

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2015044227201**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Barclays Capital Inc. (Respondent)
Member Firm
CRD No. 19714

Pursuant to FINRA Rule 9216, Respondent Barclays Capital Inc. 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, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Barclays became a FINRA member in October 1987. Barclays is headquartered in New York, NY and has 16 branches with approximately 2,900 registered representatives. Barclays provides trade execution, clearing, and investment banking services to institutional customers.

In December 2018, NYSE Arca, Inc. accepted an Offer of Settlement and Consent in which Barclays was censured and fined \$275,000 for, among other things, violating NYSE Arca recordkeeping rules by failing to maintain complete and accurate records of order cancellations and adjustments.

In December 2020, FINRA accepted an AWC in which Barclays was censured and fined \$650,000 for, among other things, violating Rule 17a-3 of the Securities Exchange Act of 1934 and FINRA Rule 2010 by failing to record the correct execution time on hundreds of brokerage order memoranda.

In April and May 2021, Cboe Exchange, Inc. accepted a Letter of Consent, and Nasdaq PHLX LLC, NYSE Arca, and NYSE American LLC each accepted AWCs in which Barclays was censured and fined a total of \$480,000 for, among other things, violating

Exchange Act Rule 17a-3 and exchange recordkeeping rules by failing to record accurate order receipt times and order entry times for thousands of options orders.¹

OVERVIEW

This matter involves Barclays' failure to comply with customer confirmation and related supervision rules. From November 2008 through the present, Barclays sent its customers approximately 270 million confirmations that inaccurately disclosed the firm's execution capacity, the customer's price, the market center of execution, or whether the trade was executed at an average price. Barclays' failures were caused by 11 underlying issues, each of which went undetected for at least five years. They included technology issues, a drafting error, and a misunderstanding of regulatory guidance. As a result, Barclays violated (1) Exchange Act Section 10(b), Exchange Act Rule 10b-10, NASD Rules 2230 and 2110, and FINRA Rules 2232 and 2010 with respect to an estimated 245.4 million confirmations; and (2) Exchange Act Section 17(a), Exchange Act Rule 17a-3(a)(8), NASD Rule 3110, and FINRA Rules 4511 and 2010 with respect to an estimated 24.8 million confirmation records.²

Throughout this time, Barclays failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with confirmation requirements. Among other things, Barclays had no supervisory system to review the accuracy of its confirmations from at least November 2008 through March 2020 and an unreasonable supervisory system in this respect from April 2020 through the present. This failure persisted even though, by mid-2017, Barclays was aware due to FINRA examinations of multiple systemic issues resulting in tens of millions of inaccurate confirmations.

Barclays also failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with Rule 605 of Regulation NMS from at least April 2014 through August 2020. As a result of its supervisory failures, Barclays violated NASD Rules 3010 and 2110 and FINRA Rules 3110 and 2010.³

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² FINRA Rule 2010 superseded NASD Rule 2110 effective December 15, 2008, FINRA Rule 2232 superseded NASD Rule 2230 effective June 17, 2011, and FINRA Rule 4511 superseded NASD Rule 3110 effective December 5, 2011.

³ FINRA Rule 3110 superseded NASD Rule 3010 effective December 1, 2014.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's cycle examinations of Barclays.

1. Barclays sent trade confirmations to customers containing inaccurate information.

a. Confirmation Requirements

Trade confirmations protect investors by, among other things, alerting them to potential conflicts of interest with their broker-dealers and providing them the means to verify the terms of their transactions and evaluate transaction costs and the quality of their broker-dealers' executions.

Section 10(b) of the Exchange Act and Exchange Act Rule 10b-10 require broker-dealers to provide customers a confirmation, at or before completion of each transaction, disclosing certain basic terms of the transaction, such as the identity, price, and number of shares of the security bought or sold and the execution capacity of the broker-dealer. In addition to being a material term of any transaction, the broker-dealer's capacity determines what additional disclosures are required under Rule 10b-10(a)(2). For example, for principal transactions, a broker-dealer must disclose the difference between the price to the customer and either the reported trade price or its contemporaneous purchase or sale price.⁴

Under FINRA Rule 2232(a), a "member shall, at or before the completion of any transaction in any security effected for or with an account of a customer, give or send to such customer written notification" in conformity with the requirements of Exchange Act Rule 10b-10. NASD Rule 2230 imposed a similar obligation.

Exchange Act Section 17(a), Exchange Act Rule 17a-3(a)(8), NASD Rule 3110, and FINRA Rule 4511 require broker-dealers to make and keep current certain books and records, including confirmations of all purchases and sales of securities. Confirmation records must be accurate to comply with these requirements.⁵

NASD Rule 2110 and FINRA Rule 2010 require a "member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade." A violation of the Exchange Act, an Exchange Act rule, or another NASD or FINRA rule is also a violation of NASD Rule 2110 or FINRA Rule 2010, as applicable.

⁴ In 1997, the staff of the Securities and Exchange Commission (SEC) published guidance allowing broker-dealers to provide an average price confirmation for customer orders effected in multiple executions. *National Association of Securities Dealers, Inc.*, 1997 SEC No-Act. LEXIS 1115, at *3-5 (May 6, 1997); *accord New York Stock Exchange, Inc.*, 2005 SEC No-Act LEXIS 325, at *1-3 (Mar. 3, 2005).

⁵ See *Anthony A. Adonnino*, 2003 SEC LEXIS 2411, at *25 (SEC Oct. 9, 2003) ("The requirement that records be kept embodies the requirement that those records be true and accurate.").

b. Barclays' Inaccurate Confirmations

From November 2008 through the present, Barclays sent customers an estimated 270 million trade confirmations that inaccurately disclosed its execution capacity (165 million), the price to the customer (77.8 million),⁶ the market center of execution (24.8 million), or whether the trade was executed at an average price (2.6 million). These inaccuracies were caused by 11 underlying issues, each of which persisted for periods ranging from five-and-a-half years to 12 years. The issues included:

- Seven separate programming issues that collectively caused incorrect capacities on an estimated 82.65 million confirmations (these issues impacted up to 13% of the firm's equities customer confirmations) between November 2008 and October 2021;
- A disclosure drafting error that resulted in inaccurate capacities on an estimated 82.35 million confirmations (representing approximately 18% of the firm's equities customer confirmations) from December 2009 through August 2018;
- A configuration issue that caused incorrect customer prices on an estimated 77.8 million confirmations (representing approximately 16% of the firm's equities customer confirmations) from January 2012 through April 2021;
- A coding change that caused incorrect market centers on an estimated 24.8 million confirmations (representing approximately 5% of the firm's equities customer confirmations) from June 2009 through July 2018; and
- A misunderstanding of regulatory guidance that caused the firm to incorrectly identify trades effected in single executions at single prices as average price executions on an estimated 2.6 million confirmations from at least December 2009 through the present.⁷

Barclays inaccurately disclosed its execution capacity, the customer price, or whether the trade was executed at an average price on an estimated 245.4 million confirmations. Therefore, Respondent violated Exchange Act Section 10(b), Exchange Act Rule 10b-10, NASD Rules 2230 and 2110, and FINRA Rules 2232 and 2010.

Barclays recorded an inaccurate market center of execution on an estimated 24.8 million confirmation records.⁸ Therefore, Respondent violated Exchange Act Section 17(a), Exchange Act Rule 17a-3(a)(8), NASD Rule 3110, and FINRA Rules 4511 and 2010.

⁶ Barclays disclosed to its customers a "Net Settle Price," which was the price inclusive of the firm's commission, commission equivalent, and other charges.

⁷ Barclays mistakenly believed that it was allowed to confirm a customer order effected in a single execution, but through an average price account, as an average price execution.

⁸ While the market center of execution was not a required disclosure under confirmation rules, recordkeeping rules require Barclays to make and keep accurate confirmation records.

2. Barclays failed to reasonably supervise its compliance with confirmation requirements.

NASD Rule 3010(a) and FINRA Rule 3110(a) require a member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. NASD Rule 3010(b) and FINRA Rule 3110(b) require a member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

The duty of supervision imposed by these rules includes the responsibility to investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation.

Barclays failed to take reasonable steps to timely act upon certain red flags of potential confirmation deficiencies. For example, in early 2016, Barclays knew of a programming issue that caused incorrect capacities on some confirmations dating back to 2009. The firm decided not to pursue a fix because it intended to migrate the relevant trade flow to a new system. However, the migration was repeatedly delayed, and Barclays sent millions of inaccurate confirmations over the next two-and-a-half years until the migration was finally completed in September 2018. In another example, in late 2016, Barclays knew of a system issue causing incorrect market centers of execution on certain confirmations but did not correct the issue until July 2018.

Beginning in at least November 2008, Barclays also had no supervisory system to review whether its confirmations complied with applicable SEC and FINRA requirements. By mid-2017, because of two FINRA examinations, Barclays knew about several of the systemic confirmation accuracy issues described above and that it had no written supervisory procedures related to confirmations. The firm failed, however, to implement a reasonable supervisory system. Instead, almost a full year later, the firm established a system and procedures to monitor only whether confirmations were delivered but not whether they were accurate.

In May 2019, FINRA, following another examination, notified Barclays that its written supervisory procedures failed to include a review of the accuracy of its confirmations. Nonetheless, it took until April 2020 for the firm to establish a supervisory system and written supervisory procedures to review the accuracy of its confirmations. The system, which remains in place at Barclays today, involves a quarterly review of 18 equities confirmations, including one cash trade confirmation from each of the firm's 18 unique client order flows. Given that the sample does not account for the different trading scenarios within each client order flow, as well as the fact that Barclays issues more than 10 million customer confirmations per quarter for equities transactions, Barclays' review of 18 confirmations per quarter does not reasonably assess its compliance with confirmation requirements.

Therefore, Respondent violated NASD Rules 3010 and 2110 and FINRA Rules 3110 and 2010.

3. Barclays failed to reasonably supervise its compliance with Regulation NMS Rule 605.

Rule 605 requires every market center that trades national market system securities to make available to the public a monthly report on the covered orders⁹ it received for execution. The report provides certain execution quality statistics and must be categorized by security, order size, and order type.

Barclays relied on a third-party vendor to produce its Rule 605 reports. The vendor was responsible for, among other things, categorizing the firm's orders and calculating the required statistics. From at least April 2014 through August 2020, Barclays failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with Rule 605. Throughout this period, Barclays' procedures did not require, nor did the firm otherwise conduct, a supervisory review of whether the vendor calculated its statistics in compliance with Rule 605. Prior to January 2017, Barclays' procedures also did not require, nor did the firm otherwise conduct, a supervisory review of whether the vendor categorized Barclays' orders in compliance with Rule 605. Pursuant to procedures implemented in January 2017, Barclays began reviewing the vendor's order categorizations but reviewed too small a sample to reasonably assess for compliance with Rule 605. Although the firm's Rule 605 reports included hundreds of millions of covered orders from January 2017 through August 2020, the firm reviewed only 45 covered orders (an average of three orders per quarter).¹⁰

Therefore, Respondent violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure;
- a \$2.8 million fine; and
- an undertaking that, within 120 days of the date this AWC is accepted, a senior officer and registered principal of Barclays shall certify in writing to FINRA that Barclays has (1) corrected the ongoing confirmation issue described above; and (2) implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Exchange Act Rule 10b-10 and

⁹ Under Rule 600(b) of Regulation NMS, a "covered order" is "any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, ... orders submitted on a 'not held' basis...." During most of the relevant period, this definition was in Rule 600(b)(15). However, it was renumbered as Rule 600(b)(16) in January 2019 and Rule 600(b)(22) in June 2021.

¹⁰ Since August 2020, Barclays has designated all orders as "not held" and has not reported any covered orders under Rule 605.

FINRA Rule 2232. The certification shall be submitted by letter addressed to Shanyn Gillespie, Senior Counsel, FINRA Department of Enforcement, 15200 Omega Drive, Suite 300, Rockville, MD 20850 and to shanyn.gillespie@finra.org.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the 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 National Adjudicatory Council (NAC) 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 Legal Officer, the NAC, or any member of the NAC, 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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 FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

June 22, 2022

Date

Penny Rosenberg

Barclays Capital Inc.

Respondent

Print Name: Penny Rosenberg

Title: Director

Reviewed by:

[Attorney Name]

Counsel for Respondent

[Firm Name]

[Address]

[City/State/Zip]

Accepted by FINRA:

Signed on behalf of the

Director of ODA, by delegated authority

June 29, 2022

Date

Shanyn Gillespie

Shanyn Gillespie

Senior Counsel

FINRA

Department of Enforcement

15200 Omega Drive

Rockville, MD 20850