

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 09-NYSE-11
CITIGROUP GLOBAL MARKETS, INC.
MEMBER ORGANIZATION

April 8, 2009

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Violated NYSE Rule 476(a)(10) by failing to submit accurate Daily Program Trade Reports to NYSE; violated NYSE Rule 476(a)(11) by failing to timely submit certain required Daily Program Trade Reports to NYSE; violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, including separate system of follow-up and review, reasonably designed to achieve compliance with NYSE rules and policies regarding submission of Daily Program Trade Reports to NYSE – Consent to censure and \$45,000 fine.

Appearances:

For the Division of Enforcement
Steven Brostoff, Esq.
Lara Posner, Esq.
Michael W. Bautz, Esq.

For Respondent
Joshua E. Levine, Esq.

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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 Citigroup Global Markets, Inc. (“Respondent,” “Citigroup,” or the “Firm”), an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that it:

- I. Violated NYSE Rule 476(a)(10) by failing on multiple occasions to submit accurate Daily Program Trade Reports to the NYSE.
- II. Violated NYSE Rule 476(a)(11) by failing on seven occasions to timely submit certain required Daily Program Trade Reports to the NYSE.
- III. Violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, including a separate system of follow-up and review, reasonably designed to

achieve compliance with NYSE rules and policies regarding the submission of Daily Program Trade Reports to the NYSE.

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. Citigroup, a member organization, is a registered broker-dealer that provides services including investment banking, underwriting debt and equity securities and advising corporations, governments and institutions, as well as acting as a full-service global broker-dealer engaged in, among other things, retail brokerage of stocks. Between January 2000 and April 2003, Citigroup operated under the name Solomon Smith Barney, Inc. (“SSB”) and was a subsidiary of Citigroup, Inc. In April 2003, SSB was renamed Citigroup Global Markets, Inc.
2. By memo dated May 2, 2007, NYSE Regulation’s Division of Market Surveillance (“MKS”) made a referral to Enforcement indicating that the Firm may have violated NYSE Rule 476(a)(10) by failing to submit accurate Daily Program Trade Reports (“DPTRs”). By letter dated May 8, 2007, Enforcement notified the Firm that it was investigating this referral.
3. In or about April 2008, as Enforcement was concluding its investigation of the May 2, 2007 referral, the Firm reported to Enforcement the potential failure by certain of its trading desks and business units to submit DPTRs to the NYSE.
4. Thereafter, by memo dated May 5, 2008, MKS referred to Enforcement additional potential violations of NYSE Rules 476(a)(10), 476(a)(11) and 342 related to the Firm’s DPTR submissions that were delinquent and/or contained poor data quality occurring from April 2007 through December 2007.
5. By letter dated May 27, 2008, Enforcement notified the Firm that it was investigating this referral, as well as the Firm’s self-reported failures.
6. Then, by memoranda dated January 6, 2009 and February 11, 2009, MKS referred to Enforcement its findings that from July 1, 2008 to December 31, 2008, the Firm made delinquent DPTR submissions, a late DPTR addition, DPTR submissions with poor data quality and Crossing Session 2 (“CS2”) reporting problems.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 22 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.

Overview

7. The Firm, on one or more occasions from in or about June 2003 to on or about April 25, 2008, failed to submit accurate DPTRs to the NYSE. Specifically, during this period certain of the Firm's trading desks and business areas failed to make DPTR submissions related to certain program trading.
8. In addition, from April 1, 2007 to December 31, 2007 and from July 1, 2008 to December 31, 2008, the Firm (1) filed 92 DPTRs with inaccurate information; (2) made 65 CS2 submissions that were inconsistent with the DPTRs it submitted; (3) had four DPTRs that were delinquent; and (4) made three late additions to previously submitted DPTRs.
9. Finally, throughout all relevant periods, the Firm failed, in violation of NYSE Rule 342, to reasonably supervise and implement adequate controls reasonably designed to achieve compliance with NYSE rules and policies regarding the submission of DPTRs to the NYSE.

DPTR Rules

10. Pursuant to NYSE Rule 476(a)(10), members and member organizations that submit financial statements, reports, or any other submission to the NYSE are under a duty to ensure that such statements, reports, or submissions are free of any "misstatement or omission of fact."
11. Since 1988, the NYSE has required member organizations to report their program trading on a daily basis via DPTRs. These reports must include all program trades executed on the NYSE and any other market. NYSE Information Memo 03-9, "Electronic Filing Platform for Daily Program Trade Reporting and the Execution of Crossing Session II Trades – Rules 476(a)(11), 476(a), and 80A" (March 17, 2003) requires that member organizations submit DPTRs no later than the close of business on the second business day ("T+2") following the reportable activity, pursuant to NYSE Rule 476(a)(11). The DPTR must include the details of each transaction, such as the number of shares and the dollar value of the shares in the baskets. For CS2 transactions, NYSE Information Memo 03-9 requires that member organizations submit by T+2 detail reports (breakdowns of symbols and the corresponding number of shares for each CS2 basket) and DPTRs.

Failure to Submit Accurate DPTRs

12. From in or about June 2003 to in or about November 2006, the Firm did not report the principal side wave of guaranteed benchmarks for customer facilitation portfolio transactions that were crossed intraday and reported to the Automated Confirmation Transaction Service ("ACT") and, for non-NYSE listed securities executed over-the-counter and then reported to ACT, was not reporting either side of the portfolio transactions in its DPTR. In addition, the Firm was not reporting either side of portfolio transactions involving NYSE-listed securities executed in NYSE's CS2.

13. From on or about July 7, 2006 to on or about March 27, 2008, no program trades from a particular front end basket trading application used by the Firm's Derivatives and ETF trading desks were included in the Firm's DPTR submissions to the NYSE.
14. From on or about May 25, 2007 to on or about March 13, 2008, program trades related to a particular trading strategy employed by the Firm's Statistical Arbitrage/Algorithmic Trading Desk were not included in the Firm's DPTR submissions to the NYSE.
15. From in or about October 2007 to on or about April 25, 2008, no program trades effected through a particular direct access platform that the Firm provides to its institutional clients were included in the Firm's DPTR submissions to the NYSE.
16. From April 1, 2007 to December 31, 2007 and from July 1, 2008 to December 31, 2008, the Firm made 92 DPTR submissions with poor data quality. The data quality problems were due to: (a) the overwriting of one side of basket trades executed as Guaranteed Volume Weighted Average Price Trade where the Firm submitted both sides with the same identifier; (b) the failure to include market on close orders executed after 4:00 p.m.; and (c) the failure to enter the proper codes for certain transactions.
17. On 65 dates from April 1, 2007 to December 31, 2007 and from July 1, 2008 to December 31, 2008, the Firm submitted CS2 data that was inconsistent with the DPTR submitted by the Firm. The inconsistencies were due to: (a) differences in the way that the Firm submits DPTR data and CS2 date; (b) the mistaken inclusion of trades effected throughout the day, but completed at 4:00 p.m., as part of that day's CS2; and (3) the improper coding of certain trades.

Late Additions

18. From July 1, 2008 to December 31, 2008 the Firm made three late additions to previously filed DPTRs. In each instance, the Firm had timely submitted the DPTR, but the additions were late having been made more than T+2.

Failure to Timely Submit DPTRs

19. From April 1, 2007 to December 31, 2007 and from July 1, 2008 to December 31, 2008, the Firm was delinquent in the submission of four of its DPTRs by failing to submit them by T+2, as required by NYSE Information Memo 03-9.

Failure to Supervise

20. Throughout all relevant periods, the Firm, in violation of NYSE Rule 342, failed to reasonably supervise and implement adequate controls, including a separate system of follow-up and review, reasonably designed to achieve compliance with NYSE rules and policies regarding the submission of DPTRs.

Other Factors Considered

21. In arriving at the agreed-upon penalty in this matter, Enforcement considered that the Firm self-reported its failure to include certain program trading effected by its Statistical Arbitrage/Algorithmic, Derivatives and ETF trading desks in its DPTR submissions.
22. Enforcement also considered the remedial steps taken by the Firm to enhance compliance with NYSE rules and policies regarding program trading. Specifically, the Firm conducted a review of each of its trading desks and business areas to determine whether such desk or business area has reportable transactions and has been including such transactions in its DPTR submission. Moreover, the Firm enhanced the training of its personnel and has undertaken to remove responsibility for reporting program trades from the individual desk to its centralized Equity Data Warehouse to, among other things, allow for greater ability to track and correct its DPTR submissions.

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 \$45,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer