

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

CONSOLIDATED TRADING LLC,

Respondent.

Proceeding No. 2017-03-00019

May 23, 2017

Respondent violated: (i) NYSE Arca Equities Rule 7.33 by failing to populate orders entered on the NYSE Arca Marketplace with the correct capacity code; and (ii) NYSE Arca Equities Rule 6.18(b) by failing to have in place a supervisory system reasonably designed to ensure the submission of orders to the NYSE Arca Marketplace with the correct capacity codes. Consent to a censure and a \$10,000 fine.

Appearances

For the Complainant: Catherine Lifeso, Esq. and Adam J. Wasserman, Esq., NYSE Regulation.

For the Respondent: Steven Gaston, Chief Compliance Officer, Consolidated Trading LLC.

DECISION

Consolidated Trading, LLC (“Consolidated Trading” or “Firm”) and NYSE Arca, Inc. entered into an 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.¹ The Hearing Officer accepts the Offer of Settlement and Consent and issues this Decision in accordance with NYSE Arca Equities Rules.²

¹ 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.

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

FINDINGS OF FACTS AND VIOLATIONS

Overview

1. This matter involves Consolidated Trading's failure to populate approximately 38,000 orders with the correct capacity code in violation of NYSE Arca Equities Rule 7.33, and to establish and maintain a supervisory system that was reasonably designed to ensure the submission of accurate capacity codes in violation of NYSE Arca Equities Rule 6.18(b), from approximately October 1, 2013, through August 25, 2016 (the "Relevant Period").

Background and Jurisdiction

2. Consolidated Trading became registered as an Equities Trading Permit ("ETP") Holder with NYSE Arca Equities Inc. (the "Exchange") on November 29, 2005, and its registration remains in effect. Consolidated Trading is a proprietary trading firm with no customers.
3. This matter arises from a referral to NYSE Regulation by the Department of Market Regulation of the Financial Industry Regulatory Authority, Inc. ("FINRA"). In connection with Consolidated Trading's Trading and Financial Compliance Examinations ("TFCE") equities cycle examination for the period of May 2016, the TFCE staff of the FINRA's Department of Market Regulation conducted a review of Consolidated Trading's compliance with NYSE Arca Equities Rule 7.33, and the Firm's supervision thereof, pursuant to NYSE Arca Equities Rule 6.18(b).
4. By letter dated March 21, 2017, the Enforcement Section of NYSE Regulation, on behalf of the Exchange, notified Consolidated Trading that it was investigating whether it had violated order marking requirements set forth in NYSE Arca Equities Rules 7.33 and related supervisory obligations set forth in NYSE Arca Equities Rule 6.18(b) during the Relevant Period.

Violations

5. NYSE Arca Equities Rule 7.33 states, in part: "ETP Holder Users of the NYSE Arca Marketplace shall input accurate information into the NYSE Arca Marketplace, including, but not limited to, whether the ETP Holder User is acting in a principal, agency, or riskless principal capacity for each order entered. Proprietary orders accepted by the NYSE Arca Marketplace from ETP Holder Users are subject to the same display and execution processes as agency orders."
6. During the Relevant Period, Consolidated Trading, which is a proprietary trading firm and has no customers, entered approximately 38,000 orders on the NYSE Arca Marketplace that failed to indicate the correct capacity code. Specifically, the orders were marked as "individual" orders when they should have been marked as principal orders.

Because “individual” is not a recognized capacity code, these orders defaulted to “agent” when entered into the NYSE Arca Marketplace.

7. Accordingly, during the Relevant Period, Consolidated Trading violated NYSE Arca Equities Rule 7.33.
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.”
9. During the Relevant Period, Consolidated Trading’s written supervisory procedures provided for periodic review of all data fields, but the “capacity code” field was not identified in the Firm’s exception reports or reviewed for accuracy. Consolidated Trading’s failure to establish and maintain a supervisory system that was reasonably designed to ensure submission of accurate capacity codes into the NYSE Arca Marketplace violated NYSE Arca Equities Rule 6.18(b).

Relevant Disciplinary History

10. Consolidated Trading LLC has no relevant disciplinary history.

Other Factors Considered

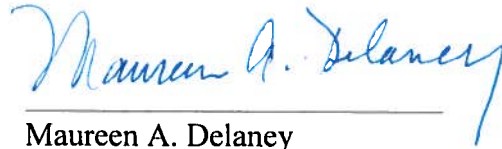
11. In determining to resolve this matter on the basis set forth herein, Enforcement took the following factors into consideration: (i) the lack of market impact or harm to other market participants or customers resulted from Consolidated Trading’s violations; (ii) that Consolidated Trading took steps to ensure correct marking of its orders sent to the NYSE Arca Marketplace promptly upon notice from FINRA that it had not properly coded its orders; and (iii) Consolidated Trading’s cooperation in identifying the duration of the conduct and quantifying the scope of affected orders.

ORDER

Consolidated Trading violated: (i) NYSE Arca Equities Rule 7.33 by failing to populate approximately 38,000 orders entered on the NYSE Arca Marketplace with the correct capacity code; and (ii) NYSE Arca Equities Rule 6.18(b) by failing to have in place a supervisory system reasonably designed to ensure the submission of orders to the NYSE Arca Marketplace with the correct capacity codes during the Relevant Period.

SANCTIONS

Consolidated Trading LLC is censured and fined \$10,000. These sanctions are effective immediately.



Maureen A. Delaney
Hearing Officer