Notice of Disciplinary Action against BMO Capital Markets Corp., Member Organization

To: Members, Member Organizations, Participants and Participant Organizations

From: Joseph Cusick, Chief Regulatory Officer, NASDAQ PHLX[SM]

DATE: October ___, 2017

Enforcement No. 2017-13
FINRA No. 20140418707

On October 5, 2017, the Business Conduct Committee (the "Committee") of the NASDAQ PHLX LLC ("PHLX" or the "Exchange") issued a disciplinary decision against BMO Capital Markets Corp. ("BMOC" or the "Firm"), a member organization of the Exchange. In response to a Statement of Charges issued in this action, BMOC submitted an Offer of Settlement ("Offer"). Solely to settle this proceeding, and without admitting or denying the charges, BMOC consented to findings that during the periods between October 2008 and June 2014 ("Review Period I") and between January 2012 and May 2012 ("Review Period II"), BMOC violated Exchange Rules 707, 708, 760, 785(c), 1014(g)(i)(A), 1053, 1063(e)(i), 1080(c)(ii)(C)(1)(2), and 748 (b), (d), and (g), and Section 17(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17a-3(a)(6)(i) thereunder.

Specifically, BMOC consented to findings that during Review Period I, BMOC had entered approximately 487 orders, representing approximately 183,674 contracts, with incorrect origin codes, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order marking errors were due to human error by Firm traders in manually entering incorrect origin codes in a system which did not have hard-coded settings in place at the time. During Review Period II, BMOC mismarked approximately 1,578 different orders, representing approximately 921,347 contracts, as "Firm" for Customer or BD Customer accounts, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order mismarkings occurred while BMOC was transitioning to become self-clearing, and were limited to orders entered into one specific broker-dealer's execution management system. Of the total mismarked contracts by BMOC during Review Periods I and II, approximately 50% were executed on the Exchange. Each instance in which BMOC executed an order with an incorrect origin code could have had adverse consequences, such as creating inaccurate order records, creating an inaccurate audit trail, inadvertently impacting the priority of order execution, reporting trades to OCC with inaccurate trade details, and adversely impacting the Exchange's ability to surveil for and detect potential violations of its rules and federal securities laws. By marking orders with the wrong origin code during Review Periods I and II, BMOC committed separate and distinct violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6)(i) thereunder; and Exchange Rules 707, 708, 760, 785(c), 1014(g)(i)(A), 1053 and 1063(e)(i).

In addition, during Review Period II, BMOC failed to properly expose the "Customer" side of a crossing order to allow for the possibility of price improvement in approximately 101 instances, representing a total of 40,056 contracts, of which approximately 174 contracts were executed on the Exchange. Such conduct constitutes separate and distinct violations of Exchange Rules 1080(c)(ii)(C)(1)(2), 707, 708, 760 and 785(c).

Moreover, during Review Period II, BMOC failed to have adequate supervisory systems and controls in place, including written supervisory procedures and separate systems of follow-up and review, which were reasonably designed to achieve compliance with the Exchange's origin code and order exposure requirements. BMOC failed to adequately train its employees on applicable rules governing origin codes, and its traders had not sought input from compliance or legal personnel regarding the proper marking of orders. Also, BMOC had no procedures to achieve compliance with Exchange order exposure rules. It was only after notice from regulators that BMOC had been alerted to its violations, and BMOC thereafter promptly took steps to develop and implement relevant systems, trainings, and procedures. Such conduct violated Exchange Rules 748(b), (d) and (g).

The Committee found that BMOC had violated Exchange Rules 707, 708, 760, 785(c), 1014(g)(i)(A), 1053, 1063(e)(i), 1080(c)(ii)(C)(1)(2), and 748 (b), (d), and (g), and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6)(i) thereunder, and ordered the imposition of the following sanctions against BMOC: (i) a censure; and (ii) a total fine in the amount of $350,000, of which $88,500 shall be paid to the Exchange.

For more information, contact:

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