

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016051325703**

TO: NYSE AMERICAN LLC

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

Barclays Capital Inc. violated SEC Rule 17a-3 and NYSE American Rule 956NY (Record of Orders) by failing to record the correct order receipt and order entry time on the brokerage memoranda of options orders and violated NYSE American Rule 320 (Offices—Approval, Supervision and Control) by failing to establish written supervisory procedures (“WSPs”), and a system of supervision reasonably designed to achieve compliance with the applicable recordkeeping provisions of the federal securities laws and NYSE American during the December 1, 2012 to June 30, 2017 period (the “Exam Review Period”). Consent to a censure, \$115,000 fine and an undertaking to revise WSPs.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”)¹ 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 Barclays 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 has been registered with NYSE American since September 22, 2008. Barclays operates as a brokerage firm and investment advisor, and has approximately 2,800 registered representatives.

¹ At the time of the violation, the Exchange was known as “NYSE MKT LLC,” and the NYSE American rules referenced herein were denominated NYSE MKT rules.

PROCEDURAL HISTORY

2. The Financial Industry Regulatory Authority (“FINRA”), on behalf of NYSE American and other options exchanges, conducted a review of the memoranda of manual options orders handled by Barclays during the period from December 2012 to June 2017 (the “Exam Review Period”).

VIOLATIONS

Barclays Recorded Inaccurate Order Receipt and Entry Times

3. The recordkeeping provisions of the federal securities laws and NYSE American rules are designed to ensure that regulators have access to certain information about securities transactions. Access to transaction records serves as an essential component for effective surveillance and examination of broker-dealers by NYSE American and other self-regulatory organizations.
4. Section 17 of the Exchange Act and Exchange Act Rule 17a-3(a)(6)(i) (“Rule 17a-3(a)(6)(i)”) require broker-dealers, such as Barclays, to create a brokerage order memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. In relevant part, Rule 17a-3(a)(6)(i) requires the brokerage order memorandum to show, among other things, the time of order receipt and entry.² The SEC has recognized that records must be accurate to comply with Rule 17a-3.³
5. NYSE American Rule 956NY requires member organizations to maintain a record of every order for the purchase or sale of option contracts, which must show the terms and conditions of the order and also must include, among other things, the date and time of order entry.
6. During the Exam Review Period, Barclays failed to maintain accurate books and records for thousands of options orders manually handled by the Firm. Specifically, Barclays failed to record the accurate order receipt time for at least 18,375 options orders and the accurate order entry time for at least 30,200 options orders, a portion of which were routed to NYSE American. These orders represented 16.80 and 27.62 percent, respectively, of the 109,340 options orders manually processed by Barclays during the Exam Review Period.

² Rule 17a-3(a)(6) defines the time of order entry as “the time when the member, broker or dealer transmits the order or instruction for execution.”

³ *Voss & Co., Inc.*, 1981 SEC LEXIS 915, at n.16 (SEC Aug. 11, 1981) (“[A]s we have repeatedly held, the requirement that records be kept embodies the requirement that such records be true and correct.”).

Barclays Failed to Reasonably Supervise for Compliance with Recordkeeping Rules

7. NYSE American Rule 320 requires member organizations to establish and maintain a system of compliance and supervisory controls designed to supervise their business size, structure, customer accounts, transactions and business activities. NYSE American Rule 320 also requires members to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with applicable federal securities laws and regulations and Exchange Rules, as part of their compliance system and supervisory controls.
8. During the Exam Review Period, Barclays failed to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with applicable federal securities laws and regulations and Exchange Rules related to recordkeeping that require the accurate documentation of the order receipt and entry times of options orders. Barclays' WSPs included a procedure that required the daily review of a report that created an alert for any orders where execution time was earlier than order entry time. Barclays, however, did not conduct reviews for the accuracy of order entry time during the Exam Review Period. Furthermore, Barclays' WSPs did not include a procedure to ensure the accuracy of order receipt times recorded on order memoranda for options orders.

RELEVANT PRIOR DISCIPLINARY HISTORY

9. On June 20, 2014, FINRA accepted an Offer of Settlement, on behalf of NYSE Arca, between Barclays and NYSE Arca in the amount of \$700,000 for failing to capture modifications to options orders and failing to record the correct order entry and execution time on the order memoranda of approximately 250,000 manual options orders, in violation of SEC Rule 17a-3 and related NYSE Arca recordkeeping and supervision rules. These violations occurred between September 2008 and December 2012.

SANCTIONS

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

1. **A total fine of \$480,000, of which \$115,000 shall be paid to the Exchange.**⁴

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.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or

⁴ The balance of the fine will be paid to NYSE Arca, Inc, Nasdaq Phlx LLC and Cboe Exchange, Inc.

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.

2. Undertaking

Within 60 days of the execution of this AWC, the Firm agrees to certify that deficiencies in its supervisory procedures have been addressed through implementation of procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein pertaining to recordkeeping. The Firm agrees that its supervisory procedures will include, among other things, procedures to detect inaccuracies in its recorded order receipt and order entry times.

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 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 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.

April 21, 2021

Date

Barclays Capital Inc.,
Respondent

By: Penny Rosenberg

Name: Penny Rosenberg

Title: Director

Accepted by FINRA

April 21, 2021

Date

Dean Floyd
Dean Floyd
Senior Counsel
FINRA, Department of Enforcement

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