FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2015044078201

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

RE: CODA Markets, Inc. (f/k/a PDQ ATS, Inc.) (Respondent)
Member Firm
CRD No. 36187

Pursuant to FINRA Rule 9216, Respondent CODA Markets, Inc. 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 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

CODA Markets became a FINRA member in May 1994. 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.[1]

OVERVIEW

From July 14, 2011 through the present, CODA Markets provided its subscribers with direct market access (DMA) to multiple exchanges 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 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,

[1] For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

CODA Markets generated more than 350,000 exceptions and alerts at FINRA and multiple exchanges for potentially manipulative trading.

During the relevant period, CODA Markets failed to develop and implement an anti-money laundering (AML) program reasonably designed to detect and cause the reporting of potentially suspicious transactions. In addition, during the periods specified below, the firm's AML testing and training were not reasonable.

During the relevant period, CODA Markets also failed to establish, document, and maintain financial risk management controls and WSPs reasonably designed to prevent the entry of: (1) orders that exceed appropriate pre-set credit thresholds and (2) erroneous orders. In addition, CODA Markets failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with the requirement under Rule 15c3-5(e) of the Securities Exchange Act of 1934 to regularly review the effectiveness of its risk management controls. Finally, during the periods specified below, CODA Markets' supervisory control system reports failed to comply with NASD Rule 3012 and FINRA Rule 3120, and its certifications failed to comply with Exchange Act Rule 15c3-5(e)(2), FINRA Rule 3130, or both.

CODA Markets' failures have resulted in potentially manipulative trading occurring through its MPIDs, potentially suspicious transactions not being reasonably detected and reported, 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 Exchange Act § 15(c)(3); Rule 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2), (e), (e)(1), and (e)(2) thereunder; FINRA Rules 3110, 3120, 3130, 3310, and 2010; and NASD Rules 3010 and 3012.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from (a) surveillances conducted by FINRA and multiple exchanges and (b) FINRA examinations of CODA Markets.

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, but it was extended to November 30, 2011 for subpart (c)(1)(i).

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. FINRA Rule 3110, like its predecessor NASD Rule 3010, requires each member to (a) "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" and (b) "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."[2]

5. FINRA Rule 2010 provides, "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, an SEC rule, or another FINRA rule constitutes a violation of FINRA Rule 2010.

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 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.[3]

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

[2] FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

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

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 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, FINRA Rules 3110 and 2010, and NASD Rule 3010.

CODA Markets failed to develop and implement a reasonably designed AML program.

Detection and Reporting of Potentially Suspicious Transactions

25. FINRA Rule 3310 requires each member firm to develop and implement a written AML program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. Under FINRA Rule 3310(a), the program must, at a minimum, establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under the Bank Secrecy Act and the implementing regulations thereunder. 31 C.F.R. § 1023.320(a)(1) requires broker-dealers to file with the Financial Crimes Enforcement Network (FinCEN) "a report of any suspicious transaction relevant to a possible violation of law or regulation." FinCEN has made clear that this reporting obligation extends not just to individual transactions but also to transactions that "taken together, form a suspicious pattern of activity."[4] The suspicious activity report (SAR) form for broker-dealers lists various types of suspicious transactions, including "Market manipulation," "Prearranged or other non-competitive trading," and "Wash or other fictitious trading."

26. In 2002, FINRA issued guidance in Notice to Members (NTM) 02-21 that each member firm has a duty to (a) tailor its AML program to the particular risks of its business model, as well as its customer base and (b) monitor for red flags of suspicious activity, including by "implement[ing] systems, preferably automated ones, that would allow [it] to monitor trading, wire transfers, and other account activity to allow [it] to determine when suspicious activity is occurring." If red flags are detected, the member firm should investigate and determine whether to file a SAR.

27. From July 14, 2011 through February 16, 2020, CODA Markets' AML program was not reasonably tailored to the risks of its DMA business. CODA Markets recognized as early as 2012 that potentially manipulative trading, such as layering, was a risk of its DMA business. Yet, prior to a 2016 FINRA examination, the firm's written AML procedures did not address potentially manipulative trading at all. Instead, they listed

[4] FinCEN Release, 67 Fed. Reg. 44,048, at 44,051 (July 1, 2002).

the examples of suspicious activity red flags from NTM 02-21, most of which did not apply to its business.

28. Following the FINRA examination, in September 2016, CODA Markets revised its AML procedures to recognize that suspicious activity included manipulative trading. However, the firm still did not include any form of manipulative trading in its list of suspicious activity red flags. Indeed, the firm's AML procedures did not identify layering, spoofing, or other forms of manipulative trading as red flags of suspicious activity until July 2018. In addition, prior to February 2020, the firm's AML procedures either did not address how it monitored for suspicious activity or incorrectly described its monitoring in this respect.

29. As discussed above, CODA Markets' surveillances and procedures were not reasonably designed to detect potentially manipulative transactions, including patterns of such transactions over time by individual traders or by multiple traders acting on behalf of the same customer.

30. When CODA Markets detected red flags of potentially manipulative trading through its surveillances or based on notices from trading venues, it routinely failed to reasonably investigate them for purposes of determining whether to file a SAR. The firm's investigations focused on what action, if any, to take against the responsible trader IDs, without also considering whether the activity should be reported on a SAR. For example, despite finding that a customer effected a pattern of layering resulting in 80 alerts over 3 days in December 2016, the firm determined only to monitor the 13 responsible trader IDs going forward, without investigating whether the transactions when taken together formed a suspicious pattern of activity that should be reported. Even in those instances where CODA Markets disabled trader IDs for engaging in potentially manipulative trading, it generally did not reasonably investigate whether the activity should be reported on a SAR.

31. By virtue of the foregoing, CODA Markets failed to establish and implement policies and procedures that could be reasonably expected to detect and cause the reporting of suspicious transactions. Therefore, CODA Markets violated FINRA Rules 3310(a) and 2010.

AML Testing and Training

32. FINRA Rule 3310(c) requires AML programs to provide for annual independent testing for compliance, unless the member firm does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts, in which case such testing is required every two years (on a calendar-year basis). As noted in NTM 02-21, the testing should review and assess the adequacy of, and level of compliance with, the member firm's AML program.

33. From June 2013 through August 2015, CODA Markets retained an outside compliance consultant to test its AML program. However, the testing was not

reasonable because it failed to assess whether (a) the firm's surveillance reports were reasonably designed to detect potentially suspicious transactions and (b) the firm reasonably reviewed the surveillance reports and reasonably investigated potentially suspicious transactions. Therefore, CODA Markets violated FINRA Rules 3310(c) and 2010.

34. FINRA Rule 3310(e) requires AML programs to provide for ongoing training for appropriate personnel. As noted in NTM 02-21, the training should be implemented on an annual basis at a minimum and address, among other things, how to identify red flags of suspicious transactions.

35. From November 2012 through at least mid-February 2020, the firm's training failed to address how to identify red flags of suspicious transactions, such as potential layering, spoofing, prearranged trades, marking the close, and odd-lot manipulation. Even after FINRA notified the firm of this deficiency in a September 2016 examination report, the firm's subsequent AML training materials listed red flags of suspicious transactions and instructed personnel to "watch for" them, without providing any guidance on how to identify such red flags. In addition, although the firm conducted AML training from September 2016 through mid-February 2020, it did not conduct such training on at least an annual basis. Therefore, CODA Markets violated FINRA Rules 3310(e) and 2010.

CODA Markets failed to establish reasonably designed credit controls and WSPs.

36. Exchange Act Rule 15c3-5(c)(1)(i) requires a market access broker-dealer to establish, document, and maintain financial risk management controls and supervisory procedures reasonably designed to "[p]revent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds." In the adopting release, the SEC stated that broker-dealers should make credit threshold determinations "based on appropriate due diligence as to the customer's business, financial condition, trading patterns, and other matters, and document that decision."[5] Where a broker-dealer provides market access to other broker-dealers, it must set an appropriate pre-set credit threshold for each broker-dealer client.

37. From November 30, 2011 through November 14, 2015, CODA Markets did not have any credit controls or supervisory procedures addressing credit controls or thresholds.

38. From November 15, 2015 through the present, CODA Markets had credit controls but failed to establish WSPs reasonably designed to determine credit thresholds based on appropriate due diligence as to each subscriber's business, financial condition, trading patterns, and other matters. The firm's WSPs did not describe the due diligence to be performed or how credit thresholds should be determined. In practice, the firm set its

[5] Exchange Act Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69,792, at 69,802 (Nov. 15, 2010).

initial credit thresholds based on historical trading patterns alone. Over time, the firm moved to a "tiered" approach to determining credit thresholds based on the subscriber's size and whether it was a broker-dealer or institutional customer. However, the firm has never considered a subscriber's financial condition in determining credit thresholds, contrary to SEC guidance. As a result, the firm set credit thresholds for certain subscribers that were unreasonably high in light of their financial conditions. For example, the firm set a $225 million credit threshold for Subscriber A in January 2016, when Subscriber A's most recently reported total assets were approximately $500,000 and its excess net capital was approximately $400,000. Subscriber A reported a net capital deficiency in March 2016 and filed a Form BDW in August 2016.

39. By virtue of the foregoing, CODA Markets failed to establish, document, and maintain financial risk management controls and WSPs reasonably designed to prevent the entry of orders that would exceed appropriate pre-set credit thresholds for each subscriber. Therefore, CODA Markets violated Exchange Act § 15(c)(3), Rule 15c3-5(b) and (c)(1)(i) thereunder, FINRA Rules 3110 and 2010, and NASD Rule 3010.

CODA Markets failed to establish reasonably designed erroneous order controls.

40. Exchange Act Rule 15c3-5(c)(1)(ii) requires a market access broker-dealer to establish, document, and maintain financial risk management 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."

41. From July 14, 2011 through April 5, 2017, CODA Markets' erroneous order controls rejected orders that (a) exceeded the single-order quantity (SOQ) limit and single-order notional value (SONV) limit established for each subscriber; (b) were priced more than a specified dollar amount or percentage through the national best bid and offer (NBBO); or (c) exceeded a maximum number of new orders per second from the same subscriber. In addition to these controls, CODA Markets also applied duplicative order and ADV controls from April 6, 2017 through the present. However, these controls were not reasonably designed to prevent the entry of erroneous orders for the reasons described below.

42. From July 14, 2011 through the present, the firm's price control was not reasonably designed to prevent the entry of erroneous orders because its parameters were substantially higher than the numerical guidelines for clearly erroneous executions (CEE) under FINRA rules, exchange rules, and the firm's own erroneous trades procedures. For example, for a stock priced $51.00, the CEE numerical guideline was 3% away from the reference price, while the firm's price control rejected orders priced more than 20% away from the NBBO from July 14, 2011 through mid-July 2016 and 10% away from the NBBO from mid-July 2016 through the present.

43. Since July 14, 2011, CODA Markets has not applied any price control to orders entered in stocks when there was no NBBO to use as a reference price, such as outside of regular trading hours. As a result, the firm did not prevent the entry of orders outside of regular trading hours at prices significantly away from the market. While CODA Markets was aware of this gap in its controls as early as October 2017, CODA Markets did not implement a solution until 2020, when it began to reject orders in stocks with no available NBBO.

44. From July 14, 2011 through April 5, 2017, CODA Markets' erroneous order controls were also unreasonable in other respects. First, the firm did not have any duplicative order controls. Second, the firm generally set the SOQ limit and SONV limit for each subscriber at such high levels that the controls were not reasonably designed to prevent erroneous orders, absent additional reasonably designed controls, such as an ADV control. For example, prior to mid-2015, the firm's default SOQ limit was 25,000 shares and SONV limit was $5 million. During onboarding, CODA Markets required a subscriber to indicate whether it wanted a SOQ limit and/or SONV limit other than the defaults. The firm usually granted such requests, which effectively allowed certain subscribers to set their own SOQ and SONV limits. In mid-2015, the firm created a tier system. For broker-dealers, SOQ limits ranged from 25,000 to 1.5 million shares and SONV limits ranged from $5 million to $50 million.

45. From April 6, 2017 through the present, CODA Markets set the thresholds for its ADV controls too high to be reasonably designed to prevent the entry of erroneous orders, absent additional reasonably designed controls. For example, the firm set its historical ADV control to reject orders at sizes that exceeded from 30% to 250% of the stock's historical ADV, depending on the subscriber.

46. By virtue of the foregoing, CODA Markets failed to establish, document, and maintain financial risk management controls and WSPs reasonably designed to prevent the entry of erroneous orders. Therefore, CODA Markets violated Exchange Act § 15(c)(3), Rule 15c3-5(b) and (c)(1)(ii) thereunder, FINRA Rules 3110 and 2010, and NASD Rule 3010.

CODA Markets failed to reasonably review the effectiveness of its risk management controls.

47. Exchange Act Rule 15c3-5(e) requires a market access broker-dealer to "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." Exchange Act Rule 15c3-5(e)(1) requires a market access broker-dealer to "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."

48. From July 14, 2011 through December 29, 2016, the firm's WSPs stated that it would review the effectiveness of its risk management controls as part of its annual

certification process and document the review. However, the WSPs did not describe how the review was to be conducted. Moreover, besides the ad hoc review described below, CODA Markets did not actually review the effectiveness of its risk management controls during this period. The firm's annual certification records did not describe or document any such reviews.

49. In connection with a FINRA examination, the firm conducted testing of certain risk management controls and reviewed certain control thresholds. First, in May 2015, the firm tested certain controls to verify that the entry of an order that exceeded applicable thresholds triggered an order rejection. Second, in or around April 2016, the firm reviewed each subscriber's SOQ, SONV, and credit thresholds, along with certain order data from the prior quarter (e.g., each subscriber's maximum order quantity, maximum order notional value), to determine if any thresholds should be adjusted.

50. On December 30, 2016, the firm revised its WSPs following the FINRA examination to require the testing and review of subscriber thresholds described above to be conducted at least annually. Despite these requirements, the firm's supervisory system was not reasonably designed to review the effectiveness of its risk management controls and supervisory procedures from December 30, 2016 through the present. Among other things, the testing only verified that the controls functioned as expected, i.e., triggered an order rejection, not whether the controls were effective or reasonably designed to achieve compliance with Exchange Act Rule 15c3-5. Furthermore, the review of subscriber thresholds was limited to the firm's SOQ, SONV, and/or credit controls. Accordingly, the firm did not regularly review the effectiveness of its other controls—including its price control, duplicative order controls, ADV controls, and regulatory risk management controls—during this period.

51. By virtue of the foregoing, CODA Markets failed to establish, document, and maintain a supervisory system reasonably designed to review the effectiveness of its risk management controls and supervisory procedures. Therefore, CODA Markets violated Exchange Act § 15(c)(3), Rule 15c3-5(e) and (e)(1) thereunder, FINRA Rules 3110 and 2010, and NASD Rule 3010.

CODA Markets failed to provide annual certifications in compliance with Exchange Act Rule 15c3-5 and FINRA Rule 3130.

52. Exchange Act Rule 15c3-5(e)(2) requires a market access broker-dealer's CEO or equivalent officer to certify, on an annual basis, that its risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c), and that it conducted the review described in Rule 15c3-5(e)(1).

53. FINRA Rule 3130(b) requires each member firm to have its CEO or equivalent officer certify annually, as set forth in FINRA Rule 3130(c), that it has in place processes to establish, maintain, review, test and modify written compliance policies and WSPs reasonably designed to achieve compliance with applicable FINRA rules.

MSRB rules and federal securities laws and regulations. Members must ensure that each ensuing annual certification is effected no later than on the anniversary date of the previous year's certification.

54. From July 14, 2011 through February 13, 2019, the firm completed certifications based on the language in FINRA Rule 3130(c). Those certifications failed to state that (1) the firm's risk management controls and supervisory procedures complied with Exchange Act Rule 15c3-5(b) and (c); and (2) the firm conducted the review required by Exchange Act Rule 15c3-5(e)(1). Additionally, from July 1, 2014 through February 13, 2019, the firm failed to complete the certifications no later than on the anniversary date of the previous year's certification. Therefore, CODA Markets violated Exchange Act § 15(c)(3), Rule 15c3-5(e)(2) thereunder, and FINRA Rule 2010 from July 14, 2011 through February 13, 2019 and FINRA Rule 3130 from July 1, 2014 through February 13, 2019.

CODA Markets failed to reasonably test its WSPs and prepare annual reports summarizing the test results.

55. FINRA Rule 3120(a), like its predecessor NASD Rule 3012(a), requires each member to designate one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (1) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules and (2) create additional or amend supervisory procedures where the need is identified by such testing and verification.[6] The designated principal must submit to the member's senior management, no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

56. For years 2012 through 2015, CODA Markets tested its WSPs in two or three subject areas only—which was not sufficient to verify that the firm's WSPs were reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Furthermore, CODA Markets' supervisory controls reports did not include a summary of the test results and significant identified exceptions, nor did they detail any additional or amended supervisory procedures created in response to the test results. For 2016, CODA Markets had no record of a supervisory controls report. Lastly, from June 10, 2014 through February 13, 2019, CODA Markets did not prepare its supervisory controls reports on a timely basis, i.e., within one calendar year of the prior year's report. Therefore, CODA Markets violated FINRA Rules 3120(a) and 2010 and NASD Rule 3012(a).

[6] FINRA Rule 3120 superseded NASD Rule 3012 on December 1, 2014.

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

1. A censure;

2. A $1.25 million fine, of which $405,000 shall be paid to FINRA;[7] 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 to conduct a comprehensive review of the adequacy of Respondent's compliance with Exchange Act Rule 15c3-5 and FINRA Rules 3110, 3120, and 3310, including but not limited to:

      (i) 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;

      (ii) The firm's policies, procedures, and systems for detecting, investigating, and responding to red flags of suspicious transactions;

      (iii) The firm's policies and procedures for reporting suspicious transactions;

      (iv) The firm's AML training program;

      (v) The firm's system of risk management controls and WSPs for managing the financial, regulatory, and other risks of its market access business;

      (vi) The firm's financial risk management controls and WSPs for preventing the entry of (1) orders that exceed appropriate pre-set credit thresholds and (2) erroneous orders;

      (vii) The firm's supervisory system and WSPs for achieving compliance with Exchange Act Rule 15c3-5(e); and

      (viii) The firm's system of supervisory control policies and procedures for (1) testing and verifying its WSPs; (2) creating additional or amending WSPs where the need is identified by such testing and verification; and (3) preparing no less than annually a report detailing its system of supervisory controls, a summary of the test results and significant

[7] FINRA investigated this matter on behalf of itself 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); Nasdaq BX, Inc. (BX); The Nasdaq Stock Market LLC (Nasdaq); and NYSE Arca, Inc (NYSE Arca). The balance of the fine will be paid to these SROs.

identified exceptions, and any additional or amended WSPs created in response to the test results.

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 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 FINRA Rules 3110, 3120, and 3310, including the specific areas identified in Section B.3.a(i)-(viii) 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, AML program, and supervisory control system; 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 BX, BYX, BZX, EDGA, EDGX, IEX, Nasdaq, and NYSE Arca.

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 prejudgment 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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.

July 8, 2021
Date

CODA Markets, Inc.
Respondent

Print 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 FINRA:

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

7/28/2021
Date

Shanyn L. Gillespie
Senior Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850-3241

This Corrective Action Statement is submitted by CODA Markets, Inc. ("CODA" or "the Firm"). It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

STATEMENT OF CORRECTIVE ACTION
BY CODA MARKETS, INC.

CODA submits this Corrective Action Statement in connection with the foregoing Letter of Acceptance, Waiver, and Consent ("AWC") to describe the steps it has already taken in connection with the issues addressed in the AWC. As set forth below, CODA has invested significant resources into its compliance program, and continues to make improvements to deter potentially disruptive trading activity.

Compliance Personnel. Since the beginning of the period covered by the AWC, CODA has hired several experienced compliance professionals to enhance its compliance program. These hires included CODA's first full-time Chief Compliance Officer, an industry veteran who joined the Firm in 2014 after working in a similar role at several prominent broker-dealers. Since that time, CODA has increased the headcount of its compliance group, and has engaged experienced outside counsel as appropriate to provide additional compliance advice and support.

Enhanced Pre-Trade Controls and Post-Trade Surveillance. Since the beginning of the period covered by the AWC, CODA has taken significant steps to enhance its pre-trade controls and post-trade surveillance tools to reduce the risk of disruptive or otherwise improper trading activity. Most notably, the Firm deployed a third-party post-trade surveillance system that leverages state of the art technology, including the use of artificial intelligence, to detect potentially problematic trading activity. CODA has also enhanced its front-end system to provide additional pre-trade controls aimed at limiting financial risk and ensuring compliance with applicable regulatory requirements.

Enhanced Written Supervisory Procedures. CODA has also taken steps to enhance its supervisory system by clarifying its procedures relating to reviewing potentially disruptive or otherwise problematic trading activity. The Firm has also implemented new client onboarding procedures that require additional information concerning CODA's broker-dealer subscribers and their customers. These procedures will enhance the Firm's ability to detect and address potential money laundering concerns.