

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016049875801**

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

RE: ABN AMRO Clearing Chicago LLC, Respondent  
Member Firm  
CRD No. 14020

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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**

ABN AMRO Clearing Chicago LLC ("AACC" or "the firm") has been a FINRA member since April 1984. The firm has approximately 65-70 registered individuals and two offices. AACC provides clearing services for institutional customers, including broker-dealers and proprietary trading customers.

**RELEVANT DISCIPLINARY HISTORY**

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

**OVERVIEW**

From April 2007 until July 2015 (the "relevant period"), AACC understated the portfolio margin requirements for 22 accounts at various points in time. It incorrectly treated certain over-the-counter ("OTC") equity securities, which are not margin eligible, as marginable securities. As a consequence, the firm understated the margin requirements

for these accounts by millions of dollars. The firm thereby violated NASD Rules 2520(g) and 2110 and FINRA Rules 4210(g) and 2010.<sup>1</sup>

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 4210 (and its predecessor NASD Rule 2520) set forth the terms on which firms can extend credit for securities transactions, including the margin requirements that determine the amount of collateral customers are expected to maintain in their margin accounts. FINRA Rule 4210(g) addresses portfolio margin requirements. Portfolio margin requirements are determined based on the greatest projected net loss of all positions in a product class or group using an approved computerized modeling methodology.

FINRA Rule 4210(g)(6)(B) provides in relevant part that a “margin equity security” is eligible for portfolio margin. In contrast, a non-margin equity security is not eligible.<sup>2</sup> Securities that are not margin eligible can be carried in portfolio margin accounts, but they must be supported by cash or marginable securities equal to their full current market value.

During a routine exam, FINRA found that the firm was calculating portfolio margin requirements incorrectly. AACC was including non-margin equity securities as margin eligible for certain customer accounts. The firm incorrectly applied a 15 percent margin requirement to equities that were not margin eligible, instead of the 100 percent required amount. As a result, the firm failed to require adequate equity to support the margin borrowing in these accounts. The non-margin eligible securities at issue were traded OTC and not on a domestic exchange, consisting principally of American Depositary Receipts of foreign equities. The firm mistakenly categorized the OTC traded equities at issue as margin eligible because of an incorrect definition of margin eligible securities used by the firm. After the problem was identified by FINRA, the firm corrected the issue.

Based on a sampling methodology, FINRA found that during the relevant period, the firm understated margin requirements at various points of time for 22 accounts. The aggregate understatements in the firm’s portfolio margin accounts on the sampled dates ranged from approximately \$1.27 million to more than \$101 million. Generally, these understatements did not result in margin deficiencies because the accounts at issue had sufficient margin on deposit in the form of securities and other assets in excess of the recalculated requirement. In no instance did the understatements cause the firm to have a net capital deficiency.

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<sup>1</sup> FINRA Rule 4210 superseded NASD Rule 2520 effective December 2, 2010. FINRA Rule 2010 superseded NASD Rule 2110 effective December 15, 2008.

<sup>2</sup> FINRA has previously explained that “[a] customer is not permitted to obtain a risk-based margin value for a non-margin equity security in a portfolio margin account.” (updated 6/08), FINRA, “Portfolio Margin FAQ” available at <https://www.finra.org/industry/portfolio-margin-faq#portfolio>.

As a result of the foregoing conduct, Respondent violated NASD Rule 2520(g) (for the period prior to December 2, 2010) and FINRA Rule 4210(g) (for conduct on or after December 2, 2010). In addition, by violating those provisions, Respondent violated NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

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

- A censure; and
- A fine of \$150,000.

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

Respondent agrees to pay the monetary sanctions 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 sanctions imposed in this matter.

## 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 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:

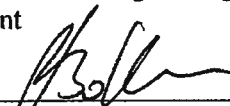
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not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

9/25/19  
Date

ABN AMRO Clearing Chicago LLC  
Respondent

By: 

Name: Andrej Bolkovic

Title: Chief Executive Officer

By: 

Name: Didier Livio

Title: Chief Risk Officer

Reviewed by:


  
Michael Lohnes

Counsel for Respondent  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661

Accepted by FINRA:

Oct. 3, 2019  
Date

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

  
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Jonathan Golomb  
Senior Special Counsel  
FINRA  
Department of Enforcement  
15200 Omega Drive  
Rockville, MD 20850