

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20140429134-01

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Deutsche Bank Securities Inc., Respondent
Broker-Dealer
CRD No. 2525

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Deutsche Bank Securities Inc. (the "Respondent," "firm" or "DBSI") 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 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Respondent has been a member of FINRA, and its predecessor NASD, since March 16, 1940, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

SUMMARY

In connection with FINRA Matter No. 20140429134, the Trading Analysis staff of the Department of Market Regulation (the "staff") reviewed DBSI's compliance with Securities and Exchange Commission ("SEC") Regulation ATS and related FINRA Rules during the period August 21, 2009 to the present (the "review period"). The review focused on DBSI's Alternative Trading System ("ATS"), called SuperX, which began operations on September 14, 2009.

In the Form ATS that the firm filed with the SEC on August 21, 2009, it represented that it would provide all ATS users with "identical access to all services and features" offered by the ATS.¹ During the course of the review period, however, DBSI failed generally to disclose to all users the availability of all services and features of the ATS, most of which involved the ability to include or exclude counterparties or groups of counterparties against whom orders would execute. This failure had the potential to benefit users who knew about and utilized such services and features, some of whom were high frequency trading firms. When the firm made disclosures about services and features to all users, the disclosures were inadequate because they were incomplete or unclear. As a result, there was the potential that not all users understood that they could access all of the services and features that were available to them. Thus, all users did not effectively have "identical access" to all services and features offered by the ATS, and therefore the Form ATS was materially untrue or omitted material information necessary to make the statements made therein not misleading.

In addition, during the same time period, the firm did not have supervisory procedures in place to ensure that it disclosed material information regarding SuperX's services and features to all users.

Based on these findings, the staff determined DBSI engaged in the violative conduct set forth below, which constitutes violations of FINRA Rule 2010 for conduct in contravention of Section 17(a)(2) of the Securities Act of 1933, FINRA Rule 2010 for conduct inconsistent with just and equitable principles of trade, FINRA Rule 2210(d)(1)(A), NASD Rule 3010, and SEC Rule 301(b)(2) of Regulation ATS.

¹ For purposes of this AWC, the terms "subscribers," "participants," "users," and "clients" are used interchangeably.

FACTS AND VIOLATIVE CONDUCT

I. The Firm's Representations and Disclosures Regarding the ATS

At all relevant times, DBSI's electronic trading group was called Autobahn. The Autobahn equities group offered three different products to clients of the firm: smart order routers; algorithms; and direct market access ("DMA"). One of the markets that clients were able to access directly through a DMA agreement was DBSI's SuperX ATS, which began operations on September 14, 2009. The firm referred to clients who were exclusively DMA clients connected only to SuperX as "Liquidity Partners." Autobahn equity clients in any of these three product offerings could also potentially have order flow enter SuperX, and the firm referred to this order flow as coming from "clients." DBSI's own proprietary trading desks could also send order flow to SuperX.

In the firm's initial Form ATS filed on August 21, 2009 (and all subsequent updates), the firm represented that "[a]ll eligible internal and external users of the ATS will have *identical access to all* services and features offered by the system . . ." (emphasis added).

DBSI responded to client requests for access to all services and features offered by the system. However, as described more fully below, the firm failed to provide identical information to all users regarding four types of critical services and features offered by the ATS: (a) the ability to segment order flow among custom counterparty groups; (b) the opportunity to interact with "standard" or "general" counterparty groups created by the firm ("General Groups"); (c) the right to set interaction preferences on a session-by-session and an order-by-order basis; and (d) the availability of post-trade analytical services. The effect of this failure was that not all users had the same awareness of these services and features; and therefore some users were able to utilize certain services and features while others were not.

DBSI made general disclosures of certain services and features during the review period. For example, the Form ATS contemplated segmentation of participant order flow (*i.e.*, the ability for participants to make choices about the types of order flow with which their own orders would interact) by stating that "[u]sers of the ATS will be able to opt out of having their orders cross in the ATS with DBSI's principal orders, with their own orders or with orders of certain types of subscribers (*e.g.*, third party broker-dealers)." The firm's Form ATS filings, however, did not disclose with specificity all the services and features that were available to ATS participants. For the most part, disclosures were a matter of individualized discussion between clients and their sales traders, but this process failed to ensure that all clients received timely and adequate disclosures regarding the services and features described herein.

The firm stated in some of its marketing materials that it "allows clients to opt-in or opt-out of interaction with liquidity coming from different sources." However, not all clients received these materials.

The firm also made disclosures about the operation of the ATS in three other documents, which, along with its Form ATS filings, were made publicly available on the SuperX website for the first time on June 17, 2014: the Order Type and Matching Logic Summary (created in April 2014); the SuperX FAQ (the earliest version of which was dated April 2013); and the SuperX ATS FIX Protocol Connectivity Specification (created on October 28, 2013) ("FIX Spec").¹ The public release of these documents did not, however, excuse the firm's prior failures to provide timely and complete disclosure of all available ATS services and features to all users. Moreover, the foregoing documents did not disclose certain services and features that the firm was providing to some users typically at their request, and therefore the firm failed to provide all ATS users with identical access to these services and features.

In February 2015, the firm published an updated version of the SuperX FAQ that included, for the first time, a list of the General Groups. While the firm responded to client requests and the firm's marketing materials for the Autobahn platform did disclose the availability of post-trade analytics, because not all ATS users were Autobahn clients, the firm did not ensure that the disclosures reached all clients.

In addition to the written disclosures discussed above, some disclosures regarding these four types of services and features were made at various times orally in discussions between clients and sales account representatives at DBSI. But as with the written disclosures, these oral disclosures were not uniformly provided to all clients.

2. The Firm Failed to Timely and Completely Disclose Four ATS Services and Features to All Users

DBSI failed to provide timely and complete disclosure of the following services and features to all ATS users.

(a) Custom Counterparty Groups

As early as October 2010, in response to requests from clients and Liquidity Partners, the firm began to segment order flow within the ATS into different counterparty groups based on definitions those participants created. This allowed the participant making the request to choose the types of order flow with which its own orders would and would not interact in the ATS. DBSI would honor this request, if it considered the request to be reasonable, by creating a custom counterparty group for that participant that was made up of the defined order flow.

As described above, two disclosure documents regarding the ability to create and trade against custom counterparty groups were made available to certain clients earlier than June 17, 2014: (1) the Form ATS dated August 21, 2009, which stated that users "will be able to opt out of having their orders cross in the ATS with DBSI's principal orders, with their own orders or with orders of certain types of subscribers (e.g., third party broker-

¹ Prior to June 17, 2014, these documents were made available upon request. Additionally, the FIX Spec was distributed to most or all ATS users when it was created in October 2013.

dealers)”; and (2) certain general marketing materials, including one entitled “Smart Liquidity for Dark Pools” that was created in March 2010 and disclosed that the ATS “allows clients to opt-in or opt-out of interaction with liquidity coming from different sources. This allows for clients to accommodate their individual needs within [the ATS].” But not all clients of the ATS received these materials. Additionally, DBSI employed sales traders assigned to each participant whose responsibilities included working with participants to optimize their trading in the ATS. But the firm was not able to show that the sales traders told all participants about all of the relevant ATS services and features.

Likewise the ATS’s FIX Spec, which was sent to participants on or around October 28, 2013 and which was made publicly available on its website on June 17, 2014, disclosed to Liquidity Partners that they could contact DBSI to request customized counterparty groups. The FIX Spec stated in relevant part:

Anti-Crossing Logic

SuperX ATS supports the ability to prevent a participant from crossing opportunities in the pool with their own flow or other participants. This functionality is referred to as the Anti-Crossing logic.

Importantly, the SuperX ATS team will not disclose the identity of the participants in the pool. The SuperX ATS team does not designate a participant to a specific type exclusively; classification is based on the nature of the flow.

Contact superx.us@list.db.com for further details and for enabling this feature.

—Prevent Self-Crossing: At the firm-level or session-level, a Liquidity Partner can opt-out from crossing with their order flow. Self-Crossing is disabled by default

—Counterparty: At the firm-level, session-level or order-level, a Liquidity Partner can request not to cross with other participant(s) or type(s) of flow in SuperX. By default, participants interact with all flows [sic] types in the pool. (emphasis added).

While the firm disclosed the availability of custom counterparty services upon client request, the firm failed to generally disclose the availability of custom counterparty services to all ATS users until three years after it first began providing the service typically at client request.

(b) General Counterparty Groups

On or around July 26, 2010, the firm created the first of what would become the General Groups. More groups were created in the ensuing years. The duties of DBSI's sales traders included working with participants to determine their counterparty group settings. This was done either orally or in writing, but DBSI did not maintain records sufficient to demonstrate what participants were told orally. Over the next four and a half years, the firm began to list the General Groups (and their definitions) in responses to participants who requested a list of such groups. Firm personnel provided individual participants with individualized lists of the available General Groups, which varied depending on the identity of the client that was requesting the information and what the DBSI sales trader assigned to that client believed the client would want. As a result, not all participants received the same list of available General Groups and the firm did not generally notify all ATS participants of their existence until a list of General Groups was included in an updated version of the SuperX FAQ published to the Deutsche Bank website in February 2015. Even then, the list did not include two General Groups that certain clients used prior to February 2015.

After the February 2015 publication of General Group information, there was a significant increase in the number of client requests to interact with General counterparty groups. This increase in requests to interact with the General counterparty groups supports the conclusion that not all ATS users were aware of these groups before the February 2015 disclosure.

(c) Setting Interaction Preferences on a Session-by-Session and an Order-by-Order Basis

In addition to counterparty groups, as early as September 2012, a participant could create multiple sub-accounts, or "sessions," within the ATS, enabling the participant to trade with (or avoid) different customized counterparty groups or General Groups for each of its different sessions. Furthermore, also in September 2012, at least one subscriber requested and was given the ability to segment its interaction preferences on an order-by-order basis, an ability that was subsequently requested and used by other subscribers as well.

While it was the firm's practice primarily to inform subscribers of these options orally through conversations between sales traders and subscribers, these disclosures were not always provided or were not provided adequately. The availability of these options was not generally disclosed to all ATS participants until October 31, 2013, when the FIX Spec, which disclosed these options, was distributed to all ATS participants via email. However, because the firm did not publicly disclose the list of General Groups until February 2015, not all subscribers were made aware that they could segment order flow against these Groups at the session or order level until that later date.

(d) Post-Trade Services

During most of the review period, the firm provided post-trade analysis to subscribers upon request, primarily through conversations between subscribers and sales traders. The firm's marketing materials for the Autobahn platform generally disclosed the availability of post-trade analysis, but these published marketing materials were not specific to the ATS. Also, not all ATS users were Autobahn clients. As a result, the firm did not ensure that all ATS users were aware that post-trade analysis services were available to them, nor did they receive such services. In addition, DBSI produced formalized "Counterparty Reports" for some participants. These reports summarized the participant's executions in the ATS by counterparty type and showed information such as the number of filled shares, the percent of filled shares, average fill size, and spread savings, among other information. The reports varied in their frequency depending on the recipient, with reports covering periods that ranged from quarterly to yearly depending on the participant's preferences. The existence of the Counterparty Reports was openly discussed with clients by the sales traders; but the firm was not able to show that it was discussed with all clients. Moreover, it was not disclosed in any of the firm's publicly available documents.

As a result, DBSI failed to provide all ATS participants with "identical access to all services and features offered by" its ATS, as the firm committed to do in its Form ATS.

3. The Firm Had a Deficient Supervisory System

During the review period, the firm failed to have in place supervisory procedures to ensure that it timely and fully disclosed all material information about SuperX's services and features to all users, and that it provided identical access to such services and features to all SuperX clients.

4. Rule Violations

Based on the foregoing conduct, the firm violated the following rules.

(a) FINRA Rule 2010 for Conduct in Contravention of Section 17(a)(2) of the Securities Act of 1933

Section 17(a)(2) of the Securities Act of 1933 makes it unlawful

for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading[.]

As described above, the firm failed to generally disclose to all ATS clients all services and features that were available to them. As a result, certain ATS clients requested and received services and features that others did not. The services and features discussed above were material because other ATS clients would have considered them important in deciding whether and how to utilize the ATS. The conduct described in this paragraph and above in Sections I.A.1 – 2 constitutes a violation FINRA Rule 2010 because the firm acted in contravention of Section 17(a)(2) of the Securities Act of 1933.

(b) FINRA Rule 2010

FINRA Rule 2010 requires every FINRA member, in the conduct of its business, to “observe high standards of commercial honor and just and equitable principles of trade” and is violated, without a finding of any other associated rule violation, when a member engages in conduct inconsistent with moral norms and standards of professional conduct. Here, the firm’s conduct described above in Sections I.A.1 and 2 caused disparate treatment of its users despite the firm’s promise that all users of the ATS would have “identical access” to all of the ATS’s services and features described above. Such conduct constitutes a violation of FINRA Rule 2010.

(c) FINRA Rule 2210(d)(1)(A)

FINRA Rule 2210(d)(1)(A) states that all member communications, including “institutional communications” (as the relevant communications here were),

must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

As described above, the firm’s representation in its Form ATS was materially misleading because not all users who received that statement were given identical access to the ATS’s services and features described above. The conduct described in this paragraph and above in Sections I.A.1 – 2 constitutes a violation of FINRA Rules 2210(d)(1)(A) and 2010.

(d) Regulation ATS Rule 301(b)(2)(1)

Regulation ATS Rule 301(b)(2)(ii) requires the firm to “file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the [ATS].” Regulation ATS Rule 301(b)(2)(iii) requires the firm to amend its Form ATS “[i]f any of the information contained in the [Form ATS] ... becomes inaccurate for any reason....” The services and features described above constituted material changes to the operation of the SuperX ATS. Therefore, as the firm began offering each such service or feature, and failed to offer it to all of its users, the offering rendered inaccurate its

statement that all ATS users “will have identical access to all services and features offered by the system.” The conduct described in this paragraph and above in Sections I.A.1 – 2 constitutes violations of Regulation ATS Rule 301(b)(2)(ii) and (iii), and FINRA Rule 2010.

Additionally, Exhibit F of Form ATS required in subsection (f) “[a] copy of the [ATS’s] subscriber manual and any other materials provided to subscribers.” During all relevant times, the firm stated in that subsection that “[t]here are currently no subscriber manuals or other materials relating to the ATS that would be provided to Subscribers.” Because the firm was, in fact, providing materials relating to the services and features described above to some users, this statement was inaccurate and required to be updated. The conduct described in this paragraph and above in Sections I.A.1 – 2 constitutes violations of Regulation ATS Rule 301(b)(2)(ii) and (iii), and FINRA Rule 2010.

(e) NASD Rule 3010

Based on the supervisory system deficiency described above in paragraph I.A.3, the firm violated NASD Rule 3010 for conduct before December 1, 2014 and FINRA Rule 3110 for conduct on and after December 1, 2014, and FINRA Rule 2010.

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

A censure and a fine of \$3,250,000; and an undertaking to revise the firm’s written supervisory procedures with respect to the areas discussed in paragraph I.A.3 above. Within 60 business days of acceptance of this AWC by the National Adjudicatory Council (“NAC”), a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 Key West Avenue, Rockville, MD 20850, a signed, dated letter, or an email from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described above in paragraph I.A.3 above; and (3) the date the revised procedures were implemented.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It 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 that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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 FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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 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 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 actions 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 the subject matter thereof 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of 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 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 Respondent to submit it.

10-18-16
Date

Deutsche Bank Securities Inc., Respondent

By: David M. Levine

Name: David M. Levine
Managing Director &
Associate General Counsel

Title: _____

By: Steven F. Reich

Name: Steven F. Reich
General Counsel - Americas

Title: _____

Accepted by FINRA:

12/15/16
Date

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

Robert A. Marchman
Robert A. Marchman
Executive Vice President, Legal Section
Department of Market Regulation