

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

IMC FINANCIAL MARKETS,

Respondent.

Proceeding No. 20150468012¹

October 25, 2018

IMC Financial Markets violated: (i) NYSE Arca Rule 7.37-E(e)(2), by failing to reasonably avoid displaying, and engaging in a pattern or practice of displaying, quotations that locked or crossed a protected quotation; and (ii) NYSE Arca Rules 11.18 and 9.2010-E, by failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the applicable securities laws and regulations, and NYSE Arca rules, concerning compliance with NYSE Arca Rule 7.37-E(e)(2). Consent to censure, \$8,000 fine, and undertaking.

Appearances

For the Complainant: John P. Hewson, Esq., Lara M. Posner, Esq., Tina Gubb, Esq., and Elizabeth Hogan, Esq., FINRA Department of Enforcement.

For the Respondent: Daniel Overmyer, IMC Financial Markets.

DECISION

IMC Financial Markets (“IMC Financial” or “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.² The Hearing Officer

¹ Includes Proceeding No. 20170566531.

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.

accepts the Offer of Settlement and Consent and issues this Decision in accordance with NYSE Arca rules.³

FINDINGS OF FACTS AND VIOLATIONS

Background and Jurisdiction

1. IMC Financial became registered as an Equities Trading Permit (“ETP”) Holder with NYSE Arca, Inc. on May 5, 2006, and its registration remains in effect.
2. In connection with Matter No. 20150468012, the Department of Market Regulation’s Market Analysis Section (“staff”) of the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, reviewed the IMC Financial’s compliance with NYSE Arca Rule 7.37-E (Lock and Crossing Quotations in NMS Stocks) as well as the Firm’s use of intermarket sweep orders (“ISOs”) during the period between January 1, 2015, and September 30, 2015 (“1Q15-3Q15 Review Period”).
3. In connection with Matter No. 20170566531, the staff, on behalf of the Exchange, conducted a review of IMC Financial’s compliance with NYSE Arca locked and crossed rules as well as the Firm’s use of ISOs during the period between July 24, 2017, and September 18, 2017 (“3Q17 Review Period”).
4. Based on these reviews, the staff determined the Firm violated the rules set forth below.
5. By letter dated February 17, 2017, which IMC Financial received, FINRA’s Department of Enforcement on behalf of the Exchange, notified the Firm of its investigation of this matter.

Relevant Disciplinary History

6. IMC Financial has no relevant disciplinary history

Overview

7. During the Review Periods, due to a market data feed packet processing issue and a separate failure to incorporate one exchange into its market data, IMC Financial, in numerous instances, routed ISOs that locked or crossed protected quotations in violation of NYSE Arca Rules 7.37-E(e), 11.18, and 9.2010.⁴

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

⁴ As of August 17, 2017, NYSE Arca Equities Rule 7.37 is denominated NYSE Arca Rule 7.37-E; NYSE Arca Equities Rule 6.18 is denominated NYSE Arca Rule 11.18; and NYSE Arca Equities Rule 2010 is denominated NYSE Arca Rule 9.2010-E. The Review Periods in this matter thus encompass violations of NYSE Arca Equities Rule 7.37, 6.18, and 2010 (from January 1, 2015, to August 16, 2017) and violations of NYSE Arca Rules 7.37-E,

Violations

8. NYSE Arca Rule 7.37-E(e)(2) provides that, except for quotations that fall within the provisions of NYSE Arca Rule 7.37-E(e)(3), “the Exchange and members of the Exchange shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross the [Best Protected Bid and the Best Protected Offer].”
9. NYSE Arca Rule 7.37-E(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations in NYSE Arca Rule 7.37-E(e)(2) does not apply when “[t]he Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.”
10. NYSE Arca Rule 11.18(a) requires, among other things, that every ETP Holder supervise persons associated with it to ensure compliance with federal securities laws and the Constitution or the rules of the Exchange. NYSE Arca Rule 11.18(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[.]” and that such system “must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca rules.” Moreover, NYSE Arca Rule 11.18(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 with the NYSE Arca rules.”
11. NYSE Arca Rule 9.2010-E provides that ETP Holders, in the conduct of their business, shall observe high standards of commercial honor and just and equitable principles of trade.

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12. During the 1Q15-3Q15 Review Period, when routing ISOs to NYSE Arca, IMC Financial failed to send additional ISOs to protected quotes on three separate exchanges. These instances occurred when the Firm did not timely process consolidated Securities Information Processor feed packets that contained the protected quotes from the three exchanges. As a result, the Firm locked or crossed protected quotes and failed to route additional ISOs to the venues with protected quotes. Accordingly, the Firm failed to reasonably avoid displaying, and engaged in a pattern or practice of displaying, quotations that locked or crossed a protected quotation during the 1Q15-3Q15 Review Period.

11.18, and 9.2010-E (from August 17, 2017, to September 18, 2017). References in this Decision to NYSE Arca Rules 7.37-E, 11.18 and 9.2010-E include NYSE Arca Equities Rules 7.37, 6.18, and 2010.

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13. During the 3Q17 Review Period, when routing ISOs to NYSE Arca, IMC Financial failed to send additional ISOs to protected quotes on one exchange. These instances occurred when the Firm failed to incorporate market data from one exchange when the Firm launched a new ISO strategy. As a result, the Firm locked or crossed protected quotes and failed to route additional ISOs to the venue with protected quotes. Accordingly, the Firm failed to reasonably avoid displaying, and engaged in a pattern or practice of displaying, quotations that locked or crossed a protected quotation during the 3Q157 review period.
14. The conduct described in paragraphs 12 and 13 constitutes a violation of NYSE Arca Rule 7.37-E(e)(2).

Supervision in Matter Nos. 20150468012 and 20170566531

15. During the review periods, IMC Financial failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the applicable securities laws and regulations, and Exchange rules, concerning locked/crossed markets. Specifically, the Firm failed to adequately monitor whether the data it used to compile the National Best Bid or Offer (“NBBO”) was complete and reliable. The Firm has since remediated its supervisory system to incorporate monitoring of the reliability of its NBBO data.
16. The conduct described in paragraph 15 constitutes a violation of NYSE Arca Rules 11.18 and 9.2010-E.

ORDER

IMC Financial Markets violated: (i) NYSE Arca Rule 7.37-E(e)(2), by failing to reasonably avoid displaying, and engaging in a pattern or practice of displaying, quotations that locked or crossed a protected quotation; and (ii) NYSE Arca Equities Rules 11.18 and 9.2010-E, by failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the applicable securities laws and regulations, and Exchange rules, concerning compliance with NYSE Arca Rule 7.37(e)(2).

SANCTIONS

IMC Financial Markets is censured and fined \$8,000.⁵

IMC Financial shall undertake to amend its written supervisory procedures. No later than 30 days after this Decision is issued, the Firm shall submit to the Compliance Assistant, Department of Enforcement, 9509 Key West Avenue, Rockville, MD 20850, a signed dated letter, or an e-mail from a work-related account of the registered principal to

⁵ Pursuant to separate settlement agreements, IMC Financial Markets agreed to a total fine of \$26,000, of which \$8,000 shall be paid to NYSE Arca Inc., and the remaining amount paid to Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and NASDAQ Stock Market LLC.

MarketRegulationComp@finra.org, providing the following information: (i) a reference to this matter; (ii) a representation that the Firm has revised its written supervisory procedures to address the deficiencies described above; and (iii) the dates this was completed.

These sanctions are effective immediately.



David Williams
Hearing Officer