

**NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014043121005**

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

RE: Deutsche Bank Securities Inc., Respondent
Member Firm
CRD No. 2525

Pursuant to Rule 9216 of Nasdaq Phlx LLC (“Phlx”) Code of Procedure,¹ Deutsche Bank Securities Inc. (“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 AND RELEVANT DISCIPLINARY HISTORY

Respondent became a FINRA member in March 1940 and a Phlx member in November 1973. Both registrations are current. Respondent is headquartered in New York, New York. Respondent engages in, among other things, securities sales and trading for institutional and retail customers and other broker-dealers. Respondent is an indirect, wholly-owned subsidiary of a global banking and financial services company.

Respondent has no relevant disciplinary history.

SUMMARY

1. From June 2013 through February 2019, Respondent failed to have a reasonably designed supervisory system for its participation, and the participation of its customers, in partial tender offers to achieve compliance with Rule 14e-4 of the Securities Exchange Act Rule of 1934, which generally prohibits the tendering of

¹ 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.

more shares than a person owns in a partial tender offer. Prior to February 2016, Respondent lacked any supervisory system, including written supervisory procedures (“WSPs”), designed to achieve compliance with Rule 14e-4. In February 2016, the Respondent incorporated into its WSPs a two-page operational procedures document for processing instructions from customers and proprietary Respondent accounts related to voluntary corporate actions, such as tender offers. This review, however, was limited to ensuring that Respondent processed tender instructions accurately without regard to whether Respondent, or its customers, were net long the shares tendered.

2. Respondent’s operational procedures were additionally flawed because they did not consider several required factors, such as options positions or securities held by the same person in multiple accounts, when calculating a person’s position in the security being tendered. Respondent’s supervisory system allowed violations of Rule 14e-4 to continue without detection. As a result, in at least one instance, Respondent impermissibly over-tendered 1,988,954 shares in a partial tender offer on behalf of its parent company’s London bank branch (“London Bank”) without a reasonable belief that London Bank possessed or owned all the shares tendered. Consequently, other tendering shareholders received fewer shares than they otherwise would have received had London Bank not over-tendered.
3. By failing to have a reasonably designed supervisory system, including WSPs, Respondent violated Phlx Rule 748² and 707.³ Respondent also violated Rule 14e-4 and Phlx Rule 707 by tendering shares short on behalf of London Bank. In addition, Respondent violated Phlx Rules 600⁴ and 613(f)⁵ by allowing an employee to function as a securities trader in connection with Respondent’s participation in the partial tender offer without being registered in that capacity.

FACTS AND VIOLATIVE CONDUCT

Applicable Law

4. Rule 14e-4, commonly referred to as the "short tender rule," is generally designed to preclude persons from tendering more shares than they own in order to avoid or reduce the risk of pro rata acceptance in a partial tender offer. A person may tender shares into a partial tender offer only if both at the time of tender and at the end of the proration period the person has a “net long position” in the subject security or an equivalent security equal to or greater than the amount tendered into the partial tender offer. Under Rule 14e-4, a person's "net long position" in a subject security equals the excess, if any, of such person's "long position" over a person's "short

² PHLX Rule 748 was superseded and replaced by PHLX Rule General 9, Section 20(h) in February 2020.

³ PHLX Rule 707 was superseded and replaced by PHLX Rule General 9, Section 1(c) in February 2020.

⁴ PHLX Rule 600 was superseded and replaced by PHLX Rule General 4, Section 1.1210 in June 2019; amended January 22, 2021.

⁵ PHLX Rule 613(f) was superseded and replaced by PHLX Rule General 4, Section 1.1220(b)(4) in June 2019; amended January 22, 2021.

position." In addition, Rule 14e-4, defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security.

5. Rule 14e-4(b)(2) prohibits a person from tendering shares for the account of another person in excess of his or her net long position unless the tendering person has a reasonable belief that the person on whose behalf the tender is made possesses or owns the subject security and will promptly deliver the subject security for tender.
6. A partial tender offer involves "proration risk," that is, a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Rule 14e-4 because the practice unfairly decreases the short tendering person's proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.
7. Phlx Rule 748 required a member organization 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 violations of, applicable securities laws and regulations, including the By-Laws and Rules of Phlx.
8. Phlx Rule 707 provided, in pertinent part, that no Member shall engage in acts or practices inconsistent with just and equitable principles of trade.
9. A violation of an Exchange Act Rule or Phlx Rule 748 is also a violation of Phlx Rule 707.
10. Phlx Rule 600 required associated persons engaged in the securities business of a member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.
11. PHLX Rule 613(f) required individual associated persons who are engaged in proprietary trading, market-making, and/or effecting transactions on behalf of a broker-dealer to qualify and register as a Securities Trader.

Respondent Failed to Have a Reasonable Supervisory System for Compliance with Rule 14e-4

12. Prior to February 2016, Respondent did not have any supervisory system, including WSPs, related to compliance with Rule 14e-4.
13. In February 2016, Respondent incorporated into its WSPs a two-page document related to compliance with Rule 14e-4. These procedures, however, were essentially an outline for how Respondent should handle voluntary corporate actions. As such, the WSPs failed to provide any guidance as to how the Respondent should calculate net long positions and what actions, if any, should be taken to ensure that the Firm

was not tendering shares for its own account, or for the account of a customer, in excess of the Respondent's, or its customer's, net long position. Respondent only checked the account for which the shares were being tendered to make sure that the shares were held in the account. Respondent did not factor into its review any options positions or shares held by the same person in other accounts. In February 2019, the Respondent implemented a new supervisory system, including WSPs, which incorporated a review of whether Respondent, or its customers, were net long the shares tendered in compliance with Rule 14e-4.

14. As a result of the foregoing conduct, Respondent violated Phlx Rules 748 and 707.

Respondent Tendered Shares on Behalf of London Bank in Violation of Exchange Act Rule 14e-4

15. Respondent processed instructions from customers and proprietary Respondent accounts related to voluntary corporate actions, such as partial tender offers. However, Respondent failed to properly determine whether Respondent, or the customer for which the Respondent was tendering shares, held a net long position in the security. Specifically, Respondent only confirmed that the individual account or accounts from which the shares would be tendered had a net long position, and did not consider whether the Respondent, or the customer, held a net long position. Respondent also failed to consider options positions when calculating either the Respondent's or its customer's net long position. The flawed methodology used by Respondent resulted in the tendering of more shares than what was permitted.

Company A Partial Tender Offer

16. In June 2013, Respondent tendered 29,907,206 common shares of Company A on behalf of London Bank in connection with a partial tender offer (the "Offer"). Pursuant to the Offer, shareholders could exchange their Company A common stock for the common stock of Company B, which was then majority-owned by Company A. Tendering shareholders received \$107.52 worth of Company B common stock for each \$100.00 worth of Company A shares tendered.
17. At the time of tender, London Bank's net long position in Company A was 27,918,306 common shares. When Respondent tendered 29,907,206 common shares of Company A on behalf of London Bank, it failed to consider short positions in Company A stock held in other London Bank accounts. Accordingly, Respondent over-tendered 1,988,954 Company A shares on behalf of London Bank. Respondent was solely responsible for the purchase and tender of Company A shares on behalf of London Bank and London Bank's Company A positions were kept on Respondent's stock records and available for review by Respondent, which approved the tender instructions. Accordingly, Respondent should have known that it was over-tendering shares on behalf of London Bank.

18. Because the Company A Offer was oversubscribed, other Company A tendering shareholders received fewer Company B shares than they otherwise would have received had London Bank not over-tendered.
19. As a result of the foregoing conduct, the Respondent violated Exchange Act Rule 14e-4(b)(2) and Phlx Rule 707.

Registration Violations

20. Between May 2013 and April 2014, an employee in Respondent's Stock Lending department executed equity transactions without being registered to function as a Securities Trader. Accordingly, Respondent failed to register one employee as a Securities Trader in violation of Phlx Rules 600 and 613(f).
- B. Respondent also consents to the imposition of the following sanctions:

A censure and a total fine of \$800,000, of which \$156,250 is payable to Phlx.⁶

Acceptance of this AWC is conditioned upon acceptance of similar agreements in related matters between the Respondent and each of the following self-regulatory organizations: FINRA; NYSE American; ISE; and Cboe.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted a Payment Information form showing the method by which it proposes to pay the fine imposed.

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 it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;

⁶ The remainder of the fine shall be allocated to FINRA, NYSE American LLC ("NYSE American"), Nasdaq ISE, LLC ("ISE"), and Cboe Inc. ("Cboe").

- 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 Respondent, 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 Respondent 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.

September 9, 2021

Date

Deutsche Bank Securities Inc.

Respondent

By: Andrew Stemmer

Print Name: Andrew Stemmer

Title: Managing Director

September 9, 2021

Date

Deutsche Bank Securities Inc.

Respondent

By: Anthony Stucchio

Print Name: Anthony Stucchio

Title: Managing Director

Reviewed by:

Bruce Newman

Bruce Newman, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
New York, New York 10007

Accepted by Phlx:

September 10, 2021

Date

Tina Salehi Gubb

Tina Salehi Gubb, Esq.
Chief Counsel
Department of Enforcement

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