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**NYSE Arca Equities Disciplinary Action  
Equity Trading Permit Holder Disciplined for Short Sale Violations  
and Inadequate Supervision  
Ronin Capital, LLC  
07-AE-03  
26 Oct 2007**

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Summary

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Case Note

**Violated Reg SHO Rule 200(g) by incorrectly marking as “short exempt” numerous sell short orders for execution that were not entitled to exemption from the applicable tick tests under Exchange and federal securities rules; violated NYSE Arca Equities Rule 7.16(a)(1) and Exchange Act Rule 10(a)(1) by executing numerous sell short orders in listed securities in a manner that improperly exempted these transactions from the applicable tick tests required under these rules, thereby causing numerous sell short orders to execute on downticks on the Exchange; violated NYSE Arca Equities Rule 6.18(a) by failing to adequately supervise its associated persons and business operations; and violated NYSE Arca Equities Rule 6.18(c) by failing establish, maintain, and enforce written procedures to supervise the business in which it engages and the activities of its associated persons. Consent to censure and \$200,000 fine.**

Case Summary

**Ronin Capital, LLC**, an Equity Trading Permit Holder, consented without admitting or denying guilt to findings of short sale violations as well as inadequacies in both supervision and written supervisory procedures.

- NYSE Arca Equities found that between approximately May 25, 2005, and June 14, 2006, one of Ronin’s trading units used the original Reg SHO Pilot “A” list found on the SEC web site to mark their sell short orders. Because this unit used the original Pilot list on the SEC website instead of the updated Pilot lists provided by the exchanges, Ronin entered approximately 5,500 sell short orders that were incorrectly marked as “sell short exempt.”
- This resulted in Ronin executing approximately 1,910 sell short orders, totaling 413,650 shares, which were improperly exempted from the tick test required by Exchange and federal securities rules. As a result, Ronin improperly executed on the Exchange numerous sell short orders on downticks.
- In addition, between June 30, 2005, and February 6, 2006, Ronin also inadvertently entered seven additional sell short orders manually that were incorrectly marked as sell short exempt, resulting in the execution of incorrectly marked sell short orders totaling 3,100 shares. Two of these orders should have been marked as sell long. The remaining orders were also improperly exempted from the applicable tick test required by Exchange and federal securities rules.
- Ronin failed to detect this violative conduct until Exchange investigators first brought this issue to the attention of Ronin’s executing broker on or around June 13, 2006.
- Ronin implemented new procedures on or about June 14, 2006, in an attempt to upload the most up-to-date pilot list on a daily basis. However, despite implementing the new procedures, Ronin inadvertently used the wrong Pilot list, this time using a Pilot “B” list from the American Stock Exchange (“AMEX”) when Ronin should have used AMEX’s Pilot “A” list.
- Because Ronin again used the wrong Pilot list, between

- approximately June 14, 2006, and August 9, 2006, Ronin entered approximately 2,800 additional sell short orders that were incorrectly marked as "sell short exempt." This resulted in approximately 380 executed orders, totaling approximately 53,500 shares, which were improperly exempted from the tick test required by Exchange and federal securities rules. As a result, Ronin again improperly executed on the Exchange numerous sell short orders on downticks.
- Ronin entered a total of approximately 8,300 sell short orders that were incorrectly marked as sell short exempt. All but two of the trades incorrectly marked as sell short exempt should have been marked as "short." Ronin thereby sold short a total of approximately 470,000 shares in approximately 2,300 transactions that were improperly exempted from the tick test required by Exchange and federal securities rules. As a result, Ronin improperly executed on the Exchange numerous sell short orders on downticks.
  - Ronin's written compliance and supervisory procedures only instructed Ronin personnel to obtain the Pilot lists from the SEC website. Ronin's procedures did not direct Ronin personnel to also consult the various exchanges for Pilot list updates, as directed by the "Reg SHO Spotlight" section of the SEC website.

NYSE Arca Equities imposed a penalty of a censure and \$200,000 fine. Ronin Capital consented to the penalty.

**NYSE ARCA EQUITIES, INC.**  
**100 S. Wacker Drive**  
**Chicago, IL 60606**

NYSE ARCA EQUITIES, INC., Complainant,	)	
	)	
v.	)	Equities Enforcement Case No. 07-AE-03
	)	
Ronin Capital, LLC	)	ESD Investigation # 990
230 S. LaSalle Street, Suite 400	)	
Chicago, Illinois 60604	)	Decision
	)	
Respondent.	)	
	)	
	)	
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This formal disciplinary action was instituted pursuant to Rule 10.4 by the Regulatory Staff of NYSE Arca Equities, Inc. (the “**Exchange**” or “**NYSE Arca Equities**”) as a result of a determination by the Chief Regulatory Officer of the Exchange and his delegee(s) that there is probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred.

In order to resolve this matter, Respondent Ronin Capital, LLC (“**Ronin**” or “**Respondent**”) has submitted an Offer of Settlement and Consent (“**Offer of Settlement**” or “**Offer**”), executed by the Respondent on July 23, 2007. Such Settlement was submitted 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 finding referred to therein. With due regard to the stipulated facts and violations and the proposed sanction contained therein, the Office of the General Counsel believes it is appropriate to accept the Settlement with respect to the File Number set forth above. This Settlement is attached to and made a part of this Decision.

**I. Stipulation of Facts and Violations**

**A. Jurisdiction and Rules**

1. During the time periods noted herein, Respondent Ronin was an Equity Trading Permit (“ETP”) Holder of NYSE Arca Equities,<sup>1</sup> registered to transact business on the Exchange in accordance with Exchange rules.

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<sup>1</sup> Prior to the closing of the merger between the New York Stock Exchange and Archipelago Holdings, LLC on March 8, 2006, the exchange now designated as NYSE Arca Equities was known as the Archipelago Exchange (“ArcaEx”), and was governed by the rules of PCX Equities, Inc. (“PCXE”). The applicable rules were not changed by the merger, and for convenient reference, this document consistently

2. During the time periods noted herein, NYSE Arca Equities Rules 6.18(a), 6.18(c), 7.16(a)(1), Securities Exchange Act of 1934 (“Exchange Act”) Rule 10a-1, and Regulation SHO (“Reg SHO”) Rule 200(g) were each in full force and effect.
3. NYSE Arca Equities Rule 6.18(a) prohibits all ETP Holders from engaging in conduct in violation of federal securities laws or NYSE Arca Equities Rules, and requires all ETP Holders to supervise persons associated with it to assure their compliance with same.
4. NYSE Arca Equities Rule 6.18(c) requires ETP Holders to establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations and Exchange Rules.
5. During the time periods noted herein, NYSE Arca Equities Rule 7.16(a)(1) and Exchange Act Rule 10a-1 prohibited ETP Holders from executing short sales of securities “below the price at which the last sale...was reported” or “at such price unless such price is above the next preceding different price at which a sale of such security...was reported...” (hereafter referred to as a “downtick”).
6. During the time periods noted herein, Reg SHO Rule 200(g) required sellers of securities to accurately mark each of their sell orders as “long,” “short” or “short exempt.”
7. During the time periods noted herein, Rule 200(g) further required that an order shall be marked “short exempt” only “if the seller is relying on an exception from the tick test of [Exchange Act Rule 10a-1], or any short sale price test of any exchange or national securities association.” By marking an order as sell short exempt, a seller allows such an order to execute on a downtick without regard to the above “tick test” requirements of Exchange Rule 7.16(a)(1) and Exchange Act Rule 10a-1, as described above in paragraph 5.

**B. The Regulation SHO Pilot Program**

8. Beginning on or about January 3, 2005, and continuing throughout the time periods noted herein, the United States Securities and Exchange Commission (“SEC”) conducted a Pilot Program in connection with the implementation of Reg SHO to obtain market data on the impact of short selling in the absence of tick tests (hereafter “the Pilot Program”).
9. The Pilot Program permitted sellers of securities to apply the “sell short exempt” label to specified lists of securities (“the Pilot lists.”). Specifically, the Pilot “A” list included securities that are exempt from the “tick test” requirement at all times, while the Pilot “B” list included securities only exempt from 4:15 p.m.

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refers to the former ArcaEx as “NYSE Arca Equities” and the governing rules as “NYSE Arca Equities Rules,” even when referring to pre-merger periods.

E.S.T. until 9:30 a.m. E.S.T. the next day. The SEC website published the original Pilot lists, but did not update these lists. Instead, the “Reg SHO Spotlight” section of the SEC Website directed users of the Pilot lists to consult updated Pilot lists that were published by the various exchanges. The exchanges updated the Pilot lists from time to time, adding certain securities and removing others, to reflect changes due to corporate actions or listing changes. Sellers participating in the Pilot Program were required to use the correct and current Pilot list to determine their order marking obligations for each particular sell order they entered.

### **C. Repeated Short Sale Order Mismarking and Improper Execution**

10. Between approximately May 25, 2005 and June 14, 2006, one of Ronin’s trading units used the original Reg SHO Pilot “A” list found on the SEC web site to mark their sell short orders. Because this unit used the original Pilot list on the SEC website instead of the updated Pilot lists provided by the exchanges, Ronin entered approximately 5,500 sell short orders that were incorrectly marked as “sell short exempt.”
11. This resulted in Ronin executing approximately 1,910 sell short orders, totaling 413,650 shares, which were improperly exempted from the tick test required by Exchange and federal securities rules. As a result, Ronin improperly executed on the Exchange numerous sell short orders on downticks.
12. In addition, between June 30, 2005 and February 6, 2006, Ronin also inadvertently entered seven additional sell short orders manually that were incorrectly marked as sell short exempt, resulting in the execution of incorrectly marked sell short orders totaling 3,100 shares. Two of these orders should have been marked as sell long. The remaining orders were also improperly exempted from the applicable tick test required by Exchange and federal securities rules.
13. Ronin did not detect or otherwise become aware of the improper executions, the incorrectly marked sell short exempt orders, or the impact of its use of the SEC’s original Pilot list as described in Paragraphs 10 and 12 above until Exchange investigators first brought this issue to the attention of Ronin’s executing broker on or around June 13, 2006.
14. Ronin implemented new procedures on or about June 14, 2006 in an attempt to upload the most up-to-date pilot list on a daily basis. However, despite implementing the new procedures, Ronin inadvertently used the wrong Pilot list, this time using a Pilot “B” list from the American Stock Exchange (“AMEX”) when Ronin should have used AMEX’s Pilot “A” list.
15. Because Ronin again used the wrong Pilot list, between approximately June 14, 2006 and August 9, 2006, Ronin entered approximately 2,800 additional sell short orders that were incorrectly marked as “sell short exempt.” This resulted in approximately 380 executed orders, totaling approximately 53,500 shares, which were improperly exempted from the tick test required by Exchange and federal

securities rules. As a result, Ronin again improperly executed on the Exchange numerous sell short orders on downticks.

16. As a result of the activity described in Paragraphs 10 through 15 above, Ronin entered a total of approximately 8,300 sell short orders that were incorrectly marked as sell short exempt. All but two of the trades incorrectly marked as sell short exempt should have been marked as “short.” Ronin thereby sold short a total of approximately 470,000 shares in approximately 2,300 transactions that were improperly exempted from the tick test required by Exchange and federal securities rules. As a result, Ronin improperly executed on the Exchange numerous sell short orders on downticks.

#### **D. Inadequate Supervision and Supervisory Procedures**

17. During the time that the conduct set forth in paragraphs 10 through 16 above was taking place, Ronin’s written compliance and supervisory procedures only instructed Ronin personnel to obtain the Pilot lists from the SEC website. Ronin’s procedures did not direct Ronin personnel to also consult the various exchanges for Pilot list updates, as directed by the “Reg SHO Spotlight” section of the SEC website.

#### **E. Violations**

18. The acts, practices and conduct described above in each of paragraphs 10, 11, 12, 14, 15, and 16 constitute violations of Reg SHO Rule 200(g) by Ronin in that Ronin incorrectly marked as “short exempt” numerous sell short orders for execution that were not in fact entitled to exemption from the applicable tick tests under Exchange and federal securities rules.
19. The acts, practices and conduct described above in each of paragraphs 11, 12, 15 and 16 constitute violations of NYSE Arca Equities Rule 7.16(a)(1) and Exchange Act Rule 10(a)(1) by Ronin in that Ronin executed numerous sell short orders in listed securities in a manner that improperly exempted these transactions from the applicable tick tests required under these rules, thereby causing numerous sell short orders to execute on downticks on the Exchange.
20. The acts, practices and conduct described above in each of Paragraphs 10 through 17 constitute violations of NYSE Arca Equities Rule 6.18(a) by Ronin in that Ronin failed to adequately supervise its associated persons and business operations to assure their compliance with NYSE Arca Equities Rule 7.16(a)(1), Exchange Act Rules 10a-1 and Reg SHO Rule 200(g).
21. The acts, practices and conduct described above in each of paragraphs 10 through 17 constitute violations of NYSE Arca Equities Rule 6.18(c) by Ronin in that Ronin failed to establish, maintain, and enforce written procedures to supervise the business in which it engages and the activities of its associated persons that were reasonably designed to ensure compliance with NYSE Arca Equities Rule 7.16(a)(1), Exchange Act Rule 10(a)(1), and Reg SHO Rule 200(g).

**II. SANCTIONS**

Respondent Ronin is hereby censured by the Exchange and fined \$200,000.00.

The fine shall be collected from Respondent within 30 days of the date of this decision, in accordance with the Exchange's standard billing and accounting practices.

Dated this 26<sup>th</sup> day of October, 2007

On behalf of the Office of the General Counsel,  
NYSE Arca, Inc.

Signature: 

Print Name: Andrew Stencas

Title: Assistant General Counsel