

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20180596150 - 01**

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

RE: Two Sigma Securities, LLC ("Two Sigma" or the "Firm"), Respondent
Member Firm;
CRD No. 148960

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Two Sigma Securities, 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 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 June 2009. The Firm is headquartered in New York, New York and its business includes equities and options market-making. As of March 2019, the Firm employed approximately 152 registered individuals in 3 branch offices. The Firm has no relevant disciplinary history.

OVERVIEW

On May 29, 2018 (the "Relevant Period"), the Firm failed to correctly calculate its net long position and, as a result, over-tendered shares in excess of its net long position when participating in the partial tender offer for ABC Corporation ("ABC").¹ As a result, the Firm's over-tender of shares violated Rule 14e-4 promulgated pursuant to the Securities Exchange Act of 1934, as amended ("SEA Rule 14e-4") and FINRA Rule 2010.

¹ A generic identifier has been used in place of the names of the referenced securities.

FACTS AND VIOLATIVE CONDUCT

1. SEA Rule 14e-4 governs partial tender offers. During the Relevant Period, SEA Rule 14e-4(a)(5) defined a partial tender offer as “a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.”
2. During the Relevant Period, SEA Rule 14e-4(b)(1) prohibited a participant in a partial tender offer from tendering shares in excess of its net long position.
3. During the Relevant Period, the amount of a participant’s “net long position” in a subject security was defined under SEA Rule 14e-4(a)(1), and shall equal the excess, if any, of such participant’s “long position” over its “short position.”
4. During the Relevant Period, SEA Rule 14e-4(a)(1)(ii) defined the components of a participant’s “short” position. SEA Rule 14e-4(a)(1)(ii)(D) provided that shares underlying relevant call options with exercise prices below the highest tender offer price or stated amount of the consideration offered for the subject security which were sold after the announcement of a tender offer are part of the short position.
5. 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 or an SEC rule constitutes a violation of FINRA Rule 2010.
6. The ABC Partial Tender Offer (“PTO”) was a “Dutch Auction” tender offer announced on May 1, 2018, in which ABC stock was to be exchanged for cash within a range of \$99 to \$114 as described in the PTO announcement.² The final tender offer price of \$103 was announced after the proration period expired on May 29, 2018. A proration factor of 98.4% was applied to all tendered shares accepted in the partial tender offer.
7. On or about May 29, 2018, Two Sigma failed to account for relevant short call options positions with exercise prices below the highest tender offer price or stated amount of the consideration offered for ABC when determining its “net long position.” The Firm incorrectly calculated its net long position, as defined by SEA Rule 14e-4(a)(1), on the basis of each of the Firm’s Aggregation Units. The Firm incorrectly applied the concept of independent trading unit aggregation

² A “Dutch Auction” tender offer is an auction structure in which tendering stockholders specify, from within a given range, a price at which they are willing to tender all or a portion of their shares. Once all tenders are received, the purchase price for all tendered shares accepted for payment is the lowest price per share from among the specified offer range at which the shares have been tendered that will enable the buyer to purchase the maximum number of shares, subject to the conditions of the tender offer.

to SEA Rule 14e-4, for purposes of the Firm's net long calculation. Specifically, the Firm had each of its Aggregation Units calculate its net long position independently under SEA Rule 14e-4 rather than aggregate short and long positions across the Firm to arrive at one Firm-wide net long position.

8. As a result of this miscalculation, the Firm over-tendered 206 shares when participating in the ABC partial tender offer. After application of the proration factor of 98.4%, 202 shares were accepted in the ABC PTO.
9. By virtue of the foregoing conduct, the Firm violated SEA Rule 14e-4(b) and FINRA Rule 2010.

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

1. Censure
2. A total fine of \$20,000 (to be paid jointly to FINRA and the Exchanges,³ of which \$6,666 shall be paid to FINRA), and
3. Disgorgement in the amount of \$713.06 (to be paid jointly to FINRA and the Exchanges, of which \$237.69 shall be paid to FINRA).⁴

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.

Disgorgement of unlawful profits is ordered to be paid to FINRA in the amount of \$713.06, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from May 29, 2018 until the date this AWC is accepted by the National Adjudicatory Council ("NAC").

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.

³ FINRA also investigated this matter on behalf of NYSE Arca, Inc. ("NYSE Arca") and NYSE American LLC ("NYSE American") (collectively, the "Exchanges").

⁴ The Firm's gain attributable to the SEA Rule 14e-4 violation was calculated by first identifying the difference between the final tender offer price of \$103 and the closing price on May 29, 2018, the last day of the tender offer period, \$99.47 (\$3.53). Then, this difference of \$3.53 was multiplied by the 202 over-tendered shares accepted in the ABC partial tender offer, resulting in a sum of \$713.06.

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 prejudice 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.

Respondent certifies that it has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 this AWC.

Two Sigma Securities, LLC
Respondent

7/16/2020

Date

By: Carl Vallesse

Print Name: Carl Vallesse

Title: Chief Compliance Officer

Reviewed by:

DocuSigned by:

Giovanni Prezioso

Giovanni Prezioso, Esq.

Counsel for Respondent

Cleary Gottlieb Steen & Hamilton LLP

2112 Pennsylvania Avenue NW

Washington DC 20037

Accepted by FINRA:

July 21, 2020

Date

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

Michael M. Zmora

Michael M. Zmora

FINRA

Department of Enforcement