

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER	:	Case Nos. 03-20, 04-105,
	:	05-549, 06-216, 06-309
OF	:	
	:	Hearing Officer – RSH
BRENDAN E. CRYAN & CO., LLC	:	
	:	DECISION
	:	
	:	February 28, 2007

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated SEC Rules 11Ac1-4 and 11Ac1-1, Exchange Rules 126(e), 320, and 170, Commentary .01 and .02, and Article 5, Section 4(h) of the Exchange Constitution, as stipulated, and as a penalty imposed a censure, a \$40,000 fine and an undertaking for Respondent to revise its written supervisory procedures.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Brendan E. Cryan & Co., LLC (“Cryan”), 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 January 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 Cryan entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Cryan based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Cryan, 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 Cryan and/or individual Cryan specialists:

(1) violated SEC Rule 11Ac1-4 (currently known as Rule 604 of Regulation NMS) and Article V, Section 4(h) of the Exchange Constitution on 25 occasions between January and March 2005 and 50 occasions between October 2005 and March 2006 by failing to handle customer limit orders in accordance with SEC Rule 11Ac1-4;

(2) violated SEC Rule 11Ac1-1 and Article V, Section 4(h) of the Exchange Constitution on 65 occasions between April 2002 and June 2003 by executing orders at prices inferior to the published quoted market;

(3) violated Exchange Rule 126(e) and Article V, Section 4(h) of the Exchange Constitution between April 2002 and June 2003 by executing 21 orders on the specialist book out of sequence;

(4) violated Exchange Rule 170, Commentary .01 and .02 and Article V, Section 4(h) of the Exchange Constitution on 10 occasions between January and March 2003 by failing to obtain the necessary Floor approval as set forth in Exchange Rule 170, Commentary .01 and .02; and

(5) violated Exchange Rule 320 between April 2002 and March 2006 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 Cryan a censure, a \$40,000 fine, and an undertaking to revise the Firm's written supervisory procedures following the guidelines specified in the Disciplinary Action section of the 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 hereby imposes upon Brendan E. Cryan & Co., LLC a censure, a fine of \$40,000 and an undertaking for Cryan to revise the Firm's written supervisory procedures.

FOR THE DISCIPLINARY PANEL



Rochelle S. Hall, Chair

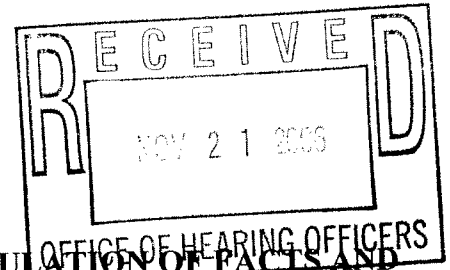
¹ Rule 12 exempts from publicity those cases in which the Panel finds that the offense "related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors." That exemption does not apply to the facts of this case.

Copies to: Brendan E. Cryan & Co., LLC (*via overnight and first class mail*)
James Rothenberg, Esq. (*via facsimile and first class mail*)
Theresa C. Clarkson, 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*)

EXHIBIT A

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
BRENDAN E. CRYAN & CO., LLC



**STIPULATION OF FACTS AND
CONSENT TO PENALTY**
Case Nos. 03-20, 04-105,
05-549, 06-216 and 06-309

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange") against Brendan E. Cryan & Co., LLC ("Cryan" or the "Firm") (CRD No. 33496), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with Cryan pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Cryan based upon or arising out of the facts hereinafter stipulated. Cryan, 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. Cryan 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. Cryan understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of the Firm's disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

1.0 During all relevant periods herein, Cryan was a Regular Member Organization and a registered specialist organization of the Exchange.

1.1 During all relevant periods herein, Cryan served as a specialist for various equities that traded on the Floor of the Exchange.

2.0 Equity Limit Order Display Violations

2.1 During all relevant periods herein, subject to certain exceptions, SEC Rule 11Ac1-4 (currently known as Rule 604 of Regulation NMS) required 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.

2.2 On 25 occasions during the period of January 1, 2005 through March 31, 2005, Cryan failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 05-549).

2.3 On 50 occasions during the period of October 1, 2005 through March 31, 2006, Cryan Specialist A failed to handle customer limit orders in accordance with SEC Rule 11Ac1-4 (Amex Case No. 06-216 and 06-309).

2.4 The conduct described in paragraphs 2.1 through 2.3 constitutes separate and distinct violations of SEC Rule 11Ac1-4 (currently known as Rule

604 of Regulation NMS) and Article V, Section 4(h) of the Exchange Constitution.

3.0 Equity Firm Quote Violations

- 3.1 Subject to certain exceptions, Exchange specialists are required to execute orders to buy or sell equities presented to them at a price at least as favorable to the published bid or offer, in accordance with SEC Rule 11Ac1-1.
- 3.2 On 65 occasions during the period of April 1, 2002 through June 30, 2003, an order was presented to Cryan at the published bid or published offer in an amount up to its published quotation size. Cryan executed these orders at prices inferior to the published quoted market (Amex Case No. 03-20).
- 3.3 The conduct described in paragraphs 3.1 and 3.2 constitutes separate and distinct violations of SEC Rule 11Ac1-1 and Article V, Section 4(h) of the Exchange Constitution.

4.0 Out of Sequence Violations

- 4.1 During all relevant periods herein, Exchange Rule 126(e) required Exchange specialists to execute orders on the specialist book in a proper sequence.
- 4.2 On 21 occasions during the period of April 1, 2002 through June 30, 2003, Cryan executed twenty one orders on the specialist book out of sequence (Amex Case No. 03-20).

4.3 The conduct described in paragraphs 4.1 and 4.2 constitutes separate and distinct violations of Exchange Rule 126(e) and Article V, Section 4(h) of the Exchange Constitution.

5.0 Destabilizing Transaction Violations

5.1 During all relevant periods herein, Exchange Rule 170, Commentary .01 and .02 required the Exchange specialist to obtain Floor Official approval: 1) prior to purchasing stock, while long or short in the firm's proprietary account on a straight plus tick; 2) when buying greater than 50% of the shares in the market on the offer while long in the firm's proprietary account; 3) when selling greater than 50% of the share in the market on the bid while short in the firm's proprietary account; and 4) prior to selling stock on a straight minus tick while long in the firm's proprietary account.

5.2 On 10 occasions during the period January 1, 2003 through March 31, 2003, Cryan failed to obtain the necessary Floor approval as set forth in Exchange Rule 170, Commentary .01 and .02 (Amex Case No. 04-105).

5.3 The conduct described in paragraphs 5.1 and 5.2 constitutes separate and distinct violations of Rule 170, Commentary .01 and .02 and Article V, Section 4(h) of the Exchange Constitution.

6.0 Supervision

6.1 During the period April 2002 through March 2006, Cryan'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 and firm quote,

executing orders in sequence, and destabilizing transactions. 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 Amex Rule 320.

DISCIPLINARY ACTION:

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

- (a) a censure;
- (b) a fine of \$40,000;
- (c) an undertaking for Cryan to revise the Firm's written supervisory procedures with respect to the areas described in paragraph 6.1. Within 90 business days of acceptance of this Stipulation by an Exchange Hearing Panel, a registered principal of Cryan 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 6.1; and, (3) the date the revised procedures were implemented.

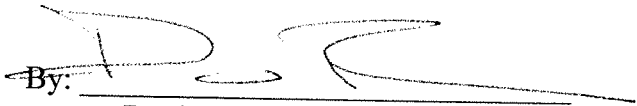
Cryan hereby acknowledges that it has read carefully this Stipulation and understands all of the provisions contained herein; that it has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to Cryan by the Exchange, its staff or representatives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

Further, Cryan 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 Cryan'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.

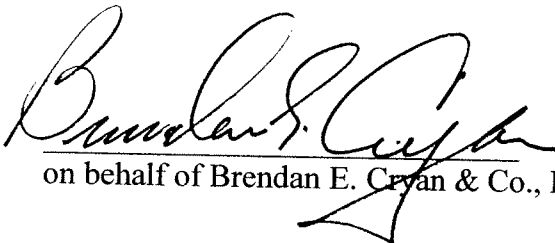
Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation of Facts and Consent to Penalty (including to, a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the Amex Constitution and/or Rules), neither Enforcement nor Cryan 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.

AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein
Vice President and Chief Counsel
NASD Amex Regulation Division

Agreed to this 11th day of NOVEMBER, 2006.


on behalf of Brendan E. Cryan & Co., LLC