

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**NO. 2018059263501**

TO: NYSE Arca, Inc.

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

**During the period between February 2015 and October 2020, Barclays Capital Inc. violated NYSE Arca Rule 6.6-O(a) (Reporting of Options Positions) by failing to report to the Large Options Position Reporting system (i) 25,062 positions on their expiration date, and (ii) 3,606 positions in 86,519 instances as acting-in-concert; and violated NYSE Arca Rule 11.18 (Supervision) by failing to establish and maintain a supervisory system and written supervisory procedures reasonably designed to ensure compliance with NYSE Arca Rule 6.6-O. Barclays Capital Inc. consents to a censure and a \$225,000 fine.**

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” 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 Arca 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 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. The Firm became registered as an Options Trading Permit (“OTP”) holder in November 2008. It is headquartered in New York, New York and has 13 branches with approximately 2,800 registered representatives. The Firm’s business includes options and equities trading on behalf of itself and customer, underwriting, and market making.

## VIOLATIONS

### The Firm Violated NYSE Arca Rule 6.6-O(a)

2. NYSE Arca rules require OTP Holders and OTP Firms to report large options positions to the Large Options Position Reporting system (the “LOPR”).<sup>1</sup> Specifically, NYSE Arca Rule 6.6-O(a) states, “[i]n a manner and form as may be prescribed by the Exchange, each OTP Holder and OTP Firm must report the name, address, and social security or tax identification number of any customer who, acting alone or in concert with others, on the previous business day, maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contract dealt in on the Exchange. The Report must indicate for each class of option, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.”
3. LOPR data is used 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. The accuracy of LOPR data is essential for this analysis.
4. From February 2015 through January 2020, as a result of a coding error by the Firm’s third-party service provider, Barclays failed to report as many as 13,607 index option positions on their expiration date. Similarly, from April 2019 through November 2019, also as a result of a coding error by the Firm’s third-party service provider, Barclays failed to report as many as 11,455 positions on their expiration date.
5. From August 2018 through February 2020, Barclays failed to report 3,543 positions held by 41 accounts in 85,677 instances as acting-in-concert (“AIC”).<sup>2</sup> This failure occurred because Barclays relied on a third-party service provider to submit the underlying LOPR data, but submitted the AIC data itself. Because the underlying data and AIC data were sent by different entities, the OCC system did not match them.
6. In addition, from June 2020 through October 2020, Barclays failed to report 63 positions held by two accounts in 842 instances as AIC. The Firm had not marked these two accounts as AIC during the onboarding process.
7. The conduct described above constituted a violation of NYSE Arca Rule 6.6-O.

### The Firm Violated NYSE Arca Rule 11.18(b) and (c)

8. NYSE Arca Rule 11.18(b) requires, in pertinent part, that “[e]ach ETP Holder, OTP Holder or OTP Firm must establish and maintain a system to supervise the activities

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<sup>1</sup> The Options Clearing Corporation hosts the LOPR system and collects and disseminates all LOPR data for the U.S. options exchanges and FINRA.

<sup>2</sup> An “instance” occurs where a firm fails to report, or inaccurately reports, a position for one day. The number of instances is determined by multiplying a given reportable position by the number of trade dates that the position was not reported or was reported inaccurately.

of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.”

9. NYSE Arca Rule 11.18(c) requires each member firm to “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 with applicable federal securities laws and regulations, and with the NYSE Arca Rules.”
10. By August 2018, the supervisory personnel at Barclays who were responsible for LOPR reporting were aware that positions held by numerous accounts were not being reported to the LOPR as AIC due to the OCC matching issue described above. The Firm, however, failed to take reasonable steps to remediate the issue.
11. In late August 2018, responsibility for LOPR reporting was transferred to a different group within Barclays. That group was not informed of the OCC matching issue and, consequently, failed to take reasonable steps to remediate it.
12. In April 2019, the Firm began working with its third-party service provider to develop a solution to the AIC reporting issue. However, the solution was not implemented until March 2020.
13. Additionally, in June 2020, Barclays became aware that a customer opened two accounts that were not marked as AIC during the onboarding process, and therefore were not being reported as AIC. Barclays failed to take reasonable action to remediate this issue until October 2020.
14. Furthermore, from February 2015 through January 2020, Barclays’ supervisory system, including its written procedures, did not include reviews to determine whether all positions required to be reported were in fact submitted to the LOPR. Rather, the Firm only reviewed the positions that were reported and did not assess whether the submissions omitted any positions that the Firm was required to report. Therefore, Barclays was unaware that positions were not reported on their expiration date.
15. By failing to maintain a supervisory system and written procedures reasonably designed to ensure compliance with NYSE Arca Rule 6.6-O, the Firm violated NYSE Arca Rule 11.18(b) and (c).

### **RELEVANT PRIOR DISCIPLINARY HISTORY**

16. In May 2018, in connection with Matter No. 20130364720, Barclays consented to a censure, a fine of \$400,000 imposed by FINRA, BZX, and MIAX, and a supervisory undertaking, for multiple violations of the exchanges’ rules relating to LOPR reporting, including the failure to report 317,000 positions to the LOPR as AIC and

for failing to establish a reasonable supervisory system for compliance with LOPR reporting.

### SANCTIONS

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

**Censure and fine in the amount of \$225,000.**

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.

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 Arca 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 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 NYSE Arca 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of NYSE Arca Rule 10.9143 or the separation of functions prohibitions of NYSE Arca 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

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 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 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 Arca Rule 10.9310(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 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. 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.

October 19, 2022

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Date

**Barclays Capital Inc.,**  
Respondent

By: *Magda Jimenez Train* \_\_\_\_\_  
Magda Jimenez Train  
Director, Legal

Reviewed by:

*Michael J. Lohnes* \_\_\_\_\_  
MICHAEL J. LOHNES, Partner  
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312.902.5341  
Counsel for Respondent

Accepted by FINRA

October 19, 2022

\_\_\_\_\_  
Date

*Samuel L. Barkin* \_\_\_\_\_

SAMUEL L. BARKIN

Director

FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by  
delegated authority from its Chief  
Regulatory Officer