

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2020-05-00105**

TO: NYSE American LLC

RE: Merrill Lynch Professional Clearing Corp., Respondent
CRD No. 16139

From December 23, 2014 to September 5, 2018 (the “Review Period”), Merrill Lynch Professional Clearing Corp. violated NYSE American Rule 906 (Reporting of Options Positions) by failing to accurately report position quantities to the Large Option Position Reporting system in an estimated 13,198 instances. Merrill Lynch Professional Clearing Corp. consents to a censure and a \$75,000 fine.

* * *

Pursuant to Rule 9216 of the NYSE American LLC¹ (“NYSE American” or the “Exchange”) Code of Procedure, Merrill Lynch Professional Clearing Corp. (“Merrill Pro” or the “firm”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE American will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NYSE American:

BACKGROUND

The firm has been a member of NYSE American and FINRA since April 1985, and its registrations remain in effect. The firm, which has approximately 109 registered representatives in three branch offices, provides services to clients including prime brokerage, and clearing and settlement services to broker-dealers.

SUMMARY

1. The Financial Industry Regulatory Authority’s (“FINRA”) Options Regulation staff (the “Staff”) within the Department of Market Regulation, on behalf of

¹ Effective July 24, 2017, NYSE MKT LLC was renamed to NYSE American LLC. Thus, while certain of the conduct referred to herein occurred prior to July 24, 2017, and thus the violations were of NYSE MKT rules, for purposes of this document all the violations cited herein will be referred to as “NYSE American Rules.”

NYSE American, conducted a review to determine the accuracy of the firm's reporting of reportable options positions to the Large Option Position Reporting system ("LOPR") during the period between October 1, 2017 and December 31, 2017. Thereafter, Staff extended the period of review to include the time between December 23, 2014 and September 5, 2018 (the "Review Period").

2. During the Review Period, the firm inaccurately reported certain of its listed options positions to the LOPR in violation of NYSE American Rule 906.

FACTS AND VIOLATIVE CONDUCT

3. NYSE American Rule 906, Reporting of Options Positions, states, in relevant part, that "[e]ach member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer, director, trustee or employee of such member organization, and each customer account, which has established an aggregate position (whether long or short) of: 200 or more option contracts if the underlying security is a stock or Exchange-Traded Fund Share...."
4. During the Review Period, there were approximately 13,198 instances in which there were inconsistencies between the short positions held in the firm's accounts that required reporting to the Large Option Position Reporting system ("LOPR") and the short positions that the firm had actually reported to LOPR.
5. LOPR data is used extensively by self-regulatory organizations to identify holders of large options positions who may be attempting to manipulate the market or otherwise violate securities rules and regulations. Thus, the accuracy of LOPR data is essential for this analysis.
6. In these instances, the firm had inaccurately reported its reportable options positions to LOPR because a proprietary system flaw caused the firm to omit the short contract quantities from being reported to LOPR in firm accounts that held short straddles (the combination of short puts and short calls with the same strike price and expiration). The firm corrected this flaw on September 7, 2018.
7. As a result of the firm's failure to report its reportable short straddle positions to LOPR during the Review Period, the firm violated NYSE American Rule 906.

B. The firm also consents to the imposition of the following sanctions:

1. **A censure; and**
2. **A fine of \$75,000.**

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter. If the firm fails to make any payments as required in connection with this AWC on a timely basis, the firm agrees that any amounts owed to it by the Exchange or any of its registered U.S. Securities exchange affiliates may be used to satisfy any payments owed by the firm pursuant to this AWC.

The firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the firm pays pursuant to this AWC, regardless of the use of the fine amounts. The firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the NYSE American's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC") and Committee for Review ("CFR"); any Director, DAC member or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and

conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the Chief Regulatory Officer of NYSE American, pursuant to NYSE American Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B).
 - 2. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NYSE American, or any other regulator against the firm;
 - 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 - 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 - 5. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE American is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic

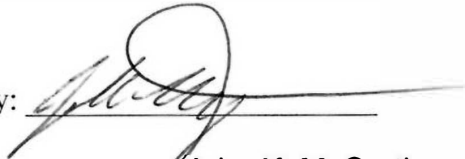
transmission shall be deemed to have the same legal effect as delivery of an original signed copy.


- E. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NYSE American, nor does it reflect the views of NYSE Regulation or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

November 16, 2020
Date

Merrill Lynch Professional Clearing Corp.
Respondent

By: 
Name: John K. McCarthy
Executive Vice President
Title: _____

Reviewed by:

Counsel for Respondent
Noreen Kelly
McGuireWoods LLP
1251 Avenue of the Americas
20th Floor
New York, NY 10020-1104

Accepted by NYSE Regulation:

Date

Mark S. Silver
Senior Enforcement Counsel
NYSE Regulation

Signed on behalf of NYSE American LLC, by
delegated authority from its Chief Regulatory
Officer

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Date

Merrill Lynch Professional Clearing Corp.
Respondent

By: _____

Name: _____

Title: _____

Reviewed by:

Counsel for Respondent
Noreen Kelly
McGuireWoods LLP
1251 Avenue of the Americas
20th Floor
New York, NY 10020-1104

Accepted by NYSE Regulation:



11/17/20
Date

Mark S. Silver
Senior Enforcement Counsel
NYSE Regulation

Signed on behalf of NYSE American LLC, by
delegated authority from its Chief Regulatory
Officer