

NYSE AMEX LLC

**HEARING BOARD DECISION 09-AMEX-9**

May 22, 2009

AIM SECURITIES CO.  
MEMBER ORGANIZATION

**HEARING BOARD DECISION 09-AMEX-10**

ADVANCED SECURITIES CO.  
MEMBER ORGANIZATION

**HEARING BOARD DECISION 09-AMEX-11**

AEGIS SPECIALIST LLC  
MEMBER ORGANIZATION

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**Violated Amex Rules 155 by failing to give precedence to orders entrusted to them as agent in multiple equities before executing at same price purchases or sales in those multiple equities for accounts in which Firm had interest; violated Amex Rule 231(e) and Regulation NMS Rule 602b.2 by failing to honor published quotation, by failing to execute equity orders upon presentment or by executing these orders at prices inferior to published quoted market; violated Amex Rule 16 by failing to adhere to principles of good business practice by failing to execute market orders in timely manner; violated Amex Rule 232 by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets; violated Amex Rule 170(b), (d) Commentary .03 by failing to issue quotations that had proper relation to preceding and/or succeeding transactions; violated Amex Rule 16 by failing to adhere to principles of good business practice by disseminating quote that locked or crossed quoted market of another ITS participant and then failing to promptly unlock or uncross ITS participant's market – Consent to censure and \$65,000 joint and several fine.**

**HEARING BOARD DECISION 09-AMEX-12**

MICHAEL MARCHISI  
SPECIALIST

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**Violated Amex Rule 170(b) by inappropriately freezing NETS Display Book thereby failing to maintain fair and orderly market pursuant to specialist obligations – Consent to censure and \$65,000 joint and several fine.**

**Appearances:**

For the Division of Enforcement  
 Robert A. Marchman, Esq.  
 Kenneth R. Bozza, Esq.  
 Shawn Mallon, Esq.

For Respondents  
 Allan Sexter, Esq.

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A Hearing Officer on behalf of the NYSE Amex LLC (“NYSE Amex” or the “Exchange”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and AIM Securities Co., Advanced Securities Co., and Aegis Specialist LLC, NYSE Amex<sup>1</sup> member organizations (collectively the “AIM Firms”) and Michael Marchisi, a specialist with the AIM Firms (collectively “Respondents”). Without admitting or denying guilt, the AIM Firms consented to a finding by a Hearing Officer that they:

- I. Violated Amex Rule 155 during the period of March 2002 through February 2007, by failing to give precedence to orders entrusted to them as agent in multiple equities before executing at the same price purchases or sales in those multiple equities for accounts in which the Firm had an interest.
- II. Violated Amex Rule 231(e) and Regulation NMS Rule 602b.2 during the period of September 2006 through February 2007, by failing to honor the published quotation, by failing to execute equity orders upon presentment or by executing these orders at prices inferior to the published quoted market.
- III. Violated Amex Rule 16 during the periods of June 2006 through August 2006 and December 2006 through February 2007, by failing to adhere to the principles of good business practice in the conduct of their affairs, in that they failed to execute market orders in a timely manner.
- IV. Violated Amex Rule 232 during the period between April 2007 and June 2007, by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets.
- V. Violated Amex Rule 170(b), (d) Commentary .03 during the period of January 2004 through June 2004 by failing to issue quotations that had a proper relation to the preceding and/or succeeding transactions.

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<sup>1</sup> On or about October 1, 2008, the American Stock Exchange (“Amex”) was acquired by NYSE Euronext and was renamed NYSE Amex LLC. Thus, while the rules of NYSE Amex govern the procedural aspects of this Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of “Amex Rules.”

- VI. Violated Amex Rule 16 during the period of November 2006 through February 2007, by failing to adhere to the principles of good business practice in the conduct of their affairs, by disseminating a quote that locked or crossed the quoted market of another ITS participant and then failing to promptly unlock or uncross the ITS participant's market.

Without admitting or denying guilt, Marchisi consented to a finding by a Hearing Officer that he violated Amex Rule 170(b) during the period of March 8, 2004 through October 21, 2004, by inappropriately freezing the NETS Display Book and thereby failing to maintain a fair and orderly market pursuant to his specialist obligations.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondents stipulate to certain facts, the substance of which follows:\*

#### **Background and Jurisdiction**

1. During all relevant periods herein, the AIM Firms were member organizations and specialist organizations of the American Stock Exchange ("Amex") registered in various equities and Exchange Traded Funds ("ETF")
2. During all relevant periods herein, the AIM Firms served as specialists for various equities, and ETFs that traded on the Floor of the Amex.
3. During all relevant periods herein, Marchisi was employed by the AIM Firms and he served as a specialist for numerous equities that traded on the Floor of the Amex.

#### **Equity Trading Ahead**

4. During all relevant periods herein, Amex Rule 155 required that a specialist 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 the specialist has an interest.
5. During the period of March 2002 through November 2006, equity orders were electronically transmitted to the Floor of the Amex through the New Equity Trading System ("NETS") electronic equity trading platform and entrusted to the AIM Firms, as agent. In November 2006, the Amex implemented a new electronic equity trading platform and orders began transmitting to the Floor of the Amex through the Auction and Electronic Market Integration system ("AEMI"). AEMI remained in effect

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\* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 34 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer.

through February 2007. As described more fully below, on certain occasions during the period of March 2002 through February 2007, the AIM Firms executed transactions in equities of which they were registered for accounts in which they had an interest before executing at the same price any purchase or sale in the same equities for accounts in which they were entrusted as agent.

6. During the period of March 2002 through February 2007, on approximately 130 occasions, the AIM Firms failed to give precedence to orders entrusted to them as agent in multiple equities before executing at the same price purchases or sales in those multiple equities for accounts in which the Respondents had an interest.
7. During the period of March 2002 through February 2007, on certain occasions there were trading ahead transactions for the AIM Firms' dealer account in DEF<sup>2</sup>. For example, on March 2, 2006 at 10:35:43 a.m., the quoted market in DEF was 53.65 – 53.79, (100x200). At 10:35:49 a.m., an Intermarket Trading System (“ITS”) limit commitment to sell 100 shares of DEF at 53.65 became viewable in the specialist's book, which was executable at the time of the specialist's receipt of the ITS participant's commitment. At 10:36:11 a.m., the specialist executed an order for his own account by selling 300 shares of DEF at 53.68, ahead of the ITS participant's commitment. The ITS participant never received a fill and the commitment expired at 10:36:15 a.m.
8. The conduct described above constitutes a violation of Amex Rule 155.

#### **Equity/ETF ITS Firm Quote Violations**

9. During the relevant period herein, subject to certain exceptions, Amex Rule 231(e) and Regulation NMS Rule 602b.2 required Amex specialists to execute incoming ITS commitments to trade at the best available price reflected in the quoted market.
10. During the period of September 2006 through February 2007, on approximately 97 occasions, in multiple products, orders were presented to the AIM Firms through ITS at the published bid or offer in an amount up to the published quotation size. The AIM Firms failed to honor the published quotation by either failing to execute these orders upon presentment or by executing these orders at prices inferior to the published quoted market.
11. The conduct described above constitutes violations of Amex Rule 231(e) and Regulation NMS Rule 602b.2.

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<sup>2</sup> A generic identifier has been used in this example.

### **Market Order Timeliness**

12. During the relevant periods herein, Amex Rule 16 required Amex members and member organizations to adhere to the principles of good business practice in the conduct of their affairs.
13. During the periods of June 2006 through August 2006 and December 2006 through February 2007, on approximately 50 occasions, in multiple products, market orders were presented to the AIM Firms. The AIM Firms failed to execute these orders within a timely manner and thereby failed to adhere to the principles of good business practice.
14. The conduct described above constitutes violations of Amex Rule 16.

### **ITS Pre-Opening Application Violations**

15. During the relevant period herein, subject to certain exceptions, Amex Rule 232 required Amex specialists to issue pre-opening notifications to other participant markets when the opening transaction on the Amex in an Eligible Listed Security was more than the applicable price change as defined by Amex Rule 232.
16. During the period of April 2006 through June 2006, on 25 occasions, AIM failed to issue required ITS pre-opening notifications in Eligible Listed Securities to other participant markets.
17. The conduct described above constitutes violations of Amex Rule 232.

### **Functions of Specialists**

18. During the relevant period herein, subject to certain exceptions, Amex Rule 170(b), (d) Commentary .03 required that “a specialist’s quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist’s position, would bear a proper relation to preceding transactions and anticipated succeeding transactions.”
19. During the period of January 2004 through June 2004, on 39 occasions, the AIM Firms issued excessively wide quotations in that the quotations were a greater than permissible deviation from the preceding and/or succeeding transactions.
20. The conduct described above constitutes violations of Amex Rule 170(b), (d) Commentary .03.

### **ITS Locked & Crossed**

21. Pursuant to the Intermarket Trading System (“ITS”) Plan that was adopted by the Securities and Exchange Commission in May 1982 and its subsequent amendments, ITS participants, which included the Amex, were advised to avoid locked markets in ITS securities.<sup>3</sup> Respondents, as member organizations and specialist firms at the Amex were responsible for carrying out the duties and obligations of the Amex under the ITS Plan.
22. During the period of November 2006 through February 2007, on numerous occasions in one product, the AIM Firms disseminated a quote that locked or crossed the quoted market of another ITS participant and then failed to promptly unlock or uncross the ITS participant’s market, thereby failing to adhere to the principles of good business practice.
23. The conduct described above constitutes violations of Amex Rule 16.

### **Freeze Activity**

24. During the relevant period herein, Rule 11Ac1-4 under the Securities Exchange Act of 1934 (the “Exchange Act”) (now designated as Rule 604 under Regulation NMS) required, in pertinent part, that an Exchange specialist immediately display customer equity limit orders in its public quotation, when each such order is at a price that would improve the specialist’s bid or offer in each such security; or when the order is priced equal to the specialist’s bid or offer and the national best bid or offer for each such security, and the size of the order represents more than a de minimis change in relation to the size associated with the specialist’s bid or offer in each such security.
25. During the relevant period herein, Amex Rule 170(b) stated in pertinent part “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....”
26. During the trading day, the specialist could properly cause the NETS Display Book to be “frozen” in a particular security. This would be necessary for short periods of time and in limited circumstances, such as for a specialist to report trades. A specialist could cause the NETS Display Book to be “frozen” either “explicitly”<sup>4</sup>, by depressing the “freeze key,” which was in place on the NETS Display Book keyboard, or “implicitly”, by opening a NETS Display Book “Execution Template,” among others, which was used to report trades to the Consolidated Tape.

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<sup>3</sup> A locked market is defined by the ITS Plan as disseminating a bid (offer) for an ITS Security at a price that equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the “locked offer (bid)”).

<sup>4</sup> Explicit “freezes” are also referred to as “manual freezes”.

27. During the time that the NETS Display Book was “frozen,” whether “explicitly” or “implicitly”, all new orders that would have been received electronically by the Amex Order File (“AOF”) system would not be delivered to the specialist’s NETS Display Book until the Book was “unfrozen” by the specialist. Therefore, while the NETS Display Book remained “frozen”, these orders could not be represented in the auction market, could not be quoted, and continued to queue in “order time” priority until the NETS Display Book was “unfrozen” by the specialist. Significantly, when the NETS Display Book was “frozen”, the Quote Assist functionality was disabled, thereby preventing the automatic updating of quotations.<sup>5</sup>

### Marchisi’s Violative Conduct

28. During the period of March 8, 2004 through October 21, 2004, Marchisi inappropriately “froze” the NETS Display Book in XYZ<sup>6</sup>, on approximately 4,028 occasions for 30 seconds or longer. During the period, XYZ had the highest volume of any equity in which Marchisi specialized. During the periods in which the NETS Display Book was frozen, customer orders that may have improved the size and/or price were unable to be displayed, executed, canceled or rerouted to other market centers. Further, several customer orders may have become unexecutable due to market movement that occurred during the “freeze” period. As a result, Marchisi failed to maintain a fair and orderly market in XYZ and failed to adhere to his specialist obligation to properly represent these agency orders.
29. The conduct described above constitutes violations of Amex Rule 170(b).

### Additional Factors Considered

30. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration the significant number of trades executed by the AIM Firms in its capacity as specialist firms on the Floor of the Exchange without incident.
31. In addition, Enforcement took into consideration the development of system improvements by the Exchange which aided specialist firms in preventing instances of trading ahead and certain order handling violations.
32. Since the time periods specified herein, there has not been a reoccurrence of the trading ahead violations specified herein.
33. Enforcement also considered that Marchisi’s freeze activity only occurred in one of the many products in which he specialized and was the only product at the AIM

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<sup>5</sup> The Quote Assist feature of the NETS Display Book generally updated the Amex’s published bid or offer automatically within twenty-eight (28) seconds of the receipt of a customer’s limit order that improved the price and/or size of the displayed quotation.

<sup>6</sup> A generic identifier has been used in this example.

Firms where the violative freeze activity occurred. In addition, the freeze activity occurred in one of the busiest products traded on the floor of the Exchange.

**DECISION**

The Hearing Officer in accepting the Stipulation of Facts and Consent to Penalty, found that Respondent's committed the offenses as set forth above.

**PENALTY**

In view of the above findings, the Hearing Officer imposed the penalty consented to by Respondents of a censure and a joint and several fine of \$65,000.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer