

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016048613101**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Clearpool Execution Services, LLC (Respondent)
Member Firm
CRD No. 168490

Pursuant to FINRA Rule 9216, Respondent Clearpool Execution Services, LLC 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, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Clearpool has been a FINRA member since April 2014. Clearpool is headquartered in New York, New York and provides execution and routing services to broker-dealers and institutional customers. Clearpool currently has approximately 40 registered persons.¹

OVERVIEW

Clearpool executed client orders on a riskless principal basis from April 27, 2015 through May 17, 2017. With respect to its riskless principal business, Clearpool failed to comply with Regulation SHO of the Securities Exchange Act of 1934, trade reporting rules, and recordkeeping requirements. First, Clearpool violated Rule 203(b)(1) of Regulation SHO and FINRA Rule 2010 by effecting an estimated 9.27 million principal short sales without obtaining locates. Second, Clearpool violated FINRA Rules 6182, 7230B(d)(6), and 2010 by reporting an estimated 9.28 million short sale transactions to the FINRA/NYSE trade reporting facility (TRF) without the short sale indicator. Finally, Clearpool violated Exchange Act § 17(a) and Rule 17a-3(a)(1) thereunder and FINRA

¹ For more information about Clearpool, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Rules 4511(a) and 2010 by failing to maintain accurate blotters of its purchases and sales of securities.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from a cycle examination of Clearpool and FINRA's trade reporting surveillance.

Clearpool effected an estimated 9.27 million principal short sales without obtaining locates to facilitate client short sale orders on a riskless principal basis.

2. In 2004, the Securities and Exchange Commission (SEC) adopted Regulation SHO pursuant to the Exchange Act to address concerns about persistent failures to deliver securities for settlement and potentially abusive "naked" short selling, which is the sale of securities that an investor does not own or has not borrowed.
3. Exchange Act Rule 203(b)(1) prohibits a broker-dealer from accepting an equity short sale order from another person, or effecting an equity short sale for its own account, unless it has, in relevant part, (i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due. A broker-dealer must therefore locate securities available for borrowing before effecting short sales.
4. FINRA Rule 2010 requires a member in the conduct of its business to "observe high standards of commercial honor and just and equitable principles of trade." A violation of the Exchange Act, an SEC rule, or another FINRA rule also constitutes a violation of FINRA Rule 2010.
5. From April 27, 2015 through May 17, 2017, Clearpool incorrectly believed that it did not have to obtain a locate when effecting principal short sales to facilitate client short sale orders on a riskless principal basis, so long as its clients obtained locates for their short sale orders.
6. While trading as riskless principal, Clearpool, upon receipt of a client short sale order, effected a principal short sale in the same security on an exchange or other execution venue and then satisfied the client order by buying the security as principal at the same price. Accordingly, there were two short sales: (1) Clearpool accepted a short sale order from its client; and (2) Clearpool effected a short sale order for its own account. Clearpool incorrectly believed that it was not required to obtain locates for its principal short sales, so long as its clients obtained locates for their short sale orders. However, Clearpool had a separate locate obligation with respect to the short sales it effected for its own account.
7. From April 27, 2015 through May 17, 2017, Clearpool effected an estimated 9.27 million short sale orders for its own account to facilitate client short sale orders on a riskless principal basis, without borrowing the securities, entering into bona-fide arrangements to borrow the securities, or having reasonable grounds to believe

that the securities could be borrowed so that they could be delivered on the date delivery was due.

8. Therefore, Clearpool violated Exchange Act Rule 203(b)(1) and FINRA Rule 2010.

Clearpool reported an estimated 9.28 million short sale transactions to the TRF without the short sale indicator.

9. FINRA Rule 6182 requires a member to “indicate on trade reports submitted to FINRA whether a transaction is a short sale or a short sale exempt transaction (‘short sale reporting requirements’). The short sale reporting requirements apply to transactions in all NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS.”
10. FINRA Rule 7230B(d) provides, “Unless the contra side will have an opportunity to provide its own trade information, the Reporting Member is responsible for the complete and accurate submission of information for both sides of the trade.” Under FINRA Rule 7230B(d)(6), this information includes a “symbol indicating whether the transaction is a buy, sell or cross, and if applicable, a symbol indicating that the transaction is a sell short or sell short exempt trade from the Reporting Member perspective or contra side perspective, irrespective of whether the contra side is a member, except the sell short or sell short exempt indicator is not required on any clearing-only, non-regulatory report submitted pursuant to Rule 7230B(h)(4).”
11. When Clearpool satisfied client short sale orders as riskless principal, it bought securities from a client that was selling short. Because these transactions were short sales from the contra side perspective, FINRA Rules 6182 and 7230B(d)(6) required Clearpool to report them to the TRF with a short sale indicator. However, Clearpool incorrectly believed a short sale indicator was not required in this circumstance. As a result, Clearpool reported an estimated 9.28 million short sale transactions to the TRF without a short sale indicator from May 1, 2016 through May 17, 2017. The 9.28 million reports were regulatory, non-tape reports.
12. Therefore, Clearpool violated FINRA Rules 6182, 7230B(d)(6), and 2010.

Clearpool’s purchases and sales blotters were inaccurate.

13. FINRA Rule 4511(a) requires a member to “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Exchange Act § 17(a) and Rule 17a-3(a)(1) require a broker-dealer to make and keep current “[b]lotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities...”
14. From April 27, 2015 through May 17, 2017, Clearpool inaccurately recorded the riskless principal legs of its transactions on its purchases and sales blotters. When

Clearpool purchased a security from its client to satisfy a client sale order, Clearpool inaccurately recorded the execution of a client sale order, rather than a purchase for its own account. Likewise, when Clearpool sold a security to its client to satisfy a client buy order, Clearpool inaccurately recorded the execution of a client buy order, rather than a sale for its own account.

15. Therefore, Clearpool violated Exchange Act § 17(a) and Rule 17a-3(a)(1) and FINRA Rules 4511(a) and 2010.

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

- a censure and
- a \$300,000 fine, of which \$195,000 shall be paid to FINRA.²

Acceptance of this AWC is conditioned upon acceptance of a similar settlement agreement in a related matter between Clearpool and NYSE Arca.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the 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

² FINRA investigated this matter on behalf of itself and NYSE Arca, Inc. The balance of the fine will be paid to NYSE Arca.

- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. 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 FINRA, or to which

FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA 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 FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

June 4, 2021

Date

Brad Rothbaum

Clearpool Execution Services, LLC
Respondent

Print Name: Brad Rothbaum

Title: President

Reviewed by:

[Attorney Name]

Counsel for Respondent

[Firm Name]

[Address]

[City/State/Zip]

Accepted by FINRA:

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

June 18, 2021

Date

Shanyn L. Gillespie

Shanyn L. Gillespie
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