

NYSE ARCA, INC.

FINRA DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NOMURA SECURITIES INTERNATIONAL,
INC.,

Respondent.

Proceeding No. 20110279058

January 26, 2015

Between January 4, 2010, and December 30, 2011, Nomura Securities International, Inc. violated (i) NYSE Arca Equities Rule 6.18(b), by failing to have adequate supervisory systems and procedures reasonably designed to ensure compliance with Regulation SHO Rule 204(a), and (ii) Regulation SHO Rule 204(a), by failing to deliver positions that resulted from long or short sales, by borrowing or purchasing securities of like kind and quantity in approximately 150 instances. Consent to a censure and a \$100,000 fine.

Appearances

For FINRA Department of Enforcement:

Josefina Martinez, Esq.
Kevin E. Pogue, Esq.
Susan Light, Esq.

For Nomura Securities International,
Inc.:

Theresa Titolo, 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 Enforcement (“Enforcement”) on behalf of NYSE Regulation, Inc.¹ and Nomura Securities International, Inc. (“Nomura”), an Equities Trading Permit (“ETP”) Holder.

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.

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.

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

FINDINGS OF FACTS AND VIOLATIONS

Background and Jurisdiction

1. Nomura is a wholly owned subsidiary of Nomura Holding America, its U.S. Parent. Nomura Holding America, in turn, is owned by Nomura Holdings, Inc., its Japanese parent. Nomura's primary business is providing investment banking and brokerage services to institutional customers as well as its own proprietary accounts. Nomura has been registered as a broker-dealer with the Securities and Exchange Commission ("SEC") and FINRA since 1969, and with NYSE Arca since 1970.
2. Because Nomura is registered as an ETP Holder with NYSE Arca, Inc., FINRA, on behalf of NYSE Regulation, has jurisdiction over the firm.

Overview

3. From January 4, 2010, through December 30, 2011 (the "Relevant Period"), Nomura failed to establish, maintain and enforce adequate supervisory systems and procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations, including NYSE Arca and Exchange Act Rules addressing the timely close-out of fail to deliver positions in equity securities pursuant to Rule 204 of Regulation SHO ("SEC Rule 204"). Accordingly, Nomura violated NYSE Arca Equities Rule 6.18(b).
4. Nomura failed to timely close out approximately 150 fail to deliver positions resulting from short and long sales by borrowing or purchasing securities of like kind and quantity as required by SEC Rule 204. Nomura thereby violated SEC Rule 204(a).

Violations

5. Effective September 7, 2004, the SEC adopted Regulation SHO under the Securities Exchange Act of 1934 ("Exchange Act") and designated January 3, 2005, as the commencement date for compliance. Regulation SHO was designed to: (i) create uniform order marking requirements for sales of equity securities; (ii) reduce the number of potential failures to deliver by means of a "locate" requirement; and (iii) limit the time in which a broker-dealer can permit a fail to deliver to persist for securities on the various SRO threshold security lists.
6. On July 31, 2009, the SEC adopted Rule 204 of Regulation SHO, which required broker-dealers to, among other things: (i) deliver securities on long and short sales by settlement

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

date; (ii) close out FTD positions for short sales on the morning of T+4³ by borrowing or purchasing securities of like kind and quantity; and (iii) close out fail to deliver positions for long sales on the morning of T+6⁴ by purchasing or borrowing securities of like-kind and quantity.

The Firm Failed to Have Adequate Supervisory Systems and Procedures for Compliance with Rule 204 of Regulation SHO

7. NYSE Arca Equities Rule 6.18(b) requires each ETP Holder to “establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules.”
8. During the Relevant Period, Nomura had in place systems and procedures for compliance with the close out requirements of SEC Rule 204. However, those systems and procedures were inadequate to ensure compliance with SEC Rule 204 for a number of reasons. First, until at least early 2011, Nomura’s supervisory systems excluded from review any fail to deliver positions that arose from proprietary equity sales. Consequently, fail to deliver positions related to these types of transactions were not subject to supervisory review.
9. Second, Nomura’s systems and processes called for manual generation of reports to determine when market action was needed to close out fail to deliver positions. Errors made in the process of manually generating these reports and a misapplication of an Excel function used by Nomura personnel to identify fails requiring market action resulted in errors and omissions in the reports. The foregoing prevented Nomura from adequately supervising for compliance with SEC Rule 204.
10. Moreover, Nomura had insufficient systems and procedures for follow-up and review to ensure that fail to deliver positions were timely closed out even after such positions were identified. Thus, Nomura had significant gaps in its SEC Rule 204 surveillance that prevented Nomura from detecting the untimely close out of its fail to deliver positions.
11. By the foregoing conduct, during the Relevant Period, Nomura violated NYSE Arca Equities Rule 6.18(b).

The Firm Violated Rule 204(a) of Regulation SHO

12. During the Relevant Period, Nomura was required to close out its fail to deliver positions on short sales by no later than T+4 and long sales by no later than T+6 by borrowing or purchasing securities of like kind and quantity. However, the Nomura failed on numerous occasions to timely close out its Continuous Net Settlement (“CNS”) fail to deliver positions as required by Rule 204(a).

³ T+4 is a reference to a date four days after the date of the transaction.

⁴ T+6 is a reference to a date six days after the date of the transaction.

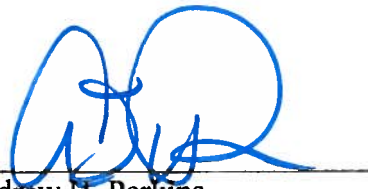
13. Specifically, during the Relevant Period, Nomura failed to borrow or purchase securities of like kind and quantity to close out approximately 150 fail to deliver positions that remained on its books for five or more consecutive days. Of these 150 fail to deliver positions, 58 fail to deliver positions remained on its books for seven or more consecutive days. The age of these fail to deliver positions ranged from 5 to 75 days, with most remaining open for an average of 15 days.
14. By the foregoing conduct, during the Relevant Period, Nomura violated Rule 204(a) of Regulation SHO.

DECISION

Between January 4, 2010, and December 30, 2011, Nomura Securities International, Inc. violated (i) NYSE Arca Equities Rule 6.18(b) by failing to have adequate supervisory systems and procedures reasonably designed to ensure compliance with Regulation SHO Rule 204(a), and (ii) violated Regulation SHO Rule 204(a) by failing to deliver positions that resulted from long or short sales, by borrowing or purchasing securities of like kind and quantity in approximately 150 instances.

SANCTIONS

Nomura Securities International, Inc. is a censured and fined \$100,000.⁵ The sanctions shall take effect immediately.



Andrew H. Perkins
Chief Hearing Officer

⁵ Under the Offer of Settlement and Consent, Nomura agreed to pay a total fine of \$250,000, of which \$100,000 shall be paid to NYSE Arca, Inc. and the remaining amount shall be paid to FINRA.