

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2020.05.0170

TO: The Nasdaq Stock Market
Nasdaq Enforcement Department

RE: D.A. Davidson & Co.
Member Firm
CRD No. 199

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, D.A. Davidson & Co. (the “Firm” or “Respondent”) 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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

The Firm has been a member of Nasdaq since July 31, 2006, and its registration remains in effect. The Firm is headquartered in Great Falls, Montana. The Firm currently conducts 16 types of businesses. The Firm does not hold or maintain funds or securities or provide clearing services and does not refer or introduce customers to other brokers and dealers.

The Firm has no relevant disciplinary history.

SUMMARY

During the period of October 1, 2019 through April 27, 2020 (the “Review Period”), the Firm violated Nasdaq Rule 4613(a) by failing to maintain continuous two-sided quotes in 3,037 instances. During the Review Period, the Firm also violated Nasdaq Rules 3010 and 2010A (for conduct occurring before December 6, 2019) and Nasdaq General 9, Section 20 and General 9, Section 1(a) (for conduct on or after December 6, 2019) by failing 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 Nasdaq rules.

FACTS AND VIOLATIVE CONDUCT

1. Pursuant to Nasdaq Rule 4613(a) (now, Nasdaq Equity 2, Section 5), for each NMS security in which a Nasdaq member is registered as a market maker, the member is required to maintain a continuous two-sided trading interest, during regular market hours, at prices within certain parameters expressed as a percentage referenced from the National Best Bid and Offer.
 2. Nasdaq Rule 3010 (now Nasdaq General 9, Section 20(a)) provides that, “Each member shall 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 Nasdaq rules.”¹
 3. Nasdaq Rule 2010A (now, Nasdaq General 9, Section 1(a)) provides that, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”²
 4. During the Review Period, the Firm failed to maintain a continuous two-sided trading interest in 3,037 instances. In 3,025 of these instances, the Firm failed to maintain a two-sided trading interest for the entire day. In eight other instances, the Firm failed to maintain a two-sided trading interest after the market opened. In four other instances, the Firm failed to maintain a two-sided trading interest on the day it was registered in certain symbols. The violations occurred because the Firm incorrectly set up symbols in its order management systems and, on April 27, 2020, the Firm’s main and backup lines had connectivity issues, which resulted in an all-day outage.
 5. The conduct in paragraph 4 constitutes violations of Nasdaq Rule 4613(a).
 6. During the Review Period, the Firm’s supervisory system was not reasonably designed to achieve compliance with Nasdaq’s rules. Specifically, the Firm’s supervisory system failed to have and implement safeguards sufficient to detect when the Firm was not quoting in symbols in which it was a registered market maker in accordance with applicable Nasdaq rules. The Firm’s supervisory system also failed to reasonably assure that symbols were entered into its order management systems in accordance with applicable Nasdaq rules and to train a new employee in the correct operation of its order management system.
 7. The conduct described in paragraph 6 constitutes violations of Nasdaq Rule 3010; Nasdaq General 9, Section 20(a); Nasdaq Rule 2010A; and Nasdaq General 9, Section 1(a).
- B. The Firm also consents to the imposition of the following sanctions:
1. A censure;

¹ Nasdaq General 9 Section 20(a) superseded Nasdaq Rule 3010 on December 6, 2019.

² Nasdaq General 9 Section 1(a) superseded Nasdaq Rule 2010A on December 6, 2019.

2. A total fine of \$22,000.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

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

The sanctions imposed herein shall be effective on a date set by Nasdaq Enforcement Department staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under Nasdaq'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 Nasdaq 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 prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and

until it has been reviewed and accepted by the Nasdaq Enforcement Department and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (“ODA”), pursuant to Nasdaq 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 Nasdaq or any other regulator against the Firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq 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.

7/19/2022
Date

D.A. Davidson & Co.
Respondent

By: 

Name: Kevin Clausen

Title: MD, Head of Institutional Sales and Trading

Reviewed by:



W. Dean Hall
Vice President
D.A. Davidson & Co.
222 SW Columbia Street
Suite 1400
Portland, Oregon 97201
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Accepted by The Nasdaq Stock Market:

7/25/2022
Date



Ann Brickley
Senior Enforcement Counsel
Department of Enforcement

Signed on behalf of The Nasdaq Stock
Market, by delegated authority from the
Director of ODA