

**NASDAQ GEMX, LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017056214410**

TO: Nasdaq GEMX, LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: Jefferies LLC  
CRD No. 2347

Pursuant to Rule 9216 of the Nasdaq GEMX, LLC (“GEMX”) Code of Procedure,<sup>1</sup> Jefferies LLC (“Jefferies” or the “Firm”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) to GEMX, formerly known as the ISE Gemini, LLC (“GEMX” or the “Exchange”), for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, GEMX 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 GEMX, or to which GEMX 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 GEMX:

**BACKGROUND**

Jefferies has been a GEMX member since 2013, and a FINRA member since 1963, and its registrations remain in effect. The Firm is headquartered in New York, NY, and employs approximately 2,200 registered representatives. The Firm provides brokerage, investment banking, research, and trading, execution and clearing services to institutional and individual customers and other broker-dealers.

Jefferies has no relevant disciplinary history.

**SUMMARY**

This matter arose from an investigation conducted by FINRA’s Department of Market Regulation.

From September 2016 to April 2018 (the “Relevant Period”), Jefferies violated GEMX Rules 401 and 400 by failing to establish and maintain a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to assure its associated

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<sup>1</sup> Series 9000 of The Nasdaq Stock Market, LLC (“Nasdaq”) Rules are incorporated by reference into Nasdaq GEMX Rule General 5, Section 3, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to Nasdaq GEMX’s jurisdiction.

persons' compliance with securities laws, regulations, and Exchange rules relating to potentially manipulative trading, specifically marking the close activity in options. As a result, the Firm failed to detect that two proprietary traders submitted orders at or near the close of the trading day on GEMX and other exchanges that affected the last reported bids and/or offers in various options series on more than 100 occasions.

### **FACTS AND VIOLATIVE CONDUCT**

1. GEMX Rule 401 states, “[n]o Member shall engage in conduct in violation of the Exchange Act, the By-Laws or the Rules of the Exchange, or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof. Every Member shall so supervise persons associated with [it] as to assure compliance therewith.”<sup>2</sup>
2. GEMX Rule 400 prohibits members from “engag[ing] in acts or practices inconsistent with just and equitable principles of trade.”<sup>3</sup> A violation of GEMX Rule 401 also constitutes a violation of GEMX Rule 400.
3. During the Relevant Period, Jefferies failed to establish and maintain a supervisory system, including WSPs, reasonably designed to assure compliance with securities laws, regulations, and Exchange rules relating to potentially manipulative trading, specifically marking the close activity in options trading.
4. The Firm’s WSPs prohibited Firm traders from engaging in “activity intended to artificially raise or lower the closing price of a[n] ... option (i.e., marking the close).” But Jefferies did not have any supervisory systems specifically designed to detect and prevent marking the close activity in executed options transactions until January 2018 and its WSPs did not indicate if the supervisory review for questionable or suspicious activity included marking the close or identify the documents and information the supervisors should use when conducting this review. Further, Jefferies did not provide its supervisors with access to applicable surveillance alerts its Compliance Department used to monitor for potentially manipulative activity, or require Compliance to inform supervisors of its Compliance reviews.
5. As a result, Jefferies did not detect that two proprietary traders submitted orders on GEMX and other exchanges at or near the end of the trading day on more than 100 occasions that affected the last reported bids and/or offers in various options series until it received an inquiry from FINRA in December 2017.
6. Although Jefferies instructed both traders in January 2018 to stop entering orders at or near the close, Jefferies did not implement any other review of orders generally, or of the traders’ activity specifically, to ensure that the traders discontinued their

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<sup>2</sup> As of June 27, 2019, GEMX Rule 401 was relocated to GEMX Options 9, which incorporates by reference Nasdaq ISE, LLC Options 9, Section 2.

<sup>3</sup> As of June 27, 2019, GEMX Rule 400 was relocated to GEMX Options 9, which incorporates by reference Nasdaq ISE, LLC Options 9, Section 1.

practice of submitting end of day orders for pricing purposes. As a result, Jefferies did not detect that one of the traders continued to submit orders at or near the end of the trading day until it implemented a month-end “marking the close” review of both executed options transactions and unexecuted option orders in April 2018.

7. Accordingly, Jefferies violated GEMX Rules 401 and 400 during the Relevant Period.

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

1. A censure; and
2. A total fine in the amount of \$450,000 (\$48,333 payable to GEMX).<sup>4</sup>

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 a Payment Information 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 GEMX’s Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal 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 Exchange Review Council 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 Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review

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<sup>4</sup> The remainder of the fine shall be allocated to Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Miami International Securities Exchange, LLC, Nasdaq ISE, LLC, Nasdaq Options Market LLC, Nasdaq PHLX LLC, and NYSE Arca, Inc. for similar violations.

Council, 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 Rule 9143 or the separation of functions prohibitions of 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 FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to GEMX 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 GEMX or any other regulator against the Firm;
  - 2. GEMX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with GEMX Rule 8310 and IM-8310-3;<sup>5</sup> and
  - 3. 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 GEMX, or to which GEMX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the the Firm's right to take legal or factual positions in litigation or other legal proceedings in which GEMX 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

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<sup>5</sup> Series 8000 of Nasdaq Rules are incorporated by reference into Nasdaq GEMX Rule General 5, Section 2, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to Nasdaq GEMX's jurisdiction.

inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by GEMX, nor does it reflect the views of the Exchange 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.

November 30, 2023

Date

Jefferies LLC  
Respondent

By: Michael Sharp

Print Name: Michael Sharp

Title: Executive Vice President

Reviewed by:

Michael D. Wolk

Michael D. Wolk  
Sidley Austin LLP  
1501 K. Street, N.W.  
Washington, DC 20005  
Counsel for Respondent

Accepted by GEMX:

December 12, 2023

Date

*Shane Cralle*

Shane Cralle  
Principal Counsel  
FINRA Department of Enforcement

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