



DISCIPLINARY DECISION

Cboe Exchange, Inc.

Star No. 20170544364/File No. USE-2296

Sumo Capital, LLC

Pursuant to Exchange Rule 17.3, attached to and incorporated as part of this Decision is a Letter of Consent.

Applicable Rule(s)

- Cboe Rules 4.2 – Adherence to Law, 4.24 – Supervision, and 13.1 – Minimum Requirements
- Section 15(c) of the Securities Exchange Act of 1934, as amended and Rule 15c3-1 – Net Capital Requirements for Brokers or Dealers, thereunder

Sanction

A censure and a monetary fine in the amount of \$25,000

Effective Date

July 31, 2019



Greg Hoogasian, CRO, SVP

Cboe Exchange, Inc.
LETTER OF CONSENT
Star No. 20170544364
USE-2296

In the Matter of:

Sumo Capital, LLC
190 South LaSalle Street
Suite 1620
Chicago, IL 60603

Subject

Pursuant to the provisions of Cboe Exchange, Inc. ("Cboe" or the "Exchange") Rule 17.3 – Expedited Proceeding, Sumo Capital LLC (the "Firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies the allegations for Star No. 20170544364 and the stipulation of facts and findings described herein do not constitute such an admission.

BACKGROUND

1. During all relevant periods herein, the Firm was acting as a registered Broker-Dealer and was an Exchange Trading Permit Holder registered to conduct business on the Exchange as a Market-Maker and a Proprietary Trading Permit Holder. The Firm's registrations remain in effect.
2. This matter originated from two investigations conducted by FINRA's Trading and Financial Compliance Examinations group (TFCE) that included, among other things, a review of the Firm's net capital compliance and timely notification of a capital withdrawal.

VIOLATIVE CONDUCT

Applicable Rules

3. During all relevant periods herein, the following rules were in full force and effect: Exchange Rules 4.2 - Adherence to Law, 4.24 - Supervision, and 13.1 - Minimum Requirements; and Section 15(c) of the Securities Exchange Act of 1934, as amended ("Exchange Act") and Rule 15c3-1 - Net Capital Requirements for Brokers or Dealers thereunder.

4. During all relevant periods herein, Rule 15c3-1, promulgated under the Exchange Act, set forth the net capital requirements for brokers and dealers.
5. Pursuant to the notification requirements set forth in Exchange Act Rule 15c3-1(e)(1), a broker-dealer must provide notice to the Securities and Exchange Commission and to its Designated Examining Authority two days prior to any withdrawal of capital that, aggregated with other capital withdrawals within the preceding 30 days, exceeds \$500,000 and 30% of the firm's excess net capital.
6. During all relevant periods herein, Exchange Rule 4.24(e) provided, in relevant part: "Each Trading Permit Holder shall establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business in which the Trading Permit Holder engages and to supervise the activities of all associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect violations of applicable securities laws and regulations, and applicable Exchange rules."
7. During all relevant periods herein, Exchange Rule 4.2 provided, in relevant part: "No Trading Permit Holder shall engage in conduct in violation of the Securities Exchange Act of 1934, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange...or any written interpretation thereof. Every Trading Permit Holder shall so supervise persons associated with the Trading Permit Holder as to assure compliance therewith."

Net Capital

8. On or about June 15, 2017 through on or about June 16, 2017, the Firm operated while below its minimum net capital requirement (i.e., net capital was below its minimum net capital requirement of the greater of \$1,000,000 or 6 2/3% of aggregate indebtedness).
9. The acts, practices and conduct described in Paragraph 8 constitute violations of Exchange Rules 4.2 and 13.1; and Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder by the Firm, in that the Firm operated while below its minimum net capital requirement.

Notification of Capital Withdrawal

10. On or about April 6, 2017, the Firm failed to provide a timely notification to the Exchange and the Securities and Exchange Commission (two business days) of a capital withdrawal that resulted in the Firm withdrawing over 30% of its excess net capital within a thirty (30) calendar day period.

11. The acts, practices and conduct described in Paragraph 10 constitute violations of Rule 4.2; and Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder by the Firm, in that the Firm failed to provide timely notification (two business days) of a capital withdrawal that resulted in the Firm withdrawing over 30% of its excess net capital within a thirty (30) calendar day period.

Supervision

12. As of approximately June 2017 through in or about March 2019, the Firm failed to establish, maintain and enforce Written Supervisory Procedures (“WSPs”), and a system for applying such procedures, reasonably designed to prevent and detect violations related to net capital requirements. Specifically, while the Firm maintained WSPs related to net capital requirements and capital withdrawals, the Firm’s WSPs, failed to, among other things: (i) provide for the daily monitoring of net capital (including intra-day monitoring); (ii) designate an individual responsible for monitoring net capital; and (iii) provide for special trading strategies, such as options trading related to a corporate event or dividend.¹ In addition, as of approximately April 2017 through in or about October 2018, the Firm failed to establish, maintain and enforce WSPs, and a system for applying such procedures, reasonably designed to prevent and detect violations related to capital withdrawals and the related notification requirements.
13. On June 15, 2017 and June 16, 2017, the Firm failed to supervise to assure compliance with net capital requirements. Specifically, the Firm failed to monitor its net capital and trading activities to prevent a net capital deficiency after being put on notice regarding treatment of a dividend capture trade and after being placed under heightened supervision by FINRA regarding the Firm’s net capital compliance.
14. The acts, practices and conduct described in Paragraph 12 constitute violations of Exchange Rule 4.24 by the Firm, in that the Firm failed to establish, maintain and enforce WSPs, and a system for applying such procedures, reasonably designed to prevent and detect violations related to net capital requirements and capital withdrawals.
15. The acts, practices and conduct described in Paragraph 13 constitute violations of Exchange Rule 4.2 by the Firm, in that the Firm failed to supervise to assure compliance with the requirements related to net capital.

SANCTIONS

16. The Firm does not have any prior relevant disciplinary history (formal) specifically related to net capital violations and/or capital withdrawal notifications.

¹ The Firm submitted revised WSPs in July 2019 (effective March 2019) that reasonably address the deficiencies identified related to the Firm’s net capital monitoring.

17. In light of the alleged rule violations described above, and the Firm's prior disciplinary history, the Firm consents to the imposition of the following sanctions:
- a. A censure; and
 - b. A monetary fine in the amount of \$25,000 that shall be paid to Cboe.

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 17.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent.

The Firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. 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 Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 17.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the Firm.

The Firm understands that it may not make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.

Date: 7-30-19

Sumo Capital, LLC 
By: 

Name: Daniel Gutman

Title: Principal