FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2014043121001

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 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

Respondent became a FINRA member in March 1940. Respondent is headquartered in New York, New York, and engages in, among other things, securities sales and trading for institutional and retail customers and other broker-dealers. Respondent is an indirect, wholly-owned subsidiary of a global banking and financial services company.1

OVERVIEW

1. From June 2013 through February 2019, Respondent failed to have a reasonably designed supervisory system for its participation, and the participation of its customers, in partial tender offers to achieve compliance with Rule 14e-4 of the Securities Exchange Act Rule of 1934, which generally prohibits the tendering of more shares than a person owns in a partial tender offer. Prior to February 2016, Respondent lacked any supervisory system, including written supervisory procedures (“WSPs”), designed to achieve compliance with Rule 14e-4. In February 2016, the Respondent incorporated into its WSPs a two-page operational procedures document for processing instructions from customers and proprietary accounts related to

1 For more information about Respondent, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.
voluntary corporate actions, such as tender offers. This review, however, was limited to ensuring that Respondent processed tender instructions accurately without regard to whether Respondent, or its customers, were net long the shares tendered.

2. Respondent’s operational procedures were additionally flawed because they did not consider several required factors, such as options positions or securities held by the same person in multiple accounts, when calculating a person’s position in the security being tendered. Respondent’s supervisory system allowed violations of Rule 14e-4 to continue without detection. As a result, in at least one instance, Respondent impermissibly over-tendered 1,988,954 shares in a partial tender offer on behalf of its parent company’s London bank branch (“London Bank”) without a reasonable belief that London Bank possessed or owned all the shares tendered. Consequently, other tendering shareholders received fewer shares than they otherwise would have received had London Bank not over-tendered.

3. By failing to have a reasonably designed supervisory system, including WSPs, Respondent violated FINRA Rules 3110(a) and (b), and 2010. Respondent also violated Rule 14e-4 and FINRA Rule 2010 by over-tendering shares on behalf of London Bank. In addition, Respondent violated NASD Rules 1031(a) and 1032(f), and FINRA Rule 2010 for not registering an employee who executed several securities transactions as a securities trader in connection with Deutsche Bank’s participation in the partial tender offer.

FACTS AND VIOLATIVE CONDUCT

Applicable Law

4. Rule 14e-4, commonly referred to as the “short tender rule,” is generally designed to preclude persons from tendering more shares than they own in order to avoid or reduce the risk of pro rata acceptance in a partial tender offer. A person may tender shares into a partial tender offer only if both at the time of tender and at the end of the proration period the person has a “net long position” in the subject security or an equivalent security equal to or greater than the amount tendered into the partial tender offer. Under Rule 14e-4, a person's “net long position” in a subject security equals the excess, if any, of such person's “long position” over a person's “short position.” In addition, Rule 14e-4, defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security.

5. Rule 14e-4(b)(2) prohibits a person from tendering shares for the account of another person in excess of his or her net long position unless the tendering person has a reasonable belief that the person on whose behalf the tender is made possesses or owns the subject security and will promptly deliver the subject security for tender.

---

2 NASD Rule 3010 for conduct prior to December 1, 2014.
3 Now FINRA Rule 1210.
4 Now FINRA Rule 1220(b)(4).
6. A partial tender offer involves "proration risk," that is, a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Rule 14e-4 because the practice unfairly decreases the short tendering person's proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.

7. FINRA Rule 3110(a)\(^5\) 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 with applicable FINRA rules, including but not limited to the establishment and maintenance of written procedures prescribed by FINRA Rule 3110(b).

8. FINRA Rule 3110(b) provides that each member shall 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 with applicable FINRA Rules.

9. FINRA Rule 2010 provides that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. Violations of the Securities Exchange Act of 1934 or of FINRA’s supervisory rules constitute a violation of FINRA Rule 2010.

10. NASD Rule 1032(f) required individual associated persons who are engaged in proprietary trading and/or the execution of transactions on an agency basis to qualify and register as a Securities Trader.

Respondent Failed to Have a Reasonable Supervisory System for Compliance with Rule 14e-4

11. Prior to February 2016, Respondent did not have any supervisory system, including WSPs, related to compliance with Rule 14e-4.

12. In February 2016, Respondent incorporated into its WSPs a two-page document related to compliance with Rule 14e-4. These procedures, however, were essentially an outline for how Respondent should handle voluntary corporate actions. As such, the WSPs failed to provide any guidance as to how the Respondent should calculate net long positions and what actions, if any, should be taken to ensure that the Respondent was not tendering shares for its own account, or for the account of a customer, in excess of the Respondent’s, or its customer’s, net long position. Respondent only checked the account for which the shares were being tendered to make sure that the shares were held in the tendering account. Respondent also did not factor into its review any options positions or shares held by the same person in other accounts. In February 2019, the Respondent implemented a new supervisory

---

\(^5\) And NASD Rule 3010 prior to December 1, 2014.

STAR No. 20140431210 (incl. 20150464128 and 20170558983) (KM)
system, including WSPs, which incorporated a review of whether Respondent, or its customers, were net long the shares tendered in compliance with Rule 14e-4.

13. As a result of the foregoing conduct, Respondent violated FINRA Rules 3110(a), 3110(b) and 2010, and NASD Rules 3010(a) and 3010(b).

Respondent Tendered Shares on Behalf of London Bank in Violation of Exchange Act Rule 14e-4

14. Respondent processed instructions from customers and proprietary accounts related to voluntary corporate actions, such as partial tender offers. However, Respondent failed to properly determine whether it, or the customer for which the Respondent was tendering shares, held a net long position in the security. Specifically, Respondent only confirmed that the individual account or accounts from which the shares would be tendered had a net long position, and did not consider whether the Respondent, or the customer, held a net long position. Respondent also failed to consider options positions when calculating either the Respondent’s or its customer’s net long position. The flawed methodology used by Respondent resulted in the tendering of more shares than what was permitted.

Company A Partial Tender Offer

15. In June 2013, Respondent tendered 29,907,206 common shares of Company A on behalf of London Bank in connection with a partial tender offer (the “Offer”). Pursuant to the Offer, shareholders could exchange their Company A common stock for the common stock of Company B, Inc., which was then majority-owned by Company A. Tendering shareholders received $107.52 worth of Company B common stock for each $100.00 worth of Company A shares tendered.

16. At the time of tender, London Bank’s net long position in Company A was 27,918,306 common shares. When Respondent tendered 29,907,206 common shares of Company A on behalf of London Bank, it failed to consider short positions in Company A stock held in other London Bank accounts. Accordingly, Respondent over-tendered 1,988,954 Company A shares on behalf of London Bank. Respondent was solely responsible for the purchase and tender of Company A shares on behalf of London Bank and London Bank’s Company A positions were kept on Respondent’s stock records and available for review by Respondent, which approved the tender instructions. Accordingly, Respondent should have known that it was over-tendering shares on behalf of London Bank.

17. Because the Company A Offer was oversubscribed, other Company A tendering shareholders received fewer Company B shares than they otherwise would have received had London Bank not over-tendered.

18. As a result of the foregoing conduct, the Respondent violated Exchange Act Rule 14e-4(b)(2) and FINRA Rule 2010.
Registration Violations

19. Between May 2013 and April 2014, an employee in Respondent’s Stock Lending department executed equity transactions without being registered to function as a Securities Trader. Accordingly, Respondent failed to register one employee as a Securities Trader in violation of NASD Rules 1031(a) and 1032(f).

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

   **A censure and a total fine of $800,000, of which $156,250 is payable to FINRA.**

Acceptance of this AWC is conditioned upon acceptance of similar agreements in related matters between the Respondent and each of the following self-regulatory organizations: Phlx; NYSE American; ISE; and Cboe.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It 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 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**

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

---

6 The remainder of the fine shall be allocated to Nasdaq Phlx LLC (“Phlx”), NYSE American LLC (“NYSE American”), Nasdaq ISE, LLC (“ISE”), and Cboe Inc. (“Cboe”).
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.

September 9, 2021

Andrew Stemmer
Deutsche Bank Securities Inc.
Respondent

Print Name: Andrew Stemmer
Title: Managing Director

September 9, 2021

Anthony Stucchio
Deutsche Bank Securities Inc.
Respondent

Print Name: Anthony Stucchio
Title: Managing Director

Reviewed by:

Bruce Newman, Esq.
Counsel for Respondent
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
New York, New York 10007
Accepted by FINRA:

September 10, 2021

Date

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

Tina Salehi Gubb

Tina Salehi Gubb, Esq.
Chief Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, Maryland 20850