

**NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016051325704**

TO: NYSE Arca, Inc.

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

Barclays Capital Inc. violated SEC Rule 17a-3 and NYSE Arca Rule 6.68 (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 Arca Rule 11.18 (Supervision) by failing to establish written supervisory procedures (“WSPs”), and a system of supervision reasonably designed to ensure compliance with federal securities laws and NYSE Arca rules related to recordkeeping from December 1, 2012 to June 30, 2017 (the “Relevant Period”). Consent to a censure, \$115,000 fine and an undertaking to revise WSPs.

* * *

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Barclays Capital Inc. (“Barclays” or “Respondent”) 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 Arca will not bring any future actions against Barclays alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Respondent 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 Arca, or to which NYSE Arca 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 Arca:

BACKGROUND AND JURISDICTION

1. Barclays became registered as an Options Trading Permit (“OTP”) holder with NYSE Arca on November 25, 2008. Barclays operates as a brokerage firm and investment advisor, and has approximately 2,800 registered representatives.

PROCEDURAL HISTORY

2. The Financial Industry Regulatory Authority (“FINRA”), on behalf of NYSE Arca and other options exchanges, conducted a review of the memoranda of manual options orders handled by Barclays during the Relevant Period.

VIOLATIONS

Barclays Recorded Inaccurate Order Receipt and Entry Times

3. The recordkeeping provisions of the federal securities laws and NYSE Arca 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 Arca 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.¹ The SEC has recognized that records must be accurate to comply with Rule 17a-3.²
5. NYSE Arca Rule 6.68 requires members 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, and any such other information as may be required by NYSE Arca.
6. During the Relevant Period, Barclays failed to maintain accurate books and records for thousands of options orders manually handled by Respondent. Specifically, Respondent 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 Arca. These orders represented 16.80 and 27.62 percent, respectively, of the 109,340 options orders manually processed by Barclays during the Relevant Period.
7. For the reasons set forth above, Barclays violated NYSE Arca Rule 6.68 during the Relevant Period.

Barclays Failed to Reasonably Supervise for Compliance with Recordkeeping Rules

8. NYSE Arca Rule 11.18 requires each OTP Holder to establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Among other things, the OTP Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance

¹ 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.”

² *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.”).

with applicable federal securities laws and regulations, and with the NYSE Arca Rules.

9. During the Relevant Period, Barclays failed to establish and maintain WSPs and a supervisory system that were reasonably designed to ensure compliance with the recordkeeping provisions of the federal securities laws and NYSE Arca rules 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 Relevant Period. Furthermore, Barclays' WSPs did not include a procedure to ensure the accuracy of order receipt times recorded on order memoranda for options orders.
10. For the reasons set forth above, Barclays violated NYSE Arca Rule 11.18 during the Relevant Period.

RELEVANT PRIOR DISCIPLINARY HISTORY

11. 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 violations of SEC Rule 17a-3(a), SEC Rule 17a-4(b), NYSE Arca Options Rule 6.68(a), NYSE Arca Options Rule 11.16(a) and NYSE Arca Options Rule 11.18 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. These violations occurred between September 2008 and December 2012.

SANCTIONS

B. Respondent 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.**³

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

Respondent 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.

Respondent 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 Respondent pays pursuant to this AWC, regardless of the use of the fine amounts. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any

³ The balance of the fine will be paid to NYSE American LLC, Nasdaq Phlx LLC and Cboe Regulation, Inc.

federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

2. Undertaking

Within 60 days of the execution of this AWC, Respondent 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. Respondent 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

Respondent specifically and voluntarily waives the following rights granted under the NYSE Arca Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE Arca; 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 Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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

Respondent 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 Arca pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; 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 Arca Rule 10.9310(a)(1)(B);
 - 2. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against Respondent;
 - 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
 - 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
 - 5. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

Respondent certifies that, in connection with the Exchange's requests for documents in connection with this matter, Respondent made a diligent search of all files in his or her possession, custody, or control that are reasonably likely to contain 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 such document production.

Respondent certifies that it 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 Respondent to submit it.

April 21, 2021

Date

Respondent,

Penny Rosenberg

Barclays Capital Inc.

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 Arca, Inc., by
delegated authority from its Chief
Regulatory Officer