

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20120348219-03**

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

**RE:** Brian Patrick Dennen, Respondent  
CRD No. 3239786

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Brian Patrick Dennen ("Dennen" or "Respondent") 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 herein.

**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**

Dennen was the Chief Executive Officer ("CEO") and Managing Director at Livevol Securities, Inc. ("LVLX" or the "Firm") during the period of July 2011 through December 2011. LVLX is a California based corporation with its principal executive offices in San Francisco, California. The Firm, through its predecessor entity, became registered as a broker-dealer with the SEC and FINRA in 1989<sup>1</sup> and executed options trades on various exchanges through an execution and clearing agreement with a separate unaffiliated broker-dealer that maintained membership on the various options exchanges. Dennen is currently employed as President, CEO and Chief Compliance Officer at another broker-dealer. Dennen does not have a relevant disciplinary history.

**SUMMARY**

During the period between October 1, 2011 and December 31, 2011 (the "Relevant Period"), the Firm, through Dennen and another Managing Director at the Firm, permitted one of its customers to circumvent the various options exchanges Professional Customer Order designation rules ("Professional Customer"). They did so by failing to aggregate orders that were placed in multiple accounts under the same common

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<sup>1</sup> In August 2015, the Firm filed a Broker-Dealer Withdrawal ("BDW") that is currently pending.

beneficial ownership of the customer, which resulted in the accounts as not being properly designated as Professional Customer. As a result, the customer avoided paying higher options exchange fees, and avoided receiving lower exchange priority of execution.

## **FACTS AND VIOLATIVE CONDUCT**

### **Professional Customer**

1. Priority Customer ("Customer") orders on the various options exchanges receive priority over Professional Customers and market maker quotes at the same price in the same options series. The Professional Customer designation is designed to preserve priority for true retail customers and create a fairer marketplace. Professional Customers trade pro-rata with other non-customers. Further, Professional Customers pay a \$.20 higher per contract execution fee than Customers.
2. The rules regarding who is deemed a Professional Customer are universally applied by each options exchange. Essentially, a Professional Customer is person or entity that is not a broker or dealer in securities that places more than 390 orders in listed options per day on average during any month of a calendar quarter for its own beneficial account(s). Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer for the *next* calendar quarter.
3. The rules regarding Professional Customer require that all orders for all beneficial accounts controlled by the same person or entity must be aggregated when determining whether or not they exceed the 390 order limit.

### **Master/Sub Accounts**

4. Between the period of May 2, 2011 and September 22, 2011, LVLX opened seven separate master accounts, with a total of 30 sub-accounts, which had trading authorizations and agreements with five Limited Liability Companies, which were managed and controlled through common beneficial ownership (the "common beneficial owners").
5. The seven separate master accounts were opened in the names of non-registered individuals who were friends or relatives of a particular trader. None of the seven account holders were registered individuals and no trading occurred through the master accounts. The seven master accounts each had several sub-accounts that were opened in the names of individual traders, including the particular trader referenced above, most of whom were also non-registered traders and had limited trading authority to conduct buying and selling trading activity only. The limited trading authority was reflected in forms on file with the Firm, which expressly prohibited the traders from transferring securities and/or disbursing funds from the accounts.

6. The Firm also had on file Lending and Security Agreements, Full Trading Authorization Forms and Client Authorization Forms that collectively reflect that the common beneficial owners funded the master/sub-accounts, maintained trading authorization in the master/sub-accounts and were the only individuals permitted to withdraw funds from the master/sub-accounts.
7. Based upon the above documents, all of which were on file at the Firm and which had been approved, the Firm, Dennen and another Managing Director at the Firm, as principals, knew or should have known that the common beneficial owners controlled the above-referenced master/sub-accounts. As such, for the purpose of the Professional Customer designation, the accounts were required to be aggregated.

Trading Activity

8. In the third quarter of 2011, the above-referenced 30 sub-accounts placed more than 390 orders in listed options per day on average during one or more months during this period. As such, all orders for these accounts were required to be represented as Professional Customer during the Relevant Period.
9. Although the Firm's own reports flagged two sub-accounts as Professional Customer in September 2011 because they each individually exceeded the average of over 390 orders in September, during the Relevant Period, the Firm and Dennen failed to designate any of the orders in the accounts of the common beneficial owners as Professional Customer.
10. As a result, during the Relevant Period, there were 97,940 orders that were entered that were incorrectly designated as Customer instead of Professional Customer, which resulted in a total of 23,292 executions involving a total of 296,296 contracts. These contracts therefore received priority of execution and did not pay higher fees to the various options exchanges where the executions took place.
11. Based on the facts stated above, Dennen violated NASD Rule 3010 and FINRA Rule 2010.

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

1. A fine of \$15,000, and
2. A suspension from associating with any FINRA-registered firm in any principal capacity for a period of one week.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It 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 that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member

in a principal capacity, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in a principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

## **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 the Firm
- 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 acceptance or rejection of this AWC.

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 the my 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 accordance with FINRA Rule 8313;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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 my (i) testimonial obligations; or (ii) 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. I understand that I 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.

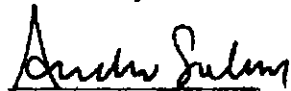
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, have been made to induce me to submit it.

11/4/2015  
Date

Respondent  
Brian Patrick Dennen



Reviewed by:



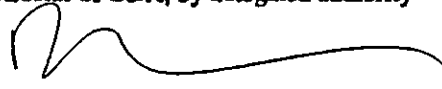
Attorney Name: Andrew Solomon  
Counsel for Respondent  
Firm Name: Sullivan & Worcester LLP  
Address: 1633 Broadway  
City/State/Zip New York, NY 10019  
Phone Number: 212-660-3023

Accepted by FINRA:

11-12-15

Date

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



David E. Rosenstein, Senior Vice President  
Legal Section  
FINRA Department of Market Regulation