

**Disciplinary Panel
American Stock Exchange LLC**

	:	
	:	Case No. 02-39
IN THE MATTER OF	:	Hearing Officer – JN
OF	:	
JOSEPH R. GUISSARI	:	Disciplinary Panel Decision
	:	December 29, 2003

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Commentary .03 to Exchange Rule 950(c), Commentary .03 to Exchange Rule 950(d), and Article V, Section 4(h) of the Exchange Constitution, and as a penalty imposed a censure and a fine of \$15,000 for the violations.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Joseph R. Guissari (“Guissari”), a Regular Member of the Exchange. A Disciplinary Panel held a hearing on December 17, 2003, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Guissari entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Guissari based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Guissari, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

III. Violation

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

- 1.) Guissari violated Commentary .03 to Exchange Rule 950(c), Commentary .03 to Exchange Rule 950(d), and Article V, Section 4(h) of the Exchange Constitution, in that he failed to properly inform the members of the trading crowd that an order that he announced to the crowd was “solicited” rather than “facilitated,” thereby denying members of the trading crowd a reasonable opportunity to accept the bid or offer prior to Guissari crossing part of the originating order with the solicited party, as set forth in paragraphs 3.0 through 3.1 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose (a) a censure and (b) a fine of \$25,000 for the violation as described above. 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 Panel concludes that the appropriate fine is \$15,000.

The Panel recognizes the seriousness of the violation (order misrepresentation), conduct which “den[ies] other traders an equal opportunity to participate...,”¹ and Respondent’s prior involvement in similar misconduct, for which the firm was prosecuted in Englander. However, there are countervailing circumstances. Respondent acknowledged his error during the hearing and showed genuine remorse. The instant case involved but one instance of misconduct, which Guissari attributed to a misunderstood telephone call. Enforcement stated that it had no evidence that the misrepresentation was intentional, and the Panel finds no basis for a belief that Respondent intended to confer an advantage on the firm or himself. Finally, Respondent’s firm

¹ Israel A. Englander & Co., Inc., Amex Disciplinary Panel Decision (No. 02-01, October 21, 2002), p. 3.

already terminated Guissari, producing a period of unemployment. In considering all of the circumstances, the Panel, acting pursuant to Article V, Section 2 of the Exchange Constitution, concludes that the proposed fine should be reduced from \$25,000 to \$15,000.²

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.³

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 censure and a fine of \$15,000 upon Guissari.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: December 29, 2003
Washington, DC

Copies to: Joseph Guissari (*via overnight and first class mail*)
Eric S. Brown, Esq. (*via facsimile, electronic mail and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

² Under that provision, the Panel may “impose the penalty agreed to in such stipulation and consent or any lesser penalty.”

³ 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.

Disciplinary Panel
American Stock Exchange LLC

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X
IN THE MATTER X STIPULATION OF FACTS
OF X AND
JOSEPH R. GUISSARI X CONSENT TO PENALTY
X Case No. 02-39
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against JOSEPH R. GUISSARI (“Guissari”) (CRD # 1616575), a Regular Member of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Guissari pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Guissari based upon or arising out of the facts hereinafter stipulated. Guissari, 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 Federal Securities Laws and to the imposition of the penalties hereinafter provided. Guissari 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 which may not be appealed by the parties. Guissari 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.

STIPULATED FACTS

- 1.0 During all relevant periods herein, Guissari worked as a floor broker on the Exchange Floor for Firm X, a Regular Member organization of the Exchange engaged in two-dollar¹ brokerage business.
- 2.0 During all relevant periods herein, Exchange Rule 950(c), Commentary .03 provided that all option orders of broker/dealers must be appropriately identified.
- 2.1 During all relevant periods herein, Exchange Rule 950(d), Commentary .03 provided, in pertinent part:

A member or member organization representing an order in options (“originating order”) may solicit another member, member organization or non-member broker dealer outside the trading crowd (“solicited party”) to participate in the transaction on a proprietary basis provided the member or member organization, upon entering the trading crowd to execute the transaction announces to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party and bids at the price he is prepared to sell to the solicited party.

After all other market participants are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders stating the quantity and price. Non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowds will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.

All orders subject to solicitation pursuant to this Commentary, and all tickets reflecting orders solicited pursuant to this Commentary, must be marked as specified by the Exchange.

- 2.4 During all relevant periods herein, Guissari was subject to Article V, Section 4(h) of the Exchange Constitution, which provided that a member, member

¹ A two-dollar broker is a floor broker who executes orders for any organization. They receive a negotiated commission rate varying with the dollar value of the transaction.

organization or approved person who or which shall be adjudged guilty in a proceeding under this Article of a violation of the Constitution of the Exchange, of a violation of a rule adopted pursuant to the Constitution, of a violation of a resolution of the Board regulating the conduct or business of members or member organizations, or of conduct or proceeding inconsistent with just and equitable principles of trade, may, if a member or member organization, be suspended or expelled from membership or, if an approved person have his approval withdrawn, unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.

3.0 On August 9, 2002, at approximately 1:20 p.m., Guissari entered the Oracle Corp. (“ORQ”) trading crowd on the Exchange Floor and represented to the crowd that he had an order to sell 600 ORQ September 10 call options; however, Guissari also indicated that he needed to purchase 300 of those contracts for the firm, representing the buy side of the order as firm “facilitated”.² The trade was ultimately executed in this manner for a price of 0.90.

3.1 Notwithstanding the fact that Guissari had represented the trade specified in paragraph 3.0 above as an order facilitated for Brokerage Firm A, Guissari knew or should have known that in fact the purchasing side of the order was effected for

² If an order is “facilitated” by a firm, the firm is the contraparty on a trade that one of its customers wishes to have executed. A “solicited” order involves the firm taking an order from a customer and attempting to find the other side of the trade at another firm, i.e., with an on-Floor or off-Floor market maker. Under Exchange rules, firms facilitating customer orders are guaranteed a minimum percentage of the execution of the customer order, and traders on the Floor often step aside to give the facilitating firm an even greater percentage of the execution. By contrast, market makers and floor brokers holding customer orders have priority over firms that have been “solicited” to take the other side of an order. Pursuant to Exchange Rule 950(d), Commentary .03, the fact that an order is “solicited” must be disclosed to the trading crowd, allowing the crowd an opportunity to participate in or fully replace the solicited party’s order.

the account of a solicited off-Floor broker/dealer. Therefore, contrary to Guissari's representation to the trading crowd, Firm X had in fact had solicited the 300 contract order executed for the off-Floor broker/dealer.

CONCLUSION:

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

- 5.1 Guissari violated Commentary .03 to Exchange Rule 950(c), Commentary .03 to Exchange Rule 950(d), and Article V, Section 4(h) of the Exchange Constitution in that he failed to properly inform the members of the trading crowd that an order that he announced to the crowd was "solicited" rather than "facilitated", thereby denying members of the trading crowd a reasonable opportunity to accept the bid or offer prior to Guissari crossing part of the originating order with the solicited party, as set forth in paragraphs 3.0 through 3.1.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Guissari:

- (a) a censure; and
- (b) a \$25,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President and Chief Counsel

Agreed to this _____ day of November, 2003.

Joseph R. Guissari