

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
of
GARGOYLE STRATEGIC
INVESTMENTS, L.L.C.

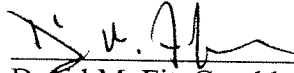
Case No. 05-520

[AMXC08022]

Hearing Officer – DMF

NOTICE OF DECISION

Enclosed is a copy of the decision of the Hearing Officer in this disciplinary proceeding, dated July 10, 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: July 10, 2008

Copies to: Gargoyle Strategic Investments, L.L.C. *(via overnight courier and first-class mail)*
Drew Hurni, Esq. *(via first-class mail)*
Brian F. Sklar, Esq. *(via electronic and first-class mail)*
Jocelyn Thrower *(via electronic and first-class mail)*

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER	:	Case No. 05-520
	:	[AMXC08022]
of	:	Hearing Officer – DMF
GARGOYLE STRATEGIC	:	DECISION
INVESTMENTS, L.L.C.	:	
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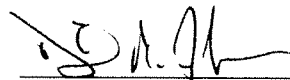
Pursuant to Article V, Section 2 of the Exchange Constitution and Rules 2(a) and (b) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings, this proceeding came before the Hearing Officer for review of the attached Stipulation and Consent to Penalty (Stipulation), which was entered 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 a Rule promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (SEC Rule), 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 SEC Rule 17a-5 and Exchange Rule 30 by failing to report on its March 31, 2005 Financial and Operational Combined Uniform Single (FOCUS) Report that its subordinated loans of \$3,000,000 and \$5,000,000 were scheduled to mature within six months following the report date—Respondent's second failure to report such information on a FOCUS Report in a two-year period;
2. Violated SEC Rule 17a-5 and Exchange Rule 443 by failing to submit its Annual Audit Report for the calendar year 2004 in an accurate and timely manner and by failing to submit its Annual Audit Reports for 2003 and 2005 in an accurate manner;
3. Violated SEC Rule 17a-5(f)(2) by failing to file a Designation of Accountant Notice for the calendar years 2002, 2003 and 2004; and
4. Violated Exchange Rule 320 by failing to establish and maintain appropriate policies, systems and procedures of supervision and control, including written supervisory procedures (WSPs), with respect to its financial reporting requirements until August 2005, and subsequently failing to properly implement its procedures once they were established.

In accordance with the Stipulation, for these violations, Respondent is censured and fined \$35,000.

SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: Gargoyle Strategic Investments, L.L.C. (*via overnight courier and first-class mail*)
Drew Hurni, Esq. (*via first-class mail*)
Brian F. Sklar, Esq. (*via electronic and first-class mail*)
Jocelyn Thrower (*via electronic and first-class mail*)

EXHIBIT A

RECEIVED

JUN 02 2008

Disciplinary Panel
American Stock Exchange LLC

<p>IN THE MATTER OF GARGOYLE STRATEGIC INVESTMENTS, L.L.C.</p>	<p>STIPULATION OF FACTS AND CONSENT TO PENALTY Case No. 05-520</p>
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This proceeding was instituted by the American Stock Exchange LLC (the "Exchange" or "Amex") against Gargoyle Strategic Investments, L.L.C. ("Gargoyle," the "Respondent" or the "Firm")(CRD # 43238), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with Gargoyle 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 Exchange Rules and 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 acknowledges that the hearing officer's acceptance of this Stipulation

may not be appealed by the parties, will become part of the Firm's disciplinary record and may be considered in any future proceeding brought by the Exchange.

STATEMENT OF FACTS:

- 1.0 During all relevant periods herein, Gargoyle was a Regular Member Organization of the Amex.
- 1.1 During all relevant periods herein, the Amex was the designated examining authority for Gargoyle, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Exchange Act").
- 1.2 During all relevant periods herein, Gargoyle's principal place of business was located in Englewood, New Jersey.
- 1.3 As of June 2004, FINRA (f/k/a NASD) Market Regulation - Amex Division (the "Division") was an authorized representative of the Exchange.

Background

- 2.0 On or about May 9, 2005, the Financial Regulation Department ("FRD") of FINRA Market Regulation – Amex Division began to review Gargoyle's Annual Audit Report for the calendar year of 2004 and also commenced a routine examination of the Firm's books and records, including its FOCUS Reports, covering the period of January 1, 2004 through March 31, 2005.
- 2.1 At the conclusion of FRD's reviews, FRD determined that several of the deficiencies identified were similar to violations that Gargoyle was advised of by FRD in connection with prior reviews of its financial reports.
- 2.2 On July 31, 2005, FRD sent the Firm a deficiency letter advising of deficiencies identified in the course of its review, including the Firm's failure to: 1)

appropriately and timely file its FOCUS and Annual Audit Reports; 2) file the Designation of Accountant Notice; and 3) provide for adequate supervision to ensure compliance with the requirement to timely and accurately file its Annual Audit and FOCUS Reports.

Gargoyle Violations

FOCUS Report

- 3.0 During all relevant periods herein, Rule 17a-5 under the Exchange Act (“SEC Rule 17a-5”), in part, required members of a national securities exchange to file Part IIA of Form X-17A-5 (“FOCUS Report”) in accordance with the requirements described in SEC Rule 17a-5 with the self-regulatory organization designated by the Securities and Exchange Commission with responsibility for examining such member for compliance with applicable financial responsibility rules. The FOCUS Report specifically indicates that broker-dealers are required to list ownership equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months.
- 3.1 During all relevant periods herein, Exchange Rule 30 required member organizations to file with the Exchange certain periodic or special reports at such time and in such form as the Exchange may prescribe.
- 3.2 Gargoyle failed to report on its March 31, 2005 FOCUS Report that its subordinated loans of \$3,000,000 and \$5,000,000 were scheduled to mature on August 31, 2005, or within six months following the FOCUS report date. While the Firm incorporated the amounts of these subordinated loans in its net capital computation on the FOCUS Report, the FOCUS Report specifically indicates that

broker-dealers are required to list ownership equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months.

- 3.3 The failure noted in paragraph 3.2 was the second time in a two year period that the Firm failed to report such information on its FOCUS Report. The Firm was previously advised of a similar violation on July 15, 2003 with respect to its March 31, 2003 FOCUS Report.

Annual Audit Report

- 3.4 During all relevant periods herein, SEC Rule 17a-5, in part, required certain specified registered brokers or dealers to file annually with the regional or district office of the Securities and Exchange Commission (“SEC”) for the region or district in which the broker or dealer has its principal place of business, the SEC’s principal office in Washington, DC, and the principal office of the designated examining authority for the broker or dealer, a report audited by an independent public accountant that is prepared in accordance with the requirements specified in SEC Rule 17a-5, and to file the Annual Audit Report not more than 60 days after the date of the financial statements.
- 3.5 During all relevant periods herein, Exchange Rule 443 required certain specified member organizations to file an annual audit of its financial statements (“Annual Audit Report”) prepared by an independent public accountant in accordance with the requirements of the Securities Exchange Act of 1934 and the rules thereunder.
- 3.6 Gargoyle failed to file its required Annual Audit Report for the calendar year 2004 with the Exchange or with the North East Regional Office (“NERO”) of the SEC in a timely manner. The Firm filed its 2004 Annual Audit Report with the

Exchange and NERO on May 9, 2005, or 48 business days after the March 1, 2005 required filing date.

- 3.7 Gargoyle's 2004 Annual Audit Report was deficient in that it: 1) included an inaccurate balance sheet that was not prepared on a consistent basis with its December 31, 2004 FOCUS Report, notably that it reflected materially less assets and liabilities because it improperly netted and commingled clearing firm balances and securities valuations; 2) included an inaccurate footnote that indicated that a \$9,000,000 repayment of subordinated loans occurred during 2004, when this repayment actually occurred in 2003; and 3) failed to indicate that the conditions of the Firm's exemption from Rule 15c3-3 under the Exchange Act¹ ("Rule 15c3-3") were being complied with as of the examination date and that no facts came to the auditor's attention to indicate that the exemption had not been complied with during the period since the last examination.
- 3.8 On July 31, 2005, FRD sent a letter to the Firm describing the deficiencies noted in paragraphs 3.6 and 3.7.
- 3.9 The deficiencies noted in paragraph 3.7 were similar to the deficiencies that the Firm was previously advised of on March 16, 2004 with respect to the accuracy of its 2003 Annual Audit Report.
- 3.10 On or about March 13, 2006, FRD commenced a review of the Firm's Annual Audit Report for the calendar year of 2005.
- 3.11 On March 23, 2006, FRD sent Gargoyle a deficiency letter identifying numerous deficiencies contained in the Firm's 2005 Annual Audit Report that were not

¹ Rule 15c3-3 requires the independent public accountant to ascertain whether the conditions of the exemption were being complied with as of the examination date and whether any facts came to his attention to indicate that the exemption had not been complied with during the period since his last examination.

present in the previous Annual Audit Reports of 2003 and 2004, but were violative of SEC Rule 17a-5. This letter represented the third consecutive year in which FRD informed the Firm of deficiencies with respect to the accuracy of its Annual Audit Reports. FRD also determined that Gargoyle submitted its 2005 Annual Audit Report to the Amex seven business days after its due date of March 1, 2006.²

3.12 On or about March 2, 2007, FRD commenced a review of the Firm's Annual Audit Report for the calendar year of 2006.

3.13 Gargoyle submitted its 2006 Annual Audit Report to the Amex one business day after its due date of March 1, 2007.³ Gargoyle's late filing of the 2006 Annual Audit Report represented three consecutive years of late financial submissions to the Amex.

Designation of Accountant Notice

3.14 During all relevant periods herein, Rule 17a-5(f)(2) under the Exchange Act ("SEC Rule 17a-5(f)(2)") required certain specified broker or dealers to file a statement ("Designation of Accountant Notice") no later than December 10 of each year indicating the existence of an agreement with an independent public accountant covering a contractual commitment to conduct the broker's or dealer's Annual Audit during the following calendar year.

² The Exchange issued Gargoyle a Minor Rule Violation ("MRV") Disciplinary Notice, pursuant to Exchange Rule 590 Part 3(g), on March 16, 2006 in the amount of \$350 for filing its 2005 Annual Audit Report seven days late. The MRV Disciplinary Notice did not account for the 2005 Annual Audit Report's inaccuracies. As such, the discussion in this Stipulation of Gargoyle's failure to file the 2005 Annual Audit Report in a timely manner relates to the Firm's overall supervisory failure to ensure that its Annual Audit Reports were filed in an accurate and timely manner, as discussed in paragraphs 3.16 through 3.20 below.

³ The Exchange issued Gargoyle a MRV Disciplinary Notice on March 7, 2007 in the amount of \$50 for filing its 2006 Annual Audit Report one day late. As such, the discussion in this Stipulation of Gargoyle's failure to file the 2006 Annual Audit Report in a timely manner relates to the Firm's overall supervisory failure to ensure that its Annual Audit Reports were filed in a timely manner, as discussed in paragraphs 3.16 through 3.20 below.

3.15 Gargoyle failed to file a Designation of Accountant Notice for the calendar years ending 2002, 2003 and 2004.

Supervision

3.16 During all relevant periods herein, Exchange Rule 320 required member organizations to develop, maintain and implement a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to ensure compliance with respect to applicable securities rules and regulations.

3.17 During the period of January 2002 through July 2005, Gargoyle failed to establish or maintain WSPs reasonably designed to achieve compliance with its Annual Audit and corresponding filing requirements, including the appropriate filing of the Designation of Accountant Notice, as set forth in paragraphs 3.4 through 3.15 above.⁴ As such, the Firm failed to provide for appropriate supervisory controls and to reasonably discharge its duties to ensure compliance with all of its financial reporting requirements for the years 2002, 2003 and 2004.

3.18 The Firm updated its WSPs in August 2005 to include procedures reasonably designed to achieve compliance with applicable financial reporting requirements.

3.19 However, the Firm failed to properly implement the updated procedures described in paragraph 3.18 to ensure that its 2005 and 2006 Annual Audits were conducted and submitted in compliance with applicable regulatory requirements, as set forth in paragraphs 3.10 through 3.13, above.

3.20 Despite receiving notifications from the Exchange of deficiencies regarding its Annual Audit Reports on March 16, 2004, July 31, 2005, and March 23, 2006,

⁴ Given that the violations exhibited in Gargoyle’s 2003 and 2005 FOCUS Reports (noted in paragraphs 3.0 through 3.3 above) were narrow in scope, and the Firm has historically filed otherwise compliant FOCUS Reports, Enforcement determined that the Firm’s inaccuracies did not constitute a supervisory violation.

Gargoyle exhibited continued deficiencies with respect to its Annual Audit Reports and thus failed to properly supervise this area of its business.

CONCLUSION:

By reason of the foregoing Stipulated Facts, a Hearing Officer may conclude that:

- 4.0 Gargoyle violated SEC Rule 17a-5 and Exchange Rule 30 by failing to report on its March 31, 2005 FOCUS Report that its subordinated loans of \$3,000,000 and \$5,000,000 were scheduled to mature within six months following the report date, as set forth in paragraphs 3.0 through 3.3.
- 4.1 Gargoyle violated SEC Rule 17a-5 and Exchange Rule 443 by failing to submit its 2004 Annual Audit Report in an accurate and timely manner and failing to submit its 2003 and 2005 Annual Audit Reports in an accurate manner, as set forth in paragraphs 3.4 through 3.11.
- 4.2 Gargoyle violated SEC Rule 17a-5(f)(2) by failing to file a Designation of Accountant Notice for the calendar years ending 2002, 2003 and 2004, as set forth in paragraphs 3.14 and 3.15.
- 4.3 Gargoyle violated Exchange Rule 320 by failing to establish and maintain appropriate policies, systems and procedures of supervision and control, including WSPs, with respect to its financial reporting requirements until August 2005, and subsequently failing to properly implement its procedures once they were established, as set forth in paragraphs 3.16 through 3.20.

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 fine in the amount of \$ 35,000.

The Respondent hereby acknowledges that he has read carefully this Stipulation and understands all of the provisions contained herein; that he 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 on a Charge Memorandum as provided by Exchange rules.

Further, the Respondent hereby agrees that he 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 28th day of MAY, 2008.

Bruce T. Rozoff
On behalf of Gargoyle Strategic Investments, L.L.C.
BRUCE T. ROZOFF