

CBOE BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012035187504

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

RE: Clear Street Markets, LLC, Respondent¹
Broker-Dealer
CRD No. 159283

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), Clear Street Markets, LLC ("Clear Street" or 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:²

BACKGROUND

The firm has been registered with the Securities and Exchange Commission ("SEC") since June 6, 2012, and has been a member of BZX since July 16, 2012. The firm has no relevant disciplinary history.

SUMMARY

This matter concerns the firm's compliance with Section 15(c)(3) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15c3-5 thereunder (the "Market Access Rule") and the supervision rules of BZX during the period November 1, 2012 through January 31, 2016 (the "review period").

During the review period, the firm's manual surveillance system of algorithmic trading was not reasonably designed to detect or prevent certain manipulative trading activity.

¹ Prior to June 10, 2019, the firm was named Summit Securities Group, LLC. Prior to October 8, 2014, the firm was named White Bay PT, LLC

² For purposes of this settlement, this proceeding includes all matters and claims set forth in the Wells Notice dated August 28, 2017, through the date of a final order, excluding any matters and claims that are the subject of any other, currently open investigations.

Specifically, the firm relied on manual reviews and failed to have automated surveillance to detect and prevent marking the close prior to February 23, 2014, and layering or spoofing prior to May 2, 2014. In addition, the firm's risk management controls and supervisory procedures were not reasonably designed to prevent Clear Street's electronic quoting system from inadvertently entering erroneous, excessive orders into the market because the parameters of one of its controls were too high. Accordingly, the firm violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder and BZX Rules 3.1, 3.2, and 5.1.

FACTS AND VIOLATIVE CONDUCT

Applicable Rules

1. On November 3, 2010, the SEC announced the adoption of the Market Access Rule, 17 C.F.R. section 240.15c3-5, "to require that broker-dealers with market access 'appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.'" The rule became effective in 2011.
2. Paragraph (b) of the Market Access Rule requires a broker or dealer with market access to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of its business.
3. Paragraph (c) of the Market Access Rule sets forth the required risk management controls and supervisory procedures. It requires the risk management controls and supervisory procedures to be "reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, including being reasonably designed to . . . prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders."
4. The Market Access Rule applies to market maker quotes and requires that a firm's controls be reasonably designed to prevent a market maker's electronic quoting system from inadvertently entering excessive quotes into the market. Paragraph (c) of the Market Access Rule also requires the risk management controls and supervisory procedures to be "reasonably designed to ensure compliance with all regulatory requirements." The regulatory requirements described in Paragraph (c) include post-trade obligations to monitor for manipulation and other illegal activity.
5. The Market Access Rule defines the term "regulatory requirements" to include "all federal securities laws, rules and regulations, and rules of SROs, that are applicable in connection with market access."

6. BZX Rule 5.1 requires each member to “establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the member and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.”
7. BZX Rule 3.1 requires each member, in the conduct of its business, to “observe high standards of commercial honor and just and equitable principles of trade.”
8. BZX Rule 3.2 requires each member to comply with the Exchange Act, the rules or regulations thereunder.

Clear Street Did Not Have Automated Surveillances to Detect and Prevent Marking the Close Activity Prior to February 2014 and Layering and Spoofing Activity Prior to May 2014

9. Marking the close is a form of market manipulation in which transactions are executed in a security at or near the end of the trading day in order to affect the security's closing price.
10. 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 limit 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.
11. Spoofing is also a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.
12. During the review period, Clear Street's business consisted solely of proprietary trading with direct market access to BZX and other national securities exchanges. Clear Street acts as a market maker in more than 3,000 securities per day. Clear Street used computerized trading algorithms to send orders and execute trades, sending an average of approximately ten million orders per day, excluding

cancellations. The number of orders ranged from five million to twenty million orders per day.

13. The firm did not implement automated surveillance to detect and prevent marking the close until February 23, 2014. The firm did not implement automated surveillance to detect and prevent layering or spoofing until May 2, 2014.
14. Prior to implementing automated surveillance, the firm's written supervisory procedures stated that the firm's Director of Risk or his designee is required to review, among other items, a sampling of real-time activity — in conjunction with stored data and surveillance reports — to monitor for potentially manipulative trading activity.
15. The firm's reliance upon manual reviews to detect and prevent marking the close, layering and spoofing was not reasonable to detect violative activity given the firm's order volume and business strategy involving high frequency trading. However, there were no instances of marking the close, layering or spoofing prior to the firm's implementation of automated surveillance.
16. As a result of the conduct described in Paragraphs 12 through 15, by failing to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to systematically manage the regulatory and other risks of providing market access, Clear Street violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5(c)(2)(i) thereunder and BZX Rules 3.1 and 3.2.
17. In addition, as a result of the conduct described in Paragraphs 12 through 15, by failing to have a supervisory system reasonably designed to assure compliance with the securities laws and BZX rules, Clear Street violated BZX Rules 5.1, 3.1, and 3.2.

One of Clear Street's Risk Management Controls Was Not Reasonably Designed to Prevent Erroneous, Excessive Orders

18. Clear Street's risk management controls and supervisory procedures were not reasonably designed to prevent Clear Street's electronic quoting system from inadvertently entering erroneous, excessive orders into the market because the parameters of one of its controls, as discussed below, were set too high.
19. The firm had "fill ratio" controls to prevent the firm from sending excessive order messages without an execution. The fill ratio control had two separate components: a fill ratio per algorithm control and a fill ratio per symbol control.
20. The fill ratio per algorithm control worked as follows: once 200,000 messages were sent by a particular algorithm to an exchange, the control examined the fill

ratio. If the algorithm's fill ratio was not at least 1:50,000, the fill ratio control would stop the algorithm from trading.

21. The fill ratio per symbol control worked as follows: once 50,000 messages were sent by a particular algorithm to an exchange in a particular symbol without an execution, the control would stop the algorithm from trading.
 22. The firm's fill ratio controls that had an initial threshold of 200,000 messages and a fill ratio of 1:50,000 were not reasonably designed to prevent the firm from inadvertently entering excessive quotes into the market, and therefore were not reasonably designed to prevent the entry of erroneous orders.
 23. As a result of the conduct described in Paragraphs 18 through 22, by failing to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to systematically manage the regulatory and other risks of providing market access, Clear Street violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5(c)(1)(ii) thereunder and BZX Rules 3.1 and 3.2.
 24. In addition, as a result of the conduct described in Paragraphs 18 through 22, by failing to have a supervisory system reasonably designed to assure compliance with the securities laws and BZX rules, Clear Street violated BZX Rules 5.1, 3.1, and 3.2.
- B. The firm also consents to the imposition of the following sanctions:
1. A censure, a fine in the amount of \$60,000, of which \$8,571.43 is payable to BZX;¹ and
 2. An undertaking to submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, 3rd FLOOR, ROCKVILLE, MD 20850, no later than 60 business days after the AWC becomes final, 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; and (2) a representation that the firm has in place risk management controls and supervisory procedures to address the deficiencies described above.

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

¹ The balance of the sanction will be paid to Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), Cboe BYX Exchange, Inc. ("BYX"), The NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq PHLX LLC ("Nasdaq PHLX"), and NYSE Regulation representing NYSE Arca, Inc. ("NYSE Arca").

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 imposed in this matter.

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and each of the following self-regulatory organizations: EDGA, EDGX, BYX, Nasdaq, Nasdaq PHLX, and NYSE Arca.

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 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 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 BZX 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 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.

6/17/2019
Date

Clear Street Markets, LLC
Respondent

By 

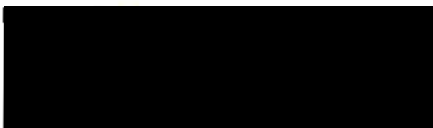
Name: Elliot Gulkowitz

Title: CEO

Reviewed by:

Richard M. Asche, Esq.
Litman, Asche & Gioiella, LLP
666 Fifth Avenue
New York, N. Y. 10103
212-809-4500

6/24/2019
Date



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

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
☐ Wire transfer

Respectfully submitted,

Respondent

Clear Street Markets, LLC

6/17/2019
Date

By: 

Name: Elliot Gulkowitz

Title: CEO

STATEMENT OF CORRECTIVE ACTION/MITIGATION

In connection with the settlement of claims set forth in the attached Letter of Acceptance, Waiver and Consent (AWC) and a Wells Notice dated August 28, 2017, Clear Street Markets LLC (formerly known as Summit Securities Group, LLC) will not rely on its fill ratio controls to detect possible erroneous orders. The fill ratio controls will be used solely for the purpose of monitoring firm order activity against exchange messaging limits. The firm uses and will use the following controls to detect and prevent erroneous orders:

Maximum order price

Maximum order quantity

Maximum order value

Maximum position size

Buying power with open positions

Buying power with open positions and working orders

Maximum net loss

The algorithms governing trading contain the following additional controls designed in part to prevent and detect erroneous orders:

Maximum unrealized loss

Maximum number of open positions

Maximum number of working orders per security

Finally, the firm employs a duplicative order control which rejects orders after 500 consecutive orders on the same side, with the same quantity, symbol and price in a one second window. The firm also employs a maximum price deviation control.

The firm believes that the foregoing controls are adequate to detect and prevent possible erroneous orders.

To reiterate, to the extent, if at all, that fill ratios were ever relied on to detect erroneous orders, they will not be so relied upon going forward.

This Corrective Action Statement/Mitigation Statement is submitted by the Respondent. It does not constitute factual or legal findings by CBOE BZX Exchange, Inc., nor does it reflect the views of CBOE Regulation or its staff.

Clear Street Markets LLC

By:


Elliot Gulkowitz
Chief Executive Officer

Attachment