

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057166105**

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

RE: Wolverine Execution Services, LLC (Respondent)
Member Firm
CRD No. 120719

Pursuant to FINRA Rule 9216, Respondent Wolverine Execution Services, LLC (Wolverine 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, 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

Wolverine became a FINRA member in November 2002. The firm's single branch is in Chicago, Illinois, where it employs approximately 46 registered representatives, and generally provides execution services for institutional clients. Wolverine does not carry customer accounts. The firm does not have any relevant disciplinary history.

OVERVIEW

Between May 2016 and March 2019, Wolverine violated Regulation SHO (Reg SHO) Rule 200(g), promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act), and FINRA Rule 2010, by inaccurately marking sell orders as long rather than short in 18,756 instances. The firm also violated Reg SHO Rule 203(b) and FINRA Rule 2010 by failing to document compliance with the locate requirement in 556,388 instances during February 2018.

Moreover, between December 20, 2017 and June 20, 2018, Wolverine violated FINRA Rules 7230A and 2010 by failing to report or submitting incorrect reports to the FINRA Trade Reporting Facility (TRF) in at least 706 instances. During this same period, Wolverine also failed to report accurate order information to the Order Audit Trail System (OATS) in 31 instances, in violation of FINRA Rules 7450 and 2010, and violated FINRA

Rules 7440 and 2010 by failing in 15 instances to record and preserve order event information.

Additionally, during Q1 2018, the firm violated Regulation NMS (Reg NMS) Rule 606, promulgated under the Exchange Act, and FINRA Rule 2010, by failing to disclose all material aspects of its relationship with significant execution venues, including a description of any payment for order flow (PFOF) arrangement between the firm and any such execution venue.

Finally, Wolverine violated FINRA Rules 3110(a) and (b) and 2010 by failing to establish and maintain supervisory systems, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the above-cited rules.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a cycle examination for 2018 conducted by FINRA's Trading and Financial Compliance Examinations group.

Reg SHO Violations

The firm mismarked short sale trades as long, in violation of Reg SHO Rule 200(g).

Reg SHO Rule 200(g) requires broker-dealers to "mark all sell orders of any equity security as 'long,' 'short,' or 'short exempt.'" The broker-dealer selling an equity security may only mark an order as "long" in the event that the "seller is deemed to own the security being sold" and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. A violation of Reg SHO Rule 200(g) also constitutes a violation of FINRA Rule 2010.¹

From May 2016 through March 2019, Wolverine engaged in riskless principal transactions for two of its customers. Wolverine incorrectly entered those orders in the same manner in which it had received them, such that if it received an order to sell long, it would enter a sell long order into an exchange, even if Wolverine was not actually long. As a result, the firm mismarked 18,756 short sale orders as long when Wolverine was actually short, in violation of Reg SHO Rule 200(g) and FINRA Rule 2010.

The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with short sale order marking requirements.

FINRA Rule 3110(a) requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA

¹ FINRA Rule 2010 provides, "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of a FINRA rule or a rule promulgated under the Exchange Act may constitute a violation of Rule 2010.

rules. Further, FINRA Rule 3110(b) requires member firms to “establish, maintain, and enforce written procedures to supervise the type 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 FINRA rules.” A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

From May 2016 through March 2019, Wolverine’s supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Reg SHO Rule 200(g). Specifically, the firm’s WSPs stated that “[b]ecause the firm does not have access to its clients’ positions, the firm generally must rely on clients to accurately represent their positions when marking sell orders ‘long’ or ‘short.’” However, Wolverine’s supervisory system, including its WSPs, failed to address how it would supervise for compliance with Reg SHO Rule 200(g) marking requirements for orders that it executed in a riskless principal capacity. Therefore, Wolverine violated FINRA Rules 3110(a) and (b) and 2010.

The firm failed to document its compliance with the locate requirements of Reg SHO Rule 203(b).

Reg SHO Rule 203(b) provides, in relevant part, that a broker-dealer may not accept a short sale order in an equity security from another person unless the broker-dealer has borrowed the security or has 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 document its compliance with this requirement. The SEC’s Frequently Asked Questions Concerning Regulation SHO² clarify that a broker-dealer may obtain an assurance from a customer that the customer can obtain securities from another identified source in time to settle the trade. The broker-dealer must still document the locate, and the documentation should include the source of the securities cited by the customer, as well as reasonable grounds to rely on the customer’s assurances.

During February 2018, Wolverine failed to document its compliance with Reg SHO Rule 203(b). The firm relied on its clients to attest that they had a locate for short sales, and configured its order management system (OMS) so that when a client entered a short sale order, an electronic window prompt requested that the client attest that it met the locate requirement and allowed the customer to provide related information. If a client did not affirm that client has a locate, the trade would not be routed. Throughout February 2018, Wolverine failed to retain records reflecting the client attestations or other documentation reflecting the reasonable grounds for the client’s attestation.

Therefore, during the month of February 2018, Wolverine failed to properly document locate information in 556,388 instances in violation of Reg SHO Rule 203(b) and FINRA Rule 2010.

² See U.S. Securities and Exchange Commission, Division of Market Regulation, Responses to FAQs Concerning Regulation SHO.

The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with locate requirements.

During February 2018, the firm's WSPs regarding Reg SHO Rule 203(b) provided that prior to entering short sale orders, clients must contact their clearing firms to obtain a locate, and that Wolverine's OMS will request confirmation that these steps have been taken. The Chief Compliance Officer (CCO), or his delegate, shall on at least a quarterly basis, verify that this confirmation system is functioning properly and shall document this review within a supervisory checklist.

Wolverine's supervisory system, including its WSPs, failed to address the requirement that the firm document compliance with the locate requirement and maintain those documents. Although Wolverine would periodically verify that the attestation function was operating properly, the firm failed to keep records of its customers' attestations or other documentation reflecting the reasonable grounds for the client's attestation. Therefore, Wolverine violated FINRA Rules 3110(a) and (b) and 2010.

The Firm Violated FINRA Trade Reporting Rules

The firm failed to submit complete and accurate trade information to FINRA's TRF, as required under FINRA Rule 7230A.

FINRA Rule 7230A requires firms to submit complete and accurate trade information for eligible transactions in reportable securities to FINRA's TRF. With respect to reporting requirements for information such as execution price and quantity, FINRA Rule 7230A(d) states that "[u]nless 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." In addition, among other information to be included in such reports to the TRF, Rule 7230A(d)(2) and (3) specify that the number of shares and "unit price, excluding commissions, mark-ups or mark-downs" must be reported to the TRF.

FINRA Rule 7230A(i)(1) provides further that "[m]embers shall not submit to the [TRF reporting] System any non-tape report (either a non-tape, non-clearing report or a clearing-only report), including but not limited to reports of step-outs and reversals, associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule 6380A(d), to reflect the offsetting riskless portion of a riskless principal transaction." FINRA Rule 7230A(i)(4) also provides that "[f]or the offsetting portion of a riskless principal or agency transaction for which a non-tape, non-clearing report has been submitted to the System, a member may submit a 'clearing-only, non-regulatory report' to the System solely for purposes of clearing the transaction. A clearing-only, non-regulatory report cannot be used to satisfy any regulatory reporting requirement under FINRA rules that may apply to the transaction, *e.g.*, the identification of other members for agency or riskless principal transactions under Rule 6380A(d)."

Between December 20, 2017 through June 20, 2018, Wolverine failed to meet these reporting obligations in 706 of 720 trades reviewed (98% error rate). In particular, Wolverine: (i) failed to submit a regulatory report on the second leg of riskless principal transactions to the TRF in 612 instances; (ii) failed to submit a regulatory report on the second leg of a riskless principal transaction to the TRF and incorrectly reported the execution price in its non-regulatory clearing report to the appropriate TRF in 33 instances; (iii) incorrectly reported the execution price in its non-regulatory clearing report (e.g., in step out transactions) to the TRF in 42 instances; (iv) incorrectly reported the execution price, execution quantity, and the special trade code in its non-regulatory clearing report for step out transactions to the TRF in 18 instances; and (v) failed to submit a regulatory report on the second leg of a riskless principal transaction to the TRF and incorrectly reported the execution price, execution quantity, and special trade code in its non-regulatory clearing report to the TRF in one instance.

These violations were caused by the firm's riskless principal trading, discussed above. For the two customers on whose behalf the firm engaged in riskless principal trading, Wolverine entered orders in the same manner in which it received them. After receiving the street side execution for such an order, the firm reported a non-tape report to the TRF for these clients' full execution at the all-in price, inclusive of Wolverine's commission equivalent.

As a result, Wolverine failed to submit complete and accurate information to the TRF, including reflecting the second, offsetting leg of its riskless principal transactions, in violation of FINRA Rules 7230A(d), 7230(A)(i), and 2010.

The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with trade reporting requirements under FINRA Rule 7230A.

Between December 20, 2017 and June 20, 2018, Wolverine's supervisory system, including its WSPs, failed to review for compliance with Wolverine's TRF reporting obligations. Although the firm had WSPs regarding riskless principal transactions, these WSPs centered on determining whether the fees and markups/markdowns charged to clients were appropriate, and not reviewing whether the riskless principal transactions were being accurately reported to the TRF. Wolverine's WSPs did not contain a procedure relating to its TRF reporting obligations. As a result, Wolverine violated FINRA Rules 3110(a) and (b) and 2010.

The Firm Violated FINRA OATS Reporting Rules.

The firm failed to transmit to OATS all order information required under FINRA Rule 7450.

FINRA Rule 7450 requires reporting members,³ such as Wolverine, to transmit to OATS all order information that is required to be recorded under FINRA Rule 7440, including

³ As defined by FINRA Rule 7410(o).

various data related to order origination and receipt, order transmittal, and order modifications, cancellations, and executions.

Between December 20, 2017 and June 20, 2018, the firm failed to meet its OATS reporting obligations pertaining to order data transmission requirements in 31 of 77 trades reviewed, constituting an error rate of 40%. In particular, Wolverine: (i) failed to report the correct routing method code in 25 instances; (ii) failed to report the limit price in three instances; (iii) failed to report the limit price and incorrectly reported the execution timestamp in one instance; (iv) failed to report the correct routing method code and incorrectly reported an Intermarket Sweep Order in one instance; and (v) incorrectly reported the routing method code, route price, and routed order type flag, and failed to report the limit price and the limit on open special handling instruction in one instance. By failing to include in its OATS reports the order data noted above, Wolverine violated FINRA Rules 7450 and 2010.

The firm failed to record and maintain order information required under FINRA Rule 7440.

FINRA Rule 7440 requires reporting members to record and maintain information related to orders immediately following receipt or origination of an order, transmission of orders between members or within departments within the same member, or the modification, cancellation, or execution of an order. Information required to be recorded includes applicable routing method identifiers (subsections (c)(2), (3), and (4)); specific information pertaining to cancelled orders (subsection (d)(2)); and order origination or receipt time and identification of the Reporting Member orders (subsection (b)). Additionally, FINRA Rule 7440(a)(2) requires member firms to record order event times in hours, minutes, seconds, and milliseconds if the firm's system captures time in milliseconds.

Between December 20, 2017 and June 20, 2018, Wolverine failed to meet its obligations under FINRA Rule 7440 pertaining to recording and preserving order event information in 15 of 77 trades reviewed, constituting an error rate of 19%. In particular, Wolverine: (i) failed to memorialize the Routed Order ID in one instance; (ii) failed to memorialize the order time in milliseconds in two instances; (iii) failed to memorialize in its order records cancel replace information, route information, or cancellation of the order in two instances; (iv) failed to memorialize the event times in its order records in four instances; (v) failed to memorialize its Order ID in its order records in one instance; (vi) incorrectly memorialized the event times in its order records and failed to memorialize the Routed Order ID and cancellation of the order in one instance; and (vii) failed to memorialize the route information in its order records in four instances. The firm therefore violated FINRA Rules 7440 and 2010.

The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with OATS Reporting requirements.

Between December 20, 2017 and June 20, 2018, Wolverine's WSPs for OATS compliance required reviews by the CCO, or a delegate, including: (i) daily reviews of OATS "feedback files" to ensure timely submission of OATS information by the 5:00 a.m. cutoff time and to detect rejections or unmatched information; (ii) monthly reviews of OATS

monthly report card statistics; (iii) quarterly reviews of samples of its prior OATS submissions to ensure that those samples were accurate “based on the applicable Technical Specifications;” and (iv) no less than two samples per year of “information related to destinations for OATS-reportable securities as well as labelling of persons who may transmit or originate orders for OATS-reportable securities that are handled or pass through the systems of the Firm.” Any exceptions noted in these reviews were to be documented on the firm’s weekly or quarterly supervisory review checklist or disseminated to appropriate personnel via written communication.

The firm’s supervisory system, including its WSPs, was not reasonably designed to ensure that its OATS submissions were accurate, in that the firm lacked specific and reasonable procedures and reviews to reasonably ensure accurate reporting. In particular, the daily reviews focus only on ensuring that reporting is complete with no rejections or unmatched trades. Similarly, Wolverine’s quarterly reviews failed to ensure that its OATS reports contained the information required by applicable FINRA rules.

With respect to the recording of order information, although the firm’s WSPs include references to OATS reporting generally, they do not include procedures governing the recording of the OATS data. Moreover, Wolverine’s supervisory system was inadequate in that it failed to ensure that the data recorded and submitted to OATS was based on, and compared to, source documentation that could be readily obtained and used for verification of accuracy. Instead, the firm’s supervisory system was limited to the reviews discussed above. Accordingly, Wolverine failed to establish and maintain a supervisory system, including WSPs, that was reasonably designed to achieve compliance with FINRA Rules 7440 and 7450. Therefore, Wolverine violated FINRA Rules 3110(a) and (b) and 2010.

The Firm Violated Reg NMS Rule 606.

The firm failed to disclose material aspects of its relationships with execution venues.

Reg NMS Rule 606 (Rule 606) requires broker-dealers to “make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS securities during that quarter.”⁴ Pursuant to Rule 606(a)(1)(iv), a firm must include within each report “[a] discussion of the material aspects of [its] relationship with each venue identified pursuant to [Rule 606(a)(1)(ii)], including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker’s or dealer’s routing decision.” The SEC’s Adopting Release for Rule 606 states that a description of the material aspects of a payment for order flow arrangement “does not require an estimate of the aggregate dollar amount of payment for order flow[,]” but “would include a description of the terms of the arrangement, such as any amounts per share or per order that the broker receives.”⁵

⁴ “The primary purpose of the Rule as adopted is simply to assure public disclosure of the significant venues to which a broker-dealer routes its customer’s orders and to facilitate an evaluation of potential conflicts of interest between the broker-dealer and its customers.” *Disclosure of Order Execution and Routing Practice*, Exchange Act Release No. 43590, 65 Fed. Reg. 75414, 75426 (Dec. 1, 2000).

⁵ *Id.* at 75427.

Here, although Wolverine's Q1 2018 Rule 606 report states that it may receive and/or make payments in varying amounts from the exchanges or other broker-dealers, it fails to disclose the "material aspects" of its relationship with its significant execution venues, including a description of any PFOF arrangement. In particular, Wolverine failed to disclose specific rebates or rebate information that it received for executing orders on the exchanges (*i.e.*, maker/taker fees). The firm therefore violated Reg NMS Rule 606 and FINRA Rule 2010.

The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Reg NMS Rule 606.

During Q1 2018, Wolverine's WSPs regarding compliance with Reg NMS Rule 606 discussed the rule requirements and provided that, at the beginning of each calendar quarter, the CCO or his delegate shall conduct a review of the firm systems for all client activity for the previous quarter. Based on this information, the firm would generate a 606 report that was then posted on the firm's website. The CCO would verify the information was accurately and timely posted. Furthermore, the CCO would document his review within the Quarterly Supervisory Review Checklist.

Wolverine's WSPs were not reasonably designed because they failed to specify what the "review of firm systems for all client activity" entails or detail how this review should be conducted. Further, the firm's supervisory system provided no other review to assure that the material aspects of its PFOF arrangements were disclosed. Therefore, Wolverine violated FINRA Rules 3110(a) and (b) and 2010.

B. Respondent also consents to the imposition of the following sanctions:⁶

- a censure and
- a \$170,000 fine, of which \$97,625 shall be paid to FINRA (\$22,000 for Reg. SHO Rule 200(g), \$13,975 for Reg. SHO Rule 203(b), \$6,650 for Reg. SHO supervision, \$45,000 for TRF, OATS, and related supervisory violations, and \$10,000 for Reg. NMS Rule 606 violations).

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

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in this matter between Respondent and NYSE Arca, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Nasdaq Stock Market LLC.

⁶ Related disciplinary action on behalf of Nasdaq Stock Market LLC, NYSE Arca, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. for similar violations are being taken concurrently in conjunction with this matter.

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
- 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 prejudgment 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.

May 7, 2021

Date

David Cavicke

Wolverine Execution Services, LLC
Respondent

Print Name: David Cavicke

Title: Chief Legal Officer

Reviewed by:

[Attorney Name]
Counsel for Respondent
[Firm Name]
[Address]
[City/State/Zip]

Accepted by FINRA:

May 24, 2021

Date

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

Andy Hubbartt

Andy Hubbartt
Senior Counsel
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Department of Enforcement
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