

**NASDAQ PHLX LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

TO: BMO Capital Markets Corp.
Attn: Mr. Michael Forlenza, Chief Compliance Officer
3 Times Square
New York, New York 10036

FROM: NASDAQ PHLX LLC ("PHLX")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Enforcement
9509 Key West Avenue
Rockville, MD 20850

DATE: November 20, 2019

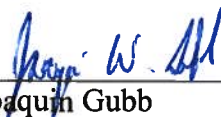
RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 2017053129001

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **November 20, 2019** by the PHLX Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the PHLX Review Council, pursuant to PHLX Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or PHLX if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

If you have any questions concerning this matter, please contact me at (240) 386-5102.



Joaquin Gubb
Senior Counsel
Department of Enforcement, FINRA

Signed on behalf of PHLX

BMO Capital Markets Corp.

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Enclosure

FINRA District 10 – New York

William St. Louis

Senior Vice President and Regional Director

(Via email)

NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053129001

TO: Nasdaq PHLX LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: BMO Capital Markets Corp., Respondent
Member Firm
CRD No. 16686

Pursuant to Rule 9216 of Nasdaq PHLX LLC ("PHLX" or the "Exchange") Code of Procedure, BMO Capital Markets Corp. ("BMO", 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

BMO became a member of FINRA on October 29, 1985 and PHLX on January 10, 2007, and its registrations remain in effect. The Firm's is headquartered in New York, New York, and the Firm has 18 branch offices in 10 states. It currently employs approximately 1,058 registered representatives. The Firm provides full-service brokerage and investment banking to institutional clients. The Firm has no prior relevant disciplinary history.

SUMMARY

1. The Financial Industry Regulatory Authority's ("FINRA") Trading and Financial Compliance Examinations staff (the "Staff") within the Department of Market Regulation, on behalf of PHLX and other options exchanges, conducted a review of the manual options order tickets handled by the Firm during the period between January 23 and January 27, 2017 (the "Exam Review Period").
2. During the Exam Review Period, BMO failed to accurately record the order receipt and order transmission times of 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, as amended (the "Exchange Act"), and PHLX Rule 760. Additionally, The Firm also violated PHLX Rule 748(h) because its written supervisory procedures ("WSPs") and supervisory system applicable to the handling of manual options orders were not reasonably designed to achieve compliance with, and to detect and prevent, insofar as practicable, violations of, the applicable recordkeeping provisions of the federal securities laws and PHLX rules during the Supervisory Review Period of January 23, 2017 through September 28, 2017 (the "Supervisory Review Period").

3. During the Exam Review Period, the firm routed a customer options order to a floor broker, who routed the options order to a second floor broker. The Firm, however, began to hedge that options order before the first floor broker routed the order to the second floor broker, and also began to hedge before the customer order was exposed to the trading crowd, in violation of PHLX Rules 1064(d) and 707. Furthermore, during the review period, the firm failed establish or maintain any WSPs to prevent, detect or review for instances of anticipatory hedging, and thus violated PHLX Rule 748(h).

FACTS AND VIOLATIVE CONDUCT

4. The recordkeeping provisions of the federal securities laws and PHLX rules are designed to ensure that regulators have access to certain basic 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.
5. Section 17 of the Exchange Act and Rule 17a-3(a)(6)(i) promulgated thereunder require broker-dealers, such as BMO, to create a brokerage order ticket 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, the rule requires the brokerage order ticket to show, among other things, the terms and conditions of the order or instructions, the time the order was received, the time the order was entered, and the time of execution or cancellation. The Rule also requires that such records must be accurate.
6. PHLX Rule 760 requires member firms to make, keep current, and preserve books and records as prescribed by the Exchange Act.
7. PHLX Rule 707 requires "[a] member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade."
8. PHLX Rule 1064(d) requires that "[n]o member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying

such class; or an order to buy or sell any related instrument until [the orders are disclosed to the crowd, or the trade is no longer imminent].”

9. PHLX Rule 748(h) requires member organizations to establish, maintain and enforce WSPs, and a system of supervision for applying such procedures, that are reasonably designed to supervise the types of businesses and activities in which they and their associated persons engage in order to achieve compliance with, and to prevent and detect, insofar as practicable, violations of, applicable securities laws and regulations, including the By-Laws and Rules of the Exchange.
10. During 2016, the Firm handled approximately 2,564 manual options orders, approximately 36% of which were manual customer orders routed to option exchange floor brokers for execution. 36 manual customer options orders, of which 33 orders were routed to floor brokers at various options exchanges during the Exam Review Period, were reviewed for timestamp accuracy.
11. From the 36 manual customer options orders routed to various options exchanges and reviewed for execution during the Exam Review Period, the Firm did not maintain an accurate record of the order receipt time for 10 (approximately 28%) of the sampled orders. Of these 10 orders, two were executed on the PHLX.
12. From the 36 manual customer options orders routed to options exchanges for execution and reviewed during the Exam Review Period, the Firm routed 33 options orders to floor brokers for execution (92%). The Firm did not maintain an accurate record of the order transmission times for 33 (100%) of those orders. Of these 33 orders, nine were executed on the PHLX.
13. The conduct described in paragraphs eleven and twelve constitutes violations of Rule 17a-3(a)(6)(i) promulgated under the Exchange Act, and PHLX Rule 760.
14. During the Supervisory Review Period, the Firm failed to establish and maintain WSPs and a supervisory system were reasonably designed to achieve compliance with, and to detect and prevent violations of, the recordkeeping provisions of the federal securities laws and PHLX rules that require the accurate documentation of the order receipt and transmission times of options orders. Specifically, the Firm’s WSPs did not include a review for the accuracy of order receipt and order transmission times of options orders handled by the Firm. Since there was no review included in the WSPs, there also was not a frequency of review or steps to be taken by a supervisor in relation to such a review. The conduct described in this paragraph constitutes a violation of PHLX Rule 748(h).
15. During the Exam Review Period, specifically on January 26, 2017, the Firm received a customer option order to sell 2,500 DOW Jan. 27 2017 60.50 calls at 12:21:33 PM. The Firm sent the order to a floor broker at 12:22:23 PM for order handling and execution. The Firm included instructions to facilitate (buy) the whole customer option order. The Firm’s trader started hedging by selling the underlying stock to the options order at 12:22:56 PM. The options order, however, was subsequently re-routed to another floor broker on the PHLX for execution. The second floor broker disclosed the options order

to the PHLX trading crowd at 12:33:29. Thus, prior to the customer's option order being received by the second floor broker, and prior to the order being disclosed to the PHLX trader crowd the Firm engaged in hedging the customer options order. The conduct described in this paragraph constitutes a violation of PHLX Rules 1064(d) and 707.

16. Additionally, during the Exam Review Period, the firm did not have WSPs to detect or review for instances involving potential violations of PHLX Rule 1064. Thus, during the review period, the Firm failed to establish and maintain WSPs and a supervisory system that were reasonably designed to achieve compliance with, and to detect and prevent violations of, the PHLX rule that prohibits improper Anticipatory Hedging. The conduct described in this paragraph constitutes a violation of PHLX Rule 748(h).

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

- A censure, and
- A fine of \$135,000, of which \$70,000.00 (\$25,000.00 for the books and records violations and \$5,000.00 for the books and records supervision violations, as well as \$30,000 for the anticipatory hedging violation and \$10,000 for the anticipatory hedging supervisory violation) shall be paid to PHLX.¹

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and NYSE Arca, Inc., NYSE American LLC and BOX Options Exchange.

Respondent agrees to pay the monetary sanction in accordance with its executed Election of 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;

¹ The balance of the fine shall be paid to NYSE Arca, Inc., NYSE American LLC and BOX Options Exchange.

- 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 PHLX 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 PHLX Review Council, or any member of the PHLX 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 PHLX 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.

11/11/19
Date

~~Brad A. Rothbaum~~
BMO Capital Markets Corp.
Managing Director
Chief Operating Officer
BMO Capital Markets Corp.

By: _____
Print Name: _____
Title: _____

Reviewed by:

Counsel for Respondent

Accepted by PHLX:

11/20/2019
Date

Joaquin W. Gubb
Joaquin W. Gubb, Esq.
Senior Counsel
Department of Enforcement

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

PAYMENT INFORMATION

The fine amount will be reflected on an upcoming invoice and will be direct debited from the account for your firm that Nasdaq currently has on file. **Please DO NOT submit payment at this time.**

Please inform your finance or applicable department of this forthcoming debit.

If you would like to arrange for an alternative method of payment, please enter the billing contact information below and Nasdaq's Billing Department will contact you. **Otherwise, please leave the following information blank.**

Billing Contact Name: _____

Billing Contact Address: _____

Billing Contact Email: _____

Billing Contact Phone Number: _____

Respectfully submitted,

11/1/19
Date

Respondent
Brad A. Rothbaum
Managing Director
Chief Operating Officer
BMO Capital Markets Corp.

By: _____

Name: _____

Title: _____

