

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER	:	
	:	
OF	:	Case Nos. 06-293 and 06-321
	:	[AMXC07001]
BEAR STEARNS SECURITIES CORP.	:	Hearing Officer – RSH
	:	
	:	DECISION
	:	
	:	April 30, 2007

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Amex Rules 30 and 320, as stipulated, and as a penalty imposed a censure, a \$250,000 fine, to be paid jointly to the AMEX and NASD, and an undertaking for the Firm to revise its written supervisory procedures.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Bear Stearns Securities Corporation (“BSSC” 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 March 9, 2007, 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 BSSC entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against BSSC based upon or arising out of the facts set forth in the Stipulation.

II. Facts

BSSC, 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 BSSC:

(1) violated Amex Rule 30 by submitting inaccurate reports of short interest positions to the AMEX;

(2) violated Amex Rule 30 by submitting inaccurate reports of weekly transactions to the AMEX; and

(3) violated Amex Rule 320 by failing to have adequate procedures in place regarding the calculation and reporting of short interest positions and weekly transactions to the AMEX and by failing to have a supervisory system which included written supervisory procedures providing for: (i) identification of the person(s) responsible for supervision with respect to the applicable rules; (ii) a statement of the supervisory step(s) to be taken by the identified person(s); (iii) a statement as to how often such person(s) should take such step(s); and (iv) 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 on BSSC a censure, a \$250,000 fine to be paid jointly to the AMEX and NASD¹, and an undertaking to revise the Firm's written supervisory procedures following the guidelines written in the Disciplinary Action section of the Stipulation.

¹ NASD has a separate settlement.

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.²

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Bear Stearns Securities Corporation a censure, a \$250,000 fine to be paid jointly to the AMEX and NASD, and an undertaking for the firm to revise its written supervisory procedures.

FOR THE DISCIPLINARY PANEL



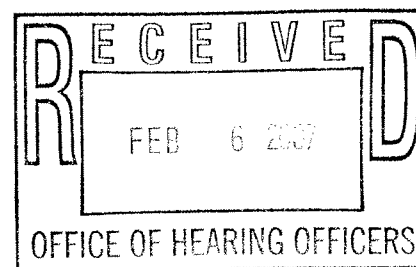
Rochelle S. Hall, Chair

Copies to: Bear Stearns Securities Corp. *(via overnight and first class mail)*
Michael D. Wolk, Esq. *(via facsimile and first class mail)*
Sebastian Krawczyk, Esq. *(electronically and via first class mail)*
Arlene Collins-Day *(electronically and via first class mail)*

² 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
BEAR, STEARNS SECURITIES CORP.

**STIPULATION OF FACTS AND
CONSENT TO PENALTY**
Case Nos. 06-293 and 06-321

This proceeding was instituted by the American Stock Exchange LLC ("AMEX") against BEAR, STEARNS SECURITIES CORP. ("BSSC" or the "Firm") (CRD No. 28432), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with the Firm pursuant to Article V, Section 2 of the AMEX Constitution in order to settle and conclude all disciplinary actions by the AMEX against the Firm based upon or arising out of the facts hereinafter stipulated. The Firm, without admitting or denying the facts, allegations and conclusions contained in this Stipulation, hereby consents to the entry of findings of violations of AMEX Rules and the imposition of the penalties hereinafter provided. The Firm understands that this settlement is subject to approval by an AMEX 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. The Firm 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 AMEX.

STIPULATED FACTS:

- 1.0 During all relevant periods herein, the Firm was a member organization of the AMEX and NASD.
- 1.1 During all relevant periods herein, BSSC was subject to AMEX Rule 30, which requires that members and member organizations file with the AMEX such periodic reports or special reports as the Board of Governors may, by rule, or otherwise, from time to time authorize.
- 1.2 During all relevant periods, BSSC was subject to Article V, Section 4(h) of the Exchange Constitution, which prohibits conduct inconsistent with just and equitable principles of trade.
- 1.3 AMEX Information Circular No. 95-136 ("Reporting of Monthly Short Interest Positions"), distributed May 8, 1995, advised all members and member organizations that it was their responsibility to report to the AMEX, the relevant short positions in AMEX-listed securities maintained by them, certain subsidiaries, and their customers pursuant to AMEX Rule 30. Short positions in AMEX-listed securities were required to be reported on the 15th of each month, or where the 15th was a non-settlement date, on the preceding settlement date.
- 1.4 AMEX Information Circular No. 98-0234 ("Additional Short Position Reporting of AMEX-Listed Securities"), distributed February 26, 1998, advised all members and member organizations that it was their responsibility to report to the AMEX, the relevant short positions in AMEX-listed Diamonds, SPDRS, MIDCAP SPDRS and the various WEBS series maintained by them, certain subsidiaries, and their customers pursuant to AMEX Rule 30. Commencing with the April 30,

1998 settlement date, in addition to the mid-month reporting described in paragraph 1.3 above, short positions in the aforementioned derivative securities were also required to be reported as of the close of the settlement date falling on the last business day of each month.

- 1.5 During all relevant periods herein, the Firm was subject to AMEX Rule 320(b) which provided that:

“Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility. The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations.”

Inaccurate Reporting of Short Interest Positions

- 2.0 In connection with a review of an AMEX-listed security, NASD Amex Regulation Division staff (the “staff”) sent BSSC a short position account identity letter dated April 15, 2005, to determine the identity of the accounts making up BSSC’s reported short position in the subject security as of settlement date February 15, 2005.
- 2.1 BSSC responded to the staff’s short position account identity letter on May 2, 2005, stating that the Firm had over-reported the entire short position in the

subject security in the Firm's February 15, 2005 short position filing due to a manual error in the Firm's short interest reporting reconciliation process.

- 2.2 On or about August 10, 2005, BSSC notified the staff that several unrelated short interest reporting issues had affected the Firm's short interest reporting to the Exchange from February 1986 until the issues were identified and resolved in June 2003.
- 2.3 Specifically, the Firm identified the following issues that caused the Firm's inaccurate short interest reporting during the above period: (a) account types improperly categorized and omitted; (b) improper system programming which prevented an account range from being included in the Firm's reports; (c) including a syndicate account which should have been excluded pursuant to SEC Rule 10a-1; and (d) improper system programming which excluded securities that changed market classes.
- 2.4 Based upon a review of a 21 month period of short interest reports from October 2001 through June 2003, the Firm incorrectly reported mid-month short interest positions in Amex-listed securities on 33 occasions that were subsequently disseminated to the general public by the Exchange.
- 2.5 Based on a review of a 21 month period of short interest reports from October 2001 through June 2003, the Firm incorrectly reported end-of-month short interest positions in Amex-listed securities on 13 occasions that were subsequently disseminated to the general public by the Exchange.

Inaccurate Transaction Reporting (AMEX Forms 1-S and 1-RA)

- 3.0 On or about October 10, 2005, BSSC notified the staff that the Firm had discovered an issue which affected the Firm's reporting of short sale transactions to the Exchange on a weekly basis as required on AMEX Forms 1-S (Weekly Report of Round Lot Short Sale Transactions For All Accounts By Clearing Member Organizations) and 1-RA (Report of Exchange Transactions Initiated from Off-Floor for Accounts of Regular and Associate Member Organizations) for a significant but indeterminate number of years.
- 3.1 Specifically, in or about August 2005, while the Firm was drafting written supervisory procedures for the department responsible for AMEX Form 1-S and 1-RA reporting, the Firm discovered that the system responsible for automatically generating the data required by AMEX Forms 1-S and 1-RA was not picking up trades marked as short in accounts where the trailer code '=S' was not in the first trailer code position. The Firm stated that this issue occurred when the program responsible for the reports failed to be updated as the Firm's file expanded and multiple trailer codes were utilized.
- 3.2 A review of the four reporting periods prior to the Firm's correction of this transaction reporting issue, September 16, 2005 through October 7, 2005, revealed that the difference between the number of short sales that BSSC underreported on AMEX Form 1-S compared to the total reported by all firms, represented a 3.77% change in the aggregate amount reported by all firms.
- 3.3 A review of the four reporting periods prior to the Firm's correction of this transaction reporting issue, September 16, 2005 through October 7, 2005,

revealed that the BSSC's failure to correctly report transactions on AMEX Form I-RA represented a change in the three components that comprise AMEX Form I-RA (total purchases, total sales, and short sales) of 0.815%, 1.495% and 0.256% from the aggregate positions in total purchases, total sales and short sales respectively, as reported by all firms to the Exchange.

Supervisory Deficiencies

- 4.0 During all relevant periods herein, the Firm relied on an automated system to comply with its short interest and transaction reporting requirements. There was no procedure to verify the accuracy of the reports submitted to the SROs.
- 4.1 During all relevant periods herein, the Firm failed to adequately supervise its process for short interest and transaction reporting to the AMEX because it failed to detect inaccuracies associated with its short interest and transaction reports and failed to have an adequate system of follow-up and review for compliance with AMEX rules with respect to short interest and transaction reporting.
- 4.2 The Firm's supervisory system did not have adequate procedures in place regarding the calculation and reporting of short interest positions and weekly transactions to the AMEX and the Firm's supervisory system did not include written supervisory procedures providing for: (1) the 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.

CONCLUSION:

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

- 5.0 The Firm violated AMEX Rule 30 in that the Firm submitted inaccurate reports of short interest positions to the AMEX, as set forth in paragraphs 2.0 through 2.5.
- 5.1 The Firm violated AMEX Rule 30 in that the Firm submitted inaccurate reports of weekly transactions to the AMEX, as set forth in paragraphs 3.0 through 3.3.
- 5.2 The Firm violated AMEX Rule 320 in that the firm failed to establish and maintain appropriate policies, systems and procedures of supervision and control, including written supervisory procedures, and failed to establish a separate system of follow-up and review to ensure compliance with the short interest and transaction reporting requirements of the AMEX, as set forth in above paragraphs 4.0 through 4.2.

DISCIPLINARY ACTION:

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

- (a) a censure;
- (b) a fine in the amount of \$250,000 to be paid jointly to the AMEX and NASD; and
- (c) an undertaking for the Firm to revise its written supervisory procedures with respect to the areas described in paragraph 4.3. Within 30 business days of acceptance of this Stipulation by an AMEX Hearing Panel, a registered principal of the Firm 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 4.3; and, (3) the date the revised procedures were implemented.

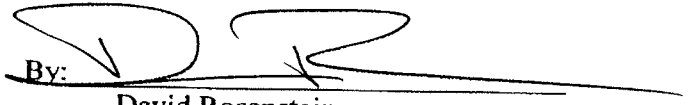
The Firm hereby acknowledges that it has read carefully this Stipulation and understands all of the provisions contained herein; that the Firm has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to the Firm by the AMEX, its staff or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

Further, the Firm hereby agrees that it may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this Stipulation or create the impression that the Stipulation is without factual basis. Nothing in this provision affects the Firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation (including, but not limited to, a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the AMEX Constitution and/or Rules), neither Enforcement nor the Firm 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.

AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein
Vice President and Chief Counsel
NASD Amex Regulation Division

BEAR, STEARNS SECURITIES CORP.

By: 

Name: Bruce Crisman

Title: Senior Managing Director

Agreed to this 31 day of 1, 2007.