

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

Certified, Return Receipt Requested

**TO: VTrader Pro, LLC
Herbert Kurlan
Managing Member
220 Montgomery Street
Suite 608
San Francisco, CA 94104**

**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: July 26, 2013

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20090166268-02

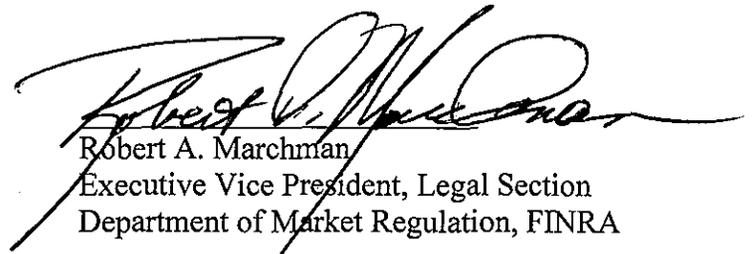
Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed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

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



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

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York
Michael Solomon, Regional Director
One World Financial Center
200 Liberty Street
New York, NY 10281

Richard M. Asche, Esq.
Litman, Asche & Gioiella, LLP
140 Broadway
New York, NY 10005

Mark F. Duffy, Esq.
Mark F. Duffy & Associates
440 South LaSalle Street, 19th Floor
Chicago, IL 60605

NASDAQ OMX BX, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090166268-02

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

RE: VTrader Pro, LLC, Respondent
Broker-Dealer
CRD No. 131920

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.¹ (the “Exchange”)² and Rule 9216 of The NASDAQ Stock Market (“Nasdaq”) Code of Procedure³, VTrader Pro, LLC (the “Firm” or “VTrader,”) 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. VTrader 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

VTrader became a Participant of the Boston Options Exchange (“BOX”)⁴ on June 25, 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. VTrader’s BOX registration was terminated at the Firm’s request on February 18, 2010. Prior to terminating its BOX membership, VTrader ceased operating as a market maker on BOX on December 3, 2008; the Firm continued to be an order flow provider until February 2010. VTrader re-registered with

¹ 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.

² Please note, for purposes of this AWC, “Exchange” includes NASDAQ OMX BX, Inc.

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

⁴ BOX became a facility of NASDAQ OMX BX in August 2008.

BOX as of August 26, 2011. On October 31, 2012, the Firm again requested termination of its BOX membership (as well as other exchange memberships). As of January 20, 2013, VTrader had terminated all of its memberships and registrations.

RELEVANT DISCIPLINARY HISTORY

On January 5, 2010, the CBOE, pursuant to a Letter of Consent (CBOE File No. 09-0051), censured and fined the Firm \$30,000 for violating CBOE Rule 4.2 (Adherence to Law) and Regulation SHO of the Exchange Act, Rule 200 (Definitions and Marking Requirements for Short Sales) and Rule 204T (Short Sales). In or about May 2009, VTrader had failed to demonstrate that it had satisfied the close-out requirements of Regulation SHO for nine of 26 sampled notices and had improperly marked 110 of 776 sampled sell orders.

On April 27, 2011, the CBOE, pursuant to a Letter of Consent (CBOE File No.10-0032 and 11-0004), censured; fined the Firm and certain associated persons a total of \$700,000 jointly and severally; and required the Firm to engage in an undertaking to review the Firm's written supervisory procedures. Violations were found of CBOE Rules 4.1 (Just and Equitable Principles of Trade), 4.2 (Adherence to Law), 4.7 (Manipulation), 13.1 (Minimum Requirements), and 15.1 (Maintenance, Retention and Furnishing of Books, Records and Other Information); Regulatory Circular RG 01-61 (Transactions between Related Entities); SEC Rule 9(a); Regulation SHO Rules 200(f) (Aggregation Units), 203(b)(1) (Locate and Delivery Requirements for Short Sales), 203(b)(3) (Borrowing and Delivery Requirements), and 204 (Close-out Requirement); and SEC Rules 15c3-1 (Net Capital Requirements for Brokers and Dealers), 17a-3 (Records to be Made by Certain Exchange Members, Brokers and Dealers), 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers), and 17a-5 (Reports to Be Made by Certain Brokers and Dealers).

It was found, among other things, that the Firm and/or the named parties: (1) coordinated on behalf of Remote Market Maker accounts, the submission of at least 73 stock and options orders that resulted in no change in beneficial ownership and resulted in improper closeouts pursuant to Regulation SHO between April 2, 2007 and August 30, 2007; (2) improperly availed themselves of the Regulation SHO market-marker exception to locate stock before selling short on numerous occasions between April 2, 2007 and August 30, 2007; (3) coordinated and submitted prearranged call option transactions between various VTrader Remote Market Maker accounts that resulted in no change in beneficial ownership between April 30, 2007 and June 19, 2007; (4) improperly communicated and shared account position information and coordinated trading activities between various VTrader Associated Persons and traders, and as a result, conducted business as an Aggregation Unit, but failed to comply with SEC and Exchange Rules for Aggregation Units between April 2, 2007 and August 30, 2007; (5) failed to establish and maintain adequate supervisory procedures to ensure compliance with SEC Regulation SHO requirements and Rule 200(f) thereunder between April 2, 2007 and August 30, 2007; (6) improperly marked a total of 33 of 436 sampled sell transactions in June 2010; (7) failed

to perform a locate for 16 of 229 sampled marked sell short orders in June 2010; (8) failed to perform a close-out for four sampled buy-in notices in June 2010; (9) failed to capture and retain all communication from personal e-mail domains in June 2010; and (10) failed to adhere in June 2010 to its written supervisory procedures concerning Regulation SHO.

SUMMARY

In connection with matter 20090166268¹, FINRA staff (“Staff”), on behalf of BOX, initially conducted a review of the Firm’s market maker performance during the period January 2008 through September 2008 and focused on activity in VTrader’s market maker account at BOX for compliance with Chapter VI, Section 6(d) of the BOX Trading Rules (quoting obligations). On behalf of the Exchange, Staff also initiated investigations into the trading activity of VTrader after conducting its Regulation SHO 203(b)(3) Review for Option Market Makers (“OMMs”) for the periods January 1, 2008 through June 30, 2008, and July 1, 2008 through September 18, 2008. The purpose of these reviews was to ascertain whether there were violations of Rule 203(b) of Regulation SHO under the Exchange Act by OMMs that may have included abuses of the bona-fide market maker locate exemption and/or the usage of sham transactions to improperly reset delivery obligations.

FACTS AND VIOLATIVE CONDUCT

Quoting Obligations

1. During the period from January 1, 2008 through September 30, 2008 (the “review period”), Respondent failed to adequately participate in the Exchange’s pre-opening phase, in that the Firm quoted less than 80% of the series in greater than 10% or more of the Firm’s assigned products on a total of 189 trading days.
2. Respondent failed to adequately enter continuous quotes, in that the Firm: (i) quoted less than 80% of the time each underlying was open for more than 10% of the Firm’s assigned classes on a total of 55 trading days during each month between January 2008 and April 2008, and during September 2008; and (ii) quoted less than 60% of the time each underlying was opened for 10% or more assigned classes on a total of 30 trading days during each month between January 2008 and March 2008.
3. The conduct described in paragraphs one and two above constitutes violations of Chapter VI, Section 6(d) of the BOX Trading Rules.

¹ Matter numbers 20080158326, 20080141520, and 20080160077 were incorporated within this matter.

Regulation SHO – Locate Obligations

4. During the review period, Respondent failed to act as a bona fide market maker in seven threshold securities¹ traded by Respondent as it was found that Respondent had failed to adhere to opening and continuous quoting obligations at BOX, failed to quote competitively, and effected only a small portion of its trades in these threshold securities on the BOX.
5. Given Respondent’s failure to act as a bona fide market maker in the subject threshold securities during the review period, Respondent was required to perform a locate prior to effecting short sales in the threshold securities previously referenced, but failed to do so in connection with its execution of 105 reversals² and 65 synthetics.³
6. The conduct described in paragraphs four and five above constitutes violations of Rule 203(b)(1) of Regulation SHO under the Securities Exchange Act of 1934.

Regulation SHO – Close-Out Obligations

7. During the review period, Respondent had received numerous fail-to-deliver (“fail”) allocations⁴ in threshold securities in which Respondent had held short stock positions. In response to the 13-day close-out⁵ requirement on these fails, Respondent engaged in 48 buy-write⁶ transactions. The calls in the buy-write transactions were at prices that yielded no economic benefit to the Respondent and assigned shortly after the transactions had occurred. These sham transactions were not bona fide purchases for the purpose of the close-out obligation, but rather served to improperly “reset” the 13-day clock to zero and circumvent Regulation SHO requirements, as the Respondent was able to maintain its fail positions beyond 13 days.
8. During the review period, Respondent engaged in 65 synthetics in a total of seven threshold securities as the counterparty to trades similar to the sham transactions noted above. The Respondent received a premium for each of these

¹ A “threshold security” is an equity security for which there is an aggregate “fail to deliver” position exceeding the size and criteria as set forth in Regulation SHO for a period of five consecutive settlement days. The delivery positions of SEC Rule 203(b)(3) required that broker-dealers must close-out fail positions in threshold securities lasting for 13 consecutive days.

² A reversal is a sale of the underlying stock paired with a synthetic underlying stock purchase. This synthetic purchase involves two paired bullish options transactions in the same strike (buy call and sell put) to create a synthetic asset with the same features as an actual purchase of the underlying stock.

³ A synthetic involves the sale of stock paired with the corresponding purchase of calls; it is the contra side of a buy-write transaction.

⁴ A “fail allocation” results when there has been no delivery of the shares sold short by settlement date.

⁵ A “close-out” of a short position involves the purchase of an equivalent number of shares to reduce the short position to zero.

⁶ A buy-write transaction involves buying and writing (selling) a corresponding number of call options.

transactions, and exercised the calls shortly after the transactions had occurred. As such, Respondent assisted other market participants in short-term sham transactions, which improperly reset their delivery obligations and circumvented Regulation SHO close-out requirements for other market participants.

9. During the review period, Respondent engaged in a conversion¹ in a threshold security on one occasion in response to a fail allocation that also constituted a sham transaction as the Respondent knew or had reason to know that the counterparty would not deliver the securities, which thus created another fail position. The transaction was executed against another VTrader account that already had a fail position in the security and would be unable to deliver, which was known, or should have been known, to the Respondent. As such, this transaction was not a bona fide purchase and was in violation of Regulation SHO close-out requirements.
10. Respondent's improper short-term transactions were temporary transactions that enabled the Respondent to maintain short positions in threshold securities for periods that exceeded 13 consecutive settlement days and subsequently reap profits of approximately \$373,270.
11. The conduct described in paragraphs seven through ten above constitutes violations of Rule 203(b)(3) of Regulation SHO, under the Securities Exchange Act of 1934.

Supervision

12. During the review period, Respondent failed to establish and maintain an adequate system of supervision, including adequate written supervisory procedures, to ensure compliance with the requirements of Regulation SHO.
13. The conduct described in paragraph 12 above constitutes a violation of Chapter III, Section 2(a)(i) of the BOX Trading Rules.

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

An expulsion from membership with the Exchange.

The sanction imposed herein shall become effective upon approval or acceptance of this AWC by the Exchange Review Council.

¹ A conversion involves buying stock, selling calls, and buying puts; it is the opposite of a reversal.

II.

WAIVER OF PROCEDURAL RIGHTS

VTrader specifically and voluntarily waives the following rights granted under the Rules of the Exchange and the Nasdaq 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, VTrader 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.

VTrader 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

VTrader 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 VTrader and

C. If accepted:

1. This AWC will become part of VTrader'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 VTrader'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. VTrader 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 VTrader's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

D. VTrader may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. VTrader 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 VTrader, 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 VTrader to submit it.

6/28/13
Date

Respondent
VTrader Pro, LLC

By: H Kurlew

Name: Herb Kurlew

Title: Managing Member

Reviewed by:

Counsel for VTrader Pro, LLC

Firm Name: _____

Address: _____

Telephone No.: _____

Accepted by Nasdaq:

7/26/13
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