NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019061053401

TO: Nasdaq Phlx LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Brian M. Ladouceur, Respondent
Former Securities Trader
CRD No. 5529162

Pursuant to Rule 9216 of Nasdaq Phlx LLC ("Phlx") Code of Procedure,[1] I ("Respondent") submit 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, Phlx will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A.   I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Phlx, or to which Phlx 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 Phlx:

BACKGROUND

Respondent entered the securities industry in May 2008 and was associated with a total of four firms over the course of his career. Most recently, Respondent was registered with Phlx through T3 Trading Group, LLC (CRD No. 154431) ("T3" or the "Firm") from November 2014 to January 2019. While at T3, Respondent was registered with Phlx as a Proprietary Trader from November 2014 to January 2016, and as a Securities Trader from January 2016 to January 2019. On January 2, 2019, T3 filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that Respondent's employment was terminated because he engaged in potentially manipulative trading activity, including by "placing orders and then cancelling them just seconds before the market close."

Respondent is not currently employed in the securities industry and is not registered or associated with any Phlx member firm. He remains subject to Phlx's jurisdiction pursuant

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[1] The Nasdaq Stock Market LLC Rules General 5 Section 9000 et al. are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to Phlx's jurisdiction.

to Phlx Rule 9110(d).[2] Respondent has no relevant disciplinary history.

SUMMARY

From March 2018 through December 2018 (the "relevant period"), Respondent engaged in a trading strategy whereby he (i) entered orders for inclusion in closing auctions ("closing auction orders") that would largely offset or flip auction imbalances for the securities he traded, which led to the creation of misleading closing imbalance information that was published to other market participants; (ii) executed smaller orders for the same securities via T3 on the contra side of his closing auction orders outside of the closing auction process ("contra side orders"); and (iii) cancelled the vast majority of his closing auction orders within seconds of market close, leaving active only those closing auction orders that matched, or closely matched, the positions Respondent accumulated through his contra side orders. Respondent's cancellations affected closing auction prices and allowed him to exit the positions he accumulated through his contra side orders at artificially advantageous prices. Respondent therefore violated Phlx Rule 707, which prohibits individuals from engaging in conduct inconsistent with just and equitable principles of trade.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from a review conducted by FINRA following the Form U5 filed by T3 referenced above.

2. During the relevant period, Phlx Rule 707 provided that "[a] member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade."[3]

3. On at least 50 occasions during the relevant period, Respondent engaged in trading activity in connection with closing auctions that violated just and equitable principles of trade.[4] Each one of these 50 occasions related to a specific security for which Respondent's trading activity followed the same general pattern.

4. At or around 3:50 p.m., Respondent entered multiple closing auction orders for a specific security in varying quantities between 100 and 10,000 shares on the side of the market that would largely offset or flip the closing auction order imbalance for

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[2] Following the relevant period at issue in this matter, Phlx relocated Phlx Rule 9110(d) to General 5 (Discipline), Section 1 (Disciplinary Jurisdiction). On March 28, 2019, FINRA sent a letter to Ladouceur on behalf of Phlx notifying him that jurisdiction was being retained over him in connection with this matter.

[3] Following the relevant period, Phlx relocated Phlx Rule 707 to Phlx Rule General 9, Section 1(c), effective February 3, 2020.

[4] Ladouceur's trading activity occurred in securities listed on the New York Stock Exchange LLC (NYSE), and as such, the closing auctions were conducted by NYSE. Ladouceur used NYSE "Discretionary Quote" or "D-Quote" orders to input his closing auction orders. D-Quote orders are directed to floor brokers who execute the orders on the NYSE closing auction after market close.

that particular security.[5] Many of Respondent's orders were not bona fide since he planned to cancel the vast majority of his closing auction orders seconds before market close leading to the creation of misleading closing imbalance information that was published to other market participants.

5. Then, around 3:59 p.m., Respondent would enter contra side orders to accumulate a position in the same security in the continuous book across numerous market centers for lesser share amounts than his pending closing auction orders.

6. After accumulating his position, Respondent would cancel the vast majority of his closing auction orders seconds before market close. This ensured that the quantity of orders that he executed in the closing auction closely matched the number of shares that he had accumulated through his contra side orders on the opposite side of the market.

7. Respondent's cancellation of his closing auction orders reduced the number of shares available to offset the closing auction imbalances, and in certain instances caused the imbalance to switch sides (*e.g.,* from a buy side imbalance to sell side imbalance). Respondent's conduct affected the closing price in a manner that allowed him to exit his accumulated position at an artificially advantageous price when his active remaining closing auction orders executed in the closing auction.

8. An example of Respondent's trading strategy occurred on December 6, 2018, in ABC.[6] Specifically, at approximately 3:48 p.m., closing order imbalance information for ABC reflected a buy side imbalance of 32,500 shares. Over the next approximately two minutes, Respondent entered multiple closing auction orders to sell short a total of 36,900 shares. When Respondent's closing auction orders were incorporated into and published by the closing auction book at 3:55 p.m., they contributed to the order imbalance information shifting from a buy side imbalance to a sell side imbalance of 2,600 shares, with 35,000 shares paired and a book clearing price of $18.44.[7]

9. Beginning at approximately 3:59 p.m., Respondent placed contra side orders consisting of Immediate-or-Cancel buy orders for 11,700 shares of ABC and received executions for 6,921 shares across numerous exchanges at a volume weighted average price per share of $18.4724. Then, seconds before market close, Respondent cancelled 30,000 shares of his closing auction orders, which contributed to the closing auction sell side imbalance changing back to a buy side imbalance. When the closing

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[5] The imbalance is the volume of better-priced buy (sell) shares that cannot be paired with both at-priced and better-priced sell (buy) shares. A buy side imbalance indicates there is more demand for a given security than supply, causing the share price to go up, whereas a sell side imbalance indicates there is more supply for a given security than demand, causing the share price to go down.

[6] A generic identifier has been used in place of the name of the relevant security.

[7] Book clearing price means the price at which all better-priced orders eligible to trade in an auction on the side of the imbalance of such orders can be traded.

auction occurred shortly after market close, Respondent sold 6,900 shares at the closing price of $18.76 per share. Respondent's trading activity in this instance yielded a potential profit of approximately $1,984.

10. As a result of this conduct, Respondent violated Phlx Rule 707.

B.   I also consent to the imposition of the following sanctions:

- a censure;

- a fine of $50,000; and

- a suspension of one year.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted a Payment Information form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am barred or suspended from associating with any Phlx member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any Phlx member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See Phlx Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under Phlx's Code of Procedure:

A.   To have a Formal Complaint issued specifying the allegations against me;

B.   To be notified of the Formal 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 Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

I understand that:

A.   Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx Rule 9216;

B.   If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C.   If accepted:

1.   This AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against me;

2.   Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3;[8] and

3.   I 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. I may not take any position in any proceeding brought by or on behalf of Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.

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[8] Series 8000 of Nasdaq Rules are incorporated by reference into Phlx General 5, Section 2, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to Phlx's jurisdiction.

D.   I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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 Phlx, nor does it reflect the views of Phlx or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

December 19, 2023   *Brian M. Ladouceur*
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Date   Brian M. Ladouceur
                                                       Respondent

Reviewed by:

Joseph Allgor
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Joseph Allgor, Esq.
Counsel for Respondent
Herskovits PLLC
305 Broadway 7th Floor
New York, New York 10007

Accepted by Phlx:

December 22, 2023
_____
Date

                                       Andy Hubbartt
_____
                                       Andy Hubbartt
                                       Senior Counsel
                                       Department of Enforcement

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