

**Disciplinary Panel
American Stock Exchange, LLC**

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IN THE MATTER	:	Case Nos. 00-15, 00-21,
OF	:	and 00-27
J. STREICHER & CO. L.L.C.	:	Disciplinary Panel Decision
AND JONATHAN Q. FREY	:	Hearing Officer – JN
	:	
	:	March 25, 2003

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondents violated Article V, Section 4(h) and Exchange Rules 126, 131, 155, 156, 320, 170 and 3, as stipulated. The Panel imposed the following penalties, as stipulated: a censure and a \$125,000 fine, to be paid jointly and severally.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against J. Streicher & Co., L.L.C., a member organization of the Exchange, and Jonathan Q. Frey, a Regular Member of the Exchange. A Disciplinary Panel held a hearing on January 21, 2003, pursuant to Article V, Section 2 of the Exchange Constitution. The Panel reviewed a Stipulation of Facts and Consent to Penalty (attached) that the Exchange, Streicher, and Frey entered into for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against them, based upon or arising out of the facts set forth in the Stipulation.

II. Facts

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

III. Violation

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

- 1.) Streicher & Co. engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, in that the firm violated SEA Rule 11Ac1-1 by failing to execute a total of 100 customer orders, entrusted to them as agent, at the best available price reflected in the quoted market for the stocks of A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z during the period July 1999 through March 2000, as set forth in paragraphs 2.0 through 7.0 of the Stipulation.¹
- 2.) Streicher & Co. violated Exchange Rule 126(e)(1)(f) and Floor Transactions Handbook, Part II F 3 – Orders entrusted to Specialists, in that during the period July 1999 through March 2000, it failed to execute orders in the proper sequence on eleven occasions, as set forth in paragraphs 2.0 through 4.1 of the Stipulation.
- 3.) Streicher & Co. violated Exchange Rule 131(a)(b)(q), in that during the period July 1999 through March 2000, it improperly executed three stop orders without an electing sale in the security, as set forth in paragraphs 2.0 through 3.1 and paragraphs 5.0 through 5.1 of the Stipulation.
- 4.) Streicher & Co. violated Exchange Rule 155, in that during the period August 1999 through February 2000, it failed to give precedence to orders entrusted to it as an agent in its specialist securities by purchasing stock for the firm's principal account at prices lower (higher) than existing customer bids (offers) on eight occasions, as set forth in paragraphs 2.0 through 3.1 and paragraphs 6.0 through 6.1 of the Stipulation.

¹ Throughout the Stipulation, the stocks involved are described only by these capital letters.

- 5.) Streicher & Co. violated Exchange Rule 156(a)(b), in that during the period July 1999 through March 2000, it failed to exercise due diligence in executing market and limit orders, as set forth in paragraphs 2.0 through 7.0 of the Stipulation.
- 6.) Streicher & Co. engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, in that the firm violated SEA Rule 11Ac1-4 by failing to reflect a total of 40 superior customer limit orders in a timely manner for the stocks H, I, J, R and U during the period April 6 through July 12, 2000, as set forth in paragraphs 8.0 through 9.10 of the Stipulation.
- 7.) Streicher & Co. violated Exchange Rule 320(b) in that it failed to supervise and control the activities of its specialists and clerks to ensure their compliance with securities laws and rules during the period July 1999 through July 2000, as set forth in paragraphs 2.0 through 10.3 of the Stipulation.
- 8.) Frey violated Exchange Rule 320(b) in that Frey failed to supervise and control the activities of its specialists and clerks to ensure their compliance with securities laws and rules during the period July 1999 through July 2000, as set forth in paragraphs 2.0 through 10.3 of the Stipulation.
- 9.) Frey violated Exchange Rule 320(c) in that Frey failed to take steps designed to detect or prevent violations or otherwise failed to develop, implement and maintain written supervisory procedures pertaining to federal securities laws during the period July 1999 through July 2000, as set forth in paragraphs 2.0 through 10.3 of the Stipulation.

- 10.) Frey violated Exchange Rule 170(d), in that on September 21, 1999, Frey engaged in transactions in stock I for his specialist proprietary account for reasons other than to contribute to the maintenance of price continuity with reasonable depth, as set forth in paragraphs 11.0 through 12.14 of the Stipulation.
- 11.) Frey violated Exchange Rule 3, in that on September 21, 1999, Frey effected excessive purchases of stock I at three different price levels in view of the market for such activity, as set forth in paragraphs 11.0 through 12.14 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose the following penalties upon Streicher & Co. and Frey: (1) a censure and (2) a \$125,000 fine to be paid jointly and severally. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalties as being appropriate to the facts and circumstances of this case. The Panel finds the proposed penalties are at the appropriate level to be imposed in this proceeding, and accepts the penalties proposed.

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

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties upon Streicher and Frey:

1. a censure;
2. a \$125,000 fine to be paid jointly and severally.

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

Jerome Nelson, Chair

Dated: March 25, 2003

Copies to: Jonathan Q. Frey and J. Streicher & Co., LLC c/o Jonathan Q. Frey (via hand-delivery and first class mail)
David E. Rosenstein, Esq. (via electronic mail and first class mail)

STIPULATED FACTS:

- 1.0 Effective January 18, 1945, Streicher & Co. was registered as a broker/dealer under Securities and Exchange Commission (“SEC”) File No. 8-4342.
- 1.1 During all relevant periods herein, Streicher & Co. was an Exchange member organization primarily engaged in specialist activities for stocks on the Floor of the Exchange.
- 16.1 During all relevant periods herein, Frey was registered with the Exchange as a specialist and was actively performing specialist duties as an employee of Streicher & Co. on the Floor of the Exchange. During the relevant period herein, Frey was also responsible for the overall supervision of Streicher & Co.’s specialist operations on the Floor of the Exchange.
- 16.2 During all relevant periods herein, stocks A, B, C, D, E, F, G, H, I, J¹, K, L², M, N, O³, P⁴, Q, R⁵, S, T, U, V, W, X⁶, Y, and Z⁷ were listed for trading on the Exchange and registered with Streicher & Co. as specialists.
- 1.4 During all relevant periods herein, Frey was the individual specialist assigned to handle the Stock I.

¹ Stock J ceased trading on the Exchange on November 2, 2000.
² Stock L ceased trading on the Exchange on August 26, 2002.
³ Stock O ceased trading on the Exchange on February 15, 2000.
⁴ Stock P ceased trading on the Exchange on November 21, 2000.
⁵ Stock R ceased trading on the Exchange on April 26, 2000.
⁶ Stock X ceased trading on the Exchange on October 10, 2000.
⁷ Stock Z ceased trading on the Exchange on July 16, 2001.

Streicher & Co.'s Firm Quote Rule violations

- 2.0 During the period specified herein, Streicher & Co. was subject to Rule 11Ac1-1 (the “Firm Quote Rule”) of the Securities and Exchange Act of 1934 (“SEA”), 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.
- 2.1 During the period specified herein, Streicher & Co. was 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.
- 2.2 During the period specified herein, Streicher & Co. was subject to Exchange Rule 155, which provided that a specialist shall give precedence to orders entrusted to it as an agent in any stock in which it is registered before executing at the same price any purchase or sale in the same stock for an account in which it has an interest.
- 2.3 During the period specified herein, Streicher & Co. was subject to Exchange Rule 156, which provided that a broker handling a market order or limited price order is to use due diligence to execute the order at the best price or prices available to it under the published market procedures of the Exchange.

2.4 During the period specified herein, Streicher & Co. was subject to Exchange Rule 131, which provided that a stop order (stop limit order) to buy becomes a market order (limit 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 (stop limit order) to sell becomes a market order (limit order executable at the limit price or at a better price) when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd.

Violations of Firm Quote Rule:

3.0 During the period July 1999 through March 2000, Streicher & Co.'s equity specialists failed to execute 100 PER⁸ (customer) orders at the available price reflected in the quoted market. (See "Exhibit A" for orders Streicher & Co. failed to execute at the available price reflected in the quoted market.) As described more fully in paragraph 3.1 below, sixty-five of these violations were "Limit Through Quote" infractions, in which a buy order is entered priced at a limit above the displayed offer, or a sell order is entered priced at a limit below the displayed bid. Price adjustments⁹ were not made to any customers for the inferior executions that the customers received.

3.1 One example of Streicher & Co.'s failure to execute a customer order at the available price reflected in the quoted market occurred on July 13, 1999. On July 13, 1999, a customer placed a limit order at 9:35 a.m. to sell 7,400 shares of stock N at 5-3/16. The

⁸ "PER", which stands for "Post Execution and Reporting" system, is the electronic order entry system for Amex equities. PER provides a direct and efficient computerized pathway for orders and execution reports between member firms' order rooms and branch offices and the specialist posts on the Exchange trading floor.

⁹ Customers received inferior executions totaling approximately \$6,521.25, ranging from \$6.25 to \$437.50 per trade.

Amex market at the time was $5\frac{1}{4} \times 5\frac{5}{16}$ (70×23). The customer's order received an execution on 7,000 shares at $5\frac{3}{16}$. As a consequence of Streicher & Co.'s conduct, the customer received \$437.50 ($\frac{1}{16}$ on 7,000 shares) less on this transaction.

Execution of Orders Out of Sequence:

4.0 During the period July 1999 through March 2000, Streicher & Co.'s equity specialists, in violation of Exchange Rule 126, failed to execute orders in the proper sequence on eleven occasions.

4.1 One example of Streicher & Co.'s failure to execute orders in the proper sequence occurred on July 14, 1999. On July 14, 1999, a customer placed a limit order at 12:48 p.m. to sell 5,000 shares of stock D at 2. The Amex market at the time was $2\frac{5}{16} \times 2\frac{1}{2}$ (25×33). Although the customer's sell order was executed against the customer with the prevailing bid, the execution on the 2,500 shares was at $2\frac{1}{4}$. The execution of the $2\frac{5}{16}$ bid at the wrong price of $2\frac{1}{4}$, created an appearance of a $2\frac{1}{4}$ bid being incorrectly executed ahead of three other $2\frac{1}{4}$ bids that were already on the book. As a consequence of Streicher & Co.'s conduct, the seller received \$156.25 ($\frac{1}{16}$ on 2,500 shares) less on this transaction.

Improper Execution of Stop Orders:

5.0 During the period July 1999 through March 2000, Streicher & Co.'s equity specialists, in violation of Exchange Rule 131, improperly executed three stop orders without an electing sale in the security.

5.1 One example of Streicher & Co.'s improper execution of a stop order without an electing sale in the security occurred on March 7, 2000. On March 7, 2000, at 10:51 a.m., a

customer placed an order to buy 200 shares of stock I at a stop limit of 42-1/8. Between 10:51 a.m. and 1:00 p.m., stock I traded at prices between 40-7/8 and 42. At 1:00 p.m., with the Amex market at 41-1/2 x 41-11/16 (25 x 79), the customer's stop limit order was executed at 41-3/4. The stop limit order was executed without an electing sale.

Failures to Give Precedence and Trading Ahead:

- 6.0 During the period August 1999 through February 2000, Streicher & Co.'s equity specialists, in violation of Exchange Rule 155, failed to give precedence to orders entrusted to it as an agent in its specialty securities by purchasing stock for its principal account at prices lower (higher) than existing customer bids (offers) on eight occasions.
- 6.1 One example of Streicher & Co.'s failure to give precedence to orders entrusted to it as an agent in its specialty securities occurred on November 19, 1999. On November 19, 1999, a customer placed a market order at 11:16 a.m. to buy 2,000 shares of stock R. The Amex market at the time was 6-15/16 x 7 (42 x 20). The displayed offer represented a public customer offer. The customer's buy order for 2,000 shares received an execution at 7-3/16; with Streicher & Co. as the contra-party to the trade. Streicher & Co. not only traded ahead of a public customer order which had precedence, the public customer buyer for 2,000 shares paid \$375 (3/16 on 2,000 shares) more on this transaction.
- 7.0 During the period July 1999 through March 2000, Streicher & Co.'s equity specialists, in violation of Exchange Rule 156, failed to exercise due diligence in executing market and limit orders as referenced in paragraphs 3.0 through 6.1 above.

Streicher & Co.’s Limit Order Display Rule violations

- 8.0 Effective January 20, 1997, and during all relevant periods herein, Rule 11Ac1-4 (“Display of Customer Limit Orders”) of the Securities and Exchange Act of 1934 (“SEA”), 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.
- 8.1 Exchange Information Circular No. 97-30 (“SEC Limit Order Display Rule”), advising all members and member organizations, including all specialists, of the requirements of SEA Rule 11Ac1-4, was distributed by the Exchange on January 16, 1997.
- 8.2 On or about June 25, 1997, the Exchange introduced a “quote assist” enhancement to the Amex Display Book (“ADB”) to facilitate specialist compliance with SEA Rule 11Ac1-4. The “quote assist” feature of the ADB automatically updates the specialist’s quote in 30 seconds to reflect any new limit orders that either better the market or increase the size. Since SEA 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 SEA Rule 11Ac1-4. Floor Member Circular #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.

- 8.3 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 circumstances¹⁰ with the approval of a Floor Official.

Violations of Limit Order Display Rule

- 9.0 During the period April 2000 through July 2000, Streicher & Co. equity specialists failed to publish 40 bids and offers that reflected the price and full size of customer limit orders that would improve the specialist’s bid or offer in the security. (See “Exhibit B” for bids and offers that Streicher & Co. failed to display in a timely fashion.)
- 9.1 On April 6, 2000, Streicher & Co. failed to display on a timely basis (30 seconds or less), a superior customer limit order in stock U. The superior customer limit order for stock U which Streicher & Co. failed to display on a timely basis, was displayed by Streicher & Co. with an elapsed time of 1 minute and 39 seconds.
- 9.2 On April 11, 2000, Streicher & Co. failed to display, either on a timely basis, or display at all, seven superior customer limit orders in stock R. Of these seven superior customer limit orders for stock R, which Streicher & Co. failed to display on a timely basis, six were displayed with elapsed times ranging from 39 seconds to one minute and 25 seconds. The one remaining superior customer limit order was never displayed at all, and was executed one minute and 15 seconds after its entry.

¹⁰ 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.

- 9.3 On April 13, 2000, Streicher & Co. failed to display, either on a timely basis, or display at all, eleven superior customer limit orders in stock R. Of these eleven superior customer limit orders for stock R, which Streicher & Co. failed to display on a timely basis, seven were displayed with elapsed times ranging from 36 seconds to one minute and 2 seconds. The remaining four superior customer limit orders were never displayed at all, and were executed with elapsed times ranging from 38 seconds to one minute and 10 seconds after their entry.
- 9.4 On May 22, 2000, Streicher & Co. failed to display on a timely basis, a superior customer limit order in stock J. The superior customer limit order for stock J which Streicher & Co. failed to display on a timely basis, was displayed by Streicher & Co. with an elapsed time of 1 minute and 14 seconds.
- 9.5 On June 23, 2000, Streicher & Co. failed to display, either on a timely basis, or display at all, five superior customer limit orders in stock I. Of these five superior customer limit orders for stock I, which Streicher & Co. failed to display on a timely basis, one was displayed by Streicher & Co. with an elapsed time of 41 seconds. The remaining four superior customer limit orders were never displayed at all, and were executed with elapsed times ranging from one minute and 15 seconds to twenty minutes and 56 seconds after their entry.
- 9.6 On June 26, 2000, Streicher & Co. failed to display, either on a timely basis, or display at all, eleven superior customer limit orders in stock I. Of these five superior customer limit orders for stock I, which Streicher & Co. failed to display on a timely basis, three were displayed with elapsed times ranging from 40 seconds to one minute and 48 seconds.

The remaining two superior customer limit orders were never displayed at all, and both were executed one minute and 12 seconds after their entry.

- 9.7 On June 29, 2000, Streicher & Co. failed to display on a timely basis, two superior customer limit orders in stock H. The two superior customer limit orders for stock H which Streicher & Co. failed to display on a timely basis, were displayed by Streicher & Co. with elapsed times of 39 and 49 seconds.
- 9.8 On July 5, 2000, Streicher & Co. failed to display on a timely basis, five superior customer limit orders in stock H. The five superior customer limit orders for stock H, which Streicher & Co. failed to display on a timely basis, were displayed with elapsed times ranging from 39 seconds to one minute and 31 seconds.
- 9.9 On July 12, 2000, Streicher & Co. failed to display, either on a timely basis, or display at all, three superior customer limit orders in stock H. Of these three superior customer limit orders for stock H, which Streicher & Co. failed to display on a timely basis, two were displayed with elapsed times of 40 seconds and one minute and 8 seconds. The one remaining superior customer limit order was never displayed at all, and was executed one minute after its entry.
- 9.10 At no time during the trade dates referenced in paragraphs 9.5 through 9.9 above, did Streicher & Co. or any of its specialists receive approval from a Floor Official to temporarily deactivate the “quote assist” feature of the ADB.

Streicher & Co.'s Failure to Supervise

- 10.0 During the period specified herein, Streicher & Co. was subject to Exchange Rule 320(b), which provided that each office, department or business activity of a member organization must be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility. Additionally, the person in charge of a group of employees must reasonably discharge his or her duties and obligations 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.
- 10.1 During the period specified herein, Frey was the subject of Exchange Rules 320(b) and 320(c), which provided that the general partners, directors, trustees of each member organization shall provide for appropriate supervisory control and shall designate a general partner, principal executive officer, trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall: 1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control; and 2) establish a separate system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.
- 10.2 During the period July 1999 through July 2000, Streicher & Co. failed to supervise and control the activities of the Equity Specialist Unit to ensure its compliance with SEA

Rule 11Ac1-1, Exchange Rules 126, 155, 156, 131, SEA Rule 11Ac1-4, Exchange Information Circular No. 97-30, Floor Member Circular # 97-736 and Exchange Rule 170.

- 10.3 During the period July 1999 through July 2000, Frey failed to take steps designed to detect or prevent violations or otherwise failed to develop, implement and maintain written supervisory procedures pertaining to federal securities laws, Exchange rules and Exchange policies as referenced in paragraph 10.2 above.

Frey's Specialist Activities in Stock I in Advance of a Stock Offering

- 11.0 During the period herein, Frey was subject to Exchange Rule 170(d), which provided that in connection with the function of a specialist in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the securities in which he is registered, it is ordinarily expected that a specialist will engage, 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.

Transactions in such securities not part of such a course of dealings are not to be effected by a specialist for his own account.

- 11.1 During the period herein, Frey was subject to Exchange Rule 3, which provided that no member or member organization shall effect on the Exchange purchases or sales for any account in which he is directly or indirectly interested, which purchases or sales are excessive in view of his financial resources or in view of the market for such security.
- 12.0 On August 27, 1999, Stock I announced plans to sell 8.7 million shares of common stock in a secondary offering. Stock I planned to use the anticipated \$319.3 million of net proceeds¹¹ from the stock sale to reduce long-term debt.
- 12.1 Stock I's secondary offering was to be priced after the close of trading of Stock I on September 21, 1999, in anticipation of the secondary offering the following morning, September 22, 1999.
- 12.2 On September 20, 1999, Stock I closed at 41-13/16, with the specialist's account long 2,300 shares.
- 12.3 From the close of trading in Stock I on September 20, 1999 to 9:40 a.m. on September 21, 1999, Stock I declined from 41-13/16 to 41-1/4 on 17,700 shares. During this 9/16 of a point price decline, 16,300 shares (92.1%) were effected on minus ticks. Of the 16,300 shares, Frey purchased 16,100 shares (98.8%).
- 12.4 On September 21, 1999, between 9:40 a.m. and 9:56 a.m., Stock I advanced from 41-1/4 to 41-7/8 on 21,800 shares. During this 5/8 of a point price rise, 19,000 shares (87.2%) were traded on plus ticks. Of the 19,000 shares, Frey sold 11,800 shares (62.1%).

¹¹ The amount of the anticipated net proceeds was based on the price of stock I at the time, less underwriting expenses.

- 12.5 On September 21, 1999, between 9:56 a.m. and 10:57 a.m., Stock I declined from 41-7/8 to 40-3/4 on 65,100 shares. During this 1-1/8 point price decline, 63,000 shares (96.8%) were effected on minus ticks. Of the 63,000 shares, Frey purchased 56,800 shares (90.2%).
- 12.6 On September 21, 1999, from 10:57 a.m. to 3:30 p.m., Stock I only traded in a narrow 1/4 of a point price range of between 40-3/4 and 41, on 227,900 shares. During the same time period, 144,900 shares out of 227,900 shares or 63.6% were executed at a price of 40-3/4. Of the foregoing 144,900 shares, Frey purchased 128,800 shares (88.9%) and participated on forty-two out of the forty-six trades at this price.
- 12.7 On September 21, 1999, from 3:30 p.m. to 4:00 p.m., Stock I traded in a very narrow 1/16 of a point price range of between 40-5/8 and 40-11/16 on 47,700 shares. During the same time period, 34,500 shares out of the 47,700 shares or 72.3% were executed at a price of 40-5/8. Of the foregoing 34,500 shares, Frey purchased 28,500 shares, 82.6% of the volume at this price.
- 12.8 On September 21, 1999, at 4:00 p.m., Stock I declined from 40-11/16 to 40-1/2 on one trade of 41,100 shares with Frey purchasing 29,100 shares (71.0%).
- 12.9 On September 21, 1999, the closing price of Stock I was 40-1/2 and the specialist's account went from long 2,300 to long 205,315 shares of Stock I.
- 12.10 Trading activity at these price levels (40-3/4, 40-5/8, and 40-1/2) accounted for 221,000 shares or 52.5% of the share volume effected during the entire regular trading session and 69.7% of the 317,200 shares effected between 10:57 a.m. and 4:00 p.m. During the same

time period, Frey purchased 186,900 shares (84.6%) of the 221,000 shares traded at the three price levels.

- 12.11 During the periods of activity at the 40-3/4 and 40-5/8 levels, as public market or marketable limit orders to sell were entered, Frey consistently executed them (by purchasing the stock for his specialist account). The volume at select price levels observed during the period was not representative of typical depth in Stock I.
- 12.12 For the period January 2, 1998 through September 20, 1999, Frey, as a specialist for Stock I, on a trading session, did not participate in a similar combination of extensive specialist purchase participation in both absolute share volume and volume as a percentage of total shares traded as he did on September 21, 1999. Moreover, a review of Frey's participation in Stock I from September 22, 1999 through October 8, 2002, did not reveal any trade dates where Frey's participation as a percentage of total shares traded approached his participation in Stock I on September 21, 1999.
- 12.13 Prior to Stock I's opening on September 22, 1999, stock I announced the pricing of the public offering of 9,900,000 shares of its common stock at a price of 40-1/2 per share.
- 12.14 After the close of trading on September 22, 1999, the specialist's account was long 74,988 shares of Stock I (with a marked to market value of \$3,037,014). Frey's two-day net profit for September 21 and 22, 1999 in Stock I was approximately \$9,800.

CONCLUSION:

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

- 13.0 Streicher & Co. engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, in that the firm violated SEA Rule 11Ac1-1 by failing to execute a total of 100 customer orders, entrusted to them as agent, at the best available price reflected in the quoted market for the stocks of A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z during the period July 1999 through March 2000, as set forth in above paragraphs 2.0 through 7.0.
- 13.1 Streicher & Co. violated Exchange Rule 126(e)(1)(f) and Floor Transactions Handbook, Part II F 3 - Orders entrusted to Specialists, in that during the period July 1999 through March 2000, it failed to execute orders in the proper sequence on eleven occasions, as set forth above in paragraphs 2.0 through 4.1.
- 13.2 Streicher & Co. violated Exchange Rule 131(a)(b)(q), in that during the period July 1999 through March 2000, it improperly executed three stop orders without an electing sale in the security, as set forth above in paragraphs 2.0 through 3.1 and paragraphs 5.0 through 5.1.
- 13.3 Streicher & Co. violated Exchange Rule 155, in that during the period August 1999 through February 2000, it failed to give precedence to orders entrusted to it as an agent in its specialist securities by purchasing stock for the firm's principal account at prices lower (higher) than existing customer bids (offers) on eight occasions, as set forth in paragraphs 2.0 through 3.1 and paragraphs 6.0 through 6.1.

- 13.4 Streicher & Co. violated Exchange Rule 156(a)(b), in that during the period July 1999 through March 2000, it failed to exercise due diligence in executing market and limit orders, as set forth above in paragraphs 2.0 through 7.0.
- 14.0 Streicher & Co. engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, in that the firm violated SEA Rule 11Ac1-4 by failing to reflect a total of 40 superior customer limit orders in a timely manner for the stocks H, I, J, R and U during the period April 6 through July 12, 2000, as set forth in above paragraphs 8.0 through 9.10.
- 15.0 Streicher & Co. violated Exchange Rule 320(b) in that it failed to supervise and control the activities of its specialists and clerks to ensure their compliance with securities laws and rules during the period July 1999 through July 2000, as set forth in above paragraphs 2.0 through 10.3.
- 15.1 Frey violated Exchange Rule 320(b) in that Frey failed to supervise and control the activities of its specialists and clerks to ensure their compliance with securities laws and rules during the period July 1999 through July 2000, as set forth in above paragraphs 2.0 through 10.3.
- 15.2 Frey violated Exchange Rule 320(c) in that Frey failed to take steps designed to detect or prevent violations or otherwise failed to develop, implement and maintain written supervisory procedures pertaining to federal securities laws during the period July 1999 through July 2000, as set forth in above paragraphs 2.0 through 10.3.
- 16.0 Frey violated Exchange Rule 170(d), in that on September 21, 1999, Frey engaged in transactions in stock I for his specialist proprietary account for reasons other than to

contribute to the maintenance of price continuity with reasonable depth, as set forth in above paragraphs 11.0 through 12.14.

16.1 Frey violated Exchange Rule 3, in that on September 21, 1999, Frey effected excessive purchases of stock I at three different price levels in view of the market for such activity, as set forth above in paragraphs 11.0 through 12.14.

DISCIPLINARY ACTION:

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

- a) a censure; and
- b) a joint and several fine of \$125,000.

AMERICAN STOCK EXCHANGE LLC

By: _____
Glen Barrentine
Vice President

Agreed to this _____ day of _____, 2002

J. Streicher & Co. L.L.C.

Jonathan Q. Frey