

NYSE AMEX LLC

HEARING BOARD DECISION 09-AMEX-14
BEAR WAGNER SPECIALISTS, L.L.C.

June 25, 2009

HEARING BOARD DECISION 09-AMEX-15
BEAR HUNTER STRUCTURED PRODUCTS, L.L.C.

HEARING BOARD DECISION 09-AMEX-16
HBH SPECIALISTS, L.L.C.
MEMBER ORGANIZATIONS

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Violated Amex Rule 155, made applicable to options through Amex Rule 950, by failing to give precedence to orders entrusted to them as agent in multiple options before executing at same price purchases or sales in multiple options for accounts in which they had interest; violated Amex Rule 155 by failing to give precedence to orders entrusted to them as agent in multiple equities before executing at same price purchases or sales in multiple equities for accounts in which they had interest; violated Amex Rule 231(e) and Regulation NMS 602(b)(2) by failing to honor published quotation, by failing to execute equity orders upon presentment or by executing these orders at prices inferior to published quoted market; violated Amex Rule 16 by failing to adhere to principles of good business practices in handling of market orders, by failing to execute orders in timely manner; violated Regulation NMS 604 by failing to immediately display customer equity limit orders in public quotation, when each such order was at price that would improve specialist's bid or offer in each such security, or when order was priced equal to specialist's bid or offer and national best bid or offer for each such security, and size of order represents more than de minimis change in relation to size associated with specialist's bid or offer in each such security; violated AMEX Rule 232 by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets and/or setting an opening price range that straddled previous day's closing price; violated Amex Rule 16 by failing to post closing prints within 180 seconds of close in product for which it specialized, in contradiction to principles of good business practice; violated Amex Rule 16 by failing to adhere to principles of good business practice in conduct of their affairs, by disseminating quote that locked or crossed quoted market of another ITS participant and then failing to promptly unlock or uncross ITS participant's market; violated Amex Rules 128A-AEMI (g) and 16 by failing to pair off remaining imbalances within ten seconds in order to re-enable Auto-Ex when a buy or sell imbalance had

**locked or crossed the AEMI Book and Auto-Ex had been disabled –
Consent to censure and \$125,000 joint and several fine.**

Appearances:

For the Division of Enforcement
Robert A. Marchman, Esq.
Kenneth R. Bozza, Esq.
Jacqueline Gorham, Esq.

For Respondent
Jay Balacek, Esq.
Harry Frischer, Esq.

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A Hearing Officer on behalf of the NYSE Amex LLC (“NYSE Amex” or the “Exchange”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Bear Wagner Specialists, L.L.C., Bear Hunter Structured Products, L.L.C. and HBH Specialists, L.L.C. (collectively “Respondents” or the “Bear Firms”), NYSE Amex member organizations. Without admitting or denying guilt, Respondents consented to a finding by a Hearing Officer that they:

- I. Violated Amex Rule 155, made applicable to options through Amex Rule 950, during the period of January 2003 through May 2005, by failing to give precedence to orders entrusted to them as agent in multiple options before executing at the same price purchases or sales in those multiple options for accounts in which the Bear Firms had an interest.
- II. Violated Amex Rule 155 during the period of March 2005 through February 2007, by failing to give precedence to orders entrusted to them as agent in multiple equities before executing at the same price purchases or sales in those multiple equities for accounts in which the Bear Firms had an interest.
- III. Violated Amex Rule 231(e) and Regulation NMS 602(b)(2) during the period of June 2006 through August 2006, by failing to honor the published quotation, by failing to execute equity orders upon presentment or by executing these orders at prices inferior to the published quoted market.
- IV. Violated Amex Rule 16 during the period of September 2005 through February 2007, by failing to adhere to principles of good business practices in the handling of market orders, by failing to execute the orders in a timely manner.

- V. Violated Regulation NMS 604 during the period of June through August 2006, by failing to immediately display customer equity limit orders in its public quotation, when each such order was at a price that would improve the specialist's bid or offer in each such security; or when the order was priced equal to the specialist's bid or offer and the national best bid or offer for each such security, and the size of the order represents more than a de minimis change in relation to the size associated with the specialist's bid or offer in each such security.
- VI. Violated AMEX Rule 232 during the period between April 2006 and September 2006, by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets and/or setting an opening price range that straddled the previous day's closing price.
- VII. Violated Amex Rule 16 during the period of April 2006 through September 2006, by failing to post closing prints within 180 seconds of the close in product for which it specialized, in contradiction to the principles of good business practice.
- VIII. Violated Amex Rule 16 during the period of May 2006 through February 2007, by failing to adhere to the principles of good business practice in the conduct of their affairs, by disseminating a quote that locked or crossed the quoted market of another ITS participant and then failing to promptly unlock or uncross the ITS participant's market.
- IX. Violated Amex Rules 128A-AEMI (g) and 16 during the period of December 2007 through February 2008 by failing to pair off remaining imbalances within ten seconds in order to re-enable Auto-Ex when a buy or sell imbalance had locked or crossed the AEMI Book and Auto-Ex had been disabled.

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, Respondents stipulate to certain facts, the substance of which follows:*

Background and Jurisdiction

1. During all relevant periods herein, the Bear Firms were member organizations and registered equities, options and Exchange Traded Fund ("ETF") specialist organizations of the American Stock Exchange ("Amex").¹

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 35 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.

¹ On October 1, 2008, the Amex was acquired by NYSE Euronext and was subsequently renamed NYSE Amex LLC. Thus, while the rules of NYSE Amex govern the procedural aspects of this

2. During all relevant periods herein, the Bear Firms served as specialists for various equities, options and ETFs that traded on the Floor of the Amex.

Option Trading Ahead Violations

3. During all relevant periods herein, Amex Rule 155 required that a specialist give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which the specialist has an interest.
4. During all relevant periods herein, Amex Rule 950 (Rule of General Applicability) provided that Amex Rule 155 also applies to Amex option transactions and other transactions on the Amex in option contracts and indicated that unless the context otherwise requires, the term "stock" whenever used in Rule 155 shall be deemed to include option contracts.
5. As set forth below, from January 2003 through May 2005, the Bear Firms violated their respective agency obligations by failing to give precedence to option orders entrusted to them. During the period of January 2003 through May 2005 orders were electronically transmitted to the Floor of the Amex through the Amex Option Display Book ("AODB") electronic options trading platform and entrusted to the Bear Firms, as agent. In June 2004, the Amex implemented a new electronic options trading platform and orders began transmitting to the Floor of the Amex through the Amex New Trading Environment ("ANTE"). ANTE remained in effect through November 2005. As described more fully below, on certain occasions during the period of January 2003 through February 2007, the Bear Firms executed transactions in options of which they were registered for accounts in which they had an interest before executing at the same price purchases or sales in the same options for accounts in which they were entrusted as agent.
6. During the period of January 2003 through May 2005, on approximately 8,409 occasions, the Bear Firms failed to give precedence to orders entrusted to them as agent in multiple options before executing at the same price purchases or sales in those multiple options for accounts in which the Respondents had an interest.
7. During the period of January 2003 through May 2005, on certain occasions there were Trading Ahead transactions in ABC for the dealer account of one of the Bear Firms. For example, on July 23, 2004 at 14:00:12 p.m., the quoted market in ABC was .90 – .95 (150 x 514). At 14:07:27 p.m., an ANTE limit order to buy 250 contracts of ABC at .95 became viewable in the specialist's book, which was executable at time of receipt. At 14:07:59 p.m., the specialist bought for his own account 514 contracts of ABC at .95, ahead of the customer order. The customer never received a fill and cancelled the order at 14:08:06 p.m.

Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of "Amex Rules."

8. The conduct described above constitutes a violation of Amex Rule 155 made applicable to options by Amex Rule 950.

Equity Trading Ahead Violations

9. As set forth below, from March 2005 through February 2007, the Bear Firms violated their respective agency obligations by failing to give precedence to equity orders entrusted to them. During the period of March 2005 through February 2007, equity orders were electronically transmitted to the Floor of the Amex through the New Equity Trading System ("NETS") electronic equity trading platform and entrusted to the Bear Firms, as agent. In November 2006, the Amex implemented a new electronic equity trading platform and orders began transmitting to the Floor of the Amex through the Auction and Electronic Market Integration system ("AEMI"). AEMI remained in effect through February 2007. As described more fully below, on certain occasions during the period of March 2005 through February 2007, the Bear Firms executed transactions in equities of which they were registered for accounts in which they had an interest before executing at the same price any purchase or sale in the same equities for accounts in which they were entrusted as agent.
10. During the period of March 2005 through February 2007, on approximately 276 occasions, the Bear Firms failed to give precedence to orders entrusted to them as agent in multiple equities before executing at the same price purchases or sales in those multiple equities for accounts in which the Respondents had an interest.
11. During the period of March 2005 through February 2007, on certain occasions there were Trading Ahead transactions in DEF for the dealer account of one of the Bear Firms. For example, on July 25, 2006 at 15:30:56 p.m., the quoted market in DEF was 74.08 – 74.10 (100 x 8,500). At 15:31:26 p.m., an ITS limit order commitment to buy 5,000 shares of DEF at 74.10 became viewable in the specialist's book, which was executable at the time of the specialist's receipt of the ITS participant's commitment. At 15:31:50 p.m., the specialist bought for his own account 2,600 shares of DEF at 74.10, ahead of the ITS participant's commitment. The ITS participant never received a fill and the commitment expired at 15:31:56 p.m.
12. The conduct described above constitutes a violation of Amex Rule 155.

Equity/ETF ITS Firm Quote Violations

13. During the relevant period herein, subject to certain exceptions, Amex Rule 231(e) and Regulation NMS 602(b)(2) required Amex specialists to execute incoming ITS commitments to trade at the best available price reflected in the quoted market.
14. During the period of June 2006 through August 2006, on approximately 170 occasions, in multiple products, orders were presented to the Bear Firms through ITS at the published bid or offer in an amount up to the published quotation size. The

Respondents failed to honor the published quotation by either failing to execute these orders upon presentment or by executing these orders at prices inferior to the published quoted market.

15. The conduct described above constitutes violations of Amex Rule 231(e) and Regulation NMS 602(b)(2).

Market Order Timeliness

16. During the relevant periods herein, Amex Rule 16 required Amex members and member organizations to adhere to the principles of good business practice in the conduct of their affairs.
17. During the period of September 2005 through February 2007, on approximately 24,395 occasions, in multiple products, market orders were presented to the Bear Firms. The Respondents failed to execute these orders within a timely manner and thereby failed to adhere to the principles of good business practice.
18. The conduct described above constitutes violations of Amex Rule 16.

Equity Limit Order Display

19. During the relevant period herein, subject to certain exceptions, Regulation NMS 604 required Amex specialists to immediately display customer equity limit orders in its public quotation, when each such order is at a price that would improve the specialist's bid or offer in each such security; or when the order is priced equal to the specialist's bid or offer and the national best bid or offer for each such security, and the size of the order represents more than a de minimis change in relation to the size associated with the specialist's bid or offer.
20. During the period of June through August 2006, on 314 occasions, in multiple products, equity limit orders that improved the quoted price or size were presented to the Bear Firms. The Respondents failed to immediately display these orders.
21. The conduct described above constitutes violations of Regulation NMS 604.

ITS Pre-Opening Application Violations

22. During the relevant period herein, subject to certain exceptions, 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 in excess of the applicable price change as defined by Amex Rule 232 and, thereafter, required specialists to wait not less than three minutes after the transmission of the pre-opening notification prior to opening the security. Amex Rule 232 also prohibited specialists from setting an opening price range that straddled the previous day's closing price.

23. During the period of April 2006 through September 2006, on 140 occasions, the Bear Firms failed to issue required ITS pre-opening notifications in Eligible Listed Securities to other participant markets, wait the required time prior to opening the security, and/or set an opening price that straddled the previous day's closing price.
24. The conduct described above constitutes violations of Amex Rule 232.

Post 4:01:30

25. During the period of April 2006 through September 2006, on 140 occasions, in multiple products, the Bear Firms failed to post closing prints within 180 seconds of the close, in products for which it specialized, in contradiction to the principles of good business practice.
26. The conduct described above constitutes violations of Amex Rule 16.

ITS Locked and Crossed

27. Pursuant to the ITS Plan that was adopted by the Securities and Exchange Commission in May 1982 and its subsequent amendments, ITS participants were advised to avoid locked markets in ITS securities.² Respondents, as member organizations and specialist firms at the Amex, were responsible for carrying out the duties and obligations of the Amex under the Plan.
28. During the period of May 2006 through February 2007, on numerous occasions, in multiple products, the Bear Firms disseminated a quote that locked or crossed the quoted market of another ITS participant and then failed to promptly unlock or uncross the ITS participant's market, thereby failing to adhere to the principles of good business practice.
29. The conduct described above constitutes violations of Amex Rule 16.

AEMI Auto-Execution Reactivation

30. During the relevant period herein, subject to certain exceptions, when a buy or sell imbalance in a security had locked or crossed the AEMI Book and the Auto-Execution function ("Auto-Ex") had been disabled for any of the reasons permitted therein, Amex Rule 128A-AEMI (g) required Amex specialists to attempt to pair off any remaining imbalance in order to re-enable Auto-Ex within ten seconds.
31. On a number of occasions during the period of December 2007 through February 2008, and in multiple products, the Bear Firms were presented with a buy or sell

² A locked market is defined by the ITS Plan as disseminating a bid (offer) for an ITS Security at a price that equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the "locked offer (bid)").

imbalance that had locked or crossed the AEMI Book and Auto-Ex had been disabled. In these situations, Respondents failed to pair off remaining imbalances within ten seconds in order to re-enable Auto-Ex. On these occasions, Auto-Ex was disabled on average for 35.72 seconds.

32. The conduct described above violates Amex Rule 128A-AEMI (g) and Amex Rule 16.

Additional Factors Considered

33. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration the number of trades executed by the Bear Firms in its capacity as specialist firms on the Floor of the Exchange without incident.
34. In addition, Enforcement took into consideration the development of system improvements by the Exchange which aided specialist firms in preventing instances of trading ahead and certain order handling violations.
35. Since the time periods specified herein, there has not been a reoccurrence of the trading ahead violations specified herein.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondent 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 \$125,000 joint and several fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer