

NYSE AMEX LLC

HEARING BOARD DECISION 09-AMEX-6

May 7, 2009

BLUEFIN SPECIALISTS, L.L.C.
MEMBER ORGANIZATION

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Violated Amex Rule 155 by failing to give precedence to order entrusted to it as agent and overrode NETS trading ahead alert to execute order at same price for account in which Firm had interest; violated Amex Rule 231(e) and Regulation NMS Rule 602b.2 by failing to execute orders upon presentment, thereby failing to honor published quotation or executing these orders at prices inferior to published quoted market; violated Amex Rule 232 by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets – Consent to censure and joint and several \$20,000 fine.

HEARING BOARD DECISION 09-AMEX-7

BLUEFIN TRADING, LLC
MEMBER ORGANIZATION

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Violated Exchange Act Rule 17a-5(a)(2)(iii) and Amex Rule 30 by filing FOCUS Reports more than 17 business days after end of calendar quarter; violated Exchange Act Rule 17a-11(d) by failing to give notice to Amex of failure to make and keep current accurate books and records on day it became aware of such failure and failing to transmit to Amex within 48 hours of required initial notice a report stating what was being done to correct situation; violated Amex Rule 958-ANTE(g), Exchange Act Rule 11a-1 and Regulation X by placing non-market making option trades in option market maker account, thereby causing clearing firm to extend market maker credit for non-market making activity – Consent to censure and joint and several \$20,000 fine.

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Appearances:

For the Division of Enforcement
David Rosenstein, Esq.
Michael E. Chasen, Esq.

For Respondent
Drew Hurni, Esq.

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A Hearing Officer on behalf of NYSE Amex LLC (“NYSE Amex”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Bluefin Specialists, L.L.C. (“Bluefin Specialists”) and Bluefin Trading, LLC (“Bluefin Trading”) (collectively, “Respondents” or “Bluefin”), NYSE Amex¹ member organizations. Without admitting or denying guilt, Respondents consented to a finding by a Hearing Officer that:

- I. Bluefin Trading violated Securities Exchange Act Rule (“Exchange Act Rule”) 17a-5(a)(2)(iii) and Amex Rule 30 during the period between January 1, 2004 and April 30, 2006, by filing either original or amended FOCUS Reports for the fourth quarter of 2003, the first, second and third quarters of 2004, and the first, second and fourth quarters of 2005, more than 17 business days after the end of each calendar quarter.
- II. Bluefin Trading violated Exchange Act Rule 17a-11(d) by failing to give notice to the Amex of its failure to make and keep current accurate books and records on the day it became aware of such failure and by failing to transmit to the Amex within 48 hours of the required initial notice a report stating what was being done to correct the situation.
- III. Bluefin Specialists violated Amex Rule 155 on December 13, 2005, by failing to give precedence to an order entrusted to it as an agent in product ABC and overrode a NETS trading ahead alert to execute an order at the same price in product ABC for an account in which the Firm had an interest in the absence of a valid exception to do so.
- IV. Bluefin Specialists violated Amex Rule 231(e) and Regulation NMS Rule 602b.2 during the period between September 1, 2006 and November 30, 2006, by failing to execute orders upon presentment and thereby failing to honor the published quotation or executing these orders at prices inferior to the published quoted market.
- V. Bluefin Specialists violated Amex Rule 232 during the periods between January 1, 2007 and March 30, 2007 and April 1, 2007 and June 30, 2007, by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets.
- VI. Bluefin Trading violated Amex Rule 958-ANTE(g), Exchange Act Rule 11a-1 and Regulation X by placing non-market making option trades in an option market maker account, thereby causing its clearing firm to extend market maker credit for non-market making activity.

¹ On or about October 1, 2008, the American Stock Exchange (“Amex”) was acquired by NYSE Euronext and was renamed NYSE Amex LLC. Thus, while the rules of NYSE Amex govern the procedural aspects of this Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of “Amex Rules”.

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 findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. During all relevant periods herein, the Respondents were member organizations of the Amex.
2. During all relevant periods herein, Bluefin Trading was engaged in floor activities, trading securities for its own accounts and effecting transactions in commodity futures, commodities and commodity options as broker for others or dealer for its own accounts. Bluefin Trading also acts as a put and call broker or dealer or option writer.
3. During all relevant periods herein, Bluefin Specialists was engaged in floor activities, trading securities for its own accounts and effecting transactions in commodity futures, commodities and commodity options as broker for others or dealer for its own accounts.

Books and Records Violations – Bluefin Trading

4. Bluefin Trading: (a) filed FOCUS Reports on several occasions during the period of 2004 through 2006 in an untimely manner in violation of Amex Rule 30 and Section 17 of the Securities Exchange Act of 1934 (the “Exchange Act”) and Exchange Act Rule 17a-5(a)(2)(iii); and (b) on several occasions failed to give notice of its failure to make and keep current accurate books and records in violation of Exchange Act Rule 17a-11(d).

Failure to Timely File Quarterly FOCUS Reports

5. During all relevant periods herein, Amex Rule 30 required that every member and member organization timely file with the Amex such periodic or special reports at such time or times and in such form as the Amex may prescribe. All information filed with the Amex is required to be true and correct.
6. During all relevant periods herein, Section 17 of the Exchange Act and Exchange Act Rule 17a-5(a)(2)(iii) stated, in pertinent part²:

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 40 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer.

² On or about November 17, 2003, the Financial Regulation Department of the Exchange (“FRD”) issued a Notice to Members (Amex FRD Notice 03-04), which, among other things, provided guidance on the due dates of FRD filings, including the quarterly filing of FOCUS Report Part

Every broker or dealer who does not carry nor clear transactions nor carry customer accounts shall file Part IIA of Form X-17A-5 within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter.

7. During the period between January 1, 2004 and April 30, 2006, Bluefin Trading filed either original, or amended, FOCUS Reports for the fourth quarter of 2003, the first, second and third quarters of 2004, and the first, second and fourth quarters of 2005 more than 17 business days after the end of each calendar quarter.
8. The conduct described above constitutes violations of Amex Rule 30 and Exchange Act Rule 17a-5(a)(2)(iii).

Notice of the Failure to Keep Current Books and Records – Bluefin Trading

9. During all relevant periods herein, Exchange Act Rule 17a-11(d) stated, in pertinent part:

Every broker or dealer who fails to make and keep current the books and records required by Rule 17a-3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made current or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

10. On several occasions between January 1, 2004 and April 30, 2006, Bluefin Trading failed to keep current accurate books and records as demonstrated by their repeated late and amended filings of FOCUS reports. Bluefin Trading failed to give notice to the Amex of its failure to make and keep current accurate books and records on the day it became aware of such failure, in that it failed to specify which books and records had not been made and/or kept current. Further, Bluefin Trading failed to transmit to the Amex within 48 hours of the required initial notice a report stating what was being done to correct the situation. Notice was not given to the Amex regarding which books or records were not current until amended filings were made, from three (3) to 275 calendar days later.
11. The conduct described above constitutes violations of Exchange Act Rule 17a-11(d).

IIA. The Notice stated that the Report will be due not later than the 17th business day of the month following the end of the reporting period.

Trading Ahead Violation – Bluefin Specialists

12. On or about December 13, 2005, Bluefin Specialists failed to give precedence to an order entrusted to it as an agent in product ABC³ and overrode a New Equity Trading System (“NETS”) trading ahead alert to execute an order at the same price in product ABC for an account in which Bluefin Specialists had an interest in the absence of a valid exception to do so in violation of Amex Rule 155.
13. During the relevant period herein, subject to certain exceptions, Amex Rule 155 stated that a specialist firm shall give precedence to orders entrusted to it as an agent in any stock in which it is registered before executing at the same price any purchase or sale in the same stock for an account in which it has an interest.
14. On or about November 22, 2005, an Amex Regulation and Compliance Memorandum (the “Memorandum) addressing the NETS Trading Ahead Block technology was released to all Amex equity, ETF and Nasdaq specialists. The Memorandum described the implementation of a new functionality which would alert specialists if they attempted to participate in a trade execution while an executable customer system order was displayed on the specialist’s book, and which order was eligible to trade in advance of the specialist’s participation on the trade. The Memorandum also discussed various valid exceptions wherein the specialist could override the trading ahead alert.
15. On December 13, 2005, on one occasion, Bluefin Specialists failed to give precedence to an order entrusted to it as an agent in product ABC and overrode a NETS trading ahead alert to execute an order at the same price in product ABC for an account in which the specialist had an interest in the absence of a valid exception to do so.
16. The conduct described above constitutes a violation of Amex Rule 155.

Equity/ETF ITS Firm Quote Violations – Bluefin Specialists

17. During the period between September 1, 2006 and November 30, 2006, Bluefin Specialists failed to execute orders upon presentment and thereby failed to honor the published quotation or executed these orders at prices inferior to the published quoted market in violation of Amex Rule 231(e) and Regulation NMS Rule 602b.2.
18. During the relevant period herein, subject to certain exceptions, Amex Rule 231(e) and Regulation NMS Rule 602b.2 required specialists to execute incoming Intermarket Trading System (“ITS”) commitments to trade at the best available price reflected in the Firm’s quoted market.

³ A generic identifier is being used to represent the product that was traded in this scenario.

19. On 18 occasions in Product JKL⁴ during the period between September 1, 2006 and November 30, 2006, orders were presented to Bluefin Specialists through ITS at their published bid or offer in an amount up to the published quotation size. Bluefin Specialists failed to execute these orders upon presentment and thereby failed to honor the published quotation or executed these orders at prices inferior to the published quoted market in Product JKL.
20. The conduct described above constitutes violations of Amex Rule 231(e) and Regulation NMS Rule 602b.2.

ITS Pre-Opening Application Violations – Bluefin Specialists

21. During the period between January 1, 2007 and March 30, 2007 and the period between April 1, 2007 and June 30, 2007, Bluefin Specialists failed to issue required ITS pre-opening notifications in eligible securities to other participant markets in violation of Amex Rule 232.
22. During all relevant periods herein, Amex Rule 232 required Amex specialists to issue pre-opening notifications to other participant markets when the opening transaction on the Amex in an Eligible Listed Security was more than the applicable price change as defined by Amex Rule 232.
23. On 25 occasions during the period between January 1, 2007 and March 30, 2007, Bluefin Specialists failed to issue required ITS pre-opening notifications in eligible securities to other participant markets.
24. On 25 occasions during the period between April 1, 2007 and June 30, 2007, Bluefin Specialists failed to issue required ITS pre-opening notifications in eligible securities to other participant markets.
25. The conduct described above constitutes violations of Amex Rule 232.

Registered Options Trader (“ROT”) Margin Violations – Bluefin Trading and ROT A

26. During the period between October 2, 2006 and December 29, 2006, Bluefin Trading, through the acts of Bluefin Trading’s Registered Options Trader “A” (“ROT A”)⁵: (a) violated Amex Rule 958-ANTE(g) by placing options trades in its market making account notwithstanding the fact that it did not initiate any of these trades through the facilities of the Amex; (b) violated Exchange Act Rule 11a-1 by effecting options transactions while on the floor of the Amex for its own account while not acting in the capacity of an options market maker; (c) violated Part 224 of the Federal Reserve Board Rules (“Regulation X”) in that it inappropriately placed options trades in its market making account held at its clearing firm when it knew, or should have known, that doing so would cause the clearing firm to improperly extend good faith market

⁴ A generic identifier is being used to indicate the product that was at issue in this scenario.

⁵ A generic identifier is being used to represent the Registered Options Trader at Bluefin Trading.

making margin treatment to such trades in contravention of Federal Reserve Board Regulation T.

27. During all relevant periods herein, Amex Rule 958-ANTE(g) required in relevant part that registered options traders, when entering into an options transaction for any account in which they have any interest, initiate such transactions on the Floor and through the facilities of the Amex for those transactions to be considered registered options trader transactions.
28. During all relevant periods herein, Amex Rule 958-ANTE, Commentary .01(a) provided in relevant part that “[a] registered options trader electing to engage in [Amex] options transactions is designated as a Specialist on the [Amex] for all purposes under the [Exchange Act] and the rules and regulations thereunder with respect to options transactions (i) initiated and effected by him on the Floor and through the facilities of the [Amex] in his capacity as registered options trader....”
29. During all relevant periods herein, Exchange Act Rule 11a-1 provided in relevant part that no member of a national securities exchange, while on the floor of such exchange, shall effect any transaction in any security admitted to trading on such exchange for its own account, but provided an exemption for transactions by a registered specialist in a security in which he is so registered on such exchange.
30. During all relevant periods herein, the Amex operated a hybrid options trading platform known as the Amex New Trading Environment (“ANTE”), which enabled registered options traders and other Amex members, pursuant to applicable rules, to enter electronic and open outcry quotations and orders as well as to effect electronic and open outcry transactions.
31. During all relevant periods herein, Regulation X required that credit obtained within or outside the United States comply with the limitations of the Federal Reserve Board's Margin Regulations T and U (12 CFR Parts 220, and 221, respectively), and that any borrower who obtained purpose credit within the United States, unless the borrower willfully caused the credit to be extended in contravention of Regulations T or U, was exempt from the Federal Reserve Board’s margin regulations.⁶
32. During all relevant periods herein, Section 224.3(b) of Regulation X stated that "any borrower who willfully causes credit to be extended in contravention of Regulations T and U ... and who, therefore, is not exempted under Section 224.1(b)(1), must conform the credit to the margin regulation that applies to the lender." This section places the obligations of Regulation T, which apply only to Brokers and Dealers

⁶ Part 220.2 of the Federal Reserve Board Rules (“Regulation T”) states: “Good faith with respect to: (1) Margin means the amount which a creditor would require in exercising sound credit judgment; (2) Making a determination or accepting a statement concerning a borrower means that the creditor is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.”

- extending credit, upon individual borrowers. Accordingly, by placing non-market making trades into a market making account, Bluefin Trading not only caused its clearing firm to violate Regulation T (i.e., causing it to extend market maker credit for non-market making activity), but also violated Regulation X by failing to conform the credit it received to Regulation T (i.e., obtaining market maker credit for non-market making activity). The principal purpose of Regulation T is to regulate extensions of credit by brokers and dealers. It imposes, among other obligations, initial margin requirements and payment rules on certain securities transactions.
33. During all relevant periods, ROT A was registered with the Amex as a registered options trader, subject to the requirements of Amex Rule 958-ANTE. As a result thereof, ROT A received a market maker ID from the Options Clearing Corporation (“OCC”).
 34. During the relevant periods, ROT A maintained an options market making account at Bluefin Trading’s clearing firm, DEF.⁷ This options market making account was intended for transactions effected by ROT A as an Amex-registered options trader in accordance with the Amex and Exchange Act rules applicable to such transactions, including without limitation that such transactions be initiated and effected by him on the Floor and through the facilities of the Amex in his capacity as a registered options trader. In agreeing to maintain such an options market making account for ROT A, DEF relied on ROT A’s status as an Amex-registered options trader as well as ROT A’s active OCC market maker ID. DEF provided good faith margin treatment for trades placed by ROT A in the options market maker account.
 35. During the relevant periods, ROT A effected a total of 162 options trades. Of the 162 options trades, ROT A placed 158 of those options trades in the options market maker account, thereby representing that each such trade was a registered options trader transaction entitled to good faith margin treatment.
 36. ROT A did not initiate and/or effect any of the 158 options trades through the facilities of the Amex. Instead, ROT A directed all of the trades to options exchanges other than the Amex.
 37. During the relevant period, ROT A had no product assignments, thus effecting 0% of his Amex volume in assigned options classes. In addition, despite a total of 63 trade dates during which ROT A could have logged onto ANTE, ROT A failed to log onto ANTE on any of them.
 38. None of ROT A’s activity as described in paragraphs 33 through 36 met the requirements to be considered registered options trader transactions since none of the transactions was effected through the facilities of the Amex, and did not otherwise meet the requirements of Amex Rule 958-ANTE.

⁷ A generic identifier is being used to make reference to the Bluefin Trading clearing firm.

39. As a result thereof, Bluefin Trading, through the acts of ROT A, caused DEF to inappropriately extend “good faith” margin treatment to such options transactions in contravention of Regulation T, which Bluefin Trading and ROT A knew, or should have known, was improper.
40. The conduct described above constitutes violations of Amex Rule 958-ANTE (g), Rule 11a-1 of the Act, and Regulation X.

Other Factors Considered

41. In arriving at the agreed upon penalty in this matter, Enforcement took into consideration the development of system enhancements by the Amex which aided specialist firms in preventing instances of trading ahead. Since the time period discussed herein, there has not been a recurrence of trading ahead violations by Bluefin.
42. In addition, Enforcement took into consideration the significant number of trades executed by Bluefin in its capacity as a specialist and trading firm on the Floor of the Amex without incident.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondents committed the offenses as set forth above.

PENALTY

In view of the above findings, the Hearing Officer imposed the penalty consented to by Respondents of a censure and a joint and several \$20,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer