

**Disciplinary Panel
American Stock Exchange, LLC**

IN THE MATTER	:	Case Nos. 01-41 and 03-02
OF	:	
GOIN & CO., LLC	:	Disciplinary Panel Decision
AND	:	Hearing Officer - JN
DENNIS J. GOIN	:	
	:	June 12, 2003

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that: (1) Respondent Goin & Co. violated Exchange Rule 170 and the Exchange’s Floor Transaction Handbook and (2) Respondent Goin violated Exchange Rules 4, 109, and 170; the Exchange’s Floor Transaction Handbook; and Article V, Section 4(i) of the Exchange Constitution, as stipulated. As a penalty, the Panel imposed a censure and a joint and several fine of \$100,000 upon the firm and Goin. As to Goin, the Panel further imposed a four-year bar and a re-qualification requirement.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Goin & Co., LLC, a former Exchange Member organization and Dennis J. Goin, a former Regular Member of the Exchange. A Disciplinary Panel held a hearing on June 3, 2003, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (attached) entered into between the Exchange, Goin & Co. and Goin for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against the firm and Goin based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Goin & Co. and Goin, 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

Through a series of actions occurring over a significant period of time, Goin engaged in conduct which artificially influenced prices in order to protect his own capital position. Such acts adversely affect the integrity of the marketplace, reflect egregious misconduct on the part of a specialist, and warrant serious sanctions.

The parties agreed to the following specific conclusions, which the Panel hereby adopts.

Goin & Co. violated Exchange Rule 170, in that on April 25, 2001, Goin & Co. engaged in transactions in Stock ABC for the specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in paragraphs 2.0 through 3.12 of the Stipulation.

Goin & Co. and Goin violated the Exchange's Floor Transaction Handbook Part IV C 2, in that on April 25, 2001, they failed to obtain the approval of a floor official prior to executing a stop order at a price of more than ¼ point away from the electing transaction, as set forth in paragraphs 2.1 through 3.12 of the Stipulation.

Goin & Co. and Goin violated Exchange Rule 170(d), in that on January 16, 2002, Goin & Co. and Goin engaged in transactions in DEF for the specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in paragraphs 4.0 through 5.6 of the Stipulation.

Goin violated Exchange Rule 4, in that during the period of January 4, 1999 through February 28, 2002, Goin executed or caused to be executed, purchases of DEF at successively higher prices for the purpose of unduly or improperly influencing the market price of DEF, as set forth in paragraphs 6.0 through 15.5 of the Stipulation.

Goin violated Exchange Rule 109, in that during the period of January 4, 1999 through February 28, 2002, he failed to reduce the spread on 158 transactions in DEF after stopping stock and the spread in the quotation was not less than twice the permitted minimum fractional change in DEF, as set forth in paragraphs 6.1 and 11.0 through 11.1 of the Stipulation.

Goin & Co. and Goin violated Exchange Rule 170, in that during the period of January 4, 1999 through February 28, 2002, Goin engaged in transactions for stock DEF for Goin & Co.'s specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in paragraph 6.5 and 7.0 through 15.5 of the Stipulation.

Goin engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(i) of the Exchange Constitution, in that he engaged in a fraudulent course of conduct or practice whereby, through a series of trades, he marked the closing price in Exchange listed security DEF, in order to favorably impact his unit's marked-to-market position, as well as the overall capital position of his firm's proprietary account, in willful violation of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, as set forth in paragraphs 6.0 through 15.5 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose the following penalties upon Goin & Co. and Goin:

- a) a censure; and
- b) a joint and several fine of \$100,000.

The Stipulation further proposes that the Disciplinary Panel impose the following additional penalties upon Goin:

- a) a four (4) year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization; and
- b) should Goin intend to return to the Exchange as a registered specialist in the future, a requirement that he re-qualify as a specialist with the Exchange.

At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalties as appropriate to the facts and circumstances of this case. Enforcement noted that it had given weight to Mr. Goin's long period of service to the Exchange in considering the appropriateness of sanctions. After consideration of the Stipulation and the agreed-upon penalties, the Disciplinary Panel finds that they are at the appropriate level to be imposed in this proceeding and therefore accepts the penalties 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

By unanimous vote, the Disciplinary Panel accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties upon Goin & Co. and Goin:

- c) a censure; and
- d) a joint and several fine of \$100,000.

By unanimous vote, the Disciplinary Panel imposes the following additional penalties upon Goin:

- c) a four (4) year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization; and
- d) should Goin intend to return to the Exchange as a registered specialist in the future, a requirement that he re-qualify as a specialist with the Exchange.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: June 12, 2003

Copies to: Dennis J. Goin (via overnight delivery and first class mail)
Goin & Co., LLC c/o Dennis J. Goin (via overnight delivery and first class mail)
Justin Kletter, Esq. (via electronic and first class mail)

Disciplinary Panel
American Stock Exchange LLC

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X
IN THE MATTER X STIPULATION OF FACTS
OF X AND
GOIN & CO., LLC X CONSENT TO PENALTY
AND X
DENNIS J. GOIN X Case Nos. 01-41 and 03-02
X
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This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against GOIN & CO., LLC (“Goin & Co.”) (CRD # 41733), a former Exchange Member organization and DENNIS J. GOIN (“Goin”) (CRD #1968918), a former Regular Member of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Goin & Co. and Goin pursuant to Article V, Section 2 of the Exchange Constitution, in order to settle and conclude all disciplinary actions by the Exchange against them based on or arising out of the facts hereinafter provided. Goin & Co. and Goin, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consent to the findings of violations of the Exchange Constitution and Rules and to the imposition of penalties hereinafter provided. Goin & Co. and Goin understand that this settlement is subject to the approval by an Exchange Disciplinary Panel and the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision which may not be appealed by the parties. Goin & Co. and Goin understand and acknowledge that the Disciplinary Panel’s decision in this matter will become part of their disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS

1.0 Effective August 30, 1996, Goin & Co. was registered as a broker-dealer under Securities and Exchange Commission (“SEC”) File No. 8-49545.²

1.1 During all relevant periods herein, Goin & Co. was an Exchange Member organization engaged in the business as a registered specialist for stocks on the Floor of the Exchange.³

1.2 During all relevant periods herein, Goin was registered with the Exchange as a specialist and was actively engaged as a specialist of Goin & Co. on the Floor of the Exchange.⁴ During all relevant periods herein, Goin was also responsible for the overall supervision of Goin & Co.’s specialist operations on the Floor of the Exchange.

1.3 During all relevant periods herein, stocks ABC and DEF were listed for trading on the Exchange, and Goin & Co. served as specialists for ABC and DEF.

1.4 During all relevant periods herein, Specialist A was an employee of Goin & Co., and was the individual designated by Goin to be the specialist for stock ABC.

1.5 During all relevant periods herein, Goin was the individual specialist for stock DEF.

Goin & Co.’s Specialist Activities in Stock ABC

2.0 During the period specified herein, Goin & Co. was subject to Exchange Rule 170, which provided that a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market, providing continuity or depth to the market when necessary.

² Goin & Co.’s SEC registration was terminated on May 7, 2002.

³ Goin & Co.’s status as an Exchange Member organization was terminated on March 6, 2002.

⁴ Goin ceased to be a Member of the Exchange on January 9, 2003.

2.1 During all relevant periods herein, Goin & Co. and Goin were subject to Part IV, C 2 of the Exchange's Floor Transaction Handbook ("Floor Handbook"), which required a specialist to obtain the approval of a floor official prior to executing stop and stop limit orders⁵ at a price more than .25 point away from an electing transaction⁶.

Goin's Activity in Stock ABC on April 25, 2001:

3.0 On April 25, 2001, Specialist A was the specialist in Stock ABC, reporting to Goin.

3.1 On April 25, 2001, during the period between 11:07:07 a.m. and 12:31:11 p.m., Stock ABC accumulated a total of 101,400 shares of sell stop orders at .60, as the result of five separate orders⁷.

3.2 At or about 12:26 p.m. on April 25, 2001, Goin, pursuant to the requirements of the Exchange's Floor Handbook, contacted Amex Floor Official A to bring to his attention the accumulation of the 101,400 shares of sell stop orders at .60 in stock ABC. At or about this time the market in ABC was quoted at .65 - .70 (5 x 104), last sale .70. Pursuant to the Exchange's Floor Handbook, Goin requested that Floor Official A approve an execution of 101,400 shares of sell stop orders at .30, down .40 from the last transaction in ABC at 12:16 p.m. Floor Official A did not grant approval to execute the sell stop orders at .30.

⁵ A stop order is an order in a security to buy or sell at the market price once the security has traded at a specified price called the stop price. A stop order to buy is usually designed to protect a profit or to limit a loss on a short sale. A stop order to sell is usually designed to protect a profit or to limit a loss on a security already purchased at a higher price. Once the security trades at the given stop price, the order becomes a market order.

⁶ An electing transaction is a transaction that satisfies the terms of a conditional order and converts thereby the conditional order into a market order. For example, if a customer receives a guaranteed buy or sell price from a specialist on the floor of the Exchange, the transaction is considered elected when that price is reached.

⁷ The five orders that created the 101,400 share sell stop order were – TA#OR09, entered at 11:21:38 a.m. to sell stop 7,000 shares at .60; TA#OT09, entered at 11:22:40 a.m. to sell stop 3,400 shares at .60; TA#PL04, entered at 11:30:46 a.m. to sell stop 71,000 shares at .60; TA#SM07, entered at 12:13:11 p.m. to sell stop 10,000 shares at .60; TA#TO09, entered at 12:31:11 p.m. to sell stop 10,000 shares at .60 (aggregate volume of sell stop orders at 12:31:11 p.m. is 101,400 shares)

- 3.3 At 12:32:56 p.m., on April 25, 2001, Specialist A re-quoted the Amex market for stock ABC at .65 - .66 (5x117). At 12:34:27 p.m., Specialist A, under the direction of Goin, executed PER⁸ order TA#T05 to sell 500 shares of stock ABC at .65, down .05 from the previous transaction.
- 3.4 At 12:34:40 p.m. on April 25, 2001, Specialist A re-quoted the Amex market for stock ABC at .60 - .66 (27x117). At 12:36:32 p.m. Specialist A, under the direction of Goin, executed PER order TA#QF1⁹ to sell 1,800 shares at .60 against existing bids residing on the specialist book¹⁰, down .05 from the previous transaction. At 12:36:39 p.m., Specialist A re-quoted the Amex market for stock ABC at .30 - .66 (5 x 117).
- 3.5 On April 25, 2001, the Third Market (“NASD”) quoted its market for stock ABC at .56 - .60 (30 x 340) at 12:36:46 p.m., the Chicago Stock Exchange (“CHX”) quoted its market for stock ABC at .65 - .70 (5 x 100) at 12:34:10 p.m. and the Boston Stock Exchange (“BSE”) quoted its market for stock ABC at .55 - .75 (50 x 12) at 12:34:35 p.m.
- 3.6 At 12:36:39 p.m., Specialist A re-quoted the Amex market for stock ABC at .30 - .66 (5 x 117). At or about 12:36:48 p.m., and in the absence of receiving prior Floor Official approval, Goin instructed Specialist A to execute a total of 101,400 shares of sell stop orders at .30.¹¹ This transaction took place nine (9) seconds after Specialist A re-quoted the Amex market in stock ABC (.30 - .66 (5 x 117)) and represented a .30 decline from

⁸ “PER”, which stands for “Post Execution and Reporting” System, is the electronic order entry system for Amex equities. PER provides a direct and efficient computerized pathway for orders and execution reports between member firms’ order rooms and branch offices at the specialist posts on the Exchange trading floor. The PER System assigns all electronically transmitted customer orders a “Turn Around” (“TA”) number. A TA number is assigned internally by the Exchange’s computerized system to identify a particular customer order.

⁹ PER Order TA#QF1 was entered at 11:40:58 a.m. to sell stop 1,800 shares at .68. The 1,800 share stop order was elected as a result of the 12:34:27 p.m. AMEX print of 500 shares at .65.

¹⁰ Orders on the specialist book - PER order TA#IY0005 was entered at 10:25:08 a.m. to buy 1,000 shares at .60 and PER Order TA#KY0009 was entered at 10:43:07 a.m. to buy 1,500 shares. TA#KY0009 was partially executed on 800 shares in this transaction.

¹¹ Although Floor Official A signed the specialist’s 191 book, he did so to acknowledge that he was aware of the trade, not as approval to execute the trade at .30.

the previous transaction, and a 50% decline in value of ABC. In executing 101,400 shares at .30, Specialist A traded through all other bids for stock ABC posted on other markets. As part of the execution of 101,400 shares of sell stop orders at .30, Goin & Co. purchased 47,700 shares leaving the unit with a long position of approximately 46,000 shares.

- 3.7 After the completion of the execution of the 101,400 shares of sell stop orders, Specialist A re-quoted the Amex market for stock ABC at .30 - .66 (1 x 117). At 12:37:18 p.m. on April 25, 2001, Goin sold 8,800 shares of stock ABC to PER order TA#TX0002¹² at a price of .35, .05 higher than the previous transactions involving the sell stop orders.
- 3.8 At 12:38:27 p.m., with a proprietary position long 29,719 shares of stock ABC and a quoted market unchanged from the market quoted in paragraph 3.7, Goin & Co. sold 10,000 shares of ABC to PER order TA#TZ0001¹³ at a price of .40, a price .05 higher than the previous transaction.
- 3.9 At approximately 12:38:30 p.m., Specialist A re-quoted the Amex market for stock ABC at .45 - .55 (300 x 40). At 12:39:20 p.m., with a proprietary position long 19,719, Goin sold 10,000 shares of ABC to PER order TA#UB0004¹⁴ at a price of .50, a price .10 higher than the previous transaction.
- 3.10 At approximately 12:39:30 p.m., Specialist A re-quoted the Amex market for stock ABC at .35 - .55 (300 x 100). At approximately 12:39:40 p.m., with a proprietary position long

¹² TA#TX0002 – entered at 12:36:55 p.m. to buy 8,800 shares at .35.

¹³ TA#TZ0001 – entered at 12:37:49 p.m. to buy 20,000 shares at .45, the balance of 10,000 shares cancelled at 12:39:01 p.m.

¹⁴ TA#UB0004 – entered at 12:38:41 p.m. to buy 10,000 shares at the market.

9,719, Goin sold 6,800 shares of ABC to PER order TA#UC0005¹⁵ at a price of .50, unchanged from the previous transaction.

- 3.11 Following the execution of 101,400 shares of stock ABC at .30 on the Amex, the CHX, BSE, and NASD markets submitted complaints through the Intermarket Trading System (“ITS”) that Goin & Co. had traded through each away market’s posted bid at the time of the execution of 101,400 shares of ABC at .30 on the Amex. Following these complaints, Goin & Co. shipped a total of 8,500 shares of stock ABC at .30 to the away markets.
- 3.12 At approximately 12:40 p.m., Specialist A had liquidated 44,100 shares of the long position in ABC stock that the unit acquired by executing the 101,400 shares in sell stop orders as described in paragraph 3.7. The liquidations of ABC stock by Goin & Co., as described in paragraphs 3.8 through 3.11, occurred at prices equal to or greater than prices at which ABC stock was acquired by the unit, resulting in a profit of \$4,800 to Goin & Co.

Goin’s Activity in Stock DEF on January 16, 2002

4.0 During the period herein, Goin was subject to Exchange Rule 170(d), which provided that in connection with the function of a specialist in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the securities in which he or she is registered, it is ordinarily expected that a specialist will engage in a reasonable degree under the existing circumstances, in dealings for his or her own account is full lots when lack of price

¹⁵ TA#UC0006 – entered at 12:39 p.m. to buy 6,800 shares at .50.

continuity or lack of depth in the full lot market or temporary disparity between supply and demand in either the full lot or the odd-lot market exists or is reasonably to be anticipated.

Transactions on the Exchange for his or her own account effected by a specialist in the securities in which he or she is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated, in either the full lot or the odd-lot market. Transactions in such securities not part of such a course of dealings are not to be effected by a specialist for his or her own account.

5.0 On January 16, 2002, Goin was the specialist in DEF. Prior to the opening of trading in DEF on January 16, 2002, Goin & Co. maintained a long position in DEF of 253,600 shares.

5.1 At 1:21:20 p.m., Goin received a PER order, TA#QW8, in DEF to buy 25,000 shares at 3.50¹⁶.

5.2 At approximately 1:30 p.m., DEF was quoted at 3.80 – 3.90 (2 x 27), Goin, motivated by a desire to liquidate a substantial portion of his unit's long position in DEF, requested permission pursuant to the Exchange's Floor Handbook, Part IV, C 2, from Floor Official A to sell 50,000 shares at 3.50, down .40 from the previous sale (3.90). Floor Official A, after speaking with Floor Governor A, declined to approve Goin's request.

5.3 At 2:09:48 p.m., Goin received a PER order, TA#TC9, to sell 500 shares of DEF at the market. Instead of executing the 500 share order in one trade (print), Goin, at 2:09:56 p.m., printed 200 shares of order TA#TC9 at 3.80, down .10 from the previous transaction and then, at 2:09:58 p.m., printed the remaining 300 shares from order

¹⁶ This order was subsequently cancelled at 1:52:30 p.m. and replaced with order TA#SF7 to buy 50,000 shares of DEF at 3.50.

TA#TC9 at 3.75, down .05 from the previous transaction. Goin & Co., whose position in DEF was long 253,600 shares immediately prior to the trade, bought 500 shares from PER order TA#TC9.

- 5.4 At or around 2:12 p.m., Goin, motivated by a desire to liquidate a substantial portion of his unit's long position in DEF, contacted Floor Official A to request permission to sell 49,500 shares of stock at 3.50, down .25 from the previous transaction. Floor Official A approved the sale by the specialist of 49,500 shares at 3.50. At 2:12:52 p.m., 49,500 shares of DEF were executed by Goin at 3.50, down .25. Goin & Co., whose position in DEF was long 254,100 shares immediately prior to the trade, sold 49,500 shares to PER order TA#SF7 (See Footnote 8).
- 5.5 At 2:12:56 p.m., 500 shares of DEF were executed by Goin at 3.50 (-0 tick). PER order, TA#ED4¹⁷, sold 500 shares to the balance of PER order TA#SF7.
- 5.6 Between 2:13 p.m. and 3:52 p.m. on January 16, 2002, Goin advanced the price of DEF .40, from 3.50 to 3.90 (the previous day's close) on only 2,300 shares as follows:
- (i) At 2:13:52 p.m., Goin re-quoted the market in DEF at 3.40-3.60 (5x2).
 - (ii) At 2:45:01 p.m., a PER order, TA#UP1, was entered to buy 300 shares of DEF at the market. At 2:45:13 p.m., Goin executed PER order TA#UP1 at 3.60, up .10 from the previous transaction. Goin & Co., whose position in DEF was long 204,600 shares immediately prior to the trade, sold 300 shares to this order. At 2:45:18 p.m., Goin re-quoted the AMEX market in DEF at 3.50 – 3.70 (5x2).
 - (iii) At 2:51:24 p.m., a PER order, TA#UW1, was entered to buy 500 shares of DEF at the market. At 2:51:34 p.m., Goin executed PER order TA#UW1

¹⁷ At 9:37:21 a.m., stop order TA#ED4 was entered to sell 500 shares at 3.50.

at 3.70, up .10 from the previous transaction. Goin & Co., whose position in DEF was long 204,300 shares immediately prior to the trade, sold 500 shares to this PER order. At 2:51:42 p.m., Goin re-quoted the AMEX market in DEF at 3.55 – 3.75 (5x2).

- (iv) At 3:03:52 p.m., a PER order, TA#VL5, was entered to buy 500 shares of DEF at the market. At 3:04:12 p.m., Goin executed 200 shares of PER order TA#VL5 at 3.75, up .05 from the previous transaction, leaving a balance of 300 shares unexecuted for PER order TA#VL5. Goin & Co., whose position in DEF was long 203,800 shares immediately prior to the trade, sold 200 shares to this PER order.
- (v) At 3:04:12 p.m., the remaining balance of 300 shares of PER order TA#VL5 were executed by Goin at 3.80, up .05 from the previous transaction. Goin & Co., whose position in DEF was long 203,600 shares immediately prior to the trade, sold 300 shares to this PER order. At 3:04:47 p.m. Goin re-quoted the AMEX market in DEF at 3.65 – 3.85 (2x2).
- (vi) At 3:21:29 p.m., a PER order, TA#WI03, was entered to buy 500 shares of DEF at the market. At 3:21:43 p.m., Goin executed 300 shares of PER order TA#WI03 at 3.80, unchanged from the previous transaction, and leaving a balance of 200 shares unexecuted for PER order TA#WI03. Goin & Co., whose position in DEF was long 203,300 shares immediately prior to the trade, sold 300 shares to this PER order.

- (vii) At 3:21:46 p.m., the remaining balance of 200 shares of PER order TA#WI03 were executed by Goin at 3.85, up .05 from the previous transaction. Goin & Co., whose position in DEF was long 203,000 shares immediately prior to the trade, sold 200 shares to this PER order. At 3:21:54 p.m., Goin re-quoted the AMEX market in DEF at 3.70 – 3.88 (2x2).
- (viii) At 3:52:18 p.m., a PER order, TA#YG3, was entered to buy 500 shares of DEF at the market. At 3:52:36 p.m., Goin executed 300 shares of PER order TA#YG3 at 3.88, up .03 from the previous transaction, leaving a balance of 200 shares unexecuted for PER order TA#YG3. Goin & Co., whose position in DEF was long 202,800 shares immediately prior to the trade, sold 300 shares to this PER order.
- (ix) At 3:52:39 p.m., the remaining balance of 200 shares from PER order TA#YG3 were executed by Goin at 3.90, up .02 from the previous transaction. Goin & Co., whose position in DEF was long 202,500 shares immediately prior to the trade, sold 200 shares to this PER order.

Goin's Specialist Activities During 1999 – 2002:

6.0 During all relevant periods herein, Exchange Rule 4 provided in part that no member or member organization shall execute or cause to be executed any purchase of a security at successively higher prices or the sale of any security at successively lower prices for the purpose of unduly or improperly influencing the market price of such security.

6.1 During all relevant periods herein, Exchange Rule 109 provided in part that by an agreement to “stop” stock at a specified price, a member who “grants the stop” guarantees the execution of an order at the stop price or better. When a broker makes an unsolicited request that the specialist grant him a stop the specialist must reduce the spread between the bid and the offer in any case where, prior to the granting of the stop, the spread in the quotation was not less than twice the permitted minimum fractional change in the stock.

6.2 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that a member, member 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 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.

6.3 During all relevant periods herein, Goin & Co. and Goin were subject to Part IV C 2 of the Exchange’s Floor Handbook, which required a specialist to obtain the approval of a floor official prior to executing stop and stop limit orders of a price more than .25 point away from an electing transaction.

6.4 During all relevant periods herein, the Securities Exchange Act of 1934 (“SEA”), Section 10(b), and Rule 10b-5 thereunder, provided in part that it shall be unlawful for any

person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any device, scheme, or artifice to defraud; to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

6.5 During all relevant periods herein, Goin was subject to Exchange Rule 170(d), which provided that in connection with the function of a specialist in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the securities in which he is registered, it is ordinarily expected that a specialist will engage in a reasonable degree under the existing circumstances, in dealings for his own account in full lots when lack of price continuity or lack of depth in the full lot market or temporary disparity between supply and demand in either the full lot or the odd-lot market exists or is reasonably to be anticipated. Transactions on the Exchange for his own account effected by a specialist in the securities in which he is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated,

in either the full lot or the odd-lot market. Transactions in such securities not part of such a course of dealings are not to be effected by a specialist for his own account.

Goin's Activity in DEF During 1999 – 2002:

- 7.0 During the period of January 4, 1999 through February 28, 2002, Goin & Co.'s clearing firm, Firm XYZ, marked his daily proprietary position in DEF to the last sale price of the trading day or, if no trades were executed in DEF on the trade date, to the last quoted bid during the trading day. The daily marking of Goin & Co.'s proprietary position in DEF by Firm XYZ constituted Goin & Co.'s "marked-to-market" position in DEF.
- 7.1 During the period of January 4, 1999 through February 28, 2002, Goin & Co. maintained an average daily long proprietary position in DEF of approximately 230,400 shares in DEF.
- 7.2 During the period of January 4, 1999 through February 28, 2002, there was a decrease in DEF's average daily trading volume from approximately 70,500 shares to 2,900 shares, respectively. During the same period, DEF decreased in average daily trades from approximately 46 to 2 trades per trading day.
- 7.3 During the period of January 4, 1999 through February 28, 2002, DEF's share price decreased from approximately 8.00 to 3.80, respectively.
- 7.4 During the period of January 1999 through February 2002, Goin & Co.'s marked-to-market proprietary position decreased from approximately \$1,640,504 to \$824,860 a decline of approximately \$815,644, or nearly 50%, in its marked-to-market position.

- 7.5 At various times during the period of January 1999 through February 2002, Goin & Co. approached the Specialist early warning equity level of \$720,000¹⁸. As a consequence of the forgoing, Goin & Co. entered into two Standard Cash Subordinated Loan Agreements¹⁹ to protect the unit from being under capitalized. The first loan agreement entered into by Goin & Co., dated April 14, 2000, and due on April 14, 2001, resulted in a cash infusion of \$300,000 into the unit that was repayable quarterly at an interest rate of 10%. The second loan agreement entered into by Goin & Co., dated October 31, 2000, and due on October 31, 2001, resulted in an additional cash infusion into the unit of \$250,000 that was repayable quarterly at an interest rate of prime plus 3%.
- 7.6 During the period of January 4, 1999 through February 28, 2002, as a consequence of a steady decline in the market price of DEF, and at a time when his unit's position in DEF was several hundred thousand shares, Goin, as more fully described below, engaged in a pattern or course of conduct, whereby through a series of trades he marked the close in DEF in order to favorably impact his unit's marked-to-market position in DEF as calculated by his clearing firm, XYZ, as well as the overall capital position in his unit's proprietary account.

Specialist Purchasing Offered Stock as the Only Trade of the Day:

¹⁸ Under Exchange Rule 171 every registered specialist shall maintain a cash or liquid asset position in the amount of \$600,000 or in an amount sufficient to assume a position of sixty trading units of each security in which such specialist is registered, whichever amount is greater. On an informal basis, the Exchange's Financial Regulatory Surveillance Department employs a \$720,000 early warning equity level to ensure compliance by each specialist unit with Exchange Rule 171.

¹⁹ A Standard Cash Subordinated Loan Agreement is a loan agreement in which the creditor agrees that in the event of bankruptcy, the creditor's claim on the loan balance outstanding is junior or "subordinated" to the other creditor claims against the firm's assets and that the loan is only repayable after such other debts with a higher claim have been satisfied.

- 8.0 During 31 trading sessions for DEF during the period of January 4, 1999 through February 28, 2002, Goin, in absence of any other trading in DEF, initiated the only trade of the day by purchasing stock at the offer price. Goin's purchasing of stock at the offer price resulted in his clearing firm, XYZ, marking his unit's proprietary position in DEF to the last sale (the offer) when it would have been marked to the bid (had no trades occurred). During the 31 trading sessions where Goin initiated the only trade for the day by purchasing DEF stock at the offer price, Goin increased his unit's proprietary marked-to-market position an average of \$42,837.27 per trade date.
- 8.1 One example of Goin's purchase of DEF stock at the offer price occurred on November 10, 2000. On November 10, 2000, at 9:43 a.m., the market was quoted at 4 – 4 1/4 (10x13). A PER order, TA#DQ9, was entered to sell 1,000 shares of DEF at 4 1/8. At 9:43 a.m., Goin re-quoted his market in DEF at 4 – 4 1/8 (10 x 10). At 3:55 p.m., over 6 hours after order TA#DQ9 was entered, and with no other orders entered in DEF or trades executed in DEF during the trading session, Goin executed PER order TA#DQ9 by purchasing 1,000 shares at the offer price of 4 1/8. As a consequence of Goin's purchase of 1,000 shares of DEF at 3:55 p.m. at the offer price, the units clearing firm, XYZ, marked the unit's proprietary position in DEF of 270,497 shares at 4 1/8, the last sale price, as opposed to 4 (the closing bid), thereby benefiting the units marked-to-market position by \$33,812.13.

Buy Orders Stopped and Executed at or Near the Close:

- 9.0 During 97 trading sessions for DEF, during the period of January 4, 1999 and February 28, 2002, Goin engaged in a course of conduct whereby he “stopped”²⁰ buy orders only to subsequently execute such orders as the last sale of the trading session.²¹ By executing these orders as the last sale of the trading session, Goin had the ability to determine the last sale price due to the fact that he was executing stopped stock. Goin routinely executed these orders at a higher price than the bid or the last sale, so as to increase his marked-to-market position in DEF.
- 9.1 One example of Goin’s stopping of a buy order in DEF only to execute the trade as the last transaction of the day at favorable prices to his unit’s proprietary position in DEF occurred on November 5, 2001. At 10:50 a.m. on November 5, 2001, a customer placed an order to buy 300 shares of DEF at the market. The market in DEF at the time was quoted at 3.60 – 3.65 (2 x 50). At 10:51 a.m., Goin “stopped”²² the buy order for 300 shares and the market was re-quoted, 3.60 – 3.65 (3 x 50)²³. The order was stopped for over 5 hours. At 4:00 p.m. Goin executed the order in question at 3.65, down .10 from the last sale from the previous day but .05 higher than the bid. As a consequence of Goin’s purchase of 300 shares of DEF at 4:00 p.m., the units clearing firm, XYZ, marked the units proprietary position in DEF of 197,815 shares, at 3.65, the last sale price, as opposed to 3.60 (the closing bid), thereby benefiting the unit’s marked-to-market position by \$9,890.75.

Sell Orders Stopped and Executed at the Last Sale of the Trading Session:

²⁰ By stopping a buy order the specialist guarantees the customer the offer price or better at the time of the stop.

²¹ Of the 97 buy orders stopped and executed as the last transaction of the day, 22 received price improvement (22.7%).

²² By stopping the customers buy order, Goin guaranteed the customer an execution at 3.65 or better.

²³ It is noted that in this instance Goin failed to narrow the spread as required under Exchange Rule 109.

- 10.0 During 33 trading sessions for DEF, during the period of January 4, 1999 through February 28, 2002, Goin, engaged in a course of conduct whereby he “stopped”²⁴ sell orders only to subsequently execute such orders as the last sale of the trading session. By executing these sell orders as the last sale of the trading session Goin had the ability to determine the last sale price in DEF due to the fact that he was executing stopped stock. During the aforementioned period, of 37 sell orders stopped by Goin and executed as the last sale of the day, 30 orders (81.1%) received price improvement (i.e. were executed at a price above the stop price). In contrast, during the aforementioned period, of 97 buy orders stopped by Goin and executed as the last sale of the day, only 22 (22.7%) received price improvement (i.e. were executed at a price below the stop price). The stopped sell orders executed as the last trade of the day increased Goin’s marked-to-market position an average of \$30,068.19 per day.
- 10.1 One example of Goin stopping a sell order in DEF only to execute the stopped stock as the last transaction of the day at favorable prices to his unit’s proprietary position in DEF occurred on March 14, 2001. At 8:08 a.m., on March 14, 2001, a PER order, TA#HQ0000, was entered to sell 1,000 shares of stock DEF at the market. At the open of trading, the market in DEF was quoted at 3.60 – 4.05 (12 x 5). At 9:32 a.m. Goin stopped the sell order for 1,000 shares and the market was re-quoted at 3.60 – 4.00 (12 x 10). At 4:01 p.m., after no other trades were executed in stock DEF during the day, Goin executed PER order TA#HQ0000 at a price of 3.98, unchanged from the previous day. As a consequence of Goin’s purchase of 1,000 shares of DEF at 4:01 p.m., the unit’s clearing firm, XYZ, marked the units proprietary position in DEF of 350,753 shares, at

²⁴ By stopping a sell order, the specialist guarantees the customer the stop price or better at the time of the stop.

3.98, the last sale price, as opposed to 3.60 (the closing bid), thereby benefiting the units marked-to-market position by \$133,286.14.

Failure to Narrow the Spread after Granting a Stop:

- 11.0 During 158 trading sessions for DEF, during the period of January 4, 1999 through February 28, 2002, Goin, in accordance with the requirement of Exchange Rule 109, failed to narrow the spread in the quoted market for DEF after stopping stock.
- 11.1 One example of Goin's failure to narrow the spread after stopping stock occurred on September 9, 1999. At 3:05 p.m. the market in DEF was quoted at $4 \frac{7}{8} - 5 \frac{1}{4}$ (5x5). At 3:48 p.m. PER order TA#WD5, was entered to buy 500 shares of DEF at the market. At 3:49 p.m., Goin stopped PER order TA#WD5 at $5 \frac{1}{4}$. At 3:49 p.m., Goin updated his quote in DEF at $4 \frac{7}{8} - 5 \frac{1}{4}$ (1x5). PER order TA#WD5 was executed at 4:00 at $5 \frac{1}{4}$, up .25 from the previous transaction. At no time after Goin stopped PER order TA#WD5, and prior to the execution of the order at 4:00 p.m., did Goin narrow the spread in the market for DEF.

Failure to Maintain Fair and Orderly Markets:

- 12.0 During 19 trading sessions for DEF, during the period of January 4, 1999 through February 28, 2002, Goin failed to provide for fair and orderly markets and often provided week depth and continuity in the market for DEF, which resulted in wide price variations between transactions in DEF. Goin's trading on these dates revealed a pattern or course of conduct whereby Goin sought to close DEF at a price favorable to his unit's proprietary position.

- 12.1 One example of Goin's failure to provide for a fair and orderly market in DEF occurred on November 19, 2001. On November 19, 2001, Goin's opening position in DEF was long 203,415 shares. At 9:33 a.m. Goin quoted the market for DEF at 3.63 – 3.93 (2 x 2). At 10:51 a.m., and again at 11:17 a.m., Goin re-quoted the market at 3.63 – 3.93 (10x2).
- 12.2 Between 11:36 a.m. and 2:35 p.m. on November 19, 2001, Goin took the price of DEF down .27, from 3.92 (the previous close) to 3.65, on a total of 8,700 shares as follows:
- (ii) At 11:36 a.m., a PER order, TA#LQ3, was entered to sell 2,800 shares of DEF at 3.82. Following the entry of TA#LQ3, Goin re-quoted the market for DEF at 3.63 – 3.82 (10x28).
 - (iii) Shortly thereafter, Goin re-quoted the market for DEF at 3.63 – 3.81 (10x9). Goin re-quoted this same market for DEF, (3.63 – 3.81 (10x9)) again at 12:07 p.m. and at 12:49 p.m.
 - (iv) Shortly after Goin re-quoted the market for DEF at 12:49 p.m., PER order TA#PM1 was entered to sell 900 shares of DEF at the market. Goin stopped this order at 3.63, the displayed bid. At 1:14 p.m., Goin updated the market for DEF at 3.63 – 3.81 (10x9)²⁵
 - (v) At 1:26 p.m., PER order TA#LQ3 (originally entered at 11:36) a.m., was cancelled and replaced with PER order TA#RG9, an order to sell 2,800 shares of DEF at 3.63.
 - (vi) At 1:27 p.m., Goin executed PER order TA#PM1 and PER order TA#RG9. Goin printed 3,700 shares of DEF at a price of 3.75, down .17 from the previous transaction. Goin & Co., whose proprietary position in

²⁵ Goin did not narrow the market in DEF after granting an unsolicited stop to PER order, TA#PM1 as required by Exchange Rule 109.

DEF at the time was long 203,415 shares, purchased 3,700 shares in the execution. Shortly after this trade, Goin re-quoted the market for DEF at 3.63 – 3.93 (2x2)

- (vii) At 2:35 p.m., a PER order, TA#UD2, was entered to sell 5,000 shares of DEF at 3.65. Shortly after PER order TA#UD2 was entered, Goin re-quoted the market for DEF at 3.63 – 3.65 (2x50). After Goin re-quoted the market for DEF, Goin executed PER order TA#UD2 at 3.65, down .10 from the previous transaction. Goin & Co., whose proprietary position in DEF at the time was 207,115 shares, purchased 5,000 shares in the execution.

12.3 While Goin, between 11:30 a.m. and 2:35 p.m. on November 19, 2001, took the price of DEF down .27 on a total of 8,700 shares, between 2:35 p.m. and 2:36 p.m. on November 19, 2001, Goin advanced the price of DEF .27, from 3.65 to 3.92 (the previous close) on only 200 shares as follows:

- (ii) At 2:35 p.m., PER order TA#UD4, was entered to buy 200 shares of DEF at the market. At 2:36 p.m., Goin re-quoted the market for DEF at 3.63 – 3.92 (2x20).
- (iii) At 2:36 p.m., Goin executed PER order TA#UD4 at 3.92, up .27 from the previous transaction. Goin & Co.'s, whose proprietary position in DEF, at the time was 212,115 shares, sold 200 shares to the PER order.

Necessity to Deal:

- 13.0 During 36 trading sessions for DEF during the period of January 1, 1999 through February 28, 2002, Goin engaged in transactions in DEF which were not reasonably necessary to permit the unit to maintain a fair and orderly market in DEF, and which were effected merely to benefit his unit's marked-to-market proprietary position in the stock ("necessity to deal").
- 13.1 One example of Goin's participation in trades in which there was no apparent necessity to deal occurred on December 6, 2000. On December 6, 2000, at 2:20 p.m., PER order TA# G93 was entered to sell 1,000 shares of DEF at a limit of $4 \frac{1}{16}$. Shortly following the entry of the PER order, Goin updated his market for DEF to $4 - 4 \frac{1}{16}$ (5x10). At 3:04 p.m., PER order TA#G93 was canceled and replaced by PER order TA# C79, which set a lower limit price of 4. Goin did not, however, acknowledge the cancellation of PER order TA#C79, and at 3:04 p.m., he executed PER order TA#G93 at $4 \frac{1}{16}$, by purchasing 1,000 shares of DEF from PER order TA#G93 at the original limit of $4 \frac{1}{16}$. Goin purchased PER order TA#G93 at $4 \frac{1}{16}$ rather than allow DEF to tick down to 4. As a consequence of Goin's purchase of 1,000 shares of DEF at 3:04 p.m. from PER order TA#G93, the unit's clearing firm, XYZ, marked the units proprietary position in DEF of 296,439 shares, at $4 \frac{1}{16}$, the last sale price, as opposed to 4, thereby benefiting the units marked-to-market position by \$18,527.44.

Specialist Increased the Bid:

- 14.0 During 26 trading sessions for DEF, during the period of January 4, 1999 through February 28, 2002, Goin, in the absence of any other trading in DEF, increased the bid

price for DEF at or near the end of the trading day. Goin's increase in the bid price, when there was no other trading present in DEF during the trade date, resulted in his clearing firm, XYZ, marking the unit's proprietary position in DEF to the closing bid. During the 26 trading sessions, Goin increased Goin & Co.'s proprietary marked-to-market position an average of \$25,017.48 per day.

- 14.1 One example where Goin increased the bid in DEF in the absence of any other trading activities occurred on January 17, 2002. On January 17, 2002, at 9:31 a.m., Goin quoted the market in DEF at 3.80 – 3.95 (2x20). At 3:37 p.m., with no trades executed in DEF during the day, Goin updated his market to 3.89 – 3.95 (2x20). A review of PER orders revealed that no order was entered which could account for a higher bid posted by Goin. As a consequence of Goin's increase of the posted bid prior to the close, the units clearing firm, XYZ, marked the units proprietary position in DEF of 202,076 shares at 3.89, the last bid, as opposed to 3.80 (the posted bid prior to 3:37 p.m.), thereby benefiting the units marked-to-market position by \$18,186.84.

Specialist Purchasing Offered Stock Prior to the Close:

15.0 During 15 trading sessions for DEF, during the period of January 4, 1999 and February 28, 2002, Goin, at times other than at or near the close of trading, would purchase offered stock notwithstanding his unit's extensive long position in DEF so as to create an opportunity for the stock to tick higher, thereby benefiting his unit's proprietary position in DEF.

15.1 One example of Goin's purchase of offered stock during the trading day occurred on March 2, 2000. Goin & Co.'s opening position in DEF was 169,287 shares. At 9:31 a.m. Goin quoted the market in DEF at 4 ½ - 4 ¾ (5x5).

15.2 At 1:04 p.m., a PER order, TA#P10, was entered to sell 300 shares of DEF at the market. At 1:05 p.m., Goin executed PER order TA#P10 at $4 \frac{5}{8}$ on a zero minus tick. The unit, whose position was long 169,287 shares of DEF, sold 300 shares to PER order TA#P10. Goin re-quoted the market in DEF at $4 \frac{1}{2} - 4 \frac{3}{4}$ (5x5).

15.3 At 1:32 p.m., a PER order, TA#V86, was entered to sell 1,000 shares at $4 \frac{5}{8}$. Following the entry of this PER order, Goin re-quoted the market for DEF at $4 \frac{1}{2} - 4 \frac{5}{8}$ (5x10) to reflect PER order TA#V86.

15.4 At 3:00 p.m., one (1) hour and twenty-eight (28) minutes after the entry of PER order TA#V86, Goin printed 1,000 shares at $4 \frac{5}{8}$ (-0). Notwithstanding the fact the unit's position was long 169,587 shares of DEF, Goin purchased 1,000 shares from PER order TA#V86 at $4 \frac{5}{8}$. Following this trade, Goin re-quoted the market in DEF at $4 \frac{1}{2} - 4 \frac{3}{4}$ (10x10).

15.5 At 3:56 p.m., PER order TA#AU91 was entered to buy 500 shares at the market. At 3:56 p.m., Goin stopped PER order TA#AU91 at $4 \frac{3}{4}$.²⁶ After this order is stopped, Goin re-quoted the market for DEF at $4 \frac{1}{2} - 4 \frac{3}{4}$ (5x10). At 4:01 p.m., Goin executed 500 shares at $4 \frac{3}{4}$, up $\frac{1}{8}$ from the previous transaction. The unit, whose position was long 170,587 shares of DEF sold 500 shares to PER order TA#AU91.

CONCLUSION:

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

16.0 Goin & Co. violated Exchange Rule 170, in that on April 25, 2001, Goin & Co. engaged in transactions in Stock ABC for the specialist proprietary account for reasons other

²⁶ Goin failed to narrow the spread to reflect this stopped order as required under Exchange Rule 109.

than to contribute to the maintenance of price continuity with reasonable depth, as set forth in above paragraphs 2.0 through 3.12.

16.1 Goin & Co. and Goin violated the Exchange's Floor Transaction Handbook Part IV C 2, in that on April 25, 2001, they failed to obtain the approval of a floor official prior to executing a stop order at a price of more than ¼ point away from the electing transaction, as set forth above in paragraphs 2.1 through 3.12.

16.2 Goin & Co, and Goin violated Exchange Rule 170(d), in that on January 16, 2002, Goin & Co. and Goin engaged in transactions in DEF for the specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in above paragraphs 4.0 through 5.6.

16.3 Goin violated Exchange Rule 4, in that during the period of January 4, 1999 through February 28, 2002, Goin executed or caused to be executed, purchases of DEF at successively higher prices for the purpose of unduly or improperly influencing the market price of DEF, as set for the above in paragraphs 6.0 through 15.5.

16.4 Goin violated Exchange Rule 109, in that during the period of January 4, 1999 through February 28, 2002, he failed to reduce the spread on 158 transactions in DEF after stopping stock and the spread in the quotation was not less than twice the permitted minimum fractional change in DEF, as set forth in above paragraphs 6.1 and 11.0 through 11.1.

16.5 Goin & Co. and Goin violated Exchange Rule 170, in that during the period of January 4, 1999 through February 28, 2002, Goin engaged in transactions for stock DEF for Goin & Co.'s specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in above paragraph 6.5 and 7.0 through 15.5.

16.6 Goin engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(i) of the Exchange Constitution, in that he engaged in a fraudulent course of conduct or practice whereby, through a series of trades he marked the closing price in Exchange listed security DEF, in order to favorably impact his unit's marked-to-market position as well as the overall capital position of his firm's proprietary account in willful violation of Section 10b of the SEA, and Rule 10b-5 thereunder, as set forth in above paragraphs 6.0 through 15.5.

DISCIPLINARY ACTION:

By reason of the above-stipulated facts, a Disciplinary Panel may impose the following penalties upon Goin & Co. and Goin:

- a) a censure; and
- b) a joint and several fine of \$100,000.

A Disciplinary Panel may impose the following additional penalties upon Goin:

- a) a four (4) year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization; and
- b) should Goin intend to return to the Exchange as a registered specialist in the future, a requirement that he re-qualify as a specialist with the Exchange.

AMERICAN STOCK EXCHANGE LLC

By: _____
Glen Barrentine
Senior Vice President

Agreed to this _____ day of _____, 2003.

Goin & Co., LLC

Dennis J. Goin