

**NYSE AMERICAN LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2014043121004**

TO: NYSE AMERICAN LLC

RE: Deutsche Bank Securities Inc., Firm  
CRD No. 2525

**From June 2013 through February 2019, Deutsche Bank Securities Inc. violated: 1) Rule 14e-4 of the Securities Exchange Act of 1934 (Prohibited Transactions in Connection with Partial Tender Offers); 2) NYSE American Rules 3110(a) and (b) (Equities. Supervision); and 3) NYSE American Rules 2.1210 (Registration Requirements) and 2.1220(b) (Definition of Representative and Representative Registration Categories). Deutsche Bank Securities Inc. consents to a censure and a \$156,250 fine.<sup>1</sup>**

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”)<sup>2</sup> Code of Procedure, Deutsche Bank Securities Inc. (“Deutsche Bank” or “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. Deutsche Bank 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. Deutsche Bank became an NYSE American member and AmEx Trading Permit (ATP) Holder in February 1988. Deutsche Bank is headquartered in New York, New York. Deutsche Bank engages in, among other things, securities sales and trading for institutional and retail customers and other broker-dealers. Deutsche Bank is an indirect, wholly-owned subsidiary of a global banking and financial services company. The Firm has no relevant disciplinary history.

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<sup>1</sup> The Firm consents to a total fine of \$800,000 (of which \$156,250 shall be paid to NYSE American LLC). The remainder of the fine shall be allocated to FINRA, Nasdaq ISE, LLC (“ISE”), Nasdaq PHLX LLC (“PHLX”), and Cboe Inc. (“Cboe”).

<sup>2</sup> Prior to July 24, 2017, the Exchange was known as “NYSE MKT LLC,” and the NYSE American rules referenced herein were denominated NYSE MKT rules.

## **PROCEDURAL HISTORY**

2. This matter resulted from a review conducted by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. (“FINRA”) to determine Deutsche Bank’s compliance with Rule 14e-4 of the Securities Exchange Act of 1934 in connection with a partial tender offer by Company A as described below.

## **SUMMARY**

3. From June 2013 through February 2019, Deutsche Bank failed to have a reasonably designed supervisory system for its participation, and the participation of its customers, in partial tender offers to achieve compliance with Rule 14e-4, which generally prohibits the tendering of more shares than a person owns in a partial tender offer. Prior to February 2016, Deutsche Bank lacked any supervisory system, including written supervisory procedures (“WSPs”), designed to achieve compliance with Rule 14e-4. In February 2016, the Firm incorporated into its WSPs a two-page operational procedures document for processing instructions from customers and proprietary Deutsche Bank accounts related to voluntary corporate actions, such as tender offers. This review, however, was limited to ensuring that Deutsche Bank processed tender instructions accurately without regard to whether Deutsche Bank, or its customers, were net long the shares tendered.
4. Deutsche Bank’s operational procedures were additionally flawed because they did not consider several required factors, such as options positions or securities held by the same person in multiple accounts, when calculating a person’s position in the security being tendered. Deutsche Bank’s supervisory system allowed violations of Rule 14e-4 to continue without detection. As a result, in at least one instance, Deutsche Bank impermissibly over-tendered 1,988,954 shares in a partial tender offer on behalf of its parent company’s London bank branch (“London Bank”) without a reasonable belief that London Bank possessed or owned all the shares tendered. Consequently, other tendering shareholders received fewer shares than they otherwise would have received had London Bank not over-tendered.
5. By failing to have a reasonably designed supervisory system, including WSPs, Deutsche Bank violated NYSE American Rules 3110(a) and (b). Deutsche Bank also violated Rule 14e-4 by tendering shares short on behalf of London Bank. In addition, Deutsche Bank violated NYSE American Rules 2.1210 and 2.1220(b) by allowing an employee to function as a securities trader in connection with Deutsche Bank’s participation in the partial tender offer without being registered in that capacity.

## **FACTS AND VIOLATIVE CONDUCT**

### Applicable Law

6. Exchange Act Rule 14e-4, commonly referred to as the “short tender rule,” is generally designed to preclude persons from tendering more shares than they own in order to avoid or reduce the risk of pro rata acceptance in a partial tender offer. A person may tender shares into a partial tender offer only if both at the time of tender and at the end of the proration period the person has a “net long position” in the subject security or an equivalent security equal to or greater than the amount tendered into the partial tender offer. Under Rule 14e-4, a person’s “net long position” in a subject security equals the excess, if any, of such person’s “long position” over a person’s “short position.” In addition, Rule 14e-4 defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security.
7. Exchange Act Rule 14e-4(b)(2) prohibits a person from tendering shares for the account of another person in excess of his or her net long position unless the tendering person has a reasonable belief that the person on whose behalf the tender is made possesses or owns the subject security and will promptly deliver the subject security for tender.
8. A partial tender offer involves “proration risk,” that is, a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Rule 14e-4 because the practice unfairly decreases the short tendering person’s proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.
9. NYSE American Rule 3110(a) requires each member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NYSE American rules, including but not limited to the establishment and maintenance of written procedures prescribed by NYSE American Rule 3110(b).
10. NYSE American Rule 3110(b) provides that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NYSE American Rules.
11. NYSE American Rule 2.1210 requires that each person engaged in the investment banking or securities business of a member organization or ETP Holder shall be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220.

12. NYSE American Rule 2.1220(b)(3)(A) requires each representative to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities or options, such person is engaged in proprietary trading or the execution of transactions on an agency basis.

Deutsche Bank Failed to Have a Reasonable Supervisory System for Compliance with Rule 14e-4

13. Prior to February 2016, Deutsche Bank did not have any supervisory system, including WSPs, related to compliance with Rule 14e-4.
14. In February 2016, Deutsche Bank incorporated into its WSPs a two-page document related to compliance with Rule 14e-4. These procedures, however, were essentially an outline for how Deutsche Bank should handle voluntary corporate actions. As such, the WSPs failed to provide any guidance as to how the Firm should calculate net long positions and what actions, if any, should be taken to ensure that the Firm was not tendering shares for its own account, or for the account of a customer, in excess of the Firm's, or its customer's, net long position. Deutsche Bank only checked the account for which the shares were being tendered to make sure that the shares were held in the account. Deutsche Bank did not factor into its review any options positions or shares held by the same person in other accounts.
15. In February 2019, the Firm implemented a new supervisory system, including WSPs, which incorporated a review of whether Deutsche Bank, or its customers, were net long the shares tendered in compliance with Rule 14e-4.
16. As a result of the foregoing conduct, the Firm violated NYSE American Rules 3110(a) and 3110(b).

Deutsche Bank Tendered Shares on Behalf of London Bank in Violation of Exchange Act Rule 14e-4

17. Deutsche Bank processed instructions from customers and proprietary accounts related to voluntary corporate actions, such as partial tender offers. However, Deutsche Bank failed to properly determine whether the Firm, or the customer for which the Firm was tendering shares, held a net long position in the security. Specifically, Deutsche Bank only confirmed that the individual account or accounts from which the shares would be tendered had a net long position, and did not consider whether the Firm, or the customer, held a net long position. Deutsche Bank also failed to consider options positions when calculating either the Firm's or its customer's net long position. The flawed methodology used by Deutsche Bank resulted in the tendering of more shares than what was permitted.

### Company A Partial Tender Offer

18. In June 2013, Deutsche Bank tendered 29,907,206 common shares of Company A on behalf of London Bank in connection with a partial tender offer (the “Offer”). Pursuant to the Offer, shareholders could exchange their Company A common stock for the common stock of Company B, which was then majority-owned by Company A. Tendering shareholders received \$107.52 worth of Company B common stock for each \$100.00 worth of Company A shares tendered.
19. At the time of tender, London Bank’s net long position in Company A was 27,918,306 common shares. When Deutsche Bank tendered 29,907,206 common shares of Company A on behalf of London Bank, it failed to consider short positions in Company A stock held in other London Bank accounts. Accordingly, Deutsche Bank over-tendered 1,988,954 Company A shares on behalf of London Bank. Deutsche Bank was solely responsible for the purchase and tender of Company A shares on behalf of London Bank and London Bank’s Company A positions were kept on Deutsche Bank’s stock records and available for review by Deutsche Bank, which approved the tender instructions. Accordingly, Deutsche Bank should have known that it was over-tendering shares on behalf of London Bank.
20. Because the Company A Offer was oversubscribed, other Company A tendering shareholders received fewer Company B shares than they otherwise would have received had London Bank not over-tendered.
21. As a result of the foregoing conduct, the Firm violated Exchange Act Rule 14e-4(b)(2).

### Registration Violations

22. Between May 2013 and April 2014, an employee in Deutsche Bank’s Stock Lending department executed equity transactions without being registered to function as a Securities Trader. Accordingly, Deutsche Bank failed to register one employee as a Securities Trader in violation of NYSE American Rules 2.1210 and 2.1220(b)(3).

### **SANCTIONS**

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

**A censure and a total fine of \$800,000, of which \$156,250 is payable to NYSE American.<sup>3</sup>**

Acceptance of this AWC is conditioned upon acceptance of similar agreements in related matters between the Firm and each of the following self-regulatory organizations: FINRA; ISE; PHLX; and Cboe.

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<sup>3</sup> The remainder of the fine shall be allocated to FINRA, ISE, PHLX, and Cboe.

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 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 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 Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, it 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.

August 16, 2021

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Date

Deutsche Bank Securities Inc.  
Respondent

By: Andrew Stemmer

Name: Andrew Stemmer

Title: Managing Director

August 17, 2021

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Date

Deutsche Bank Securities Inc.  
Respondent

By: Anthony Stucchio

Name: Anthony Stucchio

Title: Managing Director

Reviewed by:

Bruce Newman

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Counsel for Respondent

Bruce Newman, Esq.

Wilmer Cutler Pickering Hale and Dorr LLP

7 World Trade Center

New York, New York 10007

Accepted by FINRA  
September 10, 2021

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Date

*Tina Salehi Gubb*

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Tina Salehi Gubb, Esq.  
Chief Counsel  
FINRA

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