

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that:

- 1.) Fuller violated Exchange Rule 958A by failing to execute a customer market order to sell 10 PVN Jan 55 calls when the order was executable, as set forth in paragraphs 1.4 through 1.7 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose a \$4,000 fine for the above misconduct. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

The Disciplinary Panel further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.¹

¹ Rule 12 exempts from publicity those cases where the Panel finds that the offense "related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors." Those exemptions do not apply to the facts of this case.

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes a fine of \$4,000 upon Fuller.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: December 24, 2003
Washington, DC

Copies to: Michael D. Pierson, Esq. (*via facsimile and first class mail*)
Paula A. Bosco, Esq. (*via facsimile, electronic mail and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
MICHAEL FULLER	X	CONSENT TO PENALTY
.....	X	Case No. 03-34

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against MICHAEL FULLER (“Fuller”) (CRD # 2364587), a regular member of the Exchange and registered Specialist on the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Fuller pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Fuller based upon or arising out of the facts hereinafter stipulated. Fuller, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Constitution and Rules and to the imposition of the penalties hereinafter provided. Fuller understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision that may not be appealed by the parties. Fuller understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

STATEMENT OF FACTS

- 1.0 During all relevant periods herein, LETCO Specialists, LLP (“LETCO”) was a regular member organization of the Exchange.
- 1.1 During all relevant periods herein, Fuller was registered with the Exchange as a Specialist and was actively engaged as a member of LETCO on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Exchange Rule 958A provided:
- (a) Firm Quotes. At all times other than during rotation, a specialist is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading. Options series that are subject to this rule shall be determined from time to time at the discretion of the Exchange. A Floor Official may determine on a case-by-case basis that an exception to this rule is warranted for, among other things, a change in market conditions, an obvious error occurring in the posting of the display market quote due to reporter errors or system malfunctions.
- 1.3 During its routine surveillance of exceptions to a computer generated report of possible firm quote violations, the Exchange’s Derivative Trading Analysis Department (“DTA”) discovered that on January 5, 2001 (the “Trade Date”), Fuller failed to honor his quoted market with respect to a customer’s market order to sell 10 PVN¹ Jan 55 calls.
- 1.4 At 9:48:49 a.m. on the Trade Date, the customer placed an order to sell 10 PVN Jan 55 calls at the market.
- 1.5 At 10:22 a.m., the first quote for the day in PVN opened at $3\frac{1}{2}$ - $3\frac{7}{8}$. However, Fuller failed to execute the customer’s market order at that time at a price of $3\frac{1}{2}$.
- 1.6 At 10:23 a.m., Fuller requoted the market five (5) times², but continued to fail to execute the customer’s market order.

¹ Denotes the option symbol for Providian Financial Corporation.

² The requotes at 10:23, in order, were $3\frac{3}{8}$ - $3\frac{3}{4}$, then $3\frac{1}{4}$ - $3\frac{5}{8}$, then $3\frac{1}{8}$ - $3\frac{1}{2}$, then 3 - $3\frac{3}{8}$, and then $3\frac{1}{8}$ - $3\frac{1}{2}$.

- 1.7 At 10:24, Fuller again requoted the market an additional four (4) times, without filling the customer's market order.³ Thus, the customer was entitled to, but failed to receive, an execution on at least nine (9) occasions from the time the stock opened at 10:22 a.m.
- 1.8 At 10:24:49, approximately thirty-six (36) minutes after the initial market order was placed, and nearly three (3) minutes after the stock opened, 10 contracts traded at $3 \frac{1}{4}$, filling the customer's order, but, as stated in paragraph 1.5 above, at $\frac{1}{4}$ point less than what the order was entitled. The specialist bought 5 contracts, and a trader in the crowd bought the remaining 5 contracts.
- 1.9 On March 2, 2001, when DTA first brought the matter to Fuller's attention, Fuller stated he was unaware of the incorrect execution price. Fuller also stated that he believed at the time of the trade that the order may not have been placed by a customer, and thus he was reluctant to issue an adjustment. DTA advised Fuller of his obligation to treat the order as presented, and to inquire about the status of the customer afterward. Fuller then issued an adjustment check to the customer for the difference ($3 \frac{1}{2} - 3 \frac{1}{4} \times 10 \times \$100 = \$250$).

CONCLUSION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 2.0 Fuller violated Exchange Rule 958A by failing to execute a customer market order to sell 10 PVN Jan 55 calls when the order was executable, as set forth in paragraphs 1.4 through 1.7.

³ The requotes at 10:24, in order, were $3 \frac{1}{4} - 3 \frac{5}{8}$, then $3 \frac{3}{8} - 3 \frac{3}{4}$, then $3 \frac{1}{4} - 3 \frac{5}{8}$, then $3 \frac{1}{2} - 3 \frac{7}{8}$.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Fuller:

- (a) a fine in the amount of \$4,000.

AMERICAN STOCK EXCHANGE LLC

By: _____
David Rosenstein
Vice President

Agreed to on this _____ day of November 2003.

Michael Fuller