

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016052398201**

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

RE: VIRTU Americas LLC (f/k/a KCG Americas LLC and Knight Capital Americas LLC)
(Respondent)
Member Firm
CRD No. 149823

Pursuant to FINRA Rule 9216, Respondent VIRTU Americas LLC (f/k/a KCG Americas LLC and Knight Capital Americas LLC) 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

VIRTU Americas LLC (f/k/a KCG Americas LLC and Knight Capital Americas LLC) has been a FINRA member since July 22, 2009.¹ Headquartered in New York, the firm primarily engages in market making, provides electronic execution services and operates an SEC registered Alternative Trading System (ATS) that matches orders in National Market System securities. As of October 2020, the firm employed 346 registered individuals in seven branch offices.

RELEVANT DISCIPLINARY HISTORY

On December 17, 2015, FINRA accepted AWC No. 2013037816601 from the firm, imposing a censure and a \$15,000 fine for violations of FINRA Rules 7450 and 2010 occurring between April 1, 2013 and June 30, 2013 and between January 1, 2014 and

¹ The firm changed its name from KCG Americas LLC to VIRTU Americas LLC in July 2017 after it was acquired by Virtu Financial Inc.

March 31, 2014. Specifically, the firm transmitted 177 Execution or Combined Order/Execution Reports with an inaccurate reporting exception code of ‘M.’

On June 9, 2015, FINRA accepted AWC No. 20090211062-01 from the firm, imposing a censure and a \$107,500 fine, of which \$50,000 related to violations of FINRA Rules 7450(a) and 2010 occurring between May 1 and August 31, 2012, including failure to timely report nearly 129 million reportable order events (ROEs) to OATS and submission of numerous execution reports with inaccurate special handling codes.

OVERVIEW

Between October 2013 and April 2018, the firm violated FINRA Rules 7450 and 2010 by failing to comply with its Order Audit Trail System (OATS) reporting obligations. Specifically, the firm (a) transmitted more than 1.5 billion ROEs to OATS containing incorrect information; (b) transmitted more than 71 million execution reports to OATS that failed to match media trade reports; (c) failed to report more than 2 million ROEs to OATS; and (d) failed to repair timely more than 3 million ROEs that OATS rejected due to errors.

Additionally, between October 2013 and April 2018, the firm violated NASD Rule 3010 and FINRA Rules 3110 and 2010² by failing to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with FINRA Rule 7450.

FACTS AND VIOLATIVE CONDUCT

A. The Firm Violated FINRA Rules 7450 and 2010 by Failing to Comply with Its OATS Reporting Obligations.

FINRA Rule 7450(b) states that “[e]ach Reporting Member shall transmit to [OATS] a report containing each applicable item of order information identified in Rule 7440(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed.” Rule 7440 requires a firm’s reports to OATS to reflect, among other things, the origin of the order, the market participant symbol assigned by FINRA to the member firm, the type of account for which the order is submitted, the designation of the order as fully or partially executed, and the capacity in which the member executed the transaction.

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 FINRA Rule 7450 is a violation of FINRA Rule 2010.

Because FINRA uses OATS data as an integral part of its automated market surveillance program to detect customer harm, manipulative activity, and other potential violations of FINRA rules and federal securities laws, a failure to transmit ROEs, or the transmission

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

of inaccurate or incomplete ROEs, can hamper FINRA's ability to detect potentially violative conduct and/or create false positive alerts, unnecessarily requiring the expenditure of resources to resolve the alerts. Moreover, OATS reporting failures may cause an inaccurate audit trail.

Between October 2013 and September 2016, the firm transmitted 1,569,725,427 ROEs to OATS with inaccurate Account Type Codes, which provide information about the type of account for which the orders were submitted. The firm inaccurately reported the ROEs to OATS with an Account Type Code of 'U.' This indicated that the firm received these orders from another broker-dealer for unknown beneficial owners, even though the firm did not receive the order from another broker-dealer and the account owners were known to the Firm. These inaccurate reports occurred after the firm acquired multiple affiliates with separate Market Participation Identifiers (MPIDs) and the orders were associated with those MPIDs.

Additionally, between April 2015 and April 2018, the firm transmitted 3,864,198 execution reports to OATS that were required to be matched to the related trade report in a FINRA transaction reporting facility. These reports contained inaccurate reporting exception codes, generated by the firm's electronic systems, which incorrectly indicated that there were no corresponding trade reports to match to each report. Specifically, between April 22, 2015 and March 23, 2017, the firm transmitted 3,465,236 execution reports to OATS that inaccurately contained the "P" reporting exception code. Between January 1, 2016 and May 18, 2017, the firm transmitted 209,599 execution reports to OATS that inaccurately contained the "M" reporting exception code. Lastly, between October 21, 2016 and April 30, 2018, the firm transmitted 189,403 execution reports to OATS that inaccurately contained the 'R' reporting exception code.

In addition, beginning on February 2, 2015, the firm, as a FINRA member operating an ATS, was required by Rules 6160, 6170, 6480, 6720, and 7440 to use a unique MPID to report ATS transactions and was required to link all OATS execution reports from the firm's ATS to a media-reported trade report.³ However, from February 2, 2015 through August 2016, the firm failed to match 71,282,385 execution reports to a media trade report because it had not updated its execution protocol and related technology system to address the requirements for certain types of executions. These execution reports represented 77.54% of the total execution reports submitted by the firm's ATS during the same period.

Further, during several periods in 2016 and 2017, the firm, through several of its MPIDs, failed to transmit a total of 2,750,534 ROEs to OATS. Specifically, between September 1, 2016 and February 28, 2017, the firm failed to report 1,941,163 ROEs to OATS due to the firm's misconfiguration of its electronic system. Due to other errors in the firm's electronic systems, the firm failed, on September 28, 2016, through two MPIDs, to report

³ A media-reported trade report is one that is submitted to a FINRA facility and reported to and publicly disseminated by the appropriate securities information processor.

a total of 282,045 ROEs to OATS. Additionally, between July 3, 2017 and August 17, 2017, the firm failed to report 527,326 ROEs.

In August 2016, the firm failed to timely repair 3,406,854 ROEs that were rejected by OATS for context or syntax errors. Between August 1 and August 8, 2016, one of the firm's MPIDs submitted 2,728,988 ROEs that OATS rejected for context or syntax errors. The firm attempted to resubmit these ROEs between February 16 and February 22, 2017, but the resubmissions were untimely because the firm failed to make the repairs within five business days, the time period set forth in Section 6.6.2 of the OATS Reporting Technical Specifications, promulgated pursuant to Rules 7440 and 7450. Further, between August 1 and August 24, 2016, two of the firm's MPIDs submitted a total of 678,745 ROEs that OATS rejected for context or syntax errors. The firm attempted to resubmit these ROEs between February 28, 2017 and March 6, 2017, but the resubmissions were untimely because the firm failed to make the repairs within five business days, the time period set forth in Section 6.6.2 of the OATS Reporting Technical Specifications, promulgated pursuant to Rules 7440 and 7450.

By virtue of the foregoing, Respondent violated FINRA Rules 7450 and 2010.

B. The Firm Failed to Establish and Maintain a Supervisory System, Including WSPs, Reasonably Designed to Achieve Compliance with FINRA Rule 7450.

NASD Rule 3010(a) and FINRA Rule 3110(a) required each FINRA member to establish and maintain a system, including WSPs, to supervise the activities of each associated person "that [wa]s reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [NASD/FINRA] Rules." Violating NASD Rule 3010 and FINRA Rule 3110 also violates FINRA Rule 2010.

Between October 2013 and April 2018, the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with its OATS reporting requirements. The firm's WSPs required that a designated reviewer examine, on a quarterly basis, a sample of a minimum of five orders of various types to determine if the OATS information was accurate. The WSPs provided that the designated reviewer should sample new or unique order types or those order flows generating the highest number of order events. However, the minimum sample of five order types was unreasonably narrow, given the broad range of transactions the Firm had to report and the fact that the Firm transmitted approximately 9 billion ROEs to OATS on a quarterly basis during the Relevant Period.

By virtue of the foregoing, the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA Rule 7450 and thus violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

1. A censure,
2. A \$120,000 fine, and

3. An undertaking to review and revise the firm's supervisory systems and procedures concerning OATS reporting to ensure that they are reasonably designed to achieve compliance with FINRA Rule 7450 and to implement all changes necessary to remediate the violations identified herein.
 - a. Within 90 days of the date this AWC is accepted, a certification from a senior officer and principal of the firm with supervisory authority over the firm's supervisory system regarding FINRA Rule 7450 that the firm has enhanced its supervisory systems and written supervisory procedures in ways that are reasonably expected to address the areas of conduct discussed in this AWC. This certification shall be submitted by letter addressed to Carolyn O'Leary, Senior Counsel, FINRA, at the address set forth below, and to carolyn.oleary@finra.org.
 - b. The Department of Enforcement may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 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

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 it;
- 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:

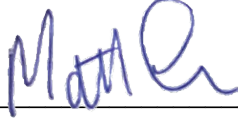
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Respondent 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 it to submit it.

November 1, 2020
Date

VIRTU Americas LLC
Respondent

By:  _____

Print Name: Matthew Levine

Title: Deputy General Counsel

Accepted by FINRA:

November 23, 2020
Date

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



Carolyn O'Leary
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281