



**DISCIPLINARY DECISION**

**Cboe BZX Exchange, Inc.**

**Star No. 20160515492-01/File No. USRI-6745-05**

**GTS Securities LLC**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rule(s)**

- Rule 203(b) of Regulation SHO – Borrowing and Delivery Requirements, promulgated under the Securities Exchange Act of 1934.
- BZX Rules 3.2 – Violations Prohibited, 5.1 – Written Procedures, and 13.2 – Failure to Deliver and Failure to Receive.

**Sanction**

- A censure and a monetary fine in the amount of \$24,000.

**Effective Date**

December 2, 2020

/s/ Greg Hoogasian

Greg Hoogasian, CRO, SVP

**Cboe BZX Exchange, Inc.**  
**LETTER OF CONSENT**  
**Star No. 2016051549201**  
**File No. USRI-6745-05**

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In the Matter of:

GTS Securities LLC  
545 Madison Avenue, 15th Floor  
New York, NY 10022,

Respondent

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Pursuant to the provisions of Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) Rule 8.3, GTS Securities LLC (the “Firm”) submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies the findings for Star No. 2016051549201/File No. USRI-6745-05 and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. During all relevant periods herein, the Firm was acting as a registered Broker-Dealer and was a Member of the Exchange. The Firm’s registrations remain in effect.
2. This matter originated from surveillances conducted by the Cboe Regulatory Department.

**VIOLATIVE CONDUCT**

**Applicable Rules**

3. During all relevant periods herein, the following rules were in full force and effect: Rule 203(b) of Regulation SHO – Borrowing and Delivery Requirements, promulgated under the Securities Exchange Act of 1934 (“Reg SHO Rule 203(b)”); and Exchange Rules 13.2 – Failure to Deliver and Failure to Receive, 3.2 – Violations Prohibited, and 5.1 – Written Procedures.
4. Reg SHO Rule 203(b)(1) contained the following “locate” requirement: “a broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1).”

5. Exchange Rule 13.2 provided that “[b]orrowing and deliveries shall be effected in accordance with Rule 203 of Regulation SHO, under the Exchange Act,” and incorporated by reference “Rules 200 and 203 of Regulation SHO, to Exchange Rule 13.2.”
6. Exchange Rule 3.2 provided that “No Member shall engage in conduct in violation of the [Securities Exchange Act of 1934], the rules or regulations thereunder, the By-Laws, Exchange Rules or any policy or written interpretation of the By-Laws or Exchange Rules by the Board or an appropriate Exchange committee.”
7. Exchange Rule 5.1 provided that Exchange Members must “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.”

#### **The Firm Failed to Comply with the Locate Requirement Because It Misidentified Certain Securities as Easy to Borrow**

8. Easy to borrow (“ETB”) lists generally may be used to satisfy the locate requirement of Reg SHO Rule 203(b)(1).<sup>1</sup>
9. From March 3, 2014 through July 31, 2015 (the “Review Period”), the Firm received ETB lists from two of its clearing firms.
10. One of the clearing firms modified an electronic tag on its ETB list without notifying the Firm of the modification. The Firm’s system did not recognize the modified tag, coding certain securities as ETB when they were not on the ETB list. As a result, the Firm did not obtain required locates for 8,424 proprietary short sales on BZX during the Review Period. Those executions comprised a small fraction of all short sales that GTS executed during the period.
11. On July 31, 2015, the Firm stopped using the clearing firm and, therefore, no longer relied on its ETB list for locates.
12. The acts, practices, and conduct described in Paragraphs 8 through 10 constitute violations of Reg SHO Rule 203 and Exchange Rules 3.2 and 13.2.

#### **The Firm Failed to Comply with the Locate Requirement Because It Improperly Relied on the Bona-Fide Market Making Exception**

13. Reg SHO Rule 203(b)(2)(iii) contained the following exception to the locate requirement: “[s]hort sales effected by a market maker in connection with bona-fide market making activities in the security for which the exception is claimed.” To qualify for the exception,

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<sup>1</sup> U.S. Securities and Exchange Commission (“SEC”) Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO (Question 4.2).

the short sales must be executed by a market maker in connection with bona-fide market making activities.

14. In the adopting release for Reg SHO, the SEC stated: “where a market maker posts continually at or near the best offer, but does not also post at or near the best bid, the market maker’s activities would not generally qualify as bona-fide market making” under the exception to the locate requirement.<sup>2</sup>
15. On six days in May 2015, the Firm executed 970 short sales at or near the best offer on BZX in one security for which the Firm was a registered market maker without obtaining a locate. The only bids the Firm had posted in the market at the moment of each of those short sales were Market Maker Peg Orders<sup>3</sup> that were priced at the Designated Percentage of 28% away from the National Best Bid (“NBB”).<sup>4</sup> Because the Firm thereby posted bid quotes that were not at or near the best bid at the time of execution of a short sale, the Firm did not qualify for the bona-fide market maker exception to the locate requirement. The Firm adjusted its systems to post limit orders closer to the NBBO in those circumstances.
16. The acts, practices, and conduct described in Paragraph 15 constitutes a violation of Exchange Act Rule 203 and Exchange Rules 3.2 and 13.2.

**The Firm Failed to Have Written Supervisory Procedures to Assure Compliance with Reg SHO Rule 203**

17. During the Review Period, the Firm had written supervisory procedures (“WSPs”) that addressed Reg SHO, including compliance with the locate requirement. The WSPs, however, did not assure compliance with the locate requirement because they did not include a review to determine if the clearing firm’s ETB lists were correctly recognized by the Firm’s systems and that its locate decisions were consistent with accurate ETB information.
18. During the Review Period, the Firm’s WSPs addressed the bona-fide market making exception to the locate requirement. The WSPs, however, did not include a supervisory procedure to determine whether the Firm posted bid quotes that were at or near the best bid at the time of execution of a short sale.
19. The acts, practices and conduct described in Paragraphs 17 and 18 constitute violations of Exchange Rule 5.1, as the Firm failed to establish, maintain and enforce WSPs to assure compliance with Reg SHO Rule 203 and Exchange Rules 3.2 and 13.2.

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<sup>2</sup> SEC Release, Short Sales, Rel. No. 34-50103, 69 FR 48008, 48015 (Aug. 6, 2004).

<sup>3</sup> Exchange Rule 11.9(c)(15) defines a “Market Maker Peg Order” as a limit order that, upon entry or at the beginning of regular trading hours, the bid or offer is automatically priced at the “Designated Percentage” away from the then-current national best bid (“NBB”) and national best offer (collectively, “NBBO”).

<sup>4</sup> The security at issue was a Tier 2 NMS Stock. Under Exchange Rule 11.8(d)(2)(D), the Designated Percentage for a Tier 2 NMS Stock is 28%.

## SANCTIONS

20. The Firm does not have any prior relevant disciplinary history specifically related to compliance with the locate requirement.
21. In light of the alleged rule violations described above, the Firm consents to the imposition of the following sanctions:
  - a. A censure; and
  - b. A monetary fine in the amount of \$24,000.<sup>5</sup>

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm waives any right to claim bias or prejudice of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The Firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The Firm agrees to pay the monetary sanction upon notice that this Letter of Consent has been accepted and that such payment is due and payable. 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 Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the Firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange or its staff.

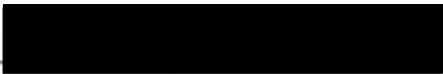
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<sup>5</sup> This settlement relates to other settlements the Firm reached with BYX, EDGX, EDGA, and FINRA.

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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.

Date: 11/13/2020

GTS Securities LLC

By: 

Name: Patrick J Romanello

Title: CCO