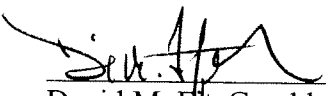


**Disciplinary Panel  
American Stock Exchange LLC**

IN THE MATTER	:	Case No. 06-297
of	:	[AMXC08011]
BNP PARIBUS SECURITIES CORP.	:	
f/k/a	:	<b>Hearing Officer – DMF</b>
BNP PARIBUS BROKERAGE SERVICES, INC.	:	

**NOTICE OF DECISION**

Enclosed is a copy of the decision of the Disciplinary Panel in this disciplinary proceeding, dated March 19, 2008 (“Decision”). Under Article V, Section 2 of the Exchange Constitution, this Decision will become the final decision of the Exchange 10 days after service of the Decision upon you unless the Amex Adjudicatory Council calls the Decision for review. Pursuant to Exchange Disciplinary Rule 12, the Disciplinary Panel has decided that its Decision shall be publicized as provided therein. However, no publicity release shall be made until the Decision becomes final.

  
\_\_\_\_\_  
David M. FitzGerald, Chair

Dated: March 19, 2008

Copies to: BNP Paribus Securities Corp. *(via overnight and first-class mail)*  
Tom DiSpaldo, *(via overnight and first-class mail)*  
Theresa C. Clarkson, Esq. *(via electronic and first-class mail)*  
Jocelyn Thrower *(via first-class mail)*

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER	:	Case No. 06-297
	:	[AMXC08011]
of	:	
	:	Hearing Officer – DMF
BNP PARIBUS SECURITIES CORP.	:	
f/k/a	:	<b>DECISION</b>
BNP PARIBUS BROKERAGE SERVICES,	:	
INC.	:	March 19, 2008
	:	

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Pursuant to Article V, Section 2 of the Exchange Constitution and Rules 2(a) and (b) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings, this proceeding came before the Hearing Officer for review of the attached Stipulation and Consent to Penalty (Stipulation), which was entered into by the Parties for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Respondent based upon or arising out of the facts set forth in the Stipulation. Respondent, without admitting or denying the facts, allegations and conclusions contained in the Stipulation, consented to the entry of findings of violations of Exchange Rules, and the imposition of penalties, as set forth in the Stipulation.

After considering the stipulated facts, as well as the analysis and authorities set forth in the Exchange’s Memorandum in Support of Proposed Settlement, the Hearing Officer hereby accepts the Stipulation, and accordingly finds that Respondent:

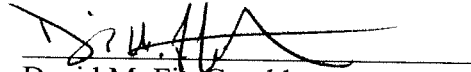
1. Violated Exchange Rule 30 from March 2001 through December 2002 by failing to submit weekly short sale reports, mid-month short interest reports and end-of-month short interest reports; and

2. Violated Exchange Rule 320 from March 2001 through December 2002 by failing 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 short sale reporting requirements of the Amex.

With regard to the proposed penalties, the Hearing Officer notes that the violations took place during the period March 2001 through December 2002. Further, the violations involved a third-party service bureau's failure to file short interest and short sale reports on Respondent's behalf through Form Filing, a web-based application, after Amex required member firms to submit short interest reports through Form Filing in March 2001. According to the Stipulation, the service bureau did not advise Respondent that it was encountering difficulties in submitting the reports through Form Filing, or that it was not submitting them. Indeed, the service bureau continued to submit short interest and short sale reports to Respondent, which led Respondent to believe they were being submitted to the Amex, as well. The Hearing Officer has also considered as aggravating factors the length of time during which the violations continued, and the impact of Respondent's erroneous short interest reports on the Amex's overall short interest reports for the securities in question, as set forth in the Stipulation.

Taking into consideration all these circumstances, the Hearing Officer concludes that the proposed penalties are adequate. Therefore, in accordance with the Stipulation, for these violations Respondent is censured and fined \$55,000.

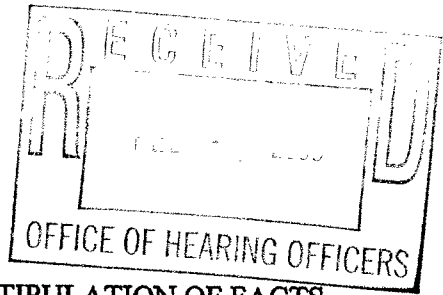
**SO ORDERED.**

  
\_\_\_\_\_  
David M. FitzGerald  
Hearing Officer

Copies to: BNP Paribus Securities Corp. (*via overnight and first-class mail*)  
Tom DiSpaldo, (*via overnight and first-class mail*)  
Theresa C. Clarkson, Esq. (*via electronic and first-class mail*)  
Jocelyn Thrower (*via first-class mail*)

# **EXHIBIT A**

Disciplinary Panel  
American Stock Exchange LLC



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IN THE MATTER  
OF  
BNP PARIBUS SECURITIES CORP  
f/k/a

BNP PARIBUS BROKERAGE SERVICES, INC.

STIPULATION OF FACTS  
AND  
CONSENT TO PENALTY  
Case No. 06-297

This proceeding was instituted by the American Stock Exchange LLC (“the Exchange” or “Amex”) against BNP Paribas Securities Corp. (f/k/a BNP Paribas Brokerage Services, Inc.) (“BNP,” the “Firm” or Respondent),<sup>1</sup> a Regular Member Organization of the Exchange (CRD# 15794). This Stipulation of Facts and Consent to Penalty (“Stipulation”) is entered into with BNP pursuant Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions brought by the Exchange against the Respondent based upon or arising out of the facts hereinafter stipulated. The Respondent, 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. The Respondent understands that a hearing officer, without conducting a formal hearing, will determine whether the Respondent has committed the violations set forth herein and may fix and impose the agreed upon penalty or reject the Stipulation. This Stipulation can also be the subject of review by the Amex Adjudicatory Council (“AAC”). The Respondent understands and

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<sup>1</sup> On January 3, 2005, BNP Paribas Brokerage Services, Inc. ceased to be an Amex Member firm. It changed its name to BNP Paribas Securities Corp. and was approved for Amex membership on the same date.

acknowledges that the hearing officer's acceptance of this Stipulation may not be appealed by the parties, will become part of their respective disciplinary records and may be considered in any future proceeding brought by the Exchange.

**STATEMENT OF FACTS:**

1.0 BNP is a member firm of the Exchange and a registered broker-dealer.

2.0 During all relevant periods herein, Exchange Rule 30 provided:

Every member and member organization shall file with the Exchange such periodic or special reports as the Board of Governors may, by rule or otherwise, from time to time authorize. All such reports shall be filed at such time or times and in such form as the Exchange may prescribe.

2.1 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided:

A member, member organization or approved person who or which shall be adjudged guilty in a proceeding under this Article of a violation of the Constitution of the Exchange, of a violation of a rule adopted pursuant to the Constitution, of a violation of a resolution of the Board regulating the conduct or business of members or member organizations, or of conduct or proceeding inconsistent with just and equitable principles of trade, may, if a member or member organization, be suspended or expelled from membership or, if an approved person have his approval withdrawn, unless the offense is the violation of a provision, rule or resolution for which a different penalty had been provided, in which case such other penalty may be imposed.

2.2 During all relevant periods herein, Amex Information Circular #95-136, dated May 8, 1995, provided in pertinent part:

Pursuant to Amex Rule 30, members and member organization shall continue to file monthly short positions in Amex-listed securities directly with SIAC. Starting in May 1995, however, members and member organizations for which the Exchange is the Designated Examining Authority ("DEA"), will be required to also report short positions to SIAC in each stock or warrant listed in other marketplaces of which they are not members. SIAC will then report the positions to the appropriate SRO. As an example, if a member/member organization for which the Amex is the DEA carries a short position in a solely-listed Philadelphia Stock

Exchange ("PHLX") security and that member/member organization is not a member of the PHLX, it should report the short position to SIAC. Members and member organizations for which the Amex is not the DEA must report short positions in non-Amex securities to the SRO which is its DEA.

- 2.3 During all relevant periods herein, Amex Information Circular #98-0234, dated February 26, 1998, provided in pertinent part:

Commencing with the April 30, 1998, settlement date, all American Stock Exchange ("Amex") member organizations will be required to report short positions in Diamonds, SPDRS, MIDCAP SPDRS and the various WEBS series set forth on the attached list. Short positions in these securities must be reported for all accounts as of the close of the settlement date falling on the last business day of each month (i.e. April 30, May 29, June 30, etc.)

Amex member organizations will be required to submit these short positions to SIAC electronically, using the "Datatrak" facility currently used to submit short position reports as of the 15<sup>th</sup> of each month. Please note that all member organizations must continue to file their regular short position reports for all Amex listed securities on the 15<sup>th</sup> of each month or, when the 15<sup>th</sup> is not a settlement date, on the closest preceding settlement date.

- 2.4 During all relevant periods herein, Amex Rule 320(b) and (c) provided:

(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

- 3.0 The Market Surveillance Department (“MSD”) of the FINRA Market Regulation - Amex Division commenced an investigation into BNP’s short interest positions at the inception of Form Filing<sup>2</sup> in July 2000.
- 3.1 During all relevant times, the Amex has relied on the accuracy of the short interest reports submitted by member organizations in compiling its own calculation of overall short interest in Amex-listed securities, which is made available to the marketplace. Market analysts and economists use the publicly available short interest reports as an indicator of market trends.
- 3.2 MSD examined the Form Filing database and found that BNP had failed to file with the Exchange, during the period March 2001 – December 2002,<sup>3</sup> 22 mid-month short interest reports (Form 50), 22 end-of-month short interest reports, and 95 weekly short sale reports (Form 1-S).
- 3.3 In response to MSD’s request dated April 12, 2004 for a detailed explanation as to why BNP had failed to submit its Form 50 and Form 1-S reports to the Amex, BNP in a written response, dated an April 26, 2004, acknowledged that it had failed to file mid-month and end-of-month short positions and weekly short sale transactions to the Exchange during the aforementioned time period.
- 3.4 In the April 2004 response, BNP stated that its third-party service bureau failed to adapt to the new Form Filing and failed to submit mid-month and end-of-month

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<sup>2</sup> “Form Filing” is FINRA’s web-based filing application for firms to use to submit various financial reports.

<sup>3</sup> March 2001 was the first month following the Amex requirement that member firms submit short interest reports using Form Filing.

reports from March 2001 through June 2001. BNP also provided copies of the requested reports.

**Inaccurate Reporting of Short Interest Positions, End-of-Month Reports**

- 4.0 MSD determined that BNP did not file 22 end-of-month short interest reports for 22 securities during the period March 2001 through December 2002.
- 4.1 A comparison of the short interest that was published by the Exchange for each security against what would have been published had BNP filed its short interest positions identified: 11 securities with adjusted short positions that represented a change of less than 1%, on average, from the short interest that was initially published by the Exchange; seven securities with an adjusted short interest between 1.08% and 5.71%; and, four securities (securities that typically have modest reportable short positions) with adjusted short interest between 20.98% and 58.18%.

**Inaccurate Reporting of Short Interest Positions, Mid-Month Reports (Form 50)**

- 5.0 MSD determined that BNP did not file 22 mid-month short interest reports for 78 securities during the period March 2001 through December 2002.
- 5.1 A comparison of the short interest that was published by the Exchange for each security against what would have been published had BNP filed their short interest positions identified: 42 securities with adjusted short positions that represented a change of less than 1%, on average, from the short interest that was initially published by the Exchange; 23 securities with an adjusted short position between 1.05% and 8.06%; and, 13 securities (securities that typically have

modest reportable short positions) with an adjusted short position between 12.53% and 80.10%.

**Inaccurate Reporting of Weekly Short Sale Reports (Form 1-S)**

6.0 MSD determined that BNP did not file 95 weekly short sale reports during the period March 2001 through December 2002

**Supervision**

- 7.0 During the time period of March 2001 to December 2002, BNP relied on a third-party service bureau to file the Firm's short interest reports. BNP did not have adequate procedures in place to verify the accuracy of its short interest and short sale reports submitted to the Amex by this third-party. Consequently, the Firm did not detect the short interest reporting errors during the above period.
- 7.1 BNP stated that its third-party service bureau ceased submitting the subject reports in June 2001 after encountering difficulties that had occurred in the previous three months of reporting (i.e., difficulties in filing reports via the website Form Filing in March 2001) but failed to advise BNP of either the difficulties or the non-submission of reports.
- 7.2 BNP stated that the third-party service bureau never informed the Firm that it had discontinued filing short interest and short sale reports to the Amex although the third-party service bureau continued to submit these reports to BNP, which led BNP to believe that short interest and short sale reports were being submitted to the Exchange.
- 7.3 During all relevant periods herein, BNP failed to adequately supervise its process for short interest and short sale reporting to the Amex because it failed to detect

inaccuracies associated with its short interest and short sale reports and failed to have an adequate system of follow-up and review for compliance with Amex Rules with respect to short interest and short sale reporting.

- 7.4 BNP adequately revised its procedures to supervise the filing of mid-month and end-of-month reports of short interest and weekly reports of short sale transactions by BNP's third-party service bureau.

**CONCLUSION:**

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

- 8.0 BNP violated Amex Rule 30, in that the Firm failed to file weekly short sale reports as well as mid-month and end-of-month short interest reports to the Amex, as set forth in paragraphs 3.0 through 6.0.
- 8.1 BNP violated Amex 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 short sale reporting requirements of the Amex, as set forth above in paragraphs 7.0 through 7.4.

**DISCIPLINARY ACTION:**

By reason of the foregoing Stipulated Facts and violations, a Hearing Officer may impose the following penalties against the Respondent:

- (a) a censure; and
- (b) a \$55,000 fine.

The Respondent 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 Respondent by the Exchange, its staff or representatives to induce the Respondent 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 as provided by Exchange rules.

Further, the Respondent 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 Respondent'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.

Further, the Respondent understands and agrees that the Exchange may make a public announcement concerning this Stipulation and the subject matter thereof in a manner consistent with those specified in Rule 12 of the Rules and Procedures Applicable to Exchange Disciplinary Proceedings.

Finally, it is understood and agreed that in any written submission to or proceeding before any person reviewing and/or body convened to consider this Stipulation of Facts and Consent to Penalty (including any reviewing person or body authorized by the Amex Constitution and/or Rules), neither Enforcement nor the Respondent, 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 (including arguing that no penalty should be imposed) 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

BNP PARIBAS SECURITIES CORP.

By: *Larry B. Sobin*

Name: LARRY B. SOBIN  
Chief Administrative Officer

Title: BNP Paribas Securities Corp.

Agreed to this 10 day of DECEMBER, 2007.