

NYSE ARCA, INC.

FINRA DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

STOCK USA EXECUTION SERVICES, INC

Respondent.

Proceeding No. 20120310864-03
(Includes 20130358303)

April 10, 2015

Stock USA Execution Services, Inc violated NYSE Arca Equities Rules 6.1 and 6.18 and Rule 15c3-5 under the Securities Exchange Act of 1934 by (i) failing to establish, maintain and enforce risk management controls and supervisory systems and procedures, including written supervisory procedures, reasonably designed to detect, investigate and prevent potentially manipulative, suspicious and otherwise violative trading, which included wash sales transactions, pre-arranged trading, spoofing, and marking the close, and (ii) by failing to establish, maintain and enforce adequate written supervisory procedures for Order Entry Accuracy, Clearly Erroneous Transactions, Algorithmic Trading, and Prohibitions Against Misuse of Material, Non-Public Information.

Stock USA Execution Services violated NYSE Arca Equities Rule 7.33 by erroneously designating ten proprietary orders as agency orders into the NYSE Arca Equities Exchange.

Consent to a censure, a \$55,000 fine, and an undertaking.

Appearances

For FINRA Market Regulation:

Dawn E. Faris, Esq.
James J. Nixon, Esq.
David E. Rosenstein, Esq.
Robert A. Marchman, Esq.

Stock USA Execution Services, Inc:

Dana S. Gloor, Esq.

A Hearing Officer at the Financial Industry Regulatory Authority (“FINRA”) considered an Offer of Settlement and Consent entered into between FINRA’s Department of Market Regulation on behalf of NYSE Regulation, Inc.¹ and Stock USA Execution Services, Inc

The Offer of Settlement and Consent was submitted 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 therein.

The Hearing Officer accepts the Offer of Settlement and Consent and issues this Decision in accordance with NYSE Arca Equities Rules.²

FINDINGS OF FACTS AND VIOLATIONS

Background and Jurisdiction

1. Stock USA Execution became registered as an Equities Trading Permit (“ETP”) Holder with NYSE Arca Inc. (NYSE Arca Equities) on June 30, 2003, and its registration remains in effect. During all relevant periods, it provided customers/clients self-directed online brokerage services by offering them an electronic platform to access U.S. markets on a direct market access basis. At all relevant times, Stock USA Execution’s customers/clients consisted of domestic and foreign individuals and entities, including foreign financial institutions, that utilized their accounts as a means to extend direct market access to third parties (which Stock USA Execution permitted by allowing such third parties to “piggyback” on the direct market access it granted to the foreign financial institution, without requiring such third parties to themselves establish an account at Stock USA Execution or disclose their identities).
2. In Review No. 20120310864, on behalf of NYSE Arca Equities and six other securities exchanges, FINRA’s Department of Market Regulation conducted a review of Stock USA Execution’s risk management controls and supervisory systems and procedures, including its written supervisory procedures for detecting, preventing, and investigating potentially manipulative, suspicious, and otherwise violative trading under the federal securities laws and the related rules of the above exchanges of which Stock USA Execution was a member by Stock USA Execution’s associated persons and customers/clients of Stock USA Execution accessing the markets directly through Stock USA Execution’s systems (or by clients of such clients doing so through Stock USA Execution’s clients’ market access) during the period of April 1, 2011, through September 30, 2013 (the “Market Access Review Period”). This review ultimately subsumed more than a dozen Market Regulation inquiries in that regard spanning the above Market Access Review Period that arose from thousands of trading alerts of

¹ FINRA is handling this matter on behalf of NYSE Regulation, Inc. and NYSE Arca, Inc. pursuant to a Regulatory Services Agreement among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Amex (now NYSE MKT LLC), NYSE Regulation, Inc. and FINRA, which became effective June 14, 2010.

² The facts, allegations, and conclusions contained in this Decision are taken from the executed Offer of Settlement and Consent.

potentially suspicious and/or violative trading by Stock USA Execution customers/clients (or clients of such clients) on multiple market centers, including NYSE Arca Equities, from a combination of exchange referrals and Market Regulation cross-market surveillance sweeps. Such suspicious trading continued during the Market Access Review Period with no and/or inadequate monitoring enhancements or other corrective measures taken by Stock USA Execution, despite receiving numerous regulatory inquiries about the trading in that time period.

3. In Trading and Market Making Surveillance (“TMMS”) Examination No. 20130358303, Market Regulation staff reviewed the trading activity of Stock USA Execution for compliance with various regulatory requirements set forth in the attached Exhibit for the trade dates of February 19, 2013, through February 22, 2013 (the “2013 TMMS Exam Period”).
4. In a letter dated November 22, 2013, which Stock USA Execution received, Market Regulation, on behalf of NYSE Arca Equities, notified Stock USA Execution in a Wells Notice that it had reached a determination to recommend that disciplinary action be brought against it for having an inadequate supervisory system, including written supervisory procedures to reasonably detect, investigate, and prevent potentially manipulative, suspicious and/or otherwise violative trading under the rules of NYSE Arca Equities and the federal securities laws in conjunction with Review No. 20120310864. Subsequently, Stock USA Execution opted to forego a written Wells Notice for TMMS Examination No. 20130358303 in expressing a desire to settle the examination in conjunction with Review No. 20120310864.

Overview

5. This Offer concerns Stock USA Execution’s compliance with NYSE Arca Equities’ requirements pertaining to adherence to principles of good business practice, pursuant to NYSE Arca Equities Rule 6.1; order entry accuracy, pursuant to NYSE Arca Equities Rule 7.33, and supervision under NYSE Arca Equities Rule 6.18, as well as regulatory requirements to establish and maintain risk management controls and supervisory systems and procedures, including written supervisory procedures, reasonably designed to ensure compliance with applicable NYSE Arca Equities Rules and the federal securities laws relevant to Rule 15c3-5 under the Securities Exchange Act of 1934.

6. During the Market Access Review Period, Stock USA Execution had no reviews focused specifically on detecting potentially manipulative trading such as pre-arranged or coordinated trading, layering/spoofing,³ or marking the close/opening⁴ during the Market Access Review Period. The scant written supervisory procedures that existed instead focused on manual daily account monitoring through Stock USA Execution's trading systems for other topics, such as drops in account equity below a specified threshold. The procedures included a cursory reference to manual monitoring for potentially manipulative trading, but the section lacked any specificity as to what any such monitoring for manipulative activity entailed, the frequency of any such reviews, or how each such review was memorialized.
7. Moreover, although the Stock USA Execution's market access procedures referred in a cursory fashion to post-trade reports being made available to surveillance personnel for monitoring (including for "improper trading"), they contained no specific schedule for the performance of any such supervisory reviews (and lacked any specificity about what any such reviews entailed). Further, Stock USA Execution lacked any automated computer surveillance of account activity to detect potentially manipulative or violative trading, notwithstanding the high-risk nature of its business model of providing direct market access to outside parties. Stock USA Execution indicated it utilized certain exception reports *not* specified in its written supervisory procedures that the Chief Compliance Officer reviewed on a weekly basis to monitor trades above certain thresholds, as measured by dollar amount or share volume. But there was no indication how, if at all, any such reports were used to identify potentially manipulative trading, and the reports' parameters limited the scope of trading subject to such reviews.
8. Further, Stock USA Execution failed to take adequate steps to improve its supervisory system during the Market Access Review Period, despite receiving repeated regulatory inquiries from FINRA about suspicious trading by several Stock USA Execution customers/clients (or clients of such clients) in connection with the previously referenced Market Regulation inquiries.
9. In addition, in connection with TMMS Examination No. 20130358303, Stock USA Execution entered ten orders into the NYSE Arca Equities Exchange that failed to indicate the correct capacity by erroneously designating the orders as agency instead of proprietary orders, contrary to the requirements of NYSE Arca Equities Rule 7.33.
10. Moreover, in connection with TMMS Examination No. 20130358303, Stock USA Execution's supervisory system did not provide for supervision reasonably designed to

³ Generally, "spoofing" is a form of market manipulation that involves the market manipulator placing certain non-bona fide orders with the intention of cancelling those orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading certain other bona fide orders. "Layering" is a form of "spoofing" in which multiple non-bona fide orders are placed on one side of the market in an effort to receive a favorable price on the opposite side of the market, followed by the cancellation of the non-bona fide orders once the intended price movement has occurred.

⁴ Marking the opening/close respectively involves placing orders shortly before the opening or close of trading on any given day to artificially affect the opening/closing price of a security.

achieve compliance with respect to certain other applicable securities laws and regulations, and/or the Rules of NYSE Arca Equities. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:

- (a) specific identification of the individual(s) responsible for supervision;
- (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
- (c) the frequency of such reviews; and
- (d) how such reviews shall be documented.

Stock USA Execution's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: (1) Order Entry Accuracy into NYSE Arca Equities [(a), (b), (c) and (d)]; (2) Clearly Erroneous Transactions [(a), (b), (c) and (d)]; (3) Algorithmic Trading [(a), (b), (c) and (d)]; and, (4) Prohibitions Against Misuse of Material, Non-Public Information under NYSE Arca Equities Rule 6.3 [(c)].

Violations

11. NYSE Arca Equities Rule 6.1 states, in part: "Every ETP Holder ... shall at all times adhere to the principles of good business practice in the conduct of its ... business affairs." NYSE Arca Equities Rule 7.33 states, in pertinent part, that, "An ETP Holder User that enters a proprietary order into the NYSE Arca Marketplace shall mark the order with the appropriate designator to identify the order as proprietary." Further, NYSE Arca Equities Rule 6.18 states, in part, that, "Each ETP Holder must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules ... The ETP Holder's supervisory system must provide, at a minimum ... [t]he establishment and maintenance of written procedures as required by paragraph (c) of this Rule"
12. Rule 15c3-5 of the Securities Exchange Act of 1934 states, in part: "A broker or dealer with market access, or that provides a customer or any other person with access to an exchange or other alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity."
13. During the Market Access Review Period, Stock USA Execution failed to establish, maintain and enforce risk management controls and supervisory systems and procedures, including written supervisory procedures, reasonably designed to detect, investigate and prevent potentially manipulative, suspicious and/or otherwise violative trading, including but not limited to, wash sales transactions, pre-arranged trading, spoofing, and marking

the close, numerous instances of which occurred on various exchanges, including NYSE Arca Equities.

14. In addition, during the 2013 TMMS Exam Period, Stock USA Execution erroneously designated ten proprietary orders as agency orders into NYSE Arca Equities and had inadequate written supervisory procedures for Order Entry Accuracy, Clearly Erroneous Transactions, Algorithmic Trading and Prohibitions Against Misuse of Material, Non-Public Information, as set forth in paragraph 10 above.
15. Accordingly, Stock USA Execution violated NYSE Arca Equities Rules 6.1 and 6.18 during the Market Access Review and 2013 TMMS Exam periods, NYSE Arca Equities Rule 7.33 during the 2013 TMMS Exam period, and Rule 15c3-5 under the Securities Exchange Act of 1934 (for conduct on or after July 14, 2011 within the Market Access Review Period).

DECISION

Stock USA Execution Services, Inc violated NYSE Arca Equities Rules 6.1 and 6.18 during the Market Access Review and 2013 TMMS Exam periods, NYSE Arca Equities Rule 7.33 during the 2013 TMMS Exam period, and Rule 15c3-5 of the Securities Exchange Act of 1934 (for conduct on or after July 14, 2011 within the Market Access Review Period), for the supervisory failures set forth in paragraph 10 above from the exam, the order entry inaccuracies from the exam and its failure during the Market Access Review Period to establish, maintain and enforce risk management controls and supervisory systems and procedures, including written supervisory procedures, reasonably designed to detect, investigate and prevent potentially manipulative, suspicious and/or otherwise violative trading, including but not limited to, wash sale transactions, pre-arranged trading, spoofing, and marking the close, under the rules of NYSE Arca Equities and the federal securities laws.

SANCTIONS

Stock USA Execution Services, Inc is censured and fined \$55,000. (consisting of \$5,000 for the order entry violations on NYSE Arca Equities from the exam, and \$50,000 for the remaining combined supervisory and other market access violations from both the exam and market access matters as to NYSE Arca Equities),⁵ and

An undertaking to provide three reports, written and oral, to FINRA on dates that are no more than six months, 12 months, and 18 months after the date of this Decision, concerning its

⁵ The Offer of Settlement provides for a total fine of \$595,000 to be paid jointly to NYSE Arca Equities, BATS Exchange, Inc., BATS Y-Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Nasdaq Stock Market LLC, Nasdaq OMX BX, Inc. and FINRA (with a FINRA Acceptance Waiver and Consent to be issued by the Department of Market Regulation in conjunction with findings from the 2013 TMMS Exam and a separate Order Audit Trail System review, and a FINRA Acceptance Waiver and Consent to be issued by the Department of Enforcement in conjunction with a concurrent disciplinary action under FINRA and SEC rules involving issues related to the market access review that Market Regulation conducted on behalf of NYSE Arca Equities and several other exchanges under the rules of those Exchanges and Exchange Rule 15c3-5).

implementation and effectiveness of Stock USA Execution's policies, systems, and procedures (written and otherwise) and training (collectively, "the Controls") relating to the specific areas described above and/or listed below to ensure:

- a. That Stock USA Execution is in compliance with the Sponsored Access and Direct Market Access Rules of all Exchanges and Alternative Trading Systems to which it grants clients market access with respect to its equities business (i.e., stock, equity options and exchange-traded funds);
- b. That Stock USA Execution is in compliance with Rule 15c3-5 of the Securities Exchange Act of 1934;
- c. That Stock USA Execution adequately supervises trading on both options and equities exchanges by its direct market access and sponsored access clients and associated persons; and
- d. That Stock USA Execution also addresses the supervisory inadequacies identified in Item 10 above from the 2013 TMMS Exam period.

The written reports shall be certified by an officer of Stock USA Execution and shall address, at a minimum, the implementation and performance of its Controls; the steps taken by supervisory personnel to ensure compliance in the abovementioned areas and the results of such supervisory reviews; training; and modifications or recommendations for improvements to the Controls and dates of the effectiveness of such modifications or planned implementation of such recommendations. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth herein.

The sanctions shall take effect immediately.



Andrew H. Perkins
Chief Hearing Officer