
**NYSE Arca Equities Disciplinary Action
Equity Trading Permit Holder Disciplined for Inadequate
Surveillance and Supervision
Goldman Sachs Execution & Clearing, L.P.
06-AE-16
13 Oct 2007**

Summary

Case Note

Violated NYSE Arca Equities Rule 6.18(a) by failing to adequately supervise its associated persons and business operations in a manner reasonably designed to assure their compliance with NYSE Arca Equities Rule 7.38(c)(3), regarding failure to aggregate odd lot orders. Consent to censure and \$105,000 fine.

Case Summary

Goldman Sachs Execution & Clearing, L.P. ("GSEC"), an Equity Trading Permit Holder, consented without admitting or denying guilt to findings of violations of inadequate surveillance and supervision.

- During the approximate time period between and including July 20, 2004, and June 19, 2005, GSEC itself did not maintain surveillance procedures to prevent or detect the routing and execution of potentially violative odd lot customer orders that were being sent to NYSE Arca Equities, even though GSEC did have surveillance procedures in place to monitor the routing and execution of customer odd lot orders that were being sent to other exchanges during this same period.
- GSEC permitted a customer of a foreign affiliate broker-dealer of GSEC to directly access NYSE Arca by electronically sending orders through GSEC's electronic order entry and routing system, which system in turn routed these orders to NYSE Arca Equities for execution.
- On or about October 22, 2004, between 2:14:54 and 2:16:36 PM E.S.T., an overseas customer of GSEC's foreign affiliate broker-dealer ("the Foreign Trader") used GSEC's electronic order entry and routing system to route and execute 82 odd lot orders of 50 shares apiece in Telephone & Data Systems ("TDS") stock on NYSE Arca Equities, resulting in the Foreign Trader purchasing a total of 4,100 TDS shares in less than 2 minutes through orders that were not aggregated into round lots as required by Rule 7.38 (c) (3).
- GSEC failed to detect that the Foreign Trader entered the odd lot orders at issue into GSEC's electronic order entry and routing system and that these orders received execution on NYSE Arca Equities. In addition, GSEC failed to learn at the time of the orders or within a reasonable time period thereafter any of the following: a) the identity of the Foreign Trader; or b) the reason(s) why the Foreign Trader entered as odd lots the orders described above.

NYSE Arca Equities imposed a penalty of a censure and \$105,000 fine. GSEC consented to the penalty.

NYSE ARCA EQUITIES, INC.
100 S. Wacker Drive
Chicago, IL 60606

NYSE ARCA EQUITIES, INC.,)	
Complainant,)	
)	
v.)	Equities Enforcement Case No. 06-AE-16
)	
Goldman Sachs Execution & Clearing, L.P.)	ESD Investigation # 33778
30 Hudson Street)	
Jersey City, NJ 07302-4699)	Decision
)	
Respondent.)	
)	
)	

This formal disciplinary action was instituted pursuant to Rule 10.4 by the Regulatory Staff of NYSE Arca Equities, Inc. (the "Exchange" or "NYSE Arca Equities") as a result of a determination by the Chief Regulatory Officer of the Exchange and his delegee(s) that there is probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred.

In order to resolve this matter, Respondent Goldman Sachs Execution & Clearing, L.P. ("GSEC" or "Respondent") has submitted an Offer of Settlement and Consent ("Offer of Settlement" or "Offer"), executed by the Respondent on October 15th, 2007. Such Offer was submitted 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 finding referred to therein. With due regard to the stipulated facts and violations and the proposed sanction contained therein, the Office of the General Counsel believes it is appropriate to accept the Settlement with respect to the File Number set forth above. This Settlement is attached to and made a part of this Decision.

I. STIPULATED FINDINGS OF FACTS AND VIOLATIONS

A. Jurisdiction and Applicable Rules

1. During all periods noted herein, Respondent GSEC was an Equity Trading Permit ("ETP") Holder of NYSE Arca Equities¹ registered to transact business on the Exchange in accordance with Exchange rules.

¹ Prior to the closing of the merger between the New York Stock Exchange and Archipelago Holdings, LLC on March 8, 2006, the exchange now designated as NYSE Arca Equities was known as the Archipelago Exchange ("ArcaEx"), and was governed by the rules of PCX Equities, Inc. ("PCXE"). The applicable rules were not changed by the merger, and for convenient reference, this document consistently

2. During all periods noted herein, NYSE Arca Equities Rules 6.18(a) and 7.38(c) were each in full force and effect.
3. NYSE Arca Equities Rule 7.38(c)(3) states that it is a violation of just and equitable principles of trade for ETP Holders to fail to aggregate odd lot orders² into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest.
4. NYSE Arca Equities Rule 6.18(a) prohibits all ETP Holders from engaging in conduct in violation of NYSE Arca Equities Rules, and requires all ETP Holders to supervise persons associated with them to assure compliance with NYSE Arca Equities Rules.
5. During the periods noted herein, GSEC permitted a customer of a foreign affiliate broker-dealer of GSEC to directly access NYSE Arca by electronically sending orders through GSEC's electronic order entry and routing system, which system in turn routed these orders to NYSE Arca Equities for execution.

B. Inadequate Surveillance and Supervision

6. On or about July 20, 2004, GSEC posted a Compliance Note on the website for its electronic order entry and routing system, which specifically reminded system subscribers about the odd lot prohibitions contained in the rules of the New York Stock Exchange, the American Stock Exchange, and NYSE Arca Equities. However, during the approximate time period between and including July 20, 2004 and June 19, 2005, GSEC itself did not maintain surveillance procedures to prevent or detect the routing and execution of potentially violative odd lot customer orders that were being sent to NYSE Arca Equities, even though GSEC did have surveillance procedures in place to monitor the routing and execution of customer odd lot orders that were being sent to other exchanges during this same period.
7. On or about October 22, 2004, between 2:14:54 and 2:16:36 PM E.S.T., an overseas customer of GSEC's foreign affiliate broker-dealer ("the Foreign Trader") used GSEC's electronic order entry and routing system to route and execute 82 odd lot orders of 50 shares apiece in Telephone & Data Systems ("TDS") stock on NYSE Arca Equities, resulting in the Foreign Trader purchasing a total of 4,100 TDS shares in less than 2 minutes through orders that were not aggregated into round lots as required by Rule 7.38(c)(3).
8. GSEC failed to detect that the Foreign Trader entered the odd lot orders described in Paragraph 7 into GSEC's electronic order entry and routing system and that these orders received execution on NYSE Arca Equities. In addition, GSEC

refers to the former ArcaEx as "NYSE Arca Equities" and the governing rules as "NYSE Arca Equities Rules," even when referring to pre-merger periods.

² An odd lot order is an order to buy or sell up to 99 shares. See NYSE Arca Equities Rule 7.31(g)(2)B).

failed to learn at the time of the orders or within a reasonable time period thereafter any of the following:

- (a) the identity of the Foreign Trader; or
 - (b) the reason(s) why the Foreign Trader entered as odd lots the orders described in Paragraph 7.
9. Because GSEC was not then surveilling for the odd lot orders being executed on NYSE Arca Equities as described in paragraph 6 above, GSEC was not aware of the activity described in Paragraph 7 above until Exchange investigators first brought it to the attention of GSEC on or about November 9, 2004.
10. After Exchange investigators contacted GSEC in November 2004, GSEC attempted to expand its odd lot surveillance to include odd lot activity on NYSE Arca Equities. However, due to the large volume of transactions GSEC was executing on NYSE Arca Equities and technological constraints pertaining to GSEC's then-current surveillance system, GSEC did not expand its odd lot surveillance to include orders being executed on NYSE Arca Equities until GSEC implemented a new odd-lot surveillance system on or about June 20, 2005.
11. Because the Foreign Trader was a customer of GSEC's foreign affiliate broker-dealer, GSEC's responses to the Exchange were not sufficiently timely as they related to its initial identification of the Foreign Trader and the reason(s) why the Foreign Trader was entering as odd lots the orders described in Paragraph 7 above.

C. Violations

12. The acts, practices and conduct described in each of Paragraphs 6 through 10 above constitute violations of NYSE Arca Equities Rule 6.18(a) by GSEC in that GSEC failed to adequately supervise its associated persons and business operations in a manner reasonably designed to assure their compliance with NYSE Arca Equities Rule 7.38(c)(3). Specifically,
- a) GSEC failed to have in place, prior to on or about June 20, 2005, procedures to surveil for and review odd lot trades executed on NYSE Arca Equities to detect and prevent potential violations of NYSE Arca Equities Rule 7.38(c)(3); and
 - b) GSEC failed to detect that the Foreign Trader, on October 22, 2004, had used GSEC's electronic order entry and routing system to execute 82 odd lot orders of 50 shares apiece within a period of less than 2 minutes on NYSE Arca Equities, in potential violation of NYSE Arca Equities Rule 7.38(c)(3).

II. SANCTIONS

Respondent GSEC is hereby censured by the Exchange and fined \$105,000.00.

The fine shall be collected from Respondent within 30 days of the date of this decision, in accordance with the Exchange's standard billing and accounting practices.

}

Dated this 13th day of November 2007

On behalf of the Office of the General Counsel,
NYSE Arca Equities, Inc.

Signature: 

Print Name: Andrew Stevens

Title: Assistant General Counsel