

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 09-NYSE-12
TORC INVESTMENTS & RESEARCH, LLC
MEMBER ORGANIZATION

April 8, 2009

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Violated NYSE Rule 476(a)(11) by, on 69 occasions, failing to timely submit certain required Daily Program Trade Reports to NYSE and violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, by failing to have written supervisory policies and procedures and 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 \$20,000 fine.

Appearances:

For the Division of Enforcement
Thomas Bruno, Esq.
Lara Posner, Esq.
Daniel N. Hoeffner, Esq.

For Respondent
Thomas O'Neill

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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 Torc Investments & Research, LLC (“Torc” or “Respondent”), 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)(11) by, on 69 occasions, failing to timely submit certain required Daily Program Trade Reports to the NYSE.
- II. Violated NYSE Rule 342 by failing to reasonably supervise and implement adequate controls, by failing to have written supervisory policies and procedures and 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. Torc, a subsidiary of parent company Torc Financial LLC, was formed during August 1999 and became a NYSE member on March 12, 2007. Torc maintains the Firm's principal place of business in New York, New York and is both a NYSE and Financial Industry Regulatory Authority ("FINRA") registered broker-dealer. Torc provides other broker-dealers, market makers, hedge funds and institutional investors direct market access through the Firm's TradeSpeed technology.¹ Torc is a small firm that consists of approximately 12 - 14 employees.
2. By memorandum dated June 27, 2008, NYSE Regulation's Division of Market Surveillance ("MKS") made a referral to Enforcement indicating that during the approximately six-month period of April 27, 2007 through October 29, 2007 (the "relevant period"), Torc may have violated NYSE Rule 476(a)(11) by failing to submit Daily Program Trade Reports ("DPTRs") and NYSE Rule 342 by failing to implement adequate supervisory procedures related to the Firm's submission of DPTRs.
3. By letter dated July 28, 2008, Enforcement notified Torc that it was investigating MKS's referral.

Overview

4. During the relevant period, Torc failed to submit the required DPTRs for certain program trades the Firm introduced for execution on the NYSE.
5. In addition, throughout the relevant period, Torc failed to reasonably supervise and implement adequate controls, by failing to have relevant written supervisory policies and procedures and a separate system of follow-up and review reasonably designed to achieve compliance with NYSE rules and policies regarding the submission of DPTRs to the NYSE.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 12 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 The Firm's TradeSpeed Technology is a suite of trading and order management components that encompass all facets of electronic and algorithmic trading, designed to provide Torc's customers with direct access to sources of liquidity across marketplaces by consolidating market data distribution and order execution capabilities across all major liquidity sources.

DPTR Rules

6. Since 1988, the NYSE has required member organizations to report their daily program trading activity 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. 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.
7. NYSE Rule 476(a)(11) requires member organizations to timely submit DPTRs to the NYSE.

Failure to Timely Submit DPTRs

8. During the relevant period, Torc introduced for execution on the NYSE 127 program trade orders on 69 trade dates for a single customer of the Firm. However, because Torc failed to take the appropriate steps to ascertain the Firm’s obligations pertaining to program trade reporting, Torc failed to submit the required DPTRs for those program trades.
9. Therefore, Torc violated NYSE Rule 476(a)(11) on each of the 69 occasions, by failing to submit the required DPTRs to the NYSE by T+2, as required by NYSE Information Memo 03-9.
10. After being informed of its failure to submit the required DPTRs, Torc successfully submitted the required DPTRs for those 69 dates on or about April 2 – 7, 2008.

Failure to Supervise

11. Throughout the relevant period, Torc failed to reasonably supervise and implement adequate controls, by failing to have written supervisory policies and procedures and a separate system of follow-up and review reasonably designed to achieve compliance with NYSE rules and policies regarding the submission of DPTRs to the NYSE.

Other Factors Considered

12. In arriving at the agreed-upon penalty in this matter, Enforcement considered the remedial steps taken by Torc to enhance compliance with NYSE rules and policies regarding the submission of DPTRs to the NYSE. Specifically, Torc has implemented relevant written supervisory policies and procedures, tested the Firm’s surveillance system and enhanced its system of follow-up and review.

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 \$20,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer