

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 09-NYSE-9

March 24, 2009

CALYON SECURITIES (USA) LLC

MEMBER ORGANIZATION

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Violated NYSE Rule 123C by failing to comply with requirements governing entry and cancellation of Market-On-Close and Limit-On-Close orders on 4,102 occasions; violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls over certain of its business activities, including separate system of follow-up and review, with respect to entry and cancellation of MOC/LOC orders – Consent to censure and \$110,000 fine.

Appearances:

For the Division of Enforcement

Steven Brostoff, Esq.

Lara Posner, Esq.

Joseph O. Okpaku, Esq.

For Respondent

Christian Billet

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Calyon Securities (USA) LLC (“Respondent,” “Calyon,” or the “Firm”), an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that it:

1. Violated NYSE Rule 123C by failing to comply with the requirements governing the entry and cancellation of Market-On-Close (“MOC”) and Limit-On-Close (“LOC”) orders on 4,102 occasions; and
2. Violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls over certain of its business activities, including a separate system of follow-up and review, with respect to the entry and cancellation of MOC/LOC orders.

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. Calyon has been a member of the NYSE through its predecessor entities since 1982. Calyon, formerly known as Credit Lyonnais Securities (USA) Inc., is a subsidiary of Credit Agricole S.A.
2. On July 9, 2008, NYSE Regulation's Division of Market Surveillance ("MKS") referred this matter to Enforcement based on the Firm's apparent violations of NYSE Rule 123C. This referral contained allegations that the Firm, on multiple trade dates between July 2007 and May 2008, violated NYSE Rule 123C by entering and/or canceling Market-On-Close ("MOC") and Limit-On-Close ("LOC") orders after the specified cutoff times without qualifying for a valid exception.
3. On September 23, 2008, MKS referred a second matter to Enforcement that alleged additional violations of NYSE Rule 123C by the Firm on July 30, 2008 and August 4, 2008. The potential violations that occurred on August 4, 2008 were self-reported by the Firm.
4. By letters dated July 17, 2008 and September 24, 2008, Enforcement notified the Firm that it was conducting a formal investigation into the allegations set forth in the respective referral.

Overview

5. As set forth below, the Firm, during the period of July 2007 through August 2008 (the "Relevant Period"), violated NYSE Rule 123C by improperly entering or canceling 4,102 MOC/LOC orders on six trade dates: July 31, 2007, September 21, 2007, September 25, 2007, October 29, 2007, November 1, 2007, and November 28, 2007. 4,023 of the improper order entries and/or cancellations involved LOC orders, and the remaining 79 improper order entries and/or cancellations involved MOC orders. The instances involving the improper entry of MOC/LOC orders included instances in which MOC/LOC orders were entered on the same side of a published imbalance, and instances in which MOC/LOC orders were entered when there was no published imbalance.
6. Furthermore, the Firm violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls over certain of its business activities, including a separate system of follow-up and review with respect to the entry and cancellation of MOC/LOC orders.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 23 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.

Calyon's Late Entry and Cancellation of MOC/LOC Orders

7. NYSE Rule 123C governs the NYSE's Market on the Close Policy. Pursuant to NYSE Rule 123C, all MOC/LOC orders must be entered prior to 3:40 p.m. on a given trading day, unless the order is submitted to offset a published imbalance in the given security. Furthermore, an MOC/LOC order may be canceled or reduced in size between 3:40 p.m. and 3:50 p.m. only to correct a legitimate error. However, no MOC/LOC order may be canceled or reduced in size after 3:50 p.m.
8. Pursuant to a prior case involving violations of the NYSE's MOC/LOC policy, the Firm implemented a number of significant enhancements to its MOC/LOC policies and practices.¹
9. In addition to requiring its upstairs traders to undergo revised training regarding MOC/LOC orders, the Firm installed a block in its electronic order system, BRASS, that was intended to prevent the entry of MOC/LOC orders after 3:40 p.m., absent an appropriate exception.
10. The Firm has since replaced BRASS with IRSA, a new proprietary order management ("front-end") system. IRSA was programmed with a similar block that prevented the improper entry and cancellation of MOC/LOC orders. IRSA's MOC/LOC block could be overridden by Firm traders.
11. In addition, the Firm added programming logic to its FIX Gateway (the Firm's "back-end" system), an interface to the NYSE used by the Firm, that was intended to prevent the improper entry and cancellation of MOC/LOC orders after 3:40 p.m.
12. The majority of the improper MOC/LOC order entries and cancellations occurred on September 21, 2007, when the Firm improperly entered or canceled a total of 3,793 LOC orders in 202 different securities. It should be noted that September 21, 2007 was an "Expiration Friday"² and a day on which some Standard & Poor's ("S&P") indices were rebalanced. These 3,793 LOC entries and cancellations included hundreds of LOC orders entered when there was no imbalance, hundreds of LOC orders entered on the same side as the imbalance and hundreds of improperly canceled LOC orders.

¹ In NYSE Decision No. 07-NYSE-7 (Hearing Board January 12, 2007), the Firm consented to findings that during the period of December 2004 through February 2005 it violated NYSE Rule 123C by improperly entering and/or canceling 95 MOC/LOC orders, and NYSE Rule 401 by improperly testing its electronic order routing systems' connectivity to the NYSE's system. The Firm also consented to a finding that it violated NYSE Rule 342 in connection with its supervision of MOC/LOC order entry and cancellation. The Firm consented to a censure and a fine in the amount of \$90,000.

² An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the NYSE, as identified by a qualified clearing corporation. The twelve expiration days are "Expiration Fridays" which fall on the third Friday in every month.

13. The September 21, 2007 violations resulted from the Firm's practice of using electronic spreadsheets to enter the components of large index arbitrage program baskets. On September 21, 2007, the details of a program basket of LOC orders were entered into an electronic spreadsheet for transmission to the NYSE, and after submitting the basket into IRSA just prior to 3:40 p.m., the spreadsheet briefly froze in the Firm's systems due to the overall high volume of orders being handled by the system. A few minutes later, just after 3:40 p.m., the spreadsheet "unfroze" and the orders were routed to the NYSE. These orders were supposed to be entered before 3:40 p.m. and were never intended to offset a post-3:40 p.m. MOC/LOC imbalance. Since the orders were entered into IRSA before 3:40 p.m., IRSA's "front-end" block was not implicated; however, due to a programming error with the FIX Gateway, the "back-end" block failed to prevent the routing of these orders to the NYSE.
14. The Firm promptly discovered the problem and, between 3:40 p.m. and 3:50 p.m., canceled all of the LOC orders that did not offset a published MOC/LOC imbalance, resulting in additional violations for canceling LOC orders after 3:40 p.m.
15. The 69 violations which occurred on September 25, 2007 and November 28, 2007 involved the aforementioned programming error with the FIX Gateway and an additional programming error with IRSA. Specifically, a complete data feed failure by IRSA on both dates caused IRSA to cancel all outstanding orders, including MOC/LOC orders after the 3:40 p.m. cut-off time. On these two dates, the aforementioned programming error in the FIX Gateway allowed these improper cancellations to be sent to the NYSE. The Firm discovered these programming errors on November 30, 2007, and corrected them.
16. The remaining 240 violations all involved human error in conjunction with the previously-described programming error with the FIX Gateway. On July 31, 2007, a Firm trader, in response to the size of the imbalance, intended to increase the size of 230 LOC orders that the Firm had previously submitted, but accidentally used the "cancel and replace" feature to do so, which improperly canceled the original 230 orders after the 3:40 p.m. cut-off time. The "back-end" block in the FIX Gateway should have prevented these cancellations from being routed to the Floor, but the programming error allowed the cancellations to be processed and routed to the NYSE.
17. The final 10 violations on October 29, 2007 and November 1, 2007 involved nine different securities. On these two dates, another Firm trader, believing that there were imbalances in the nine securities, overrode IRSA's MOC/LOC block and submitted the 10 MOC orders. Due to the same programming error with the FIX Gateway, these orders were allowed to be routed to the NYSE despite the fact that there were no published imbalances and the 10 MOC orders were, therefore, improperly entered after 3:40 p.m.
18. By improperly entering and/or canceling 4,102 MOC/LOC orders, as described above, the Firm violated NYSE Rule 123C.

Calyon's Failure to Reasonably Supervise the Entry and Cancellation of MOC/LOC Orders

19. During the Relevant Period, the Firm violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls over certain of its business activities, including a separate system of follow-up and review, with respect to the testing of its electronic order routing systems' connectivity to the NYSE's systems, and the entry and cancellation of MOC and LOC orders.
20. Specifically, during the Relevant Period, the Firm's method of reviewing for potentially improper MOC/LOC order entries and cancellations by randomly sampling certain trade dates was insufficient and not reasonably designed to detect and/or prevent MOC/LOC violations, as evidenced by the fact that the random sampling did not select any of the following dates on which violations occurred: July 31, 2007, September 21, 2007, September 25, 2007, October 29, 2007, November 1, 2007 or November 28, 2007. Furthermore, the length of time it took the Firm to identify and resolve the recurring issues with the FIX Gateway was not reasonable, as the technical issues impacting the effective operation of the FIX Gateway continued for approximately four months.

Other Factors Considered

21. The Firm has made additional significant revisions and upgrades to its internal systems designed to detect and prevent future violations, including correcting the programming issues that contributed to the violations discussed herein. In addition, since August 2008, the Firm has been reviewing all MOC/LOC trades on a daily basis, instead of conducting a random sampling of certain trade dates. Furthermore, in January 2008, the Firm subscribed to the MOC/LOC "hard block" technology offered by the NYSE.
22. Staff determined that the improper MOC/LOC entries and cancellations set forth above had a minimal, if any, impact on the published imbalances or the closing price of the respective securities.
23. Finally, as noted above, the Firm was previously disciplined for violating the NYSE's MOC/LOC policy. However, Enforcement has taken into consideration the fact that the cause of the present violations is unrelated to the cause of the Firm's previous MOC/LOC violations.

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 Respondent of a censure and a \$110,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer