

**Disciplinary Panel  
American Stock Exchange, LLC**

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IN THE MATTER	:	Case Nos. 99-18, 00-06, 00-07,
OF	:	00-11, 00-12, 00-19, 00-22,
ROSARIO INGALLINERA,	:	00-25, 00-26, 01-05, 01-32,
FABIAN CACERES,	:	02-05, 02-16, 02-21, 02-22,
ANTHONY PERGOLA,	:	02-23, 02-24, 02-40
PETER DONOHUE	:	
AND	:	Hearing Officer - JN
SPEAR, LEEDS & KELLOGG, L.P.	:	
	:	<b>Disciplinary Panel Decision</b>
	:	
	:	March 19, 2003

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**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondents violated, inter alia, various provisions of the Exchange Constitution and Exchange Rules, as stipulated. As penalties, the Panel imposed the following sanctions:**

- (a) Ingallinera: (i) a censure; and  
(ii) a fine of \$65,000.
- (b) Caceres: (i) a censure; and  
(ii) a fine of \$20,000.
- (c) Pergola: (i) a censure; and  
(ii) a fine of \$15,000.
- (d) Donohue: (i) a censure;  
(ii) a fine of \$50,000; and  
(iii) an eighteen (18) month bar from acting in a supervisory capacity retroactive to June 1, 2002, corresponding to the date SLK relieved Donohue of supervisory duties for the SLK equity specialist unit on the Floor of the Exchange.
- (e) SLK: (i) a censure; and  
(ii) a fine of \$285,000.

## **DECISION**

### **I. Introduction**

The American Stock Exchange, LLC instituted a formal disciplinary proceeding against Rosario Ingallinera, Fabian Caceres, Anthony Pergola, Peter Donohue, and Spear, Leeds & Kellogg, L.P. (SLK or the “firm”). The firm is a regular member, specialist, and clearing organization of the Exchange. Respondents Ingallinera, Caceres, and Pergola were specialists formerly employed by the firm. Donohue was formerly a specialist and an on-floor supervisor for the firm.

A Disciplinary Panel held a hearing on February 25, 2003. Pursuant to Article V, Section 2 of the Exchange Constitution, the Panel reviewed a Stipulation of Facts and Consent to Penalty (Stipulation), attached to this Decision and entered into by the parties to settle this proceeding and conclude all disciplinary actions by the Exchange against these Respondents based upon or arising out of the facts set forth in the Stipulation.

### **II. Facts**

The Respondents, without admitting or denying liability, stipulated to the facts as 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. Violations**

During the hearing, the Panel heard argument from counsel, who urged approval of the sanctions agreed upon in the Stipulation. After lengthy explanations and several questions from Panel members, the Panel deliberated and advised the parties that it would approve the Stipulation (Hearing Transcript, p. 64). In that document, the parties agree

that “a Disciplinary Panel may conclude” that the Respondent committed various listed violations (Stipulation, ¶¶ 16.0 through 21.12). To facilitate the decisional process, the parties further agreed that the formal Decision could consist of the “Conclusions” section of the Stipulations (Hearing Transcript, pp. 65-67).

Accordingly, the following paragraphs are reproduced verbatim from that section of the Stipulation (at pp. 40-46).

- 16.0 Ingallinera violated Article V, Section 4(h) of the Exchange Constitution and Exchange Rule 170(b) and (d) in that he (i) published an MOC imbalance in a stock on June 29, 2001 that did not properly reflect the conditions of the market, and (ii) failed to provide reasonable continuity at the close of trading for such stock on June 29, 2001, which contributed to a significant price swing at the opening of trading in the issue on July 2, 2001, as stated in above paragraphs 5.0 through 5.9.
- 16.1 Ingallinera violated Article V, Section 4(j) of the Exchange Constitution, in that on September 22, 2000, his clerk incorrectly input the last sale of a stock from the previous trade date in the specialist unit’s electronic book, which resulted in Ingallinera quoting, opening and trading the stock at erroneous prices that bore no relation to the previous close of the stock, as stated in above paragraphs 2.0 through 2.8.
- 16.2 Ingallinera violated Exchange Rule 7 in that (i) on February 1, 2001, he sold short 100 shares of a stock for SLK’s equity specialist unit’s proprietary account on a straight minus tick, and (ii) on May 1, 2001, he sold short 100 shares of a stock

- for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.5 and 11.6.
- 16.3 Ingallinera violated Exchange Rule 100 in that on May 31, 2000, he transmitted two commitments to purchase shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.8 through 12.11.
- 17.0 Caceres violated Article V, Section 4(h) of the Exchange Constitution on October 8, 2001, in that he (i) traded against a customer's order in SLK's proprietary account, effectively flattening his position in the stock after he would have been apprised of a trading halt in the stock traded, and (ii) executed an additional trade in that stock after the market had already been "zeroed out" by the trading halt, as stated in above paragraphs 3.0 through 3.8.
- 17.1 Caceres violated Exchange Rule 7 in that (i) on January 31, 2002, he sold short 100 shares of a stock for SLK's equity specialist unit's proprietary account on a straight minus tick, and (ii) on January 31, 2002, he sold short an additional 300 shares of the same stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.11 through 11.12.
- 18.0 Pergola violated Exchange Rule 156(b) on May 14, 1999, in that he effected a purchase of stock for his specialist proprietary account ahead of, and at a better price, than a buy limit order previously entrusted to him, as stated in above paragraphs 8.3 through 8.7.
- 18.1 Pergola violated Exchange Rule 156(a) on May 14, 1999, in that he failed to use due diligence to execute a sell market order in a stock at the best price available to him, as stated in above paragraphs 8.3 through 8.7.

- 18.2 Pergola violated Exchange Rule 155 on May 17, 1999, in that he executed, a buy order in a stock for his specialist proprietary account ahead of, and at the same price as, a customer buy order previously entrusted to the him, as stated in above paragraphs 8.7 through 8.8.
- 18.3 Pergola violated Exchange Rule 7 in that (i) on January 30, 2001, he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; (ii) on April 23, 2001, he sold short 300 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; (iii) on April 24, 2001, he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; and (iv) on February 6, 2002, he sold short 1000 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.1 through 11.4.
- 18.4 Pergola violated Exchange Rule 100 on February 4, 2000, in that he transmitted a commitment to sell 1,800 shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.1 through 12.3.
- 19.0 SLK violated Exchange Rule 155 on April 12, 2000, in that the Firm sold shares of a stock for its proprietary account ahead of a customer order at the same price that had been previously entrusted to the unit, as stated in above paragraphs 10.0 through 10.3.
- 19.1 SLK violated Exchange Rule 100 on April 12, 2000, in that the Firm transmitted two commitments to purchase a total of 7,500 shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.4 through 12.7.

- 20.0 Donohue violated Article V, Section 4(h) of the Exchange Constitution on February 10, 2000, in that he allowed three executable ITS commitments to expire and cancelled a fourth executable commitment, as stated in above paragraphs 9.0 through 9.7.
- 20.1 Donohue violated Exchange Rule 7 on November 13, 2001, in that he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.10.
- 20.2 Donohue violated Exchange Rule 320(b) during the entire aforementioned period, in that he failed to reasonably supervise the individual specialists who caused the aforementioned violations, as stated in above paragraphs 2.0 through 12.11.
- 21.0 SLK violated Exchange Rule 7 on March 15, 2001, in that Specialist B sold short 3,000 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.7.
- 21.1 SLK violated Exchange Rule 7 on May 10, 2001, in that Specialist B sold short 100 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.8.
- 21.2 SLK violated Exchange Rule 7 on March 29, 2001, in that Specialist C sold short 800 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.9.
- 21.3 SLK, through the actions of its subsidiary, SIS, violated Exchange Rule 100 on June 26, 2000, in that Specialist D transmitted three commitments to purchase shares of a Depositary Receipt through ITS after the close of Amex trading, as stated in above paragraphs 13.0 through 13.8.

- 21.4 SLK violated Article V, Section 4(h) of the Exchange Constitution on July 17, 2000, in that a clerk's error while utilizing the REDI System resulted in the unintended entry of 50% liquidation orders in 87 of the specialist unit's stocks prior to the opening of trading, as stated in above paragraphs 4.0 through 4.7.
- 21.5 SLK violated SEC Rule 11Ac1-1 (the "Firm Quote Rule"), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period July 1999 through March 2000, in that the specialist unit failed to execute 152 customer orders at the available price reflected in the quoted market, as stated in above paragraphs 6.0 through 6.14.
- 21.6 SLK violated Exchange Rule 126 on January 19, 2000, February 10, 2000, March 1, 2000 and March 14, 2000, in that the specialist unit executed customer orders out of sequence on each of those trading dates, as stated in above paragraphs 6.7 through 6.10.
- 21.7 SLK violated Exchange Rule 155 during the period August 25, 1999 through March 23, 2000, in that the specialist unit traded ahead of twelve customer orders for the specialists' proprietary account, as stated in above paragraph 6.11.
- 21.8 SLK violated Exchange Rule 131(q) on March 6, 2000, in that the specialist unit improperly executed stop orders without an electing sale, as stated in above paragraph 6.13.
- 21.9 SLK violated Exchange Rule 155 on November 22, 1999, in that the specialist unit failed to use due diligence in executing a limit order in a stock at the best price available under the published market procedures of the Exchange, as stated in above paragraph 6.12.

- 21.10 SLK violated SEC Rule 11Ac1-4 (the “Limit Order Display Rule”), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period April 2000 through September 2000, in that the specialist unit failed to reflect 31 superior customer limit orders in a timely fashion in 13 different equities, as stated in above paragraphs 7.0 through 7.23.
- 21.11 SLK violated Exchange Rule 934(a), Rule 1000 Commentary .04(a), Rule 1000A Commentary .05(a), and Rule 1200 Commentary .03(a) in that SLK failed to develop, maintain, and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm’s REDI System.
- 21.12 SLK violated Exchange Rule 320(c) in that, during the relevant period(s) and in connection with its Amex-related activities, it failed to: (i) develop, maintain and enforce reasonable written supervisory procedures for its specialist operations on the Exchange Floor so as to prevent the violations described herein; (ii) develop, maintain and enforce reasonable procedures to ensure the reporting of the situations referred to in above paragraph 15.1 to management within the Firm and the Firm’s compliance department, (iii) reasonably supervise and control Donohue’s activities as the on-Floor supervisor of SLK’s equity specialist book on the Exchange; (iv) properly inform Donohue of the existence of the liquidating functionality of SLK’s REDI System; (v) reasonably respond to “red flags” so as to prevent future violations of the Firm Quote Rule, Limit Order Display Rule, Short Sale Rules and Exchange Rule 100 (sending ITS commitments after the

close of Amex trading); (vi) detect a specialist clerk's input error that resulted in the entry of liquidating orders in 87 of the specialist unit's stocks; (vii) reasonably staff the specialist unit given the large number of securities SLK had been allocated, as had been recommended by the Subcommittee; (viii) develop, maintain, and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm's REDI System, in connection with the conduct specified in above paragraph 14.5; and (ix) to heighten its supervision or develop additional procedures for the unit despite all of the specialist unit's problems referred to in above paragraphs 2.0 through 15.15.

#### **IV. Penalties and Publicity**

The Stipulation proposes the following sanctions:

- (a) Ingallinera: (i) a censure; and  
(ii) a fine of \$65,000.
- (b) Caceres: (i) a censure; and  
(ii) a fine of \$20,000.
- (c) Pergola: (i) a censure; and  
(ii) a fine of \$15,000.
- (d) Donohue: (i) a censure;  
(ii) a fine of \$50,000; and  
(iii) an eighteen (18) month bar from acting in a supervisory capacity retroactive to June 1, 2002, corresponding to the date SLK relieved Donohue of supervisory duties for the SLK equity specialist unit on the Floor of the Exchange.
- (e) SLK: (i) a censure; and  
(ii) a fine of \$285,000.

The Panel finds that the proposed penalties are at the appropriate level to be imposed in this proceeding, and accepts them.

With certain exceptions, Rule 12 of the Exchange Rules on Disciplinary Proceedings provides that “[w]henver” a Panel finds a person guilty of an offense and such determination becomes final, “the Exchange shall announce publicly the results of such disciplinary proceeding....” The Panel finds that the exceptions (where “the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors”) are inapplicable here and concludes that the results of this disciplinary proceeding should be publicly disclosed, as provided in the Rule.

## **V. Conclusion**

The Disciplinary Panel unanimously accepts the Stipulation of Facts and Consent to penalty and hereby imposes the following penalties

- (a) Ingallinera: (i) a censure; and  
(ii) a fine of \$65,000.
- (b) Caceres: (i) a censure; and  
(ii) a fine of \$20,000.
- (c) Pergola: (i) a censure; and  
(ii) a fine of \$15,000.
- (d) Donohue: (i) a censure;  
(ii) a fine of \$50,000; and  
(iii) an eighteen (18) month bar from acting in a supervisory capacity retroactive to June 1, 2002, corresponding to the date SLK relieved Donohue of supervisory duties for the SLK equity specialist unit on the Floor of the Exchange.
- (e) SLK: (i) a censure; and  
(ii) a fine of \$285,000.

The Panel also determined that the results of this proceeding shall be made public and included in the Exchange's Weekly Bulletin.

FOR THE DISCIPLINARY PANEL

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Jerome Nelson  
Chair

Dated: Washington, DC  
March 19, 2003

Copies to: Thomas McCabe, Esq. (via facsimile and first class mail)  
Christina Schulz, Esq. (via facsimile and first class mail)  
Eric S. Brown, Esq. (via electronic mail and first class mail)

Disciplinary Panel  
American Stock Exchange LLC

.....	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
ROSARIO INGALLINERA,	X	CONSENT TO PENALTY
FABIAN CACERES,	X	Case Nos. 99-18, 00-06, 00-07,
ANTHONY PERGOLA,	X	00-11, 00-12, 00-19, 00-22, 00-25,
PETER DONOHUE	X	00-26, 01-05, 01-32, 02-05, 02-16,
AND	X	02-21, 02-22, 02-23, 02-24, 02-40
SPEAR, LEEDS & KELLOGG, L.P.	X	
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange” or the “Amex”), against SPEAR, LEEDS & KELLOGG, L.P. (“SLK” or the “Firm”), a regular member, specialist and clearing organization of the Exchange (CRD #3466), ROSARIO INGALLINERA (“Ingallinera”), FABIAN CACERES (“Caceres”), and ANTHONY PERGOLA (“Pergola”), specialists formerly employed by SLK on the Amex and PETER DONOHUE (“Donohue”), formerly a specialist and on-Floor supervisor for SLK on the Amex.<sup>1</sup> This Stipulation of Facts and Consent to Penalty is entered into with the aforementioned parties 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 upon or arising out of the facts hereinafter stipulated. SLK, Ingallinera, Caceres, Pergola and Donohue, without admitting or denying the stipulated 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 the penalties hereinafter provided. SLK,

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<sup>1</sup> Caceres, Pergola and Donohue are now associated with Performance Capital, L.P. (“Performance Capital”), which acquired SLK’s Amex equity specialist book on or about December 2, 2002. Caceres, Pergola and Donohue currently act as specialists for Performance Capital on the Floor of the Exchange.

Ingallinera, Caceres, Pergola and Donohue understand 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. Each of the aforementioned parties understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of its or his disciplinary records, and may be considered in any future proceeding brought by the Exchange.

## **STIPULATED FACTS:**

### **Background**

- 1.0 During the relevant period herein, SLK was a regular member, specialist and clearing organization of the Exchange and registered broker-dealer with its principal office located at 120 Broadway, New York, New York, 10271. SLK is the largest clearing member organization at the Exchange, providing clearing services for several hundred professional market makers, registered traders and specialists who conduct business on the Exchange Floor. SLK is also the largest specialist organization at the Exchange and is the registered specialist for several hundred index and option products listed for trading on the Exchange. SLK is also a member of the New York Stock Exchange, Inc. (“NYSE”) and the National Association of Securities Dealers, Inc. (“NASD”). On or about October 31, 2000, The Goldman Sachs Group, Inc. (“Goldman Sachs”) completed its acquisition of SLK. Goldman, Sachs & Co., a wholly owned subsidiary of Goldman Sachs, is a member organization of the Exchange and a member of the NYSE and NASD. The conduct in question occurred both before and after the acquisition.
- 1.1 Peter Donohue (“Donohue”) began his career in the securities industry in 1979. Donohue was hired as a specialist clerk by SLK in 1991 and became a specialist for the Firm at the NYSE in 1994. In 1996, Donohue became SLK’s on-Floor supervisor of its equity specialist unit on the Amex. Between June 2002 and December 2002, Donohue was not a supervisor in the unit; during that period he acted solely as a specialist on the Exchange Floor. He is now acting in that same capacity for Performance Capital. In April 2000, Donohue and an SLK equity specialist were jointly and severally fined \$25,000; Donohue was fined for failing to supervise the specialist, who had committed numerous

violations of Securities and Exchange Commission (“SEC”) Rule 11Ac1-4 (the “Limit Order Display Rule”) during September 1998. Donohue settled the matter without admitting or denying the Exchange’s allegations.

- 1.2 Rosario Ingallinera (“Ingallinera”) began his career in the securities industry in 1959 and subsequently became a specialist on the Amex in the 1960s. In 1992, Ingallinera joined SLK as a specialist, and remained with the Firm in that capacity until his retirement in May 2002.
- 1.3 Anthony Pergola (“Pergola”) began his career in the securities industry in 1982. In 1993, he was hired by SLK as a specialist clerk. In April 1999, Pergola became a specialist for the Firm, and remained in that capacity until the transfer of SLK’s Amex equity specialist book to Performance Capital in December 2002.
- 1.4 Fabian Caceres (“Caceres”) began his career in the securities industry in 1996. In 1997, Caceres was hired as a specialist clerk by SLK, and remained in that capacity until 2000, when he was promoted to specialist. Caceres remained employed with SLK in that capacity until the transfer of SLK’s Amex equity specialist book to Performance Capital in December 2002.

### **Violations occurring within the SLK Equity Specialist Unit on the Amex**

#### **Entry of incorrect closing price: SLK and Ingallinera (Case 00-19)**

- 2.0 During all relevant periods herein, SLK and Ingallinera were subject to Article V, Section 4(j) of the Exchange Constitution, which provided that a member or member organization adjudged guilty in a proceeding under this Article of any act which may be determined to be detrimental to the interest or welfare of the Exchange may be suspended or expelled from membership.

- 2.1 During all relevant periods herein, SLK was the registered specialist for ABC, an equity product listed for trading on the Exchange, and Ingallinera was the individual at SLK specializing in ABC on the Exchange.
- 2.2 On September 21, 2000, the closing price for ABC was  $24 \frac{1}{4}$ .
- 2.3 On September 22, 2000, Ingallinera's clerk incorrectly input the last sale from the previous trade date in the electronic book, entering the last sale as  $21 \frac{1}{4}$  rather than  $24 \frac{1}{4}$ .
- 2.4 At no time prior to the opening of ABC on September 22, 2000 did Ingallinera check the accuracy of his clerk's data entry, or verify the last sale from the previous trading day on the XDS System, a system which displays the last sales and ticks on the Amex and regional markets on an overhead screen at the SLK equity specialist unit post.
- 2.5 As a result of the error in inputting the previous day's closing price, Ingallinera quoted a market prior to the opening of ABC on September 22, 2000 that straddled the erroneous closing price, rather than the actual closing price. The market quoted by Ingallinera prior to the opening on September 22, 2000 was  $21 \frac{1}{8}$  -  $21 \frac{3}{8}$  (rather than  $24 \frac{1}{8}$  -  $24 \frac{3}{8}$ ), and the opening trade that morning was 700 shares at  $21 \frac{1}{8}$ , down  $3 \frac{1}{8}$  points from the previous close, which Ingallinera purchased for the specialist unit's proprietary account from an order placed on the electronic book.
- 2.6 During the morning of September 22, 2000, following a second purchase by Ingallinera from the electronic book, an Amex floor broker purchased a total of 7,000 shares from Ingallinera between 10:48 a.m. and 10:58 a.m. through five different trades at prices ranging from  $21 \frac{1}{2}$  to  $22 \frac{3}{4}$ , all at prices well below the previous day's close because of Ingallinera's erroneously quoted market. For each of these trades, Ingallinera failed to detect that the market had been erroneously quoted.

- 2.7 Ingallinera failed to detect the pricing error until he checked the XDS System at approximately 11:00 a.m. to determine how much ABC had risen in price in light of the purchasing activity and realized that the stock had fallen from the actual closing price on the previous trading day.
- 2.8 After being alerted to the problem by Ingallinera, and after lengthy discussions between SLK, Exchange representatives, a Floor Governor, and the Vice-Chairman of the Exchange, the Exchange made adjustments to the tape and execution prices, and SLK issued adjustment checks to customers. The total adjustments to customers were approximately \$12,375.

**Trading after a halt: Caceres (Case 02-40)**

- 3.0 During all relevant periods herein, Caceres was subject to Article V, Section 4(h) of the Exchange Constitution, which 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 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.
- 3.1 On October 4, 2001, the Exchange's Stock Watch Department contacted an Exchange Floor Official to request that he monitor DEF, an equity product traded on the Exchange,

because of potential impending news. DEF was an equity allocated to the SLK equity unit on the Floor of the Exchange.

- 3.2 The Exchange Floor Official notified Caceres, the SLK registered specialist for DEF, on October 4, 2001, that he would be monitoring the stock, and asked Caceres to notify him of any unusual activity in the stock.
- 3.3 On October 8, 2001, trading in DEF opened at 9:31 a.m. Between 9:31 a.m. and 9:37 a.m., Caceres sold a total of 11,000 shares of DEF at 1.50 while his specialist proprietary account was already short 1,789 shares of DEF. The last of Caceres' sales occurred at 9:37:43. During this time period, Caceres was on parity with a CAP D order<sup>2</sup> to sell 50,000 shares of DEF at 1.50 that had been previously entrusted to him.
- 3.4 At 9:38:16 a.m., a mere 33 seconds after his last sale at 1.50, Caceres, in a sudden departure from being a seller of DEF, crossed the market and purchased 12,000 shares of DEF at 1.50 from the CAP D order, dramatically reducing the short position he had just accumulated over the last seven minutes.
- 3.5 At 9:38:46 a.m., a mere 30 seconds after Caceres had nearly flattened his entire short position in DEF, the Exchange's Market Operations staff "zeroed out" DEF on the tape and trading in DEF was halted. The process of implementing a trading halt commences with an Exchange Floor Official walking into the crowd and informing the specialist and trading crowd of the trading halt. Thereafter, the Exchange's Market Operations Staff

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<sup>2</sup> A "CAP D" order is a type of percentage order that can be converted under certain circumstances. A "CAP" notation is an acronym meaning "convert and parity", which instructs the specialist that he or she may convert all or a portion of the order into a limit order, and allows the specialist to be on parity with the converted percentage order, either to participate directly in a trade or to make a bid or offer ("bettering the market"). A "CAP" notation permits stabilizing conversions. The "CAP D" notation instructs the specialist that the order may be converted to participate in destabilizing transactions as well as stabilizing transactions.

“zeroes out” the market and formally halts trading. It routinely takes more than 30 seconds for the Exchange’s Market Operations staff to formally halt trading in a security (which as stated above occurred at 9:38:46 a.m.). Under the circumstances, Caceres would have been informed of the trading halt by the Exchange Floor Official prior to his 9:38:16 a.m. trade that nearly flattened his short position in DEF.

3.6 Subsequent to the specialist purchasing those 12,000 shares, two other trades occurred in DEF: (a) at 9:38:42 a.m., 2,000 shares printed at 1.50, only four seconds before the market “zeroed out” on the tape, and (b) at 9:38:49 a.m., 3,000 shares traded at 1.50, after the market had been “zeroed out”. Neither of these trades should have been executed given that Caceres knew of the trading halt in DEF.

3.7 Caceres also sought and received Floor Official approval for his 12,000 share trade, even though he is only required to do so as a buyer when liquidating a position on a straight plus tick.

3.8 The following trading day, DEF opened at 2.49, up .99 from the price of the stock when it was halted, which resulted in Caceres avoiding a loss of almost \$12,000.

**REDI System: SLK (Case 01-05)**

4.0 During the relevant period herein, SLK was subject to Article V, Section 4(h) of the Exchange Constitution, as previously defined in above paragraph 3.0.

4.1 During the relevant period herein, SLK’s proprietary Routing and Execution Dot Interface System (the “REDI System”) was a system, which, among other things, allowed SLK to track all of its specialist equity and options positions.

- 4.2 Prior to the opening of trading each day on the Exchange, SLK clerks, using the REDI System, routinely print out the equity unit's positions for submission to the Equity Trading Analysis Department of the Exchange in accordance with Exchange Rule 191.<sup>3</sup>
- 4.3 On July 17, 2000, prior to the opening of Amex trading, an SLK specialist clerk incorrectly utilized the position tracking functionality of the REDI System. Instead of printing out the specialist unit's positions, the clerk selected a feature that caused the entry of orders to liquidate 50% of the specialist unit's positions in 87 of SLK's specialty securities. The orders were automatically entered between 8:13:24 a.m. and 8:31:19 a.m.
- 4.4 When these liquidating orders entered each specialist's electronic book, SLK specialists did not realize that the orders were liquidating orders from their own specialist account, but rather incorrectly assumed that the orders were the result of program trading activity. As a result, when SLK specialists opened these 87 stocks, in many cases they unknowingly purchased or sold stock for their specialist account from or to their specialist account.
- 4.5 The entry of liquidating orders in these 87 SLK stocks also caused order imbalances prior to the opening of each affected stock and consequently impacted the opening price in a number of the issues.
- 4.6 Prior to the opening of trading on July 17, 2000, Pergola, after consulting with Donohue and a Floor Governor, checked one of the 87 orders, an order to sell 13,351 shares of an SLK specialty stock, with the Amex service desk to ensure that the order was valid. As a

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<sup>3</sup> Exchange Rule 191(a) requires every specialist to file with the Exchange before the opening of trading on the next business day a report reflecting his opening position and each purchase and sale in both round lots and odd lots for his own account in each security in which he is registered as a specialist and, with respect to each round lot transaction, shall designate the time and type of tick at which such transaction was affected.

consequence of the order to liquidate 50% of the unit's position in the stock, it was set to open down approximately two dollars. The Amex Service Desk contacted the Firm's REDI desk and asked the REDI desk to confirm that the order was valid. Although the REDI desk followed up on the validity of the order, the fact that the order had been placed by the SLK specialist unit was not discovered. The REDI desk confirmed to the Amex Service Desk, which then informed Pergola and Donohue, that the order to sell 13,351 shares was a "good order".

- 4.7 Donohue was unaware that this liquidating feature on the REDI System was available on the REDI System terminals used by the equity specialist unit.

**Dissemination of an inaccurate order imbalance: Rosario Ingallinera (02-24)**

- 5.0 During the period specified herein, Ingallinera was subject to Exchange Rule 170(b), which provided that as a condition of a member's being registered as a specialist in one or more securities, it is to be understood that, in addition to the execution of commission orders entrusted to him and the performance of his obligations as an odd-lot dealer (if he is so registered) in such securities, 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 on the Exchange in such securities in accordance with and when viewed in relation to the criteria set forth in paragraphs (c) and (d) of this rule and the commentary thereto.
- 5.1 During the period specified herein, Ingallinera was also 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,

to 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.

- 5.2 During the time period described herein, SLK was the registered specialist for GHI, an equity product listed for trading on the Exchange, and Ingallinera was the individual at SLK specializing in GHI on the Exchange.
- 5.3 In June 2001, GHI had been included in a preliminary list of equities to be added to the Russell 3000 Index<sup>4</sup> beginning in the third quarter of 2001. Each subsequent list update issued by Russell throughout the month of June continued to include GHI, and GHI was ultimately included in the final list of the reconstitution of the Russell 3000 Index, released by Russell on June 30, 2001.
- 5.4 On June 29, 2001, the last trading day before the reconstitution of the Russell 3000 Index, GHI opened at 14.01 (-.02), on a 2,200 share trade. During the course of the trading day, GHI traded in a .38 price range (between 14.01 and 14.39) on a total volume of 130,800 shares.

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<sup>4</sup> The Russell 3000 Index measures the performance of the 3,000 largest United States companies based on total market capitalization, which represents approximately 98% of the investable United States equity market.

- 5.5 In accordance with Exchange policy, at 3:42 p.m. on June 29, 2001, Ingallinera disseminated a Market-on-Close (“MOC”) order sell imbalance for GHI of 200,000 shares to the tape.<sup>5</sup> Ingallinera’s clerk, however, had miscalculated the actual MOC imbalance; the true MOC order imbalance was only 63,000 shares to sell.
- 5.6 At no time did Ingallinera verify or otherwise question his clerk’s calculation of the MOC sell imbalance of 200,000 shares, particularly in light of the fact that the addition of a stock to the Russell 3000 Index generally has a positive effect on the price of a stock.
- 5.7 The sell imbalance published by Ingallinera portrayed an inaccurate impression, overstating the extent of selling interest and thus not properly reflecting the condition of the Amex Display Book and market activity near the close of trading on June 29, 2001.
- 5.8 The closing trade in GHI on June 29, 2001, which did not take place until 4:16 p.m.,<sup>6</sup> was for 206,700 shares at a price of 12.10, a decline of 1.95 from the previous trade, an excessive decline largely attributable to Ingallinera’s having priced the execution of the MOC orders based on a 200,000 share sell order imbalance, rather than the actual 63,000 share imbalance. As such, Ingallinera failed to provide a fair and orderly market in GHI on June 29, 2001.
- 5.9 On the following trade date, July 2, 2001, in the absence of any news for GHI, the market showed extremely large buy interest in GHI prior to the opening, even at prices

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<sup>5</sup> At 3:40 p.m., or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published on the tape.

<sup>6</sup> Had Ingallinera executed the closing trade in a more timely manner, there would have been a reduction in the sell imbalance that could have resulted in an improved price execution for the MOC sell orders (over 13,000 shares of buy limit orders were cancelled after 4:00 p.m., but before the closing print time of 4:16 p.m.).

significantly above the previous close of 12.10,<sup>7</sup> further evidencing the inappropriate pricing of GHI by Ingallinera at the close of trading on June 29, 2001. The substantial discount at which Ingallinera had traded GHI at the close on June 29, 2001 attracted buyers on the morning of July 2, 2001 prior to the opening at prices much higher than the closing price. SLK, however, was unwilling to be a seller of significant size, and opened GHI at 13.50 (+1.40), above nearly all the bids on the specialist's book, resulting in a drastic price swing in the security.

**Firm Quote Rule violations: SLK (Case 00-12)**

- 6.0 During the period specified herein, SLK was subject to SEC Rule 11Ac1-1 (the "Firm Quote Rule"), which provides, in pertinent part, that broker/dealers are obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker/dealer, at a price at least as favorable to such buyer or seller as the broker/dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such broker/dealer in connection with execution of any such order) in any amount up to its published quotation size.
- 6.1 During the period specified herein, SLK was also subject to Exchange Rule 126, which provided that the highest bid (lowest offer) has precedence in all cases, but where two or more bids (offers) are made at the same price, bids (offers) are to be filled in the order in which they were placed.

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<sup>7</sup> If the opening on July 2, 2001 was unchanged from the previous close (12.10), the buy imbalance on the specialist's book would have been 345,300 shares; even at a price of 13, the buy imbalance was 187,600 shares.

- 6.2 During the period specified herein, SLK was subject to Exchange Rule 155, which provided that a specialist must give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.
- 6.3 During the period specified herein, SLK was subject to Exchange Rule 156(b), which provided that a broker handling a limited price order is to use due diligence to execute the order at the best price or prices available to him under the published market procedures of the Exchange.
- 6.4 During the period specified herein, SLK was subject to Exchange Rule 131(q), which provided that a stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the trading crowd, and that a stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the trading crowd.
- 6.5 During the period July 1999 through March 2000, SLK equity specialists failed to execute 152 PER<sup>8</sup> (customer) orders at prices reflected in the quoted market. Almost three-quarters of these violations (113) were “Limit Through Quote” infractions, in which a marketable limit order (e.g., a buy limit order priced above the displayed offer, or a sell limit order priced below the displayed bid) is entered and executed at its limit price that is outside of the displayed quotation.<sup>9</sup>

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<sup>8</sup> “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 and the specialist booths on the Exchange trading floor.

<sup>9</sup> SLK issued adjustment checks to customers, totaling \$7,698.75.

- 6.6 Prior to the Firm Quote Rule violations set forth in above paragraph 6.5, SLK had been notified of its equity unit's failure to adhere on certain occasions to the Firm Quote Rule. On August 21, 1998, SLK was issued a summary disciplinary notice for violations of the Firm Quote Rule, pursuant to Exchange Rule 590. Also on August 21, 1998, the Exchange's Minor Floor Violations Disciplinary Committee sent Donohue a letter that, among other things, included a memorandum issued by the Exchange to all equity specialists on June 23, 1998 regarding the proper execution of limit orders priced above or below the quoted market so as to avoid violations of the Firm Quote Rule. Notwithstanding Donohue's receipt of this August 21, 1998 letter, Donohue failed to take appropriate steps to prevent future violations of the Firm Quote Rule, including by failing to alert management within the Firm and the Firm's Compliance Department.
- 6.7 On January 19, 2000, the SLK specialist responsible for JKL violated the Firm Quote Rule<sup>10</sup> by executing a sell order at 17 7/8 when the quoted market in JKL was 18 - 18 1/8, and additionally, in violation of Exchange Rule 126, executed orders out of sequence by executing a PER order to purchase 1,000 shares of JKL at 17 7/8 ahead of PER orders to purchase 200 shares at 18 and 300 shares at 18.
- 6.8 On February 10, 2000, the SLK specialist responsible for stock MNO violated the Firm Quote Rule by executing a sell order at 5 3/8 when the quoted market in MNO was 5 7/16 - 5 1/2, and additionally, in violation of Exchange Rule 126, executed orders out of sequence by erroneously executing a PER order to purchase 3,300 shares at the market ahead of 5 7/16 bids that had already been on the specialist's book.

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<sup>10</sup> Seven of the 152 Firm Quote Rule violations are highlighted in paragraphs 6.7 through 6.13 because on each of these occasions, the specialist violated an additional Exchange Rule.

- 6.9 On March 1, 2000, the SLK specialist responsible for stock PQR violated the Firm Quote Rule by executing a sell order at  $10 \frac{5}{8}$  when the quoted market in PQR was  $10 \frac{11}{16} - 10 \frac{3}{4}$ , and additionally, in violation of Exchange Rule 126, executed orders out of sequence by erroneously executing this order ahead of orders to sell 100 shares at  $10 \frac{11}{16}$  and 2,000 shares at  $10 \frac{11}{16}$ .
- 6.10 On March 14, 2000, the SLK specialist responsible for stock STU violated the Firm Quote Rule by executing a buy order at  $8 \frac{3}{4}$  when the quoted market in STU was  $8 \frac{5}{8} - 8 \frac{11}{16}$ , and additionally, in violation of Exchange Rule 126, executed orders out of sequence by erroneously executing this order ahead of orders to buy 700 shares at  $8 \frac{11}{16}$  and 150 shares at the market.
- 6.11 On twelve of the occasions referred to in above paragraph 6.5, in which SLK specialists violated the Firm Quote Rule, SLK specialists, in violation of Exchange Rule 155, also traded for the specialist unit's proprietary account ahead of customer orders that were entitled to execution.
- 6.12 On November 22, 1999, the SLK specialist responsible for stock VWX violated the Firm Quote Rule by executing a sell order at  $5 \frac{11}{16}$  when the quoted market in VWX was  $5 \frac{3}{4} - 6$ , and additionally, in violation of Exchange Rule 155, had improperly opened VWX on a quote while in possession of a limit sell order priced below the displayed bid in the opening quotation.
- 6.13 On March 6, 2000, the SLK specialist responsible for stock YZZ violated the Firm Quote Rule by executing two sell stop orders at 90 when the quoted market in YZZ was  $90 \frac{1}{2} - 91$ , and additionally, in violation of Exchange Rule 131(q), had improperly executed these two sell stop orders without an electing sale.

6.14 Despite the significance attached to Firm Quote Rule violations, which had been highlighted to SLK in the letter referred to in above paragraph 6.6, Donohue could not recall seeing this letter at any time, and never alerted management at SLK of the continuing nature of the specialist unit's violations.

**Limit Order Display Rule violations: SLK (Case 00-25)**

7.0 During all relevant periods herein, stocks A, B, C, D, E, F, G, H, I, J, K, L and M were listed for trading on the Exchange and registered with SLK as specialists.

7.1 Effective January 20, 1997, and during all relevant periods herein, SEC Rule 11Ac1-4 (“Display of Customer Limit Orders”), in part, required equity specialists to publish “immediately” a bid or offer that reflects the price and full size of each customer limit order that would improve the specialist's bid or offer in the security (i.e., a buy order priced higher than the displayed bid or a sell order priced lower than the displayed offer). According to the SEC, “immediately” means displaying the order as soon as practicable, but under normal market conditions not later than 30 seconds after receipt of the order by the specialist.

7.2 Exchange Information Circular No. 97-30 (“SEC Limit Order Display Rule”), advising all members and member organizations, including all specialists, of the requirements of SEC Rule 11Ac1-4, was distributed by the Exchange on January 16, 1997.

7.3 On or about June 25, 1997, the Exchange introduced a “quote assist” enhancement to the Amex Display Book (“ADB”) to facilitate specialist compliance with SEC Rule 11Ac1-4. The “quote assist” feature of the ADB automatically updates the specialist's quote within 30 seconds of receipt of a new limit order that either betters the market or increases the size. Since SEC Rule 11Ac1-4 requires “immediate” display of limit orders, the SEC has

advised that routine use of the “quote assist” feature by the specialist is not deemed compliance with SEC Rule 11Ac1-4. Floor Member Circular No. 97-736 (“SEC Limit Order Display Rule/ADB Quote Assist Enhancement”), dated June 24, 1997, advised Exchange equity specialists and clerks of the incorporation of the “quote assist” feature to the ADB.

- 7.4 On or about June 16, 2000, the SEC approved the addition of Commentary .10 to Exchange Rule 170 to provide that a specialist may temporarily deactivate “quote assist” in limited circumstances<sup>11</sup> with the approval of a Floor Official.
- 7.5 On April 7, 2000, the SLK specialist for stock A failed to display, either on a timely basis (30 seconds or less), or display at all, one superior customer limit order in stock A. This superior customer limit order was executed one minute and 41 seconds after its entry.
- 7.6 On April 12, 2000, the SLK specialist for stock B failed to display, either on a timely basis, or display at all, one superior limit order in stock B. This superior customer limit order was executed one minute and 28 seconds after its entry into the ADB.
- 7.7 Also on April 12, 2000, the SLK specialist for stock C failed to display one superior customer limit order on a timely basis in stock C. This order was displayed 38 seconds after it had been entered into the ADB.
- 7.8 On April 24, 2000, the SLK specialist for stock D failed to display on a timely basis two superior customer limit orders in stock D. Of these two superior customer limit orders in stock D, one was displayed 54 seconds after its entry, and the other was displayed one minute and one second after its entry.

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<sup>11</sup> These limited circumstances include the following: (i) when there is an influx of orders resulting in gap pricing; (ii) when the specialist deactivates “quote assist” in connection with an Intermarket Trading System (“ITS”) outgoing commitment; and (iii) other unusual circumstances.

- 7.9 On April 27, 2000, the SLK specialist for stock E failed to display, either on a timely basis, or display at all, four superior customer limit orders in stock E. Of these four superior customer limit orders for stock E, three were never displayed at all; the fourth superior customer limit order was displayed 42 seconds after its entry.
- 7.10 On April 28, 2000, the SLK specialist for stock F failed to display one superior customer limit order on a timely basis; in fact, the order was never displayed at all. This order was executed one minute and 13 seconds after its entry into the ADB.
- 7.11 Also on April 28, 2000, the SLK specialist for stock G failed to display, either on a timely basis, or display at all, two superior customer limit orders in stock G. One of these superior customer limit orders was executed 37 seconds after its entry, and the other was executed after 52 seconds had elapsed.
- 7.12 On May 10, 2000, the SLK specialist for stock E failed to display, either on a timely basis, or display at all, nine superior customer limit orders in stock E. Of the nine superior customer limit orders for stock E that the specialist failed to display on a timely basis, four were never displayed at all; they were executed with elapsed times ranging from one minute and two seconds to one minute and 55 seconds after their entry into the ADB. The other five orders were displayed by the SLK specialist with elapsed times ranging from 36 seconds to two minutes and nine seconds.
- 7.13 Also on May 10, 2000, the SLK specialist for stock H failed to display two superior customer limit orders on a timely basis in stock H. One of these orders was displayed 50 seconds after its entry into the ADB, and the other was displayed one minute and 21 seconds after its entry.

- 7.14 On May 15, 2000, the SLK specialist for stock I failed to display one superior customer limit order on a timely basis in stock I; 53 seconds had elapsed before the superior customer limit order was displayed in the quote.
- 7.15 On June 6, 2000, the SLK specialist for stock J failed to display two superior customer limit orders on a timely basis in stock J. One of the superior customer limit orders was displayed 57 seconds after its entry, and the other was only displayed after one minute and 49 seconds had elapsed.
- 7.16 On June 13, 2000, the SLK specialist for stock A failed to display one superior customer limit order on a timely basis in stock A. This order was displayed 44 seconds after its entry into the ADB.
- 7.17 Also on June 13, 2000, the SLK specialist for stock K failed to display two superior customer limit orders on a timely basis in stock K. One of the superior customer limit orders was displayed one minute and 24 seconds after its entry, and two minutes had elapsed before the other superior limit order was displayed.
- 7.18 On July 26, 2000, the SLK specialist for stock L failed to display one superior customer limit order on a timely basis in stock L; in fact, it was never displayed at all. This order was executed one minute and three seconds after its entry into the ADB.
- 7.19 On September 26, 2000, the SLK specialist for stock M failed to display one superior customer limit order on a timely basis in stock M. This order was displayed one minute and eight seconds after its entry.
- 7.20 The failure of the SLK specialists to reflect 31 superior customer limit orders during the period April 7, 2000 through September 26, 2000, as required by SEC Rule 11Ac1-4, resulted, in part, from clerks in the specialist unit deactivating the “quote assist” feature

of the ADBs used by the SLK specialists on the above dates for stocks A, B, C, D, E, F, G, H, I, J, K, L and M.

- 7.21 On those occasions when “quote assist” was deactivated after June 16, 2000 (the effective date of the rule requiring Floor Official approval), neither SLK nor any of its specialists received approval from a Floor Official to temporarily deactivate the “quote assist” feature of the ADB.
- 7.22 All 31 superior customer limit orders that SLK specialists failed to display on a timely basis during the period April 7, 2000 through September 26, 2000 were executed for customers at the limit price or better.
- 7.23 Previous to each of the violations of SEC Rule 11Ac1-4 referred to in above paragraphs 7.5 through 7.19, SLK, Donohue, and an individual specialist in the unit had been informed of similar violations. On September 21, 1998 and September 22, 1998, an SLK specialist failed to reflect 31 superior customer limit orders on a timely basis. Each of these violations resulted, in part, from deactivation of the “quote assist” feature of the ADB. Subsequent to these violations, Exchange staff notified Donohue, who was responsible for the supervision of the SLK equity specialists on the Exchange, of these violations, and was informed by Donohue that he would investigate these violations. SLK, nonetheless, failed to take reasonable steps to ensure compliance with SEC Rule 11Ac1-4, and during the week of September 28, 1998, the specialist unit was responsible for an additional 57 violations of SEC Rule 11Ac1-4. As a result of the specialist’s conduct and Donohue’s failure to supervise the unit in 1998, the SLK specialist and Donohue were jointly and severally fined \$25,000 (see Disciplinary Decision dated April 12, 2000, In the Matter of John Alexander Alatzas and Peter Kevin Donohue).

**Due diligence in order handling and trading ahead: SLK and Anthony Pergola  
(Case 99-18)**

- 8.0 During all relevant periods herein, SLK and Pergola were subject to Exchange Rule 156(a), which provided that a broker handling a market order is to use due diligence to execute the order at the best price or prices available to him under the published market procedures of the Exchange.
- 8.1 During all relevant periods herein, SLK and Pergola were subject to Exchange Rule 156(b), which provided that a broker handling a limited price order is to use due diligence to execute the order at the limit price, or at a better price, if available to him under the published market procedures of the Exchange.
- 8.2 During all relevant periods herein, SLK and Pergola were subject to Exchange Rule 155, which provided that a specialist is to give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.
- 8.3 On May 14, 1999, at 3:13 p.m., a PER MOC order was entered by a public customer to sell 600 shares of stock AA. At the time of this order's entry, the quoted market in stock AA was  $22 \frac{3}{4}$  - 23 (2 x 3).
- 8.4 On May 14, 1999, at 3:14 p.m., a Good-till-Cancelled ("GTC") PER limit order was entered by a public customer to buy 1,500 shares of stock AA at  $22 \frac{3}{4}$ , and at 3:14 p.m., Pergola, the registered specialist for stock AA, re-quoted the market at  $22 \frac{3}{4}$  - 23 (17 x 3) to reflect this order. At 3:16 p.m., Pergola re-quoted the market at  $22 \frac{3}{4}$  - 23 (15 x 3) to reflect another change in bid size since he was no longer bidding for 200 shares of stock AA.

- 8.5 On May 14, 1999, at 4:03 p.m., Pergola executed the MOC 600 share sell order by purchasing the 600 shares for his specialist proprietary account at 22 11/16.
- 8.6 By purchasing these 600 shares at 22 11/16, Pergola purchased stock AA for his proprietary account at 1/16 less than the posted bid of 22 3/4, which represented the public customer's 1,500 share GTC PER limit order. As a result of this trade, Pergola disadvantaged two public customer orders (the 1,500 share limit order that was traded through, as well as the 600 share MOC order that was executed at a price 1/16 away from the market).
- 8.7 On May 17, 1999, the following trading session, the opening trade in stock AA was at 9:37 a.m. for 100 shares at 22 3/4 (+ 1/16), which was the result of the specialist selling 100 shares from his proprietary account to the 1,500 share GTC limit order entered the prior trading day. Pergola subsequently re-quoted the market 22 3/4 - 23 (14 x 3), with the 1,400 share bid representing the unfilled balance of the 1,500 share limit order entered by a public customer the prior trading day referred to in above paragraph 8.4.
- 8.8 On May 17, 1999, at 1:29 p.m., a PER order was entered to sell 200 shares at the market. Five minutes later, at 1:34 p.m., Pergola executed this order by purchasing 200 shares at 22 3/4 for his proprietary account. In executing this trade, Pergola traded ahead of the customer limit order, which was entitled to precedence for the 200 shares.

**Due diligence in order handling: SLK and Peter Donohue (Case 00-07)**

- 9.0 During all relevant periods herein, as stated in above paragraph 8.1, SLK and Donohue were subject to Exchange Rule 156(b), which provided that a broker handling a limited price order is to use due diligence to execute the order at the limit price, or at a better price, if available to him under the published market procedures of the Exchange.

- 9.1 On February 10, 2000, at 12:47:09 p.m., the quoted market in stock BB, which was listed for trading on the Exchange and registered with SLK as specialist, was  $4 \frac{1}{8} - 4 \frac{3}{16}$  (20 x 15).
- 9.2 On February 10, 2000, another market center, between 12:49:18 p.m. and 12:54:37 p.m. sent three separate ITS<sup>12</sup> Commitments to the Exchange to buy 1,500 shares of stock BB at  $4 \frac{3}{16}$  while the quoted market remained at  $4 \frac{1}{8} - 4 \frac{3}{16}$  (20 x 15).
- 9.3 Donohue, the SLK specialist responsible for stock BB, allowed each ITS Commitment referred to in above paragraph 9.2 to expire without execution despite the offer to sell 1,500 shares of stock BB at  $4 \frac{3}{16}$  that was reflected in the quoted market.
- 9.4 At 12:55:42 p.m. on February 10, 2000, the quoted market in stock BB was  $4 \frac{1}{8} - 4 \frac{3}{16}$  (20 x 35). At 12:57:14 p.m. on February 10, 2000, another market center sent an ITS Commitment to the Exchange to buy 3,500 shares of stock BB at  $4 \frac{3}{16}$ , which Donohue cancelled at 12:57:55 p.m. This was an executable ITS Commitment to the extent that it had time priority over other interest in the trading crowd on the Exchange Floor.
- 9.5 On February 10, 2000, at 12:55:48 p.m., while the quoted market in stock BB was  $4 \frac{1}{8} - 4 \frac{3}{16}$  (20 x 35), a PER order was entered to buy 500 shares of stock BB at the market. Donohue, the specialist, however, failed to execute this trade until 12:57:44 p.m., one minute and 56 seconds after the entry of the order.
- 9.6 On February 10, 2000, PER orders were entered to buy 2,000 shares of stock BB at  $4 \frac{3}{16}$  at 12:47:28 p.m. and 12:48:03 p.m., times when an order of that size could have been immediately given a partial fill based on the quoted price and size for stock BB. At

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<sup>12</sup> ITS is an electronic communications network that links all U.S. equity markets, enabling market professionals to interact with their counterparts in other markets whenever the nationwide composite quotation system shows a better price.

12:57:47 p.m., Donohue executed these orders in a 4,000 share trade in stock BB at 4 3/16, 10 minutes and 19 seconds after the first 2,000 share buy trade was entered and nine minutes and 44 seconds after the second 2,000 share buy trade was entered.

**Trading ahead: SLK and Specialist A (Case 00-11)**

- 10.0 During all relevant periods herein, SLK and Specialist A were subject to Exchange Rule 155, which, as stated in above paragraph 8.2, provided that a specialist is to give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.
- 10.1 On April 19, 2000, at 3:54:11 p.m., a PER limit order was entered to sell 2,500 shares of stock CC at 13. Stock CC was listed for trading on the Exchange and registered with SLK and Specialist A as specialist.
- 10.2 On April 19, 2000, at or about the close of Exchange trading, an Exchange floor broker bid 13 for 10,000 shares of stock CC. At 4:00:45 p.m., Specialist A, the specialist responsible for stock CC on that date, executed a 2,500 share trade in stock CC, selling to the Exchange floor broker 2,500 shares from his proprietary account, at 13, leaving a balance of 7,500 shares of the Exchange floor broker's order.
- 10.3 Specialist A executed the order referred to in above paragraph 10.2 for his proprietary account while the PER order referred to in above paragraph 10.1, which had been entered over five minutes earlier at the same price, remained unexecuted on the specialist unit's book.

**Short sale violations: SLK and various specialists within the equity unit (Cases 01-32 and 02-16)**

11.0 During all relevant periods herein, SLK, Pergola, Ingallinera, Donohue, Caceres and the other specialists at SLK were all subject to Exchange Rule 7, which provided that no member or member organization shall for his or its own account or for the account of any other person effect on the Exchange any short sale of a security admitted to dealings on the Exchange unless such sale is based upon a sale in the unit of trading (1) at a price higher than the price at which the latest sale thereof, regular way, was effected on the Exchange, or (2) at such latest price and such price is above the latest different price at which a sale in the unit of trading of such security, regular way, was effected on the Exchange; provided, however, that transactions exempted by paragraph (e) of Rule 10a-1 under the SEA are also exempted from this Rule 7.

**(a) SLK and Pergola**

11.1 On January 30, 2001, at 11:40 a.m., the quoted market in stock DD, which was listed for trading on the Exchange and registered with SLK as specialist, was 2.96 - 3.16 (2 x 2). The Exchange's last sale price for stock DD was 3.35,<sup>13</sup> and the consolidated last sale price was 3.40.<sup>14</sup> At this time, with SLK's proprietary position short 3,511 shares,<sup>15</sup> Pergola, the SLK specialist responsible for stock DD on that date, sold 200 shares of stock DD at 3.16 (-0.19), on a straight minus tick.

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<sup>13</sup> This price represented the Exchange's closing price from the previous trading date.

<sup>14</sup> This price also represented the consolidated closing price from the previous trading date.

<sup>15</sup> For each of these Exchange Rule 7 violations, the specialist's position at the time of the violation was calculated by determining the opening position for the day in question, reported on the Automated 191 Book submitted by the specialist, and adding or subtracting all purchases and sales up to the point of the violation.

- 11.2 On April 23, 2001, at 12:16:02 p.m., the quoted market in stock EE, which was listed for trading on the Exchange and registered with SLK as specialist, was 9.87 - 10.05 (25 x 11). The consolidated last sale price for stock EE was 9.93 at 12:15:09 p.m. on the Exchange. At 12:20:17 p.m., with SLK's proprietary position short 5,032 shares, Pergola, the SLK specialist responsible for stock EE on that date, sold 300 shares of stock EE at 9.88 (-.05), on a straight minus tick.
- 11.3 On April 24, 2001, at 9:50:29 a.m., the quoted market in stock FF, which was listed for trading on the Exchange and registered with SLK as specialist, was 21.00 - 21.05 (10 x 1). The consolidated last sale price for stock FF was 21.05 at 9:50:24 a.m. on the Exchange. At 9:51:36 a.m., with SLK's proprietary position short 7,453 shares, Pergola, the SLK specialist responsible for stock FF on that date, sold 200 shares of stock FF at 21.01 (-.04), on a straight minus tick.
- 11.4 On February 6, 2002, the consolidated closing price in stock GG, which was listed for trading on the Exchange and registered with SLK as specialist, was 4.60 on the NASDAQ and 4.60 on the Exchange at 3:50:19 p.m. On February 7, 2002, at 9:31:01 a.m., with SLK's proprietary position short 521 shares, 2000 shares of stock GG were executed at 4.50 (-0.10) on the opening of trading, of which Pergola, the SLK specialist responsible for stock GG on that date, sold 1000 shares, on a straight minus tick.

**(b) SLK and Ingallinera**

- 11.5 On February 1, 2001, at 3:56 p.m., the quoted market in stock HH, which was listed for trading on the Exchange and registered with SLK as specialist, was 18.30 - 18.50 (1 x 10), and the consolidated last sale was 18.35. At this time, with SLK's proprietary position short 8,077 shares, Ingallinera, the SLK specialist responsible for stock HH on that date, sold 100 shares of stock HH at 18.30 (-.05), on a straight minus tick.

11.6 On May 1, 2001, at 2:24:12 p.m., the quoted market in stock JJ, which was listed for trading on the Exchange and registered with SLK as specialist, was 18.86 - 18.98 (10 x 5). The consolidated last sale price in stock JJ was 18.96 at 2:23:36 p.m. on the Exchange. At 2:25:27 p.m., with SLK's proprietary position in stock JJ short 593 shares, Ingallinera, the specialist responsible for stock JJ on that date, sold 100 shares of stock JJ at 18.87 (-.09), on a straight minus tick.

**(c) SLK and SLK Specialist B**

11.7 On March 15, 2001, at 10:25:18 a.m., the quoted market in stock KK, which was listed for trading on the Exchange and registered with SLK as specialist, was 0.34 - 0.45 (45 x 73). The consolidated last sale in stock KK was 0.43 at 10:24:01 a.m., and the last sale on the Exchange was 0.42 at 9:45:25 a.m. At 10:42:05 a.m., with SLK's proprietary position in stock KK short 1,658 shares, SLK Specialist B, the specialist responsible for stock KK on that date, sold 3,000 shares of stock KK at 0.39 (-0.03), on a straight minus tick.

11.8 On May 10, 2001, at 3:26:21 p.m., the quoted market in stock LL, which was listed for trading on the Exchange and registered with SLK as specialist, was 28.55 - 29.00 (1 x 15). The consolidated last sale price in stock LL was 28.75 at 3:26:18 p.m. on the Exchange. At 3:30:32 p.m., with SLK's proprietary position in stock LL short 2,055 shares, SLK Specialist B, the specialist responsible for stock LL on that date, sold 100 shares at 28.55 (-.20), on a straight minus tick.

**(d) SLK and SLK Specialist C**

11.9 On March 29, 2001, at 11:04:38 a.m., the quoted market in stock MM, which was listed for trading on the Exchange and registered with SLK as specialist, was 15.00 - 15.05 (250 x 100). The consolidated last sale price in stock MM was 15.05 at 10:08:42 a.m. on the

Exchange. At 11:50:03 a.m., with SLK's proprietary position short 472 shares, SLK Specialist C, the specialist responsible for stock MM on that date, sold 800 shares of stock MM at 15.04 (-.01) on a straight minus tick.

**(e) SLK and Donohue**

11.10 On November 13, 2001, at 2:16:42 p.m., the quoted market in stock NN, which was listed for trading on the Exchange and registered with SLK as specialist, was 8.38 - 8.49 (7 x 5). The consolidated last sale price in stock NN was 8.49 at 2:14:38 p.m. on the Exchange. At 2:17:27 p.m., with SLK's proprietary position short 4,454 shares, Donohue, the specialist responsible for stock NN on that date, sold 200 shares of stock NN at 8.39 (-.10), on a straight minus tick.

**(f) SLK and Caceres**

11.11 On January 31, 2002, at 2:17:00 p.m., the quoted market in stock PP, which was listed for trading on the Exchange and registered with SLK as specialist, was 93.00 - 93.75 (1 x 1). The consolidated last sale price in stock PP was 93.25 at 2:16:55 p.m. on the Exchange. At 2:17:44 p.m., with SLK's proprietary position short 1,251 shares, Caceres, the specialist responsible for stock PP on that date, sold 100 shares of stock PP at 93.03 (-0.22), on a straight minus tick.

11.12 Immediately following the trade referred to in above paragraph 11.11, at 2:17:53 p.m., with SLK's proprietary position short 1,351 shares, Caceres sold 300 shares of stock PP at 93.01 (-.02), on a straight minus tick.

11.13 None of the transactions referred to in above paragraphs 11.1 through 11.12 were exempted from Exchange Rule 7 by paragraph (e) of Rule 10a-1 under the SEA.

**(g) SLK's previous Short Sale Rule violations**

11.14 In 1997, SLK had been issued a summary disciplinary notice for repeated violations of the Short Sale Rule, and was fined \$2,500 under the Exchange's Minor Rule Violation Fine System, pursuant to Exchange Rule 590.

11.15 Additionally, Donohue was issued a cautionary letter by the Exchange on April 3, 2001, strongly advising both he and SLK to exercise greater diligence when executing orders on the ADB to avoid additional violations of the Short Sale Rule.

**Trading after the close violations: SLK and various specialists within the equity unit (Cases 00-06, 00-11, and 00-26)**

12.0 During all relevant periods herein, SLK, Pergola, Specialist A and Ingallinera were subject to Exchange Rule 100, which provided that dealings upon the Floor of the Exchange, including dealings effected through the System defined in Exchange Rule 230 ("ITS"), shall be limited to the hours when the Exchange is open for the transaction of business<sup>16</sup> except that (i) a specialist may issue and receive pre-opening notifications and responses, as provided in Exchange Rule 232, before the official opening of the Exchange, and (ii) loans of money or securities may be made after the official closing of the Exchange.

**(a) SLK and Anthony Pergola (Case 00-06)**

12.1 During all relevant periods herein, stock QQ was a multiply listed stock eligible for trading through ITS.

12.2 During all relevant periods herein, Pergola was the individual specialist assigned to handle stock QQ, which was listed for trading on the Exchange.

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<sup>16</sup> Exchange Rule 1 provides that the Exchange is open for equity trading from 9:30 a.m. until 4:00 p.m.

12.3 On trade date February 4, 2000, stock QQ had reported Exchange volume of 6,800 shares; the high for the day was  $7 \frac{1}{4}$ , and the low for the day was  $7 \frac{1}{8}$ . The last sale on the Exchange in stock QQ was for 1,200 shares at  $7 \frac{1}{4}$  at 11:58:51 a.m. At 4:01:50 p.m., after the close of equity trading on the Exchange, Pergola, in his capacity as specialist for the stock QQ, sent a commitment to trade through ITS to another market center to sell 2,000 shares of stock QQ at  $7 \frac{1}{8}$  in connection with or on behalf of an Exchange floor broker's order on the Exchange. At 4:02:19 p.m., the other market center notified Pergola through ITS that 1,800 shares of the 2,000 share order for stock QQ had been purchased at the limit price of  $7 \frac{1}{8}$ .

**(b) SLK and Specialist A (Case 00-11)**

12.4 During all relevant periods herein, stock RR was a multiply listed stock eligible for trading through ITS.

12.5 During all relevant periods herein, Specialist A was the individual specialist assigned to handle stock RR, which was listed for trading on the Exchange.

12.6 On trade date April 19, 2000, stock RR had reported Exchange volume of 262,500 shares; the high for the day was  $13 \frac{1}{16}$ , and the low for the day was  $12 \frac{3}{8}$ . At 4:00:29 p.m., after the close of equity trading on the Exchange, Specialist A, in his capacity as specialist for the stock RR, sent a commitment to trade through ITS to another market center to purchase 5,000 shares of stock RR at 13 in connection with a floor broker's order on the Exchange. At 4:00:33 p.m., the other market center notified Specialist A through ITS that 5,000 shares of stock RR had been purchased at the limit price of 13.

12.7 Shortly thereafter, at 4:01:14 p.m., after the close of equity trading on the Exchange, Specialist A, in his capacity as specialist for the stock RR, sent a commitment to trade through ITS to another market center to purchase another 2,500 shares of stock RR at 13

on behalf of a floor broker's order on the Exchange. At 4:01:19 p.m., the other market center notified Specialist A through ITS that the commitment was cancelled because of the unavailability of stock RR at that price and size.

**(c) SLK and Rosario Ingallinera (Case 00-26)**

- 12.8 During all relevant periods herein, stock SS was a multiply listed stock eligible for trading through ITS.
- 12.9 During all relevant periods herein, Ingallinera was the individual specialist assigned to handle stock SS, which was listed on the Exchange.
- 12.10 On trade date May 31, 2000, stock SS had reported Exchange volume of 66,000 shares; the high for the day was  $2\frac{1}{2}$  and the low for the day was  $1\frac{13}{16}$ . At 4:02:47 p.m., after the close of equity trading on the Exchange, Ingallinera, in his capacity as specialist for the stock SS, sent a commitment to trade through ITS to another market center to purchase 2,500 shares of SS at  $2\frac{1}{4}$  in an attempt to partially fill a PER order to purchase 20,000 shares of SS at the market. At 4:02:50 p.m., the other market center notified Ingallinera through ITS that the commitment was cancelled because of the unavailability of SS at that price and size.
- 12.11 Shortly thereafter, at 4:04:27 p.m., after the close of equity trading on the Exchange, Ingallinera, in his capacity as specialist for SS, sent a commitment to trade through ITS to another market center to purchase 2,500 shares of stock SS at  $2\frac{1}{2}$  for a floor broker's order on the Exchange. At 4:04:30 p.m., the other market center notified Ingallinera through ITS that the commitment was cancelled because of the unavailability of stock SS at that price and size.

**Violations occurring within the SLK Index Specialist Unit on the Amex (Case 00-22)**

- 13.0 During all relevant periods herein, SLK Index Specialists, LLC (“SIS”) was an affiliated entity of SLK engaged in specialist activities for index options and other derivative products on the Floor of the Exchange.
- 13.1 During all relevant periods herein, Specialist D acted as a specialist for SIS.
- 13.2 During all relevant periods herein, SIS and Specialist D were subject to Exchange Rule 100, as set forth above in paragraph 12.0.
- 13.3 During all relevant periods herein, HOLDR<sup>17</sup> # 1 was multiply listed and eligible for trading through ITS.
- 13.4 During all relevant periods herein, Specialist D was the individual specialist assigned to handle HOLDR # 1, which was listed on the Exchange.
- 13.5 On June 26, 2000, HOLDR # 1 had reported Exchange volume of 11,900 shares; the high for the day was 92 3/16, and the low for the day was 89 7/8.
- 13.6 At 4:06:56 p.m., after the close of trading HOLDRS on the Exchange, Specialist D, acting as the HOLDR # 1 specialist, sent a commitment to trade through ITS to another market center to purchase 100 shares of HOLDR # 1 at 91 9/16 for the SIS proprietary account. At 4:07:00 p.m., the other market center notified Specialist D through ITS that 100 shares of HOLDR # 1 had been purchased at the limit price of 91 9/16.
- 13.7 At 4:08:47 p.m., after the close of trading HOLDRS on the Exchange, Specialist D, still acting as specialist for HOLDR # 1, sent a commitment to trade through ITS to another

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<sup>17</sup> “HOLDRS”, or Holding Company Depositary Receipts, launched by Merrill Lynch & Co., are Depositary Receipts issued by the HOLDRS Trust representing individual and undivided ownership interest in the common stock of companies involved in a specific segment of a particular industry.

market center to purchase another 100 shares of HOLDR # 1 at 91 9/16 for the SIS proprietary account. At 4:09:47 p.m., this commitment expired unexecuted.

- 13.8 At 4:10:14 p.m., after the close of trading HOLDRS on the Exchange, Specialist D, while acting as specialist for HOLDR # 1, sent a commitment to trade through ITS to another market center to purchase another 100 shares of HOLDR # 1 at 91 5/16 for the SIS account. At 4:10:19 p.m., the other market center notified Specialist D through ITS that this commitment was cancelled.

**SLK's Violations of Rules Prohibiting Upstairs Market Making**  
**(Cases 02-05, 02-21, 02-22, 02-23)**

- 14.0 During all relevant periods herein, SLK was subject to Exchange Rule 934(a), Rule 1000 Commentary .04(a), Rule 1000A Commentary .05(a), and Rule 1200 Commentary .03(a), which provided that members and member organizations shall not enter into the Exchange's order routing system ("ORS"), as principal or agent, limit orders in the same options series or equity derivatives product for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options or equity derivatives product on a regular or continuous basis.<sup>18</sup>
- 14.1 SLK provides certain customers with access to the Exchange's ORS through the REDI System. The REDI System is an electronic order routing and management system

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<sup>18</sup> The foregoing Exchange rules also provided that, in determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange may consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract or equity derivatives product; the multiple acquisition and liquidation of positions in the same options series or equity derivatives product during the same day; and the entry of multiple limit orders at different prices in the same options series or equity derivatives product.

developed and operated by SLK. It enables customers to view quotes, to enter, monitor, and cancel orders, and to track positions. The REDI System handles order flow from customers of SLK (including public customers and broker-dealer customers), as well as from customers of other broker-dealers.

**(a) Case 02-22**

14.2 On March 13, 2002, an SLK customer sent, through the REDI System, several hundred limit orders, all for the same account, in various Trust Issued Receipts listed on the Exchange to the Exchange's ORS. During the course of this activity, there were instances in which buy and sell orders were open simultaneously.

**(b) Case 02-21**

14.3 On December 14, 2001, an Amex member broker-dealer that utilizes the REDI System sent over 100 limit orders, all for the same account, in a Trust Issued Receipt listed on the Exchange to the Exchange's ORS through REDI. During the course of this activity, there were instances in which buy and sell orders were open simultaneously.

**(c) Case 02-23**

14.4 On December 6, 2001 and December 10, 2001, an Amex member broker-dealer that utilizes the REDI System sent over 200 limit orders, all for the same account, in an Index Fund listed on the Exchange to the Exchange's ORS through REDI. During the course of this activity, there were instances in which buy and sell orders were open simultaneously.

**(d) Case 02-05**

14.5 Between February 28, 2001 and October 31, 2001, an SLK customer sent, through the REDI System, hundreds of limit orders, all for the same account, in the same class and series of an option listed on the Exchange to the Exchange's ORS. During the course of this activity, there were instances in which buy and sell orders were open simultaneously.

**(e) SLK's Systems and Controls**

- 14.6 During the period referred to in above paragraphs 14.2 through 14.5, SLK failed to develop, maintain, and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm's REDI System.

**SLK's Supervisory Failures**

**SLK's Lack of Written Supervisory Procedures**

- 15.0 During the period May 14, 1999 to March 13, 2002, SLK failed to develop, maintain, and enforce reasonable written supervisory procedures for its specialist operations on the Floor of the Exchange so as to prevent the foregoing violations. Management at SLK believed that written supervisory procedures had been finalized and implemented, and SLK produced to the Exchange what appeared to be a draft of procedures. Donohue, however, was not aware of any written supervisory procedures governing his conduct, and had never seen the documents SLK produced to the Exchange that purported to be SLK's written supervisory procedures for the Exchange Floor.
- 15.1 During the period May 14, 1999 to March 13, 2002, SLK failed to develop, maintain and enforce reasonable procedures to ensure the reporting of the following situations to management within the Firm and to the Firm's compliance department: (i) trading violations on or off the Floor of the Exchange; (ii) receipt of notice from the Exchange as to the commencement of an Exchange investigation involving the Firm or its employees; and (iii) institution of a disciplinary action against the Firm or its employees.
- 15.2 During the period May 14, 1999 to March 13, 2002, SLK failed to establish a separate system of follow-up and review sufficient to reasonably ensure that supervisory authority

and responsibility in connection with the Firm's Specialist operations on the Floor of the Exchange were properly being exercised.

### **SLK's Failure to Supervise Donohue**

- 15.3 During the period May 14, 1999 to March 13, 2002, SLK failed to reasonably supervise and control Donohue's activities as the on-Floor supervisor of SLK's equity specialist book on the Exchange so as to achieve Donohue's and the specialist unit's compliance with certain securities laws and regulations, including the Exchange's Constitution and rules, as stated in above paragraphs 2.0 through 8.8, 10.0 through 11.9 and 11.11 through 12.11.
- 15.4 On February 10, 2000 and November 13, 2001, SLK failed to reasonably supervise and control Donohue's activities as a specialist on the Floor of the Exchange so as to achieve Donohue's compliance with certain securities laws and regulations, including the Exchange's Constitution and rules, as stated in above paragraphs 9.0 through 9.6 and paragraph 11.12.
- 15.5 SLK failed to properly inform Donohue of the functionality of SLK's REDI System, which contributed to the unintended entry of 50% liquidation orders in 87 of the specialist unit's stocks prior to the opening of trading on July 17, 2000.

### **SLK's Failure to Act in Response to "Red Flags"**

- 15.6 On August 21, 1998, SLK was issued a summary disciplinary notice for violations of the Firm Quote Rule. Also on August 21, 1998, the Exchange's Minor Floor Violations Disciplinary Committee sent Donohue a letter, which, among other things, included a June 23, 1998 memorandum, which reminded equity specialists how to properly execute limit orders, so as to avoid violations of the Firm Quote Rule. Notwithstanding

Donohue's receipt of the letter, SLK failed to take appropriate steps to prevent future violations of the rule. As a result, between July 1999 and March 2000, SLK committed an additional 152 violations of the Firm Quote Rule.

- 15.7 On September 21, 1998 and September 22, 1998, an SLK specialist failed to reflect 31 superior customer limit orders in a timely fashion. After meeting with Exchange staff to discuss these violations, Donohue assured the Exchange that he would investigate the violations. SLK, nonetheless, did not take reasonable steps to ensure compliance with the SEC's Limit Order Display Rule; 57 violations of the rule occurred the following week, and an additional 31 violations of the rule occurred between April 7, 2000 and September 26, 2000.
- 15.8 In 1997, SLK was issued a summary disciplinary notice for repeated violations of the Short Sale Rules and fined \$2,500 under the Exchange's Minor Rule Violation Fine System, pursuant to Exchange Rule 590. Notwithstanding the 1997 sanction taken against the specialist unit, in 2001, two SLK specialists, Pergola and Ingallinera, entered into short sale transactions on a straight minus tick for SLK's proprietary account, as stated in above paragraphs 11.1 and 11.5. As a result of these violations, the Exchange issued a cautionary letter to Donohue on April 3, 2001, strongly advising the specialist unit to exercise greater diligence when executing orders on the Amex Display Book so as to avoid additional infractions of the Short Sale Rules. SLK specialists, nonetheless, violated the Short Sale Rules an additional nine times during an eleven month period, as set forth in above paragraphs 11.2 through 11.4 and 11.6 through 11.12.
- 15.9 On February 4, 2000, specialist Pergola sent a commitment to trade through ITS after the close of Amex trading. Donohue, who was a member of the Exchange's ITS Committee

during this time period, became aware of the violation and admonished Pergola, but did not inform management of the violation or implement any procedures or policies to ensure that future violations would not occur. Subsequently, on April 12, 2000 and May 31, 2000, two different specialists in the SLK equity specialist unit sent commitments to trade through ITS after the close of Amex trading. Donohue still only admonished the specialists responsible for the violations and never informed management that these violations continued to occur.

- 15.10 On July 17, 2000, SLK failed to detect a specialist clerk's input error that resulted in the entry of liquidating orders in 87 of the unit's stocks; when Pergola and Donohue attempted to verify the validity of one of these orders, an SLK employee on the REDI desk confirmed to the Amex Service Desk, which then informed Pergola and Donohue, that this was a "good order".
- 15.11 On February 8, 2000 and February 9, 2000, a Subcommittee of the Exchange's Committee on Floor Member Performance ("Subcommittee") convened to review Ingallinera's untimely opening of one of his stocks, and deemed the matter serious enough to warrant precluding SLK from new equity allocations for the second quarter of 2000.
- 15.12 The Subcommittee that met in February 2000 also requested SLK to submit a business plan because the Subcommittee concluded that the equity specialist unit was not adequately staffed to function in an efficient manner in the large number of securities SLK had been allocated. The first attempt at a business plan for the equity specialist unit was several sentences handwritten by Donohue, informing the Subcommittee of the number of employees in the unit and their intention to hire additional personnel. After

the Subcommittee informed Donohue that the plan submitted was insufficient, Donohue merely typed the handwritten business plan previously submitted. Only on the third attempt did Donohue submit a more substantive business plan that proved satisfactory to the Subcommittee.

15.13 Notwithstanding the Subcommittee's request in February 2000 to adequately staff the equity specialist unit, SLK had failed to significantly change the number of specialists and clerks in the unit by the end of January 2001.

15.14 In connection with the conduct specified in above paragraph 14.5, SLK failed to develop, maintain and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm's REDI System.

15.15 Despite the equity specialist unit's problems, as set forth above, SLK failed to heighten its supervision or develop additional supervisory procedures for the unit.

### **CONCLUSIONS:**

By reason of the above, a Disciplinary Panel may conclude that:

16.0 Ingallinera violated Article V, Section 4(h) of the Exchange Constitution and Exchange Rule 170(b) and(d) in that he (i) published an MOC imbalance in a stock on June 29, 2001 that did not properly reflect the conditions of the market, and (ii) failed to provide reasonable continuity at the close of trading for such stock on June 29, 2001, which contributed to a significant price swing at the opening of trading in the issue on July 2, 2001, as stated in above paragraphs 5.0 through 5.9.

16.1 Ingallinera violated Article V, Section 4(j) of the Exchange Constitution, in that on September 22, 2000, his clerk incorrectly input the last sale of a stock from the previous

- trade date in the specialist unit's electronic book, which resulted in Ingallinera quoting, opening and trading the stock at erroneous prices that bore no relation to the previous close of the stock, as stated in above paragraphs 2.0 through 2.8.
- 16.2 Ingallinera violated Exchange Rule 7 in that (i) on February 1, 2001, he sold short 100 shares of a stock for SLK's equity specialist unit's proprietary account on a straight minus tick, and (ii) on May 1, 2001, he sold short 100 shares of a stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.5 and 11.6.
- 16.3 Ingallinera violated Exchange Rule 100 in that on May 31, 2000, he transmitted two commitments to purchase shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.8 through 12.11.
- 17.0 Caceres violated Article V, Section 4(h) of the Exchange Constitution on October 8, 2001, in that he (i) traded against a customer's order in SLK's proprietary account, effectively flattening his position in the stock after he would have been apprised of a trading halt in the stock traded, and (ii) executed an additional trade in that stock after the market had already been "zeroed out" by the trading halt, as stated in above paragraphs 3.0 through 3.8.
- 17.1 Caceres violated Exchange Rule 7 in that (i) on January 31, 2002, he sold short 100 shares of a stock for SLK's equity specialist unit's proprietary account on a straight minus tick, and (ii) on January 31, 2002, he sold short an additional 300 shares of the same stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.11 through 11.12.

- 18.0 Pergola violated Exchange Rule 156(b) on May 14, 1999, in that he effected a purchase of stock for his specialist proprietary account ahead of, and at a better price, than a buy limit order previously entrusted to him, as stated in above paragraphs 8.3 through 8.7.
- 18.1 Pergola violated Exchange Rule 156(a) on May 14, 1999, in that he failed to use due diligence to execute a sell market order in a stock at the best price available to him, as stated in above paragraphs 8.3 through 8.7.
- 18.2 Pergola violated Exchange Rule 155 on May 17, 1999, in that he executed, a buy order in a stock for his specialist proprietary account ahead of, and at the same price as, a customer buy order previously entrusted to the him, as stated in above paragraphs 8.7 through 8.8.
- 18.3 Pergola violated Exchange Rule 7 in that (i) on January 30, 2001, he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; (ii) on April 23, 2001, he sold short 300 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; (iii) on April 24, 2001, he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick; and (iv) on February 6, 2002, he sold short 1000 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraphs 11.1 through 11.4.
- 18.4 Pergola violated Exchange Rule 100 on February 4, 2000, in that he transmitted a commitment to sell 1,800 shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.1 through 12.3.

- 19.0 SLK violated Exchange Rule 155 on April 12, 2000, in that the Firm sold shares of a stock for its proprietary account ahead of a customer order at the same price that had been previously entrusted to the unit, as stated in above paragraphs 10.0 through 10.3.
- 19.1 SLK violated Exchange Rule 100 on April 12, 2000, in that the Firm transmitted two commitments to purchase a total of 7,500 shares of a stock through ITS after the close of Amex trading, as stated in above paragraphs 12.4 through 12.7.
- 20.0 Donohue violated Article V, Section 4(h) of the Exchange Constitution on February 10, 2000, in that he allowed three executable ITS commitments to expire and cancelled a fourth executable commitment, as stated in above paragraphs 9.0 through 9.7.
- 20.1 Donohue violated Exchange Rule 7 on November 13, 2001, in that he sold short 200 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.10.
- 20.2 Donohue violated Exchange Rule 320(b) during the entire aforementioned period, in that he failed to reasonably supervise the individual specialists who caused the aforementioned violations, as stated in above paragraphs 2.0 through 12.11.
- 21.0 SLK violated Exchange Rule 7 on March 15, 2001, in that Specialist B sold short 3,000 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.7.
- 21.1 SLK violated Exchange Rule 7 on May 10, 2001, in that Specialist B sold short 100 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.8.

- 21.2 SLK violated Exchange Rule 7 on March 29, 2001, in that Specialist C sold short 800 shares of stock for SLK's equity specialist unit's proprietary account on a straight minus tick, as stated in above paragraph 11.9.
- 21.3 SLK, through the actions of its subsidiary, SIS, violated Exchange Rule 100 on June 26, 2000, in that Specialist D transmitted three commitments to purchase shares of a Depository Receipt through ITS after the close of Amex trading, as stated in above paragraphs 13.0 through 13.8.
- 21.4 SLK violated Article V, Section 4(h) of the Exchange Constitution on July 17, 2000, in that a clerk's error while utilizing the REDI System resulted in the unintended entry of 50% liquidation orders in 87 of the specialist unit's stocks prior to the opening of trading, as stated in above paragraphs 4.0 through 4.7.
- 21.5 SLK violated SEC Rule 11Ac1-1 (the "Firm Quote Rule"), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period July 1999 through March 2000, in that the specialist unit failed to execute 152 customer orders at the available price reflected in the quoted market, as stated in above paragraphs 6.0 through 6.14.
- 21.6 SLK violated Exchange Rule 126 on January 19, 2000, February 10, 2000, March 1, 2000 and March 14, 2000, in that the specialist unit executed customer orders out of sequence on each of those trading dates, as stated in above paragraphs 6.7 through 6.10.
- 21.7 SLK violated Exchange Rule 155 during the period August 25, 1999 through March 23, 2000, in that the specialist unit traded ahead of twelve customer orders for the specialists' proprietary account, as stated in above paragraph 6.11.

- 21.8 SLK violated Exchange Rule 131(q) on March 6, 2000, in that the specialist unit improperly executed stop orders without an electing sale, as stated in above paragraph 6.13.
- 21.9 SLK violated Exchange Rule 155 on November 22, 1999, in that the specialist unit failed to use due diligence in executing a limit order in a stock at the best price available under the published market procedures of the Exchange, as stated in above paragraph 6.12.
- 21.10 SLK violated SEC Rule 11Ac1-4 (the “Limit Order Display Rule”), made applicable to members and member organizations through Article V, Section 4(i) of the Exchange Constitution, during the period April 2000 through September 2000, in that the specialist unit failed to reflect 31 superior customer limit orders in a timely fashion in 13 different equities, as stated in above paragraphs 7.0 through 7.23.
- 21.11 SLK violated Exchange Rule 934(a), Rule 1000 Commentary .04(a), Rule 1000A Commentary .05(a), and Rule 1200 Commentary .03(a) in that SLK failed to develop, maintain, and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm’s REDI System.
- 21.12 SLK violated Exchange Rule 320(c) in that, during the relevant period(s) and in connection with its Amex-related activities, it failed to: (i) develop, maintain and enforce reasonable written supervisory procedures for its specialist operations on the Exchange Floor so as to prevent the violations described herein; (ii) develop, maintain and enforce reasonable procedures to ensure the reporting of the situations referred to in above paragraph 15.1 to management within the Firm and the Firm’s compliance department, (iii) reasonably supervise and control Donohue’s activities as the on-Floor supervisor of

SLK's equity specialist book on the Exchange; (iv) properly inform Donohue of the existence of the liquidating functionality of SLK's REDI System; (v) reasonably respond to "red flags" so as to prevent future violations of the Firm Quote Rule, Limit Order Display Rule, Short Sale Rules and Exchange Rule 100 (sending ITS commitments after the close of Amex trading); (vi) detect a specialist clerk's input error that resulted in the entry of liquidating orders in 87 of the specialist unit's stocks; (vii) reasonably staff the specialist unit given the large number of securities SLK had been allocated, as had been recommended by the Subcommittee; (viii) develop, maintain, and enforce systems and controls reasonably designed to detect and address upstairs market making by its customers and customers of other broker-dealers using the Firm's REDI System, in connection with the conduct specified in above paragraph 14.5; and (ix) to heighten its supervision or develop additional procedures for the unit despite all of the specialist unit's problems referred to in above paragraphs 2.0 through 15.15.

**DISCIPLINARY ACTION:**

By reason of the above-stipulated facts, a Disciplinary Panel may impose the following penalties upon Ingallinera, Caceres, Pergola, Donohue and SLK:

- (a) Ingallinera: (i) a censure; and  
(ii) a fine of \$65,000.
- (b) Caceres: (i) a censure; and  
(ii) a fine of \$20,000.
- (c) Pergola: (i) a censure; and  
(ii) a fine of \$15,000.

- (d) Donohue:
  - (i) a censure;
  - (ii) a fine of \$50,000; and
  - (iii) an eighteen (18) month bar from acting in a supervisory capacity retroactive to June 1, 2002, corresponding to the date SLK relieved Donohue of supervisory duties for the SLK equity specialist unit on the Floor of the Exchange.
  
- (e) SLK:
  - (i) a censure; and
  - (ii) a fine of \$285,000.

In entering into this Stipulation with SLK, the Exchange considered SLK's May 2002 adoption of comprehensive written procedures, including an Equity Specialist Division Supervision Manual and an Equity Specialist Division Manual, for SLK's equity specialist unit on the Floor of the Exchange.

AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_  
Glen Barrentine  
Vice President

Agreed to this \_\_\_\_\_ day of January, 2003.

\_\_\_\_\_  
Rosario Ingallinera

\_\_\_\_\_  
Anthony Pergola

\_\_\_\_\_  
Peter Donohue