



**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER	:	Case Nos: 06-258, 06-438, 06-482,
	:	07-01, 07-78, 07-80, 07-192,
	:	07-240 and 07-281
	:	[AMXC08005]
OF	:	
	:	Hearing Officer – DMF
ISRAEL A. ENGLANDER & CO., INC.	:	
	:	<b>DECISION</b>
	:	
	:	February 25, 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 the Exchange Constitution and Rules and the federal securities laws, 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, and noting that the proposed penalties are consistent with those imposed in similar cases, the Hearing Officer hereby accepts the Stipulation, and accordingly finds that Respondent:

1. Violated Exchange Rule 153(b) and Rule 153, Commentary .01 on numerous occasions from October 2005 through September 2007 by entering option orders into the Exchange's Booth Automated Routing System (BARS) after their execution;
2. Violated Exchange Rule 153(b) and Rule 153, Commentary .01 on numerous occasions from October 2005 through September 2006 by entering equity orders into BARS after their execution; and
3. Violated Exchange Rule 320(b), Rule 320(c), and Rule 320(e) from October 2005 through September 2007 by (a) failing to have adequate written supervisory procedures designed to achieve compliance with Exchange Rule 153(b) BARS requirements, and (b) failing to have an adequate system of follow-up and review in place to verify that delegated authority and responsibility relating to Exchange Rule 153(b) BARS compliance was being properly exercised.

In accordance with the Stipulation, for these violations the Hearing Officer hereby imposes upon Respondent a censure, a fine of \$100,000, and an undertaking for Respondent to revise its written supervisory procedures as described in the Disciplinary Action section of the Stipulation.

**SO ORDERED.**



David M. FitzGerald  
Hearing Officer

Copies to: Israel A. Englander & Co., Inc. *(via overnight and first-class mail)*  
Martin H. Kaplan, Esq. *(via facsimile and first-class mail)*  
D. Christopher Walker, Esq. *(via electronic and first-class mail)*  
Joycelyn Thrower *(via electronic and first-class mail)*

# **EXHIBIT A**

Disciplinary Panel  
American Stock Exchange LLC

IN THE MATTER  
OF

ISRAEL A. ENGLANDER & CO., INC.

**STIPULATION OF FACTS AND  
CONSENT TO PENALTY**

Case Nos.:  
06-258, 06-438, 06-482, 07-01, 07-78, 07-80,  
07-192, 07-240, and 07-281

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange" or "Amex") against Israel A. Englander & Co., Inc. ("Englander", "Respondent", or the "Firm")(CRD# 33725), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with the Respondent pursuant to 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 Rules, 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 acknowledges that the hearing officer's acceptance of this Stipulation may not be appealed by the parties, 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, Englander was a Regular Member organization of the Exchange.

2.0 At all relevant times herein, Exchange Rule 153(b) stated:

Every member or member organization shall maintain a record of every order and every modification and cancellation of such order received by such member or member organization on the Floor of the Exchange. Such record shall include the name, amount and price of the security and the time when such order, modification or cancellation was received. With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organizations shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose.

2.1 At all relevant times herein, Exchange Rule 153, Commentary .01 stated:

The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (COATS) which, ..., will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. Rule 153(b) currently requires members and member organizations to systematize "immediately upon receipt" orders "that are eligible for input into the Exchange's electronic order processing facilities" if such orders are not already systematized in the Exchange's electronic order processing facilities. Commencing on January 10, 2005, members and member organizations must systematize in BARS those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Members and member organizations also must record in BARS immediately upon receipt information pertaining to the execution of option orders.

2.2 At all relevant times herein, Exchange Rule 30 stated:

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.

- 2.3 At all relevant times herein, Exchange Notice 2004-57, dated December 21, 2004, stated:

Effective January 3, 2005, the Exchange will require Floor Brokers to immediately input into BARS all equity orders, including so-called ineligible orders, upon such orders reaching the Floor and, in any event, prior to their execution. This requirement applies to orders in all stocks (listed and UTP), closed-end funds, ETFs, HOLDRs, and structured products. In addition, effective January 3, 2005, the Exchange will require Floor brokers to promptly input into BARS each and every execution of those orders already in BARS. On December 2, 2004, the Amex issued a Notice advising members of their obligation to immediately input into BARS all equity-traded orders. Now, because of regulatory and other concerns, the Amex has also determined to require prompt entry into BARS of all order executions. Entry of orders and executions may be effected through BARS booth terminals or BARS Hand Held Terminals (HHT).

- 3.1 At all relevant times herein, Exchange Rule 320(b) stated:

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 and Exchange rules.

- 3.2 At all relevant times herein, Exchange Rule 320(c) stated:

The general partners, directors, trustees of each member or 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 and Exchange Rules. 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.

- 3.3 At all relevant times herein, Exchange Rule 320(e) stated:

Members and member organizations who have employees shall establish, maintain, enforce and keep current a system of compliance and supervisory controls, reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules, that are appropriate to their business

size, structure, customer accounts, transactions and business activities. (1) Such system of compliance and supervisory controls must include written compliance and supervisory policies and procedures. (2) Each such member or member organization shall amend its written compliance and supervisory policies and procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including Exchange rules, and as any changes occur in its compliance and supervisory systems, and each member or member organization shall be responsible for communicating amendments through its organization, as appropriate.

**4.0 Option Execution Prior to Entry (“Option EPE”) BARS Violations**

- 4.1 At all relevant times herein, Exchange Rule 153(b) (made applicable to options by ANTE Rules of General Applicability Rule 950(a)) and Exchange Rule 153, Commentary .01, provided that every member or member organization must, immediately upon receipt, input eligible option orders, that are not already systematized into the Exchange’s electronic order processing facilities, into BARS. Entry of an option order into BARS after its execution constitutes a violation of Rule 153(b) and Exchange Rule 153, Commentary .01 by the member or member organization handling the order as broker.
- 4.2 On at least 10 separate occasions during the period of October 1, 2005 through December 31, 2005, Englander entered an option order into BARS after its execution (Amex Case No. 06-258).
- 4.3 On at least 11 separate occasions during the period of January 1, 2006 through March 31, 2006, Englander entered an option order into BARS after its execution (Amex Case No. 06-438 and 07-80).
- 4.4 On at least 10 separate occasions during the period of April 1, 2006 through June 30, 2006, Englander entered an option order into BARS after its execution (Amex Case No. 06-482).

- 4.5 On at least 10 separate occasions during the period of July 1, 2006 through September 30, 2006, Englander entered an option order into BARS after its execution (Amex Case No. 07-01).
- 4.6 On at least 10 separate occasions during the period of October 1, 2006 through December 31, 2006, Englander entered an option order into BARS after its execution (Amex Case No. 07-78).
- 4.7 On at least 10 separate occasions during the period of January 1, 2007 through March 31, 2007, Englander entered an option order into BARS after its execution (Amex Case No. 07-192).
- 4.8 On at least 10 separate occasions during the period of April 1, 2007 through June 30, 2007, Englander entered an option order into BARS after its execution (Amex Case No. 07-240).
- 4.9 On at least 10 separate occasions during the period of July 1, 2007 through September 30, 2007, Englander entered an option order into BARS after its execution (Amex Case No. 07-281).
- 5.0 The conduct described in paragraphs 4.2 through 4.9 constitutes separate and distinct violations of Exchange Rule 153(b) (made applicable to options by ANTE Rules of General Applicability Rule 950(a)) and Exchange Rule 153, Commentary .01.
- 6.0 Equity Execution Prior to Entry ("Equity EPE") BARS Violations**
- 6.1 At all relevant times herein, Exchange Rule 153(b) and Rule 153, Commentary .01 (made applicable to equities by Exchange Rule 30 and Exchange Notice 2004-57) provided that every member or member organization must, immediately upon

receipt, input eligible equity orders, that are not already systematized into the Exchange's electronic order processing facilities, into BARS. Entry of an equity order into BARS after its execution constitutes a violation of Exchange Rule 153(b) and Rule 153, Commentary .01 (made applicable to equities by Exchange Rule 30 and Exchange Notice 2004-57) by the member or member organization handling the order as broker.

- 6.2 On at least 10 separate occasions during the period of October 1, 2005 through December 31, 2005, Englander entered an equity order into BARS after its execution (Amex Case No. 06-258).
- 6.3 On at least 10 separate occasions during the period of January 1, 2006 through March 31, 2006, Englander entered an equity order into BARS after its execution (Amex Case No. 06-438).
- 6.4 On at least 10 separate occasions during the period of April 1, 2006 through June 30, 2006, Englander entered an equity order into BARS after its execution (Amex Case No. 06-482).
- 6.5 On at least 10 separate occasions during the period of July 1, 2006 through September 30, 2006, Englander entered an equity order into BARS after its execution (Amex Case No. 07-01).
- 6.6 The conduct described in paragraph 6.2 through 6.5 constitutes separate and distinct violations of Exchange Rule 153(b) and Rule 153, Commentary .01 (made applicable to equities by Exchange Rule 30 and Exchange Notice 2004-57).

## 7.0 Supervision

- 7.1 During all relevant periods herein, Exchange Rule 320(b) provided, in relevant part, that each office, department or business activity of a member or member organization 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.
- 7.2 During all relevant periods herein, Exchange Rule 320(c) provided that 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.
- 7.3 During all relevant periods herein, Exchange Rule 320(e) provided that member organizations establish, maintain, enforce and keep current a system of compliance and supervisory controls, reasonably designed to achieve compliance

with applicable securities laws and regulations and Exchange rules and that such a system of compliance and supervisory controls include written compliance and supervisory policies and procedures, and that each member organization shall amend its written compliance and supervisory policies and procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including Exchange rules, and as any changes occur in its compliance and supervisory systems.

- 7.4 During the period October 1, 2005 through September 30, 2007, Englander did not have adequate written supervisory procedures designed to achieve compliance with Exchange Rule 153(b) BARS requirements nor did the Firm have an adequate system of follow-up and review in place to verify that delegated authority and responsibility relating to Exchange Rule 153(b) BARS compliance was being properly exercised. As a result, the Firm failed to provide for appropriate supervisory control and failed to reasonably discharge its duties to ensure compliance with respect to the Exchange Rule 153(b) BARS requirements. Due to the Firm's compliance failures, its employees did not adequately comply with the BARS requirements of Exchange Rule 153(b), Exchange Rule 153, Commentary .01, Exchange Rule 30, and Exchange Notice 2004-57.
- 7.5 The conduct described in paragraph 7.4 constitutes the violation of Amex Rules 320(b), 320(c) and 320(e).

**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;
- (b) a fine of \$100,000 for the BARS violations and the related BARS supervision violation; and
- (c) an undertaking for Englander to revise the Firm's written supervisory procedures with respect to the areas described in paragraph 7.4. Within 30 business days of acceptance of this Stipulation by an Exchange Hearing Panel, a registered principal of Englander shall submit to the COMPLIANCE ASSISTANT, FINRA MARKET REGULATION – AMEX 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 paragraph 7.4; and, (3) the date the revised procedures were implemented.

The Respondent hereby acknowledges that a qualified representative of the firm has read carefully this Stipulation and understands all of the provisions contained herein; that the firm 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.

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.

AMERICAN STOCK EXCHANGE LLC

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

Agreed to this 16 day of January, 2008.

Emily R. Garber  
On behalf of Israel A. Englander & Co., Inc.  
EMILY R. GARBER