

**NASDAQ OMX BX, INC.**  
**NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Barclays Capital Inc.**  
**Mr. Matthew Fitzwater**  
**Americas Head of Litigation, Investigations and Enforcement**  
**745 7<sup>th</sup> Avenue**  
**New York, NY 10019**

**FROM: The NASDAQ OMX BX, Inc. (the "Exchange")**  
**c/o Financial Industry Regulatory Authority ("FINRA")**  
**Department of Market Regulation**  
**9509 Key West Avenue**  
**Rockville, MD 20850**

**DATE: July 10, 2015**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110291718-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **July 9, 2015** by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to Nasdaq OMX BX 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 the Exchange 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 the Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

Barclays Capital Inc.  
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If you have any questions concerning this matter, please call Steven Tanner, Senior Counsel, at 646-430-7059.



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David E. Rosenstein  
Senior Vice President, Legal Section  
Department of Market Regulation

Signed on behalf of Nasdaq OMX BX, Inc.

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

Kenneth Raisler  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Counsel for Respondent

**NASDAQ OMX BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20110291718-01**

TO: NASDAQ OMX BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority (“FINRA”)

RE: Barclays Capital Inc., Respondent  
Broker-Dealer  
CRD No. 19714

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.<sup>1</sup> (the “Exchange”)<sup>2</sup> and Rule 9216 of The Exchange Code of Procedure, Barclays Capital Inc. (“BCAP” 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, the Exchange will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. BCAP 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 the Exchange, or to which the Exchange 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 the Exchange:

**BACKGROUND**

Barclays Capital Inc. became a member of the Exchange on September 19, 2008, and thereafter a Participant of the Boston Options Exchange (“BOX”),<sup>3</sup> when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange’s jurisdiction and oversight.

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX (“The Equities Rules”) and the Grandfathered Rules of the Exchange.

<sup>2</sup> Please note, for purposes of this AWC, “Exchange” includes NASDAQ OMX BX, Inc.

<sup>3</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

## **RELEVANT DISCIPLINARY HISTORY**

BCAP does not have any relevant disciplinary history.

## **SUMMARY**

In connection with matter 20110291718, FINRA staff, on behalf of BOX, conducted a review of BCAP's trading activity on April 9, 2010 in equities and the overlying options. Thereafter, the review was expanded to cover the Firm's supervisory controls and procedures for compliance with Chapter V, Section 1(b)(iv) of the BOX Trading Rules, and Chapter II, Section 14 of the Grandfathered Rules of the Exchange, covering the period of February 23, 2010 through November 29, 2011 (the "Relevant Period").

## **FACTS AND VIOLATIVE CONDUCT**

1. During the Relevant Period, Firm traders, trading on behalf of the Firm, on multiple occasions and on multiple trade dates, engaged in trading whereby they effected purchases or sales of equity securities in a firm proprietary account, immediately followed by purchases or sales of options overlying those securities. These transactions were potentially inconsistent with just and equitable principles of trade, because they could have disrupted the market for the equity securities and the overlying equity options. Depending on the economic rationale for effecting the transactions, these transactions also could have constituted a cross-product or mini-manipulation.
2. The Firm's option trades included executions on the Exchange.
3. Chapter V, Section 1(b)(iv) of the BOX Trading Rules requires member to maintain adequate procedures and controls that permit the Options Participant to effectively monitor and supervise the entry of orders by users.
4. Chapter II, Section 14 of the Grandfathered Rules of the Exchange prohibits reckless or unbusinesslike dealing, which is contrary to just and equitable principles of trade.
5. During the Relevant Period, the Firm did not have any written supervisory procedures that addressed the type of conduct described in Paragraph 1, or any surveillance system to detect the activity.
6. During the Relevant Period, the Firm failed to adequately supervise the Firm's traders to ensure compliance with Chapter II, Section 14 of the Grandfathered Rules of the Exchange.
7. The conduct described in Paragraphs 5 and 6 constitutes a violation of Chapter V, Section 1(b)(iv) of the BOX Trading Rules, and Chapter II, Section 14 of the Grandfathered Rules of the Exchange.

B. BCAP consents to the imposition of the following sanction:

**A censure and a total fine of \$250,000, of which \$12,500 shall be payable to the Exchange.**

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between BCAP and each of the following self-regulatory organizations: (i) International Securities Exchange, LLC; and (ii) NASDAQ OMX PHLX LLC. The balance of the \$250,000 fine shall be paid to these self-regulatory organizations.

BCAP agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. BCAP has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

BCAP specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

BCAP specifically and voluntarily waives the following rights granted under the Rules of the Exchange:

- A. To have a Formal Complaint issued specifying the allegations against the Firm in writing;
- 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, BCAP specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq 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.

BCAP 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

BCAP understands that:

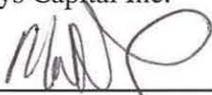
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Exchange Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against BCAP and
- C. If accepted:
  - 1. This AWC will become part of BCAP's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the Firm;
  - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  - 3. BCAP 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects BCAP's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

- D. BCAP may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. BCAP 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 the Nasdaq, nor does it reflect the views of the Nasdaq or its staff.

The undersigned(s), on behalf of BCAP, 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 BCAP to submit it.

May 21, 2015  
Date

Respondent  
Barclays Capital Inc.

By: 

Name: Matthew Fitzwater

Title: Americas Head of  
Litigation, Investigations and Enforcement

Reviewed by:  
Justin J. DeCamp  
Counsel for Respondent

Firm Name: SULLIVAN & CROMWELL LLP

Address: 125 BROAD ST., NY, NY 10004

Telephone No.: (212) 558-4000

Accepted by Nasdaq OMX BX, Inc.:

7-9-15  
Date



David E. Rosenstein  
Senior Vice President  
Department of Market Regulation  
Signed on behalf of Nasdaq OMX BX, Inc.,  
by delegated authority from the Director of  
ODA

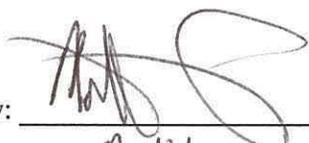
### ELECTION OF PAYMENT FORM

BCAP intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.<sup>4</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
Barclays Capital Inc.

May 21, 2015  
Date

By:   
Name: Matthew Fitzwater  
Title: Americas Head of Litigation  
Investments + Enforcement

<sup>4</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.