

**Disciplinary Panel
American Stock Exchange, LLC**

IN THE MATTER	:	Case No. 02-03
OF	:	Disciplinary Panel Decision
NATIONAL INVESTOR	:	Hearing Officer - JN
SERVICES CORPORATION	:	
	:	June 12, 2003

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rules 153A, 208, and 320(b) and Article V, Section 4(h) of the Exchange Constitution, as stipulated, and as a penalty imposed a censure and a \$20,000 fine.

DECISION

I. Introduction

The American Stock Exchange, LLC (the "Exchange") instituted a formal disciplinary proceeding against National Investor Services Corporation (NISC), a Regular Member organization of the Exchange. A Disciplinary Panel held a hearing on June 3, 2003, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (attached) that the Exchange and NISC entered into for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against the firm based upon or arising out of the facts set forth in the Stipulation.

II. Facts

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

III. Violation

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

NISC violated Exchange Rule 208 and Article V, Section 4(h) of the Exchange Constitution in that it did not aggregate odd-lot orders entered through the Firm's Post Execution Reporting system (PER) connection to the Exchange Floor, as set forth in paragraphs 3.0 through 3.4 of the Stipulation.

NISC violated Exchange Rule 153A in that it did not properly submit automated trading data to the Exchange, as set forth in paragraphs 4.0 through 4.1 of the Stipulation.

NISC violated Exchange Rule 320(b) in that it did not, at the time the odd-lot orders were entered, have reasonable policies or procedures in place designed to detect or prevent an account or related accounts from entering multiple odd-lot orders rather than one round lot order, into the firm's PER system so as to reasonably detect or prevent the entry of multiple odd-lot orders as prohibited by Exchange Rule 208.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose a censure and a \$20,000 fine for the above misconduct. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds that the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

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

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes a censure and a fine of \$20,000 upon National Investor Services Corporation.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: June 12, 2003

Copies to: Wayne Aaron, Esq. (via facsimile and first class mail)
Justin Kletter, Esq. (via electronic and first class mail)

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

Disciplinary Panel
American Stock Exchange LLC

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IN THE MATTER X STIPULATION OF FACTS
OF X AND
NATIONAL INVESTOR X CONSENT TO PENALTY
SERVICES CORPORATION X Case No. 02-03
X
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against NATIONAL INVESTOR SERVICES CORPORATION (“NISC”) (CRD#39410), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with NISC pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against NISC based upon or arising out of the facts hereinafter stipulated. NISC, without admitting or denying the facts, allegations and conclusions contained in this stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Constitution and Rules and the imposition of the penalties hereinafter provided. NISC understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. NISC understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of its disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS

- 1.0 During all relevant periods herein, NISC was Regular Member Organization of the Exchange.
- 1.1 During all relevant periods herein, Non-Member Firm A ("Broker-Dealer A"), a broker-dealer unaffiliated with NISC, was an institutional client of NISC and an independent NASD broker/dealer. Broker-Dealer A is not a member of the Exchange and, accordingly, is neither subject to the Exchange's jurisdiction nor a party to this Stipulation.
- 1.2 During all relevant periods herein, Broker-Dealer A contracted with NISC for Broker-Dealer to submit orders through NISC's Post Execution Reporting system ("PER")² connection for execution of orders on the Floor of the Exchange.
- 2.0 During all relevant periods herein, Exchange Rule 208 provided, in pertinent part:
"When a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate one or more round lots, a member or member organization shall not accept such orders for execution unless they are, as far as possible, consolidated into round lots, except that selling orders marked "long" need not be so consolidated with selling orders marked "short."
- 2.1 Pursuant to Exchange Rule 205, Specialists on the Exchange are required to execute an odd-lot market order at the prevailing offer (in the case of an order to buy) or bid (in the case of an order to sell).
- 2.2 During all relevant periods herein, NISC was subject to Exchange Rule 320(b), which provided that:

² The "PER System" is the Exchange's Post Execution Reporting System. It is an electronic system whereby customer orders are routed directly to the specialist's electronic book.

“Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility. The person in charge of a group of employees shall reasonably discharge his duties and obligation in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations.”

- 2.3 During all relevant periods herein, Exchange Rule 153A required that if a member or member organization effected or caused to be effected a transaction or transactions, such member or member organization should submit the trade data³ in automated format (“Trade Data”) as prescribed by the Exchange.
- 2.4 During all relevant periods herein, NISC was subject to Article V, Section 4(h) of the Exchange Constitution, which provides that a member, member organization and approved persons shall not engage in conduct inconsistent with just and equitable principals of trade.

³ The elements of the submitted trade data must consist of the clearing house number, the clearing house number on the opposite side of the transaction, the identifying symbol assigned to the transacted security, the date the transaction was executed, the number of shares for each specific transaction and whether each transaction was a purchase or a sale, the transaction price, the account number, the market center where the transaction was executed, the customer name, address, branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number, and if the transaction is executed on behalf of a broker dealer, the data must indicate whether the broker dealer was acting as principal or agent in the transaction, as prescribed by Exchange Rule 153A.

Odd-Lot Transactions

- 3.0 During all relevant periods herein, stock ABC was listed for trading on the Exchange.
- 3.1 On February 12, 2001, Broker-Dealer A, through NISC's PER connection to the Exchange, entered a total of 41 odd-lot trades in ABC. Each trade entered had a volume of 96 to 99 shares. The aggregate volume of Broker-Dealer A's odd-lot activity on February 12 was 4,008 shares. All odd lot orders entered by Broker-Dealer A through NISC's PER system were for the same proprietary account of Broker-Dealer A, as maintained on the books and records of NISC.
- 3.2 By entering multiple odd-lot sell orders for ABC stock through NISC for execution, Broker-Dealer A did not execute a round lot order which would have appeared on the Exchange tape. As a result, actual market interest in ABC stock was not publicly reflected. Additionally, by entering multiple odd-lot orders rather than a round lot order, an order(s) was not represented to the trading crowd, which might have provided public customers with the opportunity for price improvement in the auction market for ABC stock.
- 3.3 Since only the Specialist is the contra party to odd-lot trades, participation on the execution of the odd-lot orders, entered by Broker-Dealer A through NISC, was limited to the Specialist in ABC stock.
- 3.4 As a result of Exchange rules and systems, the Specialist was compelled to execute the multiple odd-lot sell orders, entered by Broker-Dealer A through NISC, at the prevailing bid.

Automated Submission of Trading Data

- 4.0 On or about February 16, 2001, the Exchange's Market Surveillance Department requested NISC submit automated trade data ("Bluesheet information") to the Exchange in connection with the its review of the odd lot orders entered though NISC on February 12, 2001 in ABC stock.
- 4.1 On February 16, 2001, NISC submitted the automated blue sheet information requested by the Exchange as specified in paragraph 4.0. NISC's submission, however, incorrectly combined odd-lot transactions with round lot transactions, and aggregated executions by specific execution price. Additionally, NISC's submission did not indicate the proper market center where the odd lot orders were granted executions and failed to report whether the transactions were executed by a broker/dealer.

Supervision

- 5.0 On February 12, 2001, the date Broker-Dealer A entered the odd-lot orders, NISC had not currently developed, maintained or enforced supervisory procedures reasonably designed to detect or prevent the multiple entry of odd-lot orders by customers through the firm's PER system. NISC subsequently adopted such procedures in November 2001.

CONCLUSION

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

- 6.0 NISC violated Exchange Rule 208 and Article V, Section 4(h) of the Exchange Constitution in that did not aggregate odd-lot orders entered through the Firm's PER connection to the Exchange Floor, as set forth in paragraphs 3.0 through 3.4.
- 6.1 NISC violated Exchange Rule 153A in that it did not properly submit automated trading data to the Exchange, as set forth in paragraphs 4.0 through 4.1.
- 6.2 NISC violated Exchange Rule 320 (b) in that it did not, at the time the odd-lot orders were entered, have reasonable policies or procedures in place designed to detect or prevent an account or related accounts from entering multiple odd-lot orders rather than one round lot order, into the firms PER system so as to reasonably detect or prevent the entry of multiple odd-lot orders as prohibited by Exchange Rule 208.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon National Investor Services Corporation:

- (a) a censure; and
- (b) a \$20,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: _____

Glen Barrentine
Senior Vice President

Agreed to this _____ day of _____, 2003.

on behalf of National Investors Services Corporation