

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2014043783101**

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

RE: Citigroup Global Markets Inc. (Respondent)
Member Firm
CRD No. 7059

Pursuant to FINRA Rule 9216, Respondent Citigroup Global Markets 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 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 FINRA member since 1936. The firm is headquartered in New York, New York, has over 700 branch offices, and employs over 7,000 registered representatives. It provides investment banking, asset management, brokerage, securities trading, advisory and other financial services to customers. The firm also engages in proprietary trading.

RELEVANT DISCIPLINARY HISTORY

In AWC No. 2013038061201 (April 2016), without admitting or denying the findings, Respondent consented to a censure, a \$35,000 fine, and an undertaking to revise the firm's procedures in connection with findings that it violated Rule 611(a) of Regulation National Market System (NMS) under the Securities Exchange Act of 1934, NASD Rule 3010, and FINRA Rule 2010. Specifically, between June 2012 and August 2014, the firm failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Rule 611(b)(6) of Regulation NMS.

In AWC Nos. 2015046590001 to 04 (October 2018), without admitting or denying the findings, Respondent consented to a censure, a \$110,000 fine (apportioned equally between BZX, BYX, EDGA, and EDGX), and an undertaking to revise the firm's

procedures, for violating Rule 611(c) of Regulation NMS and related BZX, BYX, EDGA, and EDGX rules. Specifically, between November 2011 and November 2014, the firm failed to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its intermarket sweep orders satisfied Regulation NMS.

OVERVIEW

Between January 2013 and April 2020, Respondent failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs of protected quotations in NMS stocks. In addition, the firm failed to conduct regular surveillance to ascertain the effectiveness of its Rule 611 compliance program and to take prompt action to remedy any deficiencies. The firm's Rule 611 policies and procedures were not reasonably designed to ensure: (i) the accuracy and reliability of the national best bid and offer (NBBO) that the firm captured from market data (i.e., its Firm-Specific Quotation Data); and (ii) the accuracy and reliability of systems upon which the firm relied to comply with certain exceptions set forth in Rule 611(b). As a result, the firm failed to detect and remediate timely approximately 155,000 potential trade-throughs.

By failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs, failing to conduct regular surveillance of its Rule 611 compliance program, and failing to take reasonable steps to establish that its intermarket sweep orders (ISOs) satisfied Rule 600(b)(31), Respondent violated Rules 611(a) and (c) of Regulation NMS, NASD Rule 3010, and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Federal securities laws and FINRA rules require broker-dealers that act as trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs.

NASD Rule 3010 and FINRA Rule 3110 require members to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA Rules.¹

Rule 611 of Regulation NMS promotes intermarket price protection by restricting "trade-throughs," which are defined by Rule 600(b)(81) as "the purchase or sale of NMS stock during the regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer." Trade-through protection prevents unfairness to investors and facilitates best execution of customer orders.

Rule 611(a)(1) requires trading centers² to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs that do not

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

² Respondent is a trading center under Rule 600(b)(82).

fall within one of the exceptions set forth in Rule 611(b), and, if relying on such an exception, that are reasonably designed to assure compliance with the exception's terms. Rule 611(a)(2) requires trading centers to conduct regular surveillance to ascertain the effectiveness of its Rule 611 compliance program and to take prompt action to remedy any deficiencies.

The Securities and Exchange Commission (SEC) has stated that Rule 611 does not require a firm to maintain a comprehensive database of the protected quotation data that it receives (Firm-Specific Quotation Data), so long as the firm: (i) implements reasonable policies and procedures including periodic reviews of its Rule 611 compliance program; and (ii) retains sufficient Firm-Specific Quotation Data to demonstrate the reasonableness of those periodic reviews. In general, a firm must conduct periodic reviews for specific time periods that are reasonably designed to test the effectiveness of its policies and procedures for preventing trade-throughs and for complying with Rule 611's exceptions. For these time periods, a firm should maintain Firm-Specific Quotation Data so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities.³

Rule 611(b) sets forth nine exceptions to the general prohibition against trade-throughs, two of which are relevant to this matter:

- (i) The Outbound ISO Exception, under Rule 611(b)(6), excepts a trade-through that was effected by a trading center that simultaneously routed an ISO to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. Rule 611(c) requires trading centers that route ISOs to take reasonable steps to establish that those ISOs meet the requirements of Rule 600(b)(31) of Regulation NMS, which defines an ISO as a limit order for an NMS stock that meets specific requirements.⁴
- (ii) The Benchmark Exception, under Rule 611(b)(7), excepts a trade-through that was the execution of an order: (i) at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution; and (ii) for which the material terms were not reasonably determinable at the time the commitment to execute the order was made. The SEC has stated that a broker-dealer's sale of American Depositary Receipts (ADRs) qualifies for the Benchmark Exception so long as the broker-dealer reasonably documents the

³ See SEC Division of Trading and Markets, April 4, 2008 update to *Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS* (FAQ), at 6.03.

⁴ Rule 600(b)(31) defines an ISO as a limit order for an NMS stock that meets the following requirements: (i) when routed to a trading center, the limit order is identified as an ISO; and (ii) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.

estimated conversion fee included in the ADR equivalent price.⁵

A violation of Rule 611, NASD Rule 3010, or FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires that members and associated persons observe high standards of commercial honor and just and equitable principles of trade.

Respondent failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs.

Between January 2013 and March 2020, Respondent failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs that resulted from outdated quotation data. While the firm's WSPs identified the need to avoid using outdated quotation data, the WSPs failed to provide for periodic reviews that may have detected the data problems. In addition, the WSPs did not contain any process for retaining Firm-Specific Quotation Data sufficient to demonstrate the reasonableness of its Rule 611 compliance program.

As a result of these supervisory failures, Respondent failed to detect repeated instances in which the firm relied upon outdated quotation data that did not reflect subsequent price changes. Consequently, the firm executed thousands of potential trade-throughs between January 2013 and March 2020.

In addition, between March 2013 and November 2015, Respondent failed to detect that one of its trading desks had improperly configured a third-party market data feed, which caused the desk to rely upon an inaccurate NBBO when trading certain securities. In order to properly configure the feed, the trading desk had to manually enter codes for each security it traded. Because the desk entered the codes incorrectly for 50 securities, its NBBO calculation for those securities failed to capture all protected quotations, resulting in thousands of potential trade-throughs.

Additionally, between November 2016 and April 2020, Respondent failed to establish, maintain, and enforce written policies and procedures reasonably designed to assure compliance with the terms of the Outbound ISO Exception. The firm likewise failed to take reasonable steps to ensure that its ISOs satisfied Rule 600(b)(31). The firm's WSPs regarding the Outbound ISO Exception required the responsible supervisor to conduct a manual review of only five trades per week. Given that the firm routed over 25 million ISOs per quarter, this sample size was unreasonably limited. In addition, the WSPs contained no guidance about how to generate the sample and how to ensure coverage of all trading systems and a reasonable variety of trades. The firm also failed to update its WSPs and supervisory processes when it began using a third-party system to facilitate compliance with the Outbound ISO Exception. Notably, the firm had no process to monitor whether its internal trading system was properly interpreting instructions from

⁵ See FAQ at 3.15 (noting that, in order to qualify for the Benchmark Exception, the ADR equivalent price may not include any reasonably determinable compensation for the broker-dealer and the amount of any anticipated fee included in the ADR equivalent price may not exceed the standard fee published by a depository for the conversion of foreign ordinary shares to ADRs).

the third-party system that would have prevented trade-throughs. As a result of these supervisory failures, the firm failed to detect and timely remediate problems with its trading systems that caused the firm to execute over 100,000 potential trade-throughs between November 2016 and April 2020.

Finally, between July 2014 and December 2015, Respondent failed to establish, maintain, and enforce policies and procedures reasonably designed to assure compliance with the Benchmark Exception for ADRs. Specifically, the firm did not have any process to reasonably document the estimated conversion fee included in the ADR equivalent price.

Through this conduct, Respondent violated Rules 611(a) and (c) of Regulation NMS, NASD Rule 3010, and FINRA Rules 3110 and 2010.

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

- A censure;
- A \$175,000 fine; and
- The following undertaking:
 - i. Within 90 days from the Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a registered principal and executive officer of the firm, on behalf of the firm, shall submit a certification that the firm's processes, controls, policies, systems, and procedures are reasonably designed to achieve compliance with Rule 611.
 - ii. The certification shall identify Matter No. 2014043783101 and be provided by email from a work-related account of a registered principal of the firm to Meghan.Ferguson@finra.org and EnforcementNotice@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 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:

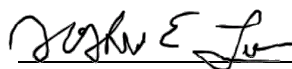
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may 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 testimonial obligations or 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.

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.

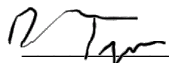
January 27, 2021

Date



Joshua E. Levine
Citigroup Global Markets Inc.
Respondent

Reviewed by:



James Tyne
Counsel for Respondent

Accepted by FINRA:

January 29, 2021

Date

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

Meghan Ferguson

Meghan A. Ferguson
Principal Counsel
FINRA Department of Enforcement