

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
BANC OF AMERICA SECURITIES,
LLC

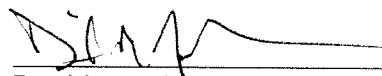
Case No. 06-281

[AMXC08025]

Hearing Officer – DMF

NOTICE OF DECISION

Enclosed is a copy of the decision of the Hearing Officer in this disciplinary proceeding, dated August 25, 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 Hearing Officer 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
Hearing Officer

Dated: August 25, 2008

Copies to: Banc of America Securities, LLC (*via overnight courier and first-class mail*)
Theresa C. Clarkson, Esq. (*via electronic and first-class mail*)
Joycelyn Thrower (*via electronic and first-class mail*)

**Disciplinary Panel
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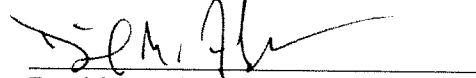
IN THE MATTER	:	Case No. 06-281
	:	[AMXC08025]
OF	:	Hearing Officer – DMF
	:	
BANC OF AMERICA SECURITIES,	:	DECISION
	:	
LLC	:	August 25, 2008

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 an Exchange Rule and Information Circular, 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 violated Amex Rule 30 and Amex Information Circular #95-136 in May 2005 by failing to file a correct mid-month short interest report to the Amex.

In accordance with the Stipulation, for these violations, Respondent is censured and fined \$6,500.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'DMF', is written over a horizontal line.

David M. FitzGerald
Hearing Officer

Copies to: Banc of America Securities, LLC (*via overnight courier and first-class mail*)
Theresa C. Clarkson, Esq. (*via electronic and first-class mail*)
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EXHIBIT A

disciplinary record, and may be considered in any future proceeding brought by the Exchange.

STATEMENT OF FACTS:

1.0 BAS is a member firm of the Exchange involved in a variety of floor and non-floor related activities.

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, 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.

OVERVIEW

3.0 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.

- 3.1 On or about May 17, 2005, BAS submitted to the Amex May 2005 mid-month short positions of 590,459 shares in AAA, 386,119 shares in BBB, and 13,811,796 shares in CCC, all of which varied significantly from BAS' reported April mid-month short positions for these securities, specifically: 476,413 shares in AAA; 99,900 shares in BBB; and 23,657,385 shares in CCC.¹
- 3.2 On May 17, 2005, the Market Surveillance Department ("MSD") of FIRNA Market Regulation – Amex Division sent a verification letter² to BAS to confirm that it had reported its May mid-month short positions correctly.
- 3.3 On May 18, 2005, BAS confirmed to MSD that all reported short interest positions (including AAA, BBB, and CCC) were correct.
- 3.4 On or about June 15, 2005, BAS submitted to the Amex June 2005 mid-month short positions of 391,081 shares in AAA, 214,238 shares in BBB, and 7,726,432 shares in CCC.
- 3.5 On June 17, 2005, MSD sent a verification letter to BAS to confirm that it had reported its short positions correctly.
- 3.6 On or about June 20, 2005, BAS verified its June mid-month short interest positions and informed MSD that an error had occurred with respect to its May 2005 mid-month short interest reporting of positions in AAA, BBB, and CCC.

¹ "AAA," "BBB," and "CCC" are generic identifiers used throughout this Stipulation for the three misreported securities from the May 2005 reporting period that BAS detected in June 2005.

² Verification letters typically are sent to firms that report position changes in securities of greater than 100,000 shares from the previous month.

- 3.7 On or about June 21, 2005, BAS explained to MSD that “due to a processing error by the associate validating the positions in May 2005, short positions were erroneously excluded for the noted symbols for one customer account.” BAS said that management had reviewed the procedures with the associate to prevent this error from reoccurring.
- 3.8 A comparison of the short interest that was published by the Exchange for each security to what would have been published if BAS had filed correct short interest positions, revealed that BAS’s error had reduced the published short interest figure for AAA by 0.09%, BBB by 2.87%, and CCC by 0.44%.
- 3.9 Although BAS indicated that its inaccurate short interest reporting for May 2005 was limited to AAA, BBB, and CCC, on September 1, 2006, BAS notified the Enforcement Department (“Enforcement”) of FINRA Market Regulation – Amex Division that the Firm had identified one additional misreported Amex issue, DDD, that previously had escaped detection.³
- 3.10 On or about September 13, 2006, BAS reported to Enforcement that the short position reported for DDD of 1,402,313 shares on settlement date May 13, 2005, should be a short position was 1,404,313 shares.
- 3.11 A comparison of the short interest that was published by the Exchange for DDD to what would have been published if BAS had filed the correct short interest position in May 2005 for DDD revealed that BAS’s error had reduced the published short interest figure for DDD by only 0.01%.

³ “DDD” is a generic identifier used throughout this Stipulation for the fourth misreported security from the May 2005 reporting period that BAS reported in September 2006.

CONCLUSION:

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

- 4.0 BAS violated Amex Rule 30 and Amex Information Circular #95-136, in that the Firm failed to file a correct mid-month short interest report to the Amex in May 2005, as set forth in paragraphs 3.0 through 3.11.

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 \$6,500 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

BANC OF AMERICA SECURITIES, LLC

By: Timothy Gill

Name: Timothy Gill

Title: Managing Director, Equities

Agreed to this 28 day of July, 2008.