

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015044347801**

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

RE: Exane, Inc., Respondent
Member Firm
CRD No. 41784

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Exane, Inc. (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 has been a member of FINRA since December 1996. The firm is a wholly-owned subsidiary of Exane S.A., and it operates out of one registered location in New York, New York and three non-registered locations in San Francisco, California, London, England, and Paris, France. The firm currently employs approximately 39 registered representatives. The firm’s primary business is in European equities, and the remainder concerns options and U.S. equities.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA, or any other self-regulatory organization.

OVERVIEW

This matter resulted from a cycle examination of the firm conducted by the Department of Market Regulation.

From August 1, 2015 through present (the “review period”), Exane failed to establish a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of its business. Specifically, Exane failed to establish risk management controls and supervisory procedures reasonably designed to prevent the following: the entry of orders that exceed appropriate pre-set credit or capital thresholds; the entry of erroneous orders; and the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. In addition, Exane failed to document its annual reviews of the business activity of the firm in connection with market access, and its CEO certifications regarding market access were deficient.

Accordingly, Exane violated Rule 15c3-5 of the Exchange Act, specifically Rules 15c3-5(b), (c)(1)(i), (c)(2)(i), (d), (e), (e)(1), and (e)(2), and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

1. Rule 15c3-5 requires that “broker-dealers with market access appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.”¹
2. Paragraph (b) of Rule 15c3-5 requires a broker-dealer with market access to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks” of its business.
3. Paragraph (c) of Rule 15c3-5 sets forth the required risk management controls and supervisory procedures. It requires the risk management controls and supervisory procedures to be “reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access.”
4. Rule 15c3-5(c)(1)(i) requires controls and procedures reasonably designed to prevent the entry of orders that “exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer of the broker or dealer and, where appropriate, more

¹ See Securities Exchange Act Release No. 34-63241 (November 3, 2010) (“Rule 15c3-5 Adopting Release”), 75 FR 69791, at 69792 (Nov. 15, 2010).

finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.”

5. In the Adopting Release for Rule 15c3-5, the Securities and Exchange Commission (“SEC”) explained that “because the controls and procedures must be reasonably designed to prevent the entry of orders that exceed the applicable credit or capital thresholds by rejecting them, the broker-dealer’s controls must be applied on an automated, pre-trade basis, before orders are routed to the exchange.”²
6. Rule 15c3-5(c)(1)(ii) requires risk management controls and supervisory procedures to “prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.”
7. Rule 15c3-5(c)(2)(i) requires risk management controls and supervisory procedures “reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.”
8. Paragraph (d) of Rule 15c3-5 requires that the “financial and regulatory risk management controls and supervisory procedures described in paragraph (c) of this section shall be under the direct and exclusive control of the broker or dealer that is subject to paragraph (b) of this section.”
9. The Adopting Release for Rule 15c3-5 notes that a broker-dealer subject to Rule 15c3-5 may use risk management tools or technology provided by exchanges or other third parties to satisfy the requirements under paragraph (c). However, the broker-dealer “must perform appropriate due diligence” to assure that the exchange-provided controls are reasonably designed to be effective and otherwise consistent with Rule 15c3-5 and must maintain direct and exclusive control over the technology.³ Further, “the direct and exclusive provision [of (d)] is designed to eliminate the practice whereby the broker-dealer providing market access may rely on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls.”⁴
10. Paragraph (e) of Rule 15c3-5 requires a broker-dealer with market access to establish, document, and maintain a system for “regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by paragraphs (b) and (c)” of the Rule “and [a system] for promptly addressing any issues.”
11. Rule 15c3-5(e)(1) requires the broker-dealer “to review, no less frequently than annually, the business activity of the broker or dealer in connection with market

² *Id.* at 69802.

³ *Id.* at 69810.

⁴ *Id.* at 69810.

- access to assure the overall effectiveness of its risk management controls and supervisory procedures, and to conduct that review in accordance with written procedures and document each such review.”
12. Rule 15c3-5(e)(2) requires the broker-dealer’s CEO to “certify that [the firm’s] risk management controls and supervisory procedures comply with paragraphs (b) and (c)” of Rule 15c3-5.
 13. FINRA Rule 3110 states, in relevant part, that member organizations shall establish and maintain a system to supervise “that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
 14. FINRA Rule 2010 states that “[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 an SEC rule constitutes a violation of FINRA Rule 2010.

Violative Conduct

15. During the review period, the firm established credit limits that it developed for each of its customers when brought on as clients. The firm utilized an end-of-day credit limit report to monitor for compliance with its customers’ pre-set credit limits. However, the firm’s credit limit controls were not automated, nor were they applied on a pre-trade basis. Accordingly, the firm failed to establish controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer. By virtue of the foregoing, Respondent violated Rule 15c3-5(b) and (c)(1)(i), and FINRA Rules 3110 and 2010.
16. During the review period, the firm utilized erroneous order controls provided by an exchange. While the firm is entitled to use risk management tools provided by a third party, such as an exchange, the firm was required to perform appropriate due diligence regarding the reasonableness and effectiveness of the controls. The firm failed to do so. Accordingly, Respondent violated Rule 15c3-5(d) and FINRA Rule 2010.
17. During the review period, the firm failed to establish any pre-trade controls or procedures to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. Rather, pursuant to its supervisory procedures, the firm reviewed compliance with regulatory requirements through post-trade execution reports, and the firm did not have any controls or procedures regarding regulatory compliance on a pre-order entry basis. Accordingly, the firm failed to establish risk management controls and supervisory procedures reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order

entry basis. By virtue of the foregoing, Respondent violated Rule 15c3-5(b) and (c)(2)(i), and FINRA Rules 3110 and 2010.

18. The firm's Annual Review documents from 2015 to 2019 contains general discussions of its efforts to review, test, and modify its policies and procedures in light of the nature of its businesses. However, they do not contain a specific discussion of Rule 15c3-5 or reference a specific review of the business activity of the firm related to market access undertaken to assure the overall effectiveness of its risk management controls and supervisory procedures. Accordingly, during the review period, the firm failed to document its annual review of the business activity of the firm in connection with market access. By virtue of the foregoing, Respondent violated Rule 15c3-5(e)(1) and FINRA Rule 2010.
19. Additionally, the CEO certifications for 2015 to 2019 do not contain an affirmative statement from the CEO that the firm's risk management controls and supervisory procedures "comply with paragraphs (b) and (c) of Rule 15c3-5." Accordingly, as set forth in this paragraph, during the review period, the firm's CEO certifications failed to comply with the requirements of Rule 15c3-5(e)(2). By virtue of the foregoing, Respondent violated Rule 15c3-5(e)(2) and FINRA Rule 2010.

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

- a censure,
- a fine of \$50,000, and
- an undertaking to revise the firm's risk management controls and supervisory procedures with respect to the areas described in paragraphs I.A.15 to I.A.19. Within 60 calendar days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the above-described deficiencies; and (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction 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 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 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 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.

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 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. 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: (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. 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.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

June 23, 2020

Date

Respondent

Exane, Inc.

By: J. Scott Eveleth

Print Name: J. Scott Eveleth

Title: Chief Executive Officer

Reviewed by:

Accepted by FINRA:

June 23, 2020

Date

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

Joel Vengrin
Joel Vengrin
Senior Counsel
Department of Enforcement