

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

NO. 20150476555-01

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

**RE: BNY Mellon Capital Markets, LLC, Respondent
Broker-Dealer
CRD No. 17454**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BNY Mellon Capital Markets, 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, 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

The firm has been a member of FINRA since August 1, 1986, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has the following relevant disciplinary history:

- On February 26, 2016, FINRA accepted an AWC in which the firm consented to a censure and a fine of \$22,500 for late reporting to the Trade Reporting and Compliance Engine ("TRACE") in violation of FINRA Rule 6730(a) and a pattern or practice of late reporting in violation of FINRA Rule 2010, during the period of January 1, 2015, through March 31, 2015.
- On September 18, 2015, FINRA accepted an AWC in which the firm consented to a censure and a fine of \$20,000 for late TRACE reporting in violation of Rule 6730(a) and a pattern or practice of late reporting in violation of Rule 2010, during the period of October 1, 2014, through December 31, 2014.

- On September 15, 2014, FINRA accepted an AWC in which the firm consented to a censure and a unitary fine of \$7,500 for late TRACE reporting in violation of Rule 6730(a) and a pattern or practice of late reporting in violation of Rule 2010; inaccurate TRACE reporting in violation of FINRA Rule 6730(c)(8); and recordkeeping violations of SEC Rule 17a-3 and FINRA Rule 4511; during the period of October 1, 2013, through December 31, 2013.

SUMMARY

This AWC, as set forth below, resolves three reviews by the Department of Market Regulation's TRACE Agency/SP staff (the "staff"), which encompassed four calendar quarters. Two of the reviews – Nos. 20150476555 and 20160509677 – involved TRACE-eligible Securitized Products ("SP"). The third review – No. 20160518934 – involved TRACE-eligible Agency Debt securities.

In Review No. 20150476555, the staff reviewed the firm's compliance with Rule 6730 during the periods from July 1, 2015, through September 30, 2015, and January 1, 2016, through March 31, 2016, and in Review No. 20160509677, the staff reviewed the firm's compliance with Rule 6730 during the periods from April 1, 2016, through June 30, 2016, and July 1, 2016, through September 30, 2016. The four calendar quarters encompassed by the two reviews are collectively referred to as the "TRACE SP review periods." During the TRACE SP review periods, the firm failed to timely report transactions in TRACE-eligible SP, as described below, and as a result, the firm violated Rules 6730(a) and 2010.

In Review No. 20160518934, the staff reviewed the firm's compliance with Rule 6730 during the period from July 1, 2016, through September 30, 2016. The calendar quarter encompassed by this reviews is referred to as the "TRACE Agency Debt review period." During the TRACE Agency Debt review period, the firm failed to timely report transactions in TRACE-eligible Agency Debt, as described below, and as a result, the firm violated Rules 6730(a) and 2010.

In addition, during the TRACE SP review periods and the TRACE Agency Debt review period, the firm's supervisory system was deficient and, as a result, the firm violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. TRACE is the FINRA-developed vehicle that facilitates the mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities. TRACE was introduced in July 2002 to bring transparency to the fixed income market and to provide all market participants with comprehensive, real-time access to price information. Moreover, TRACE data provides a regulatory audit trail utilized by FINRA staff for market surveillance.
2. In furtherance of TRACE's objectives, Rule 6730 sets forth requirements for reporting to TRACE, and Rule 6730(a) specifically prescribes requirements as to when and how

transactions in TRACE-eligible securities are to be reported to TRACE. Further, Rule 6703(a)(4) provides, "Members have an ongoing obligation to report transaction information promptly, accurately, and completely."

3. During the TRACE SP review periods, the firm failed to report to TRACE 326 transactions in TRACE-eligible SP within the time prescribed by Rule 6730. The conduct described in this paragraph constitutes separate and distinct violations of Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of Rule 2010.
4. During the TRACE Agency Debt review period, the firm failed to report to TRACE 84 transactions in TRACE-eligible Agency Debt securities within the time permitted by Rule 6730. These transactions constituted 3.24 percent of the transactions in TRACE-eligible Agency Debt that the firm reported to TRACE during the TRACE Agency Debt review period. The conduct described in this paragraph constitutes separate and distinct violations of Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of Rule 2010.
5. During the TRACE SP review periods and the TRACE Agency Debt review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. Specifically, at a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: timely submission of accurate reports to TRACE [a], [b], [c], and [d]. The conduct described in this paragraph constitutes violations of Rules 2010 and 3110.

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

1. A censure;
2. A fine of \$150,000 (consisting of a unified fine of \$100,000 for the TRACE reporting violations and \$50,000 for the supervisory violations); and
3. an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.5 above. Within 60 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal who is also a senior executive officer 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 e-mail 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 in paragraph I.A.5; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions 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 the firm;**
- 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 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 the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;**
 - 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 the firm'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. The firm 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 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 it 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.

6/23/2017
Date

Respondent

BNY Mellon Capital Markets, LLC

By: [Signature]
Name: JEFFREY S GEARHART

Title: MANAGING DIRECTOR & COO

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

7/17/17
Date

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

[Signature]
Robert A. Marchman
Executive Vice President
Department of Market Regulation