

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017054220101**

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

RE: Janney Montgomery Scott LLC, Respondent
Member Firm
CRD No. 463

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Janney Montgomery Scott LLC (JANY) 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

JANY has been a registered broker-dealer with the Securities and Exchange Commission since January 1, 1936, and a FINRA-member firm since October 16, 1936. JANY's headquarters are located in Philadelphia, PA. As of March 2020, the firm employs 1,595 registered individuals in 137 branches and is self-clearing.

RELEVANT DISCIPLINARY HISTORY

On March 2, 2015, FINRA accepted an AWC in which JANY was censured and fined \$17,500 for Order Audit Trail System (OATS) reporting violations occurring from April 1, 2012, to June 30, 2012, in violation of FINRA Rules 7450, and recordkeeping violations in violation Exchange Act Rule 17a-3 and FINRA Rule 4511.

OVERVIEW

Between October 1, 2014, and April 4, 2018, JANY submitted approximately 6.6 million inaccurate or incomplete Reportable Order Events (ROEs) to OATS. Specifically, JANY transmitted 2,860,187 Desk Reports that contained an inaccurate Desk Type code and

3,755,778 new order type events that failed to report an Information Barrier ID, in violation of FINRA Rules 7450 and 2010.

In addition, JANY failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with its OATS reporting obligations, in violation of NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

The firm failed to submit accurate and complete OATS reports to FINRA.

FINRA Rule 7450(a) requires that “[a]ll applicable order information required to be recorded under Rule 7440 shall be transmitted to the Order Audit Trail System by each Reporting Member or by a Reporting Agent....” Accordingly, Reporting Members must transmit “a report containing each applicable item of order information identified in Rule 7440(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed.”

FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of business. A violation of FINRA rules also constitutes a violation of FINRA Rule 2010.

FINRA established OATS as an integrated audit trail of order, quote, and trade information. FINRA uses OATS data to reconstruct markets promptly, effectively surveil them, and enforce various rules and regulations applicable to FINRA member firms. FINRA uses OATS data as an integral part of its automated market surveillance program to detect manipulative activity and other potential violations of FINRA rules and federal securities laws. Thus, the transmission of inaccurate, incomplete, or untimely ROEs to OATS can impede FINRA’s ability to detect potentially violative conduct and create false positive alerts requiring the expenditure of unnecessary resources to resolve the alerts. Moreover, these failures cause the audit trail to be inaccurate.

When a FINRA member originates or receives an order and then subsequently transmits that order to another desk or department within the firm, the member must report certain information to OATS regarding the intra-firm transmittal. This information includes the Desk Type code, which identifies the desk or department to which the order was transmitted. The Desk Type code is submitted as part of the Desk Report, which is used to record the transmittal of an order to a desk or department within a firm.

All of JANY’s equity retail orders flow through the firm’s agency desk, and are then routed out for execution. During the relevant period, certain types of orders, including orders over 5,000 shares, were held for manual handling by a firm trader. In these limited instances, the firm trader had the ability and authority to make a principal trade on behalf of the firm and determine where the order should be routed for execution.

JANY submitted Desk Reports coding its equity retail orders with the Desk Type code of “T”, indicating that the firm’s trading desk received the relevant orders for execution.¹ However, since all of the orders were sent through the firm’s agency desk and routed to other market destinations for execution, the firm should have used the Desk Type code of “A” for agency when reporting these orders to OATS. Between October 1, 2014, and April 4, 2018, JANY reported 2,860,187 Desk Reports that contained inaccurate Desk Type codes.

FINRA Rule 5320 prohibits a firm from trading in its own account ahead of customer orders in the same equity security. However, in the case of National Market System stocks, if a firm uses information barriers that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, then the firm’s proprietary trading units may trade at prices that would satisfy the customer orders held by the separate trading unit. In cases where an information barrier exists, firms must report the existence of that information barrier using an Information Barrier ID.

JANY’s market making desk and retail desk are within its equity division, but are prohibited from viewing each other’s orders due to the firm’s use of information barriers. Because JANY utilized information barriers between its market making and retail desks, it was required to identify the information barriers by populating the appropriate Information Barrier ID in its OATS reports. Between October 1, 2014 and April 4, 2018, JANY reported 3,755,778 new order type reports that failed to contain an Information Barrier ID code.

As set forth above, JANY transmitted a total 6,615,965 ROEs to OATS that contained inaccurate or incomplete information, which could have impacted FINRA’s surveillance patterns. The inaccurate Desk Type code and Information Barrier ID ROEs represent well over a third (39.83%) of all events JANY transmitted to OATS during the relevant period. By virtue of the foregoing, JANY violated FINRA Rules 7450 and 2010. Each of these instances constitutes a separate and distinct violation of FINRA Rule 7450.

The firm failed to reasonably supervise for compliance with its OATS reporting requirements.

NASD Rule 3010 and FINRA Rule 3110 require members to establish and maintain a system, including WSPs, to supervise the activities of associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.²

A violation of NASD Rule 3010 and FINRA Rule 3110 also violates FINRA Rule 2010.

¹ The FINRA OATS Technical Specifications define “Desk Type Code” as “the identification of the desk or department to which the order was transmitted. Types of desks include the agency desk, the sales desk and the arbitrage desk. A Trading Desk is interpreted as a place or system within the firm where an order can be executed, either automatically or with the assistance of traders.”

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

Between October 1, 2014, and April 4, 2018, JANY failed to establish and maintain a supervisory system reasonably designed to achieve compliance with respect to its OATS reporting obligations. For the majority of the relevant period, JANY failed to have a reasonably designed system in place to ensure that it was accurately reporting its OATS data. Before the first quarter of 2016, JANY's WSPs only required a daily review of the OATS Summary Page using the OATS web interface – a review that shows whether it timely reported ROEs, whether ROEs were rejected for context or syntax errors, and whether there were any matching deficiencies. The WSPs did not require a review of the OATS data submissions to assess the accuracy of the Desk Type code and Information Barrier IDs.

Although JANY updated its WSPs in the first quarter of 2016 to include a quarterly OATS review to check the accuracy of its OATS data, the revised WSPs failed to provide reasonable guidance on how the OATS review should be done, including which OATS reporting fields should be checked, how often each data field should be checked, or how the fields should be checked for accuracy. Thus, JANY's revised WSPs were not reasonably designed to achieve compliance with its OATS reporting obligations.

Additionally, JANY failed to reasonably respond to the OATS reporting deficiencies identified by FINRA staff. FINRA initially alerted JANY to the Desk Type code reporting issue in September 2016. After a number of discussions between the firm, its Order Submitting Organization (OSO) and FINRA staff, JANY remediated this issue in April 2018. Similarly, FINRA notified JANY about the information barrier issue in October 2016. However, JANY again failed to remediate the issue for all its order flows and OSOs until May 2018, nearly a year and a half after FINRA alerted it to the issue.

By virtue of the foregoing, JANY violated NASD Rule 3010, FINRA Rule 3110 and FINRA Rule 2010, by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with its OATS reporting obligations.

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

- a censure;
- a fine of \$90,000 (\$65,000 for violations relating to OATS and \$25,000 for violations relating to supervision); and
- an undertaking to update its WSPs with respect to OATS compliance.

Within 90 calendar days of acceptance of this AWC by the National Adjudicatory Council (NAC), a registered principal of the Firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, 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 had revised its WSPs to address the above-described deficiencies; and (3) the date the revised procedures were implemented.

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

- 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 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 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 it to submit it.

Janney Montgomery Scott LLC
Respondent

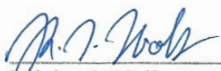
8-26-20
Date

By: 

Print Name: GREGORY B. MCSHEA

Title: GENERAL COUNSEL

Reviewed by:


Michael Wolk
Counsel for Respondent
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Accepted by FINRA:

September 8, 2020
Date

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



Mitka T. Baker
Senior Counsel
FINRA
Department of Enforcement
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