

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2014041813501**

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

RE: Deutsche Bank Securities Inc. (Respondent)
Member Firm
CRD No. 2525

Pursuant to FINRA Rule 9216, Respondent Deutsche Bank Securities 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

DBSI has been a member of FINRA since 1940. The firm maintains its principal place of business in New York, New York, has seven branch offices, and approximately 1,900 registered representatives. Among other things, the firm engages in investment banking, research, and securities sales and trading for institutional customers.¹

In parallel cases, *Deutsche Bank Securities Inc.*, Exchange Act Release No. 79576, 2016 SEC LEXIS 4656 (Dec. 16, 2016) and *Deutsche Bank Securities Inc.*, Case No. 16-143 (NY Att’y Gen. Dec. 15, 2016), DBSI consented to findings that from 2010 through 2014,² it made material misstatements and omissions concerning (a) the status and functioning of DBSI’s Dark Pool Ranking Model (“DPRM”), and (b) the extent of discretion and subjective judgment exercised by DBSI personnel in operating the DPRM. Specifically, due to a coding error, during the period February 2013 to February 2014, the firm’s Alternative Trading System (ATS) received an erroneous ranking that placed it in the bottom tier of venues and rendered it ineligible to receive all but the most aggressive orders. Believing the ranking to be an error, DBSI manually overrode the ranking model and placed its ATS into the highest-ranked position. Among other violations, DBSI consented to findings that it willfully violated Section 17(a)(2) of the Securities Act and

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

² The relevant period in the SEC case was limited to January 2012 to February 2014.

consented to a fine of \$37 million divided evenly between the SEC and the New York Attorney General.

In Deutsche Bank Securities Inc., AWC No. 20140429134-01 (Dec. 16, 2016), DBSI consented to findings, without admitting or denying those findings, that, from 2009 through 2014, the firm violated Section 17(a)(2) of the Securities Act, SEC Regulation ATS, FINRA Rule 2210, and NASD Rule 3010. The firm stated in its Form ATS that it would provide “[a]ll eligible internal and external users of the ATS” with “identical access to all services and features,” but failed to inform all clients of their ability to include or exclude certain counterparties from trades. DBSI consented to a censure, a fine of \$3,250,000, and an undertaking to revise its written supervisory procedures.

OVERVIEW

This matter involves DBSI’s failure to comply with its best execution obligations in connection with customer electronic equity orders. From January 2014 through May 2019, DBSI owned and operated an ATS, known as “SuperX.”³ When routing customer orders to exchanges, DBSI routed marketable orders first to SuperX prior to routing any part of the order to an exchange, unless customers opted out of this routing preference. DBSI did not consider whether alternate routing arrangements might have provided better price improvement, fill rates and speed of execution. Similarly, when routing orders to dark pools, DBSI routed more orders to SuperX than any other dark pool during some of the relevant period. The firm failed to consider alternate routing arrangements even though, according to the firm’s own ranking model, other dark pools consistently ranked higher than SuperX for execution quality. As a result, DBSI violated FINRA Rules 5310(a), 5310.09(a) and (b), and 2010.

DBSI also failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with its best execution obligations. The firm’s supervisory reviews were not reasonably designed to evaluate whether the firm was meeting its best execution obligations and its supervisory procedures failed to provide reasonable guidance on how the firm should conduct its reviews or circumstances in which the firm should consider modifying its routing practices. As a result, DBSI violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.⁴

Finally, DBSI failed to disclose material aspects of its relationship with the markets to which it routed orders in its quarterly reports filed under Rule 606 of Regulation NMS. The reports contained non-specific disclosures that the firm could receive trading rebates but did not disclose any details regarding such payment, such as amounts per share or per order that the firm received. As a result, DBSI violated Rule 606 of Regulation NMS and FINRA Rule 2010.

³ In connection with DBSI’s exit of U.S. equity sales and trading business, the firm closed SuperX on September 24, 2021.

⁴ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

FACTS AND VIOLATIVE CONDUCT

1. FINRA's Best Execution Rule

Broker-dealers have a longstanding and fundamental obligation to seek “best execution” of their customers’ orders—that is, to seek the most favorable terms for their customers’ orders that are reasonably available under the circumstances.

FINRA codified this best execution obligation in FINRA Rule 5310 and its Supplementary Material. FINRA Rule 5310(a) provides that, “[i]n any transaction for or with a customer or a customer of another broker-dealer, a member . . . shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.”

FINRA Rule 5310’s Supplementary Material .09(a) requires members to conduct “regular and rigorous” reviews of the execution quality of customer orders:

A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow, must have procedures in place to ensure the member periodically conducts regular and rigorous reviews of the quality of the executions of its customers’ orders if it does not conduct an order-by-order review. The review must be conducted on a security-by-security, type-of-order basis (e.g., limit order, market order, and market on open order).

Supplementary Material .09(a), also known as Rule 5310.09, requires that, at minimum, the member conduct such regular and rigorous reviews on a quarterly basis and that firms should consider whether, based on their business, more frequent reviews are needed.

FINRA Rule 5310’s Supplementary Material .09(b) provides that, “[i]n conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member’s routing arrangements or justify why it is not modifying its routing arrangements.” Each member must “compare, among other things, the quality of the executions the member is obtaining via current order routing and execution arrangements . . . to the quality of the executions that the member could obtain from competing markets.”

FINRA Rule 5310.09(b) also identifies certain factors that should be considered in reviewing and comparing the execution quality of the member’s current order routing and execution arrangements to the execution quality of other markets, including: (1) price improvement opportunities (*i.e.*, the difference between the execution price and the best quotes prevailing at the time the order is received by the market); (2) differences in price disimprovement (*i.e.*, situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);

(3) likelihood of execution of limit orders; (4) speed of execution; (5) size of execution; (6) transaction costs; (7) customer needs and expectations; and (8) existence of internalization or payment for order flow arrangements.

A violation of FINRA Rule 5310 is also a violation of FINRA Rule 2010, which requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

2. DBSI's Default Routing Preference for Orders

During the relevant period, DBSI was a broker-dealer for institutional customers. The institutional customers placed electronic equity orders with DBSI, which then routed their orders to exchanges or ATSS, known as dark pools, for execution.⁵ In routing the orders, DBSI sent customer orders to its smart order router (SOR) for execution on exchanges, or to SuperX+, an automated routing system, which primarily routed customer orders to dark pools. During the relevant period, DBSI operated one such dark pool, SuperX, subscribers to which consisted of broker-dealers, including, but not limited to, DBSI and market makers.

DBSI programmed the SOR to, by default, route to SuperX before routing to other execution venues. Specifically, for marketable orders routed through the SOR, DBSI sent an immediate-or-cancel order first to SuperX prior to routing to any other venue. Only if the order was not fully executed in SuperX would DBSI route the order, or any remaining part of the order, externally to exchanges for execution. This default routing preference was known as the SuperX "ping." DBSI disclosed the SuperX ping to customers, which were able to opt out of it.

For orders routed to dark pools, SuperX+ utilized, among other things, a dark pool ranking model to determine where to route the orders. During some of the relevant period, DBSI routed more customer orders to SuperX for execution than any other dark pool even though, SuperX did not rank as highly for execution quality as other dark pools under the firm's model.

3. DBSI's Reviews of Customer Executions Did Not Meet Rule 5310's Reasonable Diligence Standard.

DBSI's reviews of customer execution quality failed to meet the reasonable diligence standard of FINRA Rule 5310 and the regular-and-rigorous review standard of FINRA Rule 5310.09. During the relevant period, DBSI did not review execution quality on an order-by-order basis but, rather, reviewed the execution quality of customer orders through a regular and rigorous review. The reviews were conducted by the firm's best execution committee, which generally met monthly. The firm's best execution committee, however, failed to consider alternate routing arrangements to the SuperX

⁵ Dark pools are a type of ATS that do not broadcast pre-trade data—i.e., the presence, price, and amount of buy and sell orders—the way that traditional exchanges do.

ping, even when presented with evidence that the SuperX ping resulted in lower fill rates. In addition, certain reports indicated that other dark pools ranked higher in the firm's ranking model than SuperX, but the firm failed to consider alternate routing arrangements for orders routed to SuperX through SuperX+. The firm also failed to consider price improvement for orders routed to SuperX through SuperX+. Further, the firm did not consider speed of execution when routing through the SOR or SuperX+.

i. DBSI did not reasonably consider whether routing orders first to SuperX impacted execution quality.

The SuperX ping would, by default, check for liquidity in SuperX before routing marketable orders to exchanges. If there was sufficient liquidity in SuperX, customers could receive full execution without routing to exchanges. The SuperX ping, however, created an inherent delay for those orders that were not fully executed in SuperX because the orders would then have to be routed to the exchanges for execution. This delay subjected orders to potentially lower fill rates—that is, a lower percentage of an order filled during the initial route—and to potential information leakage—that is, information about orders becoming available to other market participants. Specifically, an execution in SuperX could alert other SuperX subscribers who interacted with the order and could then use that information to trade, potentially against the customer, after the remainder of the order had been routed elsewhere.

During the relevant period, execution quality reports reviewed by the firm's best execution committee showed that fill rates in SuperX for orders routed by the SOR ranged from approximately 12 percent to 32 percent. The same reports showed that orders routed to exchanges, by contrast, had fill rates above 90 percent. In addition, in approximately March 2016, the firm's best execution committee received a memorandum indicating orders subject to the SuperX ping had lower fill rates compared to orders that were not subject to the SuperX ping due to potential latency. Despite this information, DBSI did not modify its routing arrangements.

DBSI also failed to reasonably consider how price improvement on orders subject to the SuperX ping compared to price improvement opportunities for orders routed directly to exchanges, as required under Rule 5310.09(b). Although DBSI reviewed price improvement, the firm's reviews did not differentiate between orders subject to the SuperX ping and orders routed directly to exchanges. Thus, the firm could not determine whether the SuperX ping adversely affected price improvement due to information leakage or delays associated with pinging the ATS first.

ii. DBSI did not consider price improvement or alternate routing arrangements for orders routed through SuperX+.

DBSI employed a ranking model to assess the execution quality of dark pools to which it routed orders via SuperX+. The ranking model, however, considered only two factors, fill

rate and adverse selection.⁶ The firm’s reviews of execution quality for orders routed through SuperX+ did not consider other relevant execution-quality factors, such as price improvement, as required under Rule 5310.09(b). In addition, 16 separate monthly reports from November 2017 to August 2019 that were available to the firm’s best execution committee showed that other dark pools consistently ranked higher than SuperX in the firm’s ranking model. Nonetheless, during some of the relevant period, DBSI routed more orders to SuperX than any other dark pool. Although the firm was aware that SuperX+ routed orders predominantly to SuperX, it did not consider alternate routing arrangements despite other dark pools ranking higher and potentially providing better execution quality than SuperX based on DBSI’s ranking model.

iii. DBSI did not consider speed of execution.

Throughout the relevant period, the firm failed to consider speed of execution, as required under Rule 5310.09(b). For orders routed through SuperX+, as discussed above, the firm only considered fill rate and adverse selection; the firm’s reviews did not take into account the speed of execution. The firm’s reviews of orders routed through the SOR only measured the time between order entry and the order reaching a trading venue, rather than when it was executed. In addition, the firm’s monthly best execution reviews did not consider the time it took to ping SuperX prior to an order being routed to an exchange.

* * *

As a result of the foregoing, DBSI violated FINRA Rules 5310(a), 5310.09(a) and (b), and 2010.

4. DBSI did not reasonably supervise for best execution.

FINRA Rule 3110(a) and NASD Rule 3010(a) require 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 FINRA rules.

FINRA Rule 3110(b) and NASD Rule 3010(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 FINRA rules.

During the relevant period, DBSI’s supervisory system was not reasonably designed to achieve compliance with FINRA Rules 5310 and 5310.09. DBSI considered its best execution committee’s reviews as constituting its supervisory system for best execution. As set forth above, those reviews were not reasonably designed to achieve compliance

⁶ Adverse selection is used to assess whether other market participants knew about or anticipated movements in prices after an order was placed; it is present if the price of a security drops after a purchase order is executed or increases after a sell order is executed.

with the firm's best execution obligations because they failed to reasonably review certain factors set forth in Rule 5310.09(b). For example, the firm failed to consider whether the SuperX ping impacted fill rates or price improvement and failed to consider price improvement or alternate routing arrangements for orders routed through SuperX+.

Further, the firm's written procedures provided for periodic reviews of routing quality but did not provide any guidance on how the best execution committee was to complete its regular and rigorous reviews. For example, the procedures provided that if the best execution committee identified potential issues with execution quality, the firm had to either modify its routing arrangements or justify why it did not make any modifications. The procedures, however, did not provide any additional guidance concerning the factors or circumstances that would require the firm to consider modifying its routing practices in response to the best execution committee reviews.

Therefore, DBSI violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b), and 2010.

5. DBSI failed to disclose material aspects of its relationship with venues.

In 2005, the U.S. Securities and Exchange Commission adopted Regulation NMS. Among the rules in Regulation NMS is Rule 606, which is designed to foster greater transparency in connection with a broker-dealer's best execution responsibilities. Specifically, Rule 606 requires that a broker-dealer disclose to the public in quarterly reports, among other things, a discussion of the material aspects of its relationship with the venues to which it routes its orders, including a description of any arrangement for payment for order flow and any profit-sharing relationship. Such material aspects would include amounts per share or per order that a broker-dealer receives and transaction rebates from routing venues. Here, throughout the relevant period, DBSI's Rule 606 reports did not disclose per share or per order amounts that it received as trading rebates. Instead, the reports contained non-specific disclosures that the firm could receive trading rebates.

Therefore, DBSI violated Rule 606 of the Securities Exchange Act of 1934 and FINRA Rule 2010.

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

- a censure; and
- a \$2,000,000 fine.

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.

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 National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- 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.

February 9, 2022

Date

Andrew Stemmer

Deutsche Bank Securities Inc.
Respondent

Print Name: Andrew Stemmer

Title: Managing Director

February 10, 2022

Date

Ira Wurcel

Deutsche Bank Securities Inc.
Respondent

Print Name: Ira wurcel

Title: Managing Director

Reviewed by:

David G. Januszewski

David G. Januszewski
Counsel for Respondent
Cahill Gordon & Reindel LLP
32 Old Slip
New York, New York 10005

Accepted by FINRA:

March 7, 2022

Date

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

Elisabeth Grippando

Elisabeth Grippando
Principal Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850