

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Market Regulation,

Complainant,

v.

eBX LLC (CRD No. 138138),

Respondent.

Disciplinary Proceeding
No. 20100215720-01

COMPLAINT

The Department of Market Regulation (the “Market Regulation”) alleges:

Summary

1. From on or about November 2, 2009 to on or about March 18, 2013 (the “Relevant Period”), Respondent eBX LLC (“EBXL”) failed to properly report to FINRA approximately 15,339,190 transactions it matched on behalf of its broker-dealer subscribers. In each of these agency transactions, EBXL either incorrectly denoted its capacity as “principal” in contravention of FINRA Rules 7230A and 2010 or failed to include a short sale indicator as required by FINRA Rules 6182, 7230A(d)(6) and 2010.

2. Moreover, during the Relevant Period, EBXL violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with its trade reporting obligations, continuously and repeatedly failing to report cross transactions as agent and failing to include the short sale indicator when required,

despite being specifically instructed to do so by Market Regulation staff and in contravention of specific guidance issued by the FINRA.

Respondent and Jurisdiction

3. EBXL is, and was during all relevant times hereto, a broker-dealer member of FINRA and a registered broker-dealer with the United States Securities and Exchange Commission (the “Commission”). EBXL became a member of FINRA on or about July 18, 2006, and does business under the name Level ATS. FINRA retains jurisdiction over EBXL because it is currently registered as a FINRA member.

4. At all times relevant, EBXL was an alternative trading system (“ATS”) operating as Level ATS.¹ As an ATS, EBXL matched orders for its broker-dealer subscribers. On average, EBXL effected approximately 80,000 transactions daily with an average daily volume of approximately 13,500,000 shares.

Statement of Facts

FINRA/NASDAQ Trade Reporting Facility

5. In or about August 2006, FINRA established Trade Reporting Facilities, including the FINRA/NASDAQ Trade Reporting Facility (“FN TRF”) to provide its members with a mechanism for the reporting of transactions in Regulation NMS securities effected otherwise than on an exchange.

6. It is incumbent upon FINRA members to report transactions to the FN TRF accurately. Such reporting has a direct impact on the accuracy of certain public information disseminated by FINRA. Likewise, failure by FINRA members to accurately report transactions

¹ *Alternative trading system* means any organization, association, person, group of persons, or system that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing, with respect to securities, the functions commonly performed by a stock exchange.

could potentially hinder FINRA in meeting its regulatory responsibilities. For instance, FINRA, at the request of the Commission, publishes daily short sale information on an issue by issue basis. In addition, FINRA conducts a number of surveillances including, but not limited to, Regulation SHO Rule 201 circuit breaker rules. The information for both is drawn from the Trade Reporting Facilities, including the FN TRF.

EBXL Failed to Accurately Report Transactions to the FN TRF

7. As a registered electronic ATS, EBXL matched orders from its broker-dealer subscribers. Because these matches were not effected on or through a national exchange, EBXL was required to report all such transactions in Regulation NMS securities to the FN TRF.

8. In or about November 2009, EBXL began to accept non-FINRA member broker-dealers as subscribers. Accordingly, on or about November 2, 2009, EBXL programmed its trading systems to report agency cross transactions between non-members. In addition, it programmed its trading system to report transactions it matched between FINRA member subscribers and non-FINRA member subscribers to the FN TRF.

9. During the Relevant Period, EBXL matched approximately 15,339,190 orders involving non-FINRA member subscribers consisting of either: (a) agency cross transactions between non-members or (b) the matching of buy orders from FINRA member subscribers with short sell orders from non-FINRA member subscribers.

10. In reporting the agency cross transactions between non-members to the FN TRF, EBXL improperly denoted itself as “principal.” As a result, the FN TRF contained inaccurate information regarding these transactions.

11. In reporting the match of a buy order from a FINRA member subscriber with a short sale order from a non-FINRA member subscriber EBXL failed to include a “short sale” or a

“short sale exempt” indicator. As a result, the FN TRF contained inaccurate information regarding these short sale transactions.

12. On or about June 22, 2010, Market Regulation Staff advised EBXL that, when reporting these short sales, “they should reflect whether the seller is selling long or short.” Nevertheless, EBXL continued to report these short sale matches without the required “short sale” or a “short sale exempt” indicator.

13. In January 2012, FINRA issued Section 407.8 of FINRA’s Trade Reporting Frequently Asked Questions (“FAQ”), which addressed trade reporting for members matching, as agent, a non-member short sale against a member buy. FAQ 407.8 states, in relevant part, that in such situations “[the member] should include the short sale (or short sale exempt) indicator in the tape report. . .”

14. Despite the issuance of FAQ 407.8, EBXL continued to report these short sale matches to the FN TRF without the required “short sale” or a “short sale exempt” indicator.

FIRST CAUSE OF ACTION
(Trade Report Input – FINRA Rules 7230A and 2010)

15. Market Regulation realleges and incorporates by reference all preceding paragraphs.

16. Pursuant to FINRA Rule 7230A, reporting members are responsible for the complete and accurate submission of information regarding each transaction reported to the FN TRF including, among other things, a symbol indicating whether the trade is as principal, riskless principal, or agent.

17. Based upon information provided by EBXL, during the Relevant Period, EBXL effected approximately 1,297,173 agency cross transactions between non-FINRA member subscribers.

18. Despite the fact that EBXL was acting as agent for its subscribers in these matches, it improperly denoted itself as “principal” in reporting the transactions to the FN TRF.

19. As a result of the foregoing conduct, EBXL violated FINRA Rule 7230A, with each incorrect report constituting a separate and distinct violation.

20. In addition, as a result of the foregoing conduct, EBXL failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Trade Reporting of Short Sales and Trade Report Input - FINRA Rules 6182, 7230A and 2010)

21. Market Regulation realleges and incorporates by reference all preceding paragraphs.

22. FINRA Rule 6182 states, in relevant part, that “members must indicate on trade reports submitted to FINRA whether a transaction is a short sale exempt transaction . . . Thus, all short sale transactions in [Regulation NMS stocks] must carry a ‘short sale’ indicator (or a ‘short sale exempt’ indicator if it is a short sale transaction in a ‘covered security’ that may be marked ‘short exempt’ pursuant to SEC Regulation SHO).”

23. During the Relevant Period, EBXL matched approximately 14,042,017 buy orders from a FINRA member subscriber with short sell orders for the same quantity of shares at the same price from a non-FINRA member subscriber.

24. Despite the fact that the non-FINRA member was selling short, EBXL failed to report the transaction with the required short sale indicator.

25. As a result of the foregoing conduct, EBXL violated FINRA Rules 6182 and 7230A(d)(6), with each incorrect report constituting a separate and distinct violation.

26. In addition, as a result of the foregoing conduct, EBXL failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

THIRD CAUSE OF ACTION
(Supervision – NASD Rule 3010 and FINRA Rule 2010)

27. Market Regulation realleges and incorporates by reference all preceding paragraphs.

28. At all relevant times, EBXL was engaged in a course of business and activities that required it to report millions of transaction to the FN TRF.

29. NASD Rule 3010(a) requires each member to establish and maintain a system to supervise the activities of each registered representative, registered principal, and associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules. At a minimum, a member's supervisory system must provide for, among other things, the establishment and maintenance of reasonably designed written procedures, which also must be enforced by the member.

30. EBXL failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rule 7230A and 6182. As a result, for a period of more than three and one-half years, it regularly and repeatedly made erroneous reports of transactions to the FN TRF.

31. EBXL failed to update its supervisory systems related to its FN TRF reporting requirements despite being advised by Market Regulation Staff, on or about June 22, 2010, that, when reporting short sales between a FINRA member buyer and non-FINRA member seller, they should reflect whether the seller is selling long or short.

32. Likewise, EBXL failed to update its supervisory systems related to its FN TRF reporting requirements despite the fact that, in January 2012 FINRA FAQ 407.8, which states, in relevant part, that when reporting a short sale between a FINRA member buyer and non-FINRA member seller “[the member] should include the short sale (or short sale exempt) indicator in the tape report. . .”

33. As a result of the foregoing conduct, Respondent EBXL ATS violated NASD Rule 3010 and FINRA Rule 2010.

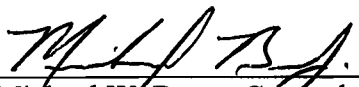
RELIEF REQUESTED

WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of facts and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF MARKET REGULATION

Date: October 9, 2014



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