

III. Violation

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

- 1.) Swindasz violated Exchange Rule 958A by failing to execute a customer's seven (7) executable sell limit orders in JPM August 140 calls at the then-existing bid, as set forth in paragraphs 1.3 through 1.5 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose a \$5,000 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 \$5,000 upon Swindasz.

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
GEORGE J. SWINDASZ JR.	X	CONSENT TO PENALTY
.....	X	Case No. 03-27

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against GEORGE J. SWINDASZ JR. (“Swindasz”) (CRD # 4706972), a regular member of the Exchange and registered Specialist on the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Swindasz pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Swindasz based upon or arising out of the facts hereinafter stipulated. Swindasz, 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. Swindasz 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. Swindasz 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, Swindasz 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 On August 9, 2000 (the “Trade Date”), the Exchange received a telephone complaint from a customer alleging that Swindasz failed to properly execute seven (7) of the customer’s eight (8) sell orders in JPM¹ Aug 140 calls at the then-existing bid over a 15 minute period that morning.
- 1.4 At 9:55:17 a.m. on the Trade Date, the market for JPM Aug 140 calls was offered at $4 \frac{3}{8}$ - $4 \frac{3}{4}$. Between 9:59:18 and 10:14:46, the customer entered a series of eight (8) sell limit orders for ten (10) contracts each at successively lower limit prices ($4 \frac{3}{8}$, $4 \frac{1}{4}$, $4 \frac{1}{8}$, 4 , $3 \frac{3}{4}$, $3 \frac{5}{8}$, $3 \frac{1}{2}$, and $3 \frac{3}{8}$). Swindasz requoted the market after receipt of each order, rendering the orders non-executable, and then re-reflected the orders as the best offer available at that time. The customer responded by placing a cancel/replace limit order on each of the first seven orders upon Swindasz’s failure to execute each order.

¹ Denotes the option symbol for J.P. Morgan & Co., Inc.

- 1.5 At 10:14:46, approximately 15 minutes after the original order was placed, the customer's eighth and final limit order was executed at $3 \frac{3}{8}$, at a full point below the original limit order price of $4 \frac{3}{8}$.
- 1.6 The Exchange's investigation staff spoke with Swindasz on the Trade Date to inquire about the circumstances surrounding the customer's orders. Swindasz advised the staff that, due to the influx of orders in and around the time of the customer's orders, he was constantly updating the market in the JPM Aug 140 calls. Swindasz also stated that he assumed that the customer "wanted to be out each time the customer cancelled and replaced the order," thus he was "providing good customer service" by canceling each order. However, it was noted by the staff that by entering several cancel/replace orders, the customer was evidently attempting to sell the contracts, and that the customer was reacting to the market. Moreover, staff noted that if the customer wanted to "be out," it would have entered a "straight cancel" order instead of lowering the offer price several times.
- 1.7 Based upon Swindasz's disagreement with Exchange staff, an Exchange Official was consulted. While the Official recognized the possibility that Swindasz may not have seen the customer's first limit order until after the market had requoted (approximately 13 seconds later), the Official concluded that the customer was trying to sell the contracts based on the fact that the customer's second order to sell 10 contracts at $4 \frac{1}{4}$ was present on Swindasz's book for over three minutes while the market was still bid at $4 \frac{1}{4}$. Thus, the Official stated that Swindasz should have filled the customer's second order at its $4 \frac{1}{4}$ limit.

- 1.8 Exchange staff confirmed with the clearing firm that cleared the trades at issue that the customer at issue was in fact a public customer and not broker-dealer or market maker account. Thus, since the customer was not a broker-dealer, Swindasz was required to execute the customer's sell limit orders for 10 JPM Aug 140 calls.
- 1.9 Exchange staff also confirmed that there were no system-related problems (e.g. fast market, news) that would have affected the customer's orders, and that from 9:59:18, the time at which the customer's first order was received, and 10:14:46, the time at which the customer's eighth and final order was received, and executed, there was no significant movement in the price of the underlying JPM stock (ranging between 139-13/16 and 141-5/8). Additionally, a review of the CBOE, PHLX, and ISE markets during the relevant time period revealed that each market was generally in line with the AMEX market during the time the customer entered its orders.
- 2.0 Based upon the Exchange Official's ruling, Swindasz ultimately agreed to adjust the customer's report for the JPM Aug 140 calls to 4 ¼ via the D.K. process.²

CONCLUSION:

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

- 2.1 Swindasz violated Exchange Rule 958A by failing to execute a customer's seven (7) executable sell limit orders in JPM August 140 calls at the then-existing bid, as set forth in paragraphs 1.3 through 1.5.

² "DK" or "Don't Know" is a designation attached to those transactions made on the Exchange that cannot be cleared because the recipient of the comparison, or Floor report of execution, has no knowledge of the transaction either because the buyer has not received a comparison from the seller, or when comparison cannot be made because of a difference in execution terms.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Swindasz:

- (a) a fine in the amount of \$5,000.

AMERICAN STOCK EXCHANGE LLC

By: _____
David Rosenstein
Vice President and Chief Counsel
Enforcement Department

Agreed to on this _____ day of November 2003.

George Swindasz