

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

OLD MISSION CAPITAL, LLC,

Respondent.

FINRA Proceeding No. 20140411317¹

May 22, 2017

Respondent violated (i) NYSE Arca Equities Rules 2010 and 7.33 by failing to mark orders with the appropriate designator to identify them as proprietary, and (ii) NYSE Arca Equities Rules 2010, 6.18(b) and 6.18(c) by failing to establish and maintain a system and written supervisory procedures reasonably designed to achieve compliance with Arca Equities Rule 7.33. Consent to a censure, a \$125,000 fine and an undertaking.

Appearances

For the Complainant: Mark Dorsey, Esq., Tina Salehi Gubb, Esq., and Robert A. Marchman, Esq., FINRA Department of Market Regulation.

For the Respondent: James D. Van De Graaff, Esq., Katten Muchin Rosenman LLP.

DECISION

Old Mission Capital, LLC (“Old Mission” 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.² The Hearing Officer accepts the Offer of Settlement and Consent and issues this Decision in accordance with NYSE Arca Equities Rules.³

¹ Includes Proceeding No. 20150441125.

² 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.

³ The facts, allegations, and conclusions contained in this Decision were taken from the executed Offer of Settlement and Consent.

FINDINGS OF FACTS AND VIOLATIONS

Background and Jurisdiction

1. The Firm became registered as an Equities Trading Permit (“ETP”) Holder with NYSE Arca Inc. (the “Exchange”) on June 9, 2009, and its registration remains in effect.
2. By letter dated October 13, 2015, which the Firm received, the Legal Section of the Financial Industry Regulatory Authority’s (“FINRA”) Department of Market Regulation, on behalf of NYSE Arca Equities, notified the Firm that it was investigating whether it had violated NYSE Arca Equities order marking requirements during the period from August 1, 2013, through April 4, 2014 (the “Review Period”).

Overview

3. This matter involves the Firm’s compliance during the Review Period with the order marking requirements of NYSE Arca Equities Rule 7.33, and the supervision requirements of NYSE Arca Equities Rule 6.18.

Violations

4. NYSE Arca Equities Rule 7.33 states, in part: “Proprietary orders accepted by the NYSE Arca Marketplace from ETP Holder Users are subject to the same display and execution processes as agency orders. 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.”⁴
5. During the Review Period, the Firm, as a result of a coding error, failed to mark 29,753,720 new orders with the appropriate designator to identify the orders as proprietary. This conduct constitutes separate and distinct violations of NYSE Arca Equities Rules 2010 and 7.33.
6. As a result of failing to mark the new orders with the appropriate proprietary designator as described above, the Firm also failed to mark 356,950,594 cancel and replace orders with the appropriate designator. The NYSE Arca Marketplace does not permit a firm to enter a capacity designator when the firm amends an existing order by entering a cancel and replace. As stated in the Exchange’s technical specifications, when a firm enters a cancel and replace, the NYSE Arca Marketplace automatically retains the designation

⁴ Subsequent to the Review Period, Arca Equities Rule 7.33 was amended to require an ETP Holder to indicate whether it was acting “in a principal, agency, or riskless principal capacity.” *See* 81 Fed. Reg. 15141 (Mar. 21, 2016).

entered by the firm in connection with the original order. The Firm knew, or should have known, that the NYSE Arca Marketplace would not include the appropriate designation when it entered the aforementioned cancel and replace orders. To enter the appropriate designator when amending an existing order, a firm must first cancel the original order, and then enter a new order with the appropriate designator. As a result, the 356,950,594 cancel and replace orders entered by the Firm during the Review Period in connection with the 29,753,720 new orders described above, failed to include the appropriate designator identifying the orders as proprietary. Exchange audit trails and related surveillance programs rely on accurate information, including accurate capacity codes. The entry of inaccurate information causes the audit trail to be inaccurate, and adversely affects self-regulatory organizations' ("SROs") ability to detect conduct that may violate SRO rules and the federal securities laws, and/or creates alerts that are false positives, requiring the expenditure of unnecessary resources to resolve the alerts.

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." Pursuant to NYSE Arca Equities Rule 6.18(b), "such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Area Equities Rules." 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."
8. During the Review Period, the Firm failed to have a supervisory review specifically designated to detect and prevent the inaccurate entry of the order capacity designator. This conduct constitutes a violation of NYSE Arca Equities Rules 2010, 6.18(b) and 6.18(c).

Other Factors Considered

9. In determining to resolve this matter on the basis set forth in this Decision, the Exchange took into consideration the fact that: (i) the Firm self-reported its failure to mark its orders with the appropriate designator on the Exchange before the Exchange became aware of the issue, (ii) made coding changes so as to mark all orders with the appropriate designator going forward, and (iii) implemented written supervisory procedures to detect and prevent the failure to mark orders with the appropriate designator.

ORDER

During the Review Period, Old Mission Capital, LLC violated: (i) NYSE Arca Equities Rules 2010 and 7.33 by failing to mark 29,753,720⁵ orders with the appropriate designator to identify the orders as proprietary, and (ii) NYSE Arca Equities Rules 2010, 6.18(b) and 6.18(c) by failing to establish and maintain a system and written supervisory procedures reasonably designed to achieve compliance with Arca Equities Rule 7.33.

SANCTIONS

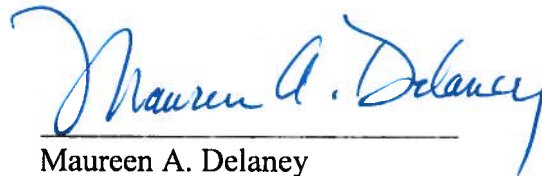
Old Mission Capital, LLC is censured and fined \$125,000.⁶

Old Mission Capital is also ordered to revise the Firm's written supervisory procedures with respect to the areas described in paragraph 8 of this Decision.

Within two weeks of this Decision, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, a signed, dated letter, or an email from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information:

- A reference to this matter;
- A representation that the Firm has revised its written supervisory procedures to address the deficiencies described in connection with this Decision; and
- The date(s) the revised procedures were implemented.

These sanctions are effective immediately.



Maureen A. Delaney
Hearing Officer

⁵ The 356,950,594 cancel and replace orders marked with the incorrect designator have not been included as violations, but have been incorporated into the agreed upon fine amount.

⁶ The fine consists of \$100,000 for the violations of Arca Equities Rule 7.33, and \$25,000 for the violations of Arca Equities Rule 6.18.