

NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016048613102

TO: NYSE Arca, Inc.

RE: Clearpool Execution Services, LLC, Respondent
CRD No. 168490

From April 27, 2015 through May 17, 2017, Clearpool Execution Services, LLC violated Rule 203(b)(1) of Regulation SHO by effecting short sales for its own account without borrowing the securities, entering into bona-fide arrangements to borrow the securities, or having reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery was due. Consent to a censure and a \$300,000 fine (of which \$105,000 shall be paid to NYSE Arca, Inc.).

* * *

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Clearpool Execution Services, LLC (“Clearpool” 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Clearpool 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

BACKGROUND AND JURISDICTION

1. Clearpool became registered as an Equities Trading Permit (“ETP”) holder with NYSE Arca in August 2014. Clearpool is headquartered in New York, New York and provides execution and routing services to broker-dealers and institutional customers. The Firm currently has approximately 40 registered persons. Clearpool has no relevant disciplinary history.

PROCEDURAL HISTORY

2. This matter arises from a review conducted by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. (“FINRA”) of the Firm’s compliance with Rule 203(b)(1) of Regulation SHO (“Rule 203” or the “locate requirement”) from April 27, 2015 through May 17, 2017.

VIOLATIONS

3. In 2004, the Securities and Exchange Commission adopted Regulation SHO pursuant to the Securities Exchange Act of 1934 to address concerns about persistent failures to deliver securities for settlement and potentially abusive “naked” short selling, which is the sale of securities that an investor does not own or has not borrowed.
4. Rule 203(b)(1) prohibits a broker-dealer from accepting an equity short sale order from another person, or effecting an equity short sale for its own account, unless it has, in relevant part, (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. A broker-dealer must therefore locate securities available for borrowing before effecting short sales.
5. Clearpool began executing client orders on a riskless principal basis on April 27, 2015 and ceased riskless principal trading on or about May 17, 2017. During this period, the Firm incorrectly believed that it did not have to obtain a locate when effecting principal short sales to facilitate client short sale orders on a riskless principal basis, so long as its clients obtained locates for their short sale orders.
6. While trading as riskless principal, Clearpool, upon receipt of a client short sale order, effected a principal short sale in the same security on an exchange or other execution venue and then satisfied the client order by buying the security as principal at the same price. Accordingly, there were two short sales: (1) Clearpool accepted a short sale order from its client; and (2) Clearpool effected a short sale order for its own account. Clearpool incorrectly believed that it was not required to obtain locates for its principal short sales, so long as its clients obtained locates for their short sale orders. However, Clearpool had a separate locate obligation with respect to the short sales it effected for its own account.
7. From April 27, 2015 through May 17, 2017, Clearpool effected an estimated 9.27 million short sale orders for its own account to facilitate client short sale orders on a riskless principal basis, without borrowing the securities, entering into bona-fide arrangements to borrow the securities, or having reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery was due.
8. Accordingly, the Firm violated Rule 203(b)(1) from April 27, 2015 through May 17, 2017.

SANCTIONS

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

1. A censure; and
2. A fine of \$300,000, of which \$105,000 shall be paid to NYSE Arca.¹ Acceptance of this AWC is conditioned upon acceptance of a similar settlement agreement in a related matter between Clearpool and FINRA.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will 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 Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint 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 Exchange'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 of NYSE Arca; the Exchange's Board of Directors, Disciplinary

¹ The balance of the fine shall be paid to FINRA.

Action Committee (“DAC”), and Committee for Review (“CFR”); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- 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. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
 2. This AWC will become part of the Firm’s permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
 5. 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 the Exchange, or to which the Exchange 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 the Exchange is not a party.

- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

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.

June 4, 2021

Date

Clearpool Execution Services, LLC
Respondent

By: Brad Rothbaum

Name: Brad Rothbaum

Title: President

Accepted by FINRA

June 4, 2021

Date

Shanyn Gillespie
Shanyn Gillespie
Senior Counsel
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by
delegated authority from its Chief
Regulatory Officer