NASDAQ BX, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150440782O3

TO: Nasdaq BX. Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: CODA Markets. Inc. (f/k/a PDQ ATS. Inc.). Respondent
Broker-Dealer
CRD No. 36187

Pursuant to Rule 9216 of the Nasdaq BX. Inc. ("BX") Code of Procedure.[1] CODA Markets. Inc. (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. BX 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 BX. or to which BX 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 BX:

BACKGROUND

CODA Markets has been a FINRA member since May 1994 and a BX member since August 2010. The firm is headquartered in Illinois and has one branch office and approximately 20 registered persons. CODA Markets sponsors and operates an alternative trading system ("ATS") and provides routing and execution services to its subscribers. which included broker-dealers and a few institutional customers. The firm has no relevant disciplinary history.

SUMMARY

From July 14. 2011 through the present. CODA Markets provided its subscribers with direct market access ("DMA") to multiple exchanges. including BX. and unaffiliated ATSs through use of its market participant identifiers ("MPIDs"). During this time. CODA Markets' DMA business grew and became its largest revenue source. Nonetheless. CODA Markets failed to establish and maintain a supervisory system. including written supervisory procedures ("WSPs"). and regulatory risk management

[1] Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into BX Rule General 5. Section 2. and are thus BX Rules and thereby applicable to BX members. associated persons. and other persons subject to BX's jurisdiction.

controls reasonably designed to monitor for potentially manipulative trading, such as potential layering, spoofing, wash trades, prearranged trades, marking the close, and odd-lot manipulation. During this time, CODA Markets generated more than 350,000 exceptions and alerts at FINRA and multiple exchanges for potentially manipulative trading.

CODA Markets' failures have resulted in potentially manipulative trading occurring through its MPIDs and hundreds of millions of orders entering the markets without being subjected to reasonably designed risk management controls or reasonably designed post-trade supervisory reviews. Based on the conduct described in this AWC, CODA Markets violated Securities Exchange Act of 1934 ("Exchange Act") § 15(c)(3); Rule 15c3-5(b) and (c)(2) thereunder; BX Rules 3010(a) and 2110; and BX General Rule 9, Sections 1(a) and 20(a).

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from surveillances conducted by FINRA and multiple exchanges.

2. 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." Pursuant to this section, the SEC adopted Rule 15c3-5 on November 3, 2010. The compliance date for Rule 15c3-5 was July 14, 2011.

3. Exchange Act Rule 15c3-5(b) provides, "A broker or dealer with market access, or that provides a customer or any other person with access to an exchange or [ATS] through use of its [MPID] 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."

4. BX General Rule 9, Section 20(a), like its predecessor BX Rule 3010(a), requires each member to "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Exchange rules."[1]

5. BX General Rule 9, Section 1(a), like its predecessor BX Rule 2110, provides, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[2] A violation of the Exchange Act, an SEC rule, or another BX rule also constitutes a violation of BX General Rule 9, Section 1(a) or its predecessor.

[1] BX General Rule 9, Section 20 replaced BX Rule 3010, effective October 23, 2019.

[2] BX General Rule 9, Section 1(a) replaced BX Rule 2110, effective October 23, 2019.

CODA Markets provided market access to day traders through its broker-dealer subscribers.

6. CODA Markets provided its subscribers access to trading on multiple exchanges, including BX, and unaffiliated ATSs through use of CODA Markets' MPIDs. The customers of CODA Markets' broker-dealer subscribers were predominately either individual day traders whose identities were unknown to the firm or trading firms that had dozens or hundreds of day traders. Some subscribers appended alphanumeric customer account identifiers ("IDs"), trader IDs, or both to their orders. Other subscribers provided no customer or trader information when submitting orders to CODA Markets.

7. CODA Markets handled billions of subscriber orders and executed hundreds of millions of trades on exchanges and unaffiliated ATSs from July 14, 2011 through the present.

CODA Markets failed to reasonably supervise for potentially manipulative trading.

8. Exchange Act Rule 15c3-5(c)(2) requires a market access broker-dealer to establish, document, and maintain regulatory risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements. In the adopting release, the SEC stated that those regulatory requirements included post-trade obligations to monitor for manipulation.[1]

9. During the relevant period, the firm failed to establish, document, and maintain a supervisory system, including WSPs, and regulatory risk management controls reasonably designed to monitor for potentially manipulative trading, such as potential layering, spoofing, wash trades, prearranged trades, marking the close, and odd-lot manipulation, by its subscribers and their customers. During this time, CODA Markets generated hundreds of thousands of exceptions and alerts at FINRA and multiple exchanges for potentially manipulative trading. For example, from August 2012 through October 2018, CODA Markets generated over 350,000 exceptions at FINRA for potentially manipulative trading.

Layering and Spoofing

10. From July 14, 2011 through August 2012, the firm did not have any supervisory system, WSPs, or risk management controls to monitor for potential layering or spoofing.

11. In September 2012, CODA Markets implemented exception reports to monitor for high volumes of order cancellations and the execution of large-sized orders in stocks with low average daily volumes ("ADVs") over the course of a trading day. These separate daily reports were not reasonably designed to identify potential layering and spoofing because such trading typically (a) involves *both* the placement and

[1] Exchange Act Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69,792, at 69,798 (Nov. 15, 2010).

cancellation of non-bona fide orders on one side of the market *and* the execution of at least one bona fide order on the opposite side of the market, and (b) occurs over a short period of time. The manipulator uses the non-bona fide orders to create a false appearance of interest in the security to push the price in a direction that allows him to obtain a more favorable execution of the bona fide order than would otherwise have been available. The reports also had unreasonable parameters. For example, the low ADV report monitored only for orders totaling more than 50,000 shares in stocks with ADVs under 10,000 shares. This was unreasonable because layering and spoofing also occurs with orders totaling less than 50,000 shares and is not limited to securities with low trading volumes.

12. From September 2012 through at least February 2014, CODA Markets tasked operations clerks with reviewing the high cancellation and low ADV reports and instructed them to escalate only those instances where the same subscriber appeared on the same report for at least 15 consecutive days with respect to the same stock. This was not a reasonable review parameter because activity does not need to occur on consecutive days, let alone for 15 consecutive days, to constitute layering or spoofing. Moreover, the firm did not establish written procedures describing how to review these exception reports until January 2019, over six years after they were implemented.

13. In mid-2011, the firm began receiving notifications and complaints from exchanges and other broker-dealers about potential layering and spoofing through its MPIDs. Those notifications and complaints increased in 2014 and 2015. Indeed, one broker-dealer performed an onsite review of the firm's surveillance and decided to terminate the firm as a market access client in 2016. Throughout this period, the firm's reports generally did not detect the potential layering and spoofing identified in those notifications and complaints.

14. Ultimately, in April 2016, CODA Markets implemented a vendor surveillance system that generated intraday alerts for potential layering and spoofing. From April 2016 through February 13, 2020, the system generated more than 160,000 alerts for potential layering and spoofing. However, the firm delegated to an analyst authority to review and dispose of the alerts, without providing him with any written procedures or written guidance on how to review the alerts or when to escalate or close them. The analyst was the sole arbiter of the alerts he closed without escalation—no one at the firm reviewed closed alerts to ascertain whether his determinations were correct.

15. For example, from May 3, 2016 through September 10, 2018, the firm's surveillance system generated more than 21,000 layering and spoofing alerts. Based on its review of those alerts, the firm identified approximately 3,680 instances of potential layering and spoofing. However, the firm did not respond reasonably because it allowed the overwhelming majority of the responsible trader IDs to continue trading through its MPIDs, even when they effected many—sometimes dozens of—instances of potential layering and spoofing.

16. CODA Markets frequently did not respond reasonably to complaints from trading venues about potential layering and spoofing through its MPIDs. For example, the firm responded by temporarily or permanently blocking the subscriber from trading only the relevant stock, which did not address potential layering and spoofing by the subscriber in other stocks.

17. In total, CODA Markets disabled 307 trader IDs for engaging in potential layering and spoofing from July 2016 through mid-February 2020. Disabled trader IDs could no longer transact through the firm. There were indications, however, that many disabled trader IDs were trading on behalf of the same customer. For example, 40 disabled trader IDs shared the same four-letter prefix. Had the firm reasonably investigated, it would have learned that those IDs were associated with a single customer. Despite such indications, the firm continued to surveil for potential layering and spoofing at the trader ID level, without reasonably monitoring for coordinated activity between different trader IDs of the same customer, and generally did not take action against its subscribers' customers for engaging in potential layering and spoofing. Indeed, there were only two occasions where CODA Markets terminated access to customers of its subscribers for engaging in potentially manipulative trading from July 14, 2011 through the present.

Wash Trading and Prearranged Trading

18. The firm's WSPs have prohibited wash trades and prearranged trades from July 14, 2011 through the present. However, CODA Markets did not implement any surveillance, supervisory reviews, or risk management controls to monitor for such activity until January 31, 2013, when it implemented an exception report to identify potential wash trades. CODA Markets however failed to establish a reasonable supervisory system to review the report and determine whether exceptions were actually wash trades. For example, the firm focused its reviews on exceptions where the same trader ID was on both sides of a transaction, which excluded wash trades involving different trader IDs transacting on behalf of the same customer or beneficial owner. Even when it identified potential wash trades, the firm simply asked its subscribers whether the trades involved a change in beneficial ownership and relied on their responses without further investigation. Indeed, while the firm's report identified thousands of potential wash trades from January 31, 2013 through the present, CODA Markets failed to take a single action against any trader IDs or customers based on those exceptions.

19. The firm did not establish WSPs for reviewing the wash trades report until June 2017 and those WSPs were not reasonably designed. The WSPs stated that exceptions should be "escalated if there [wa]s a detectable pattern of activity that suggest[ed] manipulation," without providing any guidance on what constituted such a pattern. The firm did not adopt more detailed procedures until January 2019.

20. In February 2017, CODA Markets implemented a pre-trade control to prevent potential wash trades by certain subscribers. If an MPID sent an order in the same stock at the same price to the same destination, but on the opposite side of the market

as a resting order, the control rejected both orders. However, CODA Markets unreasonably applied this control only to subscribers that historically had higher numbers of potential wash trades, not to all subscribers.

21. From July 14, 2011 through at least December 31, 2019, CODA Markets failed to establish a supervisory system, WSPs, or risk management controls reasonably designed to monitor for potential prearranged trading. In this regard, the firm did not establish any surveillance or supervisory reviews until 2020, when the firm adopted and began reviewing a prearranged trading surveillance report.

Marking the Close

22. While CODA Markets' WSPs have prohibited marking the close since at least July 14, 2011, the firm did not conduct any surveillance or supervisory reviews for marking the close prior to April 2016. Furthermore, while the firm's surveillance system began generating marking the close alerts in April 2016 and the firm established WSPs requiring designated personnel to review those alerts in June 2017, CODA Markets did not begin reviewing those alerts until December 2019. For example, from September 2016 through July 2019, CODA Markets failed to review approximately 3,650 marking the close alerts generated by its own surveillance system.

Odd-Lot Manipulation

23. Certain trading venues notified CODA Markets of potentially manipulative odd-lot trading through its MPIDs in 2013 and 2014. For example, on August 28, 2013, an ATS notified CODA Markets of 36 odd-lot orders in the same low ADV symbol that "could be looked at as manipulative...." Despite such notifications, CODA Markets did not implement any WSPs, surveillances, supervisory reviews, or risk management controls relating to potential odd-lot manipulation prior to July 2016. Although the firm's vendor surveillance system began generating odd-lot trading alerts in July 2016 and the firm established WSPs requiring designated personnel to review those alerts in June 2017, CODA Markets has never reviewed the more than 15,000 odd-lot trading alerts generated by its own surveillance system since July 2016.

24. By virtue of the foregoing, CODA Markets failed to establish and maintain a supervisory system, including WSPs, and regulatory risk management controls reasonably designed to monitor for potentially manipulative trading, such as potential layering, spoofing, wash trades, prearranged trades, marking the close, and odd-lot manipulation. Therefore, CODA Markets violated Exchange Act § 15(c)(3); Rule 15c3-5(b) and (c)(2) thereunder; BX Rules 3010(a) and 2110; and BX General Rule 9, Sections 1(a) and 20(a).

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

1. A censure;

2. A $1.25 million fine, of which $102.500 shall be paid to BX:[1] and

3. An undertaking to do the following:

    a. Retain at its own expense and within 60 days of the date of the notice of acceptance of this AWC an independent consultant not unacceptable to FINRA[2] to conduct a comprehensive review of the adequacy of Respondent's compliance with Exchange Act Rule 15c3-5 and BX General Rule 9, Section 20(a). The review should include but not be limited to the firm's supervisory system, WSPs, surveillances, and risk management controls to monitor for potentially manipulative trading, including but not limited to each form of manipulative trading identified in this AWC.

    b. Ensure that the independent consultant, any firm with which the independent consultant is affiliated or of which he or she is a member, and any person engaged to assist the independent consultant in performance of his or her duties, shall not have provided consulting, legal, auditing, or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the notice of acceptance of this AWC.

    c. Cooperate with the independent consultant in all respects, including providing the independent consultant with access to Respondent's files, books, records, and personnel, as reasonably requested for the above-mentioned review. Respondent shall require the independent consultant to report to FINRA on its activities as FINRA may request and shall place no restrictions on the independent consultant's communications with FINRA. Further, upon request, Respondent shall make available to FINRA any and all communications between the independent consultant and the Respondent and documents examined by the independent consultant in connection with this review.

    d. Refrain from terminating the relationship with the independent consultant without FINRA's written approval. Respondent shall not be in and shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to FINRA.

    e. Require the independent consultant to submit an initial written report to Respondent and FINRA at the conclusion of the independent consultant's

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[1] FINRA investigated this matter on behalf of BX and various self-regulatory organizations ("SROs"), including Cboe BYX Exchange, Inc. ("BYX"); Cboe BZX Exchange, Inc. ("BZX"); Cboe EDGA Exchange, Inc. ("EDGA"); Cboe EDGX Exchange, Inc. ("EDGX"); The Investors Exchange LLC ("IEX"); The Nasdaq Stock Market LLC ("Nasdaq"); and NYSE Arca, Inc. ("NYSE Arca"), as well as on its own behalf. The balance of the fine will be paid to these SROs.

[2] FINRA is handling this matter on behalf of BX and will oversee the independent consultant pursuant to a Regulatory Services Agreement with BX.

review, which shall be no more than 120 days after the date of the notice of acceptance of this AWC. The initial report shall, at a minimum, (i) evaluate and address the adequacy of Respondent's compliance with Exchange Act Rule 15c3-5 and BX General Rule 9, Section 20(a), including the specific area identified in Section B.3.a above; (ii) provide a description of the review performed and the conclusions reached; and (iii) make recommendations as may be needed regarding how Respondent should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to its market access business; and

(i) Within 60 days after delivery of the initial report, Respondent shall adopt and implement the recommendations of the independent consultant or, if Respondent considers a recommendation to be, in whole or in part, unduly burdensome or impractical, propose an alternative procedure to the independent consultant designed to achieve the same objective. Respondent shall submit such proposed alternative procedures in writing simultaneously to the independent consultant and FINRA.

(ii) Respondent shall require the independent consultant to (A) reasonably evaluate each alternative procedure and determine whether it will achieve the same objective as the independent consultant's original recommendation and (B) provide Respondent and FINRA with a written report reflecting its evaluation and determination within 30 days of submission of any Respondent's proposed alternative procedures. In the event the independent consultant and Respondent are unable to agree, Respondent must abide by the independent consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the independent consultant.

(iii) Within 30 days after the issuance of the later of the independent consultant's initial report or any written report regarding proposed alternative procedures, Respondent shall provide the independent consultant and FINRA with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the independent consultant's recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

f. Require the independent consultant to enter into a written agreement that, for the duration of the engagement and for a period of two years from the

completion of the engagement, the independent consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the independent consultant is affiliated or of which it is a member, and any person engaged to assist the independent consultant in the performance of its duties pursuant to this AWC, shall not, without FINRA's prior written consent, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondent or any of Respondent's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

g. Respondent shall further retain the independent consultant to conduct a follow-up review and submit a final written report to the Respondent and to FINRA no later than one year from the date of the notice of acceptance of this AWC. In the final report, the independent consultant shall address Respondent's implementation of the systems, policies, procedures, and training, and shall make any further recommendations it deems necessary. Within 30 days of receipt of the independent consultant's final report, Respondent shall adopt and implement the recommendations contained in the final report and inform FINRA in writing that it has done so.

4. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.

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

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 BX'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 acceptanee 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 BX 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 BX or any other regulator against the firm;

2. BX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3; 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 BX, or to which BX 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 BX 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 BX, 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.

July 6, 2021
Date

CODA Markets, Inc.
Respondent

By: Christopher H. Meade
Name: Christopher H. Meade
Title: Chief Compliance Officer

Reviewed by:

Peter G. Wilson, Esq.
Counsel for Respondent
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693

Accepted by BX:

7/28/2021
Date

Shanyn Gillespie
Shanyn L. Gillespie
Senior Counsel
Department of Enforcement

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