



DISCIPLINARY DECISION

Cboe Exchange, Inc.

Star Nos. 20170546006 and 20180608810

File Nos. USRI-8695 and USRI-8835

Cutler Group, LP

Pursuant to Exchange Rules 13.3 and 13.8, attached to and incorporated as part of this Decision is a Consolidated Offer of Settlement and Letter of Consent.

Applicable Rule(s)

- Cboe Rules 4.2 – Adherence to Law and 4.24 – Supervision
- Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers, promulgated under the Securities Exchange Act of 1934, as amended

Sanction

A censure, a monetary fine in the amount of \$70,000, and disgorgement in the amount of \$440,535

Effective Date

January 2, 2020

/s/ Greg Hoogasian

Greg Hoogasian, CRO, SVP

Cboe Exchange, Inc.
CONSOLIDATED OFFER OF SETTLEMENT
AND LETTER OF CONSENT
Star Nos. 20170546006 and 20180608810
File Nos. USRI-8695 and USRI-8835

In the Matter of:

Cutler Group, LP
101 Montgomery St.
Suite 700
San Francisco, CA 94104

Respondent/Subject

Pursuant to the provisions of Cboe Exchange, Inc. (“Cboe” or the “Exchange”) Rules 13.3 and 13.8, Cutler Group, LP (“Cutler” or the “Firm”) submits this Consolidated Offer of Settlement and Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

Only for the purposes of this Consolidated Offer of Settlement and Letter of Consent and without admitting or denying either the allegations of the Statement of Charges for STAR No. 20170546006 or that a violation of Cboe Rules or the Securities Exchange Act of 1934, as amended (“Exchange Act”) has been committed, Cutler, the respondent/subject (“Respondent/Subject”), consents to the stipulation of facts and findings described herein.

BACKGROUND

1. During all relevant periods herein, Cutler was acting as a registered Broker-Dealer and was an Exchange Trading Permit Holder registered to conduct business on the Exchange and to conduct a market-making business. The Firm’s registrations remain in effect.
2. This matter originated from investigations conducted by FINRA’s Market Regulation group as to the Firm’s compliance with Rule 14e-4 promulgated under the Exchange Act with regards to Cutler’s participation in the partial tender offers for CBS Corp. Cl. B (“CBS”), Intrawest Resorts Holdings Inc. (“SNOW”), Monster Beverage Corp. (“MNST”), Lockheed Martin Corporation (“LMT”), and Fortive Corporation (“FTV”).

VIOLATIVE CONDUCT

Applicable Rules

3. During all relevant periods herein, the following rules were in full force and effect: Exchange Rules 4.2 – Adherence to Law and 4.24 – Supervision, and Exchange Act Rule 14e-4 - Prohibited Transactions in Connection with Partial Tender Offers.
4. During all relevant periods herein, Exchange Rule 4.2 required that “No Trading Permit Holder shall engage in conduct in violation of the Securities Exchange Act of 1934, as amended, rules or regulations thereunder”
5. During all relevant periods herein, Exchange Rule 4.24 provided, in relevant part: “Each Trading Permit Holder shall establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business in which the Trading Permit Holder engages and to supervise the activities of all associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect violations of applicable securities laws and regulations, and applicable Exchange rules. . . .”
6. Further, during all relevant periods herein, Exchange Act Rule 14e-4 provided, in relevant part: “It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer... For his own account unless at the time of tender, and at the end of the proration period...he has a net long position equal to or greater than the amount tendered in... the subject security... or...an equivalent security...”

Cutler Over-Tendered in Excess of its Net Long Position in CBS, SNOW, MNST, LMT, and FTV

7. The CBS tender offer was announced publicly on June 11, 2014, and expired at 12:00 midnight Eastern Time (“ET”) on July 9, 2014.
8. On or about July 9, 2014, Cutler tendered 152,132 shares for the partial tender offer in CBS in excess of its net long position.
9. The SNOW tender offer was announced publicly on January 12, 2016, and expired at 5:00 PM ET on February 10, 2016.
10. On or about February 10, 2016, Cutler tendered 45,331 shares for the partial tender offer in SNOW in excess of its net long position.
11. The MNST tender offer was announced on May 10, 2016, and expired at 5:00 PM ET on June 8, 2016.

12. On or about June 8, 2016, Cutler tendered 10,198 shares for the partial tender offer in MNST in excess of its net long position.
13. The LMT tender offer was announced publicly on July 11, 2016 and expired at 8:00 a.m. ET on August 16, 2016.
14. On or about August 16, 2016, Cutler tendered 200,580 shares for the partial tender offer in LMT in excess of its net long position.
15. The FTV tender offer was announced on August 28, 2018 and expired at 8:00 AM ET on September 26, 2018.
16. On or about August 28, 2018, Cutler tendered 1,000 shares for the partial tender offer in FTV in excess of its net long position.
17. The acts, practices, and conduct described in Paragraphs 8, 10, 12, 14, and 16 constitute violations of Exchange Rule 4.2 and Exchange Act Rule 14e-4, by Cutler, in that Cutler tendered shares for the partial tender offers in CBS, SNOW, MNST, LMT, and FTV in excess of the Firm's net long position.

Unreasonable Written Supervisory Procedures

18. From on or about June 11, 2014 through on or about May 16, 2017, Cutler failed to establish, maintain, and enforce Written Supervisory Procedures, and a system for applying such procedures, reasonably designed to prevent and detect violations of Exchange Act Rule 14e-4.
19. The acts, practices and conduct described in Paragraph 18 constitute a violation of Exchange Rule 4.24 by the Firm, in that the Firm failed to establish, maintain and enforce WSPs and a system for applying such procedures, reasonably designed to prevent and detect violations of Exchange Act Rule 14e-4.

SANCTIONS

20. The Firm does not have any prior relevant disciplinary history specifically related to Exchange Act Rule 14e-4 compliance.
21. In light of the alleged rule violations described above, the Firm consents to the imposition of the following sanctions:
 - a. A censure;
 - b. A monetary fine in the amount of \$70,000; and
 - c. Disgorgement in the amount of \$440,535¹

¹ FINRA investigated STAR No. 20180608810 on behalf of Cboe, NYSE Arca, Inc., and NYSE American LLC. As a component of this Consolidated Offer of Settlement and Letter of Consent, a total sanction consisting of a \$19,500 fine and disgorgement in the amount of \$837.52 will be divided among Cboe and these other self-regulatory organizations.

If this Consolidated Offer of Settlement and Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Consolidated Offer of Settlement and Letter of Consent, and, in accordance with the provisions of Exchange Rules 13.3 and 13.8, 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 Consolidated Offer of Settlement and Letter of Consent, or other consideration of this Consolidated Offer of Settlement and Letter of Consent, including acceptance or rejection of this Consolidated Offer of Settlement and Letter of Consent.

The Firm agrees to pay the monetary sanctions upon notice that this Consolidated Offer of Settlement and Letter of Consent has been accepted and that such payments are 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 sanctions imposed in this matter.

The Firm understands that submission of this Consolidated Offer of Settlement and 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 Rules 13.3 and 13.8. If the Consolidated Offer of Settlement and 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 Consolidated Offer of Settlement and 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 Firm understands that it may not deny the charges or make any statement that is inconsistent with the Consolidated Offer of Settlement and Letter of Consent. The Firm may attach a Corrective Action Statement to this Consolidated Offer of Settlement and 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.

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 Consolidated Offer of Settlement and Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Consolidated Offer of Settlement and 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: 12/24/19

Cutler Group, LP 111

By: 

Name: Doug Patterson

Title: CCO