

**NASDAQ BX, INC.  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: BMO Capital Markets Corp.  
Mr. Brad A. Rothbaum  
Managing Director and Chief Operating Officer  
3 Times Square  
New York, NY 10036**

**FROM: NASDAQ BX, Inc. (the "Exchange")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: October 11, 2017**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20140418707-05**

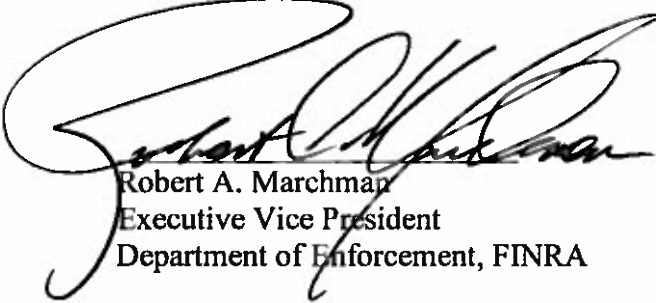
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to NASDAQ BX Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or the Exchange if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by the Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

BMO Capital Markets Corp.  
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If you have any questions concerning this matter, please contact Elyse D. Kovar, Senior Counsel,  
at (646) 430-7050.



Robert A. Marchman  
Executive Vice President  
Department of Enforcement, FINRA

Signed on behalf of NASDAQ BX, Inc.

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

Counsel for Respondent  
Ben A. Indek  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178

**NASDAQ BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20140418707-05**

**TO:** NASDAQ BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

**RE:** BMO Capital Markets Corp., Respondent  
Broker-Dealer  
CRD No. 16686

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ BX, Inc.<sup>1</sup> ("BX" or the "Exchange") and Rule 9216 of The Exchange Code of Procedure,<sup>2</sup> BMO Capital Markets Corp. ("BMO" 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, the Exchange will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

A. The firm 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 the Exchange, or to which the Exchange 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 the Exchange:

**BACKGROUND**

BMO became a member of the Exchange on July 10, 2010. Thereafter, the Firm became an Options Participant of the Boston Options Exchange ("BOX"), a facility of the Exchange,<sup>3</sup> when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the Grandfathered Boston Options Exchange Group LLC Rules ("BOX Trading Rules"), and to be subject to the Exchange's jurisdiction and oversight. Trading on BOX as a facility of the Exchange ceased as of May 14, 2012. BMO is a subsidiary of Canadian Bank of Montreal, and handles proprietary, customer, broker-dealer, and market maker order flow. The firm has no relevant disciplinary history.

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ BX, Inc., the Rules of NASDAQ BX ("The Options Rules") and the Grandfathered Rules of the Exchange.

<sup>2</sup> Additionally, this disciplinary matter is further governed by The Nasdaq Code of Procedure.

<sup>3</sup> BOX became a facility of NASDAQ BX (then NASDAQ OMX BX) in August 2008.

## SUMMARY

1. On behalf of the Exchange, the Financial Industry Regulatory Authority's ("FINRA") Options Regulation group ("Options Regulation") of the Department of Market Regulation (the "staff") conducted a review of BMOC's compliance with applicable federal securities laws and regulations and Exchange rules regarding: (i) options order entry during the period between October 2008 and June 2014 ("Review Period I"); and (ii) options order exposure, options order entry, and related supervision during the period between January 2012 and May 2012 ("Review Period II"), including Chapters III, Sections 1 and 2, and Chapter V, Sections 1, 15 and 17 of BOX Trading Rules, and Section 17(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 17a-3 thereunder.
2. Applicable Exchange rules require that, when accepting an order, a member must obtain and record an appropriate account type or origin code in each order record and as an order detail when entering orders into the Exchange's systems to indicate the kind of account for which the order will be executed and cleared. Each options market has its own origin codes, but at a minimum, all have codes to indicate that an order is being executed for a customer, a firm, or a market maker. Origin codes are important because, among other things, they affect the accuracy of the firm's order records and the Exchange's audit trail, which may inadvertently impact the Exchange's surveillance for compliance with its rules and federal securities laws. In addition, origin codes must be accurate as part of ensuring that trades are reported to the Options Clearing Corporation ("OCC") with accurate trade details.
3. The staff found, based on its investigation of activity during Review Periods I and II, that BMOC had violated certain Exchange rules and federal securities laws when entering and executing certain orders on behalf of the Firm's clients, in that the Firm had entered over 2,000 orders, representing over one million contracts, with incorrect origin codes and sent those orders to multiple U.S. options exchanges, including the Exchange, through an order entry system used by the Firm, resulting in: (i) potential adverse impact to the execution price and quantity of other market participants' orders; (ii) an inaccurate audit trail and inaccurate order records; (iii) trades being reported to OCC with inaccurate trade details; and (iv) an adverse impact to the Exchange's ability to surveil for and detect potential violations of its rules and of federal securities laws. In addition, during Review Period II, the Firm failed to properly expose the "Customer" side of a crossing order to allow for the possibility of price improvement in approximately 101 instances, representing a total of 40,056 contracts, and had related supervisory deficiencies as discussed herein.

## **FACTS AND VIOLATIVE CONDUCT**

### **Inaccurate Origin Codes**

4. Pursuant to Chapter V, Section 15(b)(ix) of BOX Trading Rules, the account type (origin code) was among the minimum information elements that were required to be included on order tickets. Among other things, the origin code is part of the audit trail data for every transaction.
5. During Review Period I,<sup>4</sup> BMOC entered approximately 487 orders, representing approximately 183,674 contracts, with incorrect origin codes, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order marking errors were due to human error by Firm traders in manually entering incorrect origin codes in a system which did not have hard-coded settings in place at the time.
6. During Review Period II, BMOC mismarked approximately 1,578 different orders, representing approximately 921,347 contracts as "Firm" for Customer or BD Customer accounts, and routed those orders through another broker-dealer's execution management system to multiple exchanges, including the Exchange. These order mismarkings occurred while the Firm was transitioning to become self-clearing, and were limited to orders entered into one specific broker-dealer's execution management system.
7. Of the total mismarked contracts by BMOC during Review Periods I and II, approximately 3.75% were executed on the Exchange.
8. Each instance in which BMOC executed an order with an incorrect origin code could have had adverse consequences, such as creating inaccurate order records, creating an inaccurate audit trail, reporting trades to OCC with inaccurate trade details, and adversely impacting the Exchange's ability to surveil for and detect potential violations of its rules and federal securities laws.
9. By marking orders with the wrong origin code during Review Periods I and II, BMOC violated the following rules:
  - a. Section 17(a)(1) of the Exchange Act and SEC Rule 17a-3(a)(6)(i) thereunder requiring Options Participants to create a memorandum of each order, and any other instruction, showing the terms and conditions of the order.
  - b. Chapter III, Section 1 of BOX Trading Rules, which prohibited violations of the Exchange Act and rules thereunder, BOX rules, and the rules of OCC as they relate to reporting or clearing transactions.

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<sup>4</sup> The Firm's activity on BX during Review Period I occurred during the period between July 2010 and May 2012.

- c. Chapter III, Section 2 of BOX Trading Rules, which required Participants to ensure that the transaction of business complied with the Exchange Act, BOX rules, and OCC rules.
- d. Chapter V, Section 15(b)(ix) of BOX Trading Rules, which required the inclusion of an account type in the order ticket for each options order received from a Customer.

#### Order Exposure Violations

- 10. Chapter V, Section 17 of BOX Trading Rules required options participants to expose customer orders for price improvement before executing as agent.
- 11. During Review Period II, the Firm failed to properly expose the "Customer" side of a crossing order to allow for the possibility of price improvement in approximately 101 instances, representing a total of 40,056 contracts, on multiple exchanges, of which approximately 6,825 contracts were executed on the Exchange.
- 12. By failing to properly expose the Customer side for the potential of price improvement on orders executed on the Exchange, BMOC violated Chapter V, Section 17, and Chapter III, Sections 1 and 2 of BOX Trading Rules.

#### Supervision

- 13. Chapter III, Section 1 of BOX Trading Rules required every Options Participant to supervise associated persons with respect to compliance with the Exchange Act and rules thereunder, BOX Trading Rules and OCC rules. Chapter III, Section 2 required an Options Participant to be responsible for ensuring that business conduct on BOX complied with applicable laws and rules, and subparagraph (i) required that it have adequate arrangements to ensure all staff members involved in conducting business on BOX were suitable, adequately trained, and properly supervised. Also, Chapter V, Section 1(b) prohibited an Options Participant from, among other conduct, engaging in conduct inconsistent with the maintenance of a fair and orderly market, failing to supervise employees and failing to maintain adequate procedures and controls to effectively monitor and supervise the entry of orders.
- 14. During Review Period II, BMOC violated Chapter III, Sections 1 and 2, and Chapter V, Section 1(b) of BOX Trading Rules by failing to have adequate supervisory systems and controls in place, including written supervisory procedures and separate systems of follow-up and review, which were reasonably designed to achieve compliance with the Exchange's origin code and order exposure requirements. The Firm failed to adequately train its employees on applicable rules governing origin codes, and the Firm's traders had not sought input from compliance or legal personnel regarding the proper marking of orders. Moreover, during Review Period II, the Firm had no procedures to achieve

compliance with Exchange order exposure rules. It was only after notice from regulators that BMOC had been alerted to its violations, and BMOC thereafter promptly took steps to develop and implement relevant systems, trainings, and procedures.

B. The Firm also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine in the amount of \$350,000, of which \$40,862 shall be paid to BX (\$6,562 for origin code errors and related supervisory failures, and \$34,300 for order exposure and related supervisory failures).

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: NASDAQ PHLX LLC; International Securities Exchange, LLC; Bats BZX Exchange, Inc.; The NASDAQ Options Market LLC; NYSE MKT LLC; and NYSE Arca, Inc.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

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

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the Rules of the Exchange and the Exchange Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm in writing;
- B. To be notified of the Formal 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 Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Market Regulation and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; 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 the Exchange or any other regulator against the firm;
  2. Nasdaq may release this or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  3. 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. The firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

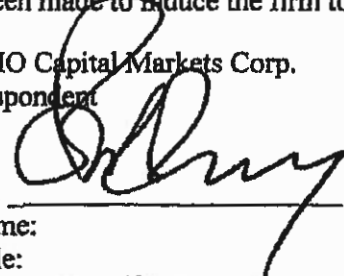


- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange or its staff.

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

June 28/17  
Date

BMO Capital Markets Corp.  
Respondent

By:   
Name:  
Title:

Brad A. Rothbaum  
Managing Director  
Chief Operating Officer  
BMO Capital Markets Corp.

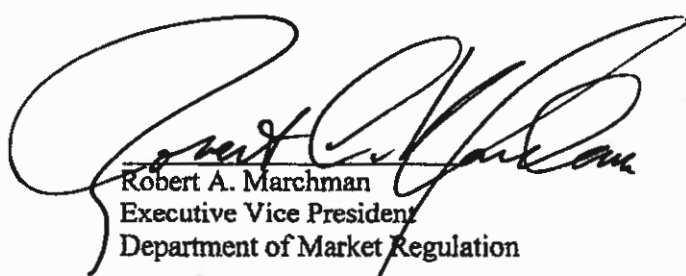
Reviewed by:

Ben Indek kg

Counsel for Respondent  
Ben A. Indek  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178-0060  
212.309.6109

Accepted by NASDAQ BX, Inc.

10/11/17  
Date

  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation

Signed on behalf of NASDAQ BX, Inc.,  
by delegated authority from the Director of  
ODA

**ELECTION OF PAYMENT FORM**

The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

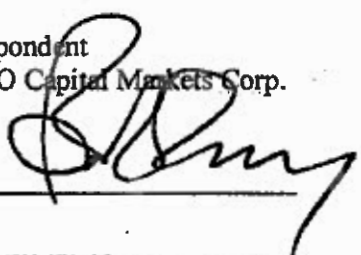
- A firm check or bank check for the full amount
- Wire transfer

Respectfully submitted,

Respondent  
BMO Capital Markets Corp.

6/28/17

Date

By: 

Name: Brad A. Rothbaum  
Title: Managing Director  
Chief Operating Officer  
BMO Capital Markets Corp.

**Billing and Payment Contact**

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. ***Please DO NOT submit payment until Nasdaq has sent you an invoice.***

Billing Contact Name: Michael Coppins

Billing Contact Address: BMO Capital Markets Corp., 3 Times Sq., New York, NY 10036

Billing Contact Email: michael.coppins@bmo.com

Billing Contact Phone Number: 212-605-1602