

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

**Certified, Return Receipt Requested**

**TO: ABN AMRO Clearing Chicago LLC  
William C. Floersch  
Chairman/Chief Executive Officer  
175 West Jackson Blvd.  
Suite 400  
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 24, 2012**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100236863-01**

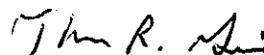
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed 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 Nasdaq 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.

ABN AMRO Clearing Chicago LLC  
Page 2

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



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Thomas R. Gira  
Executive Vice President  
Department of Market Regulation, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 8 – Chicago  
Carla A. Romano  
Regional Director  
55 West Monroe Street  
Suite 2700  
Chicago, IL 60603-5052

Mr. James Van De Graaff  
Partner  
KattenMuchinRosenman, LLP  
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Edward S. Knight, Chief Regulatory Officer  
The NASDAQ Stock Market LLC  
9600 Blackwell Road  
Rockville, MD 20850

**NASDAQ OMX BX, Inc.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20100236863-01**

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

RE: ABN AMRO Clearing Chicago LLC  
Broker-Dealer  
CRD No. 14020

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 NASDAQ Stock Market ("Nasdaq") Code of Procedure<sup>3</sup>, ABN AMRO Clearing Chicago LLC (the "Firm" or "SHMR") 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. SHMR 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

**BACKGROUND**

SHMR has been a FINRA member since April 23, 1984, and the Firm's registration remains in effect. The Firm became a Participant of the Boston Options Exchange ("BOX")<sup>4</sup> on March 27, 2007, 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> 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.

## **RELEVANT DISCIPLINARY HISTORY**

SHMR does not have any relevant disciplinary history.

## **SUMMARY**

In connection with matters 20100236863, 20110261154, and 20110287044, on behalf of BOX, FINRA staff (the “staff”) initially conducted a review of the Firm’s reporting to the Options Clearing Corporation (“OCC”) Large Options Positions Report (“LOPR”) during the periods between: (i) April 1, 2010 and June 30, 2010; (ii) October 1, 2010 and December 31, 2010; and (iii) April 1, 2011 and June 30, 2011 for compliance with BOX Trading Rules Chapter III, Sections 2(a)(i) and 10.

## **FACTS AND VIOLATIVE CONDUCT**

### **Reporting of Options Positions**

1. LOPR data is used extensively by self-regulatory organizations (“SROs”) as they conduct reviews that have the ultimate goal of identifying and deterring the establishment of options positions that may provide an incentive to manipulate the underlying market.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.
3. During the period between January 1, 2008 and April 30, 2012, SHMR had approximately 6.1 million options positions that were reportable to either the Securities Industry Automation Corporation (“SIAC”) or the OCC LOPR.
4. During the period between January 5, 2010 and January 12, 2012, SHMR failed to aggregate positions of under 200 contracts across different strike prices and expirations in accordance with OCC LOPR requirements.
5. During the period between January 2008 and January 4, 2010, SHMR failed to refresh previously reported and unchanged positions to SIAC.
6. During the period between January 2008 and November 2010, SHMR failed to properly report options positions that it had rolled forward.<sup>5</sup> This includes failing to submit “Delete” and “Add” requests for these positions from January 2010 through November 2010.

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<sup>5</sup> To roll forward an options position is to close out the existing options contract and then open a position for the same number of contracts at the same strike price and underlying with a more distant expiration date.

7. During the period between January 1, 2008 and January 13, 2012, SHMR failed to correctly report the effective date for its options positions in the following manner: (i) SHMR reported to SIAC the statement date (i.e., the date the position appeared on the customer's account statement) as the effective date from January 1, 2008 through January 4, 2010; (ii) SHMR reported to the OCC the submission date (i.e., the date the file was submitted to LOPR) as the effective date from January 5, 2010 through October 5, 2010; and (iii) SHMR reported to the OCC the statement date as the effective date for "as of" trades (e.g., trades that were initially misreported and corrected) from October 6, 2010 through January 13, 2012.
8. At various times during the period between January 5, 2010 and January 12, 2012, SHMR failed to submit "Add" requests for positions that had changed options symbols as a result of a corporate action, and improperly submitted "Delete" requests for positions that had been submitted with the "pre-corporate action" option symbol.
9. During the period between January 1, 2008 and August 1, 2011, SHMR failed to report any positions on behalf of its Joint Back Office ("JBO") participants.
10. During the period between January 1, 2008 and April 30, 2012, SHMR's options reporting issues caused SHMR to have over 4.6 million LOPR violations, in that the Firm: (i) failed to report 1,136,308 non-JBO positions; (ii) misreported 14,674 non-JBO positions; (iii) failed to report 3,482,269 JBO positions; and (iv) misreported 32,658 JBO positions.
11. During the period between January 1, 2008 and April 30, 2012, SHMR's LOPR failures adversely impacted regulatory investigations and the Exchange's regulatory responsibilities with respect to options surveillance, in that it prevented the Exchange from reviewing millions of options positions for potential violations such as those identified in paragraph two above.
12. The conduct described in paragraphs one through eleven above constitutes violations of BOX Trading Rules Chapter III, Section 10.

#### Supervision

13. In June 2008, the OCC and its participant exchanges announced: (i) the implementation of the Options Symbology Initiative to update the way in which option series information was disclosed to regulators; and (ii) the transfer of reporting from SIAC to the OCC.
14. In June 2009,<sup>6</sup> Boston Options Exchange Regulation notified its Options Participants of the transition from the SIAC to OCC. During summer 2009, many options exchanges and FINRA provided additional notices to the industry. All of

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<sup>6</sup> See BOX Regulatory Circular 2009-09, dated June 16, 2009.

these notices provided firms with the relevant milestone dates related to the implementation of the new LOPR system and requirements. Firms were to have completed the transition to the OCC LOPR, including all system verification and testing, by January 19, 2010.

15. Despite this extensive advance notice, SHMR failed to develop, test and/or implement adequate systems for reporting to OCC LOPR, and failed to properly understand the transition of LOPR from SIAC to OCC, and as such, failed to conduct the necessary supervision.
16. During the period between January 1, 2008 and April 30, 2012, despite being repeatedly notified of its LOPR-related issues by FINRA on behalf of the Exchange, the Firm only met internally to respond to each issue in isolation rather than conducting a fulsome review of its reporting issues across the Firm given the multitude of regulatory requests for accurate and thorough information regarding SHMR's LOPR.
17. For example, during July 2011, the Exchange notified SHMR of its JBO reporting errors. Although the Firm implemented a change to its LOPR systems to allow for the proper reporting of JBO positions, the Firm still failed to report 663,634 JBO positions from the date this fix was implemented until April 30, 2012, and the Firm failed to correctly report 32,658 JBO positions during that same post-fix period.
18. During the period between January 1, 2008 and April 30, 2012, SHMR failed to maintain an adequate system of supervision, including adequate written supervisory procedures and effective monitoring, reasonably designed to achieve compliance with Exchange rules relating to its obligations with respect to the reporting of options positions.
19. The conduct described in paragraphs 13 through 18 above constitutes a violation of BOX Trading Rules Chapter III, Section 2(a)(i).

#### Other Considerations

In accepting this AWC, the Exchange considered: (i) the significant remedial measures implemented by the Firm, commencing in January 2012, including systems enhancements in its reporting of large options positions and the creation and enhancement of written supervisory procedures applicable to all areas of the Firm involved in position reporting, and the implementation of an extensive plan to have an independent consultant conduct in-depth reviews of the Firm's reporting to LOPR on a periodic basis, including providing copies of reports resulting from such reviews to FINRA on behalf of the Exchange; (ii) mandatory training developed by the Firm with respect to options position reporting; (iii) the adoption and implementation of an extensive supervision plan recommended by an independent consultant hired by the Firm with respect to the reporting of large options positions as a result of this investigation;

and (iv) extraordinary cooperation by the Firm in that it provided substantial assistance to FINRA's investigation.

B. The Firm also consents to the imposition of the following sanctions:

**A censure and a total fine of \$2,000,000.**

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

SHMR 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

SHMR 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, SHMR specifically and voluntarily waives any right to claim bias or prejudgment 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.

SHMR 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

SHMR 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 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 SHMR and
- C. If accepted:
  - 1. This AWC will become part of SHMR's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
  - 2. This AWC will be made available through Nasdaq's public disclosure program in response to public inquiries about SHMR'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. SHMR 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 SHMR's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

- D. SHMR may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. SHMR 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of SHMR, 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 SHMR to submit it.

12/11/12  
Date

Respondent  
ABN AMRO Clearing Chicago LLC

By: WC Floersch

Name: WILLIAM C FLOERSCH

Title: CHAIRMAN/CEO

Reviewed by:

James R. Van der Graff  
Counsel for ABN AMRO Clearing Chicago LLC

Firm Name: Katten Muchin Rosenman LLP

Address: 525 West Monroe, Chicago, IL 60661-3693

Telephone No.: 312/902-5227

Accepted by Nasdaq:

12/24/12  
Date

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation  
Signed on behalf of Nasdaq, by delegated  
authority from the Director of ODA

### ELECTION OF PAYMENT FORM

SHMR 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>7</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
ABN AMRO Clearing Chicago LLC

12/11/12  
Date

By: WC Floersch  
Name: WILLIAM C FLOERSCH  
Title: CHAIRMAN/CEO

<sup>7</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.