

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017055657501**

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

RE: Electronic Transaction Clearing, Inc. (Respondent)
Member Firm
CRD No. 146122

Pursuant to FINRA Rule 9216, Respondent Electronic Transaction Clearing, Inc. (ETC) 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

ETC has been a member of FINRA since July 2009. The firm is headquartered in Dallas, Texas and employs fewer than 25 registered representatives across four branches. During the relevant periods, the firm provided execution, clearing and stock lending services to broker-dealers and institutional customers.

In early 2016, ETC consented to a censure and an aggregate fine of \$875,000 imposed by FINRA, NYSE Arca, Inc. (NYSE Arca), Cboe BZX Exchange, Inc. (BZX), and The Nasdaq Stock Market LLC (Nasdaq) for failing to reasonably supervise for potentially manipulative trading by customers and other deficiencies associated with the firm's risk management controls and supervisory procedures related to the provision of market access to customers from November 2009 through March 2015, in violation of Section 15(c)(3) of the Securities Exchange Act of 1934 (Exchange Act); Exchange Act Rule 15c3-5; and the supervision rules of FINRA and the above exchanges.¹ ETC also was required to review its policies, systems, procedures, and training for compliance with market access requirements and supervision of its market access customers and to submit

¹ Disciplinary Proceeding Nos. 20100254756-01 (FINRA), 20100254756-02 (Nasdaq), 20100254756-03 (NYSE Arca), and 20100254756-04 (BZX).

three written reports certified by the firm's CEO about the review performed, resulting recommendations for enhancements, and steps taken to remediate the findings. ETC completed the review and submitted the final reports by April 2017.

On February 24, 2016, ETC was censured and fined \$125,000 by FINRA for failing to establish and implement anti-money laundering (AML) policies, procedures, and internal controls reasonably expected to detect and cause the reporting of suspicious transactions and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and its implementing regulations, in violation of NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010.²

On July 24, 2017, ETC was censured and fined \$250,000 by FINRA for, among other violations, failing to implement AML policies, procedures and internal controls reasonably designed to detect and report suspicious trading and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and its implementing regulations, in violation of FINRA Rules 3310 and 2010.³

On September 15, 2017, ETC was censured and fined \$18,000 by the New York Stock Exchange (NYSE) for failing to have a system of risk management controls and supervisory procedures reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements and by failing to maintain direct and exclusive control over risk controls as of November 25, 2016, in violation of Exchange Act Rule 15c3-5(c)(2)(i) and 15c3-5(d), respectively.⁴ The firm also improperly canceled Market-on-Close orders after the prescribed cutoff time of NYSE in violation of NYSE Rule 123C and failed to implement reasonably designed supervisory systems and controls to achieve compliance with NYSE Rule 123C in the above timeframe, in violation of NYSE Rule 123C and NYSE Rule 3110, respectively.

In February and March 2018, ETC was censured and fined an aggregate \$40,000 by FINRA, Cboe BYX Exchange, Inc. (BYX), BZX, Cboe EDGX Exchange, Inc. (EDGX), NYSE, and NYSE American LLC (NYSE American) for failing to comply with Rule 611(c) of Regulation NMS, related rules of the exchanges specific to the handling of intermarket sweep orders (ISOs), and related supervision requirements of the above self-regulatory organizations (SROs) from July 2014 through March 2015.⁵ The firm improperly relied upon the systems of a non-broker-dealer customer to take snapshots of protected quotations, failed to capture protected quotations for certain securities, did not

² Matter No. 2012035298101.

³ Disciplinary Proceeding No. 2013037709301.

⁴ Matter No. 2016-11-00072.

⁵ Matter Nos. 20140437870-01 (NYSE), 20140437870-02 (NYSE American), 20140437870-03 (FINRA), 20140437870-04 (BZX), 20140437870-05 (BYX), and 20140437870-06 (EDGX).

provide for supervision reasonably designed to achieve compliance with Rule 611(c) and failed to evidence that it performed post-trade reviews of the ISOs the firm handled. ETC also was required to enter into an undertaking to update its controls and written supervisory procedures (WSPs) for achieving compliance with Rule 611(c).⁶

OVERVIEW

From May 2017 through December 2020, ETC failed to reasonably supervise for potentially manipulative trading. Throughout the relevant period, ETC provided sponsored access to foreign and domestic broker dealers and institutional customers, including several institutional customers that were comprised of hundreds of individual foreign-based day traders. The firm did not reasonably surveil for potential manipulation such as marking the open or close, prearranged trading, and wash sales. In addition, the firm's review of surveillance alerts was unreasonable. ETC had limited staff and other resources to sufficiently review and resolve alerts for potentially manipulative trading, which, by 2018, totaled more than one million alerts per year. The firm also did not reasonably respond to red flags of potentially manipulative trading. As a result, ETC violated FINRA Rules 3110 and 2010.

During the period May 2017 through December 2020, ETC also failed to establish and implement AML policies and procedures reasonably designed to detect and cause the reporting of suspicious activity. During this period, the firm failed to reasonably surveil trading, including by failing to review over one million alerts generated by its surveillance systems, or otherwise respond to red flags of suspicious activity for purposes of determining whether to file a Suspicious Activity Report (SAR). The firm also failed to implement reasonable procedures for filing SARs when the firm detected suspicious transactions. As a result, ETC violated FINRA Rules 3310 and 2010.

From May 2016 through March 2020, ETC's market access controls and supervisory procedures also were not reasonably designed. ETC did not document the rationale for its financial risk management controls, including its clients' credit controls and its erroneous order controls. Further, ETC's price controls were not reasonably designed to prevent potentially erroneous orders. ETC also improperly allocated responsibility for financial risk controls to an introducing broker, and failed to comply with annual review and certification requirements. As a result, ETC violated Exchange Act § 15c3-5, Exchange Act Rule 15c3-5, and FINRA Rules 3110 and 2010.

From September 2018 through November 2018, and from July 2019 through February 2020, ETC did not take reasonable steps to ensure that ISOs did not trade through protected quotes. Therefore, ETC violated Rule 611(c) of Regulation NMS and FINRA Rule 2010.

⁶ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter originated from surveillance conducted by FINRA and multiple exchanges, and FINRA examinations.

ETC's Business and Surveillance Model

At all relevant times, ETC provided sponsored access to foreign and domestic broker dealers, and algorithmic and day trading entities, including several entities that were comprised of hundreds of individual foreign-based day traders, such as Client A and Client B, described below.⁷ The firm's customers used ETC's market participant identifiers (MPIDs) to route orders to other broker-dealers, alternative trading systems, and exchanges for execution.

ETC used a vendor-provided system (System 1) and an in-house system (System 2) in conjunction to surveil for potentially manipulative trading by customers using its MPIDs. All order flow fed into both systems. There was some overlap in surveillance but each system also surveilled for different types of potentially manipulative activity. For System 1, the firm used an automated scoring feature to exclude from the firm's review alerts that it believed were likely to be "false positives" for manipulation. System 2 did not include a scoring feature. Instead, reviewers were expected to review all the post-trade alerts for potentially manipulative trading generated by the system.

ETC Failed to Reasonably Supervise for Potentially Manipulative Trading

FINRA Rule 3110(a) requires a member firm to 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. FINRA Rule 3110(b) requires a member firm to 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. The duty to supervise imposed by these rules requires member organizations to reasonably investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation.

A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

⁷ Broker-dealers provide access to the trading markets in a number of ways. One way is through "sponsored" access whereby a broker-dealer permits customers to enter orders in a manner that bypasses the broker-dealer's trading system and routes orders directly to a trading center. Another way is through "direct market" access whereby customer orders flow through the broker-dealer's trading systems prior to reaching the trading center.

ETC's supervisory system for potentially manipulative trading through the firm was not reasonable in several respects from May 2017 through December 2020.

ETC Did Not Reasonably Surveil for Certain Forms of Manipulation

During the relevant period, the surveillance systems used by the firm were not reasonably designed to supervise for potential manipulative trading.

First, the firm did not have a review specific to marking the open until the end of October 2019. Although the firm implemented a review to detect ramping in February 2018, that review was unreasonable for detecting marking the open because it required a series of orders and a cancellation to trigger an alert. After October 2019, ETC's marking the open surveillance was not reasonably designed because its parameters excluded orders with notional values less than \$25,000.

Second, ETC's surveillance for marking the close was unreasonable. System 1 only generated alerts for potential marking the close activity if the activity occurred within the last minute of the close. In November 2019, ETC further narrowed the parameters to consider only the last 15 seconds of the close and, by mid-November 2019, the last 2.5 seconds of the close. The firm's System 2 surveillance also was unreasonable. Although System 2 considered a longer time period — the last four minutes prior to the close — it did not generate alerts unless there had been at least three prior instances of potential marking in the same symbol in the last 20 days. As a result, System 2 would fail to identify instances where potential marking occurred on only one or two days during the preceding 20-day trading period and where potential marking occurred more than four minutes prior to the close.

Third, System 2 also was not reasonably designed to detect a client's use of multiple MPIDs to manipulate the market. Although ETC clients could enter orders through multiple MPIDs, only two of twelve of the firm's surveillance reports accounted for trading by clients using more than one MPID.⁸ As a result, potentially manipulative trading, such as wash sales, could go undetected if a client's traders used different MPIDs.

Fourth, ETC relied on System 2 to surveil for prearranged trading. Due to a coding issue, one algorithmic trading client was excluded from the firm's surveillance for potential prearranged trading from late November 2017 through December 2020. During this time, that client executed hundreds of millions of shares through ETC, including more than 472 million shares from 2018 through 2019. This client, along with Client A, Client B, and other clients, were the subject of warnings from two SROs, as described below.

ETC Failed to Reasonably Review Alerts

ETC's review of its surveillance alerts also was not reasonable. The firm's staff was too limited to reasonably conduct the initial review and analysis of alerts. As a result, from

⁸ The two surveillance reports were for prearranged trading and clients having stock in excess of 5 percent of the symbol's market capitalization.

May 2017 through December 2019, the firm failed to review more than one million of 2.3 million alerts that exceeded System 1's scoring threshold for potential manipulative trading and, therefore, required review. There were also significant delays in reviews of System 2's surveillance alerts. For example, firm records reflect delays of 98 days or more for reviews of alerts for potentially manipulative trading such as wash sales, prearranged trading, use of non-bona-fide orders, use of small orders to deceptively move prices, and manipulation of OTC small cap securities, and delays of six months in the review of alerts for potential unauthorized log-in attempts to trading systems in the above timeframe.

Further, first-level reviewers were permitted to close surveillance alerts for potentially manipulative trading without any oversight or supervision by a firm principal. During the relevant period, the persons responsible for reviewing all the alerts from System 2 since the spring of 2018 had no prior experience in identifying potentially manipulative trading.

The firm's reviewers used a central repository called the Service Bureau to access the identity of clients' individual traders when conducting supervisory reviews for potentially manipulative trading. The firm's reliance on the Service Bureau was unreasonable because the firm knew that traders had been inadvertently omitted from the repository. For example, at least 150 traders from the firm's largest client (Client A) were not captured in the firm's Service Bureau records related to the client.

The firm also failed to have reasonably designed WSPs concerning how to review for potentially manipulative trading. The firm's WSPs required alerts that evidenced patterns of potentially manipulative trading to be escalated to the Vice President of Compliance. The WSPs, however, did not provide guidance about what constituted a pattern of potential manipulation or how to reach those determinations.

ETC Did Not Reasonably Respond to Red Flags of Customers' Potentially Manipulative Trading

ETC also did not reasonably respond to "red flags" concerning its customers' potentially manipulative trading. One client, an algorithmic trader, generated more than 1.3 million alerts, which comprised more than half of the System 1 alerts requiring review from May 2017 through 2019. The firm, however, did not implement any reasonably enhanced surveillance or additional reviews of that client's trading activity.

In addition, in May 2019 and July 2019, an SRO issued written warnings to the firm detailing concerns that at least six ETC clients may have engaged in potentially manipulative trading. In August 2019, the firm initiated the termination of one of the six clients and instituted heightened surveillance for Client A and Client B. The clients identified in the warnings, however, continued to generate firm surveillance alerts for potentially manipulative trading, including Client A and Client B, which triggered trading alerts in over 85% of the inquiries from FINRA and other regulators. From May 2019 through December 2019, Client A, and its affiliate, Client B, generated more than 22,400 System 1 alerts for potentially manipulative trading that exceeded the firm's scoring

thresholds. Although the firm terminated some individual traders from Client A and Client B, the continuing alerts often were either not reviewed or untimely reviewed. In January 2020, the firm terminated Client A and Client B after two SROs issued additional written warnings to ETC regarding serious concerns that the clients were sending manipulative orders to the markets through ETC.

For these reasons, ETC violated FINRA Rules 3110 and 2010.

ETC Failed to Implement a Reasonably Designed AML Compliance Program

FINRA Rule 3310 requires all member firms to “develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm’s compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations thereunder. . . .” Pursuant to FINRA Rule 3310(a), each member’s AML program must, at a minimum, establish and implement policies and procedures that “can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. § 5318(g) and the implementing regulations thereunder.”

Regulation 31 C.F.R. § 1023.320, requires broker-dealers to file “a report of any suspicious transaction relevant to a possible violation of law or regulation,” and the U.S. Treasury Department has instructed broker-dealers to determine whether trading activity raised suspicions by monitoring for various “red flags.”⁹ FINRA also has issued guidance to member firms that they have a duty to (a) tailor their AML program to the particular risks of its business model, as well as its customer base; (b) monitor for red flags of suspicious activity; and (c) where suspicious activity is detected, perform additional due diligence to determine whether or not to file a SAR.¹⁰

Failure to monitor, analyze, and investigate red flags of suspicious activity to determine whether it is appropriate to file a SAR violates FINRA Rule 3310(a). A violation of FINRA Rule 3310 is also a violation of FINRA Rule 2010.

The firm failed to devote sufficient resources to ensure it could reasonably review the substantial number of alerts generated by its surveillance systems during the relevant period. For example, from May 2017 through December 2019, the firm delegated the daily review of all System 1 alerts, including all inquiries and follow-up investigations, to one person. The firm delegated review of System 2 reports to 1-2 reviewers. As a result, during that period, the firm failed to review more than one million of the 2.3 million alerts generated by System 1 and significantly delayed review of System 2 alerts by up to six months. ETC therefore did not reasonably monitor trading for potentially suspicious activity and investigate as necessary to determine whether a SAR should be filed. Among other things, ETC failed to review surveillance alerts indicating that its customers were

⁹ 67 Fed. Reg. 44048 (July 1, 2002).

¹⁰ See NASD Notices to Members 02-21 and 02-47 and FINRA Reg. Notice 19-18.

engaging in potential wash sales, prearranged trading, layering, spoofing, and other forms of market manipulation. ETC also failed to conduct reasonable follow-up when it became aware of red flags in connection with customer trading.

In addition, ETC failed to implement procedures reasonably designed to cause the reporting of suspicious activity once detected. The firm had no written procedure to confirm that a SAR was filed once the firm determined a transaction met the filing threshold. As a result, the firm failed to file SARs in certain instances in which it had identified suspicious activity.

For these reasons, ETC violated FINRA Rules 3310(a) and 2010.

ETC's System of Risk Management Controls and Supervisory Procedures Was Unreasonable

Exchange Act § 15(c)(3) prohibits broker-dealers from contravening the rules and regulations prescribed by the Securities and Exchange Commission (SEC) to “provide safeguards with respect to the financial responsibility and related practices of brokers and dealers.”

Exchange Act Rule 15c3-5(b) requires that a “broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.”

Exchange Act Rule 15c3-5(c)(1)(i) requires broker-dealers to establish financial risk management controls and supervisory procedures reasonably designed to “[p]revent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.” Under this provision, a broker-dealer is required to set appropriate credit thresholds for each customer for which it provides market access. Broker-dealers must make such determinations based on appropriate due diligence as to the customer’s business, financial condition, trading patterns, and other matters, and document that decision.¹¹

Exchange Act Rule 15c3-5(c)(1)(ii) requires broker-dealers to establish financial risk management controls and supervisory procedures reasonably designed to “[p]revent 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.”

¹¹ SEC Release No. 34-63241, Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69792, 69802 (Nov. 15, 2010).

Exchange Act Rule 15c3-5(d) requires that the financial and regulatory risk management controls and supervisory procedures be under the direct and exclusive control of the market access broker-dealer. While a firm may allocate regulatory risk management controls and supervisory procedures under limited circumstances, financial risk management controls and supervisory procedures must always remain under the direct and exclusive control of the broker-dealer providing market access.¹²

Exchange Act Rule 15c3-5(e) requires a broker-dealer providing market access to “establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by Rule 15c3-5(b) and (c) and for promptly addressing any issues.” Exchange Act Rule 15c3-5(e)(1) requires a broker-dealer providing market access to “review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures.” In addition, Exchange Act Rule 15c3-5(e)(2) requires the CEO or equivalent officer of a broker-dealer providing market access to certify, on an annual basis, that its risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c), and that it conducted the review described in Rule 15c3-5(e)(1).

A violation of Exchange Act § 15(c)(3) or Exchange Act Rule 15c3-5 also constitutes a violation of FINRA Rule 2010.

From May 2016 through March 2020, ETC failed to establish, document, and maintain financial risk management controls and procedures reasonably designed to limit the financial and regulatory risks associated with this activity.

ETC Failed to Document its Rationale for its Financial Risk Management Controls

Throughout the relevant period, ETC’s WSPs provided, among other things, that the rationale for establishing and adjusting the firm’s financial risk management controls must be documented pursuant to Exchange Act Rule 15c3-5. Prior to late 2018, ETC failed to document its rationale when establishing and adjusting clients’ credit controls. Furthermore, the firm could not provide a reasonable basis or documentation to demonstrate that its erroneous order controls were set at a level reasonably designed to prevent the entry of erroneous orders. At the end of 2018, the firm created a log that reflected ETC’s establishment of, and adjustments to, its clients’ credit thresholds and erroneous order controls. ETC still failed, however, to document the rationale for credit and erroneous order control settings and adjustments.

ETC’s Price Controls Were Not Reasonably Designed

From May 2016 through March 2020, ETC’s price controls for five sponsored access clients were not reasonably designed to prevent the entry of erroneous orders because,

¹² See Division of Trading and Markets, *Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access* (April 15, 2014), Question 17.

absent additional controls, the parameters were too permissive to be effective. For example, in some instances, price controls thresholds were two to three times Clearly Erroneous Execution numerical thresholds for securities priced above \$25 under FINRA and exchange rules, and two times the Limit Up/Limit Down¹³ price band parameters for certain NMS stock priced greater than \$3. In these instances, the firm did not document the rationale for the control parameters.

ETC Improperly Allocated Responsibility for Financial Risk Controls

In addition, in June 2018, ETC improperly allocated responsibility for establishing financial risk controls for one of its market access customers to an introducing broker. The introducing broker provided ETC with financial risk controls, which ETC uploaded into the customer's order management system. ETC did not memorialize its analysis of the reasonableness of the financial risk controls before uploading them or conduct any reviews thereafter to determine whether the financial risk controls remained reasonable.

ETC Failed to Reasonably Review and Certify the Effectiveness of its Risk Management Controls

ETC's WSPs required an annual review of the effectiveness of the firm's risk management controls and supervisory procedures, and related certification by the chief executive officer pursuant to Exchange Act Rule 15c3-5. ETC, however, did not review any of its risk controls for 2017, and reviewed some, but not all, of its risk controls for 2018 and 2019.

Furthermore, ETC failed to timely complete its certification of its review for 2018 and 2019. The firm's annual certification for 2018 occurred 13 months after its certification for 2017, and the firm's annual certification for 2019 occurred almost 17 months after the firm's certification for 2018.

For these reasons, ETC violated Exchange Act § 15(c)(3), Exchange Act Rules 15c3-5(b), (c)(1)(i) and (ii), (d), (e)(1) and (2), and FINRA Rules 3110 and 2010.

ETC Did Not Comply with Regulation NMS Requirements Concerning ISOs

Rule 600(b)(31) of Regulation NMS, like its predecessor Rule 600(b)(30),¹⁴ defined an intermarket sweep order (ISO) as a limit order for an NMS stock that is identified as an ISO when routed to a trading center and simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to

¹³ The LULD plan was designed to address extraordinary market volatility by preventing trades in NMS stock, as defined in Rule 600(b)(55) of Regulation NMS, from occurring outside of specified price bands and to reduce the number of erroneous trades.

¹⁴ Effective January 18, 2019, Rule 600(b)(30) was renumbered Rule 600(b)(31). After the conduct at issue, in June 2021, the rule was again renumbered to Rule 600(b)(38). Because Rules 600(b)(30) and 600(b)(31) were the rules in effect during the relevant period, those rules apply to the subject conduct.

execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.

Rule 611(c) requires broker-dealers that route an ISO to take reasonable steps to establish that such order meets the requirements of Rules 600(b)(30) and 600(b)(31).

A violation of Exchange Act Rule 611(c) constitutes a violation of FINRA Rule 2010.

From September 2018 through November 2018, due to a system coding issue, the firm failed to take snapshots of protected quotations for approximately 8.5 million ISOs routed by a sponsored access client, which resulted in trade throughs of protected quotations. The misconduct ended when the client discontinued the trading strategy.

In addition, from July 2019 through February 2020, the firm failed to take snapshots of protected quotations for approximately 150,000 ISOs routed by another sponsored access client, which resulted in trade throughs of protected quotations. As a result of human error, the firm failed to activate a pre-order entry ISO block applicable to the client, which was not authorized by the firm to submit ISOs. ETC activated the pre-order entry ISO block in March 2020, after a FINRA inquiry about the ISOs.

For these reasons, ETC failed to take reasonable steps to establish that the ISOs described above met the requirements of Exchange Act Rule 600(b)(31) and its predecessor, Rule 600(b)(30), in violation of Exchange Act Rule 611(c) and FINRA Rule 2010.

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

- a censure; and
- a \$3 million fine, of which \$836,990.22 shall be paid to FINRA.¹⁵

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between the firm and BYX, BZX, EDGA, EDGX, IEX, Nasdaq, BX, Phlx, NYSE Arca, NYSE American, NYSE, and NYSE National.

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 after the execution of this AWC, the monetary sanction imposed in this matter.

¹⁵ The remainder will be paid to BYX; BZX; Cboe EDGA Exchange, Inc. (EDGA); EDGX; Investors Exchange LLC (IEX); Nasdaq; Nasdaq BX, Inc. (BX); Nasdaq PHLX LLC (Phlx); NYSE Arca; NYSE American; NYSE; and NYSE National, Inc. (NYSE National).

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 its acceptance or rejection.

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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

August 10, 2023

Date

William Brennan

Electronic Transaction Clearing, Inc.
Respondent

Print Name: William Brennan

Title: CEO

Reviewed by:

Susan Light

Susan Light
Katten Muchin Rosenman LLP
Counsel for Respondent
50 Rockefeller Plaza
New York, NY 10020-1605

Accepted by FINRA:

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

September 8, 2023

Date

Dawn Faris

Dawn Faris
Senior Counsel
FINRA
Department of Enforcement
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