

CBOE BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015048076702

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

RE: HRT Financial LLC, Respondent
Broker-Dealer
CRD No. 152144

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), HRT Financial LLC ("HRT" 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:

BACKGROUND

The firm became a member of BZX on February 1, 2010, and its registration remains in effect. The firm has approximately 115 registered individuals and is based in New York, NY. HRT is a market making and proprietary trading firm that trades and clears transactions exclusively for its own account.

The firm does not have any relevant disciplinary history.

SUMMARY

During the period between July 1, 2015 and September 30, 2015 (the "Review Period"), in five instances, the firm had a fail-to-deliver position (a "fail") at a registered clearing agency in an equity security and did not close out the fail by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by Rule 204(a)(3) of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act Rule 204(a)(3)"). This conduct violated Exchange Act Rule 204(a)(3).

During the period from July 1, 2015 through the present, the firm's supervisory system was not reasonably designed to prevent violations of Exchange Act Rule 204(a)(3) as a result of its misinterpretation of guidance that was provided by the Securities and Exchange Commission ("SEC") in the form of a No-Action Letter. This conduct violated BZX Rules 3.1, 3.2, and 5.1.

FACTS AND VIOLATIVE CONDUCT

Applicable Rules

Exchange Act Rule 204 provides, in part, that a participant of a registered clearing agency must deliver securities for clearance and settlement on a long or short sale in any equity security within three settlement days of the transaction date ("T+3"). If a firm is unable to deliver securities on T+3, a "fail" results, which must be closed out by the participant by the beginning of the market open on the day following the settlement date ("T+4"). Exchange Act Rule 204(a)(3) provides an exemption for long sales and bona fide market making activity that extends the close-out requirement to the third consecutive settlement date following the settlement date of the transaction that had caused the fail ("T+6"). Because HRT's trading consisted of bona fide market making activity, all of the transactions in this matter involve a close-out requirement on T+6.

Regulatory guidance published by the SEC in the form of a No-Action Letter had the effect of modifying the strict requirement contained in Rule 204(e) that limited broker-dealers to claiming pre-fail credit for activity all on a single date prior to the settlement date.¹ In this SEC No-Action Letter, the SEC advised that it would not recommend enforcement action if FINRA and exchanges enforce Rule 204 consistent with what is known as the "Multi-day Approach," in which credit is claimed for closing out a fail "based on net purchases aggregated over multiple days," rather than for purchases made on one date.²

The SEC No-Action Letter, however, also states that a broker-dealer can only claim credit for closing out a fail when it is a net purchaser for the day, calculated based on its bona fide trading activity. In no instance can a broker-dealer claim credit for purchases on a day on which its trading activity results in a net sale position.³

¹ FINRA, Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2 Options Exchange") SEC No-Action Letter (Sept. 6, 2013) (the "SEC No-Action Letter"), responding to a letter that FINRA, CBOE, and the C2 Options Exchange had sent to the SEC (Sept. 6, 2013) (the "FINRA/CBOE Letter"), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2013/finra-cboe-c2-090613-201.pdf>.

² As explained in the SEC No-Action Letter, without the Multi-day Approach, a strict reading of Exchange Act Rule 204 would require the full quantity of the fails to be closed out through an affirmative purchase or borrow on the applicable close-out date or, if utilizing the pre-fail credit under Rule 204(e), on a *single* trade date from T+1 through T+3 (or T+4 through T+5 for fails caused from long sales or bona fide market making). SEC No-Action Letter at 2.

³ *Id.* at 4. See also Exchange Act Rule 204(e)(4), which states that to claim the pre-fail credit, the broker or dealer must be able to demonstrate that it has a net flat or net long position on its books and records on the day of the purchase or borrow. In an example contained in the FINRA/CBOE Letter to the SEC requesting the relief, if a firm had a T+4 close-out obligation of 1,000 shares, it could aggregate net purchases of 500 shares on T+1 and net

BZX Rule 3.1 states that “[a] Member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”

BZX Rule 3.2 states, in relevant part, that “[n]o Member shall engage in conduct in violation of the [Securities Exchange Act of 1934, as amended, or] the rules or regulations thereunder ... Every Member shall so supervise persons associated with the Member as to assure compliance with those requirements.”

BZX Rule 5.1 states that “[e]ach Member shall 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.”

Violative Conduct

1. During the Review Period, in five instances, the firm had fails at a registered clearing agency in an equity security that were attributable to its market making activities, but did not close the fails by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by Exchange Act Rule 204(a)(3).
2. In these five instances, the firm had borrowed securities to either partially or completely close out its fails. However, on the dates it had borrowed those securities, the firm was a net seller of those securities. Therefore, the firm could not claim credit for closing out its fails on those dates.
3. The violations described in paragraph I.A.1 occurred because the firm misapplied SEC's regulatory guidance regarding the Multi-day Approach and the SEC No-Action Letter. In effect, the firm claimed credit for closing out fails on five days when it was not net flat or a net purchaser for the day. Each of these five instances constituted a separate and distinct violation of Exchange Act Rule 204(a)(3).
4. Because of the firm's misunderstanding of the SEC's No-Action Letter, its systems involved in closing out fails did not properly account for and exclude instances in which the firm had borrowed securities on dates that the firm was a net seller. Thus, during the Review Period and through the present, the firm failed to establish and maintain a supervisory system reasonably designed to properly close out its fails and comply with Exchange Act Rule 204(a). The conduct described in this paragraph constitutes a violation of BZX Rules 3.1, 3.2, and 5.1.

purchases of 500 shares on T+3, and would not subtract net sales of 200 shares on T+2. Thus, the firm would receive a pre-fail credit for 1,000 shares. FINRA/CBOE Letter at 17.

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

- A censure;
- A total fine of \$25,000, of which \$8,333.33 shall be paid to BZX;⁴ and
- An undertaking for the firm to address the Regulation SHO deficiencies with respect to the areas described in paragraph I.A.4, to ensure that the firm has implemented procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein. Within 60 days of acceptance of this AWC by the Chief Regulatory Officer of BZX, a registered principal of the firm 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 supervisory systems and procedures to address the above-described deficiencies, and the steps taken to address such deficiency; and (3) the date on which the revised procedures and systems were implemented.

Additionally, acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between the firm and the following: (i) The NASDAQ Stock Market LLC; and (ii) NYSE American LLC.

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.

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.

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;

⁴ The balance of the sanction shall be paid to the self-regulatory organizations referenced in the following paragraph.

- 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; 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.

Feb 14, 2019
Date

Respondent
HRT Financial LLC

By: 

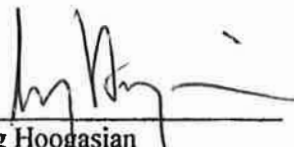
Name: Adam Nunez

Title: CEO

Reviewed by:


Counsel for Respondent

2/20/2019
Date


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

ELECTION OF PAYMENT FORM

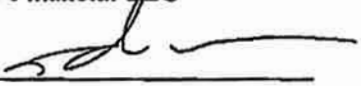
The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A firm check or bank check for the full amount; or
- Wire transfer.

Respectfully submitted,

Feb 14, 2019
Date

Respondent
HRT Financial LLC

By: 

Name: Adam Nure

Title: CEO