NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014042373802

TO: New York Stock Exchange LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Clearpool Execution Services, LLC, Respondent
Broker-Dealer
CRD No. 168490

Pursuant to Rule 9216 of the New York Stock Exchange LLC (the "NYSE" or the "Exchange") Code of Procedure, Clearpool Execution Services, LLC ("Clearpool" 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, NYSE will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The firm 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 NYSE, or to which NYSE 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 NYSE:

BACKGROUND

Clearpool is a broker-dealer headquartered in New York, New York. Clearpool has 37 registered representatives, provides electronic trading solutions, and serves as an independent agency broker-dealer. It has been a FINRA member since April 8, 2014, and an NYSE member since June 9, 2015. These registrations remain in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm does not have a relevant disciplinary history.

SUMMARY

In Matter No. 20140423738, FINRA's Department of Market Regulation, Quality of Markets team (the "Staff"), on behalf of NYSE and ten other self-regulatory organizations,[1] identified and reviewed potentially manipulative trading activity by a

[1] The ten self-regulatory organizations are NYSE Arca, Inc., NYSE American LLC, FINRA, the Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.

foreign, unregistered proprietary trading fund ("Fund X")[2] that was an affiliate and customer of Clearpool. From July 2014 to September 2016, Clearpool executed Fund X's trades and introduced its order flow to other broker-dealers for execution. Fund X traded through more than 1,000 foreign, unregistered individual traders, and triggered thousands of surveillance alerts at FINRA and multiple exchanges for potential manipulative trading known as "layering" and "spoofing." Despite being on notice of potentially manipulative trading by Fund X, Clearpool terminated the trading access of hundreds of individual traders, but continued to execute and introduce orders from Fund X.

As a result, from June 9, 2015, when Clearpool became an NYSE member, through September 2016, Clearpool failed to establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the NYSE Rules, in violation of NYSE Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Layering and Spoofing

1. Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

2. Similar to layering, spoofing is a form of manipulative trading which involves a market participant placing non-bona fide orders, generally inside the existing national best bid or offer, with the intention of briefly triggering some type of response from another market participant, followed by cancellation of the non-bona fide order, and the entry of an order on the other side of the market.

Rules Governing Clearpool's Supervisory Obligations

3. NYSE Rule 2010 states that a member or member organization, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

4. NYSE Rule 3110(a) states that "Each member organization shall establish and maintain a system to supervise the activities of each associated person that is

[2] The fund is anonymous in this AWC since it is not a party to this AWC.

reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules." NYSE Rule 3110(b)(1) states that "Each member organization shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules."

Clearpool's Supervisory Deficiencies with Respect to Layering

5. Clearpool was formed in or about May 2013. At that time, the two long-time business partners that previously formed Fund X, provided Fund X's investment, and owned 100 percent of Fund X's investment manager, also owned 76 percent of Clearpool (the "Original Controlling Owners"). Over time, however, the other owners of Clearpool increased their ownership interest in Clearpool while the ownership interest of the Original Controlling Owners decreased. In September 2016, the last of a series of transactions occurred, extinguishing the remaining ownership of the Original Controlling Owners in Clearpool.

6. Prior to Clearpool's commencement of operations, Fund X initially traded through an unaffiliated broker-dealer. In or about June 2014, Fund X opened an account with Clearpool, becoming one of Clearpool's first customers. In July 2014, Clearpool began providing market access to Fund X and introducing Fund X's order flow to unaffiliated broker-dealers. Fund X accounted for the majority of Clearpool's revenue during the period of 2014 through 2015.

7. When Clearpool began executing and introducing orders by Fund X, Clearpool was on notice of regulators' concerns regarding potentially manipulative trading by foreign traders who traded for Fund X's predecessor, another foreign proprietary trading firm owned by the Original Controlling Owners. In August 2014, FINRA filed a complaint against an unaffiliated broker-dealer for supervisory violations that included trading activity by Fund X's predecessors. The same day, a Clearpool senior officer circulated a copy of the complaint to Clearpool's owners. Two months prior to FINRA's complaint, the SEC had charged the same unaffiliated broker-dealer with failing to adopt and implement controls that were reasonably designed to prevent manipulative layering, including by traders of Fund X's predecessor. Later, throughout 2014 and 2015, the SEC, FINRA, and multiple exchanges collectively fined the unaffiliated broker-dealer over $4.2 million for, among other things, failing to prevent and detect layering and spoofing by traders from the predecessor of Fund X. In addition, in February 2016, FINRA and multiple exchanges censured and imposed a $1 million fine on a second unaffiliated broker-dealer that had provided market access to the predecessor of Fund X for, among other things, failing to supervise to prevent and detect layering. Despite being on notice of the foregoing, Clearpool continued to execute and introduce Fund X's orders.

8. From the time that Clearpool began to provide market access to Fund X, Clearpool was obligated to have in place reasonable supervisory systems and controls to ensure that its market access business complied with applicable securities laws, regulations, and NYSE rules. Clearpool instituted a supervisory system intended to achieve compliance, but Clearpool's supervisory deficiencies described herein, and the firm's termination of trading access to individual Fund X traders rather than Fund X itself, allowed the potentially violative trading to continue. As a result, beginning in approximately July 2014, and continuing through September 2016, Fund X's trading through Clearpool generated thousands of layering and other manipulation alerts at FINRA and multiple exchanges, and generated thousands of alerts in Clearpool's proprietary surveillance systems.

9. Specifically, from approximately July 2014 through January 2015, Clearpool used a proprietary system to perform certain pre-trade checks designed to block potentially manipulative orders and to generate exception reports that identified potentially manipulative trading on the day after a trading day (T+1). Despite the pre-trade checks, Clearpool's exception reports detected significant numbers of indicators for potential manipulation. Clearpool's reviews of the exception reports were not reasonably designed to detect and prevent manipulative activity. No matter how many alerts were generated on a report, Clearpool only reviewed the exceptions relating to the five securities with the most trading events and relating to the five securities with the lowest average daily trading volume. Clearpool terminated individual traders' ability to trade for Fund X, but allowed hundreds of other traders with Fund X to continue trading through Clearpool. Fund X continued to generate thousands of layering and other manipulation alerts at FINRA, multiple exchanges, and in Clearpool's proprietary surveillance systems.

10. Clearpool's written procedures were deficient in that they failed to explain how to select the sample to be reviewed and how to review the exception reports, such as how to identify manipulative trading.

11. Beginning in February 2015, Clearpool replaced its first system of pre-trade checks with a real-time surveillance system. In June 2015, Clearpool implemented a feature in its real-time surveillance system that automatically imposed trading limitations or blocks on a trader once the trader's activity had crossed pre-set scoring thresholds for suspicious activity. Clearpool, however, set these scoring thresholds at levels that did not prevent further problematic trading, as Fund X continued generating layering surveillance alerts at FINRA, multiple equity exchanges, and even in Clearpool's systems. In or about March 2016, Clearpool modified its real-time surveillance scoring thresholds, and the number of exceptions decreased. Yet Clearpool was on notice that Fund X's trading continued to be the subject of regulator's concerns through mid-2016.

12. In addition to the disciplinary actions referred to in paragraph 7, Clearpool knew about ongoing potentially violative behavior by Fund X through its receipt of

regulatory inquiries about Fund X from FINRA and multiple exchanges. Yet, Clearpool continued to execute Fund X's trades, which resulted in potential layering activity from July 2014 through September 2016.

13. For the reasons set forth in paragraphs 8–12, from June 9, 2015, when Clearpool became an NYSE member, to September 2016, Clearpool failed to establish and maintain a system of supervision that was reasonably designed to achieve compliance with applicable securities laws and regulations and with the NYSE Rules, in violation of NYSE Rules 3110 and 2010.

B. The firm also consents to the imposition of a censure and a total fine of $473,000 of which $43,000 is payable to NYSE. The balance is payable to the following self-regulatory organizations: NYSE Arca, Inc., NYSE American LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc. Cboe EDGX Exchange, Inc., and FINRA. Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and these self-regulatory organizations.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The firm 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 firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the firm pays pursuant to this AWC, regardless of the use of the fine amounts. The firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Clearpool specifically and voluntarily waives the following rights granted under the NYSE'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's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC") and Committee for Review ("CFR"); any Director, DAC member or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE employee; or any Regulatory Staff as defined in Rule 9120 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.

The firm 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

The firm 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 Chief Regulatory Officer of NYSE, pursuant to NYSE 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 firm; and

C. If accepted:

1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Rule 9310(a)(1)(B).

2. This AWC will become part of the the firm's permanent disciplinary record and may be considered in any future actions brought by NYSE, or any other regulator against the the firm;

3. NYSE shall publish a copy of the AWC on its website in accordance with

NYSE Rule 8313;

4. NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313; and

5. The firm 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 NYSE, or to which NYSE is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the the firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE is not a party.

D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

E. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 NYSE, nor does it reflect the views of NYSE Regulation 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 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 the firm to submit it.

June 4, 2019
Date

Clearpool Execution Services, LLC
Respondent

By: _____

Name: Peter DiScenza

Title: CCO

Reviewed by:

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Accepted by FINRA

June 5, 2019
Date

W. Kwame Anthony, Senior Counsel
Elyse D. Kovar, Senior Counsel
Department of Enforcement

Signed on behalf of NYSE, Inc. by delegated authority from the Chief Regulatory Officer of NYSE, Inc.