

BATS BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140423478-01

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

RE: TD Ameritrade Clearing, Inc., Respondent
Broker-Dealer
CRD No. 5633

Pursuant to Rule 8.3 of the Rules of Bats BZX Exchange, Inc. ("BZX"), TD Ameritrade 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, 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 became a member of BZX on May 3, 2011, and its registration remains in effect; however, on October 20, 2016, it requested to terminate its BZX membership.

The firm does not have any relevant disciplinary history.

SUMMARY

This matter involves two violations of BZX Rule 23.1 in that, on August 17, 2012, and September 21, 2012, the firm improperly submitted duplicate Contrary Exercise Advices ("CEAs"), and failed to correct these errors prior to the 7:30 p.m. E.T. cut-off time. Additionally, the firm violated BZX Rules 5.1 and 5.2 by failing to establish appropriate policies and procedures for supervision and control, including a separate system of follow-up and review, to ensure that CEAs were submitted in accordance with BZX rules.

FACTS AND VIOLATIVE CONDUCT

1. BZX Rule 23.1(c) states that option holders have until 5:30 p.m. E.T. on the business day immediately prior to the expiration date to make a determination as to whether to exercise an expiring option. BZX Rule 23.1(d) states, in part, that a CEA is a communication to either not exercise (or to exercise) an option that would be automatically exercised (or would not be automatically exercised) by the OCC's Exercise-by-Exception procedure. BZX Rule 23.1(d)(2) states that for customer accounts, firms have until 7:30 p.m. to submit a CEA.
2. On August 17, 2012, the firm received instructions from a customer to "do not exercise" ("DNE") 20 CAT 18 Aug 90 calls. However, the CEA submitted by the firm in connection with this request was erroneously submitted twice to the Options Clearing Corporation ("OCC").
3. To correct the resulting imbalance in its positions from the duplicate submissions, the firm effected corresponding transactions to close its position in the CAT calls, resulting in a loss to the firm of \$3,103.
4. On September 21, 2012, the firm received instructions from a customer to DNE 50 AAPL 22 Sep 700 calls. However, the CEA submitted by the Firm in connection with this request was also erroneously submitted twice to OCC.
5. To correct the resulting imbalance in its positions from the duplicate submissions, the firm effected corresponding transactions to close its position in the AAPL calls, resulting in a profit to the firm of \$47,514.
6. The conduct described in paragraphs two and four constitutes separate and distinct violations of BZX Rule 23.1(d).
7. During the period between August 2012 and December 2012, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and BZX Rules, concerning the submission of CEAs. Specifically, the firm's supervisory system was not adequate to prevent the submission of duplicate CEAs.
8. Additionally, during the period between August 2012 and present, the firm's written supervisory procedures ("WSPs") failed to reference the appropriate entity with which a memorandum is to be filed when making a final exercise decision after the exercise cut-off time without having submitted a CEA.
9. The conduct described in paragraphs seven and eight constitutes a violation of BZX Rules 5.1 and 5.2.

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

- (i) a censure;
- (ii) a fine of \$12,500; and
- (iii) disgorgement of \$44,411.

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 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(a). 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.

3-13-17
Date

TD Ameritrade Clearing, Inc.
Respondent

By: Judith K. Ricketts
Name: Judith K. Ricketts
Title: President

Reviewed by:

Jodi S. Mc
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

3-15-17
Date

Greg Hoogasian 3/30/2017
Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Bats 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; or

Wire transfer.

Respectfully submitted,

3-12-17
Date

Respondent
TD Ameritrade Clearing, Inc.

By: Judith K. Ricketts

Name: Judith K. Ricketts

Title: President