

**RB-05-21
November 21, 2005**

**TO: ALL OTP HOLDERS, OTP FIRMS AND ALLIED PERSONS
ALL ETP HOLDERS AND ETP SPONSORED PARTICIPANTS**

FROM: ENFORCEMENT DEPARTMENT

SUBJECT: DISCIPLINARY SANCTIONS IMPOSED AND ARBITRATION AWARDS RENDERED

This Regulatory Information Bulletin advises OTP Holders, OTP Firms and Allied Persons, ETP Holders and ETP Sponsored Participants of certain final disciplinary actions that resulted in the imposition of sanctions for violations of the federal securities laws and the Bylaws and Rules of the Exchange. This Bulletin also reports on the results of arbitration proceedings that were resolved at the Exchange.

A. Disciplinary Sanctions Imposed From July 1, 2005 Through September 30, 2005

OPTIONS:

The Exchange Regulatory Staff resolved the following matters pursuant to the Minor Rule Plan:

- OS0361116 An OTP Holder was fined \$500 for disseminating quotes exceeding the maximum allowable bid/ask differentials. (PCX Rule 6.37(b).)
- OS0412023 An OTP Holder was fined \$500 for failing to give priority to orders residing in the customer limit order book. (PCX Rule 6.75(a) and (b).)
- OS0308271 An OTP Holder was fined \$500 for failing to verbally identify an order as being for a Market Maker. (PCX Rule 6.66(b).)
- OS0406043 An OTP Holder was fined \$500 for failing to give priority to orders residing in the customer limit order book. (PCX Rule 6.75(b).)
- OS0308141, OS0312021, OS0401074, & OS0405103 An OTP Firm was fined \$1,000 for failing to maintain adequate procedures and controls over all users of the Exchange's automatic execution system for options order execution and reporting. (PCX Rule 6.87(c)(4).)
- OS0402041 & OS0401078 An OTP Firm was fined \$1,000 for failing to maintain adequate procedures and controls over all users of the Exchange's automatic execution system for options order execution and reporting. (PCX Rule 6.87(c)(4).)
- OS0306135 & OS0405263 An OTP Firm was fined \$1,000 for failing to maintain adequate procedures and controls over all users of the Exchange's automatic execution system for options order execution and reporting. (PCX Rule 6.87(c)(4).)
- OS0406161 An OTP Holder was fined \$1,000 for disseminating quotes exceeding the maximum allowable bid/ask differentials (2nd violation). (PCX Rule 6.37(b).)
- OS0403312 An OTP Firm was fined \$1,000 for failing to maintain adequate procedures and controls over all users of the Exchange's automatic execution system for options order execution and reporting. (PCX Rule 6.87(c)(4).)
- OS0406161 An OTP Firm was fined \$2,000 for the actions of its employees, who disseminated quotes exceeding the maximum allowable bid/ask differentials (3rd violation). (PCX Rule 6.37(b).)
- FC-0503291 An OTP Firm was fined \$2,000 because its FOCUS filing erroneously did not reflect any haircuts in net

capital contributions. (PCX Rule 4.11(a).)

- OS0502032 An OTP Firm was fined \$2,500 for engaging in prohibited practices regarding the entering of orders on the Exchange's automatic execution system for options order execution and reporting. (PCX Rule 6.87(d).)
- FC-050824 An OTP Firm was fined \$500 for failing to disclose that it had entered into a financial arrangement with another entity. (PCX Rule 11.11(b).)
- OS0503225 An OTP Firm was fined \$500 for failing to provide a 30 second exposure window for an order it entered before executing the order. (PCX Rule 6.76(c).)

The Ethics and Business Conduct Committee resolved the following matters through the rendering of Decisions accepting Offers of Settlement and Consent:

- OS0303252 & OS0302123 EQUITEC PROPRIETARY MARKETS, LLC was fined \$2,000 for failing to have adequate written supervisory procedures in effect. (PCX Rule 4.25(c).)
- OS0505032 GABRIEL PERI and KECK SECURITIES, INC. were jointly and severally fined \$2,500 for failing to immediately enter an order into the Electronic Order Tablet. (PCX Rules 6.67(c) and 10.1(a).)
- OS0310162 EDWARD WEISBAUM was fined \$5,000 for engaging in a course of dealings inconsistent with the maintenance of a fair and orderly market. (PCX Rules 6.37(a) and 6.82(c)(4).)
- OS0311054 EDWARD WEISBAUM was fined \$1,500 for failing to honor an order and engaging in conduct inconsistent with just and equitable principles of trade. (PCX Rule 6.77 and PCX Constitution Article XI, Section 2.)
- OS0405104 EDWARD WEISBAUM was fined \$3,500 for opening options late, thus failing to contribute to the maintenance of a fair and orderly market. (PCX Rules 6.37(a) and 6.82(c)(4).)
- OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$2,000 for failing to immediately and continuously represent orders, failing to represent an order as being a firm-to-firm cross, failing to price report within 90 seconds of a transaction and engaging in improper trade-throughs. (PCX Rules 6.46(a), 6.66, 6.69(a), and 6.94(a)(1).)
- OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$2,000 for failing to use due diligence in execution of an order, failing to immediately and continuously represent an order, failing to enter the details of a transaction into the Electronic Order Capture system before executing and vocalizing it, failing to price report within 90 seconds of a transaction, and engaging in improper trade-throughs. (PCX Rules 6.46(a), 6.67(c), 6.69(a), and 6.94(a)(1).)
- OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$4,000 for failing to properly use an error account, failing to immediately and continuously represent orders, improperly acting as principal and agent in the same transaction, failing to enter the details of a transaction into the Electronic Order Capture system before executing and vocalizing it, failing to price report within 90 seconds of a transaction, failing to abide by the priority of bids, and engaging in improper trade-throughs. (PCX Rules 6.46(a), 6.46(g), 6.50(a), 6.67(c), 6.69(a), 6.75(a), 6.94(a)(1).)
- OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$4,000 for failing to use due diligence in execution of an order, failing to allow adequate time for the trading crowd to respond, failing to immediately and continuously represent orders, failing to follow proper procedure in crossing orders on the Book, misrepresenting orders, failing to enter the details of a transaction into the Electronic Order Capture system before executing and vocalizing it, failing to price report within 90 seconds of a transaction, failing to abide by the priority of bids, engaging in improper trade-throughs, and engaging in conduct inconsistent with just and equitable principles of trade. (PCX Rules 6.46(a), 6.46(a) and Commentary .01, 6.47(e), 6.66, 6.67(c), 6.69(a), 6.75(a), 6.94(a)(1), 11.2(b).)
- OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$4,000 for failing to use due diligence in execution of an order, failing to immediately and continuously represent orders, misrepresenting orders, failing to enter the details of a transaction into the Electronic Order Capture system before executing and vocalizing it, failing to price report within 90 seconds of a transaction, failing to abide by the priority

of bids, and engaging in improper trade-throughs. (PCX Rules 6.46(a), 6.66, 6.67(c), 6.69(a), 6.75(a), 6.94(a)(1).)

OS0204194 et al.¹ A Floor Broker for an OTP Firm was fined \$2,000 for failing to use due diligence in executing an order, failing to immediately and continuously represent orders, failing to announce an order by public outcry, failing to request bids and offers prior to executing a crossing transaction, failing to follow proper procedure in crossing orders on the book, misrepresenting orders, failing to price report within 90 seconds of a transaction, refusing to acknowledge a trade with market makers, and engaging in improper trade-throughs. (PCX Rules 6.46(a), 6.47(a), 6.47(e), 6.66, 6.69(a), 6.77, 6.94(a)(1).)

OS0204194 et al.¹ The Managing Director of an OTP Firm charged with supervising persons associated with the OTP Firm so as to assure compliance with the rules of the Exchange was fined \$5,000, suspended from supervisory duties for five consecutive business days during the same business week, and is required to take and pass the Series 24 Examination and the PCX Broker Examination, for failing to adequately supervise those persons so as to assure compliance with all rules of the Exchange. (PCX Rule 11.18.)

OS0204194 et al.¹ An OTP Firm was fined \$150,000, included in which fine are a \$10,000 fine for violating electronic order capture rules and a \$10,000 fine for failing to supervise persons associated with the OTP Firm so as to assure compliance with all rules of the Exchange, plus the OTP Firm received a censure, plus the requirement of retaining an outside consultant, plus the requirement of hiring of a Chief Compliance Officer as a permanent employee, plus requiring all Floor Brokers employed by the OTP Firm to take the PCX Broker Examination, plus suspension of the OTP Firm's executives from supervisory duties for five consecutive business days during the same business week, for the actions of its employees, who failed to properly use error accounts, failed to use due diligence in executing orders, refused to trade with a market maker, failed to allow adequate time for market makers to respond to a cross, failed to immediately and continuously represent orders, failed to announce an order by public outcry, failed to request bids and offers prior to executing a crossing transaction, failed to follow proper procedure in crossing orders on the Book, acted as principal and agent in the same transaction, placed broker-dealer orders with an Order Book Official, misrepresented orders, failed to enter the details of transactions into the Electronic Order Capture system before executing and vocalizing them, failed to have order tickets that showed the account designation for which orders are to be executed, failed to price report within 90 seconds of a transaction, failed to abide by the priority of bids, engaged in prohibited conduct related to crossing orders, failed to acknowledge a trade as a binding contract, engaged in improper trade-throughs, and engaged in conduct or proceeding inconsistent with just and equitable principles of trade. (PCX Rules 6.46(a), 6.46(g), 6.47(a), 6.47(e), 6.50(a), 6.52(b), 6.66(c), 6.67(c), 6.68, 6.69(a), 6.75(a), 6.76(c)(3), 6.77, 6.86(b), 6.94(a)(1), 10.1(a), 11.2(b), and 11.18.)

EQUITIES:

The Exchange Regulatory Staff resolved the following matters pursuant to the Minor Rule Plan:

05-08 An ETP firm was fined \$100 for failing to maintain a continuous, two-sided Q-Order for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)

05-28 An ETP firm was fined \$100 for failing to maintain a continuous, two-sided Q-Order for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)

¹ On September 26, 2005, the Ethics and Business Conduct Committee resolved the following matters through the rendering of a Decision accepting the Offer of Settlement and Consent offered by a respondent OTP Firm, its supervisory principal, and six of its floor brokers in the consolidated matters against them: OS0204194, OS0208134, OS0210071, OS0210252, OS0302053, OS0303062, OS0306062, OS0206061, OS0308043, OS0309032, OS0311055, OS0401073, OS0401134, OS0401137, OS0401139, OS0402252, OS0402253, OS0403311, OS0404122, OS0404212, OS0404213, OS0405193, OS0407293, OS0407295, OS0401136, OS0405179, OS0407213, OS0407292, OS0405262, OS0401290, OS0503031, OS0506141, OS0507134, OS0508097, OS0508096, OS0508095, OS0508094, OS0508093, OS0508092, OS0508091, OS0507215, OS0507113, OS0507112, OS0506143, OS0505262, OS0504131, OS0504111, OS0412021, OS0504041, OS0501121, OS0504144. These matters are all incorporated in the reference to "OS0204194 et al." as used in this Regulatory Information Bulletin.

- 05-29 An ETP firm was fined \$500 for failing to file a Compliance Acknowledgment Form in a timely manner, and fined \$500 for failing to disclose to PCXE that it had entered into a financial arrangement with another entity, for a total fine of \$1,000. (PCXE Rules 6.3(b), 6.11(b), and 4.11(a).)
- 05-31 An ETP firm was fined \$500 for failing to disclose to PCXE that it had entered into a financial arrangement with another entity. (PCXE Rule 6.11.)
- 05-32 An ETP firm was fined \$2,000 for failing to furnish records and other requested information in connection with an examination of financial responsibility and/or operational conditions. (PCXE Rule 4.11(c).)
- 05-33 An ETP firm was fined \$500 for failing to disclose to PCXE that it had entered into a financial arrangement with another entity. (PCXE Rules 4.11(a) and 6.11.)
- 05-40 An ETP firm was fined \$100 for failing to maintain a continuous, two-sided Q-Order for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-41 An ETP firm was fined \$450 for failing to maintain a continuous, two-sided Q-Order for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-42 An ETP firm was fined \$100 for failing to maintain a continuous, two-sided Q-Order for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- FC-050629 An ETP firm was fined \$500 for failing to disclose to PCXE that it had entered into a financial arrangement with another entity. (PCXE Rule 11.11.)

The Business Conduct Committee resolved the following matters through the rendering of Decisions accepting Offers of Settlement and Consent:

- 05-20 LEHMAN BROTHERS, INC. was fined \$30,750 and agreed to an undertaking to amend its operational and supervisory procedures to reduce if not eliminate future violations for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-20 OTA, LLC was fined \$10,100 for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-22 MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. was fined \$2,150 for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-23 PIPER JAFFRAY & CO. was fined \$18,450 and agreed to an undertaking to amend its operational and supervisory procedures to reduce if not eliminate future violations for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-25 J.P. MORGAN SECURITIES, INC. was fined \$6,000 for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)
- 05-26 CREDIT SUISSE FIRST BOSTON, LLC was fined \$26,000, censured, and agreed to an undertaking to amend its operational and supervisory procedures to reduce if not eliminate future violations for failing to maintain continuous, two-sided Q-Orders for issues in which it is registered as a Market Maker. (PCXE Rule 7.23(a)(1).)

B. Arbitration Awards During the Period July 1, 2005 through September 30, 2005

Pursuant to PCX Rule 12.29(f), arbitration awards shall be made publicly available provided that the name of the customer party will not be disclosed if he/she so requests in writing. Upon written request, copies of the awards will be available from the Department of Arbitration of the Pacific Exchange. The following awards were made during the above-referenced period:

Case Name: Hefte v. First Union Securities, Inc., et al.
Case No: 02-S013
Date Received: March 26, 2002
Summary of Issues: Breach of fiduciary duty
Amount of Dispute: \$38,000
Amount Awarded: \$0
Decision Date: July 8, 2005

Case Name: Perloff and Foster v. Merrill Lynch, Pierce, Fenner and Smith, Inc., et al.
Case No: 04-S005
Date Received: February 25, 2004
Summary of Issues: Breach of fiduciary duty, Fraud, Suitability
Amount of Dispute: \$640,000
Amount Awarded: \$0
Decision Date: August 1, 2005

Case Name: Fox v. Morgan Stanley DW Inc. et al. (Stipulated Award)
Case No: 02-S052
Date Received: November 7, 2002
Summary of Issues: Suitability
Amount of Dispute: \$300,000
Amount Awarded: N/A
Decision Date: August 11, 2005

Case Name: Heidenreich v. Morgan Stanley Dean Witter et al. (Stipulated Award)
Case No: 02-S020
Date Received: June 14, 2002
Summary of Issues: Breach of fiduciary duty, Breach of Contract, Fraud, Negligence, Suitability
Amount of Dispute: \$335,000
Amount Awarded: N/A
Decision Date: August 15, 2005

Case Name: Clemens v. Morgan Stanley DW, Inc. (Stipulated Award)
Case No: 03-S010
Date Received: November 10, 2003
Summary of Issues: Breach of contract, Breach of fiduciary duty, Suitability
Amount of Dispute: \$200,000
Amount Awarded: N/A
Decision Date: August 30, 2005

Case Name: Bilecky v. E*Trade Securities LLC
Case No: 05-L001
Date Received: January 27, 2005
Summary of Issues: Fraud, Unauthorized trading
Amount of Dispute: \$310,532
Amount Awarded: \$11,526.56 to Respondent via Counterclaim
Decision Date: September 6, 2005

Case Name: McCarthy v. Merrill Lynch, Pierce, Fenner and Smith, Inc., et al. (Stipulated Award)
Case No: 02-S064
Date Received: December 23, 2002
Summary of Issues: Breach of contract, Breach of fiduciary duty, Fraud, Negligence, Suitability
Amount of Dispute: \$300,000
Amount Awarded: N/A
Decision Date: September 30, 2005

Questions regarding disciplinary sanctions for options may be directed to Larry Hing, Director of Options Enforcement, at (415) 393-4151. Questions regarding disciplinary sanctions for equities may be directed to Chris Hill, Director of Equities Enforcement, at (312) 442-7944. Questions regarding arbitration awards may be directed to Matt Mennes, Director of Arbitration, at (415) 393-4240.