

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057732801**

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

RE: Fenix Securities, LLC (Respondent)
Member Firm
CRD No. 159481

Pursuant to FINRA Rule 9216, Respondent Fenix Securities, 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

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

BACKGROUND

Fenix has been a FINRA member since August 2012. The firm is headquartered in New York, New York, and has a branch office in Buenos Aires, Argentina. The firm employs approximately 10 registered representatives and provides its customers direct market access through the firm's subscription with an alternative trading system.¹

OVERVIEW

From October 2016 to the present, Fenix failed to establish, document and maintain a system of risk management controls reasonably designed to manage the financial risks of its market access business activity in violation of Section 15(c)(3) of the Securities Exchange Act of 1934, Exchange Act Rules 15c3-5(b) and (c)(1)(ii), and FINRA Rules 3110 and 2010.

From October 2016 to the present, the firm failed to establish, document and maintain a system for regularly reviewing the effectiveness of its market access risk management controls and supervisory procedures in violation of Exchange Act §15(c)(3), Exchange Act Rule 15c3-5(e), and FINRA Rule 2010.

¹ 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 a referral from another self-regulatory organization.

Fenix failed to establish reasonable market access risk management controls and procedures.

Exchange Act § 15(c)(3)(A) prohibits broker-dealers from contravening the rules and regulations prescribed by the Securities and Exchange Commission to “provide safeguards with respect to the financial responsibility and related practices of brokers and dealers.” Pursuant to this section, the SEC adopted Exchange Act Rule 15c3-5. Rule 15c3-5 is designed to manage the risks faced by a broker or dealer, as well as the markets and the financial system as a whole, as a result of various market access² arrangements, by requiring financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis.

Exchange Act Rule 15c3-5(b) provides 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.”

Rule 15c3-5(c)(1)(ii) requires that the system of risk management controls and supervisory procedures be 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.”

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.

FINRA Rule 2010 provides 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 the Exchange Act or any FINRA or Exchange Act rule also constitutes a violation of FINRA Rule 2010.

² Exchange Act Rule 15c3-5(a)(1)(i) defines “market access,” in relevant part, as “[a]ccess to trading in securities on an exchange or alternative trading system as a result of being a member or subscriber of the exchange or alternative trading system, respectively.”

From October 2016 to the present, Fenix failed to establish, document, and maintain a system of risk management controls reasonably designed to manage the financial risks of its market access business activity. During this period, Fenix provided its customers direct access to multiple ATSs through the firm's order management systems. The firm implemented certain pre-trade controls within its order management systems, including order size and price controls, however the firm's controls were not reasonably designed to prevent the entry of erroneous orders. From October 2016 to at least January 2020, the firm's single order size and price variance controls relied on static numbers that did not consider the individual trading characteristics of individual securities or customers, and that were too high to be reasonably designed to prevent the entry of erroneous orders absent additional reasonably designed controls, such as an ADV control, which the firm did not have. The firm maintained no documentation of its rationale for setting those controls. Similarly, from October 2016 to at least March 2019, the firm relied on a price variance control that, once triggered, routed a warning message to a firm principal but did not stop the order from being routed to the market. The firm had no policies or procedures for how the warning messages should be reviewed or how such reviews should be documented and did not document such reviews.

Further, from October 2016 to at least August 2018, the firm, for some of its customers, relied on the pre-trade order price and size controls maintained by an ATS. The ATS's price and size controls were unreasonable, in part because they relied on static numbers that were too high to be reasonably designed to prevent the entry of erroneous orders, absent additionally reasonably designed controls. Further, Fenix did not document for which customers the firm relied on such controls and had no process to determine or document whether such controls were reasonably designed for those customers.

Finally, from October 2016 through the present, the firm did not maintain accurate documentation of its pre-trade market access controls implemented within its systems or documentation of its rationale for selecting its pre-trade controls on a firm-wide or per-customer basis.

Therefore, Fenix violated Exchange Act §15(c)(3), Exchange Act Rules 15c3-5(b) and (c)(1)(ii), and FINRA Rules 3110 and 2010.

Fenix failed to conduct an annual review of the effectiveness of its market access risk management controls and procedures.

Exchange Act Rule 15c3-5(e) requires that a broker-dealer "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." Rule 15c3-5(e)(1) requires, in relevant part, that a broker-dealer "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." Rule 15c3-5(e)(2) further requires that the CEO (or equivalent officer) certify on an annual basis that the firm's risk management controls and

supervisory procedures comply with Rule 15c3-5(b) and (c) and that the Rule 15c3-5(e)(1) regular review has been conducted.

From October 2016 to the present, the firm failed to conduct an annual review of the business activity of the firm related to market access to assure the overall effectiveness of its risk management controls and supervisory procedures as required under Rule 15c3-5(e)(1). Likewise, the firm failed to complete the corresponding CEO certifications that the firm's risk management controls and supervisory procedures comply with 15c3-5(b) and (c), and that the firm conducted a review of the business activity of the firm related to market access, as required under Rule 15c3-5(e)(2).

Therefore, Fenix violated Exchange Act §15(c)(3), Exchange Act Rule 15c3-5(e), and FINRA Rule 2010.

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

- a censure;
- a \$100,000 fine; and
- an undertaking that, within 90 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written supervisory procedures, and a documented system of risk management controls, including pre-order erroneous order controls, reasonably designed to achieve compliance with Exchange Act §15(c)(3), Exchange Act Rule 15c3-5, and FINRA Rule 3110 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Kimberly Koziara, Counsel, 1601 Market Street, Suite 2700, Philadelphia, PA 19103, kimberly.koziara@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

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.

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 prejudice 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

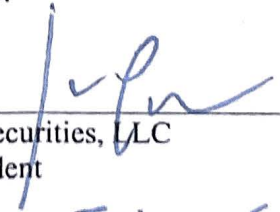
C. If accepted:

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.

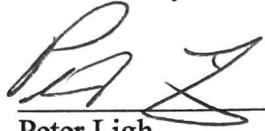
February 21, 2023
Date


Fenix Securities, LLC
Respondent

Print Name: Julian Salvey

Title: CEO / MANAGING PARTNER

Reviewed by:



Peter Ligh
Counsel for Respondent
Ligh Law LLC
250 West 75th Street
New York, NY 10023

Accepted by FINRA:

February 28, 2023

Date

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



Kimberly G. Koziara
Counsel
FINRA
Department of Enforcement
1601 Market Street, Suite 2700
Philadelphia, PA 19103

This Corrective Action Statement is submitted on behalf of Fenix. It does not constitute factual or legal findings by FINRA, nor does it reflect the view of FINRA, or its staff.

February 24, 2023

Ms. Kimberly Koziara
Counsel
FINRA Department of Enforcement
1601 Market Street, Suite 2700
Philadelphia, PA 19103

Re: Corrective Action Statement to Letter of Acceptance, Waiver and Consent (No. 2018057732801)

Dear Ms. Koziara,

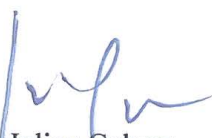
I am responding on behalf of Fenix Securities, LLC ("Fenix") to the above-referenced Letter of Acceptance, Waiver and Consent ("AWC").

Fenix has undertaken several steps designed to remediate the issues identified in the AWC and to prevent future violations, and looks forward to certifying its full remediation to FINRA within 90 days, as consented to in the AWC.

Fenix has, among other improvements, (1) replaced its Chief Compliance Officer and Chief Operating Officer, (2) replaced its order routing vendor, partnering up instead with more reliable execution vendors, (3) replaced its clearing broker, (4) updated its Written Supervisory Procedures, (5) hired an outside consulting firm—Compliance Network—to help Fenix with updating its procedures and required annual testing, and (6) hired BXS as its best execution software provider. All of Fenix's management is now well aware of the need for more robust and effective market access controls and annual reviews.

Fenix takes seriously its obligations under the FINRA rules to establish reasonable market access risk management controls and procedures, and to have annual reviews of the effectiveness of such risk management controls and procedures. Fenix will do what is necessary to comply with such rules.

Sincerely,



Julian Galvez
CEO
Fenix Securities, LLC