

**CBOE BZX EXCHANGE, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 2012031480717

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

RE: Simon Librati, Respondent  
Former Associated Person  
(CRD No. 4155156)

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), Respondent Simon Librati ("Librati") 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 Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Librati 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**

Respondent Simon Librati entered the securities industry in 1993. In approximately early 2008, with a business partner, Librati formed "Fund A," a foreign, unregistered proprietary trading firm that operated as a trading fund. On or about August 25, 2011, Librati and his partner bought SMF Trading, Inc.,<sup>1</sup> a registered broker-dealer that was a BZX member from August 2008 to September 24, 2013, and is a FINRA member. They brought on additional partners and added additional entities to their partnership. Collectively, the partners made decisions about all of the entities, including the securities business of Fund A and SMF Trading. On May 14, 2013, SMF Trading began doing business as World-Xecution Strategies ("World-Xecution"). By virtue of his ownership and control of World-Xecution, Librati was subject to BZX's jurisdiction.

In May 2013, Librati and his original business partner formed BD No. 5, a registered broker-dealer that became registered with BZX on May 15, 2014, and remains a BZX member. (BD Nos. 1-4 are referenced within.) Also in 2013, they formed "Fund B," another foreign, unregistered proprietary trading firm that operated as a trading fund, and they brought on additional partners. Collectively, the partners made decisions about all of

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<sup>1</sup> SMF Trading is the subject of parallel settlement agreements with other self-regulatory organizations.

the entities, including the securities business of Fund A, Fund B, World-Xecution, and BD No. 5. Librati was an associated person of BD No. 5 until August 31, 2016. By letter dated November 24, 2015, and subsequent correspondence, Librati was notified of this investigation. BZX retains jurisdiction over him pursuant to BZX Rule 8.1(b).

### **RELEVANT PRIOR DISCIPLINARY HISTORY**

Librati has no disciplinary history.

### **SUMMARY**

On behalf of BZX, in Matter Nos. 20120314807, 20130354712, 20140423738, and 20160508555, the staff in the Quality of Markets Section of FINRA's Department of Market Regulation reviewed Librati's activity with respect to partially owning and controlling two unregistered proprietary trading firms, Fund A and Fund B, which engaged in trading activity that included market manipulation and fraud, including layering and spoofing, on multiple markets, including BZX. The staff also reviewed Librati's activity with respect to partially owning and controlling World-Xecution and BD No. 5, which introduced or executed Fund A's and Fund B's trades.

Pursuant to Section 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), Librati is liable as a controlling person for Fund A's and Fund B's violations of Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5(a) and (c) thereunder. In addition, Librati violated BZX Rule 3.1 as a controlling person of two proprietary trading firms that engaged in trading activity that included market manipulation and fraud, particularly layering and spoofing, from 2012 through August 2016 through two broker-dealers of which he also was a controlling person. Librati also violated BZX Rule 3.1 as a controlling person of World-Xecution, which violated BZX Rule 3.1 by aiding and abetting Fund A's and Fund B's violations of Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5, and Section 17(a)(3) of the Securities Act of 1933 (the "Securities Act").

### **FACTS AND VIOLATIVE CONDUCT**

#### **Layering and Spoofing**

1. "Layering" is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

2. Similar to layering, “spoofing” is a form of manipulative trading which involves a market participant placing non-bona fide orders, generally inside the existing national best bid and offer (“NBBO”), with the intention of briefly triggering some type of response from another market participant, followed by cancellation of the non-bona fide order, and the entry of an order on the other side of the market.

#### **Librati and His Business Partner Form Fund A**

3. In 2008, Librati, a Canadian citizen and resident with a business office in Canada, and his partner formed Fund A under the laws of the Cayman Islands as a proprietary trading firm. In early 2012, they brought on additional partners, after which Librati owned 38 percent of Fund A. Fund A entered into contracts with trading managers that managed groups of traders, resulting in Fund A having thousands of overseas, unregistered day traders in foreign countries to trade for Fund A’s account. Librati personally did not trade for Fund A.
4. Librati and his partners hired unregistered risk managers in Canada to identify potential groups of traders for Fund A. Based upon recommendations and information provided by the risk managers about proposed trading groups’ strategies, buying power requirements, and history of success, they decided which groups of traders to accept. Fund A entered into negotiated agreements with each trading group pursuant to which the trading group kept approximately 85 to 90 percent of the trading profits, and Fund A retained approximately 10 to 15 percent. Generally, neither the trading managers nor the traders contributed any capital, and they did not absorb trading losses. Librati and his partners, as Fund A’s owners, bore the trading risks. Fund A paid each group’s share to the trading manager, and the manager was responsible for paying each group’s traders.
5. Librati and his original partner allocated money for Fund A to trade through each of the trading groups. They imposed strict credit limits and controls on the type and volume of activity and financial exposure of the trading. The individual traders and groups of traders for Fund A were fungible and could be terminated at any time by Librati and his partners at will, and each trading group could terminate its individual traders. Fund A retained the unpaid trading profits of any terminated traders dismissed for questionable activities.

#### **Fund A Engages in Layering and Spoofing in the United States**

6. In 2008, Fund A became a customer of BD No. 1, a U.S. registered broker-dealer. BD No. 1 provided Fund A with direct market access to a number of exchanges in the United States, including BZX. Fund A’s traders utilized third-party order management systems and entered orders directly on U.S. markets using BD No. 1’s market participant identifier (“MPID”).
7. Through the access provided by BD No. 1, Fund A engaged in trading activity that included a pattern and practice of layering and other manipulative trading. Between 2008 and 2013, Fund A’s trading triggered hundreds of thousands of regulatory alerts at FINRA and multiple exchanges for layering and other manipulative trading.

8. FINRA and the Securities and Exchange Commission (“SEC”) directed regulatory inquiries to BD No. 1 about Fund A’s activity. BD No. 1 also received reports from the exchanges showing exceptions that evidenced potentially violative trading activity. BD No. 1 in turn forwarded some of the reports to Fund A. For example, on January 7, 2010, BD No. 1 sent an email to Librati and a Fund A employee with attachments showing potential wash trades on three exchanges with the message, “Please provide written confirmation of your review and if wash trades have been detected, what action has been taken to prevent future occurrences.” BD No. 1 routinely sent identical emails to Librati and others at Fund A about other instances throughout the year.
9. Fund A and Fund B cleared their trades through registered broker-dealers. On November 3, 2010, the SEC adopted its Market Access Rule, Exchange Act Rule 15c3-5, requiring broker-dealers providing market access to have adequate risk management and supervisory systems to surveil for and prevent layering and other manipulative trading activity, among other things.
10. In approximately July 2011, after the SEC had expressed concerns to BD No. 1 about Fund A’s trading, BD No. 1 discussed with Librati and his partner the idea of having their own broker-dealer introduce Fund A’s orders to BD No. 1.

#### **Librati and his Partner Purchase World-Xecution**

11. In August 2011, Librati and his partner purchased World-Xecution, a broker-dealer already registered with FINRA, BZX, and multiple other exchanges. Librati was not licensed but was an associated person based on partial ownership and control. They installed other licensed securities professionals as officers and executives of World-Xecution. Fund A continued trading directly with BD No. 1 through December 2011. In January 2012, World-Xecution began introducing Fund A’s order flow to BD No. 1, which continued Fund A’s access to multiple securities exchanges, and Fund A’s traders continued to engage in manipulative layering.
12. By mid-2012, Librati and his original partner each owned 38 percent of World-Xecution and its affiliates, including Fund A, and the minority partners owned 24 percent. The minority partners were licensed securities professionals.

#### **Fund A Continues Layering and Spoofing through World-Xecution**

13. From January 2012 through January 2013, World-Xecution introduced Fund A’s order flow to BD No. 1, and Fund A traders continued manipulative layering, triggering more than 200,000 surveillance alerts at FINRA.
14. Librati and World-Xecution were on notice of certain manipulative activity by Fund A through regulatory inquiries sent to BD No. 1. BD No. 1, in turn, sent inquiries to Fund A about the manipulative trading. For example, on March 29, 2012, BD No. 1 sent an email to Librati and others at Fund A stating, in part, “[An exchange] has detected potential layering and other manipulative activity in these symbols through [BD No. 1’s MPID] in today’s market.”

15. In the middle of receiving these inquiries, in July 2012, Librati and his partner exchanged emails containing a Wall Street Journal article about disciplinary action taken against another firm for layering.
16. Librati and his partner frequently communicated about regulatory issues, including in August 2012, when Librati and his partner exchanged emails about Fund A operating in "grey areas" and regulators not liking Fund A's business.
17. Also, FINRA began sending regulatory inquiries directly to World-Xecution, of which Librati was a controlling person, in its capacity as the introducing broker for Fund A.
18. On September 5, 2012, an employee at BD No. 1 sent an email to Librati and others at Fund A that stated the following:

Simon, please be aware that we receive frequent contacts from exchanges, and one exchange has told me that they don't see this type of pattern from ANY other MPID across the market. Market makers are complaining to the exchanges. This pattern of entering orders which move the NBBO, enticing market makers into these prices, entering a large order on the opposite side of the market which executes, then cancelling the orders that moved the NBBO, is raising a lot of red flags.

19. Five weeks later, by letter dated October 10, 2012, BD No. 1 notified World-Xecution, including a copy directly to Librati, that it was terminating BD No. 1's relationship with World-Xecution in 30 days. BD No. 1 extended the deadline, and Fund A continued trading through BD No. 1 through January 2013.
20. After BD No. 1 informed World-Xecution that it was terminating the relationship, Librati and his partners began establishing relationships on behalf of World-Xecution and Fund A with BD No. 2, an unaffiliated registered broker-dealer, in November 2012, and BD No. 3, another unaffiliated registered broker-dealer, in December 2012.
21. Fund A's traders engaged in layering and spoofing from approximately November 2012 through May 2013 through BD No. 2.
22. Fund A's traders engaged in layering and spoofing from approximately January 2013 through October 2013 through BD No. 3.

#### **Fund B**

23. Back in March 2013, Librati and his partners had formed Fund B, a second unregistered, foreign proprietary firm that also operated as a trading fund, with the same owners as Fund A (38 percent Librati, 38 percent his partner, and 24 percent the other partners). They created it, in part, because they thought it would be a good vehicle for raising capital. Fund A became Fund B's "investment agent," and in approximately October 2013, an account was opened for Fund B at BD No. 4. Fund A's traders now traded for Fund B's account. Librati personally did not trade for Fund B.

24. From October 2013 through July 2014, Fund A's traders continued layering and spoofing in Fund B's account at BD No. 4.
25. BD No. 4's relationship with World-Xecution terminated, effective July 10, 2014.

**Librati and His Partners Form BD No. 5**

26. Librati and his partners formed BD No. 5 on May 7, 2013. Librati remained unlicensed but was an associated person based on partial ownership and control. As with World-Xecution, they installed licensed securities professionals as officers and executives of BD No. 5. Librati and his partners capitalized BD No. 5 with millions of dollars. Librati and his partner each owned a 38-percent stake in BD No. 5, and the other partners collectively owned a 24-percent stake in BD No. 5. As time went on, they brought on additional partners, and Librati sold his remaining 33 percent ownership in August 2016.
27. BD No. 5 provided market access to Fund B beginning in July 2014. BD No. 5 also introduced Fund B's order flow to BD No. 2, a registered broker-dealer, between July 2014 and July 2015. BD No. 5 has introduced Fund B's order flow to BD No. 6, a registered broker-dealer, since approximately July 2015.
28. Librati was indirectly involved in the development of a trade surveillance system at BD No. 5.
29. Fund A and Fund B generated substantial revenues for Librati and his partners, and a portion of these revenues resulted from transactions that involved layering and spoofing, including transactions that were not detected by the surveillance system at BD No. 5.
30. As noted above, Fund A and Fund B profited by retaining between 10 and 15 percent of net revenues from their trading, including the portion from layering, and Librati and his partners profited as owners of Fund A and Fund B. Although the total amount has not been quantified, Fund A and Fund B kept any unpaid profits from traders who had been terminated due to suspicious trading.
31. World-Xecution also profited from transactions executed by Fund A, including those involving layering, through commissions, fees, and rebates. Librati and his partners also profited through ownership of BD No. 5 that introduced and executed Fund A's and Fund B's trades.
32. As set forth above, when relationships ended between unaffiliated broker-dealers and Fund A or World-Xecution, Librati and his partners established relationships with other registered broker-dealers and created their own registered broker-dealer, BD No. 5, to ensure continued market access for Fund A and Fund B.
33. Librati directed that certain steps be taken to address Fund A's and Fund B's layering, but his efforts focused on individual instances of layering by individual traders. Librati directed that individual traders be terminated and substantially shrank the business transacted, but he never otherwise changed Fund A's or Fund B's business model or took action to prevent their manipulative activity. Fund A and Fund B kept the unpaid profits

that the terminated traders had generated. Librati directly or indirectly controlled Fund A and Fund B while fund traders engaged in layering, and layering continued through Fund A and Fund B in varying degrees for years.

34. At least three registered broker-dealers who executed Fund A's order flow were charged or settled disciplinary actions in connection with Fund A's trading. In June 2014, the SEC charged BD No. 1 with numerous violations, including failing to reasonably supervise to prevent or detect pre-arranged trading, wash trades, and layering, a portion of which consisted of Fund A's trades. In August 2014, FINRA filed a complaint against BD No. 1 for violating its supervisory obligations, and Fund A's trading constituted most of the trading that BD No. 1 had failed to supervise. The same day FINRA's complaint was filed, BD No. 5's chief compliance officer circulated a copy of the complaint to Librati. Later, in 2014 and 2015, the SEC and multiple self-regulatory organizations collectively fined BD No. 1 over \$4.2 million for failing to supervise its direct market access business, including in part for failing to prevent or detect Fund A's layering.
35. In 2015, FINRA and multiple exchanges censured and imposed a fine of \$1 million against BD No. 2 for inadequate supervision of layering, among other things, and some of the trading was attributable to Fund A.
36. In April 2018, FINRA and multiple exchanges censured and imposed a fine of \$1,575,000 against BD No. 3 for violations of SEC Rule 15c3-5 and inadequate supervision of layering, among other things, and some of the conduct was attributable to Fund A.

#### **Summary of Violations**

37. By reason of the conduct described above, Fund A and Fund B directly or indirectly, acting intentionally, knowingly or recklessly, by the use of the mails or means or instrumentalities of interstate commerce, or a facility of a national securities exchange, effected, alone or with one or more other persons, a series of transactions in securities creating actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others.
38. Fund A and Fund B, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or the facilities of a national securities exchange or the mail: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would have operated as fraud or deceit upon other persons.
39. As a result of the foregoing conduct, Fund A and Fund B violated Exchange Act Sections 9(a)(2) and 10(b), and Rule 10b-5(a) and (c) thereunder.
40. By reason of the conduct described above, Librati directly or indirectly controlled Fund A and Fund B. Accordingly, pursuant to Section 20(a) of the Exchange Act, Librati is liable as a controlling person for Fund A's and Fund B's violations of Sections 9(a)(2) and

10(b) of the Exchange Act, and Rule 10b-5(a) and (c) thereunder. Librati's conduct in controlling persons that violated Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder was willful.

41. Pursuant to BZX Rule 3.1, Librati was required to observe high standards of commercial honor and just and equitable principles of trade. As set forth above, Fund A and Fund B knowingly and recklessly engaged in manipulative trading in violation of Exchange Act Sections 9(a)(2) and 10(b), and Rule 10b-5(a) and (c) thereunder. In addition, Fund A and Fund B, in connection with the offer or sale of securities, directly or indirectly, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in a transaction, practice, or course of business which operated or would have operated as a fraud or deceit upon the purchaser, thereby violating Section 17(a)(3) of the Securities Act. By controlling firms that violated the Exchange Act and the Securities Act, Librati violated BZX Rule 3.1.
  42. World-Xecution violated BZX Rule 3.1 by knowingly or recklessly rendering substantial assistance to, and thereby aiding and abetting, Fund A's and Fund B's violations of Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5, and Section 17(a)(3) of the Securities Act.
  43. By reason of the conduct described above, Librati violated BZX Rule 3.1 by controlling World-Xecution, which violated BZX Rule 3.1 by knowingly or recklessly rendering substantial assistance to and thereby aiding and abetting Fund A's and Fund B's violations of Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5, and Section 17(a)(3) of the Securities Act.
- B. Respondent consents to a plenary suspension of five years.

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

Respondent understands that if he is barred or suspended from associating with any BZX member, he becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondent may not be associated with any BZX member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension.

Respondent understands that this settlement includes a finding that pursuant to Section 20(a) of the Exchange Act, he is liable as a control person for violations of Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) and (c) thereunder, and that his actions in controlling persons who violated Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) and (c) thereunder were willful. Pursuant to Sections 3(a)(39)(f) and 15(b)(4)(D) of the Securities Exchange Act of 1934, this makes Respondent subject to a statutory disqualification with respect to association with a member during the period of the suspension and until payment of any financial obligations imposed hereunder.



## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under BZX Rules:

- A. To have a Statement of Charges issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("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.

Respondent 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

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 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 him; and
- C. If accepted:
  - 1. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by BZX or any other regulator against him;
  - 2. This AWC will be published on a website maintained by BZX in accordance with BZX Rule 8.18. In addition, this AWC will be made

available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record; 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 BZX, or to which BZX 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 BZX is not a party.

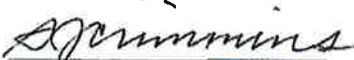
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement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

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

Aug. 7 2017  
Date

  
Simon L. Brat

Reviewed by:



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8/17/2018  
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