

NYSE AMEX LLC

HEARING BOARD DECISION 09-AMEX-2

March 19, 2009

J. STREICHER & CO., LLC
SPECIALIST

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Violated Amex Rule 155 by failing to give precedence to orders entrusted to it; violated Amex Rule 170 – AEMI, Commentaries .01 and .02 by participating in numerous destabilizing transactions without obtaining required Floor Official approval – Consent to censure and \$25,000 fine.

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HEARING BOARD DECISION 09-AMEX-3

JONATHAN Q. FREY
SPECIALIST

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Violated Amex Rule 170 by inappropriately freezing NETS display book for total of approximately 41.5 minutes per trading session, thereby failing to maintain fair and orderly market; violated Exchange Act Rule 11Ac1-4 by failing to adhere to specialist obligation to properly represent agency orders; violated Amex Rule 156 by failing to use due diligence in executing limit orders at their limit price or better – Consent to censure and \$25,000 fine.

Appearances:

For the Division of Enforcement
David Rosenstein, Esq.
Michael E. Chasen, Esq.

For Respondent Streicher
John C. Caminiti

For Respondent Frey
Jonathan Q. Frey, *pro se*

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A Hearing Officer on behalf of NYSE Amex LLC (“NYSE Amex”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and J. Streicher & Co., LLC (“Streicher” or the “Firm”), an NYSE Amex member organization and Jonathan Q. Frey, a specialist with J. Streicher & Co., LLC (collectively, the “Respondents”). Without admitting or denying guilt, Respondents consented to a finding by a Hearing Officer that:

- I. Streicher, during the period of March 1, 2005 through January 31, 2007, violated its agency obligations on numerous occasions by failing to give precedence to orders entrusted to it, in violation of Amex Rule 155;
- II. Streicher, during the period of August 1, 2007 through January 31, 2008, participated in numerous destabilizing transactions without obtaining the required Floor Official approval, in violation of Amex Rule 170 – AEMI, Commentaries .01 and .02; and
- III. Frey, during the period of March 8, 2006 through November 11, 2006, inappropriately froze the NETS display book for a total of approximately 41.5 minutes per trading session, thereby failing to maintain a fair and orderly market in violation of Amex Rule 170, failing to adhere to his specialist obligation to properly represent agency orders in violation of Rule 11Ac1-4 of the Securities Exchange Act of 1934 (“Exchange Act”), and failing to use due diligence in executing limit orders at their limit price or better in violation of Amex Rule 156.

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, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. During all relevant periods herein, Streicher was a member organization and a registered equities specialist organization of the American Stock Exchange (“Amex”).¹
2. During all relevant periods herein, Streicher served as a specialist for various equities that traded on the Floor of the Amex.
3. During all relevant periods herein, Frey was employed by Streicher and he served as a specialist for various equities that traded on the Floor of the Amex.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 22 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.

1 On October 1, 2008, the Amex was acquired by the NYSE Euronext and was subsequently 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.”

Trading Ahead Violations

4. Streicher, during the period of March 1, 2005 through January 31, 2007 (the “Trading Ahead Relevant Period”), violated its agency obligations by failing to give precedence to equity orders entrusted to it, in violation of Amex Rule 155.
5. 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.
6. As set forth below, during the Trading Ahead Relevant Period, on certain occasions, Streicher violated its agency obligations by failing to give precedence to orders entrusted to it. Orders were transmitted to the Floor of the Amex electronically and entrusted to Streicher, as agent. As described more fully below, on certain occasions during the Trading Ahead Relevant Period, Streicher executed transactions in stocks in which it was registered for accounts in which it had an interest before executing at the same price a purchase or sale in the same stocks for accounts in which it was entrusted as agent.
7. During the Trading Ahead Relevant Period, on approximately 230 occasions, Streicher failed to give precedence to orders entrusted to it as agent in multiple stocks before executing at the same price purchases or sales in those multiple stocks for accounts in which the Firm had an interest.
8. During the Trading Ahead Relevant Period, on certain occasions there were Trading Ahead transactions for the Firm’s dealer account in XYZ². For example, on March 21, 2005 at 1:24:31 p.m., the quoted market in XYZ was 10.12 – 10.14, (1x1). At 1:25:32 p.m., an ANTE limit order to buy 100 shares of XYZ at 10.14 became viewable in the specialist’s book, which was executable at the time of the specialist’s receipt of the customer’s limit order. At 1:26:00 p.m., the specialist executed an order for his own account by purchasing 100 shares of XYZ at 10.13, thus trading ahead of the customer order. At 1:26:05, the customer bought 100 shares of XYZ at 10.14, an inferior price to that which the specialist purchased at 1:26:00 p.m.
9. Customers were harmed by the conduct described above in paragraph 7.

AEMI Destabilization Violations

10. Streicher, during the period of August 1, 2007 through January 31, 2008 (the “AEMI Destabilization Relevant Period”), participated in over 200 destabilizing transactions that necessitated Floor Official approval, but failed to obtain the required Floor Official approval in violation of Amex Rule 170 – AEMI, Commentaries .01 and .02.
11. During all relevant periods herein, subject to certain exceptions not applicable in this

² A generic identifier has been used in this example.

matter, Amex Rule 170 – AEMI, Commentaries .01 and .02 required that a specialist receive prior approval from a Floor Official when purchasing on a straight plus tick, increasing or establishing a long position by purchasing all or substantially all the stock offered by the AEMI book on a zero plus tick when the stock so offered represents all or substantially all the stock offered in a market, liquidating a long position on a straight minus tick, and increasing or establishing a short position of all or substantially all the stock bid for on the AEMI book on a zero minus tick when the stock so bid for represents all or substantially all the stock bid for in the market.

12. On over 200 occasions during the AEMI Destabilization Relevant Period, Streicher failed to obtain approval from a Floor Official prior to effecting transactions that constituted a destabilizing trade, as required by Amex Rule 170 – AEMI, Commentaries .01 and .02. For example, on November 8, 2007 at 10:01:07 a.m., Streicher participated in a 6,000 share order of ABC³ by purchasing all 6,000 shares on a plus tick. Streicher was short 398 shares of ABC prior to the transaction and long 5,602 shares after the transaction, thus creating a long position by the purchase of all 6,000 shares. Streicher was required, but failed, to obtain prior Floor Official approval for this destabilizing transaction.

Book Freeze Activity

13. During the period of March 8, 2004 through November 11, 2004 (the “Freeze Relevant Period”), Frey inappropriately “froze” the NETS Display Book in XXX⁴ for approximately 41.50 minutes per trading session, or an average of 10.65 % of each trading day. On approximately 3,756 occasions during these “freezes,” the NETS Display Book in XXX stayed frozen for 30 seconds or longer in violation of the specialist’s obligation to maintain a fair and orderly market and to properly represent customer orders as mandated by Amex Rule 170. On many of the 3,756 occasions referenced above, customer limit orders received while the NETS Display Book was “frozen,” which would have improved the size and/or price of the published bid or offer, were not published in accordance with the requirements at the time pursuant to the Exchange Act Rule 11Ac1-4 and Amex Rule 156.

Order Representation

14. Rule 11Ac1-4 under the Exchange Act (now designated as Rule 604 under Regulation NMS) requires, in pertinent part, that a 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

³ A generic identifier has been used in this example.

⁴ A generic identifier has been used in this example. It should be noted that although the review focused on the time period between March 8, 2004 and October 21, 2004, XXX de-listed from trading on the Amex on October 11, 2004. Because of this, the review for XXX focused on the trading period between March 8, 2004 and October 11, 2004.

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.

15. Amex Rule 156(b) states in pertinent part "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."

The New Equity Trading System ("NETS") Display Book Freeze Mode and Quote Assist Feature

16. The NETS Display Book was an electronic workstation provided by the Amex to specialist firms for use by their specialists at their trading posts⁵ and was operated by means of a customized keyboard. The NETS Display Book allowed specialists to, among other things, receive, view, and process orders, disseminate trade and quote information, report trade executions, research order and execution status, and manage positions.
17. In order to assist specialists in their responsibility to achieve compliance with the limit order display requirements, the NETS Display Book had a Quote Assist feature. The Quote Assist feature of the NETS Display Book generally updated the Amex's published bid or offer automatically within twenty-eight (28) seconds⁶ of the receipt of a customer's limit order that improved the price and/or size of the displayed quotation. When a customer canceled a limit order that made up all or part of such quotation and when the Amex's highest bid or lowest offer had been exhausted, in whole or in part, by an execution, Quote Assist added size to the displayed best bid/offer as additional limit orders at the best bid/offer were received, and reduced the size of the displayed best bid/offer as limit order orders at the bid/offer were executed or cancelled.
18. 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,"⁷ 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.
19. 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

⁵ Since the time period of the matters discussed herein, the NETS Display Book has been replaced by the Auction & Electronic Market Integration ("AEMI") system.

⁶ Twenty-eight (28) seconds was later lowered to eight (8) seconds and eventually changed to instantaneous with the implementation AEMI.

⁷ Explicit "freezes" are also referred to as "manual freeze".

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.

20. When the NETS Display Book was “unfrozen,” electronic orders that had queued during the “freeze” would be immediately displayed on the NETS Display Book’s display screen, and the Quote Assist functionality would resume.

Frey’s Violative Conduct

21. During the Freeze Relevant Period, Frey “froze” the XXX specialist book 12,976 times. After factoring out legitimate “freeze” times relating to outgoing ITS commitments and the execution of trades, the NETS Display Book in XXX was inappropriately “frozen” for a total of approximately 41.5 minutes per trading session, or an average of 10.65% of each trading day during this time period. During these “freeze” periods, customer orders were unable to be displayed, executed, canceled or rerouted to other market centers. Further, several customer orders may have been disadvantaged or become unexecutable due to market movement that occurred during the “freeze” period. As a result, Frey failed to maintain a fair and orderly market in XXX, failed to use due diligence in executing limit orders at their limit price or better, and failed to adhere to his specialist obligation to properly represent these agency orders. Moreover, since these orders were not viewable on the NETS Display Book during these “freezes,” and therefore could not participate in the Amex’s auction market, Frey also failed to satisfy his obligation of maintaining a liquid and continuous two-sided agency auction market.

Other Factors Considered

22. Enforcement took into consideration the development of system improvements by the Amex which aid specialist firms in preventing instances of trading ahead. Since the time period discussed herein, there has not been recurrence of trading ahead violations by the Firm.

DECISION

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

PENALTY

In view of the above findings, the Hearing Officer, imposed the penalty consented to by Respondent J. Streicher & Co., LLC of a censure and a \$25,000 fine, and by Respondent Jonathan Q. Frey of a censure and a \$25,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer