

CBOE EDGX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140437870-06

TO: Cboe EDGX Exchange, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Electronic Transaction Clearing, Inc., Respondent
Broker-Dealer
CRD No. 146122

Pursuant to Rule 8.3 of the Rules of Cboe EDGX Exchange, Inc. ("EDGX"), Electronic Transaction Clearing, Inc. ("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, EDGX 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 EDGX, or to which EDGX 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 EDGX:

BACKGROUND

The firm has been a member of EDGX since May 27, 2010, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

This matter arose from two separate reviews regarding the firm's compliance with Rule 611 of Regulation NMS, and related exchange rules pertaining to the handling of intermarket sweep orders ("ISOs"), as well as related supervisory requirements, conducted by FINRA's Department of Market Regulation staff (the "staff"), on behalf of FINRA and various exchanges, including EDGX, spanning the time period July 1, 2014 through March 31, 2015 (the "review period").¹ More specifically, in Review No.

¹ In addition to FINRA, the self-regulatory organizations for which the reviews were undertaken included EDGX, Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BYX"), New York Stock Exchange LLC ("NYSE"), and NYSE American LLC f/k/a NYSE Market, LLC ("NYSE American") (collectively, the "Exchanges"). Related disciplinary actions on behalf of FINRA and each of the Exchanges concurrently are being taken against the firm in conjunction with this matter.

20140437870, the staff conducted a Cross Market Regulation NMS Trade Through/Route Through Review, which concerned the firm's handling of ISOs, primarily for the third quarter of 2014,² and in Review No. 20160501598, the staff conducted a Regulation NMS ISO Review, which concerned the firm's handling of ISOs, as of March 31, 2015.³

As further described below, during the expanded review period, the firm had inadequate supervisory procedures, including written supervisory procedures, relating to the handling of ISOs, in violation of EDGX Rules 11.5(d)(1), 11.8(c), 5.1 and 3.1, and Rule 611(c) of Regulation NMS ("Rule 611(c)").

FACTS AND VIOLATIVE CONDUCT

1. Rule 611(c) requires trading centers and broker-dealers to take reasonable steps to establish that ISOs meet the requirements set forth in the definition of an ISO in Rule 600(b)(30). Rule 600(b)(30) of Regulation NMS requires that simultaneously with the routing of a limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO.
2. EDGX Rule 11.8(c) requires trading centers and broker-dealers to take reasonable steps to ensure that ISOs are properly handled to execute against the full displayed size of any protected quotation with a price that is superior to the limit price of the ISO entered into the system. It is the member firm's responsibility to comply with the requirements of Regulation NMS regarding the handling of ISOs.⁴
3. During the review period, the firm improperly relied upon the systems of a non-broker-dealer customer to take Market Data Snapshots and make correct ISO routing decisions. In addition, the Market Data Snapshots that the firm obtained from its customer failed to capture protected quotations for all of the applicable Exchanges. As such, the firm's failed to capture protected quotations for certain securities, for purposes of complying with Rule 600(b)(30). As a consequence, the firm failed to simultaneously send ISOs to execute against the full displayed size of certain protected quotations of securities when routing ISOs to other markets, including EDGX, which led to certain trade-throughs of such protected quotations.

² This first review conducted by the FINRA staff also included certain ISO alerts triggered on September 5, 2014 involving the firm that were identified in a referral made by BZX to the FINRA staff. Those alerts were incorporated into the FINRA staff's review of this first matter.

³ This second review was conducted by the FINRA staff after it received a referral from the BZX staff which identified certain additional ISO alerts involving the firm that were triggered on March 31, 2015. Those alerts were incorporated into the FINRA staff's review of this second matter.

⁴ On October 29, 2014, EDGX Rule 11.5(d)(1) was changed to EDGX Rule 11.8(c).

4. In addition, the firm failed to have adequate procedures for complying with the regulatory requirements of Rule 611(c), and failed to provide documentation evidencing that it conducted post-trade reviews of the ISOs that were handled by the firm.
5. The firm also did not provide for supervision, including written supervisory procedures, reasonably designed to achieve compliance with respect to Rule 611(c) and EDGX Rule 11.8(c) during the review period. For example, the firm's written supervisory procedures provided for only a quarterly post-trade review to ensure that the firm's systems are capturing and storing accurate market data quotations and execution reports, and the sample size utilized by the firm for its quarterly post-trade reviews was insufficient. In addition, the data that the firm utilized in its supervisory reviews did not allow the firm to adequately verify the accuracy of the Market Data Snapshots that were provided by its customer.
6. As a consequence of the above conduct, the firm failed to take reasonable steps to establish that the ISOs it routed met the definitional requirements set forth in Rule 600(b)(30) of Regulation NMS during the review period. In addition, the firm's supervisory procedures, including its written supervisory procedures, were not reasonably designed to comply with the requirements of Rule 611(c). Accordingly, the firm violated EDGX Rules 11.5(d)(1) (for conduct prior to October 29, 2014), 11.8(c) (for conduct on or after October 29, 2014), 5.1, and 3.1, and Rule 611(c).

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

- A censure;
- A total fine of \$40,000, to be paid jointly to FINRA and the Exchanges, of which \$6,800 shall be payable to EDGX; and
- an undertaking to revise the firm's controls and written supervisory procedures with respect to the areas described in paragraphs I.A.3 through 6 above. Within 60 business days of notice of acceptance of this AWC by the Chief Regulatory Officer ("CRO") of EDGX, a registered principal of the Respondent who is a senior officer shall submit to the **COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraphs I.A.3 through 6 above; and, (3) the date the revised procedures were implemented. Upon written request showing good cause, FINRA staff, on behalf of EDGX, may extend any of the procedural dates set forth herein.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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 EDGX.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under EDGX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the firm;
- B. To be notified of the Statement of Charges 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 Appeals Committee of the EDGX's Board of Directors 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 CRO, in connection with the CRO'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 EDGX Rule 8.16, 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 the CRO, pursuant to BYX Rule 8.3;
- 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 BYX or any other regulator against the firm;
2. this AWC will be published on a website maintained by BYX in accordance with EDGX Rule 8.18. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record; 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 EDGX, or to which EDGX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which EDGX 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 EDGX, nor does it reflect the views of EDGX 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.

1/11/2018
Date

Electronic Transaction Clearing, Inc.
Respondent

By: 
Name: Eli Wishnivetski

Title: CCO

Reviewed by:

Counsel for Respondent

2/6/2018
Date


Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe EDGX Exchange, Inc.

ELECTION OF PAYMENT FORM

Electronic Transaction Clearing, Inc. 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; or
- Wire transfer.

1/11/2018
Date

Respectfully submitted,

Respondent

Electronic Transaction Clearing, Inc.

By: Eli Wishnivaetski

Name: Eli Wishnivaetski

Title: CCO