

THE NASDAQ OPTIONS MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019.12.0093

TO: The Nasdaq Options Market LLC
Nasdaq Enforcement Department

RE: Deutsche Bank Securities, Inc., Respondent
Broker-Dealer
CRD No. 2525

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”)¹ Code of Procedure, Deutsche Bank Securities, Inc. (the “Firm” or “DBSI”) 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, Nasdaq will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

DBSI became a member of the Nasdaq Options Market (“NOM”) on March 12, 2008. On September 8, 2020, NOM received notice of DBSI’s termination of its NOM membership. On October 28, 2020, Nasdaq Enforcement provided notice to DBSI that NOM was making inquiry into a matter or matters which occurred prior to DBSI’s deregistration. Accordingly, pursuant to Nasdaq Rule 9110(d), NOM continues to have jurisdiction over the Firm. The Firm, headquartered in New York, is a brokerage and investment adviser firm. It operated a direct market access (“DMA”) options business between the first quarter of 2013 and September 13, 2019 (the “Relevant Period”). The Firm has no relevant disciplinary history.

SUMMARY

During the Relevant Period, DBSI failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations, and NOM rules related to detecting potentially manipulative trading by its DMA options clients. As a result, DBSI violated NOM Rule Chapter III, Sections 1 and 2; NOM Rule Chapter V, Section 1(b)(iv); and Nasdaq Rules 3010 and 2010A.²

¹ All Nasdaq Options Market LLC disciplinary matters are governed by the Nasdaq Code of Procedure.

² As of December 6, 2019, NOM Rule Chapter III, Sections 1 and 2 was renumbered to Options 9, Sections 2(a) and (b), respectively; NOM Rule Chapter V, Section 1(b)(iv) was renumbered to Options 3, Section 21(b)(4); Nasdaq Rule 3010 was renumbered to General 9, Section 20; and Nasdaq Rule 2010A was renumbered to General 9, Section 1(a).

FACTS AND VIOLATIVE CONDUCT

1. This matter arises from reviews conducted by NOM's Options Review Department, which identified 49 potential instances of marking the close activity in four different options call series by one of DBSI's DMA broker-dealer clients ("Broker-Dealer Client A") in March and April 2018.
2. NOM Rule Chapter III, Section 1 (now Options 9, Section 2(a)) provides that no Options Participant shall engage in conduct in violation of the Exchange Act or Rules thereunder, the Rules of the Exchange or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transaction, or any written interpretation thereof. Every Options Participant shall supervise persons associated with the Participant to assure compliance therewith.
3. NOM Rule Chapter III, Section 2 (now Options 9, Section 2(b)) requires, among other things, that each Options Participant ensure compliance with the Options Participant's and associated persons' obligations under the Rules of the Exchange, the Rules of the Clearing Corporation and any other relevant laws, rules, interpretations and obligations.
4. NOM Rule Chapter V, Section 1(b)(iv) (now Options 3, Section 21(b)(iv)) prohibits an Options Participant from failing to maintain adequate procedures and controls that permit the Options Participant to effectively monitor and supervise the entry of orders by users to prevent the prohibited practices set forth in paragraph (b) and Chapter III, Section 2 of NOM Rules.
5. Nasdaq Rule 3010(a) (now General 9, Section 20) requires "[e]ach member [to] establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules."
6. Nasdaq Rule 2010A (now General 9, Section 1(a)) requires "[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade."
7. DBSI offered its clients direct market access to multiple options exchanges, including NOM. DBSI therefore had post-trade obligations to monitor for manipulation and other improper options activity entered through the Firm.

DBSI failed to establish and maintain a supervisory system reasonably designed to detect marking the close activity by its DMA options clients.

8. Marking the close is a form of market manipulation that involves trading at or near the close of market trading hours in order to influence the price of a security.
9. During the Relevant Period, DBSI's supervisory system was not reasonably designed to prevent and detect potential marking the close activity by its DMA options clients. Specifically, while DBSI used surveillance reports to detect potential marking the close activity, the parameter settings for those reports were not reasonably designed. For example, the Firm's marking the close reports surveilled for executed options trades and not unexecuted options orders. As a result, the Firm failed to identify all but one of the potential instances of marking the close described above.

See Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

10. In addition, between the first quarter 2013 and mid-2018, DBSI's written supervisory procedures ("WSPs") for its DMA options business were not reasonably designed because they did not identify the supervisory steps to be taken by the appropriate supervisor when reviewing DBSI's close manipulation reports or the steps required to document the review. Specifically, the WSPs did not require the reviewer to document the outcome of the review or the basis for that outcome when the reviewer did not escalate the exception. Further, when the reviewer escalated the exception, the Firm's WSPs did not require formal documentation of the escalation or the results of the subsequent review. Instead, DBSI's WSPs stated that, "Supervisors should evidence any follow-up or escalation related to this review through email or other means." The WSPs did not define "other means" or otherwise provide guidance on its meaning.
11. DBSI enhanced its WSPs in mid-2018 prior to initiation of NOM's inquiry, but they remained unreasonably designed. For example, the updated WSPs provided that the reviewer should "Watch for unusual activity near the close to run up/manipulate the price" and "Look[] for multiple contracts w/ significant volume (large orders at [t]he close)." The WSPs did not indicate what may constitute "unusual activity" or how to assess what a sufficient number of contracts and/or volume was to warrant escalation.
12. In addition, while the revised WSPs required that evidence of escalation and completion of the review be formally documented in an internal system, the WSPs did not require the reviewer to document the outcome of the review or the basis for that outcome in instances in which the reviewer did not escalate the exception. Indeed, the system record only indicated whether an alert was closed and when it was closed.

DBSI failed to establish and maintain a supervisory system to detect frontrunning, layering, ramping, and spoofing.

13. While the Firm provided direct market access to its options clients during the Relevant Period, it did not monitor for frontrunning, layering, ramping, and spoofing for options transactions. Therefore the Firm did not establish and maintain a supervisory system, including written procedures, reasonably designed to monitor for potential front running, layering, ramping, and spoofing by its DMA options clients.
14. As a result of DBSI's supervisory failures, its DMA options clients placed millions of orders per month during the Relevant Period through DBSI without being subjected to supervisory reviews for frontrunning, layering, ramping, and spoofing.

DBSI did not have a reasonable basis to rely on Broker-Dealer Client A's assurances that it conducted proper reviews for manipulative activity.

15. According to DBSI, Broker-Dealer Client A made assurances in a June 2019, letter (the "June Letter") that it had processes in place to detect manipulative activity, including wash trades, professional customer activities and designations, and de facto market making. DBSI's reliance on the client's assurances was unreasonable.
16. A December 2016 letter from Broker-Dealer Client A stated that it had "processes in place that are reasonably designed to detect wash trades in U.S. options and minimize the transmission of potential wash trades to its U.S. options brokers including Deutsche Bank Securities, Inc." DBSI contacted the broker-dealer client in May 2019 to ask that it amend the December 2016 letter to also reference professional customer activities and de facto market making. Broker-Dealer Client A agreed and promptly provided DBSI with the June 2019 letter. DBSI did not provide evidence that it conducted diligence to assess

whether it had a reasonable basis for believing the representation that the broker-dealer client had processes in place that were reasonably designed to detect the activities listed in the June Letter.

17. The conduct described in paragraphs 9 through 16 constitute violations of NOM Rule Chapter III, Sections 1 and 2; NOM Rule Chapter V, Section 1(b)(iv); and Nasdaq Rules 3010 and 2010A.

OTHER FACTORS CONSIDERED

In resolving this matter, Nasdaq Enforcement took into account that the Firm stopped operating its DMA options business as of September 13, 2019, following a business restructuring.

B. The Firm also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$190,000.

The Firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by Nasdaq Enforcement Department staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq 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.

The Firm further specifically and voluntarily waives 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

The Firm 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 Nasdaq Enforcement Department and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 - 1. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the Firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 3. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 the Firm 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Deutsche Bank Securities, Inc.
Respondent

By: 

Print Name: Andrew Spens

Title: Managing Director

By: _____

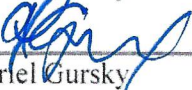
Print Name: _____

Title: _____

2/3/2023

Date

Reviewed by:



Artem Gursky
Counsel for Respondent
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 the Firm 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Deutsche Bank Securities, Inc.
Respondent

By: _____

Print Name: _____

Title: _____

By:  _____

Print Name: Mark Landsman

Title: DBSI General Counsel

Date

Reviewed by:

Ariel Gursky
Counsel for Respondent
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178

Accepted by Nasdaq:

2/15/2023

Date

Erik Wittman

Erik Wittman
Deputy Head of Enforcement
Nasdaq Enforcement Department

Signed on behalf of The Nasdaq Options
Market LLC, by delegated authority from the
Director of ODA