NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016-11-00008

TO: New York Stock Exchange LLC

RE: Benjamin & Jerold Brokerage I, LLC, Respondent
CRD No. 29110

During the period from January 1, 2014 through May 31, 2018 (the "Relevant Period"), Benjamin & Jerold Brokerage I, LLC, violated: (1) Rule 15c3-5 of the Securities Exchange Act of 1934 (the "Exchange Act"), by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial and regulatory risks of its business activity; (2) NYSE Rule 407A, by failing to accurately report employee trading accounts; (3) Rule 17a-4(f) of the Exchange Act, by failing to obtain undertakings from vendors with respect to their access to Firm books and records; and (4) NYSE Rule 3110 and former NYSE Rule 342, by failing to establish and maintain written supervisory procedures and a supervisory system reasonably designed to achieve compliance with applicable laws, rules, and regulations. Consent to a censure, a $25,000 fine, and an undertaking.

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Pursuant to Rule 9216 of the New York Stock Exchange LLC (the "NYSE" or the "Exchange") Code of Procedure, Benjamin & Jerold Brokerage I, LLC, ("Benjamin & Jerold" 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, the NYSE will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

A. Benjamin & Jerold 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 the NYSE, or to which the NYSE 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 the NYSE:

BACKGROUND AND JURISDICTION

1. Benjamin & Jerold is a limited liability company registered in the state of Illinois, with its main offices in New York, New York. The Firm conducts several lines of business, one of which involves equities trading on the floor of the New York Stock Exchange. The Firm has been a member of NYSE since August 20, 2008.

PROCEDURAL HISTORY

2. This matter arises from a referral to NYSE Regulation by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. ("FINRA"). FINRA's investigation began as a result of FINRA Trading and Financial Compliance Examinations' ("TFCE") 2015 cycle examination of the Firm. TFCE's examination reviewed, among other things, the Firm's compliance with Rule 15c3-5 of the Securities Exchange Act of 1934 (the "Market Access Rule") and the NYSE's supervision rules.

VIOLATIONS

Violations of the Market Access Rule

3. Rule 15c3-5 of the Securities Exchange Act of 1934 (the "Market Access Rule") requires that a broker or dealer with market access, or that provides a customer with market access, "shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity." The Market Access Rule, in conjunction with the Rule's Adopting Release, specifies certain financial and regulatory risks and corresponding requirements, including the requirement to design reasonable controls and supervisory procedures to prevent the entry of orders that exceed pre-set aggregate credit thresholds for customers, and to monitor trading for potentially violative activity. In addition, the Rule requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of the above-mentioned controls.

4. Benjamin & Jerold violated the Market Access Rule's requirements in connection with its: (1) setting of credit limits; (2) use of post-trade controls; and (3) conducting of annual reviews.

Customer Credit Limits

5. Exchange Act Rule 15c3-5(c)(1)(i) requires that broker-dealers' risk management controls and supervisory procedures be reasonably designed to "prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer." The Rule's Adopting Release explains that these thresholds should be determined "based on appropriate due diligence as to the customer's business, financial condition, trading patterns, and other matters," and that a broker-dealer must "document that decision." Risk Management Controls for Brokers or Dealers with Market Access, Exchange Act Release No. 34-63241, 75 Fed. Reg. 69791 (Nov. 3, 2010) (hereinafter "Adopting Release"), at 39. The SEC reiterated these criteria and documentation obligations on April 15, 2014, in its Response to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access.

6. Benjamin & Jerold failed to take each of the required criteria into account when establishing customer credit limits. Instead, for example, the Firm set certain of its

limits by adopting the credit limit allocated to that customer by its clearing broker, or allowed customer limits to be set by the customer itself. In each instance, the Firm failed to adequately assess the financial condition, trading activity, and business of its customer, among other relevant factors, as required by the Market Access Rule.

7. This failure resulted in the Firm implementing unreasonable credit limits during the Relevant Period. In particular, the Firm allocated $13 billion in aggregate credit to a single Firm customer, without having undertaken sufficient analysis with respect to that customer's financial condition or actual trading activity.

8. In addition, the Firm failed to adequately document the basis for each of its customer credit limits. The Firm did not produce any documentation reflecting its analysis for limits in effect prior to October 2017. For limits in effect after that period, the Firm produced cursory statements that failed to adequately explain why it had selected a particular threshold and how that threshold meaningfully limited the financial exposure that could be generated by the customer's trading activity.

9. Based on the foregoing, the Firm violated Exchange Act Rule 15c3-5(c)(1)(i).

Post-trade Controls

10. Exchange Act Rule 15c3-5(c)(2) provides that the controls and supervisory procedures implemented pursuant to the Rule "shall be reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to: . . . (iv) Assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access." The SEC further explained in the Rule's Adopting Release that the "regulatory requirements" referenced in subsection (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity," Adopting Release at 22-23, and that it "believes that immediate reports of executions will provide surveillance personnel with important information about potential regulatory violations, and better enable them to investigate, report, or halt suspicious or manipulative trading," Adopting Release at 48. Accordingly, FINRA made clear to broker-dealers in its 2012 Annual Regulatory and Examination Priorities[1] that members must have post-trade surveillance procedures that are "reasonably designed to identify various potential trading violations such as wash sales, marking, spoofing, layering, quote stuffing, and other potential violations of" rules of the SEC or applicable self-regulatory organizations.

11. Throughout the Relevant Period, the Firm failed to conduct adequate reviews for manipulation or other violative activity. The Firm further failed to sufficiently document its supervisory reviews of trading activity. Based on the foregoing, Benjamin & Jerold violated Exchange Act Rule 15c3-5(c)(2).

Annual Reviews

12. Exchange Act Rule 15c3-5(e) provides that broker-dealers shall "establish, document,

[1] Available at https://www.finra.org/file/2012-regulatory-and-examination-priorities-letter.

and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures . . . and for promptly addressing any issues," including by reviewing, "no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures." The Rule further provides that "Such review shall be conducted in accordance with written procedures and shall be documented," and that such procedures and documentation of review must be preserved in a manner consistent with Exchange Act Rule 17a-4(e)(7).

13. Throughout the Relevant Period, the Firm's written supervisory procedures failed to describe in sufficient detail the Firm's mandated annual review. Furthermore, the Firm failed to produce any documentation of an annual review. Based on the foregoing, the Firm violated Exchange Act Rule 15c3-5(e).

Violations of Securities Exchange Act Rule 17a-4

14. At all times during the Relevant Period, Exchange Act Rule 17a-4(f)(3)(vii) required a broker-dealer using electronic storage media to retain a third-party vendor "who has access to and the ability to download information from the [broker-dealer's] electronic storage media" to any acceptable medium and to obtain an undertaking from the vendor that will provide these records to the SEC or any other regulatory authority in the event the firm is unable to do so.

15. During the Relevant Period, Benjamin & Jerold failed to obtain the required attestation from its third-party vendor. Based on the foregoing, the Firm violated Exchange Act Rule 17a-4(f)(3)(vii).

Violations of NYSE Rule 407A

16. At all times during the Relevant Period, NYSE Rule 407A provided that "Each member must promptly report to the Exchange any securities account, including an error account, in which the member has, directly or indirectly, any financial interest or the power to make investment decisions . . . ."

17. In certain instances during the Relevant Period, the Firm failed to accurately report error accounts for its employees. Accordingly, the Firm violated NYSE Rule 407A.

Violations Concerning the Failure to Supervise

18. Exchange Act Rule 15c3-5(b) requires broker-dealers with market access to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks," and to "preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records."

19. NYSE Rule 3110(b) provides that "Each member organization must establish, maintain, and enforce written procedures to supervise the types of business in which

it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules." Prior to its adoption in November 2014, former NYSE Rule 342(b) imposed similar obligations.

20. The Firm failed to adequately describe its methodology for determining customer credit limits in its written supervisory procedures. In addition, the Firm failed to describe its process for reviewing trading activity for potential manipulation or other violative conduct. Based on the foregoing, the Firm violated Exchange Act Rule 15c3-5(b), NYSE Rule 3110(b), and former NYSE Rule 342(b).

21. In addition, at times during the Relevant Period, the Firm's written supervisory procedures failed to address applicable rules, including with respect to market looks, bank account reconciliations, its review of error transactions, its review of personal trading accounts, and the reporting of personal trading accounts. The Firm also failed to demonstrate that it had sufficient supervisory processes or reviews to ensure compliance with applicable rules, including with respect to electronic media storage and the Firm's hiring and termination practices. Based on the foregoing, the Firm violated NYSE Rule 3110(b) and former NYSE Rule 342(b).

RELEVANT PRIOR DISCIPLINARY HISTORY

22. In connection with the 2013 Financial and Operations cycle examination of the Firm, which was conducted by the Trading and Market Making Surveillance group of FINRA's Department of Market Regulation, the Firm received a letter of cautionary action for violations of (i) Exchange Act Rule 15c3-5, related to the Firm's failure to adequately document the due diligence it performed to determine customer credit limits, evidence its post-trade reviews, and document its annual review; and (ii) NYSE Rule 342, related to the Firm's failure to substantiate adequate supervision over, among other things, market looks, compliance with Regulation SHO, and compliance with Regulation NMS.

23. In addition, in connection with the 2013 examination, the Firm submitted a Minor Rule Violation Letter for violations of NYSE Rule 407A, pursuant to which it consented to a fine of $2,500.

SANCTIONS

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

1. **Censure and fine in the amount of $25,000**

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, on a schedule to be agreed upon by NYSE Regulation and the Firm. 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(s) 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.

2. **Undertaking**

Within 90 days of the execution of this AWC (or such other time as may be mutually agreed to with NYSE Regulation staff), the Firm agrees to provide (1) a certification that the Firm has revised its written supervisory procedures and supervisory system to address the deficiencies described in the paragraphs above; and (2) the date the revised procedures were implemented.

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 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 the NYSE; 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 employee; or any Regulatory Staff as defined in Rule 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 9143 or the separation of functions prohibitions of Rule 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 the NYSE pursuant to NYSE Rule 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, 25 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 Rule 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. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;

4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 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 documents in connection with this matter, the Firm made a diligent inquiry of all persons who reasonably had possession of responsive documents, and that those documents have been produced or identified in a privilege log. The Firm acknowledges that, in agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of such document production.

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.

6/29/18
Date

Benjamin & Jerold Brokerage I, LLC,
Respondent

By: Terence P. Dolan
Terence P. Dolan
Chief Executive Officer

Accepted by NYSE Regulation

6/29/18
Date

Daniel J. Northrop
Enforcement Counsel
NYSE Regulation

Signed on behalf of New York Stock Exchange LLC, by delegated authority from its Chief Regulatory Officer