

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
BRIAN A. ARENSTEIN
AND
ALA TRADING, LLC

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:
: Case No. 07-174
: [AMXC07015]

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: Hearing Officer – DMF

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: **DECISION**

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: July 20, 2007
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In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondents violated SEC Rules 203(b)(1) and (3), Article V, Sections 4(h) and (i) of the Exchange Constitution, and Exchange Rule 958—ANTE, as stipulated, and as a penalty imposed: (1) a censure against both Respondents; (2) disgorgement of trading profits of \$1,800,000 against both Respondents, jointly and severally; (3) a fine in the amount of \$1,200,000 against Respondents, jointly and severally; and (4) a five-year suspension from Exchange membership in any capacity and from employment or association in any capacity with an Exchange Member or Member Organization against Respondent Arenstein.

I. Introduction

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against Brian A. Arenstein, a Member of the Exchange, and ALA Trading, LLC, a Regular Member Organization of the Exchange. The Disciplinary Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on July 13, 2007, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (Stipulation), which is attached as Exhibit A. The Exchange, Arenstein and ALA

Trading entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Arenstein and ALA Trading based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Arenstein and ALA Trading, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein.

III. Violations

Based on the stipulated facts, the Chair concludes that Respondents Arenstein and ALA Trading violated:

(1) SEC Rule 203(b)(1) and Article V, Sections 4(h) and (i) of the Exchange Constitution in that Respondents, who were not acting as bona fide options market makers, improperly utilized the Reg SHO market maker locate exemption to avoid locating shares prior to effecting short sale transactions in Reg SHO threshold securities, as set forth in paragraphs 3 through 9 and 21 through 24 of the Stipulation;

(2) SEC Rule 203(b)(3) and Article V, Sections 4(h) and (i) of the Exchange Constitution in that Respondents engaged in a series of transactions that circumvented Respondents' delivery obligations in Reg SHO threshold securities that had been allocated to Respondents by their clearing firm, as set forth in paragraphs 10 through 19 and 25 through 29 of the Stipulation; and

(3) Exchange Rule 958—ANTE in that Respondents failed to meet their in-person, on-floor, assigned class and quoting obligations, as set forth in paragraph 9 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose the following penalties on Respondents: (1) a censure against Arenstein and ALA Trading; (2) disgorgement of \$1,800,000 in trading profits resulting from the circumvention of Reg SHO locate and delivery obligations during the period November 16, 2006 through December 17, 2006 against Arenstein and ALA Trading, jointly and severally; (3) a fine in the amount of \$1,200,000 against Arenstein and ALA Trading, jointly and severally; and (4) a five-year suspension from Exchange membership in any capacity and from employment or association in any capacity with any Exchange Member or Member Organization against Arenstein.

The Chair carefully reviewed the stipulated facts and considered the statements and representations of the parties during the hearing. There do not appear to be any directly applicable Exchange Sanction Guidelines, or any closely analogous decisions issued by the Exchange or any other Self Regulatory Organization. The Chair finds, however, that the proposed penalties are consistent with the General Principles Applicable to All Sanction Determinations and the Principle Considerations in Determining Sanctions set forth in the Exchange's Sanction Guidelines. In particular, the stipulated facts indicate that Respondents' conduct involved a complex scheme that resulted in very substantial financial gains for Respondents. The proposed penalties include disgorgement of Respondents' gains, as well as a substantial fine and a lengthy


suspension against Respondent Arenstein, which the Chair finds appropriately remedial under the stipulated facts of this case.¹

Accordingly, the Chair finds that the proposed penalties are appropriate under the facts and circumstances of this case, and therefore they will be imposed. The Chair 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.²

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties: (1) a censure against both Respondents; (2) disgorgement of \$1,800,000 against Respondents, jointly and severally; (3) a fine in the amount of \$1,200,000 against Respondents, jointly and severally; and (4) a five-year suspension from Exchange membership in any capacity and from employment or association in any capacity with any Exchange Member or Member Organization against Respondent Arenstein.

FOR THE DISCIPLINARY PANEL

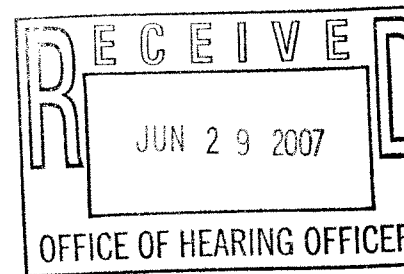


David M. Fitzgerald
Panel Chair

¹ The Chair noted that the proposed fine in this matter is substantially less than the fine in a Stipulation and Consent to Penalty that was presented to the Chair in a hearing on July 9, 2007, even though the conduct involved is similar and the amount of disgorgement in this case is higher. The Chair raised this issue during the hearing, and in response the Exchange explained persuasively that the difference in the fine amounts is attributable to certain material differences in the facts of the two cases.

² Rule 12 exempts from publicity those cases in which 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.” That exemption does not apply to the facts of this case.

Copies to: Brian A. Arenstein (*via overnight and first class mail*)
ALA Trading, LLC (*via overnight and first class mail*)
Ted S. Helwig, Esq. (*via facsimile and first class mail*)
Sebastian Krawczyk, Esq. (*electronically and via first class mail*)
Arlene Collins-Day (*electronically and via first class mail*)



**DISCIPLINARY PANEL
AMERICAN STOCK EXCHANGE LLC**

IN THE MATTER
OF
BRIAN A. ARENSTEIN and
ALA TRADING L.L.C.

**STIPULATION OF FACTS AND
CONSENT TO PENALTY**
Amex Case No. 07-174

This proceeding was instituted by the American Stock Exchange LLC ("Amex" or the "Exchange") against BRIAN A. ARENSTEIN ("Arenstein") (CRD No. 3007943), a Member of the Exchange and ALA TRADING L.L.C. ("ALA Trading" or the "Firm") (CRD No. 134746), a Regular Member Organization of the Exchange (collectively "Respondents"). This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with Respondents pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Respondents based upon or arising out of the facts hereinafter stipulated. Respondents, without admitting or denying the facts, allegations and conclusions contained in this Stipulation, hereby consent to the entry of findings of violations of the federal securities laws and rules and regulations thereunder, the Exchange Constitution and Rules, and the imposition of the penalties hereinafter provided. Respondents understand that this settlement is subject to approval by an Exchange Disciplinary Panel and can be the subject of review by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Respondents understand and acknowledge that the Disciplinary Panel's decision in this

matter will become part of their disciplinary records and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

Background and Jurisdiction

1. During all relevant periods herein, ALA Trading, a New Jersey limited liability company, was a duly registered broker-dealer with the Securities and Exchange Commission (“SEC”) and a Regular Member Organization of the Exchange.
2. During all relevant periods herein, Arenstein was a Regular Member of the Exchange and a Managing Member of ALA Trading.

Respondents Failure to Locate Shares Prior to Effecting Short Sale Transactions

3. During all relevant periods herein, Regulation SHO¹ (“Reg SHO”) required market participants to locate shares to borrow² prior to effecting a short sale transaction. However, pursuant to an exemption in Reg SHO, market makers engaged in bona-fide market making activities³ in a particular security are exempt from the locate requirements applicable to other market participants. Options market makers in equity options are exempt from the locate requirements of Reg SHO when selling the underlying equity short, provided that such short sales hedge options positions established during the course of bona fide options market making activity.⁴
4. During the period November 16, 2006 through December 17, 2006, Respondents engaged in transactions known as “reverse conversions”⁵ with purchasers of Reg SHO threshold securities.⁶

¹ Securities Exchange Act Release No. 34-50103 (July 28, 2004) 69 FR 48008 (August 6, 2004) (“Reg SHO Adopting Release”). Reg SHO was adopted to update short sale regulation in light of numerous market developments since short sale regulation was first adopted in 1938. One of the goals of Reg SHO was to address problems associated with failures to deliver, including potentially abusive “naked” short selling, by establishing uniform “locate” and “close-out” requirements. Division of Market Regulation: Key Points About Regulation SHO (April 11, 2005).

² “Locating shares” requires a market participant to, prior to effecting a short sale in any equity security, borrow the security, enter into an arrangement to borrow the security, or have reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.

³ In the Reg SHO Adopting Release, the SEC provided guidance on bona-fide market making activities. Specifically, the SEC stated, “. . . bona-fide market making does not include transactions whereby a market maker enters into an arrangement with another broker-dealer or customer in an attempt to use the market maker’s exception for the purpose of avoiding compliance with Rule 203(b)(1) by the other broker-dealer or customer” [footnote omitted]. 69 FR 48008, 48015 (August 6, 2004).

⁴ See Section 3(a)(38) of the Securities Exchange Act of 1934 (“Exchange Act”), Rules 203(b)(2)(iii) and 11a1-3(T) thereunder, and the Reg SHO Adopting Release.

⁵ A reversal or a reverse conversion is a short stock transaction that is tied to a long options combination. The options position creates a “synthetic long position”, which carries the essential risk/reward characteristics comparable to the instrument it replicates (i.e., long stock). A synthetic long position is created by buying a call option and selling a put option with the same strike price and expiration. The contra side of reversal transaction is called a conversion. A conversion is a long stock transaction that is tied to a short option combination. The options position creates a “synthetic short position”, which carries

5. In a typical reverse conversion transaction during the relevant period, a floor broker acting as agent for a purchaser of stock in a Reg SHO threshold security (the “converter”) solicited Respondents to take the other side (“contra side”) to a reverse conversion transaction (the “reverser”).
6. The converter, or buyer of the Reg SHO security, also sold call options and bought put options.
7. Respondents participated in the reverse conversion transactions by taking the contra side of the reverse conversion transaction (i.e., reversing against the conversion). Respondents sold short shares of a Reg SHO threshold security, bought call options and sold put options on the security at a specific hedge ratio⁷ equaling the number of shares sold short by the Respondents. Effecting the options component of this transaction eliminated directional risk of the market for the Respondents.⁸
8. Respondents did not locate or borrow shares of the security in question prior to entering an order to effect the short sale portion of the reverse conversion transaction as required by Reg SHO.
9. In certain cases, Respondents were not entitled to the Reg SHO market maker exemption from the locate requirements since the short sales were not effected in connection with bona-fide options market making activities. During the relevant period, Respondents’ options trades were effected without complying with the applicable Exchange options market maker obligations with respect to meeting their quoting obligations as a Remote Registered Options Trader (“RROT”). Further, Respondents did not maintain regular and continuous two-sided quotations or otherwise hold themselves out as willing to buy and sell securities on a regular or continuous basis in the options overlying the equity securities that were sold short as part of the reverse conversion transactions. As a result, Respondents failed to meet the requirements to be classified as a market maker under Sections 3(a)(38) and 11(a) of the Exchange Act, Rule 11a-1 under the Exchange Act and Exchange Rule 958-ANTE. Thus, Respondents’ short selling activities in the reverse conversion transactions and certain married puts⁹ where Respondents were using their locate exemption to provide long stock to another broker-dealer were not related to bona-fide options market making activities and, therefore, Respondents were not entitled to the market maker exemption to the locate rule when selling the stock short.

the essential risk/reward characteristics comparable to the instrument it replicates (i.e., the short sale of stock). The synthetic short position is created by selling a call option and buying a put option with the same strike price and expiration.

⁶ A “threshold security” is an equity security for which there is an aggregate “fail to deliver” position exceeding the size criteria as set forth in Reg SHO for a period of five consecutive settlement days.

⁷ A “hedge ratio”, also known by the Greek symbol “delta”, is typically defined as the change in price of a call/put option for every one-point move in the price of the underlying security.

⁸ Because put sellers hedge their transactions with stock sales and Reg SHO threshold securities are hard-to-borrow, the difficulty in delivering the stock causes the puts to trade at a higher price than the corresponding call options.

⁹ A married put is a combination transaction in which stock is purchased and an equivalent number of puts are purchased and executed simultaneously to protect against a depreciation in the stock’s price.

Respondents Failure to Close Out Fail to Deliver Positions in Reg SHO Threshold Securities

10. The short sale portion of the reverse conversion transaction resulted in a “fail to deliver position”¹⁰ in the security on the books and records of Respondents' clearing firm.
11. Pursuant to SEC Rule 203(b)(3), Respondents' clearing firm was obligated to immediately close out¹¹ any fail to deliver positions in a threshold security that lasted for 13 consecutive settlement days by purchasing securities of like kind and quantity (“Reg SHO buy-in”). However, pursuant to SEC Rule 203(b)(3)(iv), a clearing firm is permitted to allocate a portion of the fail to deliver position in the subject threshold security to a broker or dealer based on such broker or dealer's short position and thereby shift the obligation for complying with the mandatory close-out to such broker or dealer that was allocated the fail to deliver position.
12. Respondents' clearing firm routinely notified Respondents of a potential Reg SHO buy-in by sending Respondents a Reg SHO Buy-In Notification via email beginning on or about the 7th day of a fail to deliver position.
13. Respondents did not want their fail to deliver position from the reverse conversion transaction to be bought-in since Respondents or their clearing firm would be forced to make large open market purchases of a Reg SHO threshold security with little or no control as to execution price. Additionally, a buy-in would result in an unhedged synthetic long stock position (long calls and short puts) from the original reversal transaction. This would expose Respondents to directional market risk, which could negatively impact the profit from the reverse conversion transaction.
14. In order to avoid being bought-in, Respondents entered into a series of transactions that circumvented Respondents' obligation to actually deliver securities to close out their short position pursuant to Reg SHO. Specifically, Respondents, utilizing the services of a floor broker, executed a series of complex transactions that appeared to close out their fail to deliver position by purchasing securities of like kind and quantity.
15. In an example of one type of such a transaction¹², Respondents executed a married put using a one-day FLEX option¹³ that had the effect of temporarily resetting the buy-in date. In the transaction, Respondents bought stock from another Exchange “market maker” (“married put contra party”)¹⁴ and simultaneously bought one-day, deep in-

¹⁰ A “fail to deliver” position exists when there has been no delivery of the borrowed shares.

¹¹ A “close out” of a short position involves the purchase of an equivalent number of shares to reduce the short position to zero.

¹² Respondents utilized a variety of different types of transactions to circumvent their delivery obligations under Reg SHO. Examples of other types of transactions utilized by Respondents include, without limitation, buy-writes and two-day FLEX options.

¹³ A FLEX option is an exchange traded equity or index option, that enables an investor to specify within certain limits, the terms of the options, such as exercise price, expiration date, exercise type, and settlement calculation.

¹⁴ Respondents generally bought stock from other market makers that were also selling short hard to borrow

the-money FLEX put options¹⁵ for a corresponding number of shares from the same “market maker.”¹⁶ Respondents’ clearing firm reflected the transaction in Respondents’ account on the clearing firm’s books and records.

16. The following day, the one-day FLEX put options¹⁷ expired in-the-money and Respondents exercised the put options which required the contra party to purchase stock from Respondents. Respondents delivered to the contra party the purported “long” stock¹⁸ they purchased from the contra party in the married put transaction the previous day. Respondents, however, had not received delivery of long stock from the married put contra party. Accordingly, shares were not delivered to close out the short position that was established during the initial reversal transaction. Based on the execution of the married put transaction, Respondents’ clearing firm reset Respondents’ Reg SHO close-out obligation to Day 1.
17. Respondents repeatedly engaged in these or other types of transactions after receiving a Reg SHO Buy-In Notification from their clearing firm and these transactions caused the buy-in date to be reset. These transactions were executed approximately every 13 settlement days until the options positions either expired or were closed out. This course of conduct enabled Respondents to maintain impermissible short positions in a number of Reg SHO threshold securities for extended periods of time.
18. Respondents’ married put transactions described above, which circumvented the delivery requirements of Reg SHO, were in violation of Rule 203(b)(3) of Reg SHO.¹⁹
19. In addition to buying stock in the married put transactions that circumvented Respondents’ Reg SHO delivery obligations, Respondents also acted as counterparties to married put transactions for other Exchange “market makers.” Specifically, Respondents would sell short shares of threshold securities and sell one-day, deep-in-the-money FLEX put options which allowed such “market makers” to circumvent their Reg SHO delivery obligations in threshold securities for extended periods of time. Respondents’ conduct in acting as a counterparty to married put transactions for other Exchange “market makers” was in violation of Rule 203(b)(3) of Reg SHO.

Reg SHO threshold securities and utilizing the market maker exemption from the Reg SHO locate requirements.

¹⁵ A “deep-in-the-money put option” is where the market price of a security is well below the strike price of the option.

¹⁶ Because the payment received by the other “market maker” is generally less than the interest payment that such “market maker” could have received by lending the same number of shares, Respondents should have been reasonably able to infer that such “market maker” selling stock within the married put transaction was also short stock.

¹⁷ By setting the FLEX option to be a “one day” option, it meant the option would expire the next day.

¹⁸ While Respondents appeared to have purchased stock on the books and records of Respondents’ clearing firm, the counterparty to the married put did not deliver stock to Respondents.

¹⁹ Reg SHO prohibits a broker-dealer from “entering into an arrangement with a counterparty to purchase securities for purposes of closing out a failure to deliver position and the broker-dealer knows or has reason to know that the counterparty will not deliver the securities, and which thus creates another failure to deliver position” [footnote omitted]. Securities Exchange Act Release No.34-54154 (July 14, 2006) 71 FR 41709, 41711 n.13 (July 21, 2006).

Example of Respondents' Trading Activity

20. Although the manner of effecting the reverse conversion transaction, as well as the close-out transactions varied depending on the particular transaction, the following example is representative of Respondents' actions that circumvented the Reg SHO locate and delivery obligations.
21. On Trade Date, Floor Broker A, acting as agent for Entity B purchasing shares of ABCD, a Reg SHO threshold security, solicited Respondents to be the contra party to a reverse conversion transaction. In the transaction, Respondents bought ABCD calls, sold ABCD puts and sold short ABCD shares without first locating ABCD stock as required by Reg SHO. Entity B appeared to have received purported "long" stock by executing the conversion side of the transaction. Specifically, Entity B sold ABCD calls, bought ABCD puts and bought ABCD shares. The transaction is summarized below:

	Respondents – Reversal Transaction	Entity B – Conversion Transaction
Trade Date	ALA buys 500 ABCD Dec 100 calls @ 3.60.	Entity B sells 500 ABCD Dec 100 calls @ 3.60.
Trade Date	ALA sells 500 ABCD Dec 100 puts @ 10.00.	Entity B buys 500 ABCD Dec 100 puts @ 10.00.
Trade Date	ALA sells short 50,000 shares of ABCD @ 94.10.	Entity B buys 50,000 shares of ABCD @ 94.10.

22. The sale of the December 100 puts and the purchase of the December 100 calls by the Respondents created a synthetic long position. The sale of ABCD shares by Respondents created a short position. The overall reversal transaction was delta neutral²⁰ for the Respondents because the synthetic long options position was hedged against the short stock position, effectively eliminating market risk for the Respondents.
23. In the reversal transaction described above, Respondents received \$6.40 on the execution of the options combination.²¹ Respondents paid \$5.90 on the execution of the short stock related to the \$100 strike price of the options combination.²² In sum, Respondents received \$.50 per contract on this reverse conversion transaction.²³
24. Since Respondents did not locate or borrow shares of ABCD prior to effecting the short sale, Respondents created a fail to deliver position in the Respondents' account on the books and records of Respondents' clearing firm.

²⁰ Since delta measures the exposure of a derivative to changes in the value of the underlying, a portfolio that is delta neutral is effectively hedged. That is, its overall value will not change for small changes in the price of its underlying instrument.

²¹ Respondents received: \$10.00 (sell puts) – \$3.60 (buy calls) = \$6.40.

²² Respondents paid: \$100.00 (strike price) - \$94.10 (short sale) = \$5.90.

²³ Respondents received: \$6.40 - \$5.90 = \$.50 per contract. Generally, in a security that is not a Reg SHO threshold security, the Respondent would have to pay to reverse as opposed to receiving payment as is the case in hard-to-borrow securities such as in this example. The amount that Respondents' received does not take into account certain fees such as transaction costs and clearance fees.

25. Eleven settlement days after the initial reverse conversion transaction, Respondents received a Regulation SHO Buy-In Notification from their clearing firm for a total of 665,100 shares of ABCD, which included 50,000 shares that Respondents had failed to deliver for a period of 11 settlement days as part of the initial reverse conversion transaction. Respondents thereafter contacted Floor Broker A to solicit a contra party (“Contra party C”) to engage in a married put transaction in order to satisfy Respondents’ Reg SHO close-out obligation. Floor Broker A brokered a transaction in which Respondents bought 2,830,000 shares²⁴ of ABCD from Contra party C, an Exchange market maker who sold short such stock, and simultaneously bought 28,300 ABCD Dec 125 one-day FLEX put options from Contra party C.
26. Shortly thereafter, Respondents’ clearing firm reflected this transaction in the Respondents’ account and reduced Respondents’ short position by the amount of the purchase on the clearing firm’s books and records.
27. The following day, the 28,300 ABCD Dec 125 one-day FLEX put options expired in-the-money and Respondents exercised the options and delivered the shares they bought the previous day to Contra party C. As a result of the transaction, Respondents reestablished their previous short position and the fail to deliver position was reset to Day 1 on the books and records of Respondents’ clearing firm. The married put transaction is summarized below:

Married Put Transaction

Trade Date + 11	ALA receives a Regulation SHO Buy-In Notification for 665,100 shares of ABCD, which has failed to deliver for 11 days.
Trade Date + 13	ALA buys 28,300 ABCD Dec 125 puts (next day settlement) @ 27.00.
Trade Date + 13	ALA buys 2,830,000 shares of ABCD common stock @ 98.03.
Trade Date + 14	ALA exercises 28,300 ABCD Dec 125 puts, causing the appearance of delivery of 2,830,000 shares of ABCD.

28. Respondents’ reestablished fail to deliver position continued to age on the books and records of Respondents’ clearing firm. After approximately 7 days, Respondents once again received a Reg SHO Buy-In Notification from their clearing firm for 665,100 shares of ABCD. Respondents again engaged in a transaction that was identical or similar to the transaction described above in paragraphs 25 through 27. Respondents repeated this process to reset their Reg SHO obligation periodically until the options positions in the reversal transaction expired.
29. Specifically, on the options expiration date, ABCD closed at 98.05. As a result, the 500 ABCD Dec 100 calls expired worthless and the 500 ABCD Dec 100 puts expired at parity²⁵ with the short stock position.

²⁴ Respondents bought 2,830,000 shares of ABCD in order to cover fail to deliver positions in this product totaling 2,634,312 shares. The additional 1,969,212 fail to deliver shares ranged in age between 1 and 12 days old and resulted from reverse conversion transactions that Respondents engaged in on trade dates before and after the reverse transaction described in this example.

²⁵ The intrinsic value of the put was equal to the difference between the stock price and the exercise price of the option.

30. Respondents received \$.50 per contract on 500 contracts which represent 100 shares of stock each for a total realized gross profit on this transaction of approximately \$25,000. Respondents effectively locked in \$.50 per contract at the time the reversal transaction was executed and at no point were Respondents subject to market risk based on the directional movement of the underlying ABCD stock. If the price of ABCD moved down, Respondents covered the ABCD short stock when they were assigned on the ABCD puts that Respondents sold in the reversal transaction. If the price of ABCD moved up, Respondents covered the ABCD short stock position by exercising the ABCD calls that Respondents bought in the reversal transaction. In either scenario, Respondents would lose \$3.95 on this portion of the transaction. This loss was offset by the \$4.45 that Respondents initially received when they effected the options portion of the reversal transaction.
31. During the period November 16, 2006 through December 17, 2006, the Respondents engaged in a total of 26 reverse conversion transactions in ABCD for a total profit of approximately \$1.8 million.

CONCLUSION:

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

32. Respondents violated SEC Rule 203(b)(1) and Article V, Sections 4(h) and (i) of the Exchange Constitution in that Respondents, who were not acting as bona-fide options market makers, improperly utilized the Reg SHO market maker locate exemption to avoid locating shares prior to effecting short sale transactions in Reg SHO threshold securities, as set forth in paragraphs 3 through 9 and 21 through 24.
33. Respondents violated SEC Rule 203(b)(3) and Article V, Sections 4(h) and (i) of the Exchange Constitution in that Respondents engaged in a series of transactions that circumvented Respondents' delivery obligations in Reg SHO threshold securities that had been allocated to the Respondents by their clearing firm, as set forth in paragraphs 10 through 19 and 25 through 29.
34. Respondents violated Exchange Rule 958 – ANTE in that Respondents failed to meet their in-person, on-floor, and quoting obligations, as set forth in paragraph 9.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may impose the following penalties:

- (a) a censure against Arenstein and ALA Trading;

- (b) a disgorgement to be paid jointly and severally by Arenstein and ALA Trading of \$1,800,000 in trading profits resulting from the circumvention of Reg SHO locate and delivery obligations in connection with trading in ABCD during the period November 16, 2006 through December 17, 2006;
- (c) a fine in the amount of \$1,200,000 to be paid jointly and severally by Arenstein and ALA Trading; and
- (d) a suspension against Arenstein from Exchange membership in any capacity and employment or association in any capacity with an Exchange Member or Member Organization for a period of five years.

Arenstein understands that if he is suspended from association with any Exchange Member or Member Organization, he becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Arenstein understands that he may not be associated with any Exchange Member or Member Organization in any capacity, including clerical or ministerial functions, during the period of the suspension.

Arenstein and ALA Trading hereby acknowledge that they have carefully read this Stipulation and understand all of the provisions contained herein and that Arenstein and ALA Trading have agreed to its provisions voluntarily.

Further, Arenstein and ALA Trading agree that they may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this Stipulation or create the impression that

the Stipulation is without factual basis. Nothing in this provision affects Arenstein and ALA Trading's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation (including, but not limited to, a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the Exchange Constitution and/or Rules), neither Enforcement nor Respondents shall offer any argument that is inconsistent with the stipulated facts or the agreed-upon penalty, nor shall any party ask for the imposition of any penalty other than that agreed upon in this Stipulation.

ON BEHALF OF
AMERICAN STOCK EXCHANGE LLC

By: Claudia Crowley
Claudia Crowley
Senior Vice President
Chief Regulatory Officer
American Stock Exchange LLC

BRIAN A. ARENSTEIN

Brian Arenstein

Agreed to this 26th day of June, 2007

ALA TRADING L.L.C.

By: Brian Arenstein

Name: Brian Arenstein

Title: ALA Trading LLC / Managing Member

Agreed to this 26th day of June, 2007.