

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018060678201**

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

RE: BGC Financial, L.P. (Respondent)  
Member Firm  
CRD No. 19801

Pursuant to FINRA Rule 9216, Respondent BGC Financial, L.P. 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 in this AWC.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

BGC has been a FINRA member since 1987, and is headquartered in New York, New York. The firm conducts a general securities business and has approximately 270 registered representatives operating out of 12 branch offices.<sup>1</sup>

**OVERVIEW**

From September 2010 to February 2019, the firm failed to include two proprietary accounts in calculations of the firm's overall net position in equity securities (e.g., "short" or "long") being sold, which ultimately caused certain orders to be mismarked under Regulation SHO Rule 200(g). This occurred because the firm aggregated the accounts into independent trading units, even though the firm did not create a written plan of organization that identified the aggregation units, specified their trading objectives, and supported their independent identities, pursuant to Regulation SHO Rule 200(f)(1).

The firm also failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Rule 200(f) and (g), in violation of FINRA Rules 3110 and 2010, and NASD Rule 3010.<sup>2</sup>

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<sup>1</sup> For more information about the firm, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

<sup>2</sup> FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated with a cycle examination conducted by FINRA's Trading and Execution team.

Regulation SHO Rule 200(g) provides that firms must mark their sell orders of any equity security as "short," "long," or "short exempt" based on their net position. To determine the net position, Regulation SHO Rule 200(f) requires a broker-dealer to aggregate all of its positions in a security unless the broker-dealer qualifies for independent trading unit aggregation. The Rule further states that "[i]ndependent trading unit aggregation is available only if: (1) [t]he broker-dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity; (2) [e]ach aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades; (3) [a]ll traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and (4) [i]ndividual traders are assigned to only one aggregation unit at any time."

A violation of Rule 200(f) or 200(g) is also a violation of FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

FINRA Rule 3110—and its predecessor NASD Rule 3010—both require member firms to (a) 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; and (b) establish, maintain, and 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. A violation of FINRA Rule 3110 or NASD Rule 3010 is also a violation of FINRA Rule 2010.

### **BGC inaccurately calculated its net position and mismarked orders.**

During the period September 2010 to February 2019, the firm organized two of its proprietary accounts—the International Market Making Desk and the Mint Cash Equities Desk (ADR Desk)—into independent aggregation units for order-marking purposes.<sup>3</sup> BGC's order management system thus aggregated each desk's positions within the desk's respective unit—as would have been required by Regulation SHO Rule 200(f) if the desks had met the requirements for independent trading unit aggregation—instead of

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<sup>3</sup> The firm created the ADR Desk's AGU on September 24, 2010, and the International Market Making Desk's AGU on August 19, 2015. While the trading activity conducted in each AGU was generally limited to the unit, they occasionally traded in the same securities at the same time. Accordingly, after the creation of the International Market Making Desk, on August 19, 2015, the possibility of mismarked orders arose.

across the entire firm. This resulted in BGC's order management system excluding the positions of these desks when calculating the firm's net position in securities. The firm, however, failed to comply with the requirements of Regulation SHO Rule 200(f) regarding independent trading unit aggregation. Specifically, the firm failed to create a written plan of organization that identified the aggregation units, specified their trading objectives, and supported their independent identities, pursuant to Regulation SHO Rule 200(f)(1). As a result, the International Market Making Desk and ADR Desk did not qualify for independent treatment, and BGC's order management system incorrectly excluded their positions when calculating the firm's net position in securities, resulting in the firm mismarking trades for a portion of the review period.<sup>4</sup>

Therefore, Respondent violated Regulation SHO Rule 200(f) and (g) and FINRA Rule 2010.

**BGC failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Regulation SHO.**

From September 24, 2010, to February 1, 2019, the firm did not take any steps to verify that its order management system was achieving compliance with Regulation SHO. For example, the firm did not conduct regular order-marking reviews. In addition, BGC's written supervisory procedures (WSPs) did not contain descriptions of any process to ensure compliance with Rule 200 and did not identify any individual responsible for such compliance.

Following FINRA's cycle examination, the firm undertook an internal audit of its trading desks, implemented new procedures for reviewing order marking, revised its WSPs, and modified its procedures to include written plans of organization for the desks.

Therefore, Respondent violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure and
- a \$50,000 fine.

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.

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<sup>4</sup> For example, on 98 trading dates reviewed over a twelve-month period, the firm effected 427 mismarked transactions (i.e., 208 sell transactions that should have been marked short, and 219 short sale transactions that should have been marked long).

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

## **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 its acceptance or rejection.

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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

June 27, 2023

Date

*Michael Sulfaro*

BGC Financial, L.P.

Respondent

Print Name: Michael Sulfaro

Title: Chief Compliance Officer

Accepted by FINRA:

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

June 27, 2023

Date

Grant Hodges

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