

**NYSE ARCA, INC.
115 Sansome Street
San Francisco, CA 94104**

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NYSE ARCA, INC.	. Options Enforcement Decision No. 08-AO-02
Complaint,	.
	.
v.	.
	.
Casey Securities, LLC	.
Respondent.	.
X..... X	.

Appearances:

For the Division of Enforcement:

Steven Brostoff, Esq.
Virginia Harnish, Esq.
Scott Minter, Esq.

For the Respondent:

George Gasparini
Karen Steffens

This formal disciplinary action was instituted pursuant to NYSE Arca Options Rule 10.6 by the Regulatory Staff of NYSE Arca Inc. as a result of a determination by the Chief Regulatory Officer of NYSE Arca Inc. that there is probable cause for finding that a violation within the disciplinary jurisdiction of NYSE Arca Inc. has occurred.

In order to resolve this matter, Respondent Casey Securities, LLC (the “Firm” or “Respondent”) has submitted an Offer of Settlement and Consent (“Offer of Settlement”), executed by the Respondent on September 18, 2008. Such Offer of Settlement 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 finding referred to therein. With due regard to the stipulated facts and violations and the proposed sanction contained therein, the Office of the General Counsel believes it is appropriate to accept the Offer of Settlement with respect to the File Number set forth above. This Offer of Settlement is made a part of this Decision by reference herein.

STIPULATION OF FACTS AND VIOLATIONS

BACKGROUND AND JURISDICTION

1. The Firm became registered as an Options Trading Permit (“OTP”) holder with the Pacific Stock Exchange (currently known as NYSE Arca) in November 1976.¹ The Firm provides executions for both institutional and public customer orders on the options Floor of NYSE Arca.
2. In 2006, the Division of Member Firm Regulation (“MFR”) of NYSE Regulation, Inc. (“NYSE Regulation”) conducted a financial and operational compliance examination of the Firm. MFR sent a letter to the Firm dated October 11, 2006 with the findings of the examination (the “2006 Exam Report”).
3. By letter dated May 24, 2007, which the Firm received, the Division of Enforcement (“Enforcement”) of NYSE Regulation notified the Firm that it was investigating the matters contained in the 2006 Exam Report.
4. On behalf of NYSE Arca, the Financial Industry Regulatory Authority (“FINRA”) conducted a financial and operational compliance examination of the Firm in 2007, and sent a letter to the Firm dated January 15, 2008 with its findings (the “2007 Exam Report”).

OVERVIEW

5. This matter mainly involves violations by the Firm pertaining to books and records deficiencies in 2006 and 2007. The violative activity included, among other matters, that the Firm failed to timely report certain financial arrangements, failed to preserve electronic communications and financial records in the required format, and failed to conduct an independent review of its Anti-Money Laundering Compliance Program. In addition, the Firm failed to implement policies and procedures to prevent the misuse of material nonpublic information and failed to document in writing its prior approval of its employees’ outside business activities. Finally, the Firm had inadequate written procedures for supervision and control, including a separate system of follow-up and review, in the above-referenced areas.

¹ Prior to the closing of the merger between the New York Stock Exchange (“NYSE”) and Archipelago Holdings, LLC on March 8, 2006, the exchange now designated as NYSE Arca was known as the Archipelago Exchange (“ArcaEx”), and was governed by the rules of PCX, Inc. (“PCX”). The applicable rules were not changed by the merger, and for convenient reference, this document refers to the former ArcaEx as “NYSE Arca Options” and the governing rules as “NYSE Arca Option Rules,” even when referring to pre-merger periods.

VIOLATIVE CONDUCT

Electronic Communications and Business Records

6. Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-4(b)(4) thereunder require member organizations to preserve originals of all business records and communications received and sent by members relating to its business, for a period of not less than three years, the first two years in an easily accessible place. Exchange Act Rule 17a-4(f) requires that if records are stored electronically, they must be kept in a non-rewritable, non-erasable format known as WORM (write once read many).
7. NYSE Arca Options Rule 11.16, which pertains to the duty to make and maintain books and records, states, in part: “[e]ach OTP Holder and OTP Firm must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.”
8. Regulatory Bulletin RB-05-02, dated January 5, 2005, titled “Clarification Regarding Supervisory Obligations and Recordkeeping Requirements for E-Mail and Instant Messages,” states that a firm’s supervisory obligations for instant messages (“IMs”) are the same as that for e-mails. It further states that “OTP and [Equities Trading Permit (“ETP”)] Holders must supervise the use of instant messaging consistent with the required supervision of e-mail messaging...If an OTP or ETP Holder is unable to establish an adequate supervisory program, the ...[firm] must prohibit the use of instant messaging. OTP or ETP Holders must also ensure that their use of instant messaging complies with applicable SEC recordkeeping requirements.”
9. Regulatory Bulletin RBO-04-04, dated January 7, 2004, titled “Clarification for Members Regarding Supervisory Obligations and Recordkeeping Requirements for E-Mail and Instant Messages,” reiterates the requirements for retaining e-mails and IMs noted in paragraph 8 above.
10. NYSE Arca Options Rule 11.18(a) requires each OTP Holder or OTP Firm to supervise associated persons to assure compliance with federal securities laws and NYSE Arca Options Rules.
11. NYSE Arca Options Rule 11.18(b) requires each OTP Holder or OTP Firm to “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 [Options] Rules.”

12. NYSE Arca Options Rule 11.18(c) requires each OTP Holder or OTP Firm to “establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca [Options] Rules.”
13. Prior to July 2007, the Firm failed to maintain an adequate system to retain electronic communications, including e-mails and IMs, in the proper format, in that it did not retain electronic communications in WORM format.
14. The Firm did not begin to store electronic communications in WORM format until July 2007, approximately nine months after it was reminded of this requirement by MFR in the 2006 Exam Report.
15. Despite the electronic communication retention system implemented by the Firm in July 2007, the Firm continued to utilize for certain business communications an e-mail address that was not backed up in WORM format, and the Firm failed to review e-mails sent to and from that e-mail address. The Firm closed this e-mail account during the 2007 exam.
16. The Firm’s written policies and procedures pertaining to the retention of e-mails and IMs did not reference that e-mails and IMs should be preserved in WORM format.
17. The Firm also did not maintain evidence of supervisory reviews of IMs until reminded of this requirement in the 2007 Exam Report.
18. In addition, prior to the 2007 exam, certain business-related facsimile communications sent to and from the Firm’s trading floor facsimile machine were not retained or reviewed. The Firm also failed to have written procedures concerning the retention and supervision of business-related communications sent by facsimile.
19. Finally, prior to September 2007, the Firm exclusively retained its trial balance, balance sheet, income statement, and monthly net capital calculation in an electronic format. These records were not retained in the required WORM format.
20. As noted above, the Firm violated Exchange Act Section 17(a) and Exchange Act Rules 17a-4(b)(4) and 17a-4(f), and NYSE Arca Options Rule 11.16 by failing to:
 - a. preserve e-mails and IMs in the required format;
 - b. retain and review e-mails sent to and from a particular e-mail address;
 - c. retain and review facsimile communications sent to and received by its trading floor facsimile machine; and

- d. preserve its trial balance, balance sheet, income statement and monthly net capital computation in the required format.
21. The Firm also violated NYSE Arca Options Rule 11.18 by failing to provide for appropriate procedures of supervision and control and to establish a system of follow-up and review pertaining to e-mails, IMs, facsimiles, and business records, and by failing to evidence documentation of supervisory review of IMs.

Unapproved Public Options Business

22. NYSE Arca Options Rule 9.18, pertaining to the registration of principals and representatives, states:

No OTP Firm or OTP Holder shall be approved to transact business with the public in option contracts, unless those persons associated with the OTP Firm or OTP Holder who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Exchange as such...

23. The Firm is not authorized to conduct a public business. However, the Firm did business with a public firm in March and April 2007. Furthermore, the Firm did business with another public firm in December 2007.
24. During 2007, the Firm did not have written supervisory policies and procedures pertaining to not conducting a public options business.
25. By transacting business with public entities when it was not registered to do so, the Firm violated NYSE Arca Options Rule 9.18. Furthermore, the Firm violated NYSE Arca Options Rule 11.18 by failing to have appropriate procedures to prevent such a violation.

Policies and Procedures Preventing the Misuse of Material, Nonpublic Information

26. NYSE Arca Options Rule 11.3(a) states that “Every OTP Holder or OTP Firm must establish, maintain and enforce written policies and procedures reasonably designed...to prevent the misuse of material, non-public information by such OTP Holder or OTP Firm or persons associated with such OTP Holder or OTP Firm.”

Commentary .03 to NYSE Arca Options Rule 11.3 states:

03. Rule 11.3 provides that each OTP Holder or OTP Firm for which the Exchange is the [Designated Examining Authority] should establish, maintain, and enforce written policies and procedures similar to the following, as applicable:

- A. All Associated Persons must be advised in writing of the prohibition against the misuse of material, non-public information; and
 - B. All Associated Persons of the OTP Holder or OTP Firm must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and
 - C. Each OTP Holder or OTP Firm must receive and retain copies of trade confirmations and monthly account statements for each account in which an Associated Person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the OTP Holder or OTP Firm for the express purpose of detecting the possible misuse of material, non-public information...
27. For the period October 1, 2005 through December 31, 2005, fourteen associated persons and employees had attested that they had outside brokerage accounts. However, the Firm had not obtained all applicable outside brokerage account statements for eight of the fourteen associated persons and employees. During the course of the 2006 exam, the Firm was able to collect the remaining account statements with the exception of three statements.
28. Furthermore, until April 2007 the Firm failed to require an associated person, who had been hired in June 2006, to disclose his outside accounts. Therefore, for almost a year the Firm was unaware of the associated person's outside accounts, which should have been subject to supervisory review.
29. In addition, the Firm failed to evidence the supervisory review of the April 2007 and May 2007 outside account statements of a Firm Floor broker.
30. Finally, a review of the Firm's policies and procedures disclosed that the Firm did not require all associated persons to sign an attestation as described above. In addition, the Firm's insider trading policies did not specify that the receipt or misuse of inside information should be reported to the appropriate authorities within the Firm, who shall in turn, report such information to NYSE Arca.
31. The Firm violated NYSE Arca Options Rule 11.3 by failing to obtain outside account statements for nine of its associated persons. Furthermore, the Firm violated NYSE Arca Options Rule 11.18 by failing to follow its procedures with respect to reviewing outside account statements.

32. In addition, the Firm violated NYSE Arca Options Rules 11.3 and 11.18 by failing to require all associated persons to sign the required attestation, and by failing to specify that the receipt or any misuse of inside information should be reported to the appropriate authorities within the Firm, which shall in turn report such information to NYSE Arca.

Anti-Money Laundering (“AML”) Compliance Program

33. NYSE Arca Options Rule 11.19 requires firms to develop and implement an AML Compliance Program. The Rule requires that a representative of each firm’s senior management staff approve the AML Compliance Program in writing. The Rule further requires that the AML Compliance Program “provide for independent testing for compliance to be conducted by OTP Holder or OTP Firm personnel or a qualified outside party....”
34. Although the Firm did have an AML Compliance Program in place in 2006 and 2007, in 2006 the Firm failed to conduct an independent review of the program.
35. In addition, the Firm’s AML Compliance Program was not approved in writing by a member of senior management.
36. Accordingly, the Firm violated NYSE Arca Options Rule 11.19 by failing to conduct an independent review of its AML Compliance Program, and by failing to obtain the written approval of its program by the Firm’s senior management. The Firm also violated NYSE Arca Options Rule 11.18 by failing to provide for appropriate procedures of supervision and control, and to establish a system of follow-up and review to prevent the foregoing violations.

Disclosure of Financial Arrangements

37. NYSE Arca Options Rule 11.11 states:
- (a) A Market Maker, Floor Broker, or OTP Firm who enters into a financial arrangement with any other person or entity shall disclose to the Exchange the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:
 - ...(3) any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses.
 - (b) OTP Holders and OTP Firms with financial arrangements must submit to the Exchange notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Exchange within ten

business days of the effective date of such arrangements or within such shorter period of time as the Exchange may require...

38. In 2006, the Firm did not file Financial Arrangements Disclosure Forms for arrangements involving consideration over \$5,000 each for Casey Professional Services, LLC, a wholly owned affiliate firm, and five employees of the Firm, including the Chairman, President and Chief Compliance Officer.
39. By failing to file Financial Arrangements Disclosure Forms for these arrangements, the Firm violated NYSE Arca Options Rule 11.11.

Outside Business Activities

40. NYSE Arca Options Rule 2.23² states, in relevant part, that:
 - (d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity or receive compensation, without the prior written and continuing approval of his or her OTP Holder or OTP Firm, and such registered employee shall devote a substantial portion of the business day to the activities of his or her OTP Firm or OTP Holder.
41. Prior to June 2006, the Firm's written supervisory procedures did not reflect the requirement that employees are required to disclose and obtain approval for any outside business activities.
42. In 2006, the Firm failed to document in writing its prior approval of associated persons' outside business activities.
43. Accordingly, the Firm violated NYSE Arca Options Rule 2.23 by failing to document its prior approval of its associated persons' outside business activities. Furthermore, the Firm violated NYSE Arca Options Rule 11.18 by failing, prior to June 2006, to implement written supervisory procedures requiring that employees disclose and obtain approval for outside business activities.

Additional Factors Considered

44. In arriving at the agreed upon penalty in this matter, Enforcement took into consideration that the Firm has represented and evidenced that it enhanced its supervisory structure and procedures to prevent future violations of the types

² NYSE Arca Options Rule 2.23 was amended on March 12, 2007. The portion quoted herein is the version that was in effect in 2006.

discussed above and that the violations herein did not involve the execution of customer orders.

VIOLATIONS

45. Respondent violated Section 17(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 17a-4(f) thereunder, and NYSE Arca Options Rule 11.16, by failing to preserve e-mails, instant messages, trial balances, balance sheets, income statements, and monthly net capital computations in a non-rewritable, non-erasable format.
46. Respondent violated Section 17(a) of the Exchange Act, and Rule 17a-4(b)(4) thereunder, and NYSE Arca Options Rule 11.16, by failing to retain and review business-related facsimile and certain e-mail communications.
47. Respondent violated NYSE Arca Options Rule 9.18 by transacting business with the public in options contracts when it was not approved by or registered with NYSE Arca to do so.
48. Respondent violated NYSE Arca Options Rule 11.3 by failing to establish, maintain, or enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by persons associated with it by failing to:
 - a. obtain and review certain outside brokerage account statements for associated persons; and
 - b. require all associated persons to timely acknowledge receipt of its policies to prevent the misuse of material nonpublic information.
49. Respondent violated NYSE Arca Options Rule 11.19 by failing to:
 - a. conduct an independent review of the Firm’s AML Compliance Program; and
 - b. obtain the written approval of the Firm’s senior management of its AML Compliance Program.
50. Respondent violated NYSE Arca Options Rule 11.11 by failing to disclose to NYSE Arca six financial arrangements over \$5,000 each with other persons or entities.
51. Respondent violated NYSE Arca Options Rule 2.23 by allowing its registered employees to be engaged in outside business activities without first receiving the Firm’s written approval.

52. Respondent violated NYSE Arca Options Rule 11.18 by failing to establish, maintain, and/or enforce appropriate written policies and procedures for supervision and control, including separate system of follow-up and review, by failing to:
- a. ensure that electronic and facsimile communications and financial reports were properly retained and reviewed;
 - b. to ensure that the Firm did not transact business with the public in options contracts when it was not approved by or registered with NYSE Arca to do so;
 - c. obtain and review outside brokerage statements of its associated persons, and require all associated persons to timely acknowledge receipt of its policies to prevent the misuse of material nonpublic information;
 - d. ensure that the Firm conducted an independent review of its AML Compliance Program and have senior management evidence its approval of the Firm's AML Compliance Program; and
 - e. implement written policies and procedures requiring its registered employees to disclose its outside business activities to the Firm and to obtain the Firm's pre-approval for such activities.

SANCTIONS

Respondent Casey Securities, LLC is hereby censured by NYSE Arca Inc. and fined \$40,000.00.

This fine shall be invoiced and collected in accordance with NYSE Arca's standard billing and account practices, no later than 30 days of the date of this Decision.

Dated this 24th day of September, 2008

On behalf of the Office of the General Counsel,
NYSE Arca, Inc.

Signature: _____

Peggy Kuo
Chief Hearing Officer
NYSE Regulation, Inc.