

**NASDAQ ISE, LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: BMO Capital Markets Corp.  
Mr. Brad A. Rothbaum  
Managing Director and Chief Operating Officer  
3 Times Square  
New York, NY 10036**

**FROM: Nasdaq ISE, LLC ("ISE")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: October 11, 2017**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20140418707-01**

**Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on July 14, 2017 by ISE's Business Conduct Committee. A copy of the AWC is enclosed herewith.**

**You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.**

**You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ's Finance Department regarding the payment of any fine if a fine has been imposed.**

BMO Capital Markets Corp.  
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If you have any questions concerning this matter, please contact Elyse D. Kovar, Senior Counsel,  
at (646) 430-7050.



Robert A. Marchman  
Executive Vice President  
Department of Enforcement  
Signed on behalf of NASDAQ ISE

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

Counsel for Respondent  
Ben A. Indek  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178

NASDAQ ISE, LLC  
Attn: John Zecca, Chief Regulatory Officer  
60 Broad Street, 26th Floor  
New York, NY 10004

Re: LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
File No. 20140418707  
BMO Capital Markets Corp. (CRD No. 16686)

**Chief Regulatory Officer and Business Conduct Committee Members:**

Pursuant to ISE Rule 1603, BMO Capital Markets Corp. ("BMOC" or the "firm") submits this Letter of Acceptance, Waiver, and Consent ("AWC") to the NASDAQ ISE, LLC, formerly known as International Securities Exchange, LLC ("ISE" or "Exchange") to propose a settlement of the alleged rule violations described in Section II below. This AWC is submitted to resolve this proceeding and on the condition that, if accepted, ISE will not bring any future actions against BMOC based on the same alleged violations.

BMOC understands that signing this AWC is a voluntary action on its part and that the AWC will not resolve this matter unless and until it has been reviewed and accepted by both the Chief Regulatory Officer ("CRO") and then the Business Conduct Committee ("BCC"), who must decide if it is appropriate in view of the facts and allegations involved. BMOC also understands that if either the CRO or the BCC decides to decline this AWC, it will not be used against BMOC to prove that any violations occurred.

BMOC understands that if this AWC is accepted by both the CRO and the BCC, it will become a part of its permanent disciplinary records and may be considered in any future actions brought by the ISE. BMOC also understands that its experience in the securities industry and any disciplinary history may be factors which the CRO and BCC will consider in deciding whether to accept this AWC. That experience and disciplinary history includes the following:

- BMOC has been a member of ISE since July 19, 2010, and its registration remains in effect.
- BMOC has no relevant disciplinary history.

**I. Waiver of Procedural Rights**

BMOC is advised of, and specifically and voluntarily waives, the following rights which are granted by the ISE's disciplinary rules:

1. to have a Statement of Charges filed identifying the violations alleged in this matter;
2. to be notified of the Statement of Charges and have the opportunity to answer the allegations in writing;

3. to defend against the allegations in a hearing before a Panel consisting of a professional hearing officer and two members of the BCC and to be represented by an attorney at the hearing;
4. to have a written record of the hearing made and a written decision issued by the Panel; and
5. to appeal any such decision to the ISE's Board of Directors, then to the U.S. Securities and Exchange Commission and to a U.S. Court of Appeals.

BMOC further waives any provision of the ISE's disciplinary and other rules that may be interpreted as prohibiting any ISE staff member from advising the CRO and BCC in their decision as to whether to accept this AWC.

## II. Acceptance and Consent

### Overview

In FINRA Matter No. 20140418707, on behalf of the Exchange, the Financial Industry Regulatory Authority's ("FINRA") Options Regulation group ("Options Regulation") of the Department of Market Regulation (the "staff") conducted a review of BMOC's compliance with applicable federal securities laws and regulations and Exchange rules regarding: (i) options order entry during the period between October 2008 and June 2014 ("Review Period I"); and (ii) options order exposure, options order entry, and related supervision during the period between January 2012 and May 2012 ("Review Period II"), including ISE Rules 400, 401, 712(a), 713(c), 716(e), 717(e), and 1400(a); and Section 17(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 17a-3 thereunder.

Applicable Exchange rules require that, when accepting an order, a member must obtain and record an appropriate account type or origin code in each order record and as an order detail when entering orders into the Exchange's systems to indicate the kind of account for which the order will be executed and cleared. Each options market has its own origin codes, but at a minimum, all have codes to indicate that an order is being executed for a customer, a firm, or a market maker. Origin codes are important because, among other things, they affect the accuracy of the firm's order records and the Exchange's audit trail, which may inadvertently impact the priority of order execution and the Exchange's surveillance for compliance with Exchange rules and federal securities laws. In addition, origin codes must be accurate as part of ensuring that trades are reported to the Options Clearing Corporation ("OCC") with accurate trade details.

The staff found, based on its investigation of activity during Review Periods I and II, that BMOC had violated certain Exchange rules and federal securities laws when entering and executing certain orders on behalf of the Firm's clients, in that the Firm had entered over 2,000 orders, representing over one million contracts, with incorrect origin codes and sent those orders to multiple U.S. options exchanges, including the Exchange, through an order entry system used by the Firm, resulting in: (i) transactions executed by the Firm that may have traded ahead of other orders entitled to execution priority; (ii) potential adverse impact to the execution price and quantity of other market participants' orders; (iii) an inaccurate audit trail and inaccurate order records; (iv) trades being reported to OCC with inaccurate trade details; and (v) an adverse impact to the Exchange's ability to surveil for and detect potential violations of its rules and of federal securities laws. In addition, during Review Period II, the Firm failed to properly expose the "Customer" side of a crossing order to allow for the possibility of price improvement in approximately 101 instances, representing a total of 40,056 contracts, and had related supervisory deficiencies as discussed herein.

As a result of staff's review, it was determined that during Review Periods I and II, as set forth below, BMOC violated ISE Rules 400, 401, 712(a), 713(c), 716(e), 717(e), and 1400(a); and Section 17(a) of the Exchange Act, and Rule 17a-3 thereunder.

BMOC hereby accepts and consents, without admitting or denying the allegations, to the entry of findings by the ISE of the following acts and violations:

#### Inaccurate Origin Codes

1. Pursuant to ISE Rules 1400(a), and 712(a) and 713(c), orders entered into the Exchange systems must include trade information, such as account origin code information, in such form as may be prescribed by the Exchange. Among other things, the origin code determines the order's execution priority and is part of the audit trail data for every transaction.
2. During Review Period I, BMOC entered approximately 487 orders, representing approximately 183,674 contracts, with incorrect origin codes, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order marking errors were due to human error by Firm traders in manually entering incorrect origin codes in a system which did not have hard-coded settings in place at the time.
3. During Review Period II, BMOC mismarked approximately 1,578 different orders, representing approximately 921,347 contracts as "Firm" for Customer or BD Customer accounts, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order mismarkings occurred while the Firm was transitioning to become self-clearing, and were limited to orders entered into one specific broker-dealer's execution management system.

4. Of the total mismarked contracts by BMOC during Review Periods I and II, approximately 18.75% were executed on the Exchange.
5. Each instance in which BMOC executed an order with an incorrect origin code could have had adverse consequences, such as creating inaccurate order records, creating an inaccurate audit trail, inadvertently impacting the priority of order execution, reporting trades to OCC with inaccurate trade details, and adversely impacting the Exchange's ability to surveil for and detect potential violations of its rules and federal securities laws.
6. By marking orders with the wrong origin code during Review Periods I and II, BMOC violated the following rules:
  - (a) Section 17(a)(1) of the Securities Exchange Act of 1934 and SEC Rule 17a-3(a)(6)(i) thereunder requiring Options Participants to create a memorandum of each order, and any other instruction, showing the terms and conditions of the order;
  - (b) ISE Rule 400, which requires every Member to engage in acts or practices consistent with just and equitable principles of trade.
  - (c) ISE Rule 401, which requires Members to ensure that the transaction of business complied with the Exchange Act, ISE rules, and OCC rules.
  - (d) ISE Rule 1400(a), which requires every Member to make and keep records as prescribed by ISE and by the Exchange Act and rules thereunder.
  - (e) ISE Rules 712(a) and 713(c), which require Members to submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and match orders, and report resulting transactions to the OCC for clearance.

#### Order Exposure Violations

7. Pursuant to ISE Rules 716(e) and 717(e), options participants are required to expose customer orders for price improvement before executing as agent.
8. During Review Period II, the Firm failed to properly expose the "Customer" side of a crossing order to allow for the possibility of price improvement in approximately 101 instances, representing a total of 40,056 contracts, on multiple exchanges, of which approximately 1,094 contracts were executed on the Exchange.
9. By failing to properly expose the Customer side for the potential of price improvement on orders executed on the Exchange, BMOC violated Exchange Rules 716(e) and 717(e).

### Supervision

10. ISE Rule 401 requires Members to supervise persons associated with the Member as to assure compliance with the Exchange Act, the Constitution or the Rules of the Exchange, and OCC rules insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof.
11. During Review Period II, BMOC violated ISE Rule 401 by failing to have adequate supervisory systems and controls in place, including written supervisory procedures and separate systems of follow-up and review, which were reasonably designed to achieve compliance with the Exchange's origin code and order exposure requirements. The Firm failed to adequately train its employees on applicable rules governing origin codes, and the Firm's traders had not sought input from compliance or legal personnel regarding the proper marking of orders. Moreover, during Review Period II, the Firm had no procedures to achieve compliance with Exchange order exposure rules. It was only after notice from regulators that BMOC had been alerted to its violations, and BMOC thereafter promptly took steps to develop and implement relevant systems, trainings, and procedures.

BMOC hereby consents to the ISE imposing on it, at a maximum, the following sanction:

**A censure and a fine in the amount of \$350,000, of which \$37,100 shall be paid to ISE (\$32,813 for origin code errors and related supervisory failures, and \$4,287 for order exposure and related supervisory failures).**

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: NASDAQ PHLX LLC; Bats BZX Exchange, Inc.; NASDAQ BX, Inc., on behalf of the Boston Options Exchange; The NASDAQ Options Market LLC; NYSE MKT LLC; and NYSE Arca, Inc.

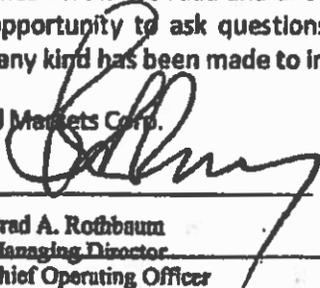
### III. Corrective Action and Other Matters

1. If this AWC is accepted by the BCC, ISE will take no further action against BMOC respecting the matters that are the subject of this AWC. If this AWC is rejected by the BCC, the matter shall proceed as though the letter had not been submitted. The BCC's decision to accept or reject this AWC shall be final, and BMOC may not seek review thereof.
2. BMOC may attach to this AWC any statement it wishes to have the CRO and BCC consider in deciding whether to accept it, although it may not deny the existence of the violations or make any other statements inconsistent with the AWC.
3. BMOC agrees to pay the monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payment is due and payable, and has attached the election form showing the method by which it proposes to pay any fine imposed.

4. BMOC understands that ISE will make such public announcement concerning this agreement and the subject matter thereof as ISE may deem appropriate.

BMOC certifies that it has read and understands all of the provisions of this AWC and has been given full opportunity to ask questions about it; and that no offer, threat, inducement, or promise of any kind has been made to induce BMOC to submit it.

BMO Capital Markets Corp.

By: 

Name: Brad A. Rothbaum  
Managing Director

Title: Chief Operating Officer  
BMO Capital Markets Corp.

Date: June 28/17

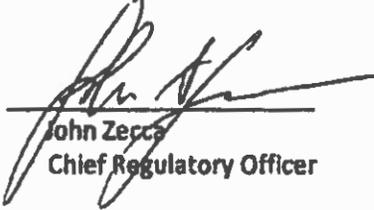
**THIS SECTION RESERVED FOR EXCHANGE USE ONLY**

Decision of the ISE Chief Regulatory Officer:

Accept     Decline

Date

7/14/17

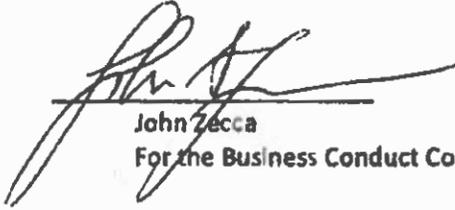
  
\_\_\_\_\_  
John Zecca  
Chief Regulatory Officer

Decision of the ISE Business Conduct Committee:

Accept     Decline

Date

7/14/17

  
\_\_\_\_\_  
John Zecca  
For the Business Conduct Committee

**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

**FINRA Matter No. 20140418707**

**Schedule A**

**Election of Payment Method**

BMO Capital Markets Corp. proposes to pay the fine as described in Part II, *Acceptance and Consent*, of the AWC by:

- Automatic Deduction from the Firm's Options Clearing Corporation account;
- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan<sup>1</sup> (If agreed between BMOC and the Exchange staff, and approved by the BCC).

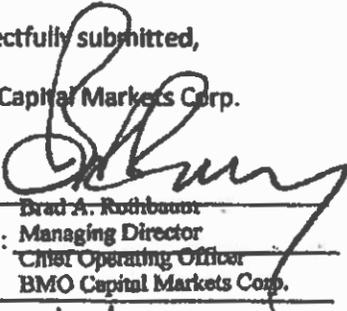
If the firm proposes to pay the fine by a firm check or a bank check for the full amount, or by wire transfer for the full amount, the Exchange must receive payment of the fine within 30 days of the AWC becoming final.

If the Exchange does not receive the firm check or a bank check for the full amount, or by wire transfer for the full amount, within 30 days of the AWC becoming final, the Exchange will deduct the fine from the firm's OCC account.

The Exchange will notify the firm by separate letter when the AWC is accepted and becomes final.

Respectfully submitted,

BMO Capital Markets Corp.

By:   
Name: Brad A. Rothbaum  
Title: Managing Director  
Chief Operating Officer  
BMO Capital Markets Corp.  
Date: 6/28/17

<sup>1</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain interest payments, minimum monthly payments and other requirements may apply. The Firm should discuss this fully with counsel before requesting this method of payment.