

NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018058715201

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

RE: Freda Ginsberg McCullough, Respondent
Associated Person
CRD No. 222212

Pursuant to Rule 9216 of Nasdaq PHLX LLC (“Phlx”) Code of Procedure, Freda Ginsberg McCullough, 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

McCullough was first registered in the securities industry in September 1967. In March 2016, she became associated with Avatar Securities, LLC (“Avatar” or the “Firm”) as a General Securities Representative and Securities Trader. In a Uniform Termination Notice for Securities Industry Registration (“Form U5”), dated September 19, 2018, and amended on September 26, 2018, the Firm reported McCullough’s voluntary termination on June 30, 2018. Phlx retained jurisdiction of McCullough in this matter when FINRA’s staff (“Staff”), on behalf of Phlx, provided written notice of the investigation to McCullough on June 20, 2018. Although McCullough is no longer associated with a Phlx member, she remains subject to Phlx’s jurisdiction pursuant to Phlx General Rule 5, Section 1(c).

PRIOR DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, Phlx, any state securities regulators, FINRA, or any other self-regulatory organization.

SUMMARY

McCullough violated Phlx Rule 8210¹ and PSX Rule 3503 by refusing to provide testimony requested pursuant to Phlx Rule 8210, in connection with the Phlx's investigation of certain securities transactions executed by McCullough.

FACTS AND VIOLATIVE CONDUCT

Phlx Rule 8210(a)(1) states, in relevant part that the Phlx Regulation Department, including FINRA staff, may require a member subject to the Exchange's jurisdiction "to testify at a location specified by [the Phlx Regulation Department], including FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding;"

Phlx Rule 8210(c) states that no "person shall fail to provide information or testimony . . . pursuant to this Rule."

A failure to comply with a request for testimony pursuant to Phlx Rule 8210 is also a violation of PSX Rule 3503, which requires associated persons to "not engage in conduct inconsistent with just and equitable principles of trade."

During a telephone call on each of April 22 and 29, 2020, Staff requested that McCullough appear and provide testimony in connection with its investigation of trading activity by McCullough. Staff told McCullough that failure to appear for testimony would subject to her to the possibility of a bar. McCullough responded that she did not intend to appear. By letter dated April 30, 2020, Staff requested pursuant to Phlx Rule 8210 that McCullough appear and provide testimony on May 14, 2020, in connection with Staff's investigation. In a follow-up phone call with Staff on April 30, 2020, McCullough reiterated that she did not intend to appear for the testimony. Via email on May 1, 2020, McCullough acknowledged receipt of the Rule 8210 request and confirmed that she would not appear for testimony. On May 14, 2020, McCullough failed to appear for testimony.

By refusing to appear and provide testimony in connection with Staff's investigation as requested pursuant to Phlx Rule 8210, McCullough violated Phlx Rule 8210 and PSX 3503.

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

- A bar from association with any Phlx member in any capacity.

Respondent understands that if she is barred from associating with any Phlx member, she becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, she may not be

¹ Phlx 8000 and 9000 Series are now included in General 5, Sections 2 and 3, respectively.

associated with any Phlx member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See Phlx Rule 8310 and IM-8310-1.)

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 me;
- 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it. I understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; I have agreed to the AWC's provisions voluntarily; and 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 me to submit this AWC.

May 14, 2020

Date

Freda Ginsberg McCullough

Freda Ginsberg McCullough
Respondent

Accepted by Phlx:

May 28, 2020

Date

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

Kevin McGee

Kevin M. McGee
Senior Counsel
Department of Enforcement

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