

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019-12-00043**

TO: NYSE AMERICAN LLC

RE: Barclays Capital Inc., Respondent
CRD No. 19714

On August 7, 2019, Barclays Capital Inc. violated: (i) NYSE American Rule 995NY(c) by effecting equity transactions in the securities underlying the option after gaining knowledge of undisclosed terms and conditions of an options order; and (ii) NYSE American Rule 320(e) by failing to establish and maintain supervisory systems reasonably designed to ensure compliance with Rule 995NY(c). Consent to a censure and a \$55,000 fine.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”) Code of Procedure, Barclays Capital Inc. (“Barclays” 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. Barclays 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 AND JURISDICTION

1. Barclays became registered as an American Trading Permit (“ATP”) Holder with NYSE American in September 2008. Its registration remains in effect. Barclays is headquartered in New York, NY. Among other services, the Firm’s business includes options trading, proprietary trading, and market making.

PROCEDURAL HISTORY

2. This matter arises from a referral to NYSE Regulation by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. (“FINRA”).

VIOLATIONS

Violations of NYSE American Rule 995NY(c) (Anticipatory Hedging)

3. NYSE American Rule 995NY(c) provides the following:

It will be considered conduct inconsistent with just and equitable principles of trade for any ATP Holder or person associated with an ATP Holder, who has knowledge of all material terms and conditions of an originating order, a solicited order, or a facilitation order, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option on the underlying securities of any option that is the subject of the order, or an order to buy or sell the security underlying any option that is the subject of the order, or any order to buy or sell any related instrument until either: (1) All the terms and conditions of the originating order and any changes in the terms or conditions of the order of which the ATP Holder or person associated with the ATP Holder has knowledge are disclosed to the trading crowd, or (2) The trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

4. When an ATP Holder engages in improper anticipatory hedging or otherwise uses undisclosed information about an imminent option transaction to trade the relevant option(s) or a related instrument (including the underlying security on which the options are based), it can potentially alter the market for either or both the subject option(s) or the underlying security.
5. As a result, the party submitting the options order could receive an inferior price and other market participants could be disadvantaged by changing their trading activity based on the price movement arising from the improper hedging activity.
6. In addition, NYSE American Regulatory Bulletin RBO-AMEX-14-01 (“Anticipatory Hedging and Frontrunning of Floor Orders,” dated Feb. 14, 2014), states that:

Rule 995NY(c) requires ...ATP Holders that send orders to the Floor for execution should have procedures whereby they can reasonably assure themselves that that [sic] an order has been systematized¹ and represented before they enter another order in the same or a related instrument for hedging or other purposes, based on the knowledge of the yet to be represented order. ATP Holders are cautioned that simply relying upon the passage of time from when an order is transmitted to the Floor, to make an assumption that the order has

¹ Systematization refers to a Floor broker’s entry of an order into an electronic format.

actually been represented in the trading crowd, would not be considered an acceptable procedure.

7. Thus, as RBO-AMEX-14-01 further states:

An ATP Holder may be deemed to have violated NYSE [American] Rule 995NY(c) if the ATP Holder, having knowledge of all material terms and conditions of an order, the execution of which is imminent, enters an order to buy or sell an option on a security underlying any option that is the subject of the order, or an order to buy or sell the security underlying any option that is the subject of the order, or any order to buy or sell any related instrument, prior to the systemization and representation of such order.

8. Here, on August 7, 2019 at 1:57:42, a trader on Barclays' Flow Derivatives Trading Desk was solicited to participate on a three-legged spread order to sell 10,000 puts and buy 10,000 call stupids² in Security 1 where the soliciting broker's customer would "collect 1c." In response, the Barclays trader showed a -\$0.02 bid, to which the broker responded that they were \$0.03 apart on the order.
9. At 2:16:38, the broker informed the Barclays trader that his customer was starting to execute a portion of his Security 1 options order electronically: "He's getting done small on screens... tiny." Eight seconds later, at 2:16:46, the Barclays trader created and began executing an order to buy 50,000 shares of Security 1 stock (which was filled at 2:17:02).
10. At 2:16:56, the Barclays trader messaged the broker to increase his bid on the customer options order from \$0.02 credit bid to an even money (\$0.00) bid. At 2:17:10, the Barclays trader created and began executing an order to buy an additional 50,000 shares of Security 1 stock (which was filled at 2:17:38).
11. At 2:17:31, the broker agreed to the Barclays trader's bid, and seventeen seconds later, at 2:17:48, the Barclays trader created and began executing an order to buy an additional 50,000 shares of Security 1 stock (which was filled at 2:18:28).
12. The soliciting broker gave the options order to a floor broker to be executed and crossed on NYSE American. The order was systematized at 2:19:00. At 2:19:29, the broker informed the Barclays trader, "you got 90%," and the order was released at 2:19:49 pm.
13. The Barclays trader ultimately purchased 150,000 shares of Security 1 equities between 2:16:46 and 2:18:28. Because the Barclays trader began purchasing Security 1 equities after gaining knowledge of the material terms and conditions of the originating options order, the execution of which was imminent, and prior to the

² A "call stupid" is a multi-leg transaction in which the trader purchases (or sells) two separate strikes.

originating options order being systematized and represented in the trading crowd, Barclays violated Rule 995NY(c).

Violations of NYSE American Rule 320(e) (Supervision)

14. Under NYSE American Rule 320(e), firms must have supervisory systems in place that are “reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules.”
15. Barclays did have daily surveillances in place to monitor for anticipatory hedging or front running of client orders, including on the Flow Derivatives trading desk where the Barclays trader worked. However, these surveillances were not reasonably designed given that, due to a coding issue, approximately 61 symbols (including Security 1) were excluded from the Firm’s anticipatory hedging and frontrunning surveillances for over two years. As a result, the Firm’s surveillances failed to capture the Security 1 trading activity on August 7, 2019.
16. Accordingly, Barclays violated NYSE American Rule 320(e).

RELEVANT PRIOR DISCIPLINARY HISTORY

17. On December 11, 2018, Barclays consented to a censure and \$70,000 fine for two instances of anticipatory hedging in violation of NYSE Arca Options Rule 6.49(b) and for related supervisory issues in violation of NYSE Arca Options Rule 11.18(b).
18. On August 15, 2017, Barclays consented to a censure and a \$60,000 fine for one instance of anticipatory hedging in violation of NYSE Arca Options Rule 6.49(b) and for related supervisory issues in violation of NYSE Arca Options Rule 11.18(b).

OTHER FACTORS

19. In determining to resolve this matter on the basis set forth herein, NYSE Regulation took into consideration remedial actions taken by the Firm, during the course of the investigation, to address its supervisory deficiencies.

SANCTIONS

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

Censure and fine in the amount of \$55,000

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) imposed in this matter.

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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE American 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 prejudice 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 communication 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 by NYSE Regulation, 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, 10 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 the Exchange, 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 the Exchange, or to which the Exchange 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 the Exchange 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

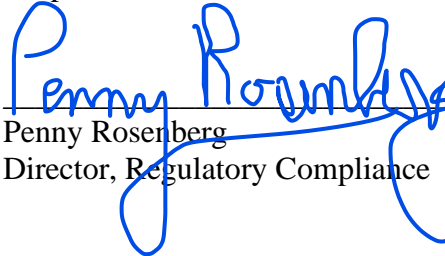
The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been

produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

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.

11/11/21
Date

Barclays Capital Inc.,
Respondent

By: 
Penny Rosenberg
Director, Regulatory Compliance

Accepted by NYSE Regulation

11/11/21
Date

Catherine Lifeso
Catherine Lifeso
Director, Enforcement
NYSE Regulation

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