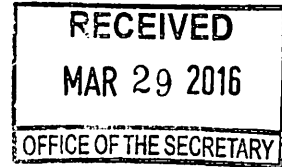


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EXPERT REPORT OF MARK F. DUFFY

In the Matter of:
Behruz Afshar, Shahryar Afshar,
Richard F. Kenny, IV, Fineline Trading
Group LLC, and Makino Capital LLC,
Respondents.

In the
ADMINISTRATIVE PROCEEDING File No. 3-16978
of the
SECURITIES AND EXCHANGE COMMISSION
UNITED STATES OF AMERICA

Mark F. Duffy hereby states as follows:

I have reviewed the Order Instituting Proceedings and Respondents' response in the proceeding.

I. FACTS ASSUMED AS THE BASIS FOR OPINIONS

- A. Behruz Afshar is the sole owner of Finline Trading Group, LLC (“Finline”).
- B. Shahryar Afshar is the sole owner of Makino Capital, LLC (“Makino”).
- C. Finline and Makino owned separate accounts at Lightspeed Trading LLC (“Lightspeed”).
- D. Lightspeed acted as an introducing broker and introduced the separate accounts to clearing firms Penson, and later Apex (which acquired Penson).
- E. Neither Behruz Afshar nor Shahyar Afshar is a member of any exchange.
- F. Merrill Lynch was the executing broker for all trades introduced by Lightspeed for the Finline and Makino accounts during the relevant time period.
- G. Of the Respondents and other parties named above, the only party which was a Member, now Trading Permit Holder, of the Chicago Board Options Exchange (“CBOE”) or any other Exchange was Merrill Lynch.
- H. Finline and Makino each engaged certain individuals (“traders”) to enter trades for their separate firm accounts.
- I. The individual traders moved between the separate firms (Finline and Makino) from time to time based on the number of orders initiated for each firm.

II. OPINIONS

- A. Based on the CBOE's definition of "Professional" under Exchange Rule 1.1 (ggg) "The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)." (Emphasis Added.)
- B. I have also reviewed the NYSE Amex Exchange definition of "Professional" under Rule 900.2NY (18A), which defines Professional orders similarly to the definition in CBOE Rule 1.1(ggg).
- C. CBOE Regulatory Circular RG09-123 dated November 6, 2009, requires Members of the CBOE to indicate orders which meet the definition of "Professional" orders by using the order origin code "W". Members are also required to review their customer's activity on at least a quarterly basis to determine whether orders that are not for the account of a broker dealer should be represented as "Professional" orders.
- D. The obligation to determine whether or not orders meet the definition of "Professional" is solely the responsibility of members (now Trading Permit Holders) of the CBOE, which in this case was Merrill Lynch, the broker that executed the orders on the Exchange.
- E. Neither Behruz Afshar nor Fineline were members of CBOE.
- F. Neither Shahryar Afshar nor Makino were members of CBOE.
- G. There is no definition of the term "beneficial account" in either CBOE Rule 1.1(ggg), in any interpretation thereof, or in the SEC approval of the CBOE Rule on December 17, 2009.
- H. Question 11 of the FAQ published by the Exchange in CBOE Regulatory Circular RG09-148 on December 24, 2009 also refers to "beneficial account(s)" but, the term "beneficial account(s)" is not defined in CBOE rules nor in any interpretation of the rules.
- I. While Question 17 of the FAQ in RG09-148 refers to "accounts controlled by the same person or entity" as a factor in the Member's determination of whether the definition of "Professional" is applicable in accordance with Exchange Rule 1.1(ggg), there is no definition of what amounts to such control in any Exchange Rule, interpretation, or other guidance nor in the SEC approval of the CBOE Rule on December 17, 2009.

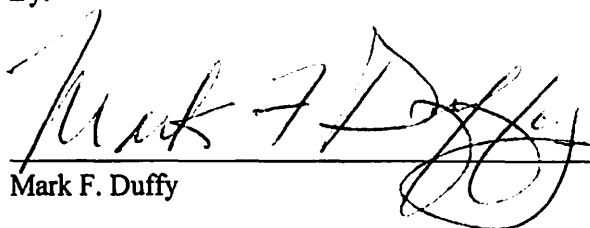
- J. Neither Behruz Afshar, Shahryar Afshar, Richard F. Kenny, Fineline, nor Makino, have any obligation or responsibility under CBOE Rules, or under any other Rule approved in accordance with Section 19(b) of the Securities and Exchange Act of 1934, for determining what orders meet the definition of "Professional". The obligation and responsibility for doing so rests only with Members of the Exchange, which in this case was solely Merrill Lynch.
- K. Based on the assumption that neither Behruz Afshar nor Fineline held an ownership interest in Makino, and based on the assumption that neither Shahryar Afshar nor Makino held an ownership interest in Fineline, it is my opinion that the relevant rules did not require the responsible member to consider orders originating from the two separate firms, for the separate accounts of each firm, as if the orders were entered for the same firms and/or for the same accounts for purposes of determining whether or not the orders should be marked as "Professional".
- L. Assuming, ARGUENDO, that the two separate firms, Fineline and Makino shared profit interests in the Fineline and Makino accounts in some fashion, but since there is no reference in CBOE Rule 1.1(ggg), or in any interpretation thereof, to the effect of such sharing; and because there is no definitive guidance that a sharing of profit interests equates to ownership of separate account(s) nor requires that separate accounts be treated as a single "beneficial account"; and because in any event, any determination as to whether orders should be marked as "Professional" must be made by the Member: therefore it is my opinion that Respondents were under no obligation to make any such determination nor therefore necessarily to disclose a profit sharing arrangement.

III. QUALIFICATIONS

At one time I was Director of Compliance for CBOE. I was a Member, later Trading Permit Holder, of CBOE continuously for 30 years. From 1995 to 2013, I served continuously on the CBOE Board of Directors. I served as Vice Chairman of the Board of Directors from 2001 to 2003, and again from 2010 to 2011. I was on the Board of Directors during the time the definition of Professional contained in Exchange Rules 1.1(ggg) was developed, submitted to the Commission for approval and when it became effective in January, 2010. Since 2013, I have served, and continue to serve, on the Member Advisory Board of the CBOE. I have attached my Curriculum Vitae.

Respectfully submitted

By:

A handwritten signature in black ink, appearing to read "Mark F. Duffy", written over a horizontal line. The signature is stylized and cursive.

Mark F. Duffy

MARK F. DUFFY

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EDUCATIONAL BACKGROUND

University of Michigan. B.A. Ed., 1972.
University of Michigan. M.A., 1975.
The John Marshall Law School. J.D., 1981.
The John Marshall Law School. L.L.M., Master of Laws in Taxation, 1987.

ADMISSIONS

Admissions: Supreme Court of the State of Illinois, May, 1981.
U.S. District Court for the Northern District of Illinois, December, 1981.

CURRENT & PREVIOUS REGISTRATIONS

Registrations: Series 4, 5, 7, 14, 15, 24, 56, and 63 Securities Registrations and Series 3 Commodities Registration.

PROFESSIONAL EXPERIENCE

2013-Present Member Advisory Board - Chicago Board Options Exchange, Inc.
1995-2013: Member Board of Directors, Chicago Board Options Exchange, Inc. and affiliated companies.
2013-Present Managing Member RJEM, LLC.
2010 -2013 Guest Lecturer (Securities Regulation) Loyola University Chicago School of Law.
2010 – 2011 & 2001-2003: Vice Chairman, Board of Directors, Chicago Board Options Exchange, Inc.
2003-Present: Principal and Attorney, The Duffy Law Firm.
1993-Present: Managing Member Cornerstone Trading LLC.
1986-Present: Expert Witness for Litigation and Arbitration.
1984-Present: President MFD Enterprises.
1986-2010: Managing General Partner, Fugue, a Member Organization Chicago Board Options Exchange, Inc.
2001- 2003: Founding Member Board of Directors, OneChicago LLC.
1998- 2003: General Partner Isomorphism, a Lessor Member Organization of Chicago Board Options Exchange, Inc.
1990-1995: Managing General Partner Duffy Giglio & Associates.
1992-1994: Managing General Partner Trident, Member Organization of Chicago Stock Exchange.
1986-1990: Member Board of Directors Inc. Trading Corporation.
1986-1990: Allied member of American Stock Exchange, Inc.
1985-1990: Vice President and Floor Broker for Inc. Trading Corporation, a subsidiary of Instinet Corporation and Reuters PLC.
1984-1988: Shatkin Investment Corporation - Vice President, Registered Options Principal and Registered Representative.
1982-1984: Cantor, Fitzgerald & Co., Inc. - Vice President, and National Options Manager.
1981-2003: Attorney, Sole Practitioner.
1979-1982: Bear Stearns Co., Manager, Midwest Institutional Options Department, Registered Options Principal.
1975-1979: Chicago Board Options Exchange, Inc. - various positions including Director, Department of Compliance.
1973-1975: High School Teacher Ida and Saline, Michigan.

OTHER AFFILIATIONS

Mount Carmel High School, Chicago, IL Bond Committee, Chairman 2009-Present
Member-Board of Directors Daniel Murphy Scholarship Foundation 1990-1993
Chairman of the American Liver Foundation Fund Raiser, Chicago Metro Chapter 1987, 1988, and 1989
Founding President, University of Michigan Club of the Western Suburbs
Treasurer, Fifth District University of Michigan Alumni Association 1988-1992
Member Board of Trustees Cincinnati Stock Exchange 2001 – 2004; Board of Directors, National Stock Exchange 2005- 2008
CBOE Executive Committee of the Board of Directors 1999 - 2003, 2007- 2013 Chairman 2001, 2002
CBOE Governance Committee of the Board of Directors 2004 – 2006
CBOE Finance Committee of the Board of Directors 2010 - 2013
CBOE Membership Committee, Chairman 2004, 2005
CBOE Floor Directors Committee 1995-2010, Chairman 2001-2003, 2010
CBOE Lessor Advisory Committee 2002, 2003, Chairman 2002
CBOE Compensation Committee of the Board of Directors 2001-2003, Chairman 2002
CBOE Financial Planning Committee 1999, 2000, 2007- 2009
CBOE Market Performance Committee 1994 - 1998, Chairman 1997, 1998
CBOE Allocation Committee 1993 - 1996, Chairman 1994, 1995, 1996
CBOE Arbitration Committee 1988 - 1999, Chairman, 1989, 1990, 1991
CBOE Clearing Procedures Committee 1986-1987
NASD Board of Arbitration
Securities Industry Association
National Securities Traders Association -
Options and Derivative Product Committee
Securities Traders Association of Chicago
Chicago Bar Association

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**CERTIFICATE OF SERVICE OF
EXPERT REPORT**

I hereby certify that a true copy of the Expert Report was served on the following on this 28th day of March, 2016, via electronic mail as agreed to by all parties.

The Honorable Cameron Elliot
Administrative Law Judge
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