NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NOS. 2019-11-00087 & 2020-06-00073

TO: New York Stock Exchange LLC

RE: Livermore Trading Group, Inc., Respondent
CRD No. 32968

During the period from at least January 2014 to September 2020 (the "122 Relevant Period"), Livermore Trading Group, Inc. ("Livermore" or the "Firm") violated NYSE Rule 122 (Orders with More than One Floor Broker) by sending and maintaining agency orders for the account of the same principal to at least two different individual Livermore floor brokers in the same security that could execute at the same time and price.

In addition, during the period from January 1, 2018 to December 5, 2020 (the "MAR Relevant Period"), Livermore violated Securities Exchange Act of 1934 Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") 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 activities (including relating to credit limits and erroneous order controls).

Lastly, during the period from at least January 2014 to December 2020 (the "Supervisory Relevant Period"), Livermore violated NYSE Rules 342 (effective before December 1, 2014) and 3110(a) and (b) (effective on and after December 1, 2014) (Supervision) by failing to establish and maintain a supervisory system and written supervisory procedures ("WSPs") reasonably designed to achieve compliance with NYSE Rule 122 and the Market Access Rule, as well as relating to post-trade controls.

Livermore consents to a censure, a $50,000 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, 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. 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 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 & JURISDICTION

1. Livermore incorporated in New York, New York in October 1992 and became a member of the NYSE in August 1999. For its customers, Livermore acts as a fully disclosed direct access firm and floor broker on the NYSE.

2. Livermore's registration as an NYSE member organization remains in effect. Livermore does not have any relevant disciplinary history.

PROCEDURAL HISTORY

3. With respect to the Firm's NYSE Rule 122 violations and supervisory failures related thereto, the matter arises from an investigation conducted by NYSE Regulation. In a letter dated June 8, 2020, NYSE Regulation provided notice to Livermore that it was under investigation for the Firm's potential violations of NYSE Rule 122.

4. With respect to the Firm's Market Access Rule violations and supervisory failures related thereto, the 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's Trading and Financial Compliance Examination 2019 cycle examination of the Firm. FINRA's examination reviewed, among other things, the Firm's compliance with Rule 15c3-5 and NYSE Rule 3110.

VIOLATIONS

Livermore Violated NYSE Rule 122

5. NYSE Rule 122 prohibits member organizations from sending and maintaining with more than one floor broker, for execution on the Exchange, orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal.[1]

6. During the 122 Relevant Period, Livermore had, among others, the following three customers: (1) a hedge fund that primarily invested friend and family money; (2) a proprietary trading firm; and (3) a proprietary desk at a multi-strategy investment partnership (collectively, the "Customers").

7. Each Customer had its own unique mnemonic that it used with Livermore and all traders at each Customer used the assigned mnemonic. For each Customer, Livermore had each mnemonic on three different individual floor broker handheld devices and all orders received by Livermore were physically directed to an individual broker's handheld by the Firm. Livermore's customers do not have the ability to directly route their orders to a specific individual floor broker.

[1] Sending or maintaining with more than one floor broker means more than one floor broker firm or two different individual floor brokers at the same floor broker firm.

8. Livermore was aware of, and stated that it attempted to comply with, NYSE Rule 122 by never sending the same trader's orders to the same individual floor broker's handheld for each of the three Customers. Nevertheless violations occurred for each of the three Customers because at times the same security that could execute at the same time and price was in the market for possible execution through two different individual Livermore floor broker's handhelds for the same Customer. Because each of the Customers described above were proprietary in nature, the orders were for the account of the same principal despite different traders and therefore were violative of NYSE Rule 122.

9. One of the purposes of NYSE Rule 122 is to prevent impacting the NYSE parity allocation rules so that a member organization or its customers cannot obtain preferential execution – that is, be over-represented in the market – by sending same orders to multiple individual floor brokers or floor broker firms at the same time.

10. As a direct result of Livermore directing the traders' orders to two different individual floor brokers, the Customers were over-represented under the NYSE parity model throughout the 122 Relevant Period. For example, sampling from January 1, 2018 through June 30, 2019 showed that in total for all three Customers, Livermore directed about a couple of hundred parent orders into the market that resulted in competing child orders for execution in contravention (albeit unintentionally) of NYSE Rule 122.[2] Of these competing child orders, however, only a small percentage both received executions at the same time.

11. For the aforementioned reasons, Livermore violated NYSE Rule 122 during the 122 Relevant Period.

__Livermore Violated the Market Access Rule__

12. 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." Rule 15c3-5(b).

13. 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. *See id.*; 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 1-2.

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[2] A parent order (or large basket of shares) can be divided into smaller lots, known as the child orders. A parent order typically is used in many algorithmic trading strategies. For example, an algorithm can slice up a parent order of 100,000 shares into 10 child orders of 10,000 shares each, only some of which may execute over the course of a trading day.

14. In addition, the Market Access Rule requires broker-dealers providing market access to maintain controls and supervisory procedures reasonably designed to "[p]revent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters . . . ." Rule 15c3-5(c)(1)(ii). The Rule further requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of the above-mentioned controls. *See* Rule 15c3-5(e).

15. Livermore violated the Market Access Rule's requirements in connection with its setting and adjusting of customer credit limits and erroneous order controls.

Customer Credit Limits

16. Rule 15c3-5(c)(1) 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."

17. The SEC's Adopting Release for Rule 15c3-5 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." Adopting Release at 39.

18. The SEC reiterated these criteria and documentation obligations in its Response to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access (April 15, 2014) (hereinafter "FAQs"), noting that "the broker-dealer should be prepared to show why it selected a particular threshold . . . [and] how that threshold meaningfully limits the financial exposure potentially generated by the customer or its own trading activity." FAQ No. 8.

19. The Market Access Rule further requires broker-dealers to regularly review their customer credit limits, and document any changes to those limits (and the reasons for the changes). *See* NYSE Information Memo 18-04, *Member Obligations Regarding Credit Limits Under the Market Access Rule* at p. 4; FAQ No. 18.

20. Livermore did not reasonable comply with these requirements regarding customer credit limits during the MAR Relevant Period in several ways:

    a. First, Livermore failed to describe its process for determining credit limits for its customers in its WSPs;

    b. Second, Livermore assigned unreasonable credit limits to its customers in many cases based on multiplying the customers' highest credit usage day over the prior six months by a multiple of five or ten;

    c. Third the Firm's WSPs failed to address how it would make intra-day changes to its credit limits, or how those changes would be documented; and

d. Fourth, the Firm's WSPs did not describe how its customers' credit limits would be allocated between the various handheld devices used by its brokers, and for one customer, the total of the credit limits across those devices was higher than the credit limit calculated pursuant to the Firm's WSPs.

21. Based on the foregoing, the Firm violated Rule 15c3-5(c)(1)(i) and 15c3-5(b).

Erroneous Order Controls

22. Rule 15c3-5(c)(1)(ii) requires broker-dealers providing market access to maintain controls and supervisory procedures reasonably designed to "[p]revent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders."

23. The Firm has been unable to provide information demonstrating that the erroneous order controls in place during the MAR Relevant Period, including controls as to order size, order value, and price, were reasonable.

24. In certain instances, the Firm's erroneous order controls appear to have been unreasonably high. For example, for one customer, the single-order quantity control was set at 1 million shares and the single-order value control was set at $10 million, despite the fact that over the prior six months, the customer only traded approximately 300,000 shares during the entirety of its busiest month, and highest credit utilization on a single day was only approximately $1.48 million.

25. Livermore's WSPs also did not reasonably address the process for making and documenting changes to its erroneous order controls, and there was no documentation of any changes during the MAR Relevant Period.

26. Based on the foregoing, the Firm violated Rule 15c3-5(c)(1)(ii) and 15c3-5(b).

Livermore Violated NYSE Rules 342 and 3110(a) & (b) (Supervision)

NYSE Rule 122

27. NYSE Rules 342 (effective before December 1, 2014) and 3110(a) and (b) (effective on and after December 1, 2014) require member organizations to, among other things, establish and maintain both a supervisory system and WSPs that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

28. Because Livermore represented the Customers on an agency basis, it had the supervisory obligations to conduct reasonable due diligence to assure that the Customers' orders were not for the account of the same principal and, if the orders were for the account of the same principal, to detect and prevent directing the orders to two different individual floor brokers in the same security that could have executed at the same time and price.

29. During the Supervisory Relevant Period, Livermore did have a supervisory system and WSPs in place in an effort to comply with NYSE Rule 122, but neither were reasonably designed. For example, Livermore did not identify any exceptions concerning, or possible violations of, NYSE Rule 122 for supervisory review for any of the three Customers – even though violations did indeed occur.

30. Additionally, Livermore's WSPs concerning NYSE Rule 122 effectively did nothing more than copying and pasting the rule's text.

31. As a result of these supervisory failures, the Firm failed to detect and prevent the violative orders described above that were directed to different individual floor brokers for the Customers.

The Market Access Rule & Post Trade Controls

32. With respect to the Market Access Rule, and as described in more detail above, Livermore's supervisory deficiencies include: 1) the failure to reasonably describe its methodology for setting credit limits in its WSPs and using a methodology that resulted in unreasonable credit limits for certain customers; 2) the failure to design and implement reasonable single-order controls; and 3) the failure to develop or implement WSPs concerning intra-day changes to credit limits or single-order controls.

33. Additionally, the Firm failed to develop or implement WSPs concerning a reasonable system of post-trade reviews of customer trading to identify potential manipulative activity and other rule violations. Here, Livermore's post-trade reviews during the Supervisory Relevant Period consisted of a manual daily review of trading data. However, the Firm's WSPs did not reasonably describe how the review is performed or documented, and, absent such documentation, the Firm was unable to demonstrate that its post-trade reviews were reasonable designed.

34. As a result of the above misconduct, Livermore violated NYSE Rules 342 and 3110(a) and (b) during the Supervisory Relevant Period.

SANCTIONS

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

1. **Censure and a fine in the amount of $50,000; and**

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.

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 supervisory systems and WSPs 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 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.

11/12/2020
Date

Livermore Trading Group, Inc.
Respondent

By: Vincent Napolitano
Vincent Napolitano
Chief Executive Officer &
Chief Compliance Officer
Livermore Trading Group, Inc.

Accepted by NYSE Regulation

November 13, 2020
Date

Tony M. Frouge
Deputy Head of Enforcement

William R. Vanderveer
Regulatory Attorney

NYSE Regulation

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