

**NASDAQ PHLX LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Sumo Capital, LLC  
Mr. Daniel Gutman  
Principal Counsel  
440 South LaSalle Street  
Suite 2101  
Chicago, IL 60605**

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

**DATE: May 9, 2018**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20150467547-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **May 9, 2018** by the PHLX Review Council’s Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the PHLX Review Council, pursuant to PHLX 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 PHLX 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.

Sumo Capital, LLC  
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If you have any questions concerning this matter, please contact Renee Barnett, Senior Counsel, at (240) 386-6107.



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Gerard P. Finn  
Senior Director  
Department of Enforcement, FINRA  
Signed on behalf of PHLX

Enclosure

FINRA District 8 – Chicago  
Edward Wegener  
Senior Vice President and Regional Director  
(Via email)

**NASDAQ PHLX LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20150467547-01**

**TO: Nasdaq PHLX LLC**  
**c/o Department of Enforcement**  
**Financial Industry Regulatory Authority ("FINRA")**

**RE: Sumo Capital, LLC, Respondent**  
**Member Firm**  
**CRD No. 146310**

Pursuant to Rule 9216 of Nasdaq PHLX LLC ("PHLX") Code of Procedure, Sumo Capital, LLC (the "firm" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("A WC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, PHLX will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent 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 PHLX, or to which PHLX 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 PHLX:**

**BACKGROUND**

The firm has been a member of PHLX since February 3, 2009, and its registration remains in effect. The firm has no relevant disciplinary history.

**SUMMARY**

In STAR No. 20150467547, the staff of the Options Regulation team of the Department of Market Regulation, on behalf of PHLX, reviewed the firm's quoting and message activity during the period December 3, 2013 through October 2015 (the "review period"). More specifically, FINRA staff reviewed the firm's compliance with requirements of SEC Rule 15c3-5 of the Securities Exchange Act of 1934 ("SEC Rule 15c3-5"), as well as PHLX rules, pertaining to establishing a reasonable supervisory system, including written supervisory procedures, designed to appropriately manage the financial, regulatory, and other risks of its business activity during the review period. FINRA staff also reviewed the firm's compliance with SEC Rule 15c3-5 and supervision on behalf of Cboe EDGX Exchange, Inc. and Cboe BZX Exchange, Inc. (collectively, the "Exchanges").

As detailed below, the firm had inadequate risk management controls and supervisory procedures pertaining to market access with respect to detecting and preventing certain

unintentional messaging activity, including quoting activity, and erroneous quotes or orders on PHLX and elsewhere, contrary to the requirements of SEC Rule 15c3-5(c)(1)(ii) and PHLX Rules 748 and 707 concerning supervision and just and equitable principles of trade.

## **FACTS AND VIOLATIVE CONDUCT**

### **Applicable Rules**

1. SEC Rule 15c3-5 is designed to reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various markets access arrangement, by requiring effective financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis.
2. SEC Rule 15c3-5(b) requires, among other things, a broker-dealer with market access, as defined by that rule, to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial regulatory, and other risks” of its market access activity and to preserve a copy of such supervisory procedures and a written description of its risk management controls as part of its books and records.
3. SEC Rule 15c3-5(c)(1)(ii) further provides that the risk management controls and supervisory procedures required by Rule 15c3-5(b) must be reasonably designed to prevent “[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.”
4. PHLX Rule 748 requires each member to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of businesses in which the member organization engages and the written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect violations of the applicable securities laws and regulations, and rules of PHLX.
5. PHLX Rule 707 requires each member to avoid engaging in conduct inconsistent with just and equitable principles of trade.

### **The Firm’s Deficient Market Access and Supervision Procedures**

6. During the review period, the firm failed to have proper supervision in place because the firm’s risk management controls for market access and supervisory system, including written supervisory procedures, were not reasonably designed to comply with SEC Rule 15c3-5 with respect to the detection and prevention of potentially erroneous, duplicative and/or unintentional order or quote activity.

7. During the review period, the firm sent unintentional quotes to PHLX over a short period of time for certain option series and did not have reasonable controls in place to prevent this type of message activity from being sent to the Exchanges. The firm also lacked reasonable controls in place to prevent the entry of unintentional quotations with prices significantly away from the national best bid or offer for certain options series. In addition, controls put in place during the review period were not adequately documented.
8. In addition, during the review period, the firm did not have reasonable supervisory procedures in place to review for instances where unintentional quotes were sent with prices significantly away from the national best bid or offer. The firm also lacked supervisory systems or procedures in place to ensure that any controls the firm was using were activated on all of its systems and ports sending quotes to the Exchanges.
9. For the foregoing reasons, the firm's risk management controls and supervisory procedures during the review period were not reasonably designed to comply with SEC Rule 15c3-5(c)(1)(ii). Accordingly, the firm violated SEC Rule 15c3-5.
10. In addition, the firm violated PHLX Rules 748 and 707.

**B. Respondent also consents to the imposition of the following sanctions:**

A censure, a fine of \$50,000 (to be paid jointly to the Exchanges, of which \$10,000 shall be paid to PHLX), and an undertaking to update the firm's risk management controls for market access and written supervisory procedures with respect to the areas described in paragraphs I.A. above. Within 30 business days 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 email from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (i) a reference to this matter; (ii) a representation that the firm has addressed and corrected the deficiencies described in paragraphs I.A., above; and (iii) the date the deficient procedures were addressed and corrected by the firm. Upon written request showing good cause, FINRA staff, on behalf of PHLX, may extend any of the procedural dates set forth herein.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under PHLX'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 PHLX Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the PHLX Review Council, or any member of the PHLX 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.

Respondent 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

Respondent 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 PHLX Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to PHLX 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 Respondent; and

**C. If accepted:**

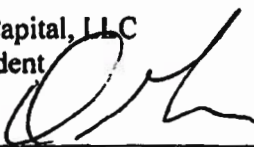
- 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by PHLX or any other regulator against the Respondent;**
- 2. PHLX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with PHLX Rule 8310 and IM-8310-3; and**
- 3. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of PHLX, or to which PHLX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which PHLX is not a party.**

**D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 PHLX, nor does it reflect the views of PHLX 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 the firm 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.

4/25/18  
Date

Sumo Capital, LLC  
Respondent

By: 

Print Name: DANIEL Butman

Title: Principal


Reviewed by:

\_\_\_\_\_  
Counsel for Respondent  
Firm Name

Accepted by PHLX:

5/9/18  
Date

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

  
Gerard Finn  
Senior Director  
Department of Enforcement

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



### ELECTION OF PAYMENT FORM

The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

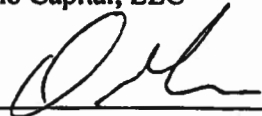
- A firm check or bank check for the full amount  
 Wire transfer

Respectfully submitted,

Respondent

Sumo Capital, LLC

4/25/12  
Date

By: 

Name: DANIEL GUTMAN

Title: Principal

### Billing and Payment Contact

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. **Please DO NOT submit payment until Nasdaq has sent you an invoice.**

Billing Contact Name: DANIEL GUTMAN

Billing Contact Address: 440 S LaSalle Suite 2101

Billing Contact Email: dgutman@sumocap.com

Billing Contact Phone Number: 312 724-7346