

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062945201**

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

RE: Barclays Capital Inc. (Respondent)
Member Firm
CRD No. 19714

Pursuant to FINRA Rule 9216, Respondent Barclays Capital Inc. 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

Barclays became a member of FINRA in October 1987. It is headquartered in New York, NY and has 13 branches with approximately 2,800 registered representatives. The Firm's business includes options, underwriting, proprietary trading, and market making. In December 2017, CBOE accepted a Letter of Consent in which Barclays consented to findings that on or about August 22, 2013, Barclays tendered shares for a partial tender offer in excess of its net long position, in violation of CBOE Rule 4.2 and Securities Exchange Act Rule 14e-4, and that from on or about July 26, 2013 through August 17, 2017, Barclays failed to establish and maintain written supervisory procedures, and a system for applying such procedures, reasonably designed to prevent and detect violations of Rule 14e-4 in violation of CBOE Rules 4.2 and 4.24. The Firm was fined \$25,000 and ordered to disgorge \$42,040.¹

OVERVIEW

On March 8, 2019, Barclays Capital Inc. violated Securities Exchange Act of 1934 Rule 14e-4 by over-tendering 270,000 shares in the partial tender offer of Company A. From January 1, 2018 to July 22, 2021 (the Relevant Period) Barclays Capital Inc. violated FINRA Rules 3110(a) and (b) by failing to have a supervisory system reasonably designed to achieve compliance with Securities Exchange Act Rule 14e-4.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

Securities Exchange Act Rule 14e-4, “Prohibited Transactions in Connection with Partial Tender Offers,” commonly referred to as the “Short Tender Rule,” is generally designed to preclude persons from tendering more shares in a tender offer than he or she owns in order to avoid or reduce the risk of pro rata acceptance in a partial tender offer. Rule 14e-4(b)(1)(i) provides in relevant part that “it shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer ... [f]or his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in ... [t]he subject security.” Under Rule 14e-4, a person’s “net long position” in a subject security equals the excess, if any, of such person’s “long position” over a person’s “short position.” The calculation of the net long position must be done both at the time of tender and at the end of the proration period, or period during which securities are accepted by lot, including any extension thereof.

On March 8, 2019, Barclays over-tendered 270,000 shares in Company A because it miscalculated its long position. When tendering shares, the Firm manually calculated its long position using several different systems. In this instance, the firm miscalculated its long position because it (i) missed a short position that was housed in another system, (ii) used an incorrect final tender price when calculating share calls required to be deducted from the firm’s long position, and (iii) miscalculated grandfathered calls, *i.e.*, calls that the Firm was short prior to the PTO announcement, giving Barclays credit for shares that it should not have included. These events resulted in Barclays over-tendering shares. All 270,000 shares that Barclays tendered—of which 36,712 shares were accepted—were over-tendered. As a result, Barclays received \$218,803.52 in ill-gotten gains. Therefore, the Firm violated Securities Exchange Act Rule 14e-4 and FINRA Rule 2010.²

FINRA Rule 3110(a) requires each member to 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 and NASD rules. FINRA Rule 3110(b) require each member to 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.

During the Relevant Period, the firm had certain procedures for calculating and reviewing the firm’s “net long positions.” Barclays’ procedures were primarily operational and did not include a supervisory review regarding compliance with Rule 14e-4. Therefore, Barclays violated FINRA Rules 3110(a) and (b) and 2010.

² A violation of the federal securities laws or FINRA’s rules also constitutes a violation of FINRA Rule 2010, which requires member firms in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.”

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

- a censure;
- a \$100,000 fine, of which \$33,333 fine is payable to FINRA; and
- disgorgement of \$218,803.52, of which \$72,934.50 is payable to FINRA, plus interest as described below.³

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in the same matter between the Firm and NYSE American and the Firm and NYSE Arca.

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 after the execution of this AWC, the monetary sanction imposed in this matter. Disgorgement of a portion of unlawful profits is ordered to be paid to FINRA in the amount of \$72,934.50 plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621 from March 8, 2019 until the date this AWC is accepted by the National Adjudicatory Council (NAC). 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

³ The remainder of the fine and disgorgement shall be allocated evenly between the NYSE American LLC ("NYSE American") and NYSE Arca, Inc. ("NYSE Arca").

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.

December 14, 2021

Date

Penny Rosenberg
Barclays Capital Inc.
Respondent

Print Name: *Penny Rosenberg*

Title: Director

Accepted by FINRA:

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

December 23, 2021

Date

Elisabeth Grippando

Elisabeth Grippando
Principal Counsel
FINRA
Department of Enforcement
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