

**Disciplinary Panel  
NYSE Alternext US LLC<sup>1</sup>**

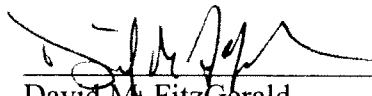
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| IN THE MATTER               | : | Case No. 06-225       |
| of                          | : | [AMXC08029]           |
| ROBERT G. PEARS & CO., INC. | : | Hearing Officer – DMF |
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**NOTICE OF DECISION**

Enclosed is a copy of the decision of the Hearing Officer in this disciplinary proceeding, dated October 24, 2008 (“Decision”). Under Rule 476(g), this Decision will become the final decision of NYSE Alternext US, LLC 25 days after service of the Decision upon you unless the NYSE Regulation Committee or the Exchange Board of Directors calls the Decision for review. Pursuant to Rule 478T, Temporary Procedures Governing Legacy Disciplinary Proceedings, 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: October 24, 2008

Copies to: Robert G. Pears & Co., Inc. *(via overnight courier and first class mail)*  
D. Christopher Walker, Esq. *(via electronic and first-class mail)*  
Jocelyn Thrower *(via overnight courier and electronic mail)*  
Mary Yeager *(via overnight courier and electronic mail)*

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<sup>1</sup> Effective October 1, 2008, the corporate successor to the American Stock Exchange is NYSE Alternext US, LLC.

**Disciplinary Panel  
NYSE Alternext US LLC<sup>1</sup>**

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|                             | : | [AMXC08029]           |
| of                          | : | Hearing Officer – DMF |
| ROBERT G. PEARS & CO., INC. | : | <b>DECISION</b>       |
|                             | : | October 24, 2008      |
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|                             | : |                       |

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Pursuant to Rule 478T, Temporary Procedures Governing Legacy 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 NYSE Alternext US, LLC 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 Memorandum in Support of Proposed Settlement, the Hearing Officer hereby accepts the Stipulation, and accordingly finds that Respondent:

1. Violated Exchange Rule 153(b) on at least 10 occasions during the period October 1, 2005 through December 31, 2005 by failing to enter

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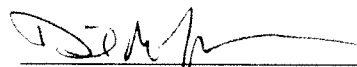
<sup>1</sup> Effective October 1, 2008, the corporate successor to the American Stock Exchange is NYSE Alternext US, LLC.

an equity order or the equity order's execution into the Exchange's Booth Automated Routing System (BARS); and

2. Violated Exchange Rules 320(b), (c), and (e) during the period October 1, 2005 through December 31, 2005 by: (a) failing to have adequate written supervisory procedures designed to achieve compliance with Rule 153(b) BARS requirements; (b) failing to have an adequate system of follow-up and review in place to verify that delegated authority and responsibility relating to Rule 153(b) BARS compliance was being properly exercised; and (c) failing to provide for appropriate supervisory control and to reasonably discharge its duties to ensure compliance with respect to the Rule 153(b) BARS requirements.

In accordance with the Stipulation, for these violations, Respondent is censured and fined \$8,000 for the BARS violations and the related BARS supervision violation.

**SO ORDERED.**



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David M. FitzGerald  
Hearing Officer

Copies to: Robert G. Pears & Co., Inc. *(via overnight courier and first class mail)*  
D. Christopher Walker, Esq. *(via electronic and first-class mail)*  
Jocelyn Thrower *(via overnight courier and electronic mail)*  
Mary Yeager *(via overnight courier and electronic mail)*

# **EXHIBIT A**

Disciplinary Panel  
American Stock Exchange LLC

IN THE MATTER  
OF  
ROBERT G. PEARS & CO., INC.

**STIPULATION OF FACTS AND  
CONSENT TO PENALTY**

Case Nos. 06-225

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange” or “Amex”) against Robert G. Pears & Co., Inc. (“Pears”, “Respondent”, or the “Firm”)(CRD# 32215), formerly a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty (“Stipulation”) is entered into with Pears pursuant to Article V, Section 2 of the Exchange Constitution, for the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and 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 (“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, Pears was a Regular Member organization of the Exchange.
- 1.1 On or about March 3, 2008, Pears terminated its membership with the Exchange.
- 1.2 On July 24, 2008, jurisdiction was retained over Pears by letter that was delivered by first class mail and certified mail.
- 2.0 At all relevant times herein, Exchange Rule 153(b) provided that every member organization must 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 must include the name, amount and price of the security and the time when such order, modification or cancellation was received. Additionally, with respect to orders that are eligible for input into the Exchange's electronic order processing facilities, member organizations must comply with their record keeping obligations under the 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, Amex Notice 2004-57, dated December 21, 2004, provided that in addition to immediately inputting into BARS all equity orders, floor brokers must promptly enter into BARS all order executions.
- 2.2 At all relevant times herein, Exchange Rule 30 provided that every member organization must file with the Exchange such periodic or special reports as the

Board of Governors authorized. Additionally, such periodic or special reports filed with the Exchange must be timely and in the proper form.

2.3 At all relevant times herein, Exchange Rule 320(b) provided that each office, department or business activity of a member organization must be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility. Additionally, the person in charge of a group of employees must 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.

2.4 At all relevant times herein, Exchange Rule 320(c) provided that member organizations provide for appropriate supervisory control and that the member organization must designate a general partner, principal executive officer, or trustee (the “designated person”) to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations and Exchange Rules. Additionally, this designated person must 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 must establish a separate system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.

2.5 At all relevant times herein, Exchange Rule 320(e) provided that member organizations having employees must 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. Additionally, Exchange Rule 320(e) provided that such a system of compliance and supervisory controls must include written compliance and supervisory policies and procedures and that each such member organization must 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.

### **3.0 Equity Volume BARS Violations**

- 3.1 At all relevant times herein, Exchange Rule 153(b), combined with Exchange Rule 30, 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 the Exchange's BARS system. Additionally, at all relevant times herein, Amex Notice 2004-57, dated December 21, 2004, provided that in addition to immediately inputting into BARS all equity orders, floor brokers must promptly enter into BARS all order executions.
- 3.2 On at least 10 separate occasions during the period of October 1, 2005 through December 31, 2005, Pears failed to enter an equity order or the equity order's execution into BARS (Amex Case No. 06-225).
- 3.3 The conduct described in paragraph 3.2 constitutes separate and distinct violations of Exchange Rules 153(b).

#### **4.0 Supervision**

- 4.1 During all relevant periods herein, Exchange Rule 320(b) provided 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.
- 4.2 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.
- 4.3 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.

4.4 During the period October 1, 2005 through December 31, 2005, Pears 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 such, 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, employees of the Firm failed to adequately comply with the BARS policies of Exchange Rule 153(b).

4.5 The conduct described in paragraph 4.4 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; and
- (b) a fine of \$8,000 for the BARS violations and the related BARS supervision violation.

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 (including any reviewing person or body authorized by the Amex Constitution and/or Rules), neither the Exchange 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 penalty (including arguing that no penalty should be imposed) other than that agreed upon in this Stipulation.

AMERICAN STOCK EXCHANGE LLC

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

Agreed to this 21 day of Aug, 2008.

Robert A. Pears  
On behalf of Robert G. Pears & Co., Inc.