

**NASDAQ PHLX LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016051325702**

TO: Nasdaq Phlx LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of Nasdaq Phlx LLC (“Phlx”) Code of Procedure,<sup>1</sup> Barclays Capital Inc. (“Barclays” or the “firm” 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, Phlx will not bring any future actions against the Respondent 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 Phlx, or to which Phlx 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 Phlx:

**BACKGROUND**

Barclays has been registered with Phlx since September 19, 2008. Barclays operates as a brokerage firm and investment advisor and has approximately 2,800 registered representatives.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

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.

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<sup>1</sup> Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange’s jurisdiction.

## SUMMARY

1. The Financial Industry Regulatory Authority (“FINRA”), on behalf of Phlx and other options exchanges, conducted a review of the memoranda of manual options orders handled by the firm during the period from December 1, 2012 to June 30, 2017 (the “Exam Review Period”).
2. During the Exam Review Period, Barclays failed to accurately record the order receipt and order entry times of certain manual options orders it had routed to floor brokers at Phlx and various other national securities exchanges for execution in violation of Rule 17a-3(a)(6)(i) promulgated under the Securities Exchange Act of 1934 (“Exchange Act”) and Phlx Rule 760. Additionally, Barclays violated Phlx Rule 748 by failing to establish written supervisory procedures (“WSPs”), and a system to supervise the activities of its associated persons and the operation of its business. The firm’s WSPs and the system for applying such procedures were required to be reasonably designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations.

## FACTS AND VIOLATIVE CONDUCT

### Barclays Recorded Inaccurate Order Receipt and Entry Times

3. The recordkeeping provisions of the federal securities laws and Phlx 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 Phlx 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.<sup>2</sup> The SEC has recognized that records must be accurate to comply with Rule 17a-3.<sup>3</sup>
5. Phlx Rule 760 required<sup>4</sup> member and member organizations to make, keep current and preserve such books and records as the Exchange may prescribe and as may

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<sup>2</sup> 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.”

<sup>3</sup> *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.”).

<sup>4</sup> Effective February 3, 2020, Phlx Rule 760 became Phlx Options Rule 6E, Sec.1.

be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder.

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 Phlx. These orders represented 16.80 and 27.62 percent, respectively, of the 109,340 options orders manually processed by the firm during the Exam Review Period.
7. The conduct described in paragraph 6 constitutes a violation of Rule 17a-3(a)(6)(i) and Phlx Rule 760.

**Barclays Failed to Reasonably Supervise for Compliance with Recordkeeping Rules**

8. Phlx Rule 748 required<sup>5</sup> member and member organizations to establish, maintain, and enforce WSPs, and a system for applying such procedures, to supervise the types of business in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The WSPs and the system for applying such procedures shall reasonably be designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange.
9. During the Exam Review Period, Barclays failed to establish and maintain WSPs and a supervisory system that were reasonably designed to prevent and detect violations of the recordkeeping provisions of the federal securities laws and Phlx 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 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. The conduct described in this paragraph constitutes a violation of Phlx Rule 748.

B. Respondent also consents to the imposition of the following sanctions:

- A total fine of \$480,000 to be paid jointly to Phlx, NYSE American LLC, NYSE Arca Inc. and Cboe Exchange, Inc., of which \$115,000 is allocated to Phlx; and
- An undertaking to revise the firm's WSPs. Within 30 business days of this

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<sup>5</sup> Effective February 3, 2020, Phlx Rule 748 became Phlx General Rule 9, Sec. 20.

AWC becoming final, a principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its WSPs to address the deficiencies described in Paragraph I.A.9 of this AWC; and (3) the date the revised procedures were implemented.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed payment form.

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.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under Phlx's 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 Review Council 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, the Exchange Review Council, or any member of the Exchange Review Council, 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 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

Respondent 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 FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx 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 Respondent; and
- C. If accepted:
  - 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;
  - 2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and
  - 3. 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 Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.
- D. 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. This Statement does not constitute factual or legal findings by Phlx, nor does it reflect the views of Phlx or its staff.

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 the firm 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 15, 2021

\_\_\_\_\_  
Date

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Barclays Capital Inc.  
Respondent

April 15, 2021

\_\_\_\_\_  
Date

By: Penny Rosenberg

Print Name: Penny Rosenberg

Title: Director

Reviewed by:

\_\_\_\_\_  
Counsel for Respondent

Accepted by Phlx:

May 4, 2021

\_\_\_\_\_  
Date

Dean Floyd

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Dean Floyd  
Senior Counsel  
Department of Enforcement

Signed on behalf of Phlx, by delegated authority from the Director of ODA