

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER	:	Case Nos. 03-32, 04-94, 04-107,
OF	:	04-208, 05-128, 05-227,
EQUITEC PROPRIETARY MARKETS, LLC	:	05-311, 05-321, 05-392,
AND	:	05-471, 06-432, 07-57
EQUITEC SPECIALISTS, LLC	:	[AMXC07007]
	:	Hearing Officer – DRP
	:	<b>DECISION</b>
	:	July 9, 2007

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**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondents violated SEC Rule 11Ac1-1, Exchange Rules 1, 156(b), 320, 943(a), 958A, and Article V, Section 4(h) of the Exchange Constitution, as stipulated, and as a penalty imposed a censure, a joint and several fine of \$90,000, and an undertaking for Respondents to revise their written supervisory procedures.**

**I. Introduction**

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against Equitec Proprietary Markets, LLC and Equitec Specialists, LLC (collectively Equitec or the firm), Regular Member Organizations of the Exchange.<sup>1</sup> 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 31, 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.

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<sup>1</sup> Equitec Specialists, LLC functions as the specialist on the equity side, while Equitec Proprietary Markets, LLC functions as the options specialist. Respondent requested that they be grouped together for purposes of the proposed settlement. (Hearing Transcript at 20.)

The Exchange and Equitec entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Equitec based upon or arising out of the facts set forth in the Stipulation.

## **II. Facts**

Equitec, 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 on the stipulated facts, the Chair concludes that Equitec violated:

(1) Exchange Rule 156(b) and Article V, Section 4(h) of the Exchange Constitution on 100 occasions during the period of June 2002 through May 2003, and on 23 occasions during March 2004, by failing to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately;

(2) SEC Rule 11Ac1-1 and Article V, Section 4(h) of the Exchange Constitution on 149 occasions during the period of October 2002 through February 2003, on 173 occasions during the period of January 2004 through October 2004, and on 76 occasions during the period of February 2005 through April 2005, by either failing to execute orders upon presentment or executing orders at prices inferior to the Firm's published quoted market, thereby failing to honor its published quotation;

(3) SEC Rule 11Ac1-1, Exchange Rule 958A and Article V, Section 4(h) of the Exchange Constitution on 43 occasions during the period of January 2003 through May 2003, and on 66 occasions between the period of October 2004 through January 2005, by

failing to execute orders upon presentment and thereby failing to honor its published quotation;

(4) Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution on 510 occasions during the period of July 2003 through April 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;

(5) Exchange Rule 1 and Article V, Section 4(h) of the Exchange Constitution on 4 occasions during the period of June 2005 through August 2005 by failing to timely open equities in accordance with Exchange Rule 1;

(6) Exchange Rule 320 during the period of June 2001 through February 2006 by failing to provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and Exchange Rules concerning the firm's Exchange operations, including but not limited to limit order display, firm quotes, linkage locked and crossed markets, and timely market openings. Specifically, the firm failed to have 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; and

(7) Exchange Rule 320 during the period of March 2006 through August 2006 by failing to provide for supervision reasonably designed to achieve compliance with respect

to the applicable securities laws, regulations and Exchange Rules concerning the firm's Exchange operations, including but not limited to its obligation to handle market orders in a timely manner and failed to take appropriate remedial measures after being notified of this deficiency. Specifically, the firm failed to have 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 Equitec Proprietary Markets, LLC and Equitec Specialists, LLC, a censure, a joint and several fine of \$90,000, and an undertaking to revise their written supervisory procedures with respect to the areas described in the Stipulation (which are outlined above in paragraphs six and seven). In addition, within 90 business days of acceptance of this Stipulation by the Panel Chair, a registered principal of both Equitec Proprietary Markets, LLC and Equitec Specialists, LLC shall submit to the Compliance Assistant at NASD AMEX Regulation Division in New York a signed, dated letter providing reference to this matter; a representation that the firm has revised its written supervisory procedures to address the deficiencies described herein; and the date the revised procedures were implemented.


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.<sup>2</sup>

**V. Conclusion**

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Equitec Proprietary Markets, LLC and Equitec Specialists, LLC, a censure, a joint and several fine of \$90,000, and an undertaking to revise the firm's written supervisory procedures.

**FOR THE DISCIPLINARY PANEL**

  
Dana R. Pisanelli,  
Panel Chair

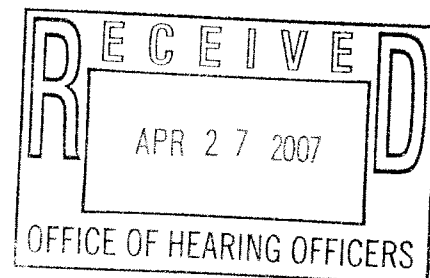
Copies to: David Barclay, Esq. (*via facsimile and first class mail*)  
Equitec Specialists, LLC (*via overnight and first class mail*)  
Equitec Proprietary Markets, LLC (*via overnight and first class mail*)  
Jacqueline Gorham, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*electronically and via first class mail*)

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<sup>2</sup> 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  
  
EQUITEC PROPRIETARY  
MARKETS, LLC and  
EQUITEC SPECIALISTS, LLC

**STIPULATION OF FACTS AND  
CONSENT TO PENALTY**

Case Nos. 03-32, 04-94, 04-107,  
04-208, 05-128, 05-227, 05-311,  
05-321, 05-392, 05-471,  
06-432 and 07-57

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange") against Equitec Proprietary Markets, LLC (CRD No. 113728) and Equitec Specialists, LLC (CRD No. 103917) (collectively "Equitec" or the "Firm"), both Regular Member Organizations of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with Equitec pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Equitec based upon or arising out of the facts hereinafter stipulated. Equitec, 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. Equitec 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. Equitec 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, Equitec Proprietary Markets, LLC was a Regular Member Organization and a registered options specialist organization of the Exchange.

1.2 During all relevant periods herein, Equitec Specialists, LLC was a Regular Member Organization and registered equities specialist organization of the Exchange.

**2.0 Option Limit Order Display Violations**

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

2.2 On 100 occasions during the period of June 3, 2002 through May 30, 2003, Equitec failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 04-94).

2.3 On 23 occasions during the period of March 1, 2004 through March 31, 2004, Equitec failed to use due diligence in handling customer limit orders by failing to execute or display customer option limit orders immediately (Amex Case No. 04-208).

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<sup>1</sup> 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).

2.4 The conduct described in paragraphs 2.2 and 2.3 constitutes separate and distinct violations of Exchange Rules 156(b) 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 a subject security presented to them at a price at least as favorable to the published bid or published offer in an amount up to the specialist's published quotation size in accordance with SEC Rule 11Ac1-1.
- 3.2 On 149 occasions during the period of October 1, 2002 through February 28, 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 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 No. 03-32).
- 3.3 On 173 occasions during the period of January 1, 2004 through October 31, 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 its published quotation (Amex Case No. 05-128).
- 3.4 On 76 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 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 No. 05-311).

3.5 The conduct described in paragraphs 3.2 through 3.4 constitutes separate and distinct violations of SEC Rule 11Ac1-1 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 43 occasions during the period of January 1, 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. 04-107).

4.3 On 66 occasions during the period of October 1, 2004 through January 31, 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. 05-392).

4.4 The conduct described in paragraphs 4.2 and 4.3 constitutes separate and distinct violations of SEC Rule 11Ac1-1, 958A and Article V, Section 4(h) of the Exchange Constitution.

## **5.0 Linkage Locked/Crossed Markets Violations**

5.1 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.

5.2 On 510 occasions during the period of July 1, 2003 through April 30, 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 No. 05-321).

5.3 The conduct described in paragraph 5.2 constitutes separate and distinct violations of Exchange Rule 943(a) and Article V, Section 4(h) of the Exchange Constitution.

## **6.0 Untimely Opening Violations**

6.1 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.

6.2 On 4 occasions during the period June 1, 2005 through August 31, 2005, the Firm failed to timely open equities in accordance with Exchange Rule 1 (Amex Case No. 05-471).

6.3 The conduct described in paragraph 6.2 constitutes separate and distinct violations of Exchange Rule 1 and Article V, Section 4(h) of the Exchange Constitution.

## **7.0 Supervision**

7.1 During the period June 2001 through February 2006, the Firm did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Exchange rules, concerning its Amex operations, including but not limited to limit order display, firm quotes, linkage locked and crossed markets and timely openings. Specifically, the Firm failed to have 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. (Amex Case Nos. 05-227 and 06-432)

7.2 During the period of March 2006 through August 2006, the Firm did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Exchange rules, concerning its Amex operations, including but not limited to its obligation to handle market orders in a timely manner, and the Firm failed to take appropriate remedial measures after being notified of this deficiency. Specifically, the Firm failed to have 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. (Amex Case No. 07-57)

7.3 The conduct described in paragraphs 7.1 and 7.2 constitutes a violation of Amex Rule 320.

**DISCIPLINARY ACTION:**

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

- (a) a censure to be imposed against both Equitec Proprietary Markets, LLC and Equitec Specialists, LLC;
- (b) a joint and several fine of \$90,000 to be imposed against both Equitec Proprietary Markets, LLC and Equitec Specialists, LLC; and
- (c) an undertaking for both Equitec Proprietary Markets, LLC and Equitec Specialists, LLC to revise their written supervisory procedures with respect to the areas described in paragraphs 7.1 and 7.2. Within 90 business days of acceptance of this Stipulation by an Exchange Hearing Panel, a registered principal of both Equitec Proprietary Markets, LLC and Equitec Specialists, LLC 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 paragraphs 7.1 and 7.2; and, (3) the date the revised procedures were implemented.

Equitec 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 Equitec by the Exchange, its staff or representatives to induce Equitec 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, Equitec 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 Equitec'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 Equitec 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.

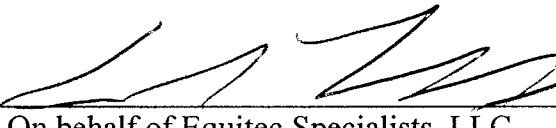
AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein  
Senior Vice President and Chief Counsel  
NASD Amex Regulation Division

Agreed to this 18<sup>th</sup> day of April, 2007.

  
On behalf of Equitec Proprietary Markets, LLC, General Counsel

  
On behalf of Equitec Specialists, LLC, General Counsel