

**NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NOS. 2017-03-00044 & 2017-10-00062**

TO: New York Stock Exchange LLC

RE: Prime Executions, Inc., Respondent
CRD No. 32889

Prime Executions, Inc. ("Prime" or the "Firm") violated: (i) NYSE Rules 134(d)(v) (Differences and Omissions-Cleared Transactions), 123(b) (Record of Orders), 123(e) (Record of Orders), 134(d)(iii) (Differences and Omissions-Cleared Transactions), 440 (Books and Records), 342 (Supervision) (for conduct occurring prior to December 1, 2014) and 3110(a) and (b) (Supervision) (for conduct occurring on or after December 1, 2014), and Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rules 17a-3 and 17a-4 for improperly using its Floor error account during the period from November 1, 2012 through September 30, 2017 (the "Error Relevant Period"); and (ii) Exchange Act Rule 15c3-5(b), (e)(1)(i) and (e)(2)(iv) (the "Market Access Rule") and NYSE Rule 3110(a) and (b) (Supervision) for failing to set a reasonable credit limit for one of its customers from December 2016 through September 2017 and for failing to have supervisory procedures reasonably designed to manage the risks of its market access business activity, including unreasonable post-trade supervisory reviews, during the period from August 2017 through August 2018.

Prime consents to a censure, a fine of \$22,500, and an undertaking.

* * *

Pursuant to Rule 9216 of the New York Stock Exchange LLC (the "NYSE" or the "Exchange") Code of Procedure, Prime 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. Prime hereby accepts and consents, 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, and without admitting or denying the findings, to the entry of the following findings by the NYSE:

BACKGROUND & JURISDICTION

1. Prime became a member of the NYSE in June 1991 and currently is a member. Prime is an agency-only NYSE Floor broker.

PROCEDURAL HISTORY

2. This matter arises from referrals to NYSE Regulation by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. ("FINRA") for potential violations of, among others, NYSE Rule 134, as well as investigation by NYSE Regulation ("NYSER") into potential violations of the Market Access Rule and NYSE Rule 3110.
3. On June 21, 2017, NYSER notified Prime that it was investigating whether it violated, among other rules, NYSE Rule 134. Then, on October 16, 2017, NYSER notified Prime that it was investigating whether it violated, among other rules, the Market Access Rule.

VIOLATIONS

I. Error Account Violations

A. Use of Floor Error Account – Failure to Produce Complete Documentation of Customer Instructions

1. NYSE Rule 134(d)(v) states: "No trading may take place in an error account that is not related to an error." Further, NYSE Rule 134(g) states that for the purpose of the rule, an order is an "error" when it is "executed outside of the customer instructions as entered in the electronic order tracking system of the Exchange pursuant to Rule 123(e)."
2. NYSE Information Memorandum 06-63 states in relevant part that, "[t]o the extent documentation is not available either to support an error **Such transactions may not be processed through an error account.**" (Emphasis in original.)
3. In at least 5 instances during the Error Relevant Period, the Firm processed transactions through its error account for which it was unable to produce written evidence of its customers' instructions. Consequently, the Firm was unable to evidence that brokers had made a mistake in executing the customers' orders or had failed to follow the customers' order instructions. As the Firm could not show documentation that the orders were bona fide errors for purposes of NYSE Rule 134, the Firm improperly processed these transactions through the Firm's error account in violation of NYSE Rule 134(d)(v).

B. Failure to Document Customer Instructions in Writing

1. Section 17(a)(1) of the Exchange Act, Rule 17a-3(a)(6)(i) thereunder requires every broker, dealer, and member of a national securities exchange to make and keep a "memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the instructions and of any modification or cancellation thereof[.]"

2. Section 17(a)(1) of the Exchange Act, Rule 17a-4 thereunder requires that the Firm keep the documents described in Section 17(a)(1) of the Securities Exchange Act of 1934, Rule 17a-3(a)(6)(i) thereunder for "a period of not less than three years, the first two years in an easily accessible place."
3. NYSE Rule 123(b), Receipt of Orders, states: "Every member shall preserve for at least three years a record of every order received by that member on the Floor from off the Floor. Such record shall include the name and amount of the security, the terms of the order and the time when such order was received."
4. NYSE Rule 440, Books and Records, states: "Every member not associated with a member organization and every member organization shall make and preserve books and records as the Exchange may prescribe and as prescribed by Rule 17a-3."
5. NYSE Rule 123(e)(iii)(11), states in relevant part that, "[t]he details of each order required to be recorded . . . shall include . . . [a]ny special conditions[.]"
6. NYSE Rule 134(d)(iii) provides that "records as to all errors shall be maintained by the member . . . Such records shall include the audit trail data elements prescribed in NYSE Rule 132, as well as the nature and the amount of the error, the means whereby the member resolved the error with the member or member organization that cleared the error trade on the member's behalf, the aggregate amount of liability that the member has incurred and has outstanding, as of the time of each such error trade entry is recorded, and such other information as the NYSE may from time to time require."
7. In at least 5 instances during the Error Relevant Period, the Firm failed to make and maintain records and/or receipt of orders, and failed to provide complete order details of orders in violation of NYSE Rules 123(b), 134(d)(iii), 123(e) and 440, and Rules 17a-3 and 17a-4.

C. Incorrect Use of Error Account for Mistakes in the Execution of Not Held Orders

1. NYSE Rule 134(d)(v) states: "No trading may take place in an error account that is not related to an error." A bona fide error includes the failure to execute a not held order due to an error as to symbol, side or price in the execution of the order. *See* NYSE Rule 134(g)(ii).
2. NYSE Rule 134(g)(i) states that an "error" includes the situation in which "an order is executed outside of the customer instructions as entered in the electronic order tracking system . . . When a held or not held order is executed in: (a) the wrong security; or (b) on the wrong side of the market; or (c) at a price outside the limit price of the order; or (d) is over bought or over sold; or (e) duplicates an execution."
3. NYSE Rule 134(h)(ii) states that an "error" occurs "when a not held order remains unexecuted, in whole or in part, due to the order being lost or misplaced, or as a result of a system malfunction. A system malfunction is the failure of physical equipment,

devices and/or programming employed by the Floor broker or otherwise provided by the Exchange and used in the execution of orders.”

4. “A ‘not-held’ order is a market or limit order that gives the Floor broker or Floor trader both time and price discretion to attempt to get the best possible price.” *In re John N. Monaco*, NYSE Hearing Board Decision 08-37 at n.2 (June 26, 2008). *See also In re Morgan Stanley & Co, Inc.*, Order Instituting Administrative and Cease-and-Desist Proceedings, SEC Release No. 55726, Administrative Proceeding File No. 3-12631 at n. 3 (May 9, 2007).
5. In at least 12 instances, the Firm identified not held orders as held orders, and processed those orders through the Floor error account. As such, the Firm incorrectly processed these transactions through the Firm’s error account in violation of NYSE Rule 134(d)(v).

D. Supervisory Deficiencies Related to Use of the Floor Error Account

1. NYSE Rule 3110(a) requires, *inter alia*, each member to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.” Before NYSE Rule 3110(a) became effective on December 1, 2014, NYSE Rule 342 imposed similar obligations.
2. NYSE Rule 3110(b) requires, *inter alia*, each member to “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.” Before NYSE Rule 3110(a) became effective on December 1, 2014, NYSE Rule 342 imposed similar obligations.
3. The Firm failed to record order information sufficient to establish that the transactions processed through the Firm’s Floor error account were related to bona fide errors, although the Firm’s written supervisory procedures (“WSPs”) required electronic memorialization of all order instructions.
4. Because the Firm failed to ensure adherence to its WSPs related to compliance with NYSE Rule 134, the Firm violated NYSE Rules 3110(a) and (b) and 342.

II. Market Access Violations

A. Unreasonable Credit Limit Set for One of Its Market Access Customers

1. SEC Rule 15c3-5(b) requires, *inter alia*, every “broker or dealer with market access, or that provides a customer any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, 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.”

2. SEC Rule 15c3-5(c)(1)(i) requires every broker-dealer that provides market access to have "risk management controls and supervisory procedures . . . reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, including being reasonably designed to . . . [p]revent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer"¹ Thus, the Market Access Rule requires that firms have procedures and a methodology in place to set initial credit limits for each of its customers, taking into account the customer's business, financial condition, trading patterns, and other matters. See IM 18-04 at 3.
3. As discussed above, NYSE Rule 3110(a) and (b) require, *inter alia*, each member to establish and maintain a supervisory system and WSPs that are reasonably designed to achieve compliance with applicable federal securities laws and Exchange rules.
4. From December 2016 through September 2017, Prime violated Rule 15c3-5(b) and (c)(1)(i) by setting an unreasonable credit limit for one of its customers ("Customer A").
5. Prime mistakenly had a credit limit set for Customer A at \$50 billion from December 2016 through September 2017. Prime intended to set Customer A's credit limit at \$1 billion.
6. Specifically, following a series of credit risk breaches by Customer A, the Firm decided to increase Customer A's credit limit on December 14, 2016 to \$1 billion. Instead of entering \$1 billion for Customer A into one of its handheld devices ("HHDs") or properly decrementing the \$1 billion across multiple handhelds (for example, \$200 million in five HHDs), Prime mistakenly entered \$10 billion in five separate HHDs for Customer A. For this reason, Prime violated Rule 15c3-5(b) and (c)(1)(i).
7. In addition, Prime violated NYSE Rule 3110(a) and (b) because it did not have reasonable supervisory procedures in place or WSPs concerning periodic reviews of customer credit limits to assess and monitor the reasonableness of customer credit limits. See IM 18-04 at 4.

B. Unreasonable Post-Trade Supervisory Reviews

1. SEC Rule 15c3-5(b) requires, *inter alia*, every "broker or dealer with market access, or that provides a customer any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, 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."

¹ See also NYSE Information Memo No. 18-04, *Member Obligations Regarding Credit Limits Under the Market Access Rule* (August 13, 2018) ("IM 18-04").

2. SEC Rule 15c3-5(c)(2)(iv) requires every broker-dealer that provides market access to "[a]ssure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access."
3. Again, NYSE Rule 3110(a) and (b) require, *inter alia*, each member to establish and maintain a supervisory system and WSPs that are reasonably designed to achieve compliance with applicable federal securities laws and Exchange rules.
4. From at least August 2017 until August 2018, Prime did not conduct any reasonable daily reviews (or any other reasonable periodic review) to identify and address any potentially manipulative, disruptive or other improper order or trading activity by any of its customers to whom the Firm provided market access, such as the use of trading strategies that involved non-bona fide orders.
5. The post-trade reviews that Prime conducted identified other potential problems, such as trade fails or Firm employees' improperly trading in their own outside accounts.
6. Moreover, in terms of post-order entry controls and reviews, Prime's WSPs provided that:

Examples of areas which may be reviewed are . . . for [m]arket manipulation which may include: front running, insider trading, stock manipulation, wash sales, marking the close, etc. On a monthly basis or as required our Compliance Officer will review several trades to examine if all the information on the order hit our order management system. Evidence of questionable trades will be logged and kept in a folder at our main office.

7. However, Prime could not point to any actual and specific reasonable post-trade reviews conducted from at least August 2017 through August 2018 concerning potentially manipulative trading. In addition, Prime had not logged any potentially manipulative, disruptive, improper or questionable trade in the folder referenced in the WSPs.
8. Because Prime's post-trade supervisory reviews and WSPs relating thereto were unreasonable, Prime violated SEC Rule 15c3-5(b) and (c)(1)(i) and NYSE Rule 3110(a) and (b).

PRIOR DISCIPLINARY HISTORY

In 2013, FINRA issued the Firm a Cautionary Action Letter ("CAL") in connection with violations of NYSE Rule 134(d)(v), for using its Floor error account for executions that were not related to bona fide errors on eight occasions. *See* CAL, FINRA Matter No. 20130354722 (May 28, 2013).

OTHER RELEVANT FACTORS

In arriving at the agreed-upon penalty, NYSE Regulation took into consideration that Prime has already undertaken remedial measures in response to this investigation, including: (i) hiring a new Chief Compliance Officer; (ii) updating the Firm's WSPs; (iii) purchasing and implementing new compliance review tools to effect reasonable post-trade reviews for potential improper trading; (iv) terminating relationships with all of the Firm's program trading clients; and (v) moving one of the principals at the Firm from Floor broker duties to business operations.

SANCTIONS

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

1. a censure;
2. a fine in the amount of \$22,500; and
3. an undertaking to improve its WSPs and Market Access Rule and supervisory system controls and reviews to address the deficiencies described in the paragraphs above, including reasonable controls to capture for review the use of trading strategies that potentially involve non-bona fide orders or are otherwise improperly disruptive.

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 WSPs and Market Access Rule and supervisory system controls and reviews to address the deficiencies described in the paragraphs above; and (2) the date the revised procedures were implemented.

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. 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.

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

III. 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 entity'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 entity's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

IV. 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.

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.

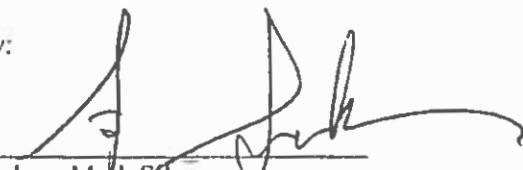
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, 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.

4-14-19

Date

Prime Executions, Inc.
Respondent

By:

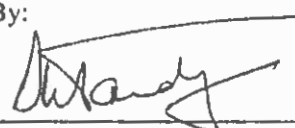

Andrew Mark Silverman
for and on behalf of
Prime Executions, Inc.

4-14-19

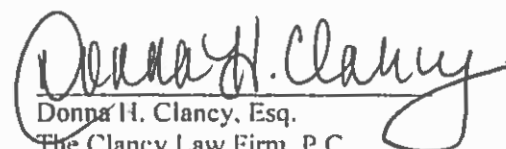
Date

Prime Executions, Inc.
Respondent

By:


Daniel Warren Tandy
for and on behalf of
Prime Executions, Inc.

Approved as to form by:


Donna H. Clancy, Esq.
The Clancy Law Firm, P.C.
Counsel for Prime Executions, Inc.

Accepted by NYSE Regulation

04/10/19

Date


Danielle Kantor, Enforcement Counsel
Tony Frouge, Senior Enforcement Counsel
NYSE Regulation

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