

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017055668501**

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

RE: BMO Capital Markets Corp., Respondent
Member Firm
CRD No. 16686

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent BMO Capital Markets Corp. ("BMO" or the "firm") 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 FINRA member since October 1985. BMO has its principal offices in New York and Chicago and currently employs approximately 984 registered representatives within its 17 branch offices. The firm operates as a self-clearing, institutional broker-dealer, providing investment banking and brokerage services to corporate, institutional, and affiliate clients.

RELEVANT DISCIPLINARY HISTORY

On October 23, 2015, BMO accepted an AWC whereby the firm was censured and fined \$20,000 for submitting 92 Reportable Order Events ("ROEs")¹ with inaccurate, incomplete or improperly formatted data to the Order Audit Trail System ("OATS") during the period from January 1, 2014 through March 31, 2014. The firm also failed to repair 11,963 rejected reports to OATS; failed to repair 21 rejected ROEs within the

¹ A Reportable Order Event is a record representing each event in the life cycle of an order (e.g., order receipt, order cancellation, or order execution) that firms are required to report to OATS. The New Order Report, Route Report, Execution Report and Cancel Report are among the ROEs that firms are required to report to OATS.

required five business days; and, failed to accurately populate required fields for 320 rejection resubmissions, during the period from October 1, 2014 through December 31, 2014. As a result, the firm violated FINRA Rule 7450.

OVERVIEW

In the period January 9, 2017 through August 15, 2017, BMO failed to transmit ROEs to OATS. As a result, the firm violated FINRA Rules 7450 and 2010.

In the period October 1, 2017 through December 31, 2018, BMO failed to make publicly available all accurate and complete information in quarterly reports required in order to comply with Rule 606 of Regulation NMS ("Rule 606"). As a result, the firm violated Rule 606 and FINRA Rule 2010.

In the period January 9, 2017 through April 29, 2019, BMO failed to establish, maintain and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules. As a result, the firm violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

OATS Reporting

1. FINRA Rule 7450 requires, in relevant part, that each Reporting Member² transmit to OATS a report containing each applicable item of order information identified in FINRA Rule 7440 whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed. Reporting Members must record and report each event in the life cycle of an order to OATS.
2. 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 a FINRA rule constitutes a violation of FINRA Rule 2010.
3. 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 the federal securities laws. Therefore, a failure to transmit ROEs to OATS can impede FINRA's ability to detect potentially violative conduct or create false positive alerts of potentially violative conduct.
4. During the period from January 9, 2017 through August 15, 2017, BMO failed to transmit a total of 1,162,932 Route Reports³ to OATS.
5. The firm's Route Reports were suppressed from being reported to OATS due to a

² A Reporting Member is a member that receives or originates an order and has an obligation to record and report the order to OATS.

³ A Route Report is an ROE submitted to OATS when an order is sent from a member firm to another member firm, Exchange, or non-member for handling or execution.

coding error within the firm's order management system used by the Firm's program trading desk that occurred during the implementation of an update. This coding error caused a Financial Information eXchange ("FIX")⁴ specifications tag to be omitted, which resulted in the system not identifying the transactions as being reportable. The firm corrected this error on August 15, 2017.

6. By virtue of the foregoing, BMO violated FINRA Rules 7450 and 2010.

Rule 606

7. Rule 606 of Regulation NMS requires every broker or dealer to make publicly available each calendar quarter a report containing information on its routing of non-directed orders in national market system ("NMS") securities. Specifically, Rule 606(a)(1)(iii) provides that for each venue identified pursuant to [this Rule], the quarterly report must disclose "[t]he net aggregate amount of any... transaction rebates received, both as a total dollar amount and per share." In addition, Rule 606(a)(1)(iv) provides, in relevant part, that the firm's report must include "[a] discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to [this Rule], including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker's or dealer's routing decision." A violation of a Regulation NMS rule constitutes a violation of FINRA Rule 2010.
8. Rule 606 is intended to provide investors with transparency into broker-dealers' order handling and routing practices, and to promote competition by allowing investors to evaluate the quality of broker-dealers' performance, including order handling.⁵
9. From October 1, 2017 through December 31, 2018, the firm failed to include a discussion of the material aspects of its relationship with each venue, including a description of any payments for order flow, and any amounts per share or per order that the broker-dealer received, in its quarterly Rule 606 reports. Specifically, the firm received payment for order flow in the form of rebates from exchanges, which the firm was required to disclose on the firm's quarterly 606 reports, including the amounts per share or per order.
10. By virtue of the foregoing, BMO violated Rule 606 of Regulation NMS and FINRA Rule 2010.

Supervision

11. FINRA Rule 3110(a) provides, "[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."
12. FINRA Rule 3110(b) provides, "[e]ach member shall establish, maintain, and

⁴ FIX is an electronic communications protocol for the real-time exchange of information related to securities/options transactions and exchange markets.

⁵ See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3602 (January 21, 2010).

enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

13. During the period from January 9, 2017 through April 29, 2019, the firm’s supervisory system, including its WSPs, were not reasonably designed to achieve compliance with FINRA rules relating to OATS reporting. Specifically, the firm’s supervisory system and WSPs did not include a review designed to determine whether all required ROEs were being reported to OATS. In addition, the firm’s supervisory system, including its WSPs, failed to include a review of the firm’s quarterly disclosure reports designed to achieve compliance with the requirements of Rule 606 of Regulation NMS that are described above in paragraph 8.
14. By virtue of the foregoing, BMO violated FINRA Rules 3110(a) and (b) and 2010.

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

- A censure; and
- A fine of \$40,000 (of which \$15,000 is for OATS violations, \$15,000 is for Rule 606 violations, and \$10,000 is for supervision violations).

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 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

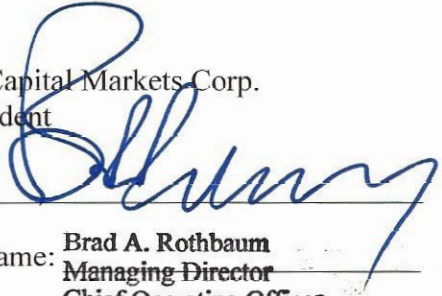
Respondent understands that:

- 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.

7/21/2020
Date

BMO Capital Markets Corp.
Respondent

By: 

Print Name: Brad A. Rothbaum
Managing Director
Chief Operating Officer

Title: BMO Capital Markets Corp.

Accepted by FINRA:

July 21, 2020
Date

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

Monika Mohan

Monika V. Mohan
Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281