

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

RAYMOND JAMES & ASSOCIATES, INC.,

Respondent.

FINRA Proceeding No. 20160501987¹

May 8, 2018

Raymond James & Associates, Inc. violated: (i) NYSE Arca Rule 6.6, by failing to report and inaccurately reporting reportable options positions to the Large Options Position Report (LOPR); and (ii) NYSE Arca Equities Rule 11.18, by failing to establish a reasonable supervisory system, including written supervisory procedures and a separate system of follow-up and review, reasonably designed to ensure compliance with rules governing the reporting of reportable options positions to the LOPR, which resulted in numerous LOPR violations. Consent to censure, a \$200,000 fine, and an undertaking.

Appearances

For the Complainant: Elyse D. Kovar, Esq., Eric S. Brown, Esq., and Robert A. Marchman, Esq., FINRA Department of Enforcement.

For the Respondent: Paul M. Tyrell, Esq. and Timothy B. Nagy, Esq., Sidley Austin LLP.

DECISION

Raymond James & Associates, Inc. (“Raymond James” 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

¹ Includes Proceeding No. 20170540387.

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

Background and Jurisdiction

1. Raymond James became registered as an Options Trading Permit ("OTP") Holder with NYSE Arca, Inc. ("NYSE Arca") on June 5, 2013, and became registered with FINRA on August 21, 1964. These registrations remain in effect. The Firm does not have any relevant disciplinary history.
2. On behalf of NYSE Arca, the Department of Market Regulation staff ("staff") of the Financial Industry Regulatory Authority ("FINRA") conducted a review of Raymond James's compliance with NYSE Arca Rule 6.6 and the accuracy of the Firm's reporting of options positions to the Large Options Position Report ("LOPR") during the first quarters of 2016 and 2017, which led to a broader review by the staff dating back to June 2013.
3. In a letter dated October 31, 2017, which Raymond James received, FINRA, on behalf of NYSE Arca, notified the Firm that it was investigating whether the Firm violated NYSE Arca Rules 6.6 and 11.18 between June 2013 and the present.

Overview

4. In connection with Matter No. 20160501987, the staff conducted a review on behalf of NYSE Arca to determine the accuracy of Raymond James's reporting of options positions to the LOPR during the first quarter of 2016 and 2017. Through this review, the staff detected that the Firm had violations in connection with its reporting of options positions to the LOPR and related supervisory deficiencies during the period between June 2013 and January 2017 ("Review Period").
5. LOPR data is used extensively by NYSE Arca and other self-regulatory organizations to identify holders of large option positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations. The accuracy of LOPR data is essential for the analysis of potential violations, including insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.

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 American LLC, and FINRA.

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

Violations

6. NYSE Arca Rule 6.6(a) states: “In a manner and form as may be prescribed by the Exchange, each OTP Holder and OTP Firm must report the name, address, and social security or tax identification number of any customer who, acting alone or in concert with others, on the previous business day, maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contract dealt in on the Exchange. The Report must indicate for each class of option, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.”
7. During the Review Period, Raymond James failed to report positions to the LOPR in approximately 627,430 instances,⁴ and inaccurately reported positions to the LOPR in approximately 565,223 instances. The Firm’s LOPR reporting violations primarily resulted from: (i) its entry of an incorrect Effective Date⁵ when submitting certain options positions to the LOPR; and (ii) its failure to properly aggregate certain of its reportable options positions as acting in-concert.⁶
8. Specifically, as a result of entering an incorrect Effective Date, Raymond James: (i) failed to report positions in approximately 8,264 instances; (ii) under-reported positions in approximately 37,700 instances; (iii) over-reported positions in approximately 16,343 instances; (iv) reported positions in approximately 3,478 instances with an inaccurate quantity; and (v) reported positions in approximately 174,642 instances with an inaccurate covered quantity. As a result of failing to properly aggregate accounts as acting in-concert, the Firm: (i) failed to report positions in approximately 619,076 instances; (ii) under-reported positions in approximately 223,523 instances; (iii) over-reported positions in approximately 105,215 instances; and (iv) reported positions in approximately 4,322 instances with an inaccurate quantity.
9. Accordingly, Raymond James violated NYSE Arca Rule 6.6 during the Review Period.
10. NYSE Arca Rules 11.18(b) and (c) require an OTP Holder or OTP Firm to establish and maintain a system to supervise the operations of its business, including written supervisory procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations, and NYSE Arca Rules.

⁴ An “instance” is a single failure to report, or inaccurately report, a given options position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had been reported inaccurately.

⁵ The “Effective Date” is the date the LOPR record is established, modified, or deleted. The Effective Date must be supplied for each LOPR submission. The failure to report a position to the LOPR with the correct Effective Date gives the appearance that a position was established at an inaccurate date later in time and results in the position being unreported to the LOPR for typically one day.

⁶ As part of their LOPR obligations, firms must provide regulators with a list of all groups of options accounts that act in-concert or are under common control so that the positions held in those accounts can be properly aggregated to ensure compliance with applicable position and exercise limits.

11. During the Review Period, Raymond James failed to have a reasonable supervisory system with respect to the reporting of options positions, including a review for accuracy of LOPR submissions with respect to Effective Dates and accounts acting in concert. Additionally, until November 2015, the Firm also lacked any written supervisory procedures (“WSPs”) with respect to the proper reporting of options positions, including systems of follow-up and review, and thereafter, failed to have adequate WSPs until January 2017. Reasonable WSPs should, at a minimum, specify: (i) the identification of the individual(s) responsible for supervision; (ii) the supervisory steps and reviews to be taken by the appropriate supervisor; (iii) the frequency of such reviews; and (iv) how such reviews shall be documented.
12. Accordingly, Raymond James violated NYSE Arca Rule 11.18 during the Review Period.

Other Factors Considered

13. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction, NYSE Arca considered the following: (i) Raymond James’s provision of extraordinary cooperation with this investigation by retaining outside counsel and an outside auditing firm to conduct an extensive review of the Firm’s options reporting systems, practices, and procedures, and to report these findings to FINRA; and (ii) the efforts and enhancements made to the Firm’s LOPR reporting systems, and supervisory practices and procedures.

ORDER


Raymond James & Associates, Inc. violated: (i) NYSE Arca Rule 6.6, by failing to report and inaccurately reporting reportable options positions to the LOPR; and (ii) NYSE Arca Equities Rule 11.18, by failing to establish a reasonable supervisory system, including WSPs and a separate system of follow-up and review, reasonably designed to ensure compliance with rules governing the reporting of reportable options positions to the LOPR, which resulted in numerous LOPR violations.

SANCTIONS

Raymond James & Associates, Inc. is censured, fined \$200,000,⁷ and shall complete an undertaking to submit a written report confirming it has completed remediation of all the LOPR issues identified herein within 120 days of the date of this Decision.

These sanctions are effective immediately.

SO ORDERED.



Richard E. Simpson
Hearing Officer

⁷ Raymond James & Associates, Inc. agreed to pay a total fine of \$400,000, of which \$200,000 shall be paid to NYSE Arca, Inc., and the remaining amount paid to NYSE American LLC, pursuant to a separate settlement agreement.