

BATS EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140397934-02

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

RE: Xambala Capital, LLC
Broker-Dealer
CRD No. 158871

Pursuant to Rule 8.3 of the Rules of BATS Exchange, Inc. ("BZX"), Xambala Capital, LLC (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, BZX 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 BZX, or to which BZX 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 BZX:

BACKGROUND

The firm has been a member of BATS Z-Exchange since February 15, 2012, and its registration remains in effect. The firm is a high-frequency proprietary trading firm which has no clients and trades only for the firm's accounts. The firm has no relevant disciplinary history.

SUMMARY

In connection with Matter No. 20140397934, the staff of FINRA's Department of Market Regulation (the "staff") conducted a 2014 Trading and Financial Compliance Examination ("TFCE") of the firm, on behalf of BZX and several other equity exchanges, and reviewed, among other things, trade activity and firm records for trade dates January 8, 2014 and January 9, 2014 (the "Initial Review Period") and trade dates September 15, 2014 through September 30, 2014 (the "Supplemental Review Period").

FACTS AND VIOLATIVE CONDUCT

1. Since the firm became a member of BZX through September 30, 2014, and specifically, during the Initial and Supplemental Review Periods, the firm submitted inaccurate information to multiple equity exchanges on a total of more than six million instances by entering "Principal" orders as "Agency" orders, of which approximately 3,576,922 instances were submitted to BZX during the Supplemental Review Period; this represented 100% of the firm's orders entered into BZX under a certain firm Market Participant Identifier ("MPID") during the Supplemental Review Period. The foregoing conduct constituted separate and distinct violations of BZX Rules 11.21, 3.1 and 3.2.
 2. Since the firm became a member of BZX through September 30, 2014, and specifically, during the Initial and Supplemental Review Periods, the firm's books and records were inaccurate in that the firm's trading ledgers inaccurately reflected all of the firm's trades in an "Agency" capacity rather than a "Principal" capacity. The foregoing conduct violated Section 17(a) of the Securities Exchange Act of 1934, as amended, and Rule 17a-3 thereunder.
 3. Since the firm became a member of BZX through September 30, 2014, and specifically, during the Initial and Supplemental Review Periods, the firm's supervisory system and written supervisory procedures ("WSPs") did not provide for supervision reasonably designed to ensure compliance with certain applicable securities laws and regulations, BZX rules and federal rules and regulations, including with respect to submission of accurate capacity codes on orders submitted to BZX and accurate books and records reflecting such orders.
 4. The firm's WSPs were inadequate in the following subject areas: (i) trade reporting of capacity codes of orders entered into BZX; (ii) preparation and maintenance of books and records; (iii) receiving/retaining copies of trade confirmations and monthly account statements; and (iv) disclosure of direct or indirect financial interest. The foregoing conduct violated BZX Rules 5.1, 3.1 and 3.2.
- B. The firm also consents to the imposition of the following sanctions:
- A censure and a total fine of \$95,000, to be allocated among BZX, BATS Y-Exchange and EDGX Exchange, Inc., of which \$60,000 shall be paid to BZX, and an undertaking to revise the firm's WSPs with respect to the areas described in paragraph I.A.3 subsections (iii) and (iv). Within 30 business days of acceptance of this AWC by BZX, a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 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 WSPs to address the deficiencies described in paragraph I.A.3 subsections (iii) and (iv); and (3) the date the revised procedures were implemented.

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 BZX.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under BZX 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 BZX'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 Chief Regulatory Officer ("CRO"), in connection with her 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 BZX 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 BZX 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 BZX or any other regulator against the firm;
 - 2. This AWC will be published on a website maintained by BZX in accordance with BATS Z-Exchange Rule 8.11, *Interpretations and Policies .01*; 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 BZX, or to which BZX 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 BZX 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 BZX, nor does it reflect the views of BZX 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.

12.5.15
Date

Xambala Capital, LLC
Respondent

By: DPZ
Name: DAN TREPANIER

Title: Mgr

Reviewed by:

J. Zordani
Counsel for Respondent
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jzordani@zordanilaw.com

12.5.15
Date

Tamara Schadenmann
Tamara Schadenmann
Chief Regulatory Officer
BATS Exchange, Inc. 12/7/15

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; or
- ☐ Wire transfer.

Respectfully submitted,

12.5.15
Date

Respondent
Xambala Capital, LLC

By: DP

Name: DAN TREPANIER

Title: Mngr