

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

CASEY SECURITIES, LLC,

and

DANIEL RANDALL

Respondents.

Proceeding No. 2016-07-01302¹

August 8, 2018

Casey Securities, LLC violated: (i) NYSE Arca Options Rule 6.77A, by failing to obtain customer approval for busting and adjusting trades and by adjusting trades to take advantage of intra-day price movement; (ii) NYSE Arca Options Rule 6.46, by failing to use due diligence to execute orders at the best prices available; (iii) NYSE Arca Options Rules 6.68 and 9.17, and NYSE Arca Rules 2.28 and 11.16, by failing to maintain and preserve accurate records of customer orders and accounts subject to cancellation pursuant to NYSE Arca Options Rule 6.77A; (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 6.77A, 6.46, 6.68, and 9.17, and NYSE Arca Rules 2.28 and 11.16; and (v) NYSE Arca Options Rule 10.2, by impeding a regulatory investigation. Consent to censure, a \$285,000 fine, and undertaking.

Daniel Randall violated: (i) NYSE Arca Options Rule 6.77A, by failing to obtain customer approval for busting and adjusting trades and by adjusting trades to take advantage of intra-day price movement; and (ii) NYSE Arca Options Rule 6.46, by failing to use due diligence to execute orders at the best prices available. Consent to censure, a \$60,000 fine, and a seven-week suspension (two weeks in all capacities and five weeks in all supervisory capacities).

¹ Includes Matter Nos. 2016-11-00024, 2017-04-00043, 2017-08-00098.

Appearances

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

For the Respondent: Bob E. Lehman, Esq., Lehman & Eilen LLP.

DECISION

Casey Securities, LLC (“Casey” or “Firm”) and Daniel Randall (“Randall”), 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 Rules.³

FINDINGS OF FACTS AND VIOLATIONS

Overview

1. This matter concerns Casey’s pattern and practice of improperly busting and adjusting facilitated cross trades without ascertaining mutual agreement of the parties to the trade and taking advantage of intraday price movement. This pattern and practice was in contravention of NYSE Arca Rules concerning bust and adjust, due diligence and best execution, books and records, and supervision.
2. From January 1, 2015, through March 31, 2018 (the “Relevant Period”), Casey violated: (i) NYSE Arca Options Rule 6.77A,⁴ by failing to obtain mutual agreement of the parties to the trade for busting and adjusting trades and adjusting trades to take advantage of intra-day price movement; (ii) NYSE Arca Options Rule 6.46,⁵ by failing to use due diligence to execute orders at the best prices available; (iii) NYSE Arca Options Rules 6.68⁶ and 9.17⁷ and NYSE Arca Rules 2.28 and 11.16, by failing to maintain and preserve accurate records of customer orders and accounts subject to cancellation

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. Prior to August 17, 2017, the rules involved in this matter were called NYSE Arca Options rules.

⁴ NYSE Arca Options Rule 6.77A is now denominated NYSE Arca Rule 6.77A-O.

⁵ NYSE Arca Options Rule 6.46 is now denominated NYSE Arca Rule 6.46-O.

⁶ NYSE Arca Options Rule 6.68 is now denominated NYSE Arca Rule 6.68-O.

⁷ NYSE Arca Options Rule 9.17 is now denominated NYSE Arca Rule 2.28.

pursuant to NYSE Arca Options Rule 6.77A; (iv) NYSE Arca Options Rule 11.18,⁸ by failing to establish and maintain adequate supervisory systems and written procedures reasonably designed to ensure compliance with NYSE Arca Options Rules; and (v) NYSE Arca Options Rule 10.2,⁹ by impeding a regulatory investigation.

3. During the Relevant Period, Randall, a Casey phone clerk and Manager of the Firm's Floor Operations and Booth Staff, violated: (i) NYSE Arca Options 6.77A, by failing to obtain mutual agreement of the parties to a trade for busting and adjusting trades and by adjusting trades to take advantage of intra-day price movement and (ii) NYSE Arca Options Rule 6.46, by failing to use due diligence to execute orders at the best prices available.

Background and Jurisdiction

4. Casey registered as an Options Trading Permit ("OTP") Holder with the Pacific Stock Exchange, currently known as NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") on November 1, 1976, and its registration remains in effect. Its principal place of business is in San Francisco, California. Casey performs execution-only services for other broker-dealers.
5. During all times relevant to this matter, Randall was employed by Casey and registered with NYSE Arca. Randall was a Floor Broker and Manager of the Firm's Floor Operations and Booth Staff.

Violations

Violation of NYSE Arca Options Rule 6.77A (Improper Busts and Adjusts of Trades) by Casey and Randall

6. 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 be authorized by the Exchange prior to the nullification or adjustment."
7. On December 13, 2013, NYSE Regulation released a regulatory bulletin, RBO-13-08 ("Nullification of Trades Based on Mutual Agreement"), to advise OTP Holders of the proper procedures for nullifying a trade pursuant to NYSE Arca Options Rule 6.77 Commentary .02. RBO-13-08 states: "[t]he nullification of a trade may only be effected if all parties to the transaction (buyer and seller) agree to the nullification" and that "Floor

⁸ NYSE Arca Options Rule 11.18 is now denominated NYSE Arca Rule 11.18.

⁹ NYSE Arca Options Rule 10.2 is now denominated NYSE Arca Rule 10.2.

Brokers should not request a trade to be nullified without specific instructions from the OTP Holder(s) they are representing on the trade.”

8. RBO-13-08 also states: “[t]he intent of the rule is not to permit trades to be cancelled due to intra-day price movement or other market activity related to the options class or the underlying security. In addition, trades that have been nullified should not be subsequently re-traded in order to circumvent any Exchange rules, including but not limited to, rules governing priority and trade allocation, trade reporting and broker best-ex obligations.”
9. RBO-13-08 further states: “OTP Holders demonstrating a pattern and practice of nullification and re-entry of trades will be reviewed from a regulatory perspective and violators will be subject to formal disciplinary action.”
10. During the Relevant Period, Casey did not undertake measures to ascertain whether it had mutual agreement of all parties to the facilitated cross trade (i.e., the agreement of its broker-dealer customer (the “Broker-Dealer Customer”) and the broker-dealer’s customer (the “End Customer”) before busting and/or adjusting those transactions. Casey relied upon the assumption that the Broker-Dealer Customer had sought agreement from the End Customer to bust/adjust prior to asking Casey to bust/adjust a trade. However, as a general matter, Casey did not ask the Broker-Dealer Customer if it had obtained the End Customer’s agreement, or even seek the reason for the bust, prior to December of 2017.
11. Prior to December 2017, Casey did not routinely record the Broker-Dealer Customer’s instruction to bust or adjust a trade. As a result, the Firm did not have any documentation for certain transactions to establish that the bust/adjust was requested, the reasons for the bust/adjust, or any evidence that there was mutual agreement of all parties to the trade.
12. Casey, often under the direction of Randall, had a pattern and practice of entering multiple releases and/or prints as “stop prices,” en route to executing a specific target price sought by its Broker-Dealer Customer. That is, in situations where Casey’s Broker-Dealer Customer’s target price did not currently fit the market, Casey, often under the direction of Randall, would incrementally execute and then bust trades to move along with prevailing price conditions, until the market reached the target price.
13. For these reasons, Casey and Randall violated NYSE Arca Options Rule 6.77A during the Relevant Period.

Violation of NYSE Arca Options Rule 6.46 by Casey and Randall

14. Under NYSE Arca Options Rule 6.46(a), “[a] Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.”

15. Casey's practice of walking the price towards a Broker-Dealer Customer's target price, described *supra*, resulted in harm to the End Customer in a number of instances.
16. By pursuing the price the Broker-Dealer Customer wanted, Casey prioritized its Broker-Dealer Customers' trading objective above the due diligence/best execution obligations owed to the End Customer. Indeed, Casey, under the direction of Randall, busted and adjusted several trades during the Relevant Period to prices that were worse for the End Customer (who was on the contra side of the facilitated cross). These busts and adjustments resulted in approximately \$125,000 of potential harm to the End Customers.¹⁰
17. Accordingly, Casey and Randall violated NYSE Arca Options Rule 6.46 during the Relevant Period.

Violation of 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) by Casey

18. 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).
19. 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. RBO-13-08 states that all OTP Holders must record and maintain an accurate account of all transactions subject to cancellation pursuant to Rule 6.77, and all OTP Holders who fail to record and maintain an accurate record of all trade nullifications are in violation of Rule 6.68 and Rule 9.17.
20. 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.
21. During the Relevant Period, Casey employees did not capture on a consistent basis the order details for orders received. As a result, Casey failed to consistently capture a complete record of all order details (including price and execution instructions) as received from the Broker-Dealer Customer for its orders.
22. Also missing from Casey's paper and electronic records were complete and accurate

¹⁰ This amount did not directly accrue to Casey or Randall.

records concerning the Broker-Dealer Customer's instructions to cancel or adjust orders. The Firm's records likewise did not document the reasons for any such adjustment, who directed the adjustment, and/or whether it obtained mutual agreement.

23. For these reasons, Casey 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.

Violation of NYSE Arca Options Rule 11.18 (Supervision) by Casey

24. 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) required firms to have written supervisory procedures ("WSPs") in place to ensure they followed such supervisory systems. In this case, during the Relevant Period, Casey failed to have supervisory systems or WSPs in place reasonably designed to ensure compliance with NYSE Arca Options Rules 6.77A, 6.46, 6.68, and 9.17, and NYSE Arca Rules 2.28 and 11.16.
25. During the Relevant Period, Casey had two different CCOs ("CCO A" and "CCO B") respectively. Neither of these individuals had any experience or training in compliance. CCO A was an IT employee who had no trading experience. CCO B, who took over in mid-2015, continued to have extensive phone clerk and floor broker responsibilities even while purportedly handling compliance issues for the Firm. Both of these CCOs demonstrated an insufficient understanding of the relevant NYSE Arca Rules and guidance in connection with the issues addressed in this matter. In fact, CCO B could not recall reviewing any NYSE Arca regulatory guidance, including RBO-13-08, concerning busts and adjusts.
26. Casey failed to have a supervisory system or WSPs reasonably designed to ensure compliance with NYSE Arca Options Rule 6.77A.
27. Casey failed to implement a system to ascertain whether the Firm had mutual agreement of the Broker-Dealer Customer and the End Customer prior to Casey busting and adjusting their trade, and failed to implement a system concerning the documentation of that agreement.
28. Casey's WSPs failed to address the prohibition on busts and adjusts that sought to take advantage of intra-day price movements or that violated trade-through or priority rules.
29. Casey failed to have a supervisory system reasonably designed to ensure compliance with NYSE Arca Options Rule 6.46. Specifically, Casey failed to implement a system to ascertain whether any trades violated the Firm's best execution obligations and, prior to December 2017, failed to provide any training to its employees about those obligations.

30. Casey 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, Casey failed to implement a system to ensure compliance with the Firm's books and records obligations. Casey failed to implement a system that consistently captured: (i) a complete record of all order details (including price and execution instructions) as received from the Broker-Dealer Customer for its orders; and (ii) complete and accurate records concerning the Broker-Dealer Customer's instructions to cancel or adjust orders, as well as the reasons for any such adjustment, who directed the adjustment, and/or whether mutual agreement had been obtained.
31. For these reasons, Casey violated NYSE Arca Options Rule 11.18 during the Relevant Period.

Violation of NYSE Arca Options Rule 10.2 (Regulatory Cooperation) by Casey

32. Under NYSE Arca Options Rule 10.2(d), no OTP Holder or OTP Firm may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange.
33. In this case, CCO A made inaccurate representations to FINRA regarding the individuals consulted in providing the Firm's regulatory response, when in fact CCO A did not consult with those individuals.
34. For these reasons, Casey impeded NYSE Arca's investigation and therefore violated NYSE Arca Options Rule 10.2(d).

Relevant Disciplinary History

35. On September 16, 2013, Casey consented to a censure, a \$260,000 fine, and disgorgement of \$24,000 for, among other things, numerous error account violations (under NYSE Arca Options Rules 6.46(g), 6.50, 11.16(a), 11.17(a) and (b)), as well as failure to use due diligence to execute orders at the best price available (NYSE Arca Options Rule 6.46(a)), failure to adhere to principles of good business practices (NYSE Arca Options Rule 11.1(b)), and related supervisory violations (NYSE Arca Options Rules 11.18(b) and (c)).
36. As part of that same settlement, Randall consented to a censure, a \$40,000 fine, and a five-week suspension for, among other things, numerous error account violations (under NYSE Arca Options Rules 6.46(g), 6.50), failure to use due diligence to execute orders at the best price available (NYSE Arca Options Rule 6.46(a)), and related supervisory violations (NYSE Arca Options Rules 11.18(b) and (c)).

ORDER

Casey Securities, LLC violated: (i) NYSE Arca Options Rule 6.77A by, failing to obtain customer approval for busting and adjusting trades and by adjusting trades to take advantage of intra-day price movement; (ii) NYSE Arca Options Rule 6.46, by failing to use due diligence to execute orders at the best prices available; (iii) NYSE Arca Options Rules 6.68 and 9.17 and NYSE Arca Rules 2.28 and 11.16, by failing to maintain and preserve accurate records of customer orders and accounts subject to cancellation pursuant to NYSE Arca Options Rule 6.77A; (iv) NYSE Arca Options Rule 11.18, by failing to establish and maintain adequate supervisory systems and written procedures that were reasonably designed to ensure compliance with NYSE Arca Options Rules 6.77A, 6.46, 6.68, and 9.17, and NYSE Arca Rules 2.28 and 11.16; and (v) NYSE Arca Options Rule 10.2, by impeding a regulatory investigation.

Daniel Randall violated: (i) NYSE Arca Options 6.77A, by failing to obtain customer approval for busting and adjusting trades and by adjusting trades to take advantage of intra-day price movement; and (ii) NYSE Arca Options Rule 6.46, by failing to use due diligence to execute orders at the best prices available.

SANCTIONS

Casey Securities LLC is censured and fined \$285,000.¹¹ The Firm shall also undertake to revise its supervisory system and WSPs to ensure they are reasonably designed to comply with NYSE Arca Rules 2.28, 6.46-O, 6.68-O, 6.77A-O, and 11.16.

Daniel Randall is censured, fined \$60,000, and suspended for seven weeks, including a two-week suspension in all capacities and a five-week suspension in all supervisory capacities. Randall shall serve such suspensions consecutively and complete the suspensions within 60 days of the date of this Decision.

These sanctions are effective immediately.


Richard E. Simpson
Hearing Officer

¹¹ The fine shall be paid according to the following schedule: (i) \$142,500 on the date this Decision is issued; (ii) \$47,500 thirty days thereafter; (iii) \$47,500 thirty days thereafter; and (iii) \$47,500 thirty days thereafter.