

CBOE BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053358701

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

RE: Synergy Capital Management, LLC, Respondent
Broker-Dealer
CRD No. 143751

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), Synergy Capital Management, 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, 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 has been a member of BZX since August 1, 2016, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In Matter Nos. 20170533587 and 20180575827, the Options Regulation staff of FINRA's Department of Market Regulation, on behalf of BZX, conducted a review of the firm's compliance with Rule 15c3-5 of the Securities Exchange Act of 1934 ("Rule 15c3-5") and related supervisory and just and equitable requirements of BZX during the period spanning September 1, 2016 through February 28, 2017 (the "review period"). As detailed below, the firm's system of risk management controls and supervisory procedures for market access, were not reasonably designed to manage the financial, regulatory, and other risks of its business activity, pursuant to Rule 15c3-5 and BZX supervisory and just and equitable requirements. Accordingly, the firm violated Rule 15c3-5(b), 15c3-5(c), 15c3-5(e)(1), and BZX Rules 5.1, 5.2, 3.1 and 3.2.

FACTS AND VIOLATIVE CONDUCT

1. 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 market access arrangements, 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. 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. Rule 15c3-5(c) further provides that the risk management controls and supervisory procedures required by Rule 15c3-5(b) must be reasonably designed to prevent “the entry of erroneous orders” and to “ensure compliance with all regulatory requirements....”
4. In addition, Rule 15c3-5(e) provides that a broker-dealer must review no less than annually the overall effectiveness of its risk management controls and procedures, and that such reviews “shall be conducted in accordance with written procedures” and documented.
5. During the review period, Cboe regulatory surveillance alerts identified more than 4,100 instances of potentially excessive and erroneous options quote messaging in compressed time periods associated with hundreds of options symbols on BZX. Such elevated options quote messaging occurred each month throughout the review period, with the majority of the alerts occurring in November 2016.
6. The elevated messaging was unintended and not part of any firm trade strategy. The elevated messaging generally occurred due to the firm’s “anti-flicker” quote logic being disabled as a result of a coding error prior to November 2016 and to unintended consequences of multiple coding trade safety controls in its quote system reacting to each other thereafter. This resulted in the firm’s quote system engaging in various “looping” cycles in which it repeatedly alternated between a sequence of quote patterns in compressed timeframes. The excessive messaging generally does not appear to have resulted in execution activity.
7. During the review period, the firm’s risk management controls and supervisory procedures, including its written supervisory procedures, were not reasonably designed to manage the financial, regulatory and other risks associated with its business activity involving market access, as required by Rule 15c3-5.
8. Specifically, the firm did not have an automated pre-order entry control to prevent potentially excessive and erroneous options quote messaging activity to the market by limiting the number of quote messages it sent to the market during a compressed

timeframe. The lack of such a control, which the firm subsequently implemented as of March 7, 2018, impeded the firm's ability prior to that time to promptly detect and prevent instances of potentially excessive and erroneous quote messaging in the event the firm's quote logic malfunctioned or otherwise operated in an unintended manner. Moreover, the firm did not have an automated control(s) specific to duplicative order entry.

9. In addition, the firm's written procedures governing how it conducted its reviews of the overall effectiveness of its market access controls and supervisory procedures provided no details as to how such reviews were conducted. Furthermore, the firm had insufficient written descriptions of its market access controls and of the firm's related written supervisory procedures to, among other things, adequately identify such controls and supervisory procedures, and understand how they operated. Among other things, the firm's applicable written descriptions did not specify (or cross reference to other documents to detail) the thresholds or parameters associated with its market access controls. Moreover, the applicable written supervisory procedures specific to Rule 15c3-5 did not include any supervisory reviews specific to detecting and preventing potentially erroneous order activity, including quote messaging, and more generally with respect to the operation of its market access controls.
10. For the foregoing reasons, the firm's risk management controls and supervisory procedures, including its written supervisory procedures, during the review period were not reasonably designed to comply with Rule 15c3-5. Accordingly, the firm violated Rule 15c3-5(b), 15c3-5(c), 15c3-5(e)(1) and BZX 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 total fine of \$45,000, and an undertaking to update the firm's system of risk management controls and supervisory procedures, including but not limited to, its written description of risk management controls and written supervisory procedures, to address the deficiencies described in connection with paragraphs I.A.5 through I.A.10 above to achieve compliance with Rule 15c3-5 and BZX Rules 5.1, 5.2, 3.1 and 3.2. Within 60 business days of the date of the Notice 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 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 risk management controls and supervisory procedures to address the deficiencies described in connection with paragraphs I.A.5 through I.A.10; and (3) the date(s) the revised controls and supervisory procedures were implemented. Upon written request showing good cause, FINRA staff, on behalf of BZX, 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 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 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 the firm 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.

11/13/2018
Date

Respondent
Synergy Capital Management, LLC

By: 

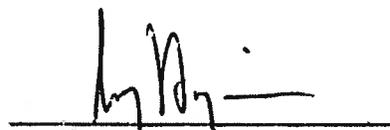
Name: John KARP

Title: Managing Member

Reviewed by:


Charles A. DeVore
Katten Muchin Rosenman LLP
Counsel for Respondent
525 West Monroe Street
Chicago, IL 60661-3693
Phone Number (312) 902-5478

11/16/2018
Date


Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Choe 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):

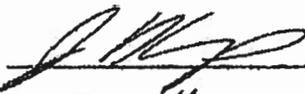
- A firm check or bank check for the full amount;
- Wire transfer;

Respectfully submitted,

Respondent

Synergy Capital Management, LLC

11/13/18
Date

By: 
Name: Tom Harp
Title: Managing Member