

NYSE AMEX LLC

HEARING BOARD DECISION 09-AMEX-23
AGS SPECIALISTS, L.L.C.

August 7, 2009

HEARING BOARD DECISION 09-AMEX-24
AGS SPECIALISTS II, L.L.C.

HEARING BOARD DECISION 09-AMEX-25
STR SPECIALISTS, L.L.C.
SPECIALISTS

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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 AGS Firms had interest; violated Amex Rules 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 AGS Firms had interest; violated Regulation NMS Rule 602(b)(2) and Amex Rule 958A-ANTE by failing to honor published quotation, failing to execute option orders upon presentment or executing these orders at prices less favorable than those in published quoted market; violated Amex Rule 231(e) and Regulation NMS Rule 602(b)(2) by failing to honor published quotation, by failing to execute equity orders upon presentment or executing these orders at prices less favorable than those in published quoted market; violated Amex Rule 16 by failing to adhere to principles of good business practice in conduct of their affairs, in that they failed to execute market orders in timely manner; violated Amex Rule 958A(e) by failing to publish immediately upon receipt price and size of each customer options limit order held by specialist that is at price or size that would improve displayed bid or offer in option that is subject of limit order; violated Regulation NMS Rule 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 Regulation SHO Rule 220 and Amex Rule 957 by failing to accurately mark all sell orders of any securities as "long", "short" or "short exempt"; violated Amex Rule 191 by failing to provide 191 Data to Amex; violated Amex Rule 232 by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets; 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 Section 11(a)(1)(A) of Exchange Act, Regulation X, and Amex Rule 958-ANTE(b) by executing option transactions in Firm's market maker account that did not constitute course of dealings reasonably calculated to contribute to maintenance of fair and orderly market, therefore improperly causing clearing firm to extend "good faith" margin for non-market making transactions – Consent to censure and joint and several fine of \$125,000.

Appearances:

For the Division of Enforcement
Robert Marchman, Esq.
Kenneth R. Bozza, Esq.
Shawn R. Mallon, Esq.

For Respondent
William Purcell, Esq.

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A Hearing Officer on behalf of the 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 AGS Specialists, L.L.C. ("AGS Specialists"), AGS Specialists II, L.L.C ("AGS Specialists II") and STR Specialists, L.L.C. (STR Specialists") (collectively, the "AGS Firms" or "Respondents"), NYSE Amex member organizations. Without admitting or denying guilt, Respondents consented to findings by a Hearing Officer they:

- I. Violated Amex Rule 155, made applicable to option through Amex Rule 950, during the period of January 2003 through November 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 AGS Firms had an interest.
- II. Violated Amex Rules 155 during the period of March 2003 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 AGS Firms had an interest.
- III. Violated Regulation NMS Rule 602(b)(2) and Amex Rule 958A-ANTE during the period of October 2006 through January 2007, by failing to honor the published quotation, by failing to execute option orders upon presentment or by executing these orders at prices less favorable than those in the published quoted market.

- IV. Violated Amex Rule 231(e) and Regulation NMS Rule 602(b)(2) during the period of September 2006 through February 2007, by failing to honor the published quotation, by failing to execute equity orders upon presentment or by executing these orders at prices less favorable than those in the published quoted market.
- V. Violated Amex Rule 16 during the period of December 2006 through February 2007, by failing to adhere to the principles of good business practice in the conduct of their affairs, in that they failed to execute market orders in a timely manner.
- VI. Violated Amex Rule 958A(e) during the period of October 2006 through January 2007, by failing to publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order.
- VII. Violated Regulation NMS Rule 604 during the period of October 2006 through February 2007, 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.
- VIII. Violated Regulation SHO Rule 220 and Amex Rule 957 on or about November 10, 2006, by failing to accurately mark all sell orders of any securities as "long", "short" or "short exempt".
- IX. Violated Amex Rule 191 during the period of January 2005 through May 2006, by failing to provide 191 Data to the Amex.
- X. Violated Amex Rule 232 during the period between April 2006 and June 2006, by failing to issue required ITS pre-opening notifications in eligible securities to other participant markets.
- XI. Violated Amex Rule 16 during the period of August 2005 through October 2007, 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.
- XII. Violated Section 11(a)(1)(A) of the Exchange Act, Regulation X, and Amex Rule 958-ANTE(b) during the period of October 2006 through December 2006 by executing option transactions in the Firm's market maker account that did not constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, therefore improperly causing the clearing firm to extend "good faith" margin for non-market making transactions.

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 AGS Firms were member organizations and registered equities, options and Electronically Traded Funds (“ETF”) specialist organizations of the American Stock Exchange (“Amex”).¹
2. During all relevant periods herein, the AGS 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 required, the term “stock” whenever used in Rule 155 shall be deemed to include option contracts.
5. As set forth below, from January 2003 through November 2005, the AGS 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 2004 orders were electronically transmitted to the Floor of the Amex through the Amex Option Display Book (“AODB”) electronic options trading platform. 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 November 2005, the AGS Firms executed transactions in options of which they were

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 50 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 Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of “Amex Rules.”

- registered for accounts in which they had an interest before executing at the same price purchases or sales in the same options for orders transmitted to it as specialist.
6. During the period of January 2003 through November 2005, on approximately 450 occasions, the AGS Firms failed to take steps to ensure that it gave precedence to orders entrusted to them as agent in certain options before executing at the same price purchases or sales in those certain options for accounts in which the Respondents had an interest.
 7. During the period of January 2003 through November 2005, on certain occasions there were Trading Ahead transactions for the Respondents' dealer account in ABC². For example, on October 13, 2005 at 10:37:04 a.m., the quoted market in ABC was .25 – .35, (357x310). At 10:37:17 a.m., an ANTE limit order to sell 200 contracts of ABC at .35 became viewable in the specialist's book. At 10:38:17 a.m., the specialist executed an order for his own account by selling 780 contracts of ABC at .35, ahead of the customer order. The customer never received a fill and cancelled the order at 10:48:08 a.m.
 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 2003 through February 2007, the AGS Firms violated their respective agency obligations by failing to give precedence to equity orders entrusted to them. During the period of March 2003 through November 2006, equity orders were electronically transmitted to the Floor of the Amex through the New Equity Trading System ("NETS") electronic equity trading platform. 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 2003 through February 2007, the AGS 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 orders which had been transmitted to it as specialist.
10. During the period of March 2003 through February 2007, on approximately 448 occasions, the AGS Firms failed to take steps to ensure it gave precedence to orders entrusted to them as agent in certain equities before executing at the same price purchases or sales in those certain equities for accounts in which the Respondents had an interest.

² A generic identifier has been used in this example.

11. During the period of March 2003 through February 2007, on certain occasions there were Trading Ahead transactions for the Respondents' dealer account in DEF³. For example, on September 14, 2006 at 15:54:56 p.m., the quoted market in DEF was 3.27 – 3.29, (900x600). At 15:55:20 p.m., an Inter-market Trading System ("ITS") limit commitment to sell 900 contracts of DEF at 3.27 became viewable in the specialist's book, which was executable at the time of the specialists' receipt of the ITS participant's commitment. At 15:55:39 p.m., the specialist executed an order for his own account by selling 2000 contracts of DEF at 3.34, ahead of the ITS participant's commitment. The ITS participant never received a fill and the commitment expired at 15:55:50 p.m.
12. The conduct described above constitutes a violation of Amex Rule 155.

Option Firm Quote Violations

13. During the relevant period herein, subject to certain exceptions, Regulation NMS Rule 602(b)(2) and Amex Rule 958A-ANTE required Amex specialists for each series of each listed option class to promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size and to execute any customer order in an option series in an amount up to its published size.
14. During the period of October 2006 through January 2007, on approximately 19 occasions, in certain products, orders were presented to the AGS Firms 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 less favorable than those in the published quoted market.
15. The conduct described above constitutes violations of Regulation NMS Rule 602(b)(2) and Amex Rule 958A.

Equity/ETF ITS Firm Quote Violations

16. During the relevant period herein, subject to certain exceptions, Amex Rule 231(e) and Regulation NMS Rule 602(b)(2) required Amex specialists to execute incoming ITS commitments to trade at the best available price reflected in the quoted market.
17. During the period of September 2006 through February 2007, on approximately 80 occasions, in certain products, orders were presented to the AGS 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 less favorable than those in the published quoted market.

³ A generic identifier has been used in this example.

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

Market Order Timeliness

19. During the relevant periods herein, Amex Rule 16 required Amex specialists to adhere to the principles of good business practice in the conduct of their affairs.
20. During the period of December 2006 through February 2007, on approximately 25 occasions, in certain products, market orders were presented to the AGS Firms. The AGS Firms failed to execute these orders within a timely manner and thereby failed to adhere to the principles of good business practice.
21. The conduct described above constitutes violations of Amex Rule 16.

Option Limit Order Display

22. During the relevant period herein, subject to certain exceptions, Amex Rule 958A(e), required Amex specialists to publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. "Immediately upon receipt" shall mean, under normal market conditions, as soon as practicable, but no later than 30 seconds after receipt.
23. During the period of October 2006 through January 2007, on 19 occasions, in certain products, option limit orders that improved the quoted price or size were presented to AGS Firms. The Respondents failed to immediately display these orders.
24. The conduct described above constitutes violations of Amex Rule 958A(e).

Equity Limit Order Display

25. During the relevant period herein, subject to certain exceptions, Regulation NMS Rule 604, required Amex specialists to immediately display customer equity limit orders in their 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 represented more than a de minimis change in relation to the size associated with the specialist's bid or offer.
26. During the period of October 2006 through February 2007, on 25 occasions, in certain products, equity limit orders that improved the quoted price or size were presented to the AGS Firms. The Respondents failed to immediately display these orders.
27. The conduct described above constitutes violations of Regulation NMS Rule 604.

Short Sale

28. During the relevant period herein, Regulation SHO Rule 220 and Amex Rule 957 required Amex specialists to mark all sell orders of any securities as “long”, “short” or “short exempt”.
29. On October 10, 2006, on 141 occasions in certain products, the AGS Firms improperly marked orders as “sell long” as opposed to “sell short” or “sell short exempt” when the Respondents had a net short position in the security.
30. The conduct described above constitutes violations of Regulation SHO Rule 220 and Amex Rule 957.

Failure to Provide 191 Data

31. During the relevant period herein, Amex Rule 191 required Amex specialists to file with the Amex before the opening of trading on the next business day a report reflecting his opening position and each purchase and sale in both round lots and odd lots for his own account in each security in which he is registered as a specialist and, with respect to each round lot transaction, shall designate the time and type of tick at which such transaction was effected (known as “191 Data”).
32. During the period of January 2005 through May 2006, the AGS Firms failed to provide 191 Data for 187 various Index and Equity linked notes for which the AGS Firms were the specialists.
33. The conduct described above constitutes violations of Amex Rule 191.

ITS Pre-Opening Notification Violations

34. 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 more than the applicable price change as defined by Amex Rule 232.
35. During the period of April 2006 through June 2006, on 19 occasions, the AGS Firms failed to issue required ITS pre-opening notifications in Eligible Listed Securities to other participant markets.
36. The conduct described above constitutes violations of Amex Rule 232.

Post 4:01:30

37. During the relevant period herein, Amex Rule 16 required Amex specialists to adhere to the principles of good business practice in the conduct of their affairs.
38. During the period of August 2005 through October 2007, on 184 occasions, in certain equity products the AGS 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.

39. The conduct described above constitutes violations of Amex Rule 16.

Registered Options Trader (“ROT”) Margin Violations

40. During the period between October 2006 and December 2006 (the “relevant period”), Section 11(a)(1)(A) of the Exchange Act provided in relevant part that “it shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account” or “for any account in which such member has an interest.” An exception to these provisions is for “any transaction by a dealer acting in the capacity of a market maker” or “any transaction by a registered specialist in a security in which he is so registered on such exchange.”
41. During the relevant period herein, Section 3(a)(38) of the Exchange Act defined a market maker as “any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis”.
42. During the relevant period herein, Amex Rule 958-ANTE(b) required Exchange option transactions of a Registered Trader to constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and no Registered Trader should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.
43. During the relevant period herein, Part 224 of the Federal Reserve Board Rules (“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 was exempt from the Federal Reserve Board’s margin regulations. Section 224.3(b) of Regulation X stated that “any borrower who willfully causes credit to be extended in contravention of Regulation 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 extending credit, upon individual borrowers.
44. During the relevant period herein, Registered Options Trader A (“ROT A”) was employed by the Respondents and was registered with the Amex as a registered options trader. As a registered options trader, ROT A received a market maker ID from Options Clearing Corporation (“OCC”).
45. During the relevant period herein, ROT A maintained an options market making account at the Respondents’ clearing firm, XYZ. Clearing firm XYZ extended “good

faith” margin treatment for all trades placed in the account.⁴ The options market making account was only to be used for transactions that are consistent with the purpose articulated above in Section 3(a)(38) of the Exchange Act and Amex Rule 958-ANTE(b).

46. During the relevant period, 28.8% of the contracts executed by ROT A’s were dividend spreads effected on the Floor of the Amex. Dividend spreads are not transactions that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and therefore were not market making transactions. However, these transactions were improperly placed in ROT A’s options market maker account. As a result, by placing non-market making trades into a market making account, AGS 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 principle purpose of Regulation T is to regulate extensions of credit by brokers and dealers. It imposes, among other obligations, initial requirements and payment rules on certain securities transactions.
47. The conduct described above constitutes separate and distinct violations of Section 11(a)(1)(A) of the Exchange Act, Regulation X, and Amex Rule 958-ANTE(b).

Additional Factors Considered

48. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration the significant number of trades executed by the Firm in its capacity as a specialist firm on the Floor of the Exchange without incident.
49. 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.
50. 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 Respondents committed the offenses as set forth above.

⁴ 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.”

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 fine in the amount of \$125,000.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer