

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55508 / March 22, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12595**

**In the Matter of**

**RICHARD ROBINSON,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Richard Robinson (“Robinson” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Robinson has submitted an Offer of Settlement of Richard Robinson (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Robinson and the subject matter of these proceedings, which are admitted, Robinson consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### A. RESPONDENT

**Richard Robinson**, age 51, resides in Monroe Township, New Jersey. From 1998 until March 2003, Robinson was a vice president of the American Stock Exchange LLC ("Amex") and was responsible for overseeing the Amex's Derivatives Trading Analysis Department ("DTA") within the Amex's Member Firm Regulation Department. DTA was responsible for the Amex's regulatory surveillance programs for the derivatives and options markets.

#### B. RELEVANT ENTITY

**American Stock Exchange LLC**, located in New York, New York, is a national securities exchange registered with the Commission pursuant to Section 6 of the Exchange Act. From 1998 until December 31, 2004, the Amex was a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"). On December 31, 2004, the NASD completed the sale of its interest in the Amex and transferred control to the Amex Membership Corporation. The Amex trades over 800 stocks, various types of options, and over 100 exchange traded funds.

#### C. SUMMARY

From at least 1999 until at least 2003, the Amex failed to enforce adequately certain options order handling rules and to comply with its record keeping obligations. As a result of its failure adequately to surveil for and investigate violations of, and to enforce, certain options order handling rules, the Amex violated Section 19(g) of the Exchange Act. In addition, the Amex failed to furnish accurate records and, as a result, violated Section 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-1. Robinson, the individual responsible for managing the Amex's surveillance program for derivatives and options, was a cause of the Amex's violations by failing to oversee properly the Amex's surveillance program for derivatives and options and by signing and submitting an affirmation to the Commission on behalf of the Amex which contained inaccurate representations relating to the Amex's regulatory program.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

## D. FACTS

### 1. Prior Commission Action

On September 11, 2000, the Commission issued an order (“September 2000 Order”) against the Amex and three other options exchanges, finding, in relevant part, that the Amex had failed to surveil for, or to take appropriate action with respect to evidence of, violations of firm quote,<sup>2</sup> customer priority,<sup>3</sup> limit order display,<sup>4</sup> and trade reporting rules.<sup>5</sup>

The Commission ordered the Amex to enhance and improve its regulatory programs for surveillance, investigation, and enforcement of the options order handling rules, including the limit order display, priority, trade reporting, and firm quote rules. The Amex further was required to provide Commission staff with annual affirmations detailing its progress in complying with the September 2000 Order.

At the time of the September 2000 Order, Robinson oversaw the Amex’s Derivatives Trading Analysis Department (“DTA”) which was responsible for the Amex’s surveillance of

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<sup>2</sup> The firm quote rule generally requires options specialists to trade options at the prices and in the amounts that they quote. During most of the period relevant to this Order, the firm quote rule for options was set forth in Exchange Act Rule 11Ac1-1, which had a compliance date of April 2001, and Amex Rule 958A. With the Commission’s adoption of Regulation NMS in August 2005, the Commission’s firm quote rule was redesignated as Exchange Act Rule 602. Under Exchange Act Rule 602, its predecessor Exchange Act Rule 11Ac1-1, and Amex Rule 958A, responsible brokers or dealers are required, with a few exceptions, to execute options transactions with customers at prices at least as favorable as their published bids or offers at the time the orders are presented and in any amount of contracts up to their published sizes.

<sup>3</sup> With certain exceptions, the priority rules generally require that a customer limit order be executed prior to the execution of any other order if it has the best price, i.e., the highest bid or lowest offer. See Amex Rules 126 and 950(d). If there is more than one customer order at the best price, the customer order that arrives first has priority.

<sup>4</sup> The obligation to display limit orders generally requires that a customer limit order that is priced better than the highest bid or the lowest ask price currently quoted on the exchange immediately be displayed in the quotations. As discussed infra at III.D.2.c., at the time of the September 2000 Order, specialists were required to display such limit orders as part of their due diligence obligations. In January 2005, the Commission approved, and the Amex thereafter implemented, a limit order display rule specifically applicable to options.

<sup>5</sup> The trade reporting rule generally requires that transactions be reported within a specified time after execution. The Amex’s trade reporting rule, adopted in August 2000, requires that options transactions are to be reported to the Amex Options Market Data System within 90 seconds of execution and that transactions not reported within that time are to be designated as late. See Amex Rule 992.

Amex specialists' compliance with firm quote, customer priority, trade reporting, limit order display, as well as, other options order handling rules. Robinson knew of the Amex's obligations to enhance and improve its regulatory programs for surveillance, investigation, and enforcement of the options order handling rules. During the relevant time, Robinson continued to oversee DTA which had responsibility for implementing many rules, policies and programs created by the Amex in response to the September 2000 Order's mandate that the Amex improve its regulatory programs for surveillance, investigation, and enforcement of the options order handling rules.

## **2. Inadequate Surveillance, Investigatory, and Enforcement Programs for Options Trading**

As late as 2003, there remained significant deficiencies in the Amex's surveillance, investigatory, and disciplinary programs regarding the firm quote, customer priority, trade reporting, limit order display, as well as, other options order handling rules.

### **a. The Firm Quote Rule**

The firm quote rule generally requires a responsible broker or dealer<sup>6</sup> to trade options at the prices and in the amounts that he or she quotes. The Amex through DTA improperly applied the rule, established unreasonable surveillance parameters, and failed adequately to pursue disciplinary actions for violations of the rule.

For example, when it initially began reviewing surveillance reports, the Amex simply concluded without investigation that if the quote changed in the thirty seconds following receipt of an order, the specialist was in the process of changing the quote when he or she received the order. The thirty-second period was an unreasonably long period to use in this analysis, because it may have permitted the precise type of conduct that the firm quote rule was designed to prohibit. Within thirty seconds, a specialist could receive an order, revise the quote to an inferior price, and either not execute the order or execute it at an inferior price without being cited for a violation of the firm quote rule. Robinson, who was responsible for implementing this thirty-second review parameter, knew or should have known that such a parameter was inappropriate.

The Amex also excused violations of the firm quote rule based on rationales not recognized under any exception to the rule. For example, the Amex improperly excused some violations in which a customer limit order was executed at the limit price rather than at an Amex quote that represented a better price. It also excused some violations in which a specialist paired off a customer's order with another customer order even though, at the time, there was a posted quote at a better price. As head of DTA, Robinson ultimately was responsible for the investigation and

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<sup>6</sup> A responsible broker or dealer is a member of an exchange who communicates quotes to other members of the exchange. See Exchange Act Rule 602(b)(65). The responsible broker or dealer frequently is the specialist for the subject security.

analysis by Amex analysts conducting firm quote surveillance and knew or should have known that analysts were improperly excusing violations.

The Amex also failed to investigate conduct that its surveillance reports identified as potential firm quote violations. One surveillance report that the Amex used to identify potential violations of the rule was the “Executable Orders Unexecuted” report. The report was generated on a daily basis and captured instances in which an Amex specialist failed to execute a market or limit order after the order became executable. As such, all orders captured on the report represented potential violations of the rule. The Amex, however, did not review all of the orders that appeared on the report. In certain instances, for example, the Amex reviewed only those orders that were unexecuted for more than two minutes. Even reviewing only select exceptions, analysts were continuously backlogged in reviewing the Executable Orders Unexecuted report. As head of DTA, Robinson knew or should have known that only select exceptions were being reviewed and knew or should have known that the review of the Executable Orders Unexecuted report was severely backlogged. Therefore, Robinson knew or should have known that the Amex was not adequately surveilling for firm quote violations.

Under the Amex’s Minor Rule Violation Plan, when an Amex analyst concluded that a firm quote violation had occurred, DTA could refer the matter either to the Amex’s Minor Floor Violation Disciplinary Committee (“MFV Disciplinary Committee”) or to the Enforcement Department, which had the authority to impose more severe sanctions than the MFV Disciplinary Committee. However, when it made referrals, DTA referred almost all potential firm quote violations to the MFV Disciplinary Committee. Because of the backlog in reviewing the Executable Orders Unexecuted report, by the time DTA referred matters to the MFV Disciplinary Committee, often a significant amount of time had passed since the order at issue. This further impeded disciplinary actions, because the committee’s evaluation of the conduct depended in part on the memory of the specialist. After the committee complained about the delay, in August 2002, DTA stopped referring potential violations of the firm quote rule to the MFV Disciplinary Committee. Robinson knew that DTA had stopped referring potential firm quote rule violations to the MFV Disciplinary Committee.

#### **b. Trading Ahead**

The Amex’s trading ahead rules require a specialist to give precedence to an order entrusted to him or her as agent before executing at the same price any transaction in the same option for an account in which the specialist has an interest.<sup>7</sup> The parameters the Amex set through DTA for its trading ahead surveillance report essentially gave Amex specialists a sixty-second grace period to trade ahead of a customer’s order and thereby receive a better price than the

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<sup>7</sup> See Amex Rules 155 and 950(a). The Amex also had a rule that required a registered options trader, when establishing or increasing a position for an account in which he or she had an interest, to give precedence to off-floor orders. See Amex Rule 111(d). A registered options trader is a participant on the exchange trading for his or her own or firm’s account who is responsible for making two-sided markets.

customer received. The Amex also failed to review numerous instances of potential trading ahead violations identified on its surveillance report. Robinson was responsible for implementing the sixty-second parameter in the Amex's trading ahead report and additionally knew or should have known that only select exceptions were being reviewed. Therefore, Robinson knew or should have known that the Amex was not adequately surveilling for trading ahead violations.

### **c. Limit Order Display**

Pursuant to its rules, the Amex required specialists to exercise due diligence in handling customer orders.<sup>8</sup> As part of their due diligence obligations, specialists immediately were to display customer limit orders that improved Amex quotes. The Amex's surveillance, investigative, and enforcement programs relating to the limit order display obligation were deficient. The Amex through DTA limited its surveillance to the conduct of specialist units rather than individual specialists and employed a flawed method for calculating compliance rates which resulted in inflated compliance rates. Robinson was responsible for overseeing surveillance for limit order display violations and knew or should have known about these deficiencies in the Amex's surveillance for limit order display violations.

### **d. Other Order Handling Rules**

The Amex's surveillance and enforcement with respect to trade reporting and stopped orders were also inadequate. The trade reporting rule requires that transactions be reported within a specified time after execution.<sup>9</sup> The Amex through DTA inappropriately limited its review of potential violations of the trade reporting rule to instances in which a specialist unit reported more than five percent of its trades late. In determining whether the five-percent threshold was exceeded, the Amex also included trades that were automatically reported, rather than just trades that were not reported automatically. This practice gave the appearance of a higher compliance rate than was warranted.<sup>10</sup>

Separately, the Amex through DTA did not monitor for compliance by option class and thus was generally unable to determine whether there were patterns of late trade reporting in particular options classes. The Amex further did not surveil for transactions that were reported late but that were not designated as such when the transactions were reported.<sup>11</sup>

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<sup>8</sup> See Amex Rules 156 and 950(g).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> At the relevant time, the Amex estimated that approximately sixty percent to seventy percent of options transactions were electronically routed and executed orders that were reported immediately.

<sup>11</sup> Pursuant to Amex Rule 992(b), a transaction not reported within ninety seconds of execution was to be designated as late. When that occurred, the specialist was supposed to add to the trade report a modifier designating the trade as late.

The Amex's "stopped order" rule essentially requires a specialist to provide execution assurances under certain circumstances.<sup>12</sup> A member whose customer wants to buy or sell an option at a better price than the price currently available can ask the specialist to "stop" the member's order and to attempt to obtain a better price. If the specialist agrees, the specialist then is obligated to execute the member's order at a better price or, if one cannot be obtained, at the market price at the time of the stop. The Amex through DTA generally did not review all exceptions on its surveillance report for monitoring stopped orders and/or excused instances in which specialists executed stopped orders at prices that were worse than the market prices at the time of the stop.

As head of DTA, Robinson was responsible for overseeing the Amex's surveillance regarding trade reporting and stopped orders and knew or should have known about these deficiencies in the Amex's surveillance for trade reporting and stopped orders.

### **3. Failure to Make, Keep, and Furnish Complete and Accurate Records**

The Amex also failed to make and keep certain of the required records relating to its surveillance, investigatory, and enforcement activities and further furnished the Commission with an inaccurate document.

#### **a. Inadequate Documentation**

The Amex lacked documentation sufficient to support its options surveillance, investigatory, and enforcement activities. DTA, for example, failed uniformly to maintain in its case files the surveillance reports that gave rise to investigations and failed to make or keep records of floor official approval and customer consent to busted and adjusted trades. Not only were DTA investigative files incomplete, but during an internal review in 2003, the Amex was unable to locate many investigative files. In some instances, there were documents in case files that were dated after DTA's case tracking log reflected that the matters had been closed. In other instances, case files lacked documentation of how the matters were resolved, but DTA logs reflected that the matters had been referred to the MFV Disciplinary Committee.

The Amex's documentation relating to enforcement actions taken by the MFV Disciplinary Committee was also inadequate. Some of the minutes failed even to include references to the types of violations that the committee considered. Other minutes were unclear as to which violations the committee considered or on which violations the committee acted. In other instances, the minutes did not include a discussion of some matters that purportedly were on the agenda for those meetings.

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<sup>12</sup> See Amex Rules 109, 154, and 950(f), (o).

As head of DTA, Robinson was responsible for reviewing and maintaining DTA's investigative files relating to the Amex's surveillance for options order handling rules. In addition, Robinson was responsible for keeping and maintaining the minutes of the MFV Disciplinary Committee meetings. Accordingly, Robinson knew or should have known that DTA's investigative files and the minutes of the MFV Disciplinary Committee meetings were incomplete and inadequate.

**b. The Failure to Furnish a Complete and Accurate Affirmation**

Affirmations detailing the Amex's compliance with the September 2000 Order were due annually on September 11.

The first affirmation, signed by Robinson, included the following representations:

- (1) the Amex's Enforcement Department was reviewing all matters that DTA was proposing to submit to the MFV Disciplinary Committee before they were presented to the MFV Disciplinary Committee;
- (2) firm quote violations "will be forwarded to the Enforcement Department for their review and action unless there are extenuating circumstances";
- (3) in early September 2001, a Trading Ahead of Customer Orders Report and an Executable Orders Unexecuted Report had been incorporated into the Amex's routine surveillance;
- (4) the Amex was utilizing the following surveillance reports: (a) Lack of Traders Trading in Between the Markets and (b) Specialists Routinely Being the Only Contra-Side on a Trade; and
- (5) the Amex had incorporated a Trade Reporting Report into its routine surveillance program.

None of these representations was accurate. At the time of the Amex's first affirmation, the Enforcement Department was not reviewing all matters that DTA was proposing to submit to the MFV Disciplinary Committee, nor did the Enforcement Department ever review routinely all matters that DTA was proposing to submit to the MFV Disciplinary Committee. At the time of the first affirmation, DTA also was not forwarding routinely firm quote violations to the Enforcement Department, nor did DTA ever forward routinely firm quote violations to the Enforcement Department. Instead, DTA referred most firm quote violations to the MFV Disciplinary Committee. In addition, the Trading Ahead of Customer Orders Report and the Executable Orders Unexecuted report were still in testing in September 2001 and were not actually implemented until approximately January 2002. Similarly, the reports for the Lack of Traders Trading in Between the Markets and for Specialists Routinely Being the Only Contra-Side on a Trade also were still in development at the time of the affirmation. Neither report was used for surveillance. In addition,

requirements for the Trade Reporting Report did not start to be developed until February 2002. Robinson knew or should have known these representations were inaccurate.

## **E. DISCUSSION**

### **1. Violation of Section 19(g)(1) of the Exchange Act**

Section 19(g)(1) of the Exchange Act obligates the Amex as a self-regulatory organization to comply with the Exchange Act, the Exchange Act rules and regulations, and the Amex's rules. Section 19(g)(1) further obligates the Amex, absent reasonable justification or excuse, to enforce compliance with these provisions by its members and persons associated with those members. In carrying out its duty to enforce compliance, the Amex was required to develop and maintain surveillance over its members and to "be vigilant in surveilling for, evaluating, and effectively addressing issues that could involve violations" of the securities laws.<sup>13</sup> The Amex failed to surveil for and investigate violations of, and to enforce compliance with options trading rules by Amex members and therefore violated Section 19(g)(1) of the Exchange Act. By implementing unreasonable parameters in the Amex's surveillance reports, by failing to ensure that Amex analysts were not excusing order handling violations based on improper grounds, and by failing to ensure that Amex analysts were reviewing all exceptions on Amex surveillance reports and reviewing exception reports in a timely manner, Robinson was a cause of the Amex's violations of Section 19(g)(1) of the Exchange Act.

### **2. Violation of Section 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-1**

Section 17(a)(1) of the Exchange Act requires an exchange such as the Amex to make and keep for prescribed periods, and then to furnish the Commission with a copy of, such records as the Commission prescribes as necessary or appropriate in the public interest, for the protection of investors, or for other purposes set forth in the Exchange Act. Exchange Act Rule 17a-1(a) further requires an exchange to keep and preserve at least one copy of all correspondence, records, and other documents made or received by it in its business and in the conduct of its self-regulatory activity. Rule 17a-1(c) requires an exchange promptly to furnish the Commission with a copy of any such document that the Commission requests. The requirement that an exchange keep and furnish records to the Commission includes the requirement that any accompanying explanation of those records be complete and accurate and that those materials be furnished on a timely basis.

The Amex failed to keep and furnish records with respect to its surveillance and investigatory functions as well as its enforcement activities. By submitting the first affirmation late and with inaccuracies, the Amex further failed to satisfy its obligation to furnish the Commission with such documents as it requests.<sup>14</sup> By failing to maintain properly the Amex's investigative

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<sup>13</sup> National Ass'n of Sec. Dealers, Inc., Exchange Act Rel. No. 37538, at 3 (Aug. 8, 1996).

<sup>14</sup> The affirmation, which was required by the September 2000 Order, was prepared in the course of the Amex's activity as a self-regulatory organization and is a record within the meaning of Section 17(a) of

files regarding its options order handling surveillance and by signing and submitting an affirmation to the Commission on behalf of the Amex, which Robinson knew or should have known contained inaccurate representations, Robinson was a cause of the Amex's violations of Section 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-1.

**IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that Richard Robinson cease and desist from causing any violations and any future violations of Sections 17(a)(1) and 19(g)(1) of the Exchange Act and Exchange Act Rule 17a-1.

By the Commission.

Nancy M. Morris  
Secretary

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the Exchange Act and Exchange Act Rule 17a-1.