

**NYSE ARCA, INC  
115 Sansome Street  
San Francisco, CA 94104**

X.....X	.
NYSE ARCA, INC.	. Options Enforcement Decision No. 08-AO-01
Complainant,	.
	.
v.	.
	.
Student Options, LLC	.
	.
Respondent.	.
X.....X	.

**Appearances:**

For the Division of Enforcement:

For the Respondent:

Virginia Harnisch, Esq.  
Steven M. Tanner, Esq.

Steven Student

This formal disciplinary action was instituted pursuant to NYSE Arca Options Rule 10.4 by the Regulatory Staff of NYSE Regulation, Inc. as a result of a determination by the Chief Regulatory Officer of the NYSE Arca, Inc. and his delegee(s) that there is probable cause for finding that a violation within the disciplinary jurisdiction of the NYSE Arca has occurred.

In order to resolve this matter, Respondent Student Options, LLC (“Student Options” or the “Firm”) has submitted an Offer of Settlement and Consent, executed by the Respondent on June 2, 2008. Such Offer of Settlement and Consent was submitted solely for the purposes of this proceeding without admitting or denying guilt as to any of the matters set forth therein. With due regard to the stipulated facts and findings and the proposed sanction contained therein, the Office of the General Counsel believes it is appropriate to accept the Offer of Settlement and Consent with respect to the File Number set forth above. This Offer of Settlement and Consent is attached to and made a part of this Decision.

**I. Summary**

This matter involves violations by the Firm pertaining to books and records and supervisory deficiencies in 2005, 2006, and 2007. The violative activity included, among other matters, that the Firm failed to properly retain e-mails and instant messages, improperly computed its required Net Capital, failed to conduct an independent review of its Anti-Money Laundering Compliance Program, and had inadequate written procedures for supervision and control, including a separate system of follow-up and review, in these areas.

## **II. Jurisdiction and Applicable Rules**

1. Student Options became registered as an Options Trading Permit (“OTP”) firm with the Pacific Stock Exchange, Inc. (currently known as NYSE Arca) in October 1989.<sup>1</sup> The Firm conducts a Floor brokerage options business at NYSE Arca.
2. In 2005, the Financial and Operational Compliance Department (“FOCD”) of NYSE Arca conducted an examination of the Firm. FOCD sent a letter to the Firm dated November 30, 2005 with the findings of the examination (the “2005 Report”).
3. By letter dated March 8, 2007, which the Firm received, the Division of Enforcement of NYSE Regulation, Inc. (“Enforcement”) notified the Firm that it was continuing the investigation of the matters in the 2005 Report.
4. FOCD also conducted a financial and operational compliance examination of the Firm in 2006, and sent a letter to the Firm dated January 9, 2007 with its findings (the “2006 Report”). By letter dated July 13, 2007, Enforcement notified the Firm that it was also investigating the matters contained in the 2006 Report.
5. On behalf of NYSE Arca, the Financial Industry Regulatory Authority (FINRA) conducted an examination of the Firm in 2007, and sent a letter to the Firm dated December 19, 2007 with its findings (the “2007 Report”).
6. During the relevant period, 2005-2007, NYSE Arca Options Rules 4.11(a), 11.16, 11.17, 11.18, and 11.19 were in full force and effect. Additionally during the Relevant Period, Section 15(c) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 15c3-1 thereunder, and Section 17(a) of the Exchange Act and Rules 17a-3, 17a-4(b)(4), 17a-4(f) and 17a-5 thereunder, were in full force and effect.

## **III. Violative Conduct**

### **Electronic Communications**

7. Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-4(b)(4) thereunder require member organizations to preserve originals of all communications received and copies of all communications sent by members relating to its business, for a period of not less than three years, the first two years in an easily accessible place. Exchange Act Rule 17a-4(f) requires that if records are stored electronically, they must be kept in a non-rewritable, non-erasable format known as WORM (write once read many).

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<sup>1</sup> Prior to the closing of the merger between the New York Stock Exchange and Archipelago Holdings, LLC on March 8, 2006, the exchange now designated as NYSE, Inc. was known as the Archipelago Exchange (“ArcaEx”), and was governed by the rules of PCX, Inc. (“PCX”). The applicable rules were not changed by the merger, and for convenient reference, this document consistently refers to the former ArcaEx as “NYSE Arca” and the governing rules as “NYSE Arca Option Rules,” even when referring to pre-merger periods.

8. NYSE Arca Options Rule 11.16, which pertains to the duty to make and maintain books and records, states, in part: “[e]ach OTP Holder and OTP Firm must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.”
9. Regulatory Bulletin RB-05-02, dated January 5, 2005, titled “Clarification Regarding Supervisory Obligations and Recordkeeping Requirements for E-Mail and Instant Messages,” states that a firm’s supervisory obligations for instant messages (“IMs”) are the same as that for e-mails. It states that “OTP and ETP Holders must supervise the use of instant messaging consistent with the required supervision of e-mail messaging...If an OTP or ETP Holder is unable to establish an adequate supervisory program, the ...[firm] must prohibit the use of instant messaging. OTP or ETP Holders must also ensure that their use of instant messaging complies with applicable SEC recordkeeping requirements.” Regulatory Bulletin RBO-04-04, dated January 7, 2004, titled “Clarification for Members Regarding Supervisory Obligations and Recordkeeping Requirements for E-Mail and Instant Messages,” reiterates the requirements for retaining e-mails and IMs.
10. Prior to August 2006, the Firm failed to maintain an adequate system to electronically retain e-mail messages in the proper format, in that it did not retain e-mail messages in the WORM format.
11. The Firm did not begin to store e-mail messages in the WORM format until August 2006, approximately nine months after it was reminded of this requirement in the 2005 Report.
12. In or around April 2006 the Firm failed to retain e-mail communications in any format in that e-mails from prior to April 2006 were erroneously deleted, and the Firm did not retain hardcopies of the deleted messages.
13. Prior to June 2007, the Firm also failed to maintain IMs in the WORM format. The Firm did not begin to store IMs in WORM until June 2007, approximately five months after it had been reminded of the requirement in the 2006 Report.
14. The Firm’s written procedures stated that it was required to maintain e-mail messages for three years; however, prior to 2007 the procedures did not make reference to the form in which they should be retained.
15. Additionally, although the Firm had been notified in the 2006 Report that it did not maintain documentation of its supervision of IMs, the Firm did not correct the problem until July 2007.
16. Finally, prior to November 2007, the Firm failed to have written procedures for the retention and supervision of communications sent by facsimile.
17. Thus, the Firm violated Exchange Act Section 17(a) and Exchange Act Rules 17a-4(b)(4) and 17a-4(f), and NYSE Arca Options Rule 11.16 by failing to properly retain e-mails











