

CBOE EDGX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150467547-03

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

RE: Sumo Capital, LLC, Respondent
Broker-Dealer
CRD No. 146310

Pursuant to Rule 8.3 of the Rules of Cboe EDGX Exchange, Inc. ("EDGX"), Sumo 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, EDGX 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 EDGX, or to which EDGX 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 EDGX:

BACKGROUND

The firm has been a member of EDGX since October 15, 2015, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

The staff of the Options Regulation team of the Department of Market Regulation, on behalf of EDGX, reviewed the firm's quoting and message activity during the period October 12, 2015 through July 22, 2016 (in STAR No. 20160519375), and November 7, 2016 (in STAR No. 20170556025) (collectively the "review period"). More specifically, FINRA staff reviewed the firm's compliance with requirements of SEC Rule 15c3-5 of the Securities Exchange Act of 1934 ("SEC Rule 15c3-5"), as well as EDGX rules, pertaining to establishing a reasonable supervisory system, including written supervisory procedures, designed to appropriately manage the financial, regulatory, and other risks of its business activity during the review period. FINRA staff also reviewed the firm's compliance with SEC Rule 15c3-5 and supervision on behalf of Cboe BZX Exchange, Inc. and Nasdaq PHLX LLC (collectively, the "Exchanges").

As detailed below, the firm had inadequate risk management controls and supervisory procedures pertaining to market access with respect to detecting and preventing certain unintentional messaging activity, including quoting activity, and erroneous quotes or orders on EDGX and elsewhere, contrary to the requirements of SEC Rule 15c3-5(c)(1)(ii) and EDGX Rules 5.1, 5.2, 3.1, and 3.2 concerning supervision and just and equitable principles of trade.

FACTS AND VIOLATIVE CONDUCT

Applicable Rules

1. SEC Rule 15c3-5 is designed to reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various markets access arrangement, by requiring effective financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis.
2. SEC Rule 15c3-5(b) requires, among other things, a broker-dealer with market access, as defined by that rule, 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 market access activity and to preserve a copy of such supervisory procedures and a written description of its risk management controls as part of its books and records.
3. SEC Rule 15c3-5(c)(1)(ii) further provides that the risk management controls and supervisory procedures required by Rule 15c3-5(b) must be reasonably designed to prevent “[p]revent 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. EDGX Rules 5.1 and 5.2 require 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 assure compliance with applicable securities laws, rules, and regulations. The member bears final responsibility for proper supervision.
5. EDGX Rules 3.1 and 3.2 require member firms to observe high standards of commercial honor and just and equitable principles of trade and to comply with exchange rules, the Securities and Exchange Act, the rules and regulations thereunder, and to supervise persons associated with the member to assure compliance with these rules and regulations.

The Firm’s Deficient Market Access and Supervision Procedures

6. During the review period, the firm failed to have proper supervision in place because the firm’s risk management controls for market access and supervisory system, including written supervisory procedures, were not reasonably designed to comply

with SEC Rule 15c3-5 with respect to the detection and prevention of potentially erroneous, duplicative and/or unintentional order or quote activity.

7. During the review period, the firm sent unintentional quotes to EDGX over a short period of time for certain option series and did not have reasonable controls in place to prevent this type of message activity from being sent to the Exchanges. The firm also lacked reasonable controls in place to prevent the entry of unintentional quotations with prices significantly away from the national best bid or offer for certain options series. In addition, controls put in place during the review period were not adequately documented.
8. In addition, during the review period, the firm did not have reasonable supervisory procedures in place to review for instances where unintentional quotes were sent with prices significantly away from the national best bid or offer. The firm also lacked supervisory systems or procedures in place to ensure that any controls the firm was using were activated on all of its systems and ports sending quotes to the Exchanges.
9. For the foregoing reasons, the firm's risk management controls and supervisory procedures during the review period were not reasonably designed to comply with SEC Rule 15c3-5(c)(1)(ii). Accordingly, the firm violated SEC Rule 15c3-5.
10. In addition, the firm violated EDGX Rules 5.1, 5.2, 3.1, and 3.2.

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

A censure, a fine of \$50,000 (to be paid jointly to the Exchanges, of which \$20,000 shall be paid to EDGX), and an undertaking to update the firm's risk management controls for market access and written supervisory procedures with respect to the areas described in paragraphs I.A. above. Within 30 business days of acceptance of this AWC, 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 email from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (i) a reference to this matter; (ii) a representation that the firm has addressed and corrected the deficiencies described in paragraphs I.A., above; and (iii) the date the deficient procedures were addressed and corrected by the firm. Upon written request showing good cause, FINRA staff, on behalf of EDGX, may extend any of the procedural dates set forth herein.

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 EDGX.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under EDGX 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 EDGX'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 EDGX 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:

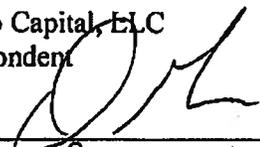
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to EDGX Rule 8.3;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. 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 EDGX or any other regulator against the firm;
 - 2. This AWC will be published on a website maintained by EDGX in accordance with EDGX 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 EDGX, or to which EDGX 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 EDGX 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 EDGX, nor does it reflect the views of EDGX 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.

4/25/2018
Date

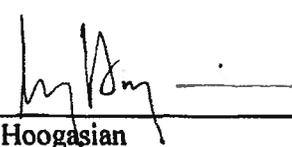
Sumo Capital, LLC
Respondent

By: 
Name: Daniel Lutman
Title: Principal

Reviewed by:

Attorney Name
Counsel for Respondent

5/9/2018
Date



Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe EDGX 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

Sumo Capital, LLC

4/25/18

Date

By: 
Name: DANIEL GUTMAN
Title: Principal