.1 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.
- 4.2 On 110 occasions during the period of January 2, 2003 through July 31, 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 Nos. 04-110 and 03-60).

- 4.3 On 34 occasions during the period of January 2, 2003 through May 30, 2003, an order was presented to Kellogg Specialist M at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist M failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case Nos. 04-59 and 04-88).
- 4.4 On 16 occasions during the period of January 2, 2003 through May 30, 2003, an order was presented to Kellogg Specialist E at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist E failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 04-88).
- 4.5 On 23 occasions during the period of June 2, 2003 through July 31, 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 executed these orders at prices inferior to the Firm's published quoted market (Amex Case No. 03-59).
- 4.6 On 98 occasions during the period of January 2, 2004 through April 30, 2005, an order was presented to Kellogg Specialist N at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist N failed to execute these orders upon presentment and

thereby failed to honor the published quotation (Amex Case Nos. 05-51, 05-188, 05-347 and 06-26).

- 4.7 On 25 occasions during the period of March 1, 2004 through September 30, 2004, 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 either failed to execute these orders upon presentment or executed these orders at prices inferior to the Firm's published quoted market and thereby failed to honor the published quotation (Amex Case No. 05-164).
- 4.8 On 20 occasions during the period of March 1, 2004 through September 30, 2004, an order was presented to Kellogg Specialist O at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist O failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 05-181).
- 4.9 On 25 occasions during the period of March 1, 2004 through January 31, 2005, an order was presented to Kellogg Specialist A at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist A failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case Nos. 05-182 and 05-345).
- 4.10 On 15 occasions during the period of March 1, 2004 through September 30, 2004, an order was presented to Kellogg Specialist P at the specialist's published bid or offer in an amount up to the published quotation size.

Kellogg Specialist P failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 05-218).

- 4.11 On 26 occasions during the period of March 1, 2004 through September 30, 2004, an order was presented to Kellogg Specialist Q at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist Q failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 05-220).
- 4.12 On 25 occasions during the period of March 1, 2004 through September 30, 2004, an order was presented to Kellogg Specialist B at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist B failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 05-221).
- 4.13 On 25 occasions during the period of March 1, 2004 through January 31, 2005, an order was presented to Kellogg Specialist R at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist R either failed to execute these orders upon presentment or executed these orders at prices inferior to the published quoted market and thereby failed to honor the published quotation (Amex Case Nos. 05-228 and 05-454).
- 4.14 On 25 occasions during the period of October 1, 2004 through January 31, 2005, an order was presented to Kellogg Specialist D at the specialist's published bid or offer in an amount up to the published quotation size.

Kellogg Specialist D failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case No. 05-386).

- 4.15 On 55 occasions during the period of October 1, 2004 through April 30, 2005, an order was presented to Kellogg Specialist C at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist C failed to execute these orders upon presentment and thereby failed to honor the published quotation (Amex Case Nos. 05-389 and 05-473).
- 4.16 On 50 occasions during the period of October 1, 2004 through April 30, 2005, an order was presented to Kellogg Specialist E at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist E either failed to execute these orders upon presentment or executed these orders at prices inferior to the published quoted market and thereby failed to honor the published quotation (Amex Case Nos. 05-391 and 05-497).
- 4.17 On 25 occasions during the period of February 1, 2005 through April 30, 2005, an order was presented to Kellogg Specialist B at the specialist's published bid or offer in an amount up to the published quotation size. Kellogg Specialist B either failed to execute these orders upon presentment or executed these orders at prices inferior to the published quoted market and thereby failed to honor the published quotation (Amex Case No. 05-506).

- 4.18 On 25 occasions during the period of February 1, 2005 through April 30, 2005, 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. 05-554).
- 4.19 The conduct described in paragraphs 4.2 through 4.18 constitutes separate and distinct violations of SEC Rule 11Ac1-1, Exchange Rule 958A and Article V, Section 4(h) of the Exchange Constitution.

5.0 Equity and ITS Firm Quote Violations

- 5.1 Subject to certain exceptions, SEC Rule 11Ac1-1 and Exchange Rule 231(e) require Exchange specialists to execute incoming ITS commitments to trade at the best available price reflected in the Firm's quoted market.
- 5.2 On 305 occasions during the period of April 1, 2004 through February 28, 2005, 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 either failed to execute these orders upon presentment or executed these orders at prices inferior to the Firm's published quoted market and thereby failed to honor its published quotation (Amex Case Nos. 05-178, 05-369 and 05-412).
- 5.3 On 46 occasions during the period of July 1, 2004 through February 28, 2005, an ITS commitment to trade was transmitted to the Firm at the Firm's published quoted market. The Firm failed to accept these ITS commitments to trade at the Firm's quoted markets prior to the expiration or cancellation of such commitments (Amex Case Nos. 05-369 and 05-412).

5.4 The conduct described in paragraph 5.2 constitutes separate and distinct violations of SEC Rule 11Ac1-1 and Article V, Section 4(h) of the Exchange Constitution.

5.5 The conduct described in paragraph 5.3 constitutes separate and distinct violations of SEC Rule 11Ac1-1, Exchange Rule 231(e) and Article V, Section 4(h) of the Exchange Constitution.

6.0 Linkage Firm Quote Violations

6.1 Subject to certain exceptions, SEC Rule 11Ac1-1 and Exchange Rules 941(e) and 958A require Exchange specialists to execute Linkage Principal and Principal as Agent orders received from other Participant Exchanges and entrusted to the specialist as agent at the best available price reflected in the Firm's quoted market.

6.2 On 50 occasions during the period of November 1, 2004 through April 31, 2005, the Firm failed to execute orders entitled to an execution at the Firm's quoted markets in Linkage (Amex Case No. 06-56).

6.3 The conduct described in paragraph 6.2 constitutes separate and distinct violations of SEC Rule 11Ac1-1, Exchange Rules 941(e) and 958A and Article V, Section 4(h) of the Exchange Constitution.

7.0 Linkage Locked/Crossed Markets Violations

7.1 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 Marker locks or crosses.

- 7.2 On 100 occasions during the period of July 1, 2003 through October 31, 2004, 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 Nos. 05-322, 04-255 and 05-52).
- 7.3 The conduct described in paragraph 7.2 constitutes separate and distinct violations of Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution.

8.0 Stopped Order Violations

- 8.1 Subject to certain exceptions, Exchange Rule 109³ 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.
- 8.2 On 57 occasions during the period of February 1, 2004 through October 31, 2004, the Firm failed to comply with Exchange requirements regarding stopping options in accordance with Exchange Rule 109 (Amex Case Nos. 05-75, 05-65 and 05-60).
- 8.3 The conduct described in paragraph 8.2 constitutes separate and distinct violations of Exchange Rule 109 and Article V, Section 4(h) of the Exchange Constitution.

³ The provisions of Exchange Rule 109 and Commentary thereto regarding “stopping” stock apply to Exchange options transactions. See Exchange Rule 950(o).

9.0 Linkage Trade Through Violations

- 9.1 Subject to certain exceptions, Exchange Rule 942(a) required options specialists to avoid trading through the posted bid or offer of a Participant Exchange in an Eligible Option Class.
- 9.2 On 23 occasions during the period May 1, 2004 through July 31, 2004, Kellogg Specialist A failed to avoid trading through the posted bid or offer of a Participant Exchange (Amex Case No. 04-247).
- 9.3 The conduct described in paragraph 9.2 constitutes separate and distinct violations of Exchange Rule 942(a) and Article V, Section 4(h) of the Exchange Constitution.

10.0 Untimely Opening Violations

- 10.1 During all relevant periods provided herein, Exchange Rule 1 required equity specialists to commence the opening of equities on the Exchange Floor at 9:30 a.m.
- 10.2 On 143 occasions during the period January 1, 2003 through February 28, 2005, the Firm failed to timely open equities in accordance with Exchange Rule 1 (Amex Case Nos. 04-271, 05-126 and 05-248).
- 10.3 The conduct described in paragraph 10.2 constitutes separate and distinct violations of Exchange Rule 1 and Article V, Section 4(h).

11.0 Publication of Market-on-Close Order Imbalance Information Violations

- 11.1 Exchange Rule 131A and Amex Notice – Market-On-Close (“MOC”) Policy and Expiration Opening Procedures (March 17, 2004) required equity specialists to publish MOC order imbalances of 25,000 shares or more at or

as close to 3:40 p.m. as possible, and further required equity specialists to publish a second imbalance at or near 3:50 p.m. if an imbalance of 25,000 shares or more existed at that time. Additionally, Exchange Rule 131A only permits the publication of order imbalances of less than 25,000 shares at the aforementioned times with Floor Official approval.

11.2 On 10 occasions during the period September 19, 2003 through November 30, 2004, the Firm failed to publish MOC order imbalances in accordance with Exchange Rule 131A and the aforementioned Amex Notice (Amex Case No. 05-121).

11.3 The conduct described in paragraph 11.2 constitutes separate and distinct violations of Exchange Rule 131A and Article V, Section 4(h) of the Exchange Constitution.

12.0 Supervision

12.1 During the period January 2003 through June 2005, 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 rules, concerning limit order display, firm quotes, the publication of Market-On-Close order imbalances, timely openings, stopped orders, Linkage locked and crossed markets, and trading through the posted bids and offers of Linkage Participant Exchanges. 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.

12.2 The conduct described in paragraph 12.1 constitutes a violation of Amex Rule 320.

DISCIPLINARY ACTION:

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

- (a) a censure;
- (b) a fine of \$275,000; and
- (c) an undertaking for Kellogg to revise the Firm's written supervisory procedures with respect to the areas described in paragraphs 12.1. Within 90 business days of acceptance of this Stipulation by an Exchange Hearing Panel, a registered principal of Kellogg shall submit to the COMPLIANCE ASSISTANT, NASD AMEX REGULATION DIVISION, ENFORCEMENT DEPARTMENT, ONE LIBERTY PLAZA, NEW YORK, NY 10006, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph 12.1; and, (3) the date the revised procedures were implemented.

Kellogg hereby acknowledges that the Firm has read carefully this Stipulation and understands all of the provisions contained herein; that the Firm has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to Kellogg by the Exchange, its staff or representatives to induce Kellogg 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 _____ day of _____, 2006.

On behalf of Kellogg Capital Group LLC