



NYSE Arca WEEKLY BULLETIN

December 26, 2008 WB-08-52

The Bylaws and Rules of NYSE Arcasm Exchange ("Exchange"), in certain specific instances, require the Exchange to provide notice to all OTP Firms and OTP Holders (collectively "OTPs") and ETP Holders ("ETPs"). To satisfy this requirement, a copy of the *Weekly Bulletin*, including *Regulatory Bulletins*, is provided to all OTPs and ETPs on a weekly basis.

Pursuant to Exchange Rules, all OTPs and ETPs are reminded to promptly report business, home and mailing address changes, telephone number changes, and e-mail address changes to crs@nyx.com or Client Registration Services at (888) 689-7739, option 3.

NYSE Arca Equities

NEWLY APPROVED ETP HOLDERS*
(none)

NEWLY APPROVE MARKET MAKER/ETP HOLDER
(none)

TERMINATED ETP HOLDERS
Order Execution Services, LLC

Total ETP Holders	545
Total MM/ETP Holders	49

NYSE Arca Options.

NEWLY APPROVED OTP FIRMS AND HOLDERS*
(none)

TERMINATED OTP FIRMS AND HOLDERS:
12/23 - ORDER EXECUTION SERVICES, LLC – OTP Firm and Broker Dealer
12/24 - CIBC World Markets Corporation – OTP Firm and Broker Dealer

Total OTP Holders	106
Total MM/OTP Holders	36

* for current week (as of 8 a.m. today)

Total ETP & OTP Holders	92
Total ETP Only Holders	501
Total OTP Only Holders	15

For updated information regarding NYSE Arca Options plan for the OCC Symbology Initiative visit: www.nyse.com/optionssymbology

IMM ASSIGNMENTS

IMM assignment for QQQQ: J45I J45-CGRPA 12/29/08 to 01/02/09
IMM assignment for IWM: J20C A55-PRSQO 12/29/08 to 01/02/09
For more information visit:
http://www.nyse.com/pdfs/Issues_No_LMM.pdf

OTP POSTINGS

The following applicants have applied for OTP status at the Exchange and are being posted for a period of three business days, during which time interested OTPs may submit written comments with respect to the qualifications of the applicants. Admission of applicants will become effective after applicants have been cleared and approved for OTP status pursuant to the policies of the Exchange.

Janas, Matthew – Market Maker Authorized Trader for Optiver US, LLC

REPORTS DUE TO THE EXCHANGE

Focus Report Due Dates – SEC Rules 17a-5(a) & 17a-10

FOCUS Reports must be submitted electronically and received by the NYSE Arca Financial & Operational Compliance Department on or before the following due dates:

Monthly FOCUS Reports are required from all NYSE Arca Market Makers and NYSE Arca Lead Market Makers:

October 2008 Monthly FOCUS Report
Due: Tuesday, November 25, 2008

Quarterly FOCUS Reports are required from all Clearing OTPs and DEA Broker-Dealers subject to the SEC Net Capital Rule:

4th Quarter 2008 FOCUS Report
Due: Tuesday, January 27, 2009

Annual Audited Financial Statements – SEC Rule 17a-5(d)

OTPs and ETPs are reminded to file their Annual Reports with the NYSE Arca Financial & Operational Compliance Department by the following due dates:

OTPs and ETPs with FYE September 30, 2008 ... December 1, 2008

OTPs and ETPs with FYE October 31, 2008 December 30, 2008

OTPs and ETPs are reminded to submit Annual Audited Financial Statements, Material Change Forms, Financial Arrangement Disclosures, and SIPC payments to the following address:

NYSE Euronext
Attn: [Firm's NYSE Coordinator]
20 Broad Street, 21st Floor
New York, NY 10005
Fax: (212) 656-5748

REGULATORY BULLETINS/NOTICES IN THIS ISSUE

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**REGULATORY
INFORMATION
BULLETIN**

**RB-08-386
December 22, 2008**

**TO: All DEA OTP Firms and OTP Holders
All DEA ETP Holders**

FROM: Regulation

SUBJECT: 2008 Common Examination Findings

IMPROVING EXAMINATION RESULTS

NYSE Arca, Inc. and NYSE Arca Equities, Inc. (collectively "NYSE Arca") issues this publication to assist member firms in their compliance efforts. This regulatory bulletin highlights frequently found deficiencies relating to NYSE Arca's examination program. Many of the findings of Examiners have been referred to the NYSE Regulation Division of Enforcement and in a number of instances have resulted in disciplinary action.

While each firm must establish its own compliance programs and supervisory systems, NYSE Arca shares its frequently found deficiencies to help firms focus their efforts on pertinent, timely issues and to prepare effectively for regulatory examinations. This document also offers guidance on how to avoid common deficiencies. The topics addressed below are not exhaustive, nor are the topics necessarily provided in order of priority. In this regard, NYSE Arca will examine other relevant areas in addition to those highlighted in this communication.

FREQUENT DEFICIENCIES

Anti-Money Laundering (NYSE Arca Equities Rule 6.17, NYSE Arca Rule 11.19):

The AML requirements for broker-dealers continue to be an examination focus. It is important to note that the AML requirements apply to all NYSE Arca firms, regardless of size or business model, even firms that do not hold customer funds.

Examiners have found a variety of deficiencies regarding the firms' AML Programs. For example, many firms have failed to ensure that a member of its senior management staff has approved the AML Program, including any revisions, in writing. In addition, examiners continue to find a variety of deficiencies related to AML training, including failures to conduct adequate and/or timely training, and failures to document the dates and participants who attended such training.

Electronic Storage of Books and Records (Securities Exchange Act of 1934 (SEA) Rule 17 a-4(f)(2), NYSE Arca Rule 11.16 and NYSE Arca Equities Rules 2.24):

Examiners continue to find that firms who choose to utilize electronic storage to retain books and records, which are required to be maintained pursuant to SEA Rules 17a-3 and 17a-4, have failed to notify the Exchange prior to employing any such electronic storage media as required by SEA Rule 17a-4(f)(2)(i), and have failed to ensure that a third-party undertaking is filed with the Exchange as required by SEA Rule 17a-4(f)(2)(vii).

Retention of E-Mails and Instant Messages:

Examiners continue to find instances in which firms do not preserve their E-Mail and/or Instant Messages ("IM") in non-rewriteable, non-erasable formats. For example, examiners have found that some firms' Associated Persons ("AP's") have the ability to access IM providers or alternate E-mail providers through proprietary computer systems that enable them to produce business communications that may not be retained by the firms. Although a firm may not allow APs to utilize such IM or E-mail, it must be able to demonstrate that there is a supervisory review in place to detect the unauthorized use of such IM or E-mail.

Retention and Supervision of Fax Communications (SEA Rule 17a-f(b)(4), NYSE Arca Rule 11.16 and NYSE Arca Equities Rules 2.24):

Examiners have found that firms who utilize fax communications as a means of sending and receiving business-related communications often do not have written or practiced procedures to ensure that business-related fax communications are supervised and retained.

Procedures to Prevent the Misuse of Material, Non-Public Information (NYSE Arca Rule 11.3 and NYSE Arca Equities Rule 6.3):

Policy and Procedure Attestations

Examiners continue to find that firms fail to ensure that each employee or AP is furnished with the most current version of their policies and procedures on insider trading. Each AP is required to sign an attestation that states that he/she will adhere to and acknowledge in writing an understanding of such policies and procedures within **ten business days** of the employee's start date.

Annual Compliance Acknowledgment Form

In addition, examiners have found that firms have failed to complete the Annual Compliance Acknowledgment Forms in a complete and accurate manner. Specifically, many firms have failed to disclose a complete and accurate list of all accounts in which an AP has a direct or indirect financial interest or makes investment decisions ("Accounts").

Review of Accounts

Examiners continue to find that firms fail to adequately review and/or maintain evidence of their reviews of APs Accounts. For example:

- Examiners have found instances in which firms have failed to require APs to disclose all Accounts upon hire and, as a result, did not begin timely reviews of such Accounts.
- Many firms failed to obtain and review activity in all Accounts disclosed by their APs on at least a quarterly basis.

- Many firms failed to adequately evidence their reviews of such Accounts. For example, many firms did not maintain ongoing evidence of the supervisor reviewing such Accounts as well as the date such review was performed.

Disclosure of Corporate Insiders

Examiners have found that firms have not required their APs to disclose whether or not they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded.

Supervision (NYSE Arca Rule 11.18, NYSE Arca Equities Rule 6.18):

WSP Attestations:

Examiners have found that firms fail to ensure that APs attest in writing that they have received, read, and would comply with the firm's Written Supervisory Procedures ("WSPs"), including any revisions to the procedures.

E-Mail and IM Supervision

Many firms have failed to supervise and maintain evidence of the supervision of E-Mail and IM related to their businesses as such.

Background Checks

Examiners have continued to find that firms failed to conduct background checks (including the verification of prior employment) for all new employees and registered APs prior to their start dates. In addition, for those firms that have conducted background checks, examiners have found that some have failed to maintain adequate documentation of such background checks, including verifying the name, contact information, and date of any persons contacted for verification.

Approval of Financial Documents

Examiners commonly find that firms do not maintain documentation to evidence that the Financial Operations/Principal has either prepared or reviewed their bank

reconciliations, general ledgers, and large adjusting journal entries on at least a monthly basis.

Approval of Outside Business Activities

Examiners have found that registered employees have been engaged in another business or have been employed by another organization in any capacity or have received outside compensation without the prior written and continuing approval of his or her firm. Specifically, firms have failed to ensure that any such outside business activities are disclosed upon hire and on an ongoing basis to ensure that the proper written approval may be given to such activities.

Compliance with the SEC July 11, 2003 No-Action Letter:

Examiners have routinely found that firms that share expenses with another entity have failed to comply with the SEC July 11, 2003, No-Action Letter, entitled "Recording Certain Broker-Dealer Expenses and Liabilities" (the "Letter"). For example, many firms' that share expenses with other entities do not have a written expense-sharing agreement between themselves and the third-parties. In those instances in which a firm has an expense-sharing agreement in place, examiners have found that the agreements do not adequately address the requirements of the Letter. For example, the expense-sharing agreements do not state the specific expenses being shared by the entities, which party is obligated to pay each expense, and whether the firms have any obligation, direct or indirect, to reimburse or otherwise compensate any party for paying the expense, when the firm records the expense in an amount that is determined according to an allocation made by the third party and the method of allocation.

Form U-4 Retention:

Examiners have found that firms fail to maintain a manually signed copy of Forms U-4.

Submission of Form U-5 (NYSE Arca Rule 2.23(i) and NYSE Arca Equities Rule 2.21(i)):

Examiners have found that firms often fail to file Forms U-5 for terminated persons within **ten business days** of the date of their terminations.

Form BD Updates (NYSE Arca Rule 2.17(b) and NYSE Arca Equities Rule 2.16(b)):

Examiners continue to find that firms fail to update their Forms BD within ten business days of any change requiring an amendment.

Registration (NYSE Arca Rule 2.23 and NYSE Arca Equities Rule 2.21):

Examiners have found instances in which firms have allowed remote traders to commence trading prior to the date that they were approved by NYSE Arca to trade.