

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
MARK HANLEY

Case Nos. 04-214 and 05-115

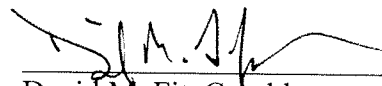
[AMXC08024]

**Hearing Officer – DMF**

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**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.



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David M. FitzGerald  
Hearing Officer

Dated: August 25, 2008

Copies to: Mark Hanley (*via overnight courier and first-class mail*)  
Jeffrey Plotkin, Esq. (*via first-class mail*)  
Charles Falgie, Esq. (*via electronic and first-class mail*)  
Joycelyn Thrower (*via electronic and first-class mail*)

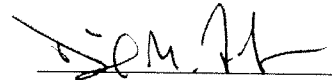


Options Linkage System (OLS), he sold, as principal, ahead of said customer order prior to Specialist A's transmission;

2. Violated Exchange Rule 111(d) on January 11, 2005, when, while knowing that Specialist A intended to partially fill a customer purchase order through OLS, he purchased, as principal, ahead of said customer order prior to Specialist A's transmission; and
3. Violated Article V, Section 4(h) of the Exchange Constitution on July 15, 2004 and January 11, 2005, in that his conduct was inconsistent with just and equitable principles of trade.

In accordance with the Stipulation, for these violations, Respondent is censured and fined \$7,000.

**SO ORDERED.**

  
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David M. FitzGerald  
Hearing Officer

Copies to: Mark Hanley (*via overnight courier and first-class mail*)  
Jeffrey Plotkin, Esq. (*via first-class mail*)  
Charles Falgie (*via electronic and first-class mail*)  
Joycelyn Thrower (*via electronic and first-class mail*)

# **EXHIBIT A**

Disciplinary Panel  
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
MARK HANLEY	X	CONSENT TO PENALTY
	X	Case Nos. 04-214 and 05-115
	X	
.....	X	

This proceeding was instituted by the American Stock Exchange, LLC (“the Exchange” or “Amex”) against Mark Hanley (“Hanley” or the “Respondent”) (CRD No. 1178368), a former Member of the Exchange (“Amex” or “the Exchange”) and former employee of Talking Horse, LLC (CRD No. 124222) (“TH” or “the Firm”), a former Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty (“Stipulation”) is entered into with Hanley pursuant to Article V, Section 2 of the Exchange Constitution, in order to settle and conclude all disciplinary actions brought by the Exchange against Hanley 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 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. 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 Respondent's disciplinary record and may be considered in any future proceeding brought by the Exchange.

**STIPULATED FACTS:**

- 1.1 At all times relevant herein, TH was a Regular Member Organization of the Exchange.
- 1.2 During all relevant periods herein, Hanley was a Member of the Exchange, was employed as a Registered Options Trader ("ROT") with TH and acted as a Market Maker on the Exchange Trading Floor while trading in a Firm proprietary account.
- 1.3 According to the Central Registration Depository System, Hanley terminated his Exchange membership effective November 22, 2006 by filing a Form U5 - Uniform Termination Notice for Securities Industry Registration. Jurisdiction was retained over Hanley pursuant to a certified jurisdiction letter dated January 10, 2007, and for which a signed return receipt was received by the Exchange. TH terminated its Exchange membership on March 8, 2007.
- 2.0 During all relevant periods herein, Hanley was subject to Exchange Rule 111(d), which prohibited a ROT from retaining priority over an off-Floor order when establishing or increasing a position for an account in which he has an interest, while on the Floor of the Exchange.
- 2.1 During all relevant periods herein, Hanley was subject to Article V, Sec. 4 (h) of the Exchange Constitution, which prohibited any member from conduct or proceeding inconsistent with just and equitable principles of trade.

## **BACKGROUND OF HANLEY'S TRADING VIOLATIONS**

### **Trading Violation in Product A – July 15, 2004 (“Relevant Period 1”):**

- 3.0 During Relevant Period 1, Firm A was a Regular Member organization of the Exchange.
- 3.1 During Relevant Period 1, Product A was an option listed for trading on the Exchange.
- 3.2 During Relevant Period 1, Specialist A was an employee of Firm A and was a specialist in Product A on the Trading Floor of the Exchange.
- 3.3 On July 15, 2004, at 10:18:58 a.m., the Exchange market in Product A Aug 85 calls was 0 -.20 (54 x 100).
- 3.4 At 10:39:20 a.m., Specialist A received an electronic market order from a public customer to sell 100 Product A Aug 85 calls. At the time of the receipt of the order, the Exchange market was still at 0 -.20, (54 x 100). However, at this same time, the market on the Pacific Stock Exchange (“Pacific”) was .15 - .30 (5 x 10).
- 3.5 Specialist A announced to the Exchange trading crowd that since the best bid in Product A was on the Pacific, he was going to transmit the customer order through the Options Linkage System (“OLS”) in an attempt to sell five contracts for the customer on the Pacific at .15, and then sell the remaining 95 contracts on the Exchange at a price below .15.
- 3.6 Subsequent to Specialist A’s announcement to the Exchange trading crowd, but prior to Specialist A transmitting the customer order to the Pacific, Hanley, using his proprietary trading system, placed an order on the Pacific to sell five

- Product A Aug 85 calls at .15. Hanley's order was executed at 10:40:21 a.m. at a price of .15.
- 3.7 Specialist A, who had transmitted the customer's sell order to the Pacific at 10:40:25 a.m., received a rejection of the order at 10:40:28 a.m.
- 3.8 At 10:42:38 a.m., after receiving the rejection from the Pacific, Specialist A, using the OLS, transmitted the customer's order to sell 5 Product A Aug 85 calls at .10 to the International Securities Exchange ("ISE"), where the market was .10 - .25 (5x71), and received a full execution at 10:43:13 a.m.
- 3.9 At 10:43:15 a.m., the remaining 95 contracts of the customer order to sell Product A Aug 85 calls were executed on the Exchange at a price of .05. Hanley, who had just sold five contracts at .15, participated on the contra-side of the remainder of the customer order, purchasing a total of 14 Product A Aug 85 call contracts at .05 while standing in the Product A trading crowd.
- 3.10 On July 15, 2004, subsequent to the filling of the customer order to sell 100 Product A Aug 85 calls, Specialist A was in the process of requesting of Exchange Floor Supervisor B to review why Specialist A had received a rejection on his original OLS order. At this time, Hanley approached Specialist A and informed him that he was the person who sold the five Product A Aug 85 call contracts on the Pacific, and that he was willing to give the .15 sale on the five contracts to Specialist A's public customer.
- 3.11 On July 15, 2004, at approximately 12:20 p.m., a price change was processed for Specialist A's customer, thus giving the customer the price of .15 on five of the Product A Aug 85 calls.

**Trading Violation in Product B – January 11, 2005 (“Relevant Period 2”):**

- 4.0 During Relevant Period 2, Firm B was a Regular Member organization of the Exchange.
- 4.1 During Relevant Period 2, Product B was an option listed for trading on the Exchange.
- 4.2 During Relevant Period 2, Specialist A was an employee of Firm B and was a specialist in Product B on the Trading Floor of the Exchange.
- 4.3 On January 11, 2005, at 10:31:59 a.m., the National Best Bid and Offer (“NBBO”) in Product B Jan 90 puts was .70 -.80 (230 x 103), with the Exchange as the best bid and the ISE as the best offer.
- 4.4 At 10:32:02 a.m., while this market was still displayed, the specialist book for Product B received an electronic order from a public customer to buy 500 Product B Jan 90 puts at .90.
- 4.5 At 10:32:44 a.m., the NBBO in Product B Jan 90 puts remained .70 - .80 with the Amex as the best bid for the same size but with the ISE offer decreasing (230 x 55).
- 4.6 Thereafter, Specialist A announced to the trading crowd that he was transmitting to the ISE an order to purchase 55 contracts for the customer at .80, and then would purchase the remaining 445 contracts on the Exchange.
- 4.7 Subsequent to Specialist A’s announcement of the order to the trading crowd, Hanley, using his proprietary trading system, placed an order on the ISE to purchase 55 Product B Jan 90 puts at .80 and received an execution at 10:32:54 a.m.

- 4.8 After Hanley's order had been executed, Specialist A's order to purchase 55 Product B Jan 90 puts at .80 to partially fill the customer order on the ISE was rejected at 10:34:09 a.m.
- 4.9 Specialist A, then queried the trading crowd regarding who had received the execution. At this point Hanley stated that he received an execution of his order prior to Specialist A's transmitting the customer order to the ISE. After discussing his actions with Specialist A, Hanley stated that he would give the .80 purchase on the contracts to Specialist A's customer.
- 4.10 Subsequently, the 55 contracts for which Hanley had received an execution were sold to Specialist A's customer on the Exchange at .80. Thus, neither of Specialist A's customers at issue ultimately suffered any unreimbursed losses.

**CONCLUSION:**

- By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:
- 5.0 On July 15, 2004, Hanley violated Exchange Rule 111(d) when, while knowing that Specialist A intended to partially fill a customer sell order through OLS, he sold, as principal, ahead of said customer order prior to Specialist A's transmission, as described in above paragraphs 3.0 through 3.11.
- 5.1 On January 11, 2005, Hanley violated Exchange Rule 111(d) when, while knowing that Specialist A intended to partially fill a customer purchase order through OLS, he purchased, as principal, ahead of said customer order prior to Specialist A's transmission, as described in above paragraphs 4.0 through 4.10.

5.2 On July 15, 2004 and January 11, 2005, Hanley violated Article V, Sec. 4(h) of the Exchange Constitution, in that his conduct as described in above paragraphs 3.0 through 3.11 and 4.0 through 4.10 was inconsistent with just and equitable principles of trade.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty upon Hanley:

- (a) a censure; and
- (b) a fine of \$7,000.

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 agrees that he may not take any action or may not 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.

Also, 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.

Further, it is also understood and agreed that in any written submission to or proceeding before any person reviewing and/or body convened to consider this Stipulation (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 penalties, nor shall either party ask for the imposition of any penalties other than those agreed upon in this Stipulation.

Finally, by signing this stipulation, the Respondent understands and acknowledges that Amex Rule 341A, which concerns the continuing education requirements for registered persons, requires him to re-take the Regulatory Element of the Continuing Education Program within 120 days from when this disciplinary action becomes final. If the Respondent does not complete the Regulatory Element of the Continuing Education Program within the prescribed time frame, his registration will be deemed inactive until such time as the requirements of the program have been satisfied. The Respondent understands and acknowledges that if his registration has been deemed inactive under Rule 341A, he must cease all activities as a registered person.

ON BEHALF OF:  
AMERICAN STOCK EXCHANGE LLC

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

Agreed to this 14<sup>th</sup> day of July, 2008.

Mark Hanley  
Mark Hanley