

**NASDAQ ISE, LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2019.09.0062**

TO: Nasdaq ISE, LLC  
ISE Enforcement Department

RE: BGC Financial, L.P., Respondent  
Member Firm  
CRD No. 19801

Pursuant to Rule 9216 of the Nasdaq ISE, LLC (“ISE”) Code of Procedure,<sup>1</sup> BGC Financial, L.P. (the “Firm,” “BGCF,” or “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, ISE will not bring any future actions against the 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 ISE, or to which ISE 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 ISE:

**BACKGROUND AND RELEVANT DISCIPLINARY HISTORY**

BGCF became an ISE member on August 7, 2009, and its registration remains in effect. BGCF is a U.S. registered broker dealer and an inter-dealer for fixed income securities, equities, options, derivatives, and futures. The Firm has no relevant disciplinary history.

**SUMMARY**

This matter arose from a 2017 examination of BGCF conducted by FINRA’s Trading and Financial Compliance Examinations Group. A subsequent investigation found that from October 2010 through March 2017, one of the Firm’s employees executed orders for his personal account through BGCF systems in violation of the Firm’s policies. In addition, the Firm’s supervisory system was not reasonably designed to assure that its employees’ personal trading complied with Firm policies. Further, while the Firm had a supervisory system in place to review certain kinds of employee personal trading activity, during a portion of the relevant period parts of its automated supervisory process managed by a third-party vendor were not working properly. Finally, the Firm’s written supervisory procedures and supervisory process to review for frontrunning of options orders was not reasonably designed. These supervisory deficiencies existed from at least December 9, 2009 through April 2019 (the “Relevant Period”).

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<sup>1</sup> Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into ISE Rule General 5, Section 3, and are thus ISE’s Rules and thereby applicable to ISE members, associated persons, and other persons subject to ISE’s jurisdiction.

## FACTS AND VIOLATIVE CONDUCT

1. ISE Rule 401, now Options 9, Section 2, provides that “No Member shall engage in conduct in violation of the Exchange Act, the By-Laws or the Rules of the Exchange, or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof. Every Member shall so supervise persons associated with the Member as to assure compliance therewith.”
2. ISE Rule 400, now Options 9, Section 1, provides that “No Member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members shall have the same duties and obligations as Members under the Rules of this Options 9.”
3. Supplemental Material .02 to Rule 400, now Options 9, Section 1, states that “it may be considered conduct inconsistent with just and equitable principles of trade for any person associated with a Member who has knowledge of all material terms and conditions of: (i) an order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (i) the terms of the order and any changes in the terms of the order of which the person associated with the Member has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.”
4. From October 2010 through March 2017, a Firm employee (“Employee A”) who was licensed as a General Securities Principal and Options Principal used the Firm’s systems, in violation of Firm policy, to execute orders for his personal trading account totaling approximately 600,000 contracts. The Firm had no supervisory system in place to assure that its employees were not using its systems to trade for their personal accounts.
5. The Firm’s written supervisory procedures (“WSPs”) prohibited employees from (1) trading for their personal accounts securities or derivatives of stock in which they are brokering; and (2) effecting transactions between the Firm or its customer, and their own personal securities account. In some instances, however, Employee A executed orders for his personal account with known liquidity providers, who transacted with the Firm, acting as the contra party to his transactions. In addition, all orders executed by Employee A were in derivative types that he brokered. ISE’s review did not uncover any instances of actual frontrunning.
6. While the Firm reviewed certain employee transactions to determine (i) if required pre-approval was obtained, (ii) if the security was on the Firm’s watch or restricted lists, (iii) the size of trade, (iv) the sector in which the trade occurred, and (v) compliance with the Firm’s required holding period, the Firm had no supervisory system in place to assure that its employees were not trading against Firm customers or in securities or derivatives in which they are brokering.
7. Moreover, prior to June 2017, the Firm reviewed employee transactions for compliance with Firm policy by conducting a manual review of brokerage account statements. Beginning in June 2017, the Firm automated the outside account

review process by engaging an outside vendor.

8. In or around April 2019, however, the Firm discovered a flaw in the vendor's conversion system, where the vendor was not attaching the buy/sell indicator to certain transaction data, causing that data to appear as "null" and not systemically processed. There were also instances where the vendor's personnel had not entered the transaction data at all, causing those transactions to be omitted from the data feed. Until the vendor fixed the issue in April 2019, the Firm was not reviewing all employee transactions for compliance with Firm policies for approximately two years.
9. Finally, the Firm's WSPs also prohibited its employees from frontrunning customer orders. The Firm, however, did not have WSPs or a supervisory system that was reasonably designed to assure compliance. First, while the Firm conducted a review for frontrunning of options orders, the Firm's WSPs describing the review could be reasonably interpreted to indicate that it applied only to over the counter equity trading. Second, when conducting the frontrunning review, Control Room Compliance reviewed a front running exception report that compared all Firm and customer activity against all employee trade activity on a T+1 basis. This report showed if any employee traded in the same securities as any Firm or customer account. The report, however, only included options cleared through BGCF. Options transactions executed on a give up basis (such as those executed by Employee A) were not captured on the Firm's frontrunning report. The Firm's WSPs and its failure to include options transactions cleared on a give up basis in its frontrunning review were unreasonable.
10. Accordingly, BGCF violated ISE Rules 401 and 400 during the Relevant Period.

#### **OTHER FACTORS CONSIDERED**

In resolving this matter, ISE Enforcement took into account that the investigation did not identify any frontrunning by Employee A or any evidence that Firm customers were disadvantaged by the price when executing against Employee A.

- B. Respondent also consents to the imposition of the following sanctions:
1. A censure;
  2. A fine in the amount of \$250,000; and
  3. An undertaking to provide, within 30 days after the date of the Notice of Acceptance of this AWC, a certification that the Firm has revised its written supervisory procedures with respect to the areas described above. A registered principal of the Respondent shall e-mail the certification from a work-related account of the registered principal. The certification shall provide the following information: (i) a reference to this matter; (ii) a detailed description of steps taken by the Firm to remedy the supervisory deficiencies described above, and the date(s) on which specific actions were taken by the Firm.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Payment Information Form.

Respondent 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 ISE Enforcement Department staff.

## II.

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under ISE Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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, Respondent 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.

Respondent 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**

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 ISE Enforcement Department and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (“ODA”), pursuant to ISE 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 Respondent; and
- C. If accepted:
  - 1. This AWC will become part of the Respondent’s permanent disciplinary record and may be considered in any future actions brought by ISE or any other regulator against the Respondent;
  - 2. ISE may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with ISE Rule 8310 and IM-8310-3; and
  - 3. 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 ISE, or to which ISE is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent’s right to take legal or factual positions in litigation or other legal proceedings in which ISE 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 ISE, nor does it reflect the views of ISE 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 the Firm 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.

BGC Financial, L.P.  
Respondent

By: 

Print Name: Michael Sulfaro

Title: Chief Compliance Officer

July 5, 2023

Date:

Accepted by ISE:

July 19, 2023

Date

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



Erik Wittman  
Erik Wittman  
Deputy Head of Enforcement  
ISE Enforcement Department