

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2018057116501**

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

RE: Canaccord Genuity LLC, Respondent  
Member Firm  
CRD No. 1020

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Canaccord Genuity LLC ("Canaccord," "Respondent" 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 Respondent alleging violations based on the same factual findings described herein.

**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**

Canaccord has been a FINRA member firm since 1946. It has 298 registered individuals operating out of 17 branch offices. Canaccord is an indirect wholly-owned subsidiary of Canaccord Genuity Group Inc., a publicly-traded Canadian company. Canaccord is an institutional broker-dealer providing research, trading and sales services to U.S. institutional and corporate clients and investment banking services to U.S. corporate clients.

**RELEVANT DISCIPLINARY HISTORY**

In AWC No. 20120316437-01 (September 2, 2014), FINRA found, among other violations, that the Firm violated Rule 203(b)(1) of Regulation SHO on 24 occasions during the period of October 22 to October 26, 2012. The sanction in that matter related to the Regulation SHO violation consisted of a censure and a fine of \$7,500; the Firm was also subject to an additional \$12,500 fine and an undertaking for violations unrelated to Regulation SHO.

In AWC No. 20110307621-01 (August 10, 2015), FINRA found that, during the period of May 1, 2011 through August 31, 2011, the Firm violated Rule 201(b) of Regulation SHO, NASD Rule 3010, and FINRA Rule 2010 due its failure to implement supervisory systems, including written supervisory procedures, reasonably designed to achieve compliance with Rule 201(b) of Reg SHO. The sanction in that matter was a censure, a fine of \$15,000, and an undertaking to revise the firm's written supervisory procedures.

### OVERVIEW

Rule 204(a) of Regulation SHO ("SEC Rule 204(a)") imposes a close out requirement on a fail to deliver position. If that close out requirement is not satisfied, Rule 204(b) of Regulation SHO ("SEC Rule 204(b)") – the "penalty box" provision – restricts short selling unless additional requirements are met. During the period of December 1, 2016 through November 16, 2018 (the "Relevant Period"), Canaccord failed to timely close out 28 fail to deliver positions in violation of SEC Rule 204(a)(3) and FINRA Rule 2010, and executed 15 short sale orders while in the penalty box in violation of SEC Rule 204(b) and FINRA Rule 2010. In addition, because the Firm's close out practices in connection with its market making activities were inconsistent with the requirements of SEC Rule 204(a)(3), the Firm's supervisory system and written supervisory procedures were not reasonably designed to achieve compliance with SEC Rule 204(a)(3) in violation of FINRA Rules 3110 and 2010.

### FACTS AND VIOLATIVE CONDUCT

SEC Rule 204(a)(3) provides that "[i]f a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security that is attributable to bona fide market making activities by a registered market maker, options market maker, or other market maker obligated to quote in the over-the-counter market, the participant shall by no later than the beginning of regular trading hours on the third consecutive day following the settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity."

In 28 instances during the Relevant Period, Canaccord failed to close out a fail to deliver position in an equity security attributable to market making activity by the time required under SEC Rule 204(a)(3), *i.e.*, by market open on the third day after the settlement date. In these instances, the Firm, rather than purchase or borrow securities of like kind and quantity by market open on the close out date, generally displayed at market open a bid-only quote to the over-the-counter markets at FINRA Rule 6433's minimum quote size, which, on some occasions, was less than the number of shares necessary to close out the fail to deliver position. By virtue of the foregoing, Canaccord violated SEC Rule 204(a)(3) and FINRA Rule 2010.

SEC Rule 204(b) provides, in relevant part, that "[i]f a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out such a fail to deliver position in accordance with the requirements of [SEC Rule 204(a)], the participant and any broker or dealer from which it receives

trades for clearance and settlement ... may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, to the extent that the broker or dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency....”

In 15 instances during the Relevant Period, Canaccord executed a short sale order in an equity security for which it had a fail to deliver position that it had not yet closed out without having first borrowed or entered into a bona fide arrangement to borrow the security. By virtue of the foregoing, Canaccord violated SEC Rule 204(b) and FINRA Rule 2010.

FINRA Rule 3110(a) requires member firms 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.” FINRA Rule 3110(b)(1) requires member firms to “establish, maintain, and enforce written procedures to supervise the type 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.”

During the Relevant Period, with respect to certain less liquid OTC equity securities, Canaccord adopted a practice of displaying a bid-only quote (typically at the minimum quote size) to close out certain fail to deliver positions attributable to its market making activities. This practice was inconsistent with the close out requirements of SEC Rule 204(a)(3) and led to the 28 violations of Rule 204(a)(3) discussed above. The Firm’s 2016 written supervisory procedures did not provide guidance as to the Firm’s actual practice, while the Firm’s 2017 written supervisory procedures were vague and did not describe any steps to be taken by the Firm to supervise the close out activity. As a result, both the Firm’s supervisory system and its written supervisory procedures were not reasonably designed to achieve compliance with SEC Rule 204(a)(3). By virtue of the foregoing, the Firm violated FINRA Rules 3110 and 2010.

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

- Censure; and
- A fine in the amount of \$80,000.

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 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
- 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 prejudice 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 acceptance or rejection of this AWC.

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:

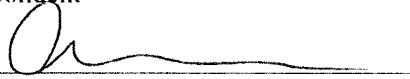
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;

- 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 the subject matter thereof 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: (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. 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 or its staff.

The undersigned, on behalf of the Respondent 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 it 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 it to submit it.

Canaccord Genuity LLC  
Respondent

10/7/2019  
Date

By: 

Name: Andrew F. Viles

Title: U.S. General Counsel

Reviewed by:




Michael D. Wolk, Esq.  
Michael R. Trocchio, Esq.  
Counsel for Respondent  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

Accepted by FINRA:

10/21/2019  
Date

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

  
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Jeffrey E. Baldwin  
Principal Counsel  
FINRA  
Department of Enforcement  
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