

**NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND
CONSENT NO. 2017056214408**

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

RE: Jefferies LLC, Respondent
Member Firm
CRD No. 2347

Pursuant to Rule 9216 of Nasdaq Phlx LLC (“Phlx”) Code of Procedure,¹ Jefferies LLC (“Jefferies,” 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

Jefferies has been a Phlx member since 2012, and a FINRA member since 1963, and its registrations remain in effect. The Firm is headquartered in New York, NY, and employs approximately 2,200 registered representatives. The Firm provides brokerage, investment banking, research, and trading, execution and clearing services to institutional and individual customers and other broker-dealers.

Jefferies has no relevant disciplinary history.

SUMMARY

This matter arose from an investigation conducted by FINRA’s Department of Market Regulation.

¹ Series 9000 of The Nasdaq Stock Market LLC (“Nasdaq”) 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 Phlx’s jurisdiction.

From September 2016 to April 2018 (the “Relevant Period”), Jefferies violated Phlx Rules 707 and 748 by failing to establish and maintain written supervisory procedures (“WSPs”), and a system for applying such procedures, reasonably designed to detect and prevent marking the close activity in options trading. As a result, the Firm failed to detect that two proprietary traders submitted orders at or near the close of the trading day on Phlx and other exchanges that affected the last reported bids and/or offers in various options series on more than 100 occasions.

FACTS AND VIOLATIVE CONDUCT

1. Phlx Rule 748 requires, among other things, that each member establish, maintain, and enforce WSPs, and a system for applying such procedures, to supervise the business in which the member engages and the activities of all its registered representatives, employees, and associated persons. The WSPs and the system for applying them must also be reasonably designed to prevent and detect violations of applicable securities laws and regulations and Phlx rules.²
2. Phlx Rule 707 provides that a member shall not engage in conduct inconsistent with just and equitable principles of trade.³ A violation of Phlx Rule 748 also constitutes a violation of Phlx Rule 707.
3. During the Relevant Period, Jefferies failed to establish and maintain WSPs, and a system for applying such procedures, reasonably designed to detect and prevent potentially manipulative trading, specifically marking the close activity in options trading.
4. The Firm’s WSPs prohibited Firm traders from engaging in “activity intended to artificially raise or lower the closing price of a[n] ... option (i.e., marking the close).” But Jefferies did not have any supervisory systems specifically designed to detect and prevent marking the close activity in executed options transactions until January 2018 and its WSPs did not indicate if the supervisory review for questionable or suspicious activity included marking the close or identify the documents and information the supervisors should use when conducting this review. Further, Jefferies did not provide its supervisors with access to applicable surveillance alerts its Compliance Department used to monitor for potentially manipulative activity, or require Compliance to inform supervisors of its Compliance reviews.
5. As a result, Jefferies did not detect that two proprietary traders submitted orders on Phlx and other exchanges at or near the end of the trading day on more than 100 occasions that affected the last reported bids and/or offers in various options series until it received an inquiry from FINRA in December 2017.
6. Although Jefferies instructed both traders in January 2018 to stop entering orders at or near the close, Jefferies did not implement any other review of orders generally, or of the traders’ activity specifically, to ensure that the traders discontinued their

² As of February 3, 2020, Phlx Rule 748 was relocated to Phlx General 9, Section 20.

³ As of February 3, 2020, Phlx Rule 707 was relocated to Phlx General 9, Section 1(c).

practice of submitting end of day orders for pricing purposes. As a result, Jefferies did not detect that one of the traders continued to submit orders at or near the end of the trading day until it implemented a month-end “marking the close” review of both executed options transactions and unexecuted option orders in April 2018.

7. Accordingly, Jefferies violated Phlx Rules 748 and 707 during the Relevant Period.

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

1. A censure; and
2. A total fine of \$450,000, of which \$48,333 shall be paid to Phlx.⁴

Respondent agrees to pay the monetary sanction 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 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.

⁴ The remainder of the fine will be paid to Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Cboe BZX Exchange, Inc. (“BZX”), Cboe EDGX Exchange, Inc. (“EDGX”), Miami International Securities Exchange, LLC (“MIAX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq Options Market LLC (“NOM”), and NYSE Arca, Inc (“NYSE”).

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;⁵ 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.

⁵ Series 8000 of Nasdaq Rules are incorporated by reference into Phlx Rule General 5, Section 2, and are thus Phlx Rules and thereby applicable to Phlx Members, Associated Persons, and other persons subject to Phlx's jurisdiction.

