

THE NASDAQ OPTIONS MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2020.11.0260

TO: The Nasdaq Options Market LLC
Nasdaq Enforcement Department

RE: Virtu Americas LLC, Respondent
Member Firm
CRD No. 149823

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure,¹ Virtu Americas LLC (the “Firm,” “Virtu,” 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, Nasdaq 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 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 AND RELEVANT DISCIPLINARY HISTORY

Virtu has been registered with The Nasdaq Options Market LLC (“NOM”) since October 1, 2019 and its registration remains in effect.

On August 4, 2016, the Firm² consented to findings that it violated ISE Gemini, LLC (“ISE Gemini”) Rule 804, Supplementary Material .01, which required that Primary Market Makers (“PMMs”) provide two-sided quotes for 90% of the time the option class is open for trading on the ISE in order to meet the continuous quoting obligation; and ISE Gemini Rule 401, which required that the Firm adequately supervise its PMM quoting activities to ensure compliance with ISE Gemini Rule 804(e)(1). The Firm was censured and fined \$17,500 (FINRA Matter No. 2015048152801, ISE 2015-28).

SUMMARY

During the period of September 1, 2020 through October 30, 2020 (the “Review Period”), Virtu violated NOM Rules Options 2, Section 4 and Options 2, Section 5(d)(1)(A) by failing to provide two-sided quotations in 60% of the cumulative number of seconds for which the Firm’s assigned options series are open for trading on nineteen trade dates. During the period of September 1, 2020 through the present (the “Supervisory Review

¹ The Nasdaq Options Market LLC disciplinary matters are governed by the Nasdaq Code of Procedure.

² The named entity was the Firm’s predecessor entity, KCG Americas LLC.

Period”), the Firm violated Options 9, Section 2(b), General 9, Section 20, and General 9, Section 1 by failing to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with NOM Rules Options 2, Section 4 and Options 2, Section 5(d)(1)(A).

FACTS AND VIOLATIVE CONDUCT

1. NOM Rule Options 2, Section 4(a) provides that “[i]n registering as a Market Maker, an Options Participant commits himself to various obligations.” In particular, “[d]uring trading hours, a Market Maker must maintain a two-sided market, pursuant to Section 5(d)(1) of this Rule, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.”
2. NOM Rule Options 2, Section 5(d)(1) provides that a “Market Maker must enter bids and offers for the options to which it is registered” on a daily basis. NOM Rule Options 2, Section 5(d)(1)(A) provides, in relevant part, that “Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as NOM may announce in advance, for which that Options Participant’s assigned options series are open for trading.”
3. NOM Rule General 9, Section 20 provides: “Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”
4. In addition, NOM Rule Options 9, Section 2(b) requires members to maintain reasonable supervisory systems and controls.
5. General 9, Section 1 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”
6. On nineteen separate trade dates during the Review Period, the Firm, while acting as a Market Maker, failed to provide two-sided quotations in 60% of the cumulative number of seconds for which the Firm’s assigned options series were open for trading.
7. The conduct described in paragraph 6 constitutes a violation of NOM Rules Options 2, Section 4 and Options 2, Section 5(d)(1)(A).
8. During the Review Period, the Firm’s real-time market making monitoring tool, known as a quoting bot, was not reasonably designed to achieve compliance with the Firm’s market making obligations because it was referencing stale data and thus prevented the Firm from identifying its failure to quote on the nineteen trade dates during the Review Period.
9. During the Supervisory Review Period, while the Firm utilized a monthly supervisory signoff intended to attest to daily monitoring of the quoting bot as well as to highlight issues that may have arisen during the relevant period, the Firm did not otherwise have written supervisory procedures. Specifically, the Firm did not have written supervisory procedures describing the Firm’s responsibility with respect to market making, the relevant markets or rule(s) at issue, the review being conducted, the supervisory steps and reviews to be taken by the appropriate supervisor, or how such

reviews shall be documented.

10. The conduct described in paragraphs 8 and 9 constitutes violations of Options 9, Section 2(b), General 9, Section 20, and General 9, Section 1.

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

1. A censure;
2. A fine in the amount of \$35,000.00; and
3. An undertaking to provide, within 90 days after the date of the Notice of Acceptance of this AWC, a certification from a registered principal of the Respondent to the Nasdaq Enforcement Department, 805 King Farm Boulevard, Rockville, MD 20850 through a signed, dated letter, or an e-mail from a work-related account of the registered principal to enforcement@nasdaq.com, providing the following information: (1) a reference to this matter and (2) a detailed description of steps taken by the Firm to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with NOM Rules Options 2, Section 4 and Options 2, Section 5(d)(1)(A), and that remedies the deficiencies identified in paragraph 9, as well as a copy of the relevant revised written supervisory procedures. The certification shall describe the date(s) on which specific actions were taken by the Firm.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Payment Information 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 Nasdaq Enforcement Department staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under Nasdaq'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 Nasdaq 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 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.

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 the Nasdaq Enforcement Department 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 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 Nasdaq or any other regulator against the Respondent;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq 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.

Virtu Americas LLC
Respondent



By:

Print Name: Matthew Levine

Title: Deputy General Counsel

Date: August 26, 2021

Accepted by Nasdaq:

August 27, 2021

Date

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



Muiyiwa Odeniyide
Enforcement Counsel
Nasdaq Enforcement Department