

**NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020-12-14-00022**

TO: New York Stock Exchange LLC

RE: Cuttone & Co., Inc. (n/k/a DriveWealth Institutional LLC), Respondent
CRD No. 33038

On one known occasion between January 1, 2018 and the present (the “Relevant Period”), Cuttone & Co., Inc. (“Cuttone”)¹ violated NYSE Rule 122 (Orders with More than One Broker) by maintaining orders for the account of the same principal with two different floor brokers in the same security that could execute at the same time and price.

In addition, the Firm also violated NYSE Rule 3110(b) (Supervision) by failing to establish and maintain written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with NYSE Rule 122 during the Relevant Period.

Consent to a censure and \$10,000 fine.

* * *

Pursuant to Rule 9216 of the New York Stock Exchange LLC (the “NYSE” or the “Exchange”) Code of Procedure, 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, the NYSE 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 the NYSE, or to which the NYSE 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 the NYSE:

BACKGROUND AND JURISDICTION

1. Cuttone became a member of the NYSE in February 1984. DriveWealth, LLC acquired Cuttone in December 2020. Since that time, Cuttone has operated as DriveWealth Institutional LLC.

¹ DriveWealth, LLC acquired Cuttone in December 2020. Since that time, Cuttone has operated as DriveWealth Institutional LLC (together with Cuttone, the “Firm”).

2. The Firm's registration remains in effect. Throughout the Relevant Period, the Firm operated a floor broker business on the NYSE.

PROCEDURAL HISTORY

3. This matter arises from an investigation conducted by NYSE Regulation.

VIOLATIONS

The Firm Violated NYSE Rule 122

4. NYSE Rule 122 prohibits member organizations from sending and maintaining with more than one floor broker, for execution on the Exchange, orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal. Sending to, maintaining with, or using more than one floor broker can mean more than one floor broker firm or two different individual floor brokers at the same floor broker firm.
5. On January 4, 2019, the Firm executed orders on behalf of the same customer ("Customer A") through two of the Firm's floor brokers at the same time. Specifically, at 3:07:36 pm, the Firm received a 5,000 share order at a limit price of \$23.15 from Customer A to buy Security 1 and the Firm routed that order to one of the Firm's floor brokers ("Broker 1"). While that unexecuted order was still with Broker 1, at 3:41:20 pm the Firm received a 25,000 share scale order² at limit prices ranging from \$23.14 to \$23.18 from Customer A to buy Security 1.
6. A Firm employee entered the second order into the Firm's order management system, mistakenly routing it to another of the Firm's floor brokers ("Broker 2"), even though the first order was still open with Broker 1. Broker 2 entered a portion of his order at the same price as the first order entered by Broker 1, which inadvertently led to competing child orders in the market at the same price and time for over a minute, in violation of NYSE Rule 122. During that time frame, Customer A received 49 executions totaling 10,000 shares at \$23.15 through both Firm floor brokers at 3:41:46 pm.
7. One of the purposes of NYSE Rule 122 is to prevent circumvention of the NYSE parity allocation rules so that a member organization or its customer cannot obtain preferential execution – that is, be over-represented in the market – by sending competing orders to multiple floor brokers at the same time. As a result of the two Firm floor brokers sending the competing orders into the market over the same time on January 4, 2019, Customer A was over-represented under the NYSE parity model. This prevented another market participant from receiving 100 shares that it should

² A scale order is a type of order that comprises several limit orders at incrementally increasing or decreasing prices.

have received at 3:41:46 pm under the parity model, and that market participant did not receive an execution until 3:53:40 pm.

8. As a result of the above conduct, the Firm violated NYSE Rule 122.

The Firm Violated NYSE Rule 3110(b)

9. NYSE Rule 3110(b) requires member organizations to establish and maintain WSPs that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.
10. Prior to October 2021, the Firm had no WSPs addressing NYSE Rule 122 or describing the Firm's processes and procedures for achieving compliance with the Rule.
11. Accordingly, by failing to establish and maintain WSPs reasonably designed to achieve compliance with NYSE Rule 122, the Firm violated NYSE Rule 3110(b).

RELEVANT PRIOR DISCIPLINARY HISTORY

12. The Firm does not have any disciplinary history relevant to NYSE Rule 122.

OTHER FACTORS

13. In considering an appropriate sanction in this matter, NYSE Enforcement took into account that the NYSE Rule 122 violation occurred over a period of minutes on a single day.
14. Additionally, in response to this investigation, the Firm established WSPs addressing NYSE Rule 122 and implemented a post-trade surveillance report to identify potential violations of NYSE Rule 122.

SANCTIONS

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

1. **Censure and fine in the amount of \$10,000.**

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

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this

AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE 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's Board of Directors 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 prejudice of the Chief Regulatory Officer of the NYSE; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE employee; or any Regulatory Staff as defined in Rule 9120 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 communication prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III. OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of the NYSE pursuant to NYSE 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

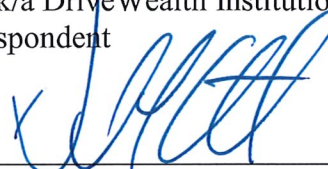
- C. If accepted:
1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Rule 9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;
 4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313; and
 5. 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 the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

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.

11/29/21
Date

Cuttone & Co., Inc.
(n/k/a DriveWealth Institutional LLC),
Respondent

By: 
Donato Cuttone
Chief Executive Officer

Accepted by NYSE Regulation

November 29, 2021
Date


Hanna Seifert
Enforcement Counsel

Tony Frouge
Deputy Head of Enforcement
NYSE Regulation

Signed on behalf of New York Stock
Exchange LLC, by delegated authority from
its Chief Regulatory Officer

STATEMENT OF CORRECTIVE ACTION BY DRIVEWEALTH INSTITUTIONAL LLC

DriveWealth Institutional LLC ("DWI") 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 single Rule 122 violation from 2019 addressed in the AWC.

As set forth below, DWI has invested significant resources into its compliance program, and continues to make improvements to avoid such violations in the future. The Firm also notes that as Cuttone & Co., it received a total of 6,919,780 BBSS orders in 2018, 8,976,968 BBSS orders in 2019 and 4,819,996 BBSS orders in 2020. During this timeframe, the violation referenced in the foregoing AWC is the sole instance noted by NYSE Regulation.

Compliance Personnel. Since the beginning of 2021, DWI has hired additional experienced compliance professionals to enhance its overall compliance program.

Enhanced Rule 122 Surveillance. Prior to the beginning of the period covered by the AWC, DWI personnel have been aware of the need to comply with NYSE Rules, including Rule 122. This single violation, due to a mistake by personnel, prompted a review of process. As such, the Firm has included in its supervisory regimen, a specific exception report to detect possible instances of 122 violations to reduce the risk of improper activity. DWI staff have also been reminded of their obligations with respect to this specific rule, ensuring compliance with applicable regulatory requirements.

Enhanced Written Supervisory Procedures. DWI has also taken steps to enhance its supervisory procedures redrafting and including a specific section addressing Rule 122, consistent with the NYSE's changes to the Rule in November of 2020. These procedures will enhance the Firm's ability to detect and address any potential Rule 122 concerns.