

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2014041808601**

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

RE: Barclays Capital Inc. (Respondent)
Member Firm
CRD No. 19714

Pursuant to FINRA Rule 9216, Respondent Barclays Capital 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

Barclays became a FINRA member in October 1987. Barclays is headquartered in New York, NY and has 16 branches with approximately 2,900 registered representatives. Barclays provides trade execution, clearing, and investment banking services to institutional customers.¹

In parallel cases, *Barclays Capital Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016) and *Barclays PLC and Barclays Capital Inc.* (NY Att’y Gen. Jan. 29, 2016), the SEC and the New York Attorney General fined Barclays and made findings that Barclays committed violations of certain federal securities laws in connection with the operation of its Alternative Trading System (ATS) from December 2011 through June 2014.

OVERVIEW

This matter involves Barclays’ failure to comply with its best execution obligations in connection with its customers’ electronic equity orders. From January 2014 through February 2019, Barclays routed customers’ electronic equity orders for execution using a smart order router (SOR). During this period, Barclays also owned and operated an ATS, known as “LX.” Using an indication of interest connection (“IOI Feed”), Barclays’ SOR

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

routed all of its customers' marketable orders to LX first if there was sufficient liquidity in LX to fill the order completely or partially at the NBBO or better.² Despite considering certain execution quality factors for orders routed to LX, Barclays failed to consider whether alternate routing arrangements could have provided price improvement opportunities and better speed of execution. In addition, although Barclays reviewed fill rates in LX during the relevant period, the firm failed to consider alternate routing arrangements when the firm's own data showed that fill rates in LX were inferior to fill rates at some competing execution venues. As a result, Barclays violated FINRA Rules 5310(a), 5310.09(a) and (b), and 2010.

Barclays also failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with its best execution obligations. The firm's supervisory reviews were not reasonably designed to evaluate execution quality of customer orders to determine whether the firm was meeting its best execution obligations. The firm's WSPs also failed to provide reasonable guidance concerning the factors the firm should consider in determining whether to modify its routing practices. As a result, Barclays violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.³

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

² In September 2016, the firm began migrating its customers' order flow to a new smart order router that did not preference LX. By February 2019, the firm had migrated 74 percent of its customer order flow to this new router. The firm completed the migration in May 2020.

³ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

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 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. Barclays' Default Routing Preference for Marketable Orders

During the relevant period, institutional customers placed electronic equity orders with Barclays, which routed the orders for execution, using the SOR, to exchanges or ATSSs, including Barclays' own ATS, LX. Barclays operated LX as a dark pool.⁴ Subscribers to LX consisted primarily of institutional investors, electronic market makers and broker-dealers, including, but not limited to, Barclays.

Barclays programmed the SOR to preferentially route customers' marketable orders to LX. Specifically, Barclays used an IOI feed between LX and the SOR to identify liquidity in LX. The firm automatically routed all marketable orders to LX, prior to routing to any competing venue, if the IOI Feed indicated that there was sufficient liquidity in LX to fill the entire order at the NBBO or better. If the IOI feed indicated that there was liquidity in LX at the NBBO or better to fill only part of a marketable order, the

⁴ A dark pool is a type of ATS that does not broadcast pre-trade data—*i.e.*, the presence, price, and amount of buy and sell orders—the way that traditional exchanges do.

SOR routed that part of the order to LX and the remaining portion of the order to other venues contemporaneously. Barclays routed a marketable order directly to exchanges and other trading venues only if the IOI feed indicated that there was no liquidity in LX at the NBBO or better.⁵

In September 2016, the firm began migrating its customers' order flow to a new smart order router that did not preference LX. By February 2019, the firm had migrated 74 percent of its customer order flow to this new router. The firm completed the migration in May 2020.

3. Barclays Failed to Meet its Best Execution Obligations

Barclays' reviews of customer execution quality failed to meet the reasonable diligence standard of FINRA Rule 5310 and the regular-and-rigorous review requirements of FINRA Rule 5310.09. During the relevant period, Barclays programmed its SOR to perform a pre-execution assessment to determine where to route each order using real time market information. In addition, its Best Execution Working Group conducted quarterly reviews for execution quality. The Best Execution Working Group, however, failed to conduct reasonable reviews of execution quality for customer orders routed to LX. In particular, the Best Execution Working Group:

- failed to review price improvement data that measured the difference between the execution price and the best quotes prevailing at the time the order was received by the market, as required under FINRA Rule 5310.09(b); and
- did not review speed of execution for any of the venues to which the firm routed orders or consider whether the firm could have obtained better execution speed from competing markets.⁶

In addition, Barclays failed to consider alternate routing arrangements when reports reviewed by the Best Execution Working Group indicated that marketable orders routed to LX received lower fill rates compared to certain competing venues. These reports reflected that LX delivered a lower fill rate than the average fill rate of competing venues in every quarter from 2015 to the first quarter of 2019. LX's average fill rate during this period was 77 percent, whereas competing venues' average fill rates was 87 percent, and in each of the 17 quarters in this period, at least eight competing venues delivered better fill rates than LX.

Therefore, Barclays violated FINRA Rules 5310(a), 5310.09(a) and (b), and 2010.

⁵ Barclays' routing practice was disclosed to customers, who could opt out of it.

⁶ The Best Execution Working Group considered other metrics such as the change in the price of a security immediately after an order for that security was executed.

4. Barclays did not reasonably supervise for best execution

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires 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), like its predecessor NASD Rule 3010(b), requires 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, Barclays’ supervisory system was not reasonably designed to achieve compliance with FINRA Rules 5310 and 5310.09. The firm’s Best Execution Working Group’s reviews were not reasonably designed to achieve compliance with the firm’s best execution obligations because the firm failed to reasonably consider price improvement for orders routed to LX and speed of execution for any venue. In addition, the firm’s WSPs failed to provide reasonable guidance on the factors the firm should consider in determining whether to modify its routing practices.

Therefore, Barclays violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b), and 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

September 2, 2022

Date

Timothy Magee

Barclays Capital Inc.
Respondent

Print Name: Tim Magee

Title: Managing Director

Reviewed by:

Jeffrey T. Scott

Jeffrey T. Scott
Counsel for Respondent
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

Accepted by FINRA:

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

October 4, 2022

Date

Rachel Browder

Rachel Browder
Principal Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850