

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

BARCLAYS CAPITAL INC.,

Respondent.

Proceeding No. 2017-05-00011

December 12, 2018

Barclays Capital Inc. violated: (i) NYSE Arca Options Rule 6.77A, by failing to obtain agreement of its customer before busting and adjusting a trade and adjusting trades in a manner that circumvents other Exchange Rules; (ii) NYSE Arca Options Rule 11.1 by busting a trade that resulted in an inferior price for its customer; (iii) NYSE Arca Options Rules 6.68 and 9.17 and NYSE Arca Rules 2.28 and 11.16, by failing to create, maintain, and preserve accurate records of adjustments to customer orders and documentation of customer instruction and/or agreement to modify trades pursuant to Rule 6.77A; (iv) and NYSE Arca Options Rule 11.18, by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Options Rules. Consent to censure, \$275,00 fine, and undertaking.

Appearances

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

For the Respondent: Penny Rosenberg, Esq. for Barclays Capital Inc.

DECISION

Barclays Capital Inc. (“Barclays” or the “Firm”) and NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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.²

FINDINGS OF FACTS AND VIOLATIONS

Overview

1. From March 1, 2015, through May 31, 2018 (“Relevant Period”), Barclays violated: (i) NYSE Arca Options Rule 6.77A,³ by failing to obtain agreement of its customer before busting and adjusting a trade and adjusting the trade in a manner that circumvented other Exchange rules; (ii) NYSE Arca Options Rule 11.1,⁴ by busting a trade that resulted in an inferior price for its customer; (iii) NYSE Arca Options Rules 6.68⁵ and 9.17⁶ and NYSE Arca Rules 2.28 and 11.16, by failing to create, maintain, and preserve accurate records of adjustments to customer orders and documentation of customer instruction and/or agreement to modify trades pursuant to Rule 6.77A; and (iv) NYSE Arca Options Rule 11.18,⁷ by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Options Rules.

Background and Jurisdiction

2. Barclays became registered as an Options Trading Permit (“OTP”) Holder with NYSE Arca, Inc. on November 25, 2008. Its principal place of business is in New York, New York.

Violations

NYSE Arca Options Rule 6.77A (Improper Bust and Adjust)

3. Under NYSE Arca Options Rule 6.77A, “[a] trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that any trade that is nullified or adjusted pursuant to this Rule must

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 American LLC (fka NYSE MKT LLC), and FINRA.

² See NYSE Arca Rule 10.6(e). The facts, allegations, and conclusions contained in this Decision were taken from the executed Offer of Settlement and Consent. Prior to August 17, 2017, the rules involved in this matter were called NYSE Arca Options rules.

³ NYSE Arca Options Rule 6.77A is now denominated NYSE Arca Rule 6.77A-O.

⁴ NYSE Arca Options Rule 11.1 is now denominated NYSE Arca Rule 11.1.

⁵ NYSE Arca Options Rule 6.68 is now denominated NYSE Arca Rule 6.68-O.

⁶ NYSE Arca Options Rule 9.17 is now denominated NYSE Arca Rule 2.28.

⁷ NYSE Arca Options Rule 11.18 is now denominated NYSE Arca Rule 11.18.

be authorized by the Exchange prior to the nullification or adjustment.”

4. Furthermore, any trade that is adjusted pursuant to NYSE Arca Options Rule 6.77A “must be adjusted to a price that was permissible and in compliance with any applicable rules of the Exchange or the Securities and Exchange Commission.”
5. On October 14, 2016, a NYSE Arca floor broker (“Floor Broker”), on behalf of Barclays, executed a put spread in XYZ⁸ (“Oct XYZ Trade”).
6. A Barclays trader initially relayed the order to the Floor Broker and asked for a bid on the spread, and the Floor Broker responded that the bid was \$1.71. The Barclays trader indicated to the Floor Broker that he would be willing to facilitate the customer order at that price.
7. The Floor Broker was unable to execute the order at \$1.71 and instead executed the order at \$1.75, a better price for the Firm’s customer, a seller. When the Floor Broker informed him of the \$1.75 execution, the Barclays trader expressed frustration, but ultimately agreed to it.
8. Shortly thereafter, the Floor Broker called the Barclays trader and told him that he could now execute the trade at \$1.71. The Barclays trader immediately told the Floor broker to do so.
9. The Floor Broker busted the \$1.75 execution and re-executed the trade at \$1.71, which was four cents worse for Barclays’ customer.
10. Immediately thereafter, the Barclays trader called the Floor Broker and asked him to execute the trade at \$1.72 instead, which was better for the Firm’s customer than the \$1.71 execution, but still three cents worse for the Firm’s customer than the initial \$1.75 execution. The Floor Broker followed these instructions and executed the trade at \$1.72.
11. At no time during this process did Barclays obtain the agreement of its customer to bust and adjust the Oct XYZ Trade.
12. By instructing the Floor Broker to bust and adjust the Oct XYZ Trade without the consent of the Firm’s customer and in a manner that circumvents other Exchange rules, Barclays violated NYSE Arca Options Rule 6.77A.

NYSE Arca Options Rule 11.1 (Just and Equitable Principles)

13. Under NYSE Arca Options Rule 11.1(a), a firm “shall at all times comply with just and equitable principles of trade, the applicable regulations of the Securities and Exchange

⁸ A generic identifier has been used in place of the name of certain options series.

Commission [(“SEC”)] . . . and the Bylaws and Rules of the Exchange.”

14. By instructing the Floor Broker to bust and adjust the Oct XYZ Trade to a price that was worse for the Firm’s customer, Barclays further violated NYSE Arca Options Rule 11.1.

NYSE Arca Options Rules 6.68 (Record of Orders) and 9.17 (Books and Records); NYSE Arca Rules 2.28 and 11.16 (Books and Records)

15. Under NYSE Arca Options Rule 6.68, every OTP Holder must maintain and preserve for the period specified under SEC Rule 17a-4, a record of every order and of any instruction given or received for the purchase or sale of option contracts. Such record must show the terms and conditions of the order or instruction *and of any modification or cancellation thereof* (emphasis added).
16. Under NYSE Arca Options Rule 9.17, OTP Holders and OTP Firms must make and maintain all the books and records prescribed by the rules of the Exchange. Accordingly, all OTP Holders must record and maintain an accurate account of all transactions subject to cancellation pursuant to Rule 6.77, and maintain an accurate record of all trade nullifications or adjustments.
17. Under NYSE Arca Rule 11.16, OTP Holders and OTP Firms must keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (“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.
18. During the Relevant Period, Barclays failed to maintain complete and accurate records of order cancellations and adjustments, the reasons for any such adjustment, who directed the adjustment, and/or whether customer agreement had been obtained.
19. For these reasons, Barclays failed to create and maintain adequate books and records in violation of NYSE Arca Options Rules 6.68 and 9.17, and NYSE Arca Rules 2.28 and 11.16.

NYSE Arca Options Rule 11.18 (Supervision)

20. Under NYSE Arca Options Rule 11.18(b), firms must have supervisory systems in place “reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca rules.” NYSE Arca Options Rule 11.18(c) requires firms to have written supervisory procedures (“WSPs”) in place to ensure that such supervisory systems are followed.
21. In this case, during the Relevant Period, Barclays failed to have supervisory systems or WSPs in place reasonably designed to ensure compliance with NYSE Arca Options

Rules 6.77A, 11.1, 6.68, and 9.17, and NYSE Arca Rules 2.28 and 11.16.

22. Specifically, Barclays failed to reasonably design a supervisory system or WSPs to ensure compliance with NYSE Arca Options Rule 6.77A by failing to implement a system to ascertain whether the Firm had the agreement of its customer prior to busting and adjusting a trade, failing to implement a system concerning the documentation of that agreement, and failing to address the prohibition on busting and adjusting trades in a manner that circumvents other Exchange rules.
23. Barclays also failed to reasonably design a supervisory system to ensure compliance with NYSE Arca Options Rule 11.1. Specifically, Barclays failed to implement a system to ascertain whether the busting and adjusting of any trade would result in harm to its customer, and failed to implement an adequate system of post-trade review to address any potential violations.
24. Barclays further failed to have a supervisory system reasonably designed to ensure compliance with NYSE Arca Options Rules 6.68 and 9.17, and NYSE Arca Rules 2.28 and 11.16. Specifically, Barclays failed to implement a system that consistently captured complete and accurate records concerning the cancellation or adjustment of orders, as well as the reasons for any such adjustment, who directed the adjustment, and/or whether customer agreement had been obtained.
25. For these reasons, Barclays violated NYSE Arca Options Rule 11.18 during the Relevant Period.

Relevant Disciplinary History

26. On June 20, 2014, Barclays consented to a censure and a sanction of \$700,000 for books and records violations (Exchange Act Rules 17a-3(a) and 17a-4(b) and NYSE Arca Options Rules 6.68(a) and 11.16(a)).

Other Factors

27. In connection with NYSE Regulation's investigation, Barclays offered its customer restitution in the amount of \$768 and will continue to develop and implement WSPs concerning NYSE Arca Rule 6.77A-O.

ORDER

Barclays Capital Inc. violated: (i) NYSE Arca Options Rule 6.77A, by failing to obtain agreement of its customer before busting and adjusting a trade and adjusting trades in a manner that circumvents other Exchange Rules; (ii) NYSE Arca Options Rule 11.1 by busting a trade that resulted in an inferior price for its customer; (iii) NYSE Arca Options Rules 6.68 and 9.17 and NYSE Arca Rules 2.28 and 11.16, by failing to create, maintain, and preserve accurate records of adjustments to customer orders and documentation of customer instruction and/or

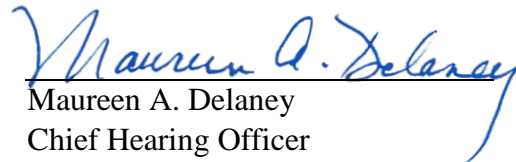
agreement to modify trades pursuant to Rule 6.77A; and (iv) NYSE Arca Options Rule 11.18, by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Options Rules.

SANCTIONS

Barclays Capital Inc. is censured and fined \$275,000.

Barclays further agrees to undertake to develop and implement controls and procedures reasonably designed to address the deficiencies described above. Within 90 days of this Decision, a registered principal of the Respondent shall submit to Laura J. Seamon, Enforcement Counsel, NYSE Regulation, New York Stock Exchange, 11 Wall Street, New York, NY 10005, a signed, dated letter, or an email from a work-related account of the registered principal to laura.seamon@theice.com, providing the following information: (i) reference to this matter; (ii) a representation that Barclays has developed and implemented controls and procedures reasonably designed to address the deficiencies described above; and (iii) the date(s) these controls and procedures were implemented.

These sanctions are effective immediately.


Maureen A. Delaney
Chief Hearing Officer