

NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057171902

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

RE: Sanford C. Bernstein & Co., LLC, Respondent
Member Firm
CRD No. 104474

Pursuant to Rule 9216 of Nasdaq PHLX LLC (“Phlx”) Code of Procedure,¹ Sanford C. Bernstein & Co., LLC (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

The Firm became registered with Phlx in December 2006, and became a FINRA member in November 2000. Its registrations with Phlx and FINRA remain in effect. The Firm is headquartered in New York, New York and has 23 branch offices. It currently has 940 registered representatives. The Firm provides equity research, and equity and options sales and execution services to institutional clients.

The Firm has no 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

¹ Series 9000 of The Nasdaq Stock Market 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.

manual options order tickets handled by the Firm during the period between April 16 and April 20, 2018 (the “Exam Review Period”).

2. During the Exam Review Period, the Firm 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, during the period between April 16 and September 1, 2018 (the “Supervisory Review Period”), the Firm 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 that require the accurate documentation of the order receipt and transmission times of options orders.

FACTS AND VIOLATIVE CONDUCT

3. 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.
4. Section 17 of the Exchange Act and Rule 17a-3(a)(6)(i) promulgated thereunder require broker-dealers, such as the Firm, 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. Such records must be accurate.
5. Phlx Rule 760 requires member firms to make, keep current, and preserve books and records as prescribed by the Exchange Act.
6. 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.
7. During 2018, the Firm handled approximately 4,840 manual options orders, approximately 60% of which were manual customer orders routed to option exchange floor brokers for execution. During the Exam Review Period, the staff sampled a total of 62 manual customer options orders the Firm had routed to various options exchanges, and reviewed 37 orders that were routed to floor brokers for timestamp accuracy.

8. From the 37 manual customer options orders routed to floor brokers for execution during the Exam Review Period, the Firm did not maintain an accurate record of the order receipt time for 16 (approximately 43%) of the sampled orders. Of these 16 orders, seven were executed on Phlx.
 9. From the same sample of 37 manual customer options orders routed to floor brokers for execution during the Exam Review Period, the Firm did not maintain an accurate record of the order transmission times for all 37 (100%) of those orders. Of these 37 orders, 15 were executed on Phlx.
 10. The conduct described in paragraphs eight and nine constitutes violations of Rule 17a-3(a)(6)(i) promulgated under the Exchange Act, and Phlx Rule 760.
 11. During the Supervisory 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 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 any review for the accuracy of order receipt and order transmission times of manual options orders handled by the Firm.
 12. The conduct described in paragraph 11 constitutes a violation of Phlx Rule 748(h).
- B. Respondent also consents to the imposition of the following sanctions:
1. A censure; and
 2. A fine of \$85,000, of which \$27,500 (\$25,000 for the books and records violations and \$2,500 for the supervision violations) shall be paid to Phlx.²

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and NYSE American LLC, NYSE Arca, Inc. and Nasdaq ISE, LLC.

Respondent agrees to pay the monetary sanction in accordance with its Payment Information 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.

² The balance of the fine shall be paid to NYSE Arca, Inc, NYSE American LLC, and Nasdaq ISE, LLC.

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;
- 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

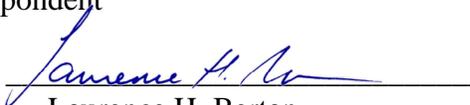
- C. If accepted:
1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;
 2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject 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 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.

8/11/2020

Date

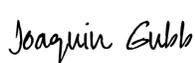
Sanford C. Bernstein & Co., LLC
Respondent

By: 
Laurence H. Bertan
Senior Vice President, Compliance

Accepted by Phlx:

September 9, 2020

Date


Joaquin Gubb
Senior Counsel
Department of Enforcement

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