

**NASDAQ GEMX, LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

**TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated
Mr. J. David Montague
Associate General Counsel
One Bryant Park
New York, NY 10036**

**FROM: Nasdaq GEMX, LLC (“GEMX”)
c/o Financial Industry Regulatory Authority (“FINRA”)
Department of Enforcement
9509 Key West Avenue
Rockville, MD 20850**

DATE: September 26, 2018

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20140411279-06

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **September 14, 2018** by GEMX’s Business Conduct Committee. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration (“Form BD”) to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Department of Enforcement, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ’s Finance Department regarding the payment of any fine if a fine has been imposed.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
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If you have any questions concerning this matter, please contact me at (646) 430-7050.



Elyse D. Kovar
Senior Counsel
Department of Enforcement

Signed on behalf of NASDAQ GEMX

Enclosure

FINRA District 10 – New York
Michael Solomon
Senior Vice President and Regional Director
(via email)

Emily Gordy
McGuire Woods LLP
2001 K. Street N.W.
Suite 400
Washington, DC 20006
Counsel for Respondent

NASDAQ GEMX, LLC
Attn: John Zecca, Chief Regulatory Officer
60 Broad Street, 26th Floor
New York, NY 10004

Re: LETTER OF ACCEPTANCE, WAIVER AND CONSENT
File No. 20140411279
Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD No. 7691)

Chief Regulatory Officer and Business Conduct Committee Members:

Pursuant to GEMX Rule 1603, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO" or the "Firm") submits this Letter of Acceptance, Waiver, and Consent ("AWC") to Nasdaq GEMX, LLC, formerly known as the ISE Gemini, LLC ("GEMX" or "Exchange"), to propose a settlement of the alleged rule violations described in Section II below. This AWC is submitted to resolve this proceeding and on the condition that, if accepted, GEMX will not bring any future actions against MLCO based on the same alleged violations.

MLCO understands that signing this AWC is a voluntary action on its part and that the AWC will not resolve this matter unless and until it has been reviewed and accepted by both the Chief Regulatory Officer ("CRO") and then the Business Conduct Committee ("BCC"), who must decide if it is appropriate in view of the facts and allegations involved. MLCO also understands that if either the CRO or the BCC decides to decline this AWC, it will not be used against MLCO to prove that any violations occurred.

MLCO understands that if this AWC is accepted by both the CRO and the BCC, it will become a part of its permanent disciplinary records and may be considered in any future actions brought by GEMX. MLCO also understands that its experience in the securities industry and any disciplinary history may be factors which the CRO and BCC will consider in deciding whether to accept this AWC. That experience and disciplinary history includes the following:

- MLCO has been a member of GEMX since July 29, 2013, and its registration remains in effect. MLCO has no relevant disciplinary history.

I. Waiver of Procedural Rights

MLCO is advised of, and specifically and voluntarily waives, the following rights, which are granted by GEMX's disciplinary rules:

1. to have a Statement of Charges filed identifying the violations alleged in this matter;

2. to be notified of the Statement of Charges and have the opportunity to answer the allegations in writing;
3. to defend against the allegations in a hearing before a Panel consisting of a professional hearing officer and two members of the BCC and to be represented by an attorney at the hearing;
4. to have a written record of the hearing made and a written decision issued by the Panel; and
5. to appeal any such decision to GEMX's Board of Directors, then to the U.S. Securities and Exchange Commission and to a U.S. Court of Appeals.

MLCO further waives any provision of GEMX's disciplinary and other rules that may be interpreted as prohibiting any GEMX staff member from advising the CRO and BCC in their decision as to whether to accept this AWC.

II. Acceptance and Consent

Overview

FINRA's Department of Market Regulation's Options Regulation staff (the "Staff"), on behalf of GEMX, conducted a review of potentially manipulative trading by the Firm in equities and the overlying options during the period between January and March 2014, and the reasonableness of the Firm's supervisory systems and written supervisory procedures ("WSPs") to detect and prevent potential cross-product manipulation or mini-manipulation during the period between January 2014 and June 2017, later expanded to December 1, 2017 (the "Review Period"). As a result of its reviews, FINRA's Department of Enforcement ("Enforcement") determined that, during the Review Period and until the Firm implemented surveillances for mini-manipulation on December 1, 2017, the Firm had no supervisory systems or surveillances reasonably designed to ensure compliance with Exchange rules prohibiting potentially manipulative cross-product trading or mini-manipulative activity. In addition, during the Review Period and through the present, the Firm did not have reasonable WSPs with respect to the detection and prevention of potential mini-manipulation.

MLCO hereby accepts and consents, without admitting or denying the allegations, to the entry of findings by GEMX of the following acts and violations:

1. GEMX Chapter 4 (Business Conduct) incorporates by reference the rules contained in Nasdaq ISE Chapter 4, including ISE Rule 400, which requires every Member to engage in acts or practices consistent with just and equitable principles of trade, and ISE Rule 401, which requires Members to supervise persons associated with the Member as to assure compliance with the Securities Exchange Act of 1934, the Constitution or Rules of

the Exchange, and OCC rules insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof.

2. During the period between January and March 2014, Firm traders, trading on behalf of the Firm, on multiple occasions and trade dates, engaged in trading whereby they effected purchases or sales of equity securities in a Firm proprietary account, immediately followed by purchases or sales of options overlying those securities. These transactions were potentially inconsistent with just and equitable principles of trade, because they could have disrupted the market for the equity securities and the overlying equity options. Depending on the economic rationale of the Firm traders for effecting the transactions, these transactions could have constituted manipulative cross-product trading or mini-manipulation trading activity.
3. Beginning in October 2014, Staff advised the Firm that it was reviewing potential mini-manipulation activity by Firm traders. In furtherance of its reviews, Staff issued multiple subsequent correspondence to the Firm seeking information and updates regarding the Firm's surveillances and procedures to monitor for potential mini-manipulation.
4. Before and during the Review Period, notices were made available to the industry through public settlements involving mini-manipulation, securities industry conferences that addressed mini-manipulation, and FINRA Priorities Letters in 2012 and 2013, which highlighted mini-manipulation as an area of FINRA's focus. Despite the foregoing and the multiple letters sent by Staff to the Firm beginning in October 2014, during the Review Period, the Firm had no supervisory systems or surveillances reasonably designed to ensure compliance with Exchange rules prohibiting manipulative cross-product trading or mini-manipulative activity. In addition, during the Review Period and through the present, the Firm had no WSPs with respect to mini-manipulation.
5. The Firm's conduct described in paragraph 4 above violated GEMX Chapter 4 in connection with ISE Rules 400 and 401.

MLCO hereby consents to GEMX imposing on it, at a maximum, the following sanction:

A censure; a fine in the amount of \$125,000, of which \$15,625 shall be paid to GEMX;¹ and an undertaking to revise the Firm's WSPs with respect to mini-manipulation, as described in paragraph 4 above. Within 30 business days of the date of the Notice of Acceptance of this AWC, a registered principal of the Firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following

¹ The balance of the fine shall be paid to the self-regulatory organizations referenced in the following paragraph.

information: (1) a reference to this matter; (2) a representation that the Firm has revised its WSPs to address the deficiencies described in paragraph 4; and (3) the date the revised procedures were implemented.

Additionally, acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: (i) BOX Options Exchange LLC; (ii) The NASDAQ Options Market LLC; (iii) Nasdaq ISE, LLC; (iv) Nasdaq PHLX LLC; (v) Miami International Securities Exchange, LLC; (vi) NYSE Arca, Inc.; and (vii) NYSE American LLC.

III. Corrective Action and Other Matters

1. If this AWC is accepted by the BCC, GEMX will take no further action against MLCO respecting the matters that are the subject of this AWC. If this AWC is rejected by the BCC, the matter shall proceed as though the letter had not been submitted. The BCC's decision to accept or reject this AWC shall be final, and MLCO may not seek review thereof.
2. MLCO may attach to this AWC any statement it wishes to have the CRO and BCC consider in deciding whether to accept it, although it may not deny the existence of the violations or make any other statements inconsistent with the AWC.
3. MLCO agrees to pay the monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payment is due and payable, and has attached the election form showing the method by which it proposes to pay any fine imposed.
4. MLCO understands that GEMX will make such public announcement concerning this agreement and the subject matter thereof as GEMX may deem appropriate.

MLCO certifies that it has read and understands all of the provisions of this AWC and has been given full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind has been made to induce MLCO to submit it.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: J. David Montague
Name: J. David Montague
Title: Associate General Counsel
Date: 7/12/2018

THIS SECTION RESERVED FOR EXCHANGE USE ONLY

Decision of GEMX Chief Regulatory Officer: Accept Decline

Sept. 14, 2018
Date


John Zecca
Chief Regulatory Officer

Decision of GEMX Business Conduct Committee: Accept Decline

Sept. 14, 2018
Date


By John Zecca
For the Business Conduct Committee

LETTER OF ACCEPTANCE, WAIVER AND CONSENT
FINRA Matter No. 20140411279

Schedule A
Election of Payment Method

Merrill Lynch, Pierce, Fenner & Smith Incorporated proposes to pay the fine as described in Part II, *Acceptance and Consent*, of the AWC by:

- Automatic Deduction from the Firm's Options Clearing Corporation account;
- A Firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan² (if agreed between MLCO and the Exchange staff, and approved by the BCC).

If the Firm proposes to pay the fine by a Firm check or a bank check for the full amount, or by wire transfer for the full amount, the Exchange must receive payment of the fine within 30 days of the AWC becoming final.

If the Exchange does not receive the Firm check or a bank check for the full amount, or by wire transfer for the full amount, within 30 days of the AWC becoming final, the Exchange will deduct the fine from the firm's OCC account.

The Exchange will notify the Firm by separate letter when the AWC is accepted and becomes final.

Respectfully submitted,

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: J. David Montague

Name: J. David Montague

Title: Associate General Counsel

Date: 7/12/2018

² The installment payment plan is only available for a fine of \$50,000 or more. Certain interest payments, minimum monthly payments and other requirements may apply. The Firm should discuss this fully with counsel before requesting this method of payment.