

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

**Certified, Return Receipt Requested**

**TO: Clearpool Execution Services, LLC  
Mr. Peter Discenza  
Chief Compliance Officer  
17 State Street  
38th Floor  
New York, NY 10004**

**FROM: NASDAQ BX, Inc. (the "Exchange")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
15200 Omega Drive, Suite 300  
Rockville, MD 20850**

**DATE: July 10, 2019**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 2014042373806**

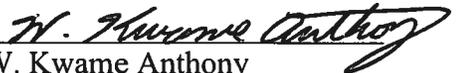
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **July 10, 2019** by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to NASDAQ BX Rule 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.

Clearpool Execution Services, LLC  
Page 2

If you have any questions concerning this matter, please contact W. Kwame Anthony, Senior Counsel, at (646) 430-7030, or Elyse D. Kovar, Senior Counsel, at (646) 430-7050.

  
W. Kwame Anthony  
Elyse D. Kovar  
Senior Counsel  
Department of Enforcement, FINRA

Signed on behalf of NASDAQ BX, Inc.

Enclosure

FINRA District 10 – New York  
William St. Louis  
Senior Vice President and Regional Director  
(Via email)

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**NASDAQ BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2014042373806**

TO: Nasdaq BX, Inc.  
c/o Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Clearpool Execution Services, LLC, Respondent  
Broker-Dealer  
CRD No. 168490

Pursuant to Rule 9216 of the Nasdaq BX, Inc. ("BX" or the "Exchange") Code of Procedure, Clearpool Execution Services, LLC ("Clearpool" 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, BX 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 BX, or to which BX 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 BX:

**BACKGROUND**

The firm is a broker-dealer headquartered in New York, New York. The firm has 37 registered representatives, provides electronic trading solutions, and serves as an independent agency broker-dealer. It has been a FINRA member since April 8, 2014, and a BX member since June 13, 2014, and its registrations remain in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

The firm does not have relevant disciplinary history.

**SUMMARY**

In Matter No. 20140423738, FINRA's Department of Market Regulation, Quality of Markets team (the "Staff"), on behalf of BX and ten other self-regulatory organizations,<sup>1</sup> identified and reviewed potentially manipulative trading activity by a foreign,

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<sup>1</sup> The ten self-regulatory organizations include FINRA, The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., NYSE Arca, Inc., the New York Stock Exchange LLC, and NYSE American LLC.

unregistered proprietary trading fund (“Fund X”)<sup>2</sup> that was an affiliate and customer of Clearpool. From July 2014 to September 2016, Clearpool executed Fund X’s trades and introduced its order flow to other broker-dealers for execution. Fund X traded through more than 1,000 foreign, unregistered individual traders, and triggered thousands of surveillance alerts at FINRA and multiple exchanges for potential manipulative trading known as “layering” and “spoofing.” Despite being on notice of potentially manipulative trading by Fund X, Clearpool terminated the trading access of hundreds of individual traders, but continued to execute and introduce orders from Fund X.

As a result, from July 2014 through September 2016, Clearpool failed to establish and maintain a system of supervision that was reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable BX rules in violation of BX Rules 3010 and 2110.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Layering and Spoofing**

1. Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.
2. Similar to layering, spoofing is a form of manipulative trading which involves a market participant placing non-bona fide orders, generally inside the existing national best bid or offer, with the intention of briefly triggering some type of response from another market participant, followed by cancellation of the non-bona fide order, and the entry of an order on the other side of the market.

#### **Rules Governing Clearpool’s Supervisory Obligations**

3. BX Rule 3010 requires member firms to establish, maintain, and enforce a supervisory system and written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and BX rules. BX Rule 3010 further provides that BX members are required to comply with NASD Rule 3010 as if NASD Rule 3010

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<sup>2</sup> The fund is anonymous in this AWC since it is not a party to this AWC.

were part of BX's Rules.<sup>3</sup>

4. BX Rule 2110 requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.

#### **Clearpool's Supervisory Deficiencies with Respect to Layering**

5. Clearpool was formed in or about May 2013. At that time, the two long-time business partners that previously formed Fund X, provided Fund X's investment, and owned 100 percent of Fund X's investment manager, also owned 76 percent of Clearpool (the "Original Controlling Owners"). Over time, however, the other owners of Clearpool increased their ownership interest in Clearpool while the ownership interest of the Original Controlling Owners decreased. In September 2016, the last of a series of transactions occurred, extinguishing the remaining ownership of the Original Controlling Owners in Clearpool.
6. Prior to Clearpool's commencement of operations, Fund X initially traded through an unaffiliated broker-dealer. In or about June 2014, Fund X opened an account with Clearpool, becoming one of Clearpool's first customers. In July 2014, Clearpool began providing market access to Fund X and introducing Fund X's order flow to unaffiliated broker-dealers. Fund X accounted for the majority of Clearpool's revenue during the period of 2014 through 2015.
7. When Clearpool began executing and introducing orders by Fund X, Clearpool was on notice of regulators' concerns regarding potentially manipulative trading by foreign traders who traded for Fund X's predecessor, another foreign proprietary trading firm owned by the Original Controlling Owners. In August 2014, FINRA filed a complaint against an unaffiliated broker-dealer for supervisory violations that included trading activity by Fund X's predecessor. The same day, a Clearpool senior officer circulated a copy of the complaint to Clearpool's owners. Two months prior to FINRA's complaint, the SEC had charged the same unaffiliated broker-dealer with failing to adopt and implement controls that were reasonably designed to prevent manipulative layering, including by traders of Fund X's predecessor. Later, throughout 2014 and 2015, the SEC, FINRA, and multiple exchanges collectively fined the unaffiliated broker-dealer over \$4.2 million for, among other things, failing to prevent and detect layering and spoofing by traders from the predecessor of Fund X. In addition, in February 2016, FINRA and multiple exchanges censured and imposed a \$1 million fine on a second unaffiliated broker-dealer that had provided market access to the predecessor of Fund X for, among other things, failing to supervise to prevent and detect layering. Despite being on notice of the foregoing, Clearpool continued to execute and introduce Fund X's orders.
8. From the time that Clearpool began to provide market access to Fund X, Clearpool was

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<sup>3</sup> Like BX Rule 3010, NASD Rule 3010 (FINRA Rule 3110, as of December 1, 2014) requires members to establish and maintain a supervisory system, including WSPs, which is reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable SRO rules.

obligated to have in place reasonable supervisory systems and controls to ensure that its market access business complied with applicable securities laws, regulations, and BX rules. Clearpool instituted a supervisory system intended to achieve compliance, but Clearpool's supervisory deficiencies described herein, and the firm's termination of trading access to individual Fund X traders rather than Fund X itself, allowed the potentially violative trading to continue. As a result, beginning in approximately July 2014, and continuing through September 2016, Fund X's trading through Clearpool generated thousands of layering and other manipulation alerts at FINRA and multiple exchanges, and generated thousands of alerts in Clearpool's proprietary surveillance systems.

9. Specifically, from approximately July 2014 through January 2015, Clearpool used a proprietary system to perform certain pre-trade checks designed to block potentially manipulative orders and to generate exception reports that identified potentially manipulative trading on the day after a trading day (T+1). Despite the pre-trade checks, Clearpool's exception reports detected significant numbers of indicators for potential manipulation. Clearpool's reviews of the exception reports were not reasonably designed to detect and prevent manipulative activity. No matter how many alerts were generated on a report, Clearpool only reviewed the exceptions relating to the five securities with the most trading events and relating to the five securities with the lowest average daily trading volume. Clearpool terminated individual traders' ability to trade for Fund X, but allowed hundreds of other traders with Fund X to continue trading through Clearpool. Fund X continued to generate thousands of layering and other manipulation alerts at FINRA, multiple exchanges, and in Clearpool's proprietary surveillance systems.
10. Clearpool's written procedures were also deficient in that they failed to explain how to select the sample to be reviewed and how to review the exception reports, such as how to identify manipulative trading.
11. Beginning in February 2015, Clearpool replaced its first system of pre-trade checks with a real-time surveillance system. In June 2015, Clearpool implemented a feature in its real-time surveillance system that automatically imposed trading limitations or blocks on a trader once the trader's activity had crossed pre-set scoring thresholds for suspicious activity. Clearpool, however, set these scoring thresholds at levels that did not prevent further problematic trading, as Fund X continued generating layering surveillance alerts at FINRA, multiple equity exchanges, and even in Clearpool's systems. In or about March 2016, Clearpool modified its real-time surveillance scoring thresholds, and the number of exceptions decreased. Yet, Clearpool was on notice that Fund X's trading continued to be the subject of regulators' concerns through mid-2016.
12. In addition to the disciplinary actions referred to in paragraph 7 above, Clearpool knew about ongoing potentially violative behavior by Fund X through its receipt of regulatory inquiries about Fund X from FINRA and multiple exchanges. Yet, Clearpool continued to execute Fund X's trades, which resulted in potential layering activity from July 2014 through September 2016.

13. For the reasons set forth in paragraphs 8–12, from July 2014 to September 2016, Clearpool failed to establish and maintain a system of supervision that was reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable BX rules in violation of BX Rules 3010 and 2110.

- B. The firm also consents to the imposition of a censure and total fine of \$473,000, of which \$43,000 is payable to BX. The balance is paid to the following self-regulatory organizations: The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., FINRA, NYSE Arca, Inc., the New York Stock Exchange LLC, and NYSE American LLC. Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and these self-regulatory organizations.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. It has submitted a Payment Information form showing the method by which it proposes to 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 sanctions imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under BX's 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 BX Review Council 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, the BX Review Council, or any member of the BX 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.

The firm 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

The firm 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 Enforcement and the BX Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to BX 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. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by BX or any other regulator against the firm;
  - 2. BX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3; and
  - 3. 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 BX, or to which BX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which BX is not a party.
- D. 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. This Statement does not constitute factual or legal findings by BX, nor does it reflect the views of BX or its staff.

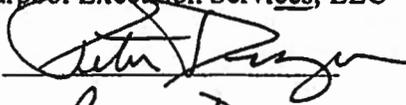
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat,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

JUNE 4, 2019

Date

Respondent

~~Clearpool Execution Services, LLC~~

By: 

Name: PETER DISCENZA

Title: CCO

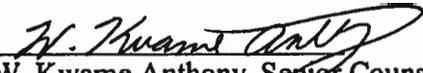
Reviewed by:



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July 10, 2019  
Date

  
W. Kwame Anthony, Senior Counsel  
Elyse D. Kovar, Senior Counsel  
Department of Enforcement

Signed on behalf of BX, by delegated authority from the Director of ODA

**PAYMENT INFORMATION**

The fine amount will be reflected on an upcoming invoice and will be direct debited from the account for your firm that BX currently has on file. ***Please DO NOT submit payment at this time.***

Please inform your finance or applicable department of this forthcoming debit.

If you would like to arrange for an alternative method of payment, please enter the billing contact information below and BX's Billing Department will contact you. ***Otherwise, please leave the following information blank.***

Billing Contact Name: \_\_\_\_\_

Billing Contact Address: \_\_\_\_\_

Billing Contact Email: \_\_\_\_\_

Billing Contact Phone Number: \_\_\_\_\_

Respectfully submitted,

Respondent

Clearpool Execution Services, LLC

JUNE 4, 2019  
Date

By: 

Name: PETER DISCENZA

Title: CCO