

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 07-44

RBC DAIN RAUSCHER, INC.

MEMBER ORGANIZATION

March 23, 2007

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Violated NYSE Rule 445 requiring member organizations to establish an adequate Anti-Money Laundering compliance program, by failing to establish written procedures regarding filing of Suspicious Activity Reports, to conduct adequate review for structuring, to have an adequate monitoring system to review and document follow-up on exceptions found by Firm's Anti-Money Laundering Department; violated NYSE Rule 351(a)(8) by failing to promptly report to NYSE settlement of customer complaints – Consent to censure and \$90,000 fine.

Appearances:

For the Division of Enforcement

Joy A. Weber, Esq.

Penny Rosenberg, Esq.

Jennifer Mennella, Esq.

For Respondent

John R. Hewitt, Esq.

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE” or the “Exchange”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and RBC Dain Rauscher, Inc. (“Respondent,” “RBC,” or the “Firm”), an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that it:

- I. Violated NYSE Rule 445 requiring member organizations to establish an adequate Anti-Money Laundering compliance program by failing to:
 - a. establish written procedures regarding the filing of Suspicious Activity Reports;
 - b. conduct an adequate review for structuring; and
 - c. have an adequate monitoring system to review and document follow-up on exceptions found by the Firm’s Anti-Money Laundering Department.

- II. Violated NYSE Rule 351(a)(8) in that the Firm failed in certain instances to promptly report to the Exchange the settlement of customer complaints.

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 Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. RBC was established in 2000 when Dain Rauscher Incorporated, a member organization of the NYSE since April 8, 1993, was acquired by the Royal Bank of Canada. In March 2002, the Firm merged with Sutro & Co. Incorporated and Tucker Anthony Incorporated. The Firm engages in numerous businesses including retail securities brokerage. Its home office is in Minneapolis, Minnesota.
2. An examination conducted by the NYSE's Regulation's Division of Member Firm Regulation ("MFR") in June 2003 determined that the Firm was not in complete compliance with certain federal securities laws and regulations and NYSE Rules.
3. By letter dated January 26, 2004, Enforcement notified RBC that it was investigating the matters set forth in a report of an examination of RBC conducted by MFR dated September 26, 2003.
4. Enforcement subsequently notified the Firm that it was reviewing the Firm's late filings of "Submission of Required Information Pertaining to Members, Member Organizations, Allied Members, Registered and Non-Registered Employees and Approved Persons" ("Forms RE-3") reporting settlements of customer complaints. The Forms RE-3's reported settlements of customer complaints several months after the events.

Overview

5. During the period January 2003 to June 2003, RBC was not in complete compliance with requirements for establishment of an anti-money laundering program. Additionally, the Firm failed to make timely reports to the Exchange of its settlement of certain customer complaints.

Failure to Establish an Adequate Anti-Money Laundering Compliance Program

6. Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-8 thereunder require, in relevant part, that every broker-dealer subject to the requirements of the Bank Secrecy Act, shall comply with the requisite reporting, record keeping and retention requirements.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 20 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer.

7. NYSE Rule 445, effective April 2002, requires, among other things, member organizations to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.* (the “BSA”) and the implementing regulations promulgated thereunder by the Department of the Treasury.
8. Bank Secrecy Act regulations¹ impose an obligation on a broker or dealer in securities to report any transaction that involves or aggregates to at least \$5,000 that “the broker-dealer knows, suspects or has reason to suspect:” (i) may derive from illegal activity; (ii) is designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (“structuring”); (iii) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (iv) involves the use of the broker-dealer to facilitate criminal activity.²
9. A broker or dealer in securities must file a suspicious activity report (“SAR”) no later than 30 calendar days after the detection of a reportable transaction.³
10. The Firm’s anti-money laundering program was deficient in that it did not include written procedures detailing the process utilized and the time requirements for filing SARs. Additionally, the procedures did not identify the process for determining when an item reviewed by the organization became suspicious so as to warrant a SAR filing.
11. The Firm did not establish an adequate review for structuring⁴. The Anti-Money Laundering Department (“AML Department”) of the Firm did not conduct any reviews for cash equivalent deposits and the Firm’s system did not have the ability to adequately identify cash equivalent deposits out of other types of deposits, such as checks, in order to facilitate a structuring review
12. The Firm did not have an adequate system for follow-up and review for the anti-money laundering exceptions it accumulated. After its AML Department flagged accounts that required additional follow-up, there was inadequate record keeping to

¹ 31 U.S.C. §5318(g) and 31 CFR § 103.19.

² 31 CFR §103.19(a)(2).

³ 31 CFR §103.19(b)(3).

⁴ The Bank Secrecy Act defines structuring as “a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, others persons, conducts or attempts to conduct one or more transactions in currency in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the [Currency Transaction Report (CTR) filing requirements].” “In any manner” includes, but it is not limited to, breaking down a single currency sum exceeding \$10,000 into smaller amounts that may be conducted as a series of transactions at or less than \$10,000. The transactions need not exceed the \$10,000 CTR filing threshold at any one bank on any single day to constitute structuring.

determine the status of the follow-up review.

13. As a result of the aforementioned failures, the Firm was unable to accurately track, monitor and timely report potential suspicious activity in its accounts.

Failure to Promptly Report the Settlement of Customer Complaints

14. NYSE Rule 351(a)(8) requires each member organization to promptly⁵ report to the NYSE whenever such member or member organization, or any member, allied member or registered or non-registered employee associated with such member or member organization is the subject of any claim for damages by a customer, broker or dealer which is settled for an amount exceeding \$15,000. However, when the claim for damages is against a member organization, then the reporting to the Exchange shall be required only when such claim is settled for an amount exceeding \$25,000.
15. On or about December 2, 2004 the Firm settled a customer complaint with NLD Revocable Trust, SD, the RD Trust and KD for \$65,000. The Firm did not report this settlement until November 29, 2005, almost one year later.
16. On or about April 21, 2005 the Firm settled a customer complaint with JS and SS for \$199,000.00. Although the settlement was reached in April 2005, the Firm did not report the settlement until November 29, 2005, approximately six months later.
17. The delayed reporting of the two settlements described above did not comply with the “promptly” reporting requirement of NYSE Rule 351(a)(8).

Other Factors

18. As a result of the findings, the Firm has made improvements to both its anti-money laundering program and its policies and procedures regarding the reporting of specified events. The Firm adopted appropriate written procedures requiring that a SAR be filed no later than 30 calendar days after the initial determination that a transactional event constitutes the basis for filing a SAR. The Firm implemented a report to survey for structuring in August 2003 and is currently enhancing its capabilities to better identify cash equivalents. Additionally, the Firm has installed a case management database to record the status of items or accounts selected for review of potentially suspicious activity.
19. The Firm has implemented supervisory procedures to ensure Form RE-3 reportable events are identified and filed in a timely manner.
20. The Firm has been cooperative in Enforcement’s investigation.

⁵ NYSE Information Memo 90-17, dated April 30, 1990 and distributed to all member organizations defined “prompt” filing as occurring within 30 days of the reportable event.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent guilty as set forth above.

PENALTY

In view of the above findings, the Hearing Officer, imposed the penalty consented to by Respondent of a censure and a \$90,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer