

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049752801**

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

RE: Virtu Americas LLC (f/k/a KCG Americas LLC), Respondent
Broker-Dealer
CRD No. 149823

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Virtu Americas LLC (“Virtu”, or the “Firm” 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. Virtu 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 July 2009. The Firm is headquartered in New York, New York, and its business includes trading in over-the-counter (“OTC”) and listed securities as a market maker. The Firm has six branch offices and approximately 307 registered representatives. Until July 2017, the firm was known as KCG Americas LLC, which was owned by parent company KCG Holdings, Inc. In July 2017, Virtu Financial, Inc. acquired KCG Holdings, Inc. Following the acquisition, KCG Americas LLC changed its name to Virtu Americas LLC.

RELEVANT DISCIPLINARY HISTORY

The Firm does not have any relevant disciplinary history with the Securities and Exchange Commission (“SEC”), any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

During the period of September 1, 2015 through August 21, 2017 (the “Review Period”), Virtu failed to provide best execution with respect to 13,136 customer orders it had received from two of its broker-dealer clients outside of normal trading hours, by failing to use reasonable diligence to ascertain the best market for the subject securities and by failing to buy or sell in such market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. As a result, Virtu failed to provide best execution to these customer orders and therefore violated FINRA Rule 5310 and 2010.

During the Review Period, the Firm failed to establish and maintain a supervisory system and written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with FINRA Rule 5310 for customer orders executed outside of normal trading hours in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 5310 Violations

1. FINRA Rule 5310 states, in relevant part, that “[i]n any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.”
2. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. A violation of another FINRA Rule constitutes a violation of FINRA Rule 2010.
3. During the Review Period, Virtu failed to provide best execution with respect to 13,136 orders it had received that were customer orders of another broker-dealer, by failing to use reasonable diligence to ascertain the best market for the subject securities and by failing to buy or sell in such market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions.
4. On September 1, 2015, the Firm began accepting orders for execution outside of normal trading hours, as early as 4:00 a.m. Normal trading hours are from 9:30 a.m. until 4:00 p.m. Eastern time. At the request of two of its broker-dealer clients, the Firm accepted orders that were routed earlier than 8:00 a.m. and 8:15 a.m. respectively, but delayed the release of these orders for execution until 8:00 a.m. and 8:15 a.m. respectively (“hold and release” orders).
5. The Firm’s order management system is designed to handle hold and release orders by first crossing any buy and sell orders that were marketable against each other at the midpoint of the National Best Bid and Offer (“NBBO”), and then, once the crossing process is completed, hold and release orders were released for execution by the Firm’s electronic market making systems.

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6. During the Review Period, due to a programming error in the Firm's order management system, certain hold and release orders were executed by the Firm's electronic market making systems prior to the completion of the crossing process. The hold and release orders were received and executed outside of normal trading hours, and were marketable against each other and designated by each customer for execution at the same time, but were not executed against each other at the NBBO midpoint. Instead, the Firm executed such eligible buy and sell orders separately, on a principal basis, at the NBBO or a price that was better than the NBBO but that was at prices less favorable than the NBBO midpoint.
 7. This programming error affected 13,136 hold and release orders, all of which were entered by two of the Firm's broker-dealer clients. The difference between the execution price of the 13,136 orders and the NBBO midpoint at the time of each order's execution amounted to \$164,137.70 in customer harm.
 8. The Firm took corrective action by implementing a temporary fix on August 21, 2017, and thereafter permanently fixed the programming error at the end of 2017.
 9. The Firm paid full restitution to the two introducing broker-dealer clients affected by the programming error during the Review Period.
 10. By virtue of the foregoing, the Firm violated FINRA Rules 5310 and 2010.

Supervision Related to Best Execution Obligations

11. FINRA Rule 3110(a) provides, in relevant part, that "[e]ach member shall 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 rules."
12. FINRA Rule 3110(b)(1) requires that a member firm "establish, maintain, and enforce written procedures to supervise the types 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."
13. During the Review Period, the Firm's supervisory system and WSPs included a requirement to review an exception report it had designed to monitor for best execution. However, the Firm's system and procedure, including its review of the exception report, did not apply to orders executed outside of normal trading hours. The exception report was developed prior to the Firm's acceptance and execution of hold and release orders outside of normal trading hours. Therefore, these orders would not have been captured by the exception report until the Firm took corrective action in November 2017. As a result, the Firm did not have a means to reasonably supervise its best execution obligations with respect to hold and release orders received and executed outside of normal trading hours.

14. By virtue of the foregoing, the Firm violated FINRA Rules 3110 and 2010.

- B. The firm also consents to the imposition of the following sanctions:
- A censure, and
 - A fine in the amount of \$175,000 (\$100,000 for violations of FINRA Rules 5310 and 2010, and \$75,000 for violations of FINRA Rules 3110 and 2010).

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 an inability 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 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 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.

Date: July 10, 2020

Respondent
Virtu Americas LLC

By:



Name: Matthew Levine

Title: Deputy General Counsel

Accepted by FINRA:

July 21, 2020

Date

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



Shawn R. Mallon
Senior Counsel
FINRA Department of Enforcement