

**Disciplinary Panel
American Stock Exchange LLC**

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| IN THE MATTER | : | Case No. 07-115 |
| | : | [AMXC07020] |
| OF | : | |
| | : | Hearing Officer – DMF |
| RBC CAPITAL MARKETS CORPORATION | : | |
| | : | DECISION |
| | : | |
| | : | November 16, 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 \$225,000 fine, to be paid jointly to AMEX, FINRA and NYSE.

I. Introduction

The American Stock Exchange, LLC (AMEX) instituted a formal disciplinary proceeding against RBC Capital Markets Corporation (RBCCMC), a Regular Member Organization of AMEX. The Disciplinary Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the AMEX Constitution, held a hearing on October 23, 2007, pursuant to Article V, Section 2 of the AMEX Constitution, to review a Stipulation of Facts and Consent to Penalty, which is attached as Exhibit A. AMEX and RBCCMC entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by AMEX against RBCCMC based upon or arising out of the facts set forth in the Stipulation.

II. Facts

RBCCMC, 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 RBCCMC:

(1) violated AMEX Rule 30, by submitting inaccurate reports of short interest positions to AMEX, as set forth in paragraphs 3.0 through 3.5 of the Stipulation;

(2) violated AMEX Rule 30, by submitting inaccurate transaction reports to AMEX, as set forth in paragraphs 4.0 through 4.3 of the Stipulation; and

(3) violated AMEX Rule 320, by failing to establish and maintain appropriate policies, systems and procedures of supervision and control, including written supervisory procedures, and by failing to establish a separate system of follow-up and review to ensure compliance with the short interest and transaction reporting requirements of AMEX, as set forth in paragraphs 5.0 through 5.2 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose on RBCCMC a censure and a \$225,000 fine to be paid jointly to AMEX, FINRA and NYSE.¹

After considering the stipulated facts and the statements of the parties, as well as the decisions cited in AMEX'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. In that regard, the Chair notes that RBCCMC discovered and self-reported deficiencies in its short interest reporting in February 2006, and thereafter also discovered

¹ FINRA and NYSE have separate settlements with RBCCMC calling for the same fine.

and self-reported its inaccurate transaction reporting. Further, the Chair notes that the penalties were negotiated by RBCCMC jointly with AMEX, FINRA and NYSE and equal amounts (\$75,000) will be paid to each SRO. The Chair further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the AMEX Rules on Disciplinary Proceedings.²

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon RBC Capital Markets Corporation a censure and a \$225,000 fine to be paid jointly to AMEX, FINRA and NYSE.

FOR THE DISCIPLINARY PANEL



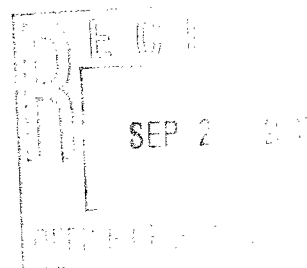
David M. FitzGerald, Chair

Copies to: Peter von Maur, Esq. (*via facsimile and first class mail*)
Jacqueline Gorham, 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
RBC CAPITAL MARKETS CORPORATION

**STIPULATION OF FACTS
AND CONSENT TO PENALTY**

Case No.: 07-115

This proceeding was instituted by the American Stock Exchange LLC ("AMEX") against RBC Capital Markets Corporation ("RBCCMC" or the "Firm"), a Regular Member Organization (CRD No. 6579) of the AMEX. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with RBCCMC pursuant to Article V, Section 2 of the AMEX Constitution in order to settle and conclude all disciplinary actions by the AMEX against RBCCMC based upon or arising out of the facts hereinafter stipulated. RBCCMC, 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 AMEX Constitution and Rules, and the imposition of the penalties hereinafter provided. RBCCMC understands that this settlement is subject to approval by an AMEX Disciplinary Panel and can be the subject of review by the AMEX Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. RBCCMC understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of RBCCMC's disciplinary record and may be considered in any future proceeding brought by the AMEX.

STIPULATED FACTS:

- 1.0 During all relevant periods herein, RBCCMC was a Regular Member Organization of the AMEX, FINRA and the New York Stock Exchange ("NYSE") (collectively the "SROs").
- 1.1 During all relevant periods herein, RBCCMC 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 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.
- 1.3 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 1.2 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.

- 1.4 During all relevant periods herein, RBCCMC was subject to AMEX Rule 320(b) and (c) which state:

(b) 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.

(c) The general partners, directors, trustees of each member organization shall provide for appropriate supervisory control and shall designate a general partner, principal executive officer, trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall: (1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control; and (2) establish a separate system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.

OVERVIEW

- 2.0 As is set forth in the following paragraphs, this matter was referred to the Enforcement Department ("Enforcement") by the Trading Analysis Department ("TA") of the FINRA AMEX Regulation Division. It involves a joint investigation conducted by the SROs that was initiated after RBCCMC had self-reported deficiencies in its short interest reporting (Form 50) on or about February 10, 2006. RBCCMC subsequently learned of and reported to TA that there were also deficiencies in its reporting 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).

Inaccurate Reporting of Short Interest Positions, Form 50

- 3.0 RBCCMC discovered that it had been inaccurately reporting its short interest positions when it was evaluating changes to the structure of certain accounts and, as part of its review, analyzed the impact of the changes on its short interest reporting obligations. While conducting this review, the Firm identified discrepancies between what had been reported through its third-party service provider ("Vendor") and what was reflected on the Firm's internal stock record.¹ RBCCMC discovered that positions in a pledge account it held on behalf of one of its affiliates ("Affiliate") were erroneously being included in Vendor's calculations, causing it to over-report RBCCMC's short interest positions.
- 3.1 RBCCMC, on behalf of Affiliate, had established an internal account ("pledge account") to hold securities that are pledged as collateral against loans extended to Affiliate from Royal Bank of Canada (parent company).² For purposes of internal bookkeeping, RBCCMC classifies the positions held in the pledge account as short and also keeps a record of the collateral in a pledge offset account, in which the positions are categorized as long. Because these accounts are maintained for internal record keeping purposes, neither account actually holds reportable short

¹ RBCCMC employs Vendor as a service provider to generate various reports, including short interest reports.

² Loans were extended to Affiliate directly from Royal Bank of Canada and indirectly through Royal Bank of Canada affiliates.

interest positions. Due to human error, however, the pledge account was included in the Firm's short interest calculation.

- 3.2 RBCCMC codes all of its accounts using an internal classification system and tells Vendor which account code types should be included in the short interest calculation. Vendor then directly accesses RBCCMC's account records to generate the reports. If there is an account that should not be included in the short interest calculation but comes within the account type range that would normally be included, RBCCMC must fill out a form in order to instruct Vendor to exclude the account.
- 3.3 In May 2003, RBCCMC reclassified the pledge account causing it to come within the range of account code types Vendor had been instructed to include in the short interest calculation. Due to an oversight at the time of the reclassification, Vendor was not told (via the form) that the pledge account should be excluded in the short interest calculation.
- 3.4 RBCCMC discovered the error in February 2006 and immediately contacted the AMEX to inform it that the Firm had been incorrectly reporting short interest positions for thirty-two months.
- 3.5 Between June 2003 and January 2006, RBCCMC incorrectly reported to the AMEX 140 short interest positions for the purposes of mid-month and end-of-month reporting. A comparison of the overall short interest that was published by the AMEX between June 2003 and January 2006 for each security to what would have been published had RBCCMC correctly filed its short interest positions revealed that there were five instances where the published amount was affected

between 10% and 25%, thirty-nine instances where it was affected between 1% and 10% and fifty-six instances where the overall short position report was affected by less than 1%.

Inaccurate Transaction Reporting, Form 1-S and Form 1-RA

- 4.0 On March 15, 2006, RBCCMC contacted TA to self-report errors it had discovered relating to its submission of 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).
- 4.1 The Form 1-S seeks total daily round lot short sale activity in proprietary and customer accounts. RBCCMC explained that in preparing its Form 1-S, Vendor had failed to include short sale information from customer accounts. RBCCMC discovered this error when it compared its Form 1-S to its Form 1-RA and observed that the same total that was reported on the Form 1-S was reflected in the proprietary short sale column on the Form 1-RA. That could only be accurate if no customer short sales were effected for that week.
- 4.2 Form 1-RA seeks aggregate proprietary short sale activity. RBCCMC explained that while preparing this form, Vendor only provided customer short sale activity and completely neglected to include proprietary short sale activity. According to RBCCMC, Vendor capabilities only let them capture short sale activity by extracting it from 'type 5' (short sale) accounts. Type 5 accounts are customer accounts and are not used for proprietary short sale activity. Thus, Vendor was

capturing only customer short sale activity, which should not have been included in this calculation as the report seeks only proprietary activity.

- 4.3 RBCCMC conceded that it had been filing inaccurate Forms 1-S and 1-RA for a number of years, but could not identify the exact time period. A comparison of the daily submissions of the Firm to the aggregate of the Forms 1-S and 1-RA submitted by all firms between September 2005 and March 2006 revealed that RBCCMC's unreported and over-reported transactions represented less than a 1% change of the total amount of short sales and off-floor transactions reported during this time period.

Supervisory Deficiencies

- 5.0 During the time period of June 2003 to February 2006, RBCCMC relied on an automated system to comply with its short interest and transaction reporting requirements. The Firm did not have procedures in place to verify the accuracy of its short interest reports submitted to the SROs. Consequently, the Firm did not detect the short interest reporting errors during the above period despite repeatedly being asked to confirm the accuracy of the short positions reported to the AMEX.
- 5.1 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.

- 5.2 During the relevant time period, 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:

- 6.0 RBCCMC violated AMEX Rule 30 in that the Firm submitted inaccurate mid and end of month reports of short interest positions to the AMEX, as set forth in paragraphs 3.0 through 3.5.
- 6.1 RBCCMC violated AMEX Rule 30 in that the Firm submitted inaccurate transaction reports to the AMEX, as set forth in paragraphs 4.0 through 4.3.
- 6.2 RBCCMC 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 above in paragraphs 5.0 through 5.3.

DISCIPLINARY ACTION:

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

- (a) a censure; and
- (b) a \$225,000 fine to be paid jointly to the AMEX, FINRA, and NYSE.

RBCCMC 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 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, RBCCMC 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 AMEX 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 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 of Facts and Consent to Penalty.

ON BEHALF OF AMERICAN STOCK EXCHANGE LLC

By: Claudia Crowley
Claudia Crowley
Senior Vice President
Chief Regulatory Officer
American Stock Exchange LLC

RBC CAPITAL MARKETS CORPORATION

By: [Signature]

Name: LABRENA JONES MARTIN

Title: MANAGING DIRECTOR

Agreed to this 26 day of Sept., 2007.