

FINRA

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100215637-01

2011 JUL 20 AM 11:03

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: EBX LLC, Respondent
Broker-Dealer
CRD No. 138138

Pursuant to FINRA Rule 9216 of the FINRA Code of Procedure, EBX LLC (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 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 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

The firm became a member of FINRA in 2006, and its registration remains in effect.
The firm's primary business name is Level ATS.

RELEVANT DISCIPLINARY HISTORY

The firm has the following relevant disciplinary history:

- On February 12, 2010, FINRA accepted the firm's AWC (20080139725) in which the firm agreed to a censure and a fine of \$7,000 for violations of Order Audit Trail System ("OATS") reporting rules from January 1 to March 31, 2008.
- On January 20, 2010, FINRA accepted the firm's AWC (20090170065) in which the firm agreed to a censure and a total fine of \$15,000, which included a \$5,000 fine for violations of OATS reporting rules and a \$10,000 fine for violations of SEC Rule 605 of Regulation NMS on March 23, 2009.

SUMMARY

This matter is the result of the firm's 2010 Trading and Market Making Surveillance ("TMMS") Examination conducted by the Department of Market Regulation. The on-site portion of the examination took place on April 19-20, 2010. Attached as Exhibit A is a list of the items the TMMS staff reviewed during the on-site examination for trade dates January 21 and February 17, 2010.

FACTS AND VIOLATIVE CONDUCT

1. On February 17, 2010, the firm transmitted to OATS nine reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, eight reports were incorrectly submitted with a "not held" special handling code, and one report was submitted with an incorrect limit price. These nine reports constituted 11.8% of the reports reviewed for compliance with FINRA rules regarding OATS reporting. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
2. For the month of January 2010, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. In six instances the firm failed to include eligible orders in its report, and in three order type/size categories the firm published incorrect order execution information. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.

B. The firm also consents to the imposition of the following sanctions:

A censure and a total fine of \$30,000, consisting of a \$10,000 fine for the FINRA Rule 7450 violations and a \$20,000 fine for the SEC Rule 605 violations.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("NAC") 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 prejudice of the General Counsel, 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 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 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

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 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 the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. 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 FINRA, nor does it reflect the views of FINRA or its staff.

Accepted by FINRA:

Signed on behalf of the Director of ODA
by delegated authority

8/24/11
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Exhibit A
EBX LLC ("EBXL")
2010 Trading and Market Making Surveillance Examination
Matter No. 20100215637
Sample Source/Period: February 17, 2010 (unless otherwise noted)

The staff reviewed the following samples during the examination:

<u>Sample Size</u>	<u>Sample Description</u>
165	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
76	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements (sample source/period: January 21, 2010)
6	Data sets published for January 2010 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
5	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
144	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
559	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
N/A	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611

All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements
N/A	Trades reported to the ADF/TRACS for compliance with FINRA Rule 6282
N/A	ADF orders and quotes accessed by other market participants for compliance with FINRA Rule 6250 requirements to submit Order and Order Response reports