

**NASDAQ OMX BX, INC.  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: KCG Americas LLC  
Mr. Matthew S. Levine  
Chief Compliance Officer  
545 Washington Blvd.  
Jersey City, NJ 07310**

**FROM: The NASDAQ OMX BX, Inc. (the "Exchange")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Market Regulation  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: October 29, 2014**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110300883-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **October 28, 2014** by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to Nasdaq OMX BX Rule 9216. 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 the Exchange 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 will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by the Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

KCG Americas LLC  
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If you have any questions concerning this matter, please call Theresa Clarkson, Senior Counsel,  
at (212) 858-4326.



Eric S. Brown  
Chief Counsel, Legal Section  
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq OMX BX, Inc.

Enclosure

FINRA District 9 – New Jersey  
Michael Solomon  
Senior Vice President and Regional Director  
(Via e-mail)

**NASDAQ OMX BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20110300883 - 01**

TO: NASDAQ OMX BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: KCG Americas LLC, Respondent  
Broker-Dealer  
CRD No. 149823

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.<sup>1</sup> (the "Exchange")<sup>2</sup> and Rule 9216 of The Exchange Code of Procedure, KCG Americas LLC ("NITE" 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 Exchange will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. NITE 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 Exchange, or to which the Exchange 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 Exchange:

**BACKGROUND**

Knight Capital Americas, L.P. became a member of the Exchange on July 12, 2009, and thereafter a Participant of the Boston Options Exchange ("BOX")<sup>3</sup>, when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX ("The Equities Rules") and the Grandfathered Rules of the Exchange.

<sup>2</sup> Please note, for purposes of this AWC, "Exchange" includes NASDAQ OMX BX, Inc.

<sup>3</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

Knight Execution & Clearing Services, LLC became an Exchange Member on September 18, 2009 and thereafter a Participant of the BOX, when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

Knight Capital Americas, L.P. and Knight Clearing & Execution Services, LLC subsequently became one entity titled Knight Capital Americas, LLC, effective June 30, 2012, and this one entity was renamed KCG Americas LLC on January 1, 2014.

### **RELEVANT DISCIPLINARY HISTORY**

NITE does not have any relevant disciplinary history.

### **SUMMARY**

In connection with matter 20110300883, FINRA staff, on behalf of BOX, conducted a review of the Firm's order entry activities during the period between August 2011 and January 2012 ("review period") for compliance with exchange rules, including Chapter III, Sections 1 and 2, Chapter V, Sections 1 and 15, and Chapter VIII, Section 1 of the BOX Trading Rules and BOX Regulatory Circular 2011-11;<sup>4</sup> and Section 17(a) of the Securities Exchange Act of 1934, as amended (the "Act") and Rule 17a-3 promulgated thereunder.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Marking of Options Orders**

1. During the review period, Exchange rules required that, when accepting an order, a member must obtain and record an appropriate code to identify the origin of the order (e.g., "Customer," "Professional Customer," "Broker-Dealer," "Market Maker").
2. During the review period, Exchange Participants were required to comply with BOX Regulation Regulatory Circular 2011-11 dated September 15, 2011 (effective October 3, 2011), which defined "Professional Customer"<sup>5</sup> and required all such orders to be appropriately marked by all BOX Participants in accordance with previously provided technical specifications.
3. The accurate entry of order origin codes ensures the integrity of the Exchange's audit trail, and the improper entry of origin codes can also impact the amount of execution fees owed to the Exchange.

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<sup>4</sup> All circulars are codified as rules on BOX, as specified within Chapter II, Section 7(c) of the BOX Trading Rules.

<sup>5</sup> "Professional Customer" was defined as "any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)."

4. During the period from October 2011 through January 2012, NITE erroneously marked a total of approximately 66,752 options contracts with an account type designation of "Customer," although the orders in fact had been entered for the account of a "Professional Customer." NITE self-detected and corrected the problem causing the improper account designation but failed to report the problem to BOX or FINRA.
5. The conduct described in paragraph four constitutes violations of Chapter V, Sections 1 and 15 and Chapter VIII, Section 1 of the BOX Trading Rules; and Section 17(a) of the Act and Rule 17a-3 promulgated thereunder.

#### Supervision

6. As referenced previously, all Exchange Regulatory Circulars are codified as rules on BOX, as specified within Chapter II, Section 7(c) of the BOX Trading Rules.
  7. During the review period, NITE failed to identify and comply with BOX Regulatory Circular 2011-11, and failed to update the Firm's systems to implement the BOX "Professional Customer" account type within the requisite time period.
  8. The conduct described in paragraph seven constitutes a violation of Chapter III, Sections 1 and 2, and Chapter V, Section 1(b)(iv) of the BOX Trading Rules.
- B. NITE consents to the imposition of the following sanction:

**A censure and a total fine of \$20,000.**

In accepting this AWC, BOX considered NITE's self-detection of the miscoding issues and subsequent remedial measures implemented by the Firm.

NITE agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. NITE has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

NITE specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

NITE specifically and voluntarily waives the following rights granted under the Rules of the Exchange:

- A. To have a Formal Complaint issued specifying the allegations against the Firm in

writing;

- 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 Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, NITE specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

NITE further specifically and voluntarily waives any right to claim that a person violated the ex parte 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**

NITE 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 FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Exchange Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against NITE and
- C. If accepted:
  - 1. This AWC will become part of NITE's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the Firms;

2. This AWC will be made available through Nasdaq's public disclosure program in response to public inquiries about NITE's disciplinary record;
  3. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  4. NITE 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects NITE's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. NITE may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. NITE understands that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by the Nasdaq, nor does it reflect the views of the Nasdaq or its staff.

The undersigned(s), on behalf of NITE, certifies that a person duly authorized to act on their 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 NITE to submit it.

October 13, 2014  
Date

Respondent  
KCG Americas LLC

By: 

Name: Matthew S. Levine

Title: Chief Compliance Officer

Reviewed by:

\_\_\_\_\_  
Counsel for Respondent

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Accepted by Nasdaq OMX BX, Inc.:

10/28/2014  
Date



Eric S. Brown  
Chief Counsel  
Department of Market Regulation  
Signed on behalf of Nasdaq OMX BX, Inc.,  
by delegated authority from the Director of  
ODA



**ELECTION OF PAYMENT FORM**

NITE intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.<sup>6</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
KCG Americas LLC

October 13, 2014  
Date

By:   
Name: Matthew S. Levine  
Title: Chief Compliance Officer

<sup>6</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.