

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 10-NYSE-7

March 15, 2010

UBS SECURITIES LLC

MEMBER ORGANIZATION

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Violated NYSE Rule 92(a) by entering order to buy (sell) NYSE-listed security while knowingly in possession of customer order to buy (sell) such security, which could have been executed at same price; violated NYSE Rule 401 by failing to conduct business affairs in accordance with principles of good business practice by failing to adequately document customer's permission to trade along with, or ahead of, customer orders executed pursuant to NYSE Rule 92(b); violated Section 11(a)(1) of Exchange Act and NYSE Rule 90 in that orders were executed by Firm's Floor Brokers on NYSE Floor for account in which Firm had interest without such orders complying with requirements of statutory exemption; violated NYSE Rule 410(b) by allowing proprietary orders that could have been properly executed pursuant to Section 11(a)(1)(G) of Exchange Act to be transmitted to NYSE Floor without being identified in manner that would enable order to be handled pursuant to requirements of Exchange Act Section 11(a)(1)(G); violated NYSE Rule 132.30 by submitting inaccurate account type indicators to NYSE for comparison and settlement; violated NYSE Rules 410(a) and 440 and Exchange Act Rules 17a-3(a)(1) and (3) and 17a-4(b)(1) by failing to make and maintain certain records of order information and order tickets; violated NYSE Rule 123C by failing to comply with requirements governing entry and cancellation of MOC and LOC orders; violated NYSE Rule 410B by failing to report to NYSE certain transactions in NYSE-listed securities that were not reported to Consolidated Tape; violated NYSE Rule 342 by failing to provide for appropriate procedures of supervision and control, including separate system of follow-up and review, reasonably designed to achieve compliance with NYSE rules with respect to (a) transmission and execution of certain proprietary and agency trades on NYSE Floor; (b) submission of certain audit trail data; (c) retention of certain records pertaining to order information and order tickets; (d) entry and/or cancellation of certain MOC and LOC orders; and (e) submission of certain NYSE Rule 410B Reports – Consent to censure and \$350,000 fine.

Appearances:

For the Division of Enforcement
 Steven J. Brostoff, Esq.
 Thomas C. Bruno, Esq.
 Lara M. Posner, Esq.
 Felix M. Hester, Esq.
 Elizabeth E. Cochran

For Respondent
 Ben A. Indek, Esq.
 Judith Romaine, Esq.
 John Shin, Esq.
 Joseph Schifano, 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 UBS Securities LLC (“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 92(a) by, on twenty-one occasions, entering an order to buy (sell) an NYSE-listed security while knowingly in possession of a customer order to buy (sell) such security, which could have been executed at the same price.
- II. Violated NYSE Rule 401, in that it failed to conduct its business affairs in accordance with the principles of good business practice by failing, on eleven occasions, to adequately document whether it obtained a customer’s permission to trade along with, or ahead of, customer orders executed pursuant to NYSE Rule 92(b).
- III. Violated Section 11(a)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and NYSE Rule 90 in that, on seven occasions, orders were executed by the Firm’s Floor Brokers on the NYSE Floor for an account in which the Firm had an interest without such orders complying with the requirements of a statutory exemption.
- IV. Violated NYSE Rule 410(b), in that, on five occasions, it allowed proprietary orders that could have been properly executed pursuant to Section 11(a)(1)(G) of the Exchange Act to be transmitted to the NYSE Floor without being identified in a manner that would enable the order to be handled pursuant to the requirements of Exchange Act Section 11(a)(1)(G).
- V. Violated NYSE Rule 132.30 by submitting, on thousands of occasions, inaccurate account type indicators to the NYSE for comparison and settlement.

- VI. Violated NYSE Rules 410(a) and 440 and Exchange Act Rules 17a-3(a)(1) and (3) and 17a-4(b)(1), in that the Firm failed to make and maintain certain records of order information and order tickets.
- VII. Violated NYSE Rule 123C by, for 1,231 MOC/LOC orders, failing to comply with the requirements governing the entry and cancellation of Market-on-Close and Limit-on-Close orders;
- VIII. Violated NYSE Rule 410B by, on three occasions, failing to report to the NYSE certain transactions in NYSE-listed securities that were not reported to the Consolidated Tape; and
- IX. Violated NYSE Rule 342 by failing to provide for appropriate procedures of supervision and control, including a separate system of follow-up and review, reasonably designed to achieve compliance with NYSE rules with respect to (a) the transmission and execution of certain proprietary and agency trades on the NYSE Floor; (b) the submission of certain audit trail data; (c) the retention of certain records pertaining to order information and order tickets; (d) the entry and/or cancellation of certain Market-on-Close and Limit-on-Close orders; and (e) the submission of certain NYSE Rule 410B Reports.

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. UBS is a Delaware limited liability company with its principal place of business in Stamford, Connecticut. UBS is registered with the Securities and Exchange Commission (“SEC”) and is a member organization of the NYSE. The Firm is engaged in the business of global investment banking, securities trading, and asset management.
2. On January 9, 2007, Enforcement opened an investigation of the Firm based on referrals from NYSE Regulation’s Division of Market Surveillance (“MKS”) concerning potential violations of NYSE Rule 92(a), as well as potential violations of NYSE Rules 134 and 342. By letter dated January 16, 2007, Enforcement notified the Firm of its investigation. Subsequently, MKS referred additional potential violations of NYSE Rules 92(a), 132.30, 440, 401, 410(b) and 342 as well as potential violations of the Securities Exchange Act of 1934 (the “Exchange Act”), Section 11(a)(1) and Rules 17a-3 and 17a-4. In various correspondence, Enforcement notified UBS of that it had expanded its investigation to include these additional

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 56 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, except that pseudonyms have been provided to protect the privacy of non-parties.

referrals.

3. Subsequently, in December 2007, based upon another referral from MKS, Enforcement began investigating certain late entry and cancellation of Market-on-Close (“MOC”) and Limit-on-Close (“LOC”) orders in potential violation of NYSE Rule 123C. By letter dated January 30, 2008, Enforcement notified the Firm of its investigation. Thereafter, Enforcement received several additional related referrals and the Firm was notified of the expanded investigation.
4. MKS thereafter referred potential violations of NYSE Rule 410B concerning reporting obligations in connection with trades in NYSE-listed securities not otherwise reported to the Consolidated Tape on three occasions. By letter dated April 27, 2009, the Firm was notified that Enforcement was investigating a referral from MKS related to potential violations of NYSE Rule 410B.

Overview

5. During the period January 2005 through December 31, 2008 (the “First Relevant Period”) UBS violated NYSE Rule 92(a) on twenty-one occasions by: (i) on eight occasions, trading along with or trading ahead of a customer order without consent to do so; (ii) on seven occasions, obtaining consent from a customer to trade along with the customer’s order, but allocating certain executions between the Firm’s proprietary account and the customer’s account in amounts outside of the consent granted without obtaining the customer’s consent to modify the terms of the original consent; and (iii) on six occasions, in instances where the Firm traded along with or ahead of a customer order without consent to do so, such trading was also in violation of Exchange Act Section 11(a)(1), because the Firm’s “G” order failed to yield priority, parity and precedence to public orders.
6. During the First Relevant Period, the Firm failed on eleven occasions to document whether it had obtained a customer’s consent to trade along with or trade ahead of the customer’s order in violation of NYSE Rule 401. Further, on several occasions the Firm submitted inaccurate account type indicators in violation of NYSE Rule 132.30, and failed to mark certain proprietary orders with the required “G” notation in violation of NYSE Rule 410(b).
7. During the First Relevant Period, the Firm failed to make and maintain certain books and records in violation of NYSE Rules 410(a) and 440 and Exchange Act Rules 17a-3(a)(1) and (6) and 17a-4(b)(1).
8. Enforcement’s investigation also disclosed that during the period January 19, 2007 through December 24, 2008, (the “Second Relevant Period”) the Firm entered or cancelled 1,231 MOC or LOC orders in violation of NYSE Rule 123C. Separately, on three occasions between September 1, 2008 and January 19, 2009, UBS failed to report trades in NYSE-listed securities not otherwise reported to the Consolidated Tape in violation of NYSE Rule 410B.

9. Throughout both relevant periods, UBS failed to provide for appropriate procedures of supervision and control, including a separate system of follow-up and review, reasonably designed to achieve compliance with respect to: (a) the transmission and execution of certain proprietary and agency orders on the NYSE Floor; (b) the submission of certain audit trail data; (c) the retention of certain records pertaining to order information and order tickets; (d) the entry and cancellation of certain MOC/LOC orders; and (e) the reporting requirements with respect to certain trades in NYSE-listed securities not otherwise reported to the Consolidated Tape, in violation of NYSE Rule 342.

Facts

NYSE Rule 92

10. NYSE Rule 92 generally prohibits members and member organizations from trading on a proprietary basis along with (“trading along”), or ahead of (“trading ahead”), customer orders that are executable at the same price as the proprietary order.¹
11. In particular, NYSE Rule 92(a) provides that “no member or member organization shall cause the entry of an order to buy (sell) any [NYSE]-listed security for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a ‘proprietary order’), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer’s order to buy (sell) such security that could be executed at the same price.”
12. NYSE Rule 92(b) contains, among other things, several exceptions that make it permissible for a member or member organization to enter a proprietary order while representing a customer order that could be executed at the same price, provided, among other things, the firm obtains the customer’s express consent. These exceptions include proprietary orders in which the member or member organization is either: (1) liquidating a position held in a proprietary facilitation account; (2) creating a *bona fide* hedge; (3) modifying an existing hedge; or (4) engaging in a *bona fide* arbitrage or risk arbitrage transaction (“NYSE Rule 92(b) exceptions”).
13. NYSE Information Memos 01-21 (August 9, 2001) and 01-33 (October 8, 2001) provided that “[t]he express permission of the customer must include an understanding by the customer of the relative price and size of allocated execution reports” and that “[s]uch permission must be obtained on an order-by-order basis” as “[m]ember organizations may not rely on a broad contractual understanding with a customer in this regard.” Additionally, these NYSE Information Memos state “members and member organizations must implement appropriate procedures to

¹ A violation of NYSE Rule 92 for “trading along” can occur either when: 1) without receiving express permission from the customer to do so, a member or member organization allocates a portion of a particular execution to both a proprietary order and a customer order; or 2) having received the express permission from the customer, a member or member organization allocates portions of a particular execution to both a proprietary order and a customer order in sizes other than that consented to by the customer.

capture this information with respect to each such order. The burden of proof to demonstrate that customer permission was obtained will fall on the member or member organization.”

14. On July 5, 2007, the NYSE amended NYSE Rule 92 to provide that the consent of the customer does not have to be provided on an order-by-order basis, provided that the broker-dealer obtains and documents a customer’s affirmative blanket consent and complies with all other requirements of NYSE Rule 92. However, broker–dealers were also permitted to continue obtaining consent on an order-by-order basis using pre-amendment express consent procedures. Because NYSE Rule 92 as amended permitted blanket affirmative consent going forward, the statement in NYSE Information Memos 01-21 and 01-33 prohibiting a broad contractual understanding with a customer became inapplicable.
15. NYSE Information Memo 07-107 (November 9, 2007), which was approved by the SEC,² was issued to provide members and member organizations additional guidance with respect to the amendment to NYSE Rule 92(b), which permitted obtaining blanket consent to trade along with a customer’s order, but did not prevent a member organization from obtaining customer consent under NYSE Rule 92(b) on an order-by-order basis using the pre-amendment express consent procedures.

Section 11(a)(1)(G) of the Exchange Act and NYSE Rules 90 and 410(b)

16. Section 11(a)(1) of the Exchange Act, states in relevant part that “[i]t shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion.”
17. The prohibitions of Section 11(a)(1) regarding proprietary trading are qualified by nine exemptions, including Section 11(a)(1)(G), which exempts transactions for a member’s own account, provided that, *inter alia*, “the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.” (*Emphasis added.*) Orders executed pursuant to Section 11(a)(1)(G) are commonly referred to as “G” orders. NYSE Rule 90 is substantively similar to Section 11(a)(1).
18. NYSE Rule 90(d) provides that any member that executes a “G” order on the Floor of the NYSE must “clearly announce or otherwise indicate to the specialist and to other members then present in the trading crowd in such security that he is representing an order” that must yield priority, parity and precedence.³ To enable members on the Floor to comply with this provision, NYSE Rule 410(b) states: “[e]very

² See Securities Exchange Act Release No. 34-56753 (November 6, 2007), SR-NYSE-2007-97.

³ NYSE Rule 90(d) amended October 24, 2008, among other things, phased out specialists by creating Designated Market Makers.

order...transmitted or carried to the Floor and executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder must be identified in a manner that will enable the executing member to disclose to other members that the order is subject to those provisions.”

Violative Conduct by the Firm

NYSE Rule 92(a)

19. On twenty-one occasions during the First Relevant Period UBS violated NYSE Rule 92(a) by entering a proprietary order to buy/sell an NYSE-listed security while knowingly in possession of a customer order to buy/sell such security that could be executed at the same price, which proprietary order then traded along with, or ahead of, the customer order, or traded outside of a customer’s consent parameters.

Trading Along and/or Trading Ahead Without Customer Consent

20. In eight instances during the First Relevant Period where the NYSE Rule 92(b) exceptions applied, UBS traded a proprietary order ahead of, or along with, a customer order without obtaining the customer’s consent to do so, in violation of NYSE Rule 92(a).

September 8, 2006 - XYZ

21. For example, on September 8, 2006, at 1:38:17 p.m., in stock symbol XYZ, UBS improperly entered a proprietary order, which thereafter traded along with a customer order without the customer’s consent to do so.

November 15, 2006 - ABC

22. As another example, on November 15, 2006, at 2:46:03 p.m., in stock symbol ABC, UBS improperly entered a proprietary order, which thereafter traded along with a customer order without the customer’s consent to do so.

Trading Outside Customer Consent

23. In seven instances during the First Relevant Period, where the NYSE Rule 92(b) exceptions applied, UBS obtained consent from a customer to trade along with the customer’s order, but allocated certain executions between the Firm’s proprietary account and the customer’s account in an amount outside of the consent granted by the customer without obtaining the customer’s consent to modify the terms of the original consent to trade along, in violation of NYSE Rule 92(a).

January 31, 2005 – DEF

24. For example, on January 31, 2005, in stock DEF, at 9:34:21 a.m. the Firm received a customer order to sell 150,000 shares. At 9:34:26 a.m. the Firm entered a proprietary order to sell 50,000 shares (liquidation of a facilitation position). The Firm had the

customer's consent to split the executions between the Firm's order and the customer's order equally. At 9:35:28 a.m., however, the Firm sold 5,000 shares for the proprietary order and did not allocate any shares to the customer's order. At 9:35:44 a.m., the Firm sold 20,000 shares for the proprietary order and again did not allocate any shares to the customer's order.

Trading Along and/or Trading Ahead Using "G" Orders

25. In six instances in the First Relevant Period the Firm traded its proprietary "G" orders along with or ahead of its customer's order in violation of NYSE Rule 92(a).
26. In five of the six instances during the First Relevant Period, UBS sent proprietary "G" orders to its own Floor brokers for execution without the orders being properly identified as such in violation of NYSE Rule 410(b).
27. In the six instances referred to in paragraph 25 above, and in one additional instance, the Firm violated NYSE Rule 90(a) and Exchange Act Section 11(a)(1) by failing to yield priority, parity, and precedence to public orders in connection with its execution of its own "G" orders.

NYSE Rule 401

28. During the First Relevant Period, NYSE Rule 401 stated, in relevant part, that "[e]very member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs."
29. On eleven occasions during the First Relevant Period, where the NYSE Rule 92(b) exceptions applied, UBS failed to document whether it had obtained a customer's NYSE Rule 92(b) consent to trade along with or trade ahead of the customer's order. Therefore, UBS failed to conduct its business affairs in accordance with the principles of good business practice, thereby violating NYSE Rule 401.

January 19, 2005 – GHI

30. For example, on January 19, 2005, in the stock GHI, one of the NYSE Rule 92(b) exceptions applied and express customer consent to trade along had been obtained according to the Firm's personnel; however, the customer's express consent to trade along had not been documented.

NYSE Rule 132.30

31. NYSE Rule 132.30 requires each clearing member that is a party to a securities contract to submit to the NYSE certain "trade data elements" regarding its side of the contract for comparison or settlement. As set forth in NYSE Rule 132.30 and as explained in various Information Memos issued by the NYSE, including Information Memo 02-59 (New Identification Code/Audit Trail Account) (December 17, 2002) and Information Memo 96-36 (New Audit Trail Identifiers) (December 5, 1996), such required data includes an identifier indicating the type of account for which the trade

was effected. Through Information Memo 02-59, the NYSE provided to member firms an updated list of account type identifiers that firms should use in complying with NYSE Rule 132.30.

32. On numerous trade dates during the period January through October 2005 involving executions in various securities, UBS submitted thousands of incorrect account type indicators to comparison and settlement, in violation of NYSE Rule 132.30. Certain agency orders were submitted with “proprietary” account type indicators, or vice versa.
33. For example, on August 18, 2005, in stock JKL the Firm submitted to comparison and settlement approximately 444 inaccurate account type indicators for executed orders on behalf of UBS-Capital Markets (“UBS-CM”) (a non-member affiliate and approved person of the Firm). UBS-CM was a separate broker/dealer that primarily acted as a wholesale intermediary, accepting orders from many correspondent broker/dealers. UBS had acquired UBS-CM as of November 1, 2004 and UBS, at the time, was in the process of integrating UBS-CM onto the UBS Platform. UBS-CM utilized a riskless principal method while UBS utilized an agency method of routing such orders. However, the subject orders were routed through UBS for the account of UBS-CM, a non-member affiliate, and therefore the trades should have been reported as “agency” rather than “proprietary,” as reflected in Information Memo 02-59.

Books and Records

34. NYSE Rules 410(a) and 440 and Section 17(a) and Rule 17a-4(b)(1) of the Exchange Act require every member and member organization to preserve accurate books and records, including the terms and conditions of customer orders.
35. During the First Relevant Period, the Firm failed to maintain certain required order information, such as time of order entry, for most dates during the period December 2006 through March 2007 and for all dates from April 2007 through the end of October 2007.
36. The Firm failed to retain this information due to a configuration error in the trading system utilized by the Firm. As a result of the configuration error, the entry times for certain principal orders submitted by the Firm’s Cash Desk personnel were lost for the period described in the prior paragraph. The Firm has remedied this configuration error.
37. Additionally, the Firm did not retain the order tickets for five orders on five trade dates.

NYSE Rule 123C

38. An MOC order guarantees an execution for the purchase or sale of a stock at the closing price, provided that trading in the stock was not halted before the close. An LOC order is an order that is entered for execution at the closing price provided the closing price is at or within the limit specified. LOC orders with prices that are better

- than the closing price in the subject security are guaranteed an execution unless there is a trading halt. LOC orders at the closing price are not guaranteed an execution.
39. A guarantee of execution can greatly impact the closing price of a stock. Thus, in an effort to minimize volatility at the close and allow sufficient time to attempt to offset large imbalances of MOC and LOC orders, the NYSE has set forth a policy that requires early entry of MOC and LOC orders and prohibits the entry or cancellation of such orders after certain specified cut-off times.
 40. Generally, in order to facilitate offsetting trades, NYSE Rule 123C provides for publication of imbalances of shares to buy over shares to sell (or vice versa) in MOC and/or marketable LOC orders at 3:40 p.m., and again at 3:50 p.m.
 41. During the relevant period, NYSE Rule 123C restricted the entry or cancellation of MOC and LOC orders after certain times generally as follows, unless a regulatory halt is in effect at or after 3:40 p.m.:
 - All MOC/LOC orders in any stock, unless entered to offset a published imbalance, must be entered by 3:40 p.m.
 - After 3:40 p.m., MOC/LOC orders may be entered only on the contra side of the last published imbalance.
 - After 3:40 p.m., MOC/LOC orders cannot be cancelled or reduced in size, except in case of legitimate error (defined to include errors in “side, size, symbol, price and/or duplication of an order”).
 - After 3:50 p.m., MOC/LOC orders cannot be cancelled or reduced in size for any reason.
 42. During the Second Relevant Period, on approximately 61 trade dates, the Firm entered or cancelled 1,231 MOC/LOC orders in violation of NYSE Rule 123C as follows:
 43. UBS entered a total of 106 MOC/LOC orders in a variety of securities on 15 different trade dates, 101 of which were submitted after the designated cut-off time where a “no imbalance” publication had been posted and five were entered on the same side of a published imbalance.
 44. UBS cancelled a total of 1,125 MOC/LOC orders in a variety of securities on 47 different trade dates; the Firm cancelled 427 orders between 3:40 p.m. and 3:50 p.m. without having a legitimate error and cancelled the remaining 698 orders after 3:50 p.m. when cancellation of MOC/LOC orders is not permitted for any reason.

NYSE Rule 410B

45. NYSE Rule 410B(a) requires in relevant part that “[t]ransactions in securities listed for trading on the Exchange...that are not reported to the Consolidated Tape, shall be reported...to the Exchange in the manner and within the timeframes required by this rule.” NYSE Rule 410B(b) requires that such transactions be reported to the Exchange by the close of business on the next day that the Exchange is open.
46. The Firm failed to comply with NYSE Rule 410B reporting obligations on three occasions. For example, on September 1, 2008, Labor Day, UBS executed a 170,000 share purchase of stock MNO, an NYSE-listed security, that was not reported to the Consolidated Tape. The 410B filing for this transaction was filed with the NYSE on January 26, 2009, approximately four months beyond NYSE Rule 410B’s next business day reporting requirement.

NYSE Rule 342

47. NYSE Rule 342(a) provides, among other things, that “[e]ach office, department or business activity of a ... member organization ... shall be under the supervision of the member or member organization establishing it and of the personnel delegated such authority and responsibility. The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations.”
48. NYSE Rule 342(b)(1) provides, in pertinent part, that the “general partners or directors of each member organization shall provide for appropriate supervisory control and shall [through a general partner or principal executive officer]...delegate...responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.” NYSE Rule 342(b)(2) further requires, in relevant part, that each member organization shall “establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.”
49. UBS was responsible for providing appropriate procedures of supervision and control, including establishing a separate system of follow-up and review, with respect to NYSE Rule 92, MOC/LOC order entry and cancellation, submission of audit trail data, retention of books and records, and reporting requirements with respect to trades in NYSE-listed securities not otherwise reported to the Consolidated Tape.
50. With regard to NYSE Rule 92, although the Firm had in place policies and procedures throughout the First Relevant Period that prohibited improper trading ahead of or alongside customer’s orders, the Firm failed to establish an adequate system of follow-up and review to determine that its policies and procedures were being properly followed. For example, while the Firm generated a report that would

enable it to conduct a review to determine whether customer consent had been obtained and complied with, the Firm would only sample some of the trading sequences that were flagged on the report. The Firm's sampling was insufficient given the size of the transactions that were reported.

51. In instances where the Firm's algorithmic trading system executed transactions involving orders subject to NYSE Rule 92, the Firm failed to have in place any supervisory review of such transactions to determine whether the algorithmic trading system was operating as designed. These deficiencies constituted a failure to provide for an adequate system of follow-up and review for compliance with NYSE Rule 92.
52. With respect to the submission of audit trail data, the Firm failed to monitor the submission of order flow directly from an affiliated broker/dealer and as a result the Firm submitted orders to the NYSE with inaccurate account type indicators. Additionally, with regard to the configuration error above, the Firm failed to have a system in place to determine whether certain information was being accurately recorded as required in violation NYSE Rules 410(b) and 440 and Section 17(a), Rule 17a-4(b)(1) of the Exchange Act.
53. During the Second Relevant Period the Firm had in place policies and procedures reasonably designed to comply with NYSE rules relating to entry, modification or cancellation of MOC/LOC orders. This included reasonable policies and procedures for conducting follow-up and review. The Firm failed, however, to consistently follow its own procedures and conduct the follow-up and review with regard to reviewing reports generated as a result of the entry or cancellation of MOC/LOC orders after the 3:40 p.m. cut-off.
54. Finally, with regard to Rule 410B Reports, the Firm did not have written procedures in place for the filing of Rule 410B Reports, nor did the Firm have in place an adequate system of follow-up and review to achieve compliance with NYSE Rule 410B.
55. Accordingly, for the reasons set forth above, the Firm violated NYSE Rule 342.

Other Factors

56. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration that: (i) UBS has implemented new system enhancements and controls designed to better detect and prevent certain of the violations described above and will take additional steps to address the other supervisory deficiencies; (ii) UBS self-reported some of the violations cited in this matter; (iii) UBS will offer remuneration to five customers in connection with the above-mentioned violations of NYSE Rule 92; and (iv) UBS will have an independent verification and testing review conducted of the relevant algorithmic trading system to examine whether its trading is in conformance with the Black Box exception to NYSE Rule 92 described in NYSE Information Memo 01-33; and the Firm will adopt and implement the recommendations made as a result of such 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 \$350,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer