

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND
CONSENT NO. 2017055595901**

TO: The Nasdaq Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: National Financial Services, LLC, Respondent
Broker-Dealer
CRD No. 13041

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, National Financial Services, LLC (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

The firm is headquartered in Boston, Massachusetts. As of March 5, 2021, the firm has 16 branch offices and 1,659 registered individuals. The firm became a member of FINRA on January 31, 1983 and of Nasdaq on July 12, 2006. The firm’s memberships remain in effect through the date of this AWC.

The firm does not have relevant disciplinary history.

SUMMARY

From February 1, 2015 through December 2019, the firm maintained a system of risk management controls and supervisory procedures designed to manage the financial risk of its market access business activity. However, certain of the firm’s controls were not reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceeded appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicated duplicative orders. As a result, the firm violated Section 15(c)(3) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 15c3-5 thereunder (“Exchange Act Rule 15c3-5”); and Nasdaq Rules 2010A and 3010 (for

conduct before December 6, 2019), and Nasdaq Rules General 9, Section 1(a) and General 9, Section 20 (for conduct on or after December 6, 2019).

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

1. Exchange Act Rule 15c3-5(b) requires that a “broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier 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.”
2. Exchange Act Rule 15c3-5(c)(1)(ii) requires broker-dealers to establish 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.”
3. Nasdaq Rule 3010 states: “[e]ach 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.” Effective December 6, 2019, Nasdaq Rule 3010 was relocated to General 9, Section 20.
4. Nasdaq Rule 2010A provide that member firms, “in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” Effective December 6, 2019, Nasdaq Rule 2010A was relocated to General 9, Section 1(a).

Violative Conduct

5. From in or about February 2015 through December 2019, the firm maintained a system of risk management controls and supervisory procedures designed to manage the financial risk of its market access business activity. The controls at issue existed in the firm’s mainframe, which houses trading applications for retail and certain institutional customers; a Financial Information eXchange (“FIX”) connection and trading platform that received both retail and institutional orders; and a third-party order management system (“OMS”) the firm used for certain orders that were routed electronically for manual handling.
6. Between on or about February 1, 2016 through on or about April 14, 2018, among the pre-trade controls maintained in the firm’s mainframe and FIX connection was a control designed to reject orders that exceeded the greater of either the security’s: (1) 20% of the 20-day average daily volume (“ADV”) control for equity orders and 50% of 20-day ADV for exchange traded funds (“ETFs”), or (2) the daily volume at the time of the trade (in

the mainframe) or 100% of the calculated remaining volume for the day (in the FIX connection).¹ These thresholds were set too high to be reasonably designed to prevent the entry of erroneous orders, absent additional reasonably designed controls. For example, on November 15, 2017, the firm's maximum order control allowed a market order to enter the markets that represented approximately 34.56% of the symbol's 20-day ADV which was lower than the approximately 46.03% of the calculated remaining volume for the day, which resulted in a clearly erroneous order petition filing.

7. Starting in or about 2016, orders marked "not-held" or otherwise worked by a professional trader that were manually entered or modified in the firm's OMS would be subjected to a 500% 20-day ADV control, which was adjusted to 250% in 2017 and maintained at that level through 2018. Both thresholds were set too high to be reasonably designed to prevent the entry of erroneous orders, absent additional reasonably designed controls.
8. In addition, between in or about February 2016 through December 2019, the firm's mainframe, FIX connection, and OMS each maintained a single static order price variance control that was designed to block limit orders that were priced too far away or through the prevailing market price of a security. However, this static control was not reasonably designed as it applied the same threshold to all securities regardless of the security's reference price. In addition, for some securities the control exceeded the numerical guidelines for clearly erroneous executions ("CEE") under Nasdaq's rules and the firm did not have a documented rationale for why the control was set at this level. For example, the firm's mainframe and FIX connectivity price variance controls were set at thresholds higher than the CEE numerical guideline under Nasdaq's rules for securities with a reference price of greater than \$25.00 and the firm's OMS control was set at a threshold higher than the numerical guidelines for all securities.
9. From in or about February 2017 through August 2018, the firm's FIX connection duplicative order control rejected orders only with the same Order ID as a prior order and did not consider characteristics of potentially duplicative orders (*i.e.*, orders with the same symbol, side, quantity, and price). The firm also had a separate system that monitored for duplicative order flow in the firm's FIX connection that included order message counts on an account/side/symbol/price/quantity basis. The firm failed to have reasonably designed procedures that detailed how orders identified by the system were to be reviewed prior to being allowed to proceed to the routing destination. Therefore, the firm failed to establish reasonably designed controls and procedures to prevent the entry of erroneous, potentially duplicative orders.
10. By virtue of the foregoing, the firm violated Section 15(c)(3) of the Exchange Act, Exchange Act Rule 15c3-5(b) and (c)(1)(ii), and Nasdaq Rules 2010A and 3010 (for conduct before December 6, 2019), and Nasdaq Rules 2010A and 3010 (for conduct before December 6, 2019), and Nasdaq Rules General 9, Section 1(a) and General 9,

¹ On Jan. 2019, the firm ceased using the remaining projected volume calculation in its FIX connection and instead applied the current volume calculation.

Section 20 (for conduct on or after December 6, 2019).

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

- A censure;
- A total fine of \$75,000 to be paid jointly to Nasdaq, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc., of which \$33,000 is allocated to Nasdaq; and
- An undertaking to revise the firm's written supervisory procedures and/or risk management controls with respect to the areas described in paragraphs 6 through 8, above.
- Within 30 days of acceptance of this AWC, a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures and/or risk management controls to address the deficiencies described in paragraphs 6 through 8; and (3) the date the revised procedures and/or controls were implemented.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment are 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 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 prejudgment 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 FINRA's Department of Enforcement 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.

May 6, 2021

[Date]

National Financial Services, LLC
Respondent

By: Janet M. Dyer

Name: Janet M. Dyer

Title: Chief Compliance Officer

Reviewed by:

MS. Knoll

Mark D. Knoll
Counsel for Respondent
Bressler, Amery & Ross, P.C.
17 State Street
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New York City, NY 10004

Accepted by Nasdaq:

May 7, 2021

[Date]

Luis A. Prieto

Luis A. Prieto
Counsel
Department of Enforcement

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