

**NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053210204**

TO: Nasdaq Phlx LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: Sagetrader, LLC, Respondent
Member Firm
CRD No. 137862

Pursuant to Rule 9216 of Nasdaq Phlx LLC (“Phlx”) Code of Procedure,¹ Sagetrader, LLC (the “Firm” or “Respondent”) 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, 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 became a FINRA member on May 19, 2006, and a Phlx member on July 3, 2017. The Firm is headquartered in San Francisco, CA, maintains one other branch office, and employs eight registered persons. The Firm has no relevant disciplinary history.

SUMMARY

Sagetrader failed to reasonably supervise for potentially manipulative trading on its platforms. Since becoming a Phlx member on July 3, 2017 through December 31, 2019 (the “Relevant Period”), Sagetrader provided routing and execution services to domestic and foreign entities, which were comprised of hundreds to thousands of individual day traders. The automated surveillance system that the Firm used to detect potentially manipulative trading such as layering, spoofing, wash trades and marking the close did not surveil for marking the open until October 2018. In addition, the Firm’s review of the surveillance alerts was unreasonable. Sagetrader had limited staff and other resources to

¹ Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange’s jurisdiction.

sufficiently review and resolve alerts for potentially manipulative trading, which, by 2018, totaled more than 500,000 alerts per year. Further, the Firm's guidance to and supervision of the assigned reviewers was unreasonable.

In addition, Sagetrader failed to properly register 11 individuals with Phlx, and failed to have reasonably designed written supervisory procedures ("WSPs") to achieve compliance with Phlx registration requirements during the Relevant Period.

As a result, Sagetrader violated Phlx Rules 748, 707, 611(a), 612(a), 613(a), 1210, 1220(a)(2), 1220(b)(2), and Phlx General 4, Sections 1.1210, 1.1220(a)(2) and 1.1220(b)(2).

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from surveillance conducted by FINRA.

Sagetrader's Business Model

2. During the Relevant Period, Sagetrader provided routing and execution services to domestic and foreign customers, which were comprised of hundreds to thousands of day traders. The Firm's customers used Sagetrader's market participant identifiers (MPIDs) to route orders to an alternative trading system and to exchanges.

Sagetrader Onboarded New Customers that Generated Red Flags for Potentially Manipulative Trading

3. From 2013 through 2017, Sagetrader onboarded an increasing number of customers, which caused a corresponding increase in trading activity through the Firm. Trading on the Firm's platform increased from more than 67 million orders per year in 2015 to more than 200 million orders per year in 2017. The number of shares traded by the Firm's customers increased from roughly 3.7 billion shares per year in 2015 to more than 18.9 billion shares per year in 2017.
4. The trading activity conducted by some of these customers generated "red flags" for potentially manipulative trading. More specifically, the Firm's automated surveillance of customers' trading generated hundreds of thousands of internal surveillance alerts for potentially manipulative trading. Since July 2017, approximately 67 percent of those internal alerts were generated by three Firm customers that each included hundreds of foreign-based day traders. The Firm classified one of these customers as "high risk." This customer generated more than 125,000 internal surveillance alerts for potentially manipulative trading from July 2017 until mid-May 2018, when it stopped using the Firm for routing and execution services.

Sagetrader Failed to Reasonably Supervise for Potentially Manipulative Trading

5. Phlx Rule 748, now General 9, Section 20, requires members and member organizations to establish, maintain, and enforce WSPs, and a system for applying

such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The WSPs and the system for applying such procedures shall reasonably be designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange. The duty to supervise under the above rules includes the responsibility to reasonably investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation. A violation of Phlx Rule 748 is also a violation of Phlx Rule 707, now General 9, Section 1(c), which requires members, member organizations, and persons associated with or employed by a member or member organization to not engage in conduct inconsistent with just and equitable principles of trade.²

6. Sagetrader's supervisory system, including WSPs, for potential manipulative trading on its platforms was not reasonable in several respects.
7. **First**, the Firm's automated surveillance generated post-trade alerts for potential spoofing, layering, wash trades, and marking the close throughout the Relevant Period, but its automated surveillance did not surveil for marking the open until October 2018.
8. **Second**, Sagetrader's review of the alerts was not reasonable during the Relevant Period. For example, the Firm had limited staff and other resources to sufficiently conduct the initial review and analysis of the alerts, which, by 2018, totaled more than 500,000 alerts per year.
9. Further, the Firm's first-level reviewers were permitted to close surveillance alerts for potentially manipulative trading without any oversight or supervision by a Firm principal. One of these assigned reviewers, who was responsible for reviewing approximately 73 percent of the Firm's alerts from July 2017 through June 2018, and 100 percent of the alerts thereafter, did not have sufficient experience or training in identifying potentially manipulative trading when he was hired.
10. **Third**, Sagetrader's WSPs failed to provide reasonable guidance on how to review for potentially manipulative trading. The Firm's WSPs directed reviewers to seek customer explanations for alerts "of concern." Based on their analysis, the reviewers could close the alert if it did not "appear to be egregious," but were supposed to escalate "significant alerts" to the alert review committee. There was no guidance as to what constituted a "significant" alert that required escalation. Nor was there any guidance as to what rendered alerts "of concern" or how to determine whether an alert appeared to be egregious.
11. **Fourth**, the Firm's supervisory system was unreasonable, because while the Firm focused on resolving individual alerts generated by each separate trader at each

² As of February 3, 2020, Phlx Rules 748 and 707 were renumbered as Phlx General 9, Sections 20 and 1(c), respectively.

customer, and terminated some individual traders, the Firm did not have a system in place to consider the total alerts generated by multiple traders at the same customer in order to evaluate the aggregate regulatory risk presented by a customer's overall trading activity.

12. *Fifth*, the Firm had identified one customer during the Relevant Period as "high risk," which, according to the Firm, required "enhanced" surveillance. But the Firm had no system or procedures for conducting "enhanced" surveillance and, in fact, did not do so.
13. *Finally*, the Firm did not routinely document the alert reviews it conducted, and for the alert reviews that it did document, the documentation was not always sufficient.
14. Therefore, SageTrader violated Phlx Rules 748 and 707.

SageTrader Did Not Comply With Phlx Registration Requirements

15. Phlx General 4, Section 1.1210 and its predecessors, Phlx Rules 1210, 611(a) and 613(a), provide that each person engaged in the securities business of a member shall be registered with Phlx as a representative or principal in each category of registration appropriate to his or her functions and responsibilities. A principal, pursuant to Phlx General 4, Section 1.1220(a)(1) and its predecessors, Phlx Rules 1220(a)(1) and 611(b), includes those actively engaged in the management of the member's securities business, which includes those having managerial decision-making authority with respect to the member's securities business and management-level responsibilities for supervising any aspect of such business. Such principals shall be required to register as a general securities principal, pursuant to Phlx General 4, Section 1.1220(a)(2) and its predecessors, Phlx Rules 1220(a)(2) and 612(a), unless their functions are addressed by another principal registration category not applicable in this matter.³
16. In addition, Phlx General 4, Section 1.1220(b)(2) and its predecessors, Phlx Rules 1220(b)(2) and 613(a), require a representative to register as a general securities representative, unless their functions are addressed by another representative registration category not applicable in this matter.
17. During the Relevant Period, the Firm did not register five employees as general securities principals and general securities representatives. The Firm also did not register one other employee as a general securities principal and five other employees as general securities representatives during the Relevant Period. Therefore, the Firm violated Phlx General 4, Sections 1.1210, 1.1220(a)(2) and 1.1220(b)(2), and Phlx rules 1210, 1220(a)(2), 1220(b)(2), 611(a), 612(a) and 613(a).

³ Phlx General 4, Section 1 superseded the Phlx 1200 rule series on June 7, 2019. The Phlx 1200 rule series superseded Phlx Rules 611-613 on Oct. 1, 2018.

18. The Firm also failed to establish, maintain, and enforce WSPs, and a system for applying such procedures, to prevent and detect, insofar as practicable, violations of Phlx registration requirements. Specifically, the Firm had no supervisory system or WSPs in place to prevent and detect, insofar as practicable, violations of Phlx registration and qualification requirements. Therefore, the Firm violated Phlx Rules 748 and 707.

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

1. A censure;
2. A \$775,000 fine, of which \$89,583.33 shall be paid to Phlx;⁴ and
3. An undertaking to review and revise the Firm's supervisory system, including its WSPs, with respect to the findings described above concerning the Firm's supervision for potentially manipulative trading by customers and compliance with Phlx registration requirements. Within 90 business days of the notice of acceptance of this AWC, a registered principal of the Respondent shall submit to Compliance Assistant, FINRA Department of Enforcement, 15200 Omega Drive, Third Floor, Rockville, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to EnforcementNotice@FINRA.org, providing the following information: (i) a reference to this Matter No; (ii) a representation that the Firm has revised its supervisory system, including WSPs, to address the above findings in this matter concerning the Firm's supervision for potentially manipulative trading by customers and compliance with Phlx registration requirements; and, (iii) the date(s) the updates to the Firm's supervisory system and WSPs were implemented and registration deficiencies of Firm personnel were corrected.

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between BYX, BZX, EDGA, EDGX, FINRA, Nasdaq, BX, and NYSE Arca.

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

⁴ The remainder will be paid to Cboe BYX Exchange, Inc (BYX); Cboe BZX Exchange, Inc. (BZX); Cboe EDGA Exchange, Inc. (EDGA); Cboe EDGX Exchange, Inc. (EDGX); FINRA; The Nasdaq Stock Market LLC (Nasdaq); Nasdaq BX, Inc. (BX); and NYSE Arca, Inc. (NYSE Arca).

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 Exchange 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 Exchange Review Council, or any member of the Exchange 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 Exchange 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.

June 23, 2022

Date

Sagetrader, LLC

Respondent

By: Doug Engmann _____

Print Name: Doug Engmann _____

Title: Principal Executive Officer _____

Reviewed by:

Susan Light _____

Susan Light
Counsel for Respondent
Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, NY 10020-1605

Accepted by Phlx:

July 20, 2022

Date

Dawn E. Faris _____

Dawn E. Faris
Senior Counsel
Department of Enforcement

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