

**NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 20180571661-03**

TO: NYSE Arca, Inc.

RE: Wolverine Execution Services, LLC, Respondent
CRD No. 120719

Wolverine Execution Services, LLC violated: (i) NYSE Arca Rule 7.16-E by mismarking orders as long rather than as short in 1,956 instances from May 2016 through March 2019; (ii) Regulation SHO Rule 203(b) and NYSE Arca Rule 7.16-E by failing to document compliance with the locate requirement in 408,126 instances in February 2018; and (iii) NYSE Arca Rule 11.18 by failing to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to ensure compliance with NYSE Arca Rule 7.16-E and Regulation SHO Rule 203(b). Consent to a censure and a total fine of \$170,000, of which \$20,025 shall be payable to NYSE Arca, Inc.

* * *

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Wolverine Execution Services, LLC (“Wolverine Execution” 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. 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 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. The Firm became registered as an Equities Trading Permit (“ETP”) holder with NYSE Arca in March 2003. The Firm generally provides execution services for institutional clients and does not carry customer accounts. The Firm has no relevant disciplinary history.

PROCEDURAL HISTORY

2. FINRA’s Trading and Financial Compliance Examinations group, on behalf of FINRA, NYSE Arca, and other exchanges, conducted a 2018 cycle examination of the Firm which reviewed for compliance with Regulation SHO (“Reg. SHO”), among other regulatory requirements.

VIOLATIONS

Violations with Respect to Order Marking

3. NYSE Arca Rule 7.16-E(c) provides that “[a]n ETP Holder must mark all sell orders as ‘long’, ‘short’, or ‘short exempt’. Sales should be marked ‘short’, ‘short exempt’, and ‘long’ in accordance with SEC Rule 200(g).” In turn, Reg. SHO Rule 200(g) provides that an order may be marked as “long” only if the seller is deemed to own the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer, or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.
4. From May 2016 through March 2019, Wolverine conducted riskless principal transactions for two of its customers. Wolverine incorrectly entered those orders in the same manner in which it had received them, such that if it received an order to sell long, it would enter a sell long order into the Exchange, even if Wolverine was not actually long.
5. As a result of the conduct noted above, from May 2016 through March 2019, Wolverine mismarked a total of 1,956 short sale orders as long rather than as short, in violation of NYSE Arca Rule 7.16-E(c).

Violations of the Locate Rule

6. NYSE Arca Rule 7.16-E(e) provides that “[s]hort sale executions. . . will be subject to, and comply with, the provisions of Reg. SHO under the Securities Exchange Act of 1934.” In turn, Reg. SHO Rule 203(b)(1), generally referred to as the “Locate Rule,” provides that “[a] broker 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 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.”
7. The SEC’s Frequently Asked Questions Concerning Regulation SHO¹ clarify that a broker-dealer may obtain an assurance from a customer that the customer can obtain securities from another identified source in time to settle the trade. The broker-dealer must still document the locate, and the documentation should include the source of the securities cited by the customer, as well as reasonable grounds to rely on the customer’s assurances.
8. During February 2018, Wolverine failed to document its compliance with Reg SHO Rule 203(b). The firm relied on its clients to attest that they had a locate for short

¹ See U.S. Securities and Exchange Commission, Division of Market Regulation, Responses to FAQs Concerning Regulation SHO.

sales, and configured its order management system (“OMS”) so that when a client entered a short sale order, an electronic window prompt requested that the client attest that it met the locate requirement and allowed the customer to provide related information. If a client did not affirm that client has a locate, the trade would not be routed. Throughout February 2018, Wolverine failed to retain records reflecting the client attestations or other documentation reflecting the reasonable grounds for the client’s attestation.

9. Therefore, Wolverine failed to properly document locate information in 408,126 instances for orders entered as short sales into the Exchange during February 2018, in violation of NYSE Arca Rule 7.16-E(e) and Reg. SHO Rule 203(b).

Violations of NYSE Arca Rule 11.18 (Supervision)

10. NYSE Arca Rule 11.18(a) requires an ETP holder to supervise associated persons with respect to compliance with federal securities laws and Exchange rules. Further, Rule 11.18(b) requires an ETP holder to establish and maintain a supervisory system that is reasonably designed to ensure compliance with applicable federal securities laws and regulations and Exchange rules, and Rule 11.18(c) requires an ETP holder to establish, maintain, and enforce written procedures to supervise its business and associated persons. The procedures must be reasonably designed to ensure compliance with applicable securities laws and regulations and Exchange rules.
11. From May 2016 through March 2019, Wolverine’s written supervisory procedures (“WSPs”) relating to short sale order marking stated that “[b]ecause the Firm does not have access to its clients’ positions, the Firm generally must rely on clients to accurately represent their positions when marking sell orders ‘long’ or ‘short.’” However, Wolverine’s supervisory system, including its WSPs, failed to address how it would supervise for compliance with exchange-based short sale indicator requirements for orders that it executed in a riskless principal capacity.
12. During February 2018, with respect to compliance with NYSE Arca Rule 7.16-E(e) and Reg. SHO Rule 203(b), the Firm’s WSPs provided that prior to entering short sale orders, clients must contact their clearing firms to obtain a locate, and that Wolverine’s OMS will request confirmation that these steps have been taken. The Firm’s WSPs further stated that the Chief Compliance Officer (“CCO”), or his delegate, shall on at least a quarterly basis, verify that this confirmation system is functioning properly and shall document this review within a supervisory checklist. However, the Firm’s supervisory system, including its WSPs, failed to address the requirement that the Firm document compliance with the locate requirement and maintain those documents. Although Wolverine would periodically verify that the attestation function was operating properly, the firm failed to keep records of its customers’ attestations or other documentation reflecting the reasonable grounds for the client’s attestation.
13. As a result of the conduct described above, Wolverine failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures,

reasonably designed to ensure compliance with order marking rules and locate requirements applicable to its business activity under NYSE Arca Rule 7.16-E(c) and (e), and Reg. SHO Rule 203(b). Therefore, Wolverine violated NYSE Arca Rule 11.18.

SANCTIONS

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

1. A censure; and
2. A total fine of \$170,000, of which \$20,025 shall be paid to NYSE Arca.²

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and the self-regulatory organizations set forth in Footnote 2 below.

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's 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,

² The remainder of the fine shall be allocated to the Nasdaq Stock Market, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., and FINRA, for similar and/or additional violations.

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 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 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 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.

May 7, 2021

Date

Wolverine Execution Services, LLC
Respondent

By: David Cavicke
Name: David Cavicke
Title: Chief Legal Officer

Accepted by FINRA

May 7, 2021

Date

Andy Hubbardt

Andy Hubbardt
Senior Counsel
FINRA, Department of Enforcement

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