

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014041862801**

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

RE: Macquarie Capital (USA) Inc.
Member Firm
CRD No. 36368

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Macquarie Capital (USA) Inc. ("Macquarie" or the "Firm"), 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 Macquarie alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

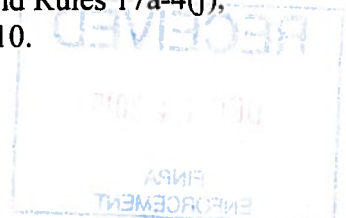
- A. Macquarie hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Macquarie is, among other things, a full-service broker of Australian, Asian, and U.S. equity and fixed income securities, equities research, and underwriting services. The Firm is headquartered in New York and has approximately 568 registered persons in its offices around the world. Macquarie has been a FINRA member since 1994. Macquarie has no relevant disciplinary history.

OVERVIEW

Between 2012 and 2015, Macquarie submitted to the SEC and FINRA blue sheets that inaccurately reported certain information. Macquarie submitted at least 1,143 inaccurate blue sheets to the SEC that misreported at least 178,318 transactions and submitted at least 600 inaccurate blue sheets to FINRA that misreported at least 160,971 transactions. In addition, between 2012 and 2014, Macquarie did not have in place an adequate audit system providing for accountability of its blue sheet submissions. As a result of the foregoing conduct, Macquarie violated Section 17(a) of the Securities Exchange Act (the "Exchange Act") and Rules 17a-4(j), 17a-4(f)(3)(v), and 17a-25, thereunder; and FINRA Rules 8211, 8213, and 2010.



FACTS AND VIOLATIVE CONDUCT

Federal securities laws and FINRA rules require that member firms submit trade data in an automated format when requested by the SEC or FINRA. These trade data are commonly known as “blue sheets.”

The SEC, FINRA, and other regulators request blue sheets to assist them in investigations focused on equity trading, including suspicious and insider trading. Blue sheets provide regulators with critical information about suspicious transactions, including the name of the account owner, the nature of the transaction (whether it was a buy, sale, or short sale), and the price at which the transaction occurred. This information is essential to regulators’ ability to discharge their enforcement and regulatory mandates.

The failure of a member firm to provide complete and accurate blue sheet information in response to a regulatory request can impact a regulator’s ability to discharge its obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with its ability to protect investors. It is therefore an essential and fundamental obligation of each member firm to provide complete, accurate, and timely blue sheet submissions.

Submission of Inaccurate Blue Sheets. Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25, thereunder, require broker-dealers to submit “legible, true, complete, and current” blue sheet data to the SEC upon request. FINRA Rules 8211 and 8213 require that member firms submit trade data as prescribed in FINRA Rule 8211 to FINRA upon request.

In conjunction with commencing clearing activities for its Cash Trading business in January 2012, Macquarie developed a new system to generate blue sheets. Due to an increase in the volume of blue sheet requests, the Firm developed another, more automated system to generate blue sheets, which the Firm began using in November 2012.

Between January 2012 and September 2015, Macquarie experienced multiple problems with these blue sheet systems, including reversing the buy/sell code on allocations of certain customer trades; miscalculating the net amount on allocations of certain customer trades; failing to report post-trade cancels and corrections; and failing to provide (or providing incomplete) customer information for certain transactions. The problems were caused by technical deficiencies in the Firm’s blue sheet systems; errors in its blue sheet logic; and the fact that information was pulled from a front-end database that did not accurately reflect actions that some times occurred after a trade was executed. As a result of these problems, Macquarie submitted to the SEC at least 1,143 inaccurate blue sheets that misreported approximately 178,318 transactions and submitted to FINRA at least 600 blue sheets that misreported approximately 160,971 transactions.

As a result of the foregoing, Macquarie violated Section 17(a) of the Exchange Act; Rules 17a-4(j) and 17a-25, thereunder; and FINRA Rules 8211, 8213, and 2010.

Inadequate Audit System. Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder, require broker-dealers to have “in place an audit system providing for accountability

regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.”

In 2012 and 2013, Macquarie’s written supervisory procedures for blue sheets consisted of instructions on how to submit a blue sheet response and “sample checking” for blue sheet validation.

In early 2014, after a consultant reviewed its blue sheet systems and procedures, Macquarie revised its blue sheet validation process and subsequently discovered the problems described above.

Between January 2012 and 2014, Macquarie did not have in place an adequate audit system providing for accountability of its blue sheet submissions. As a result, Macquarie violated Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder; and FINRA Rule 2010.

OTHER FACTORS

In determining the appropriate sanction in this matter, FINRA’s Enforcement Department considered Macquarie’s self-report following its discovery of the violations described above. Macquarie detected the violations, initiated internal reviews upon discovery of the violations, identified the cause of the violations, and engaged in remediation.

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

- (1) a censure; and
- (2) a fine of \$2,950,000.

Macquarie further agrees to conduct a review of its policies, systems, and procedures (written or otherwise) relating to its compilation and submission of blue sheet data and the audit deficiencies addressed herein. Within 90 days of the issuance of a Notice of Acceptance of this AWC, an officer of the Firm shall certify in writing to James E. Day, Vice President and Chief Counsel, FINRA Department of Enforcement, that (i) Macquarie has engaged in the comprehensive review described above, and (ii) as of the date of the certification, Macquarie has in place policies, systems, and procedures to address and correct the violations described in this AWC and also reasonably designed to ensure the Firm provides accurate and timely blue sheet submissions as requested by regulators. FINRA staff may, upon a showing of good cause and in its sole discretion, extend the time for compliance with this provision.

Macquarie agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Macquarie has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

Macquarie 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, Macquarie specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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 acceptance or rejection of this AWC.

Macquarie 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

Macquarie 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 it; 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 FINRA or any other regulator against it;
 - (2) this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;
 - (3) FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - (4) 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. Macquarie 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- (D) Macquarie 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Macquarie, 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 Macquarie has agreed to its 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 Macquarie to submit it.

12/11/2015
(mm/dd/yyyy)

Respondent
Macquarie Capital (USA) Inc.

By: 
[NAME] Gus Wong
[TITLE] CHIEF COMPLIANCE OFFICER

By: 
[NAME] Kent A. Paschke
[TITLE] CEO

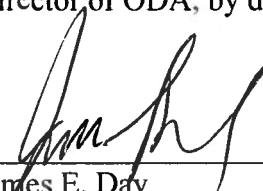
Reviewed by:


Susan L. Merrill
Counsel for Respondent
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-8558

Accepted by FINRA:

12/23/15
Date

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


James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
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Rockville, MD 20850-3241
(301) 258-8520