

## NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

VIRTU FINANCIAL BD LLC,

Respondent.

Proceeding No. 2016-07-01267

December 20, 2016

**Respondent violated: (i) NYSE Arca Equities Rule 7.23 by failing to maintain continuous, two-sided trading interest in approximately 57,045 instances; (ii) NYSE Arca Equities Rule 7.23 by failing to affix the proper Market Maker ID in 2,854 instances; and (iii) NYSE Arca Equities Rules 6.18(b) and (c) by failing to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-up and review, reasonably designed to ensure compliance with NYSE Arca Equities Rule 7.23. Consent to a censure, a \$70,000 fine, and an undertaking.**

### Appearances

For the Complainant: Laura J. Seamon, Esq. and Adam J. Wasserman, Esq., NYSE Regulation.

For the Respondent: Jaclyn L. Butler, Chief Compliance Officer, Virtu Financial BD LLC.

### DECISION

A Hearing Officer at the Financial Industry Regulatory Authority (“FINRA”) considered an Offer of Settlement and Consent entered into between NYSE Arca, Inc. and Virtu Financial BD LLC (“Virtu or Firm”).<sup>1</sup>

Virtu submitted the Offer of Settlement and Consent 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 offer of settlement.

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<sup>1</sup> FINRA’s Office of Hearing Officers reviewed the Offer of Settlement and Consent under the terms of a Regulatory Services Agreement (as amended) among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE MKT LLC, and FINRA.

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

## **FINDINGS OF FACTS AND VIOLATIONS**

### **Overview**

1. During the eleven-quarter time period of April 1, 2013, through December 31, 2015 (“Review Period”), Virtu violated: (i) NYSE Arca Equities Rule 7.23 by failing to maintain continuous, two-sided trading interest in approximately 57,045 instances<sup>3</sup>; (ii) NYSE Arca Equities Rule 7.23 by failing to affix the proper Market Maker ID (“MMID”) in 2,854 instances;<sup>4</sup> and (iii) NYSE Arca Equities Rules 6.18(b) and (c) by failing to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-up and review, reasonably designed to ensure compliance with NYSE Arca Equities Rule 7.23.

### **Background and Jurisdiction**

2. The Firm is an Equities Trading Permit (“ETP Holder”) with NYSE Arca Equities Inc. (the “Exchange”).

### **Violations**

3. NYSE Arca Equities Rule 7.23 (a)(1)(B) sets forth specific quotation requirements for ETP Holders that are registered as Market Makers in one or more securities that trade on the NYSE Arca Equities market. Under the Rule, a Market Maker has pricing obligations for National Market System (“NMS”) stocks in which the Market Maker must, during the core trading session, enter bid (offer) interest, “not more than the ‘Designated Percentage<sup>5</sup>’” away from the then current [NBBO], or if no [NBBO], not more than the Designated Percentage away from the last reported sale from the responsible single plan processor.” The Market Maker is required to remain within the Designated Percentage as the NBBO increases, decreases, or if a bid (offer) is executed or cancelled.
4. Because Market Makers receive benefits for their registration in particular symbols, it is essential that they uphold the quoting obligations associated with their registered symbols, and provide market liquidity in the form of continuous quoting, as required by NYSE Arca Equities Rule 7.23.

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<sup>2</sup> The facts, allegations, and conclusions contained in this Decision were taken from the executed Offer of Settlement and Consent.

<sup>3</sup> This figure was calculated using a sampling approach.

<sup>4</sup> This figure also was calculated using a sampling approach.

<sup>5</sup> NYSE Arca Rule 7.23(a)(1)(B)(iii) defines the required “Designated Percentage” for securities.

5. In approximately 57,045 instances during the Review Period, Virtu violated NYSE Arca Equities Rule 7.23(a)(1)(B), by failing to enter and maintain continuous, two-sided trading interest within the Designated Percentage above and below the NBBO as required by the Rule.
6. In interpretation of NYSE Arca Equities Rule 7.23, NYSE Arca RBE-10-08 “New Market Maker Pricing Obligations” (Dec. 3, 2010) and NYSE Arca RBE-11-05 “Amended Arca Equities Rules 7.11 and 7.23...” (Aug. 4, 2011) require ETP Holders to include the proper MMID in submitted quotes in order to receive “credit” for satisfying the continuous two-sided quoting obligation of NYSE Arca Equities Rule 7.23.
7. In approximately 2,854 instances, the Firm failed to affix the proper MMID to its quotes, thus failing to meet the continuous quoting obligations of NYSE Arca Equities Rule 7.23.
8. 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.” Pursuant to NYSE Arca Equities Rule 6.18(b), “[s]uch system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules.” Moreover, NYSE Arca Equities Rule 6.18(c) requires each ETP Holder 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 achieve compliance with applicable federal securities laws and regulations, and with the NYSE Arca Equities Rules.”
9. Due to the combination of, among other things, wide exception parameters (which resulted in too high of a threshold for potential quoting failures to be reviewed), the use of a sampling methodology that did not review across all symbols, and lack of a systematic escalation of observed quoting issues as part of its supervisory review process, Virtu failed to detect, identify, and remedy persistent quoting failures. As a result, Virtu violated NYSE Arca Equities Rules 6.18(b) and (c) during the Review Period because it failed to reasonably supervise the activities of its associated persons and the operation of its business by establishing and maintaining adequate supervisory procedures, including written procedures and a reasonable system of follow-up and review, that were reasonably designed to ensure compliance with NYSE Arca Equities Rule 7.23.

### **Relevant Disciplinary History**

10. On December 7, 2012, Virtu received a Cautionary Action Letter for failing to meet its quoting obligations under NYSE Arca Equities Rule 7.23 for the time period of December 6, 2010, through July 31, 2012.

## **ORDER**

Virtu Financial BD LLC violated:

1. NYSE Arca Equities Rule 7.23 by failing to maintain continuous, two-sided trading interest in approximately 57,045 instances;
2. NYSE Arca Equities Rule 7.23 by failing to affix the proper MMID in 2,854 instances;
3. NYSE Arca Equities Rules 6.18(b) and (c) by failing to reasonably supervise the activities of its associated persons and the operation of its business in that it failed to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-up and review, designed to ensure compliance with NYSE Arca Equities Rule 7.23.

## **SANCTIONS**

Virtu Financial BD LLC is censured and fined \$70,000.

Also, the Firm is ordered to address deficiencies in its written supervisory procedures to ensure that it has implemented procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein pertaining to Market Maker Quoting Obligations.

These sanctions are effective immediately.



**Andrew H. Perkins**  
**Chief Hearing Officer**