NASDAQ MRX, LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018060117906

TO: Nasdaq MRX, LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Dash Financial Technologies LLC, Respondent
Broker-Dealer
CRD No. 104031

Pursuant to Rule 9216 of the Nasdaq MRX, LLC ("MRX") Code of Procedure,[1] Dash Financial Technologies LLC ("Dash" or the "Firm") 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, MRX will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Dash 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 MRX, or to which MRX 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 MRX:

BACKGROUND

1. Dash became a member of MRX in February 2016, and its registration remains in effect. Dash is an agency-only broker-dealer that provides routing and execution services to institutional customers for options and equities. The Firm offers various algorithmic trading products to its customers and does not domicile accounts or engage in proprietary trading. Dash has approximately 55 registered representatives and three branches, and its principal place of business is Chicago, IL. The Firm has no relevant disciplinary history.

SUMMARY

2. This matter arises from referrals from certain options exchanges made to FINRA's Department of Market Regulation ("Market Regulation") involving Dash's execution of certain call options on October 10, 2018, and a separate referral for similar activity that occurred on February 21, 2020. Market Regulation reviewed Dash's Market

[1] Series 9000 of The Nasdaq Stock Market, LLC ("Nasdaq") Rules are incorporated by reference into Nasdaq MRX General 5, Section 3, and are thus Nasdaq MRX Rules and thereby applicable to Nasdaq MRX Members, Associated Persons, and other persons subject to Nasdaq MRX's jurisdiction.

Access Rule controls and procedures to determine if they were reasonably designed to limit the financial exposure that arises as a result of market access by, among other things, preventing erroneous orders by rejecting orders that exceed price parameters.

3. This review found that from October 2018 through September 2020, Dash violated Rule 15c3-5 of the Securities Exchange Act of 1934 ("Market Access Rule") by failing to establish, document, and maintain erroneous order controls and supervisory procedures applicable to market orders for options. Further, from October 2018 through March 2022, Dash violated the Market Access Rule by failing to assure that appropriate surveillance personnel receive immediate post-trade execution reports. From October 2018 through March 2022, Dash also violated MRX Rules 400 and 401[2] by failing to establish and maintain written supervisory procedures ("WSPs") and a supervisory system reasonably designed to ensure compliance with the Market Access Rule in connection with the same.

FACTS AND VIOLATIVE CONDUCT

The Market Access Rule

4. Rule 15c3-5(b) requires a broker-dealer with market access to "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."

5. Rule 15c3-5(c)(1) is intended to address these financial risks. To that end, Rule 15c3-5(c)(1)(ii) requires broker-dealers providing market access to maintain 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." These controls must be reasonably designed to prevent erroneous orders caused by both manual errors and technological malfunctions.

6. Rule 15c3-5(c)(2)(iv) requires risk management controls and supervisory procedures "reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access." This requirement is designed to assure the broker-dealers with market access have information immediately available to effectively control associated financial and regulatory risks.

The October 10, 2018 Erroneous Order Event

7. On October 10, 2018, a broker-dealer client routed ten market orders to buy a total of 20,700 ABC October 12 call option contracts in a series of ten strike prices (from $52.50 to $57) in quantities of 700 to 4,200 option contracts to Dash and selected a

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[2] As of June 6, 2019, MRX Rules 400 and 401 were renumbered to Options 9, Sections 1 and 2, respectively.

specific routing algorithm that was designed for users who were not price sensitive and who were looking to execute an options strip or basket quickly.

8. The selected algorithm then converted the market orders into multiple child limit orders that reflected the size and price of the best offer disseminated by the target exchange at the time each child order was created. The algorithm continued to send limit orders until the order was fully executed, or all exchange quotes were pulled.

9. In less than one second, 9,664 of the 20,700 option contracts executed. Of those, 4,694 contracts executed on MRX and several other options exchanges. As the orders executed, and as the sell-side liquidity in the contracts decreased, the algorithm continued to submit buy orders with escalating limit prices. Thus, although the National Best Offer in the relevant call series ranged from $0.05 to $0.08 when the initial market orders were received, the selection by the Firm's client of this particular algorithm, and the manner in which the algorithm priced the child limit orders, caused execution prices to range from $0.05 to $10.00.

10. Dash first learned of this activity when it was contacted by its broker-dealer client. At the client's request, Dash contacted MRX and other options exchanges to request that the executions be reviewed and adjusted. MRX and the other options exchanges treated the trades as Catastrophic Errors and adjusted the prices of 1,737 out of the 4,694 contracts traded. The remaining trades stood without adjustment, including all trades executed at $0.05 to $0.07.

The February 21, 2020 Erroneous Order Event

11. On February 21, 2020, a different broker-dealer client routed an order to sell 4,000 XYZ March 25 calls to Dash and selected the same algorithm referenced above, which was designed to quickly execute options orders at prevailing market prices. While Dash had implemented a control following the October 10, 2018 Erroneous Order Event that was designed to limit the cumulative price impact that a parent market order could have over a short period of time,[3] the parameters were insufficiently tailored for low-priced options. As a result, the algorithm submitted orders to MRX and other options exchanges, without sufficient regard to the impact the orders may have on the price of the XYZ calls, with limit prices ranging from $0.40 down to $0.10 and resulting in the execution of 3,358 of the 4,000 contracts on MRX and other options exchanges in less than one second at prices ranging from $0.40 down to $0.10.

[3] On November 8, 2018, the Firm implemented a control on its smart order router ("SOR") to apply a maximum offset based NBBO at the time a market order is received to the limit price setting functionality used by the Firm's SOR when routing child orders.

12. Dash first learned of this activity when it was contacted by its broker-dealer client. At the client's request, Dash contacted MRX and the other options exchanges to request that the executions be reviewed and adjusted. Following their review, the exchanges declined to do so as the execution prices did not qualify as Obvious or Catastrophic Errors.

Violations of Rules 15c3-5(b) and 15c3-5(c)(1)(ii)

13. At the time of the October 10, 2018 erroneous order event, Dash had in place various pre-trade erroneous order controls that would reject limit orders that exceeded price parameters. Dash did not, however, apply these or any other pre-trade price control to market orders for options, and Dash's WSPs did not reference such a control. Thus, although the algorithm converted the customer's market orders to limit orders, Dash created and routed limit orders at continuously increasing prices to fill the client market orders, which led to the October 10, 2018 Erroneous Order Event and resulted in a Catastrophic Error review and related trade adjustments.

14. In or around November 2018, Dash implemented an "Inbound Market Order Control" that applies a synthetic limit (*i.e.*, an offset) to market orders based on the NBB/NBO at the time the order is received. This synthetic limit is then used as an absolute limit for the prices that Dash's algorithms can use when externally routing orders for execution. Although this control was in place at the time of the February 21, 2020 erroneous order event, its parameters were set such that it applied an offset of $0.50 to all orders priced up to $2.00 and was therefore not sufficiently tailored for orders in low-priced options. Thus, this control did not prevent the orders at issue on February 21, 2020 from being routed because the price of those options was under $0.50. Dash's Inbound Market Order Control was therefore not reasonably designed as it did not reasonably consider the price of the security. Dash subsequently updated this control as of September 2020 to use nine pricing tiers, with offsets ranging from $0.15 to $4.00. Dash did not, however, include a description of its Inbound Market Order Control in its WSPs.

15. For the reasons set forth above, Dash violated Rules 15c3-5(b) and 15c3-5(c)(1)(ii).

Violations of Rules 15c3-5(b) and 15c3-5(c)(2)(iv)

16. From October 2018 through March 2022, Dash failed to assure that appropriate surveillance personnel received immediate post-trade execution reports that resulted from its market access. Dash lacked, and its WSPs did not reference, a post-trade execution report that would detect substantial price movements resulting from orders routed by its customers. As a result, Dash did not learn of either the October 10, 2018 or the February 21, 2020 erroneous order events until it was contacted by the respective clients.

17. For the reasons set forth above, Dash violated Rules 15c3-5(b) and 15c3-5(c)(2)(iv).

Supervisory Violations

18. MRX Rule 400, and subsequently Options 9, Section 1, provides that MRX members shall not engage in acts or practices inconsistent with just and equitable principles of trade.

19. MRX Rule 401, and subsequently Options 9, Section 2, provides that MRX member shall not engage in conduct in violation of the Exchange Act, the MRX By-Laws or rules, or the rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any MRX transaction, or any written interpretation thereof. Every MRX member shall so supervise persons associated with the member as to assure compliance therewith.

20. From October 2018 through March 2022, Dash failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with applicable securities laws, regulations and exchange rules relating to its Rule 15c3-5 erroneous order controls for options market orders. Dash's WSPs did not reference its Inbound Market Order Control, or any other control designed to prevent the erroneously priced orders discussed above. Dash's WSPs also did not reference any post-trade surveillance report that would detect substantial price movements resulting from orders routed by its customers.

21. For the reasons set forth above, from October 2018 through June 5, 2019, Dash violated MRX Rules 400 and 401, and from June 6, 2019 through March 2022, Dash violated Options 9, Sections 1 and 2.

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

1. Censure; and

2. A total fine in the amount of $125,000 ($10,890 payable to MRX).[4]

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Payment Information form showing the method by which it will 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(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

[4] The remainder of the fine shall be allocated to NYSE American, LLC, NYSE Arca, LLC, Nasdaq PHLX, LLC, Nasdaq Options Market, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq BX, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX Pearl, LLC, and BOX Exchange, LLC for similar violations.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under MRX'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 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 MRX 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 permanent disciplinary record and may be considered in any future actions brought by MRX or any other regulator against the Firm;

2. MRX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with MRX Rule 8310 and IM-8310-3;[5] 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 MRX, or to which MRX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions in litigation or other legal proceedings in which MRX 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 MRX, nor does it reflect the views of the Exchange or its staff.

[5] Series 8000 of the Nasdaq Rules are incorporated by reference into Nasdaq MRX General 5, Section 2, and are thus Nasdaq MRX Rules and thereby applicable to Nasdaq MRX Members, Associated Persons, and other persons subject to Nasdaq MRX's jurisdiction.

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.

April 25, 2022
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Date

Dash Financial Technologies LLC
Respondent

By: Jaclyn L Butler
Name: Jaclyn L Butler
Title: Chief Compliance Officer

Reviewed by:

Derek Lacarrubba
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Derek Lacarrubba, Special Counsel
Schulte Roth & Zabel LLP
Counsel for Respondent

Accepted by MRX:

May 16, 2022
____
Date

Andy Hubbartt
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Andy Hubbartt
Senior Counsel
Department of Enforcement

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