

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049884201**

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

RE: FIS Brokerage & Securities Services LLC, Respondent
Broker-Dealer
CRD No. 104162

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, FIS Brokerage & Securities Services LLC 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 the firm 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 FINRA member since October 2000. The firm is headquartered in Geneva, Illinois and has three additional branch offices. It currently employs approximately 74 registered representatives at its headquarters, branch offices and non-branch locations. The firm provides execution services to other broker-dealers and institutional customers on an agency basis.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA, or any other self-regulatory organization.

OVERVIEW

From November 2015 through September 2019, the supervisory system and pre-trade risk management controls maintained by the firm were not reasonably
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designed to prevent the entry of erroneous orders. This conduct violated Rule 15c3-5 of the Securities Exchange Act of 1934, as amended (the Exchange Act), specifically Rules 15c3-5(b) and 15c3-5(c)(1)(ii), and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

In general, Rule 15c3-5 requires that broker-dealers with market access “appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.”

Paragraph (b) of Rule 15c3-5 requires a broker-dealer with market access to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks” of this business.

Paragraph (c) of Rule 15c3-5 sets forth the required risk management controls and supervisory procedures.¹ Rule 15c3-5(c)(1)(ii) specifically requires such controls and procedures to be reasonably designed to prevent “the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.”

FINRA Rule 3110(a) states, in relevant part, that member organizations shall establish and maintain a system to supervise “that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

FINRA Rule 2010 states that a “member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of the Exchange Act constitutes a violation of FINRA Rule 2010.

Violative Conduct

1. While the firm had implemented various pre-trade price and size controls that were designed to prevent the entry of erroneous orders, certain of these controls were not reasonably designed.
2. During the review period, the firm had between ten and 22 direct market access customers, approximately 1% of its customer base. The firm

¹ Exchange Act Release No. 63241, 75 Fed. Reg. 69792 (Nov. 3, 2010).

applied both general and customer-specific pre-trade erroneous order controls to its order flow. The general controls included an average daily volume (ADV) control for market orders and a price deviation control for limit orders. The customer-specific controls, which applied to both market and limit orders, included single order size and notional controls. However, the parameters of both the firm's general controls for the period November 2015 to March 2016, and customer-specific controls for the period November 2015 to September 2019, were too wide to be reasonably effective in detecting potentially erroneous orders, and thus blocking them from being routed to an exchange.

- 3 Among the pre-trade controls maintained by the firm that were common to all of its customers and designed to take into account the individual characteristics of a security was an ADV check, which rejected market orders that exceeded a defined percentage of a security's ADV. Although during the period of November 3, 2015 through March 6, 2016 the firm had tightened the threshold at which its ADV control rejected market orders, during that time the parameters were unreasonably wide, and therefore not reasonably designed to prevent potentially erroneous orders. For example, in November 2015, for orders up to 500,000 shares, the ADV check would reject an order in certain securities only if the order represented at least 75% of the ADV of those securities.
- 4 Another pre-trade control maintained by the firm that was common to all of its customers was a price deviation check. This control rejected limit orders greater than a certain percentage away from a security's National Best Bid or Offer (NBBO). Although during the period of November 3, 2015 through March 6, 2016 the firm had tightened the threshold at which its price deviation control would reject orders, during that time the firm's price control check was not reasonably designed to prevent erroneous orders from being routed to an exchange because these parameters were unreasonably wide. For example, in November 2015, depending on the price of the security, the firm's controls did not prevent certain limit orders from being routed to an exchange even if their prices were nearly 100% away from the NBBO.
- 5 Additionally, the firm applied several controls to each customer's order flow: a credit limit; single order size; single order notional value; and order entry rate. The thresholds of these controls were based on a customer's historical trading activity and were revised quarterly. Although the firm reduced the multiplier for buying power, the maximum order shares, and the maximum order notional value for onboarding new clients in July 2018, for the reasons set forth below, these controls were not reasonably designed to prevent erroneous order entry during the period of November 2015 to September 2019.

- 6 Specifically, the firm created a broad “bucketing” system that it used to establish the thresholds of its customer specific pre-trade controls. When assigning customers to a “bucket,” the firm would first use the factors referenced in the prior paragraph to establish an initial reference point or limit for each of the controls. The firm would then apply a multiplier to those initial reference limits to create secondary reference limits. The bucket into which the firm placed a customer was based upon the secondary reference point (i.e., a multiple of a customer’s trading history).
- 7 For example, if the firm determined that a customer’s initial reference size control limit should be 1,000 shares, the firm would apply a multiplier to 1,000 to establish a secondary reference point (i.e., 1,000 x 1.5). It would then place the customer in the bucket that would permit orders of at least the secondary reference point size (i.e., 1,500). Because the buckets were established to cover a wide range of limits, in many instances this process had the effect of further increasing firm customers’ maximum order sizes and order values beyond the multiplied secondary reference point. For example, although one of the firm’s broker-dealer customers had not sent an order larger than approximately one million shares in the prior calendar quarter, the firm placed this customer in the ‘bucket’ that allowed for a maximum order size at 2.5 million shares for the following calendar quarter. Similarly, although that customer’s maximum order value had been \$48,040,000, the firm placed the customer in the ‘bucket’ that allowed for a maximum order value of \$100 million.
- 8 Although the firm regularly reviewed its system of pre-trade controls for those accounts during the review period and tightened its order handling controls and procedures on multiple occasions, these limits were not reasonably designed to prevent firm customers from placing orders that greatly exceeded their historical trading patterns, and therefore were not reasonably designed to prevent erroneous order entry.
- 9 The conduct described in paragraphs I.A.2 through I.A.8 constitutes separate and distinct violations of Rules 15c3-5(b) and 15c3-5(c)(1)(ii) of the Exchange Act and FINRA Rules 3110(a) and 2010.

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

- A censure; and
- A fine of \$48,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 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 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;

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- 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 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. 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 the Respondent 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.

September 14, 2020

Date

Respondent

FIS Brokerage & Securities Services LLC

By: Brian Madigan

Name: Brian Madigan

Title: President and CEO

Reviewed by:

Susan Light

Susan Light, Esq.
Counsel for Respondent
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
212.940.8599

Accepted by FINRA:

September 29, 2020

Date

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

Steve Tanner

Steven M. Tanner
Senior Counsel
FINRA Department of Enforcement