

## NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

Proceeding No. 2017-02-00059

v.

OTA LLC,

June 19, 2018

Respondent.

**OTA LLC violated (i) NYSE Arca Rule 7.23-E, by failing to maintain continuous, two-sided trading interest in approximately 1,183 full-day instances, and (ii) NYSE Arca Rule 11.18(b) and (c), by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Rule 7.23-E. Consent to a censure and a \$55,000 fine.**

### Appearances

For the Complainant: David A. Feldman, Esq., and Adam J. Wasserman, Esq., NYSE Regulation.

For the Respondent: Paul J. Bazil, Esq., Pickard Djinis & Pisarri.

### DECISION

OTA LLC (“OTA” 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.<sup>1</sup> The Hearing Officer accepts the Offer of Settlement and Consent and issues this Decision in accordance with NYSE Arca Rules.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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. During the period of April 1, 2016, through August 31, 2017 (the “Relevant Period”), OTA violated (i) NYSE Arca Rule 7.23-E, by failing to maintain continuous, two-sided trading interest in approximately 1,183 instances, with each instance lasting for a full trading day; and (ii) NYSE Arca Rules 11.18(b) and (c), by failing to establish and maintain adequate supervisory procedures reasonably designed to ensure compliance with NYSE Arca Rule 7.23-E.<sup>3</sup> As stated below, the Firm consents to a censure and a fine of \$55,000, and has undertaken to address any remaining deficiencies.

### Background and Jurisdiction

2. OTA has been registered as an Equities Trading Permit (“ETP”) Holder with NYSE Arca, Inc. (the “Exchange”) since October 2006.
3. In a letter dated June 23, 2017, which OTA received, NYSE Regulation Enforcement, on behalf of the Exchange, notified the Firm it was investigating whether OTA violated NYSE Arca Equities Rule 7.23 and NYSE Arca Equities Rule 6.18 by failing to maintain continuous, two-sided quotations in certain assigned symbols and establish and maintain a system to supervise the activities of its associated persons and the operation of its business. The investigation concluded that the Firm violated these rules, as described in detail below.

### Violations

4. NYSE Arca Rule 7.23-E(a)(1) sets forth specific obligations for ETP Holders registered as Market Makers in one or more securities that trade on the Exchange. Under the Rule, a Market Maker is required to maintain “continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade.” This requires Market Makers to uphold the quoting obligations associated with their registered symbols and provide market liquidity in the form of continuous quoting.
5. In approximately 1,183 instances during the Relevant Period, OTA violated NYSE Arca Rule 7.23-E(a)(1) by failing to enter and maintain continuous, two-sided trading interest as the rule required. Each of these instances constituted a full-day quoting gap, caused by

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<sup>3</sup> As of August 17, 2017, NYSE Arca Equities Rule 7.23 is denominated NYSE Arca Rule 7.23-E, and NYSE Arca Equities Rule 6.18 is denominated NYSE Arca Rule 11.18. The Relevant Period thus encompasses violations of NYSE Arca Equities Rules 7.23 and 6.18 (during the period April 1, 2016, through August 16, 2017) and violations of NYSE Arca Rules 7.23-E and 11.18 (during the period August 17, 2017, through August 31, 2017). References in this Decision to NYSE Arca Rules 7.23-E and 11.18 include NYSE Arca Equities Rules 7.23 and 6.18.

the Firm's failure to identify symbols for which it was registered as a Market Maker on NYSE Arca.

6. 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." Pursuant to NYSE Arca Rule 11.18(b), "[s]uch 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 ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca Rules."
7. During the Relevant Period, OTA failed to establish or maintain a reasonable procedure to identify the symbols for which it was registered as a Market Maker on NYSE Arca.
8. Accordingly, OTA failed to reasonably supervise the activities of its associated persons and the operation of its business by failing to establish and maintain adequate supervisory procedures, including written procedures and a reasonable system of follow-up and review reasonably designed to ensure compliance with NYSE Arca Rule 7.23-E during the Relevant Period, in violation of NYSE Arca Rules 11.18(b) and (c).

#### **Relevant Disciplinary History**

9. In addition to a prior informal action, on December 9, 2015, OTA was censured and fined \$85,000 for failing to enter and maintain continuous, two-sided trading interest within the required designated percentages above and below the National Best Bid (Offer) as NYSE Arca Equities Rule 7.23 required, and related supervisory deficiencies, for the periods April 1, 2013, through September 30, 2014, and January 1, 2015, through March 31, 2015, in violation of NYSE Arca Equities Rule 6.18(b) and (c).

#### **Other Factors Considered**

10. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration that OTA instituted a new market maker review comparison procedure.

#### **ORDER**

OTA LLC violated (i) NYSE Arca Rule 7.23-E, by failing to maintain continuous, two-sided trading interest in approximately 1,183 full-day instances, and (ii) NYSE Arca Rule 11.18(b) and (c), by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Rule 7.23-E.

**SANCTIONS**

OTA LLC is censured and fined \$55,000.

These sanctions are effective immediately.

  
Richard E. Simpson  
Hearing Officer