NYSE ARCA, INC.

NYSE REGULATION, Complainant, v. BARCLAYS CAPITAL INC., Respondent.	Proceeding No. 2017-07-00014 December 11, 2018

Barclays Capital Inc. violated: (i) NYSE Arca Options Rule 6.49(b), by effecting equity transactions after gaining knowledge of undisclosed terms and conditions of orders in related option series; and (ii) NYSE Arca Options Rule 11.18(b), by failing to establish and maintain adequate supervisory systems reasonably designed to ensure compliance with Rule 6.49(b). Consent to censure and $70,000 fine.

Appearances

For the Complainant: Mark S. Silver, 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 and issues this Decision on behalf of NYSE Regulation Enforcement.[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 American LLC (fka NYSE MKT LLC), and FINRA.

[2] *See* NYSE Arca Rule 10.6(e)(2)(C). 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.

FINDINGS OF FACTS AND VIOLATIONS

Overview

1. On March 2, 2015, and March 30, 2015, Barclays violated NYSE Arca Options Rule 6.49(b)[3] by effecting equity transactions after gaining knowledge of undisclosed terms and conditions of orders in related option series. From at least March 2015 through April 2017, Barclays also violated NYSE Arca Options Rule 11.18(b)[4] by failing to establish and maintain adequate supervisory systems that were reasonably designed to ensure compliance with Rule 6.49(b).

Background and Jurisdiction

2. Barclays became registered as an Options Trading Permit ("OTP") Holder with the Exchange on November 25, 2008.

3. The Financial Industry Regulatory Authority referred this matter to NYSE Regulation.

Violations

Violations of NYSE Arca Options Rule 6.49(b)(Anticipatory Hedging)

4. Arca Options Rule 6.49(b) states that:

> It will be considered conduct inconsistent with just and equitable principles of trade for any OTP Holder or OTP Firm or person associated with a OTP Holder or OTP Firm, who has knowledge of all material terms and conditions of an originating order, a solicited order, or a facilitation order, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option on the underlying securities of any option that is the subject of the order, or an order to buy or sell the security underlying any option that is the subject of the order, or any order to buy or sell any related instrument until either: (1) All the terms and conditions of the originating order and any changes in the terms or conditions of the order of which the OTP Holder or OTP Firm or person associated with the OTP Holder or OTP Firm has knowledge are disclosed to the trading crowd, or (2) The trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

[3] NYSE Arca Options Rule 6.49(b) is now denominated NYSE Arca Rule 6.49-O(b).

[4] NYSE Arca Options Rule 11.18(b) is now denominated NYSE Arca Rule 11.18(b).

5. When an OTP Holder engages in improper anticipatory hedging or otherwise uses undisclosed information about an imminent option transaction to trade the relevant option(s) or a related instrument (including the underlying security on which the options are based), it can potentially alter the market for either or both the subject option(s) or the underlying security.

6. As a result, the party submitting the options order could receive an inferior price and other market participants could be disadvantaged by changing their trading activity based on the price movement arising from the improper hedging activity. As set forth in Rule 6.49(b), such conduct is considered inconsistent with just and equitable principles of trade.

7. Furthermore, NYSE Arca Regulatory Bulletin RBO-14-02, titled "Anticipatory Hedging and Frontrunning of Floor Orders" and dated February 14, 2014, states that:

> NYSE Arca Rule 6.67(c) requires . . . OTP Holders that send orders to the Floor for execution should have procedures whereby they can reasonably assure themselves that that [sic] an order has been systematized and represented before they enter another order in the same or a related instrument for hedging or other purposes, based on the knowledge of the yet to be represented order. OTP Holders are cautioned that simply relying upon the passage of time from when an order is transmitted to the Floor, to make an assumption that the order has actually been represented in the trading crowd, would not be considered an acceptable procedure.

8. RBO-14-02 goes on to say:

> An OTP Holder may be deemed to have violated NYSE Arca Rule 6.49(b) if the OTP Holder, having knowledge of all material terms and conditions of an order, the execution of which is imminent, enters an order to buy or sell an option on a security underlying any option that is the subject of the order, or an order to buy or sell the security underlying any option that is the subject of the order, or any order to buy or sell any related instrument, prior to the systemization and representation of such order.

9. On March 2, 2015, a Barclays trader relayed a facilitated cross order for certain XYZ[5] options securities to an NYSE Arca floor broker in a call that lasted from 15:58:46 to 15:58:56. According to NYSE Arca order data, the floor broker who represented the

[5] Generic identifiers have been used in place of the names of the options series at issue.

facilitation on the floor timestamped the customer's order at 15:59:26 and executed it at 15:59:27.

10. The Barclays trader began selling XYZ equities as hedges against the XYZ options order at 15:59:15, 19 seconds after the call ended and 11 seconds before the floor broker timestamped the customer's order, and ultimately sold 15,100 shares of XYZ equities by 15:59:23.

11. Because the Barclays trader began selling XYZ equities prior to the systematization of the XYZ options order, this March 2, 2015 trading by Barclays violated Rule 6.49(b).

12. On March 30, 2015, a Barclays trader relayed a facilitated cross order for certain ABC options securities to an NYSE Arca floor broker in three separate pieces. According to NYSE Arca order data, the first ABC options order was timestamped at 14:04:13.

13. The Barclays trader purchased 9,200 ABC equities as hedges against the first ABC options order at 14:03:30, 43 seconds before the floor broker timestamped the first options order. The Barclays trader subsequently purchased 108,569 ABC equities as hedges between 14:05:00 and 14:13:40, resulting in an improper overhedge of 42,169 shares, as the Firm purchased more shares than needed to hedge the disclosed portion of the options order.

14. The second ABC options order was timestamped at 14:14:15. The Barclays trader subsequently purchased 101,344 ABC equities as hedges between 14:16:47 and 14:27:16, resulting in an overhedge of 67,913 shares, as the Firm again purchased more shares than needed to hedge the disclosed portion of the options order.

15. Because the Barclays trader: (i) began purchasing ABC equities prior to the systematization of the first ABC options order; and (ii) purchased more ABC equity shares than needed to hedge the two subsequent ABC options orders, this March 30, 2015 trading by Barclays violated Rule 6.49(b).

Violation of NYSE Arca Options Rule 11.18(b) (Supervision)

16. Under NYSE Arca Options Rule 11.18(b), firms must have supervisory systems in place that are "reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca rules."

17. Barclays did have daily surveillances in place to monitor for anticipatory hedging or front running of client orders, including on the Flow Volatility desk, where the Barclays trader worked. However, these surveillances did not review any short sale orders, such as the XYZ equities sale on March 2, 2015, until April 2017.

18. Because the aforementioned surveillances did not review short sale orders, Barclays violated Rule 11.18(b).

Relevant Disciplinary History

19. On August 15, 2017, Barclays consented to a censure and a $60,000 fine for a single instance of anticipatory hedging in violation of NYSE Arca Options Rule 6.49(b) and for related supervisory issues in violation of NYSE Arca Options Rule 11.18(b).

ORDER

Barclays Capital Inc. violated: (i) NYSE Arca Options Rule 6.49(b), by effecting equity transactions after gaining knowledge of undisclosed terms and conditions of orders in related option series; and (ii) NYSE Arca Options Rule 11.18(b), by failing to establish and maintain adequate supervisory systems that were reasonably designed to ensure compliance with Rule 6.49(b).

SANCTIONS

Barclays Capital Inc. is censured and fined $70,000.

These sanctions are effective immediately.

David R. Sonnenberg
Hearing Officer