

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

**Certified, Return Receipt Requested**

TO: **Wolverine Execution Services, LLC**  
**Ms. Judy Kula**  
**Chief Financial Officer**  
**175 W. Jackson Blvd.**  
**Suite 200**  
**Chicago, IL 60604**

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: December 22, 2014

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20120341223-02

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **December 22, 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.

Wolverine Execution Services, LLC  
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If you have any questions concerning this matter, please call Elyse D. Kovar, Senior Counsel,  
at (646) 430-7050.

  
Robert A. Marchman  
Executive Vice President, Legal Section  
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq OMX BX, Inc.

Enclosure

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

David L. Cavicke, Esq.  
Chief Legal Officer  
Wolverine Execution Services, LLC  
175 West Jackson Blvd., Suite 200  
Chicago, IL 60604

**NASDAQ OMX BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20120341223-02**

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

RE: Wolverine Execution Services, LLC, Respondent  
Broker-Dealer  
CRD No. 120719

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,<sup>3</sup> Wolverine Execution Services, LLC ("WEXX" 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. WEXX 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**

WEXX is a FINRA member and has been a member since November 14, 2002. WEXX became a Participant of the Boston Options Exchange ("BOX")<sup>4</sup> on January 21, 2004, 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

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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 Options Rules") and the Grandfathered Rules of the Exchange.

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

<sup>3</sup> Additionally, this disciplinary matter is further governed by The Nasdaq Code of Procedure.

<sup>4</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

WEXX has no prior relevant disciplinary history.

### SUMMARY

In October 2012, WEXX notified the Exchange, through FINRA, that a proprietary smart order router ("SOR") used to submit options orders to the Exchange had prevented the Firm from properly marking numerous options orders on the Exchange with the correct origin code. Upon being informed of these issues, and on behalf of the Exchange, FINRA staff (the "Staff") conducted a review of WEXX's order entry activities during the period between July 1, 2011 and October 11, 2012 (the "Review Period") for compliance with Chapter III, Section 1, Chapter V, Sections 1 and 15; and Chapter VIII, Section 1 of the BOX Trading Rules, and Section 17(a) of the Exchange Act, as amended, and Rule 17a-3 promulgated thereunder.

Applicable Exchange rules require that, when accepting an order, a member must obtain and record an appropriate code to identify the origin of the order (e.g., customer, broker-dealer, market maker). Such order origin codes are important because, among other things, they affect the accuracy of the Exchange's audit trail and may impact priority of execution and the amount of execution fees due to certain options exchanges.

As a result of its investigation, the Staff concluded that during the Review Period, WEXX improperly marked certain options orders on behalf of broker-dealers as "customer" or "firm", instead of "broker-dealer customer" through its SOR used to send options orders to the Exchange, resulting in: (i) an inaccurate audit trail; and (ii) the potential that, in certain situations, orders and quotations were not properly prioritized and matched, given that orders marked as "customer" had priority over other order types. Additionally, the Staff concluded that WEXX had supervisory deficiencies related to these matters, as described below.

### FACTS AND VIOLATIVE CONDUCT

#### Marking of Options Orders

1. During the Review Period, WEXX mismarked numerous options orders with inaccurate origin codes as a result of a programming error by the Firm in June 2011 in configuring its SOR to recognize the introduction of a new origin code ("B/D Cust") for orders by broker-dealer customers that were not members of the Options Clearing Corporation. The SOR programming update error impacted orders of six broker-dealer customers of WEXX that had entered orders with the B/D Cust code for an account with a default setting other than B/D Cust. Certain of the orders coded B/D Cust in the SOR had erroneously defaulted to either "customer" or "firm" origin codes.

2. As a result of the programming update error in WEXX's SOR described in paragraph 1 above, during the Review Period (prior to May 14, 2012), WEXX marked with inaccurate origin codes a total of approximately 265,176 options contracts, across multiple exchanges; of the total number of mismarked contracts, 11,319 contracts were executed on the Exchange. The foregoing mismarkings resulted in the execution of transactions that may have been afforded priority to which they were not entitled and thereby potentially adversely impacted the execution and/or price of orders of other market participants. In addition, the conduct described above adversely impacted the Exchange's ability to surveil for and detect conduct potentially violative of its rules and federal securities laws.
3. The conduct described in paragraphs one and two above violated Chapter III, Section 1, Chapter V, Sections 1 and 15, and Chapter VIII, Section 1 of the BOX Trading Rules, and Section 17(a) of the Exchange Act, as amended, and Rule 17a-3 promulgated thereunder.

#### Supervision

4. During the Review Period (prior to May 14, 2012), WEXX failed to have supervisory systems and controls in place, including a separate system of follow-up and review, reasonably designed to achieve compliance with the Exchange's origin code requirements, in that WEXX failed to: (i) reasonably address origin code requirements in implementing a programming update to its SOR to recognize a new origin code; (ii) maintain written supervisory procedures reasonably designed to achieve compliance with the Exchange's rules relating to the assignment of origin codes; and (iii) adequately review and monitor for accurate marking of origin codes.
5. The conduct described in paragraph four above violated Chapter III, Sections 1 and 2, and Chapter V, Section 1 of the BOX Trading Rules.

B. WEXX also consents to the imposition of the following sanction:

**A censure and a total fine** in the amount of \$235,000 due to the Exchange and the six options exchanges identified below, of which \$10,000 shall be paid to the Exchange.

In accepting this AWC, BOX considered: (i) the Firm's self-reporting to the options exchanges the order mismarkings and the Firm's ensuing cooperation throughout FINRA's investigation; and (ii) the subsequent remedial measures implemented by the Firm, including systems and surveillance enhancements.

Additionally, acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between the Firm and the following options exchanges: (i) BOX Options Exchange LLC; (ii) NYSE Arca, Inc.; (iii) The Nasdaq Options Market LLC ("NOM"); (iv) NASDAQ OMX PHLX, Inc. ("PHLX"); (v)

International Securities Exchange, LLC (“ISE”); and (vi) NYSE MKT LLC (“MKT”).

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

WEXX 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 the staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

WEXX specifically and voluntarily waives the following rights granted under the Rules of the Exchange and the Exchange Code of Procedure:

- 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, WEXX specifically and voluntarily waives any right to claim bias or prejudice 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.

WEXX 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

WEXX 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 Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against WEXX; and
- C. If accepted:
  - 1. This AWC will become part of WEXX's permanent disciplinary record and may be considered in any future actions brought by the Exchange or any other regulator against the Firm;
  - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about WEXX's disciplinary record;
  - 3. The Exchange 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. WEXX 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 Firms may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects WEXX's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. WEXX may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. WEXX 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 the Exchange, nor does it reflect the views of the

Exchange or its staff.

The undersigned(s), on behalf of WEXX, 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 WEXX to submit it.

December 2, 2014

Date

Respondent

Wolverine Execution Services, LLC

By: Judy Kula

Name: JUDY KULA

Title: CFO

Reviewed by:

D J Cavicki  
Counsel for Wolverine Execution Services, LLC

Accepted by Nasdaq OMX BX, Inc.:

12/22/14  
Date

Robert A. Marchman  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation  
Signed on behalf of Nasdaq OMX BX, Inc.,  
by delegated authority from the Director of  
ODA

ELECTION OF PAYMENT FORM

WEXX 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>5</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
Wolverine Execution Services, LLC

December 2, 2014  
Date

By: David H. Cavicco

Name: David H. Cavicco

Title: Chief Legal Officer

<sup>5</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.