

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER	:	Case No. 06-302
	:	[AMXC08019]
of	:	Hearing Officer – DMF
CHARLES SCHWAB & CO., INC.	:	DECISION
	:	July 10, 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 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:

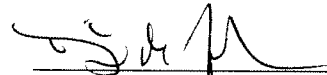
1. Violated Exchange Rule 1000 - Commentary .04(a) by entering limit orders in a Portfolio Depository Receipt for the account(s) of the same

or related beneficial owners into the Exchange's order routing system on both sides of the market on a regular or continuous basis;

2. Violated Exchange Rule 411 by failing to properly know the entity that utilized the firm's order entry conduit to the Exchange Trading Floor during the review period October 11-15, 2004; and
3. Violated Exchange Rule 320(c) as it relates to Exchange Rule 1000 - Commentary .04(a) in October 2004 by failing to provide for appropriate procedures of supervision and control.

In accordance with the Stipulation, for these violations, Respondent is censured and fined \$30,000.

SO ORDERED.


David M. FitzGerald
Hearing Officer

Copies to: Charles Schwab & Co., Inc. *(via overnight and first-class mail)*
Nader H. Salehi *(via first-class mail)*
Corin R. Swift *(via first-class mail)*
Theresa C. Clarkson, Esq. *(via electronic and first-class mail)*
Jocelyn Thrower *(via electronic and first-class mail)*

EXHIBIT A

2.0 At all relevant times herein, Exchange Rule 1000-Commentary .04 (a) provided:

Member and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Portfolio Depositary Receipts, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Portfolio Depositary Receipts on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same Portfolio Depositary Receipts; the multiple acquisition and liquidation of positions in the same Portfolio Depositary Receipts during the same day; and the entry of multiple limit orders at different prices in the same Portfolio Depositary Receipts.

2.1 At all relevant times herein, Exchange Rule 411 provided:

Every member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted. No member or member organization shall make any transaction for the account of or with a customer unless, prior to or promptly after the completion thereof, the member, a general partner, an officer or a trustee of the member organization shall specifically approve the opening of such account, provided, however, that in the case of a branch office the opening of an account for a customer may be approved by the manager of such branch office, but the action of such branch office manager shall within a reasonable time be approved by a general partner or an officer of the member organization. The member, general partner, officer or trustee approving the opening of an account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which will become part of the permanent records of his office organization.

2.2 At all relevant times herein, Exchange Rule 320(c) provided:

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. 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. Only persons meeting the Exchange's qualification requirements for such positions shall be in charge of: (1) any office of a member or member organization, (2) any regional or other group of offices, and (3) any other organizational group of registered representatives.

CS Violations

- 3.0 For the period of October 11 - 15, 2004 ("review period"), the Market Surveillance Department of FINRA Market Regulation – Amex Division ("Staff") performed a review using the Amex Rule 1000 Exception Report, which revealed possible market making activity effected in AAA,¹ a Portfolio Depository Receipt, through CS's trading system linked to the Amex.
- 3.1 Through this review, Staff determined that there were 3,860 buy and sell AAA limit orders entered by a customer of another broker-dealer using CS's trading system linked to the Amex's order routing system on October 11, 2004.
- 3.2 On or about November 5, 2004, Staff contacted CS and requested the identity of the customer(s) or Firm trader(s) effecting the order activity on October 11, 2004.
- 3.3 CS initially was unable to identify the correct entity that had effected the subject order activity or the entity that entered the orders through CS's trading system.
- 3.4 On or about February 4, 2005, CS disclosed that it was a broker-dealer ("Entity A"),³ a non-Amex member, which had effected the subject order activity on October 11, 2004. CS had entered into a contractual agreement with Entity A, agreeing to clear Entity A's

¹ "AAA" is a generic identifier used throughout this Stipulation for the subject Portfolio Depository Receipt.

³ "Entity A" is a generic identifier used throughout this Stipulation for this entity.

trades on an omnibus basis. CS also reported that Entity A had an omnibus agreement with its customer ("Entity B"),⁴ another broker-dealer and non-Amex member, and because the transactions in question were effected on an omnibus basis for Entity A's customer, CS was unable to provide the identity of the underlying clients at Entity B.

- 3.5 On or about February 28, 2005, Staff contacted Entity B for the identity of the accounts and individual(s) who entered the AAA orders and for the identity of the firm traders along with a detailed basis of the activity.
- 3.6 On or about March 28, 2005, Staff learned the identity of the entity ("Entity C"),⁵ a trading firm and non-Amex member, that effected the order activity through Entity B.
- 3.7 On or about April 20, 2005, Staff sent Entity C a request for the identities of the client or traders who effected the subject order activity in AAA on October 11, 2004.
- 3.8 On or about April 27, 2005, Entity C responded, stating that proprietary traders at Entity C had entered the orders, which resulted in simultaneous or near simultaneous entry of limit orders to buy and sell AAA on trade date October 11, 2004.
- 3.9 Thus, the subject AAA orders were all proprietary orders entered by Entity C for the same account or accounts of the same or related beneficial owner and were executed at the Amex through CS's trading system linked to the Amex order routing system.⁶

CS's Supervisory Violations

- 4.0 By allowing third-parties to enter limit orders for AAA on both sides of the market on a simultaneous or near simultaneous basis through its trading system linked to the Amex's order routing system, CS failed to detect or prevent the violations of Amex Rule 1000, Commentary .04(a).

⁴ "Entity B" is a generic identifier used throughout this Stipulation for this entity.

⁵ "Entity C" is a generic identifier used throughout this Stipulation for this entity.

⁶ Staff referred Entity C's activity to another regulator.

- 4.1 On or about September 21, 2004, during a phone conversation between Staff and CS as part of a separate investigation relating to Amex Rule 1000, Staff requested a copy of the Firm's supervisory procedures regarding Amex Rule 1000.
- 4.2 On or about October 4, 2004, CS advised Staff that the Firm did not have supervisory procedures that specifically addressed Amex Rule 1000 but that it did have surveillance measures (including a AAA surveillance report) in place that reviewed for unusual or market manipulative activity.
- 4.3 On or about December 23, 2004, Staff requested a copy of CS's supervisory procedures and surveillance reports relating to Amex Rule 1000 during the review period.
- 4.4 On or about January 7, 2005, CS provided a copy of its supervisory procedures relating to Amex Rule 1000, as well as its AAA surveillance report, both of which were in the development phase during the review period.
- 4.5 CS's surveillance report provided information on CS's open order activity to determine whether CS and its customers could be deemed to have operated as a market maker in any series of Portfolio Depository Receipts. CS's surveillance report for the review period, however, was not designed to capture orders entered by other broker-dealer entities, such as Entity A, through its omnibus clearing agreements with CS.
- 4.6 Therefore, CS failed to have a system or procedures in place to identify the subject AAA order activity on October 11, 2004.

CONCLUSION:

By reason of the foregoing stipulated facts, a Disciplinary Panel may conclude that:

- 5.0 CS violated Amex Rule 1000-Commentary .04(a) by entering limit orders in AAA for the account(s) of the same or related beneficial owners into the Exchange's order routing system on both sides of the market on a regular or continuous basis, as stated above in Paragraphs 3.0 – 3.9.

5.1 CS violated Exchange Rule 411 by failing to properly know the entity (Entity A) that utilized CS's order entry conduit to the Amex Trading Floor during the review period, as stated above in Paragraphs 3.0 – 3.9.

5.21 CS violated Amex Rule 320(c) as it relates to Amex Rule 1000-Commentary .04(a) by failing to provide for appropriate procedures of supervision and control, as stated above in Paragraphs 4.0 – 4.6.

DISCIPLINARY ACTION:

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

- (a) a censure; and,
- (b) a fine of \$30,000.


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 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.

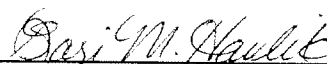
Further, the Respondent understands and agrees that the Exchange may make a public announcement concerning this Stipulation and the subject matter thereof in a manner consistent

with those specified in Rule 12 of the Rule 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.

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

Agreed to this 30 day of APRIL, 2008.


on behalf of Charles Schwab & Co., Inc.

BARI M. HAVLIK - SENIOR VICE PRESIDENT
Print Name Signed Above and Provide Corporate Titles