

**THE NASDAQ STOCK MARKET LLC**  
**NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

TO:      **Lawrence Stanton**  
              Chief Financial Officer  
              Murphy & Durieu  
              120 Broadway  
              17<sup>th</sup> Floor  
              New York, NY 10271

FROM:     The NASDAQ Stock Market LLC ("Nasdaq")  
              c/o Financial Industry Regulatory Authority ("FINRA")  
              Department of Market Regulation  
              9509 Key West Avenue  
              Rockville, MD 20850

DATE:     June 14, 2013

RE:        Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110261562-01

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ's Finance Department regarding the payment of any fine if a fine has been imposed.

Murphy & Durieu  
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If you have any questions concerning this matter, please call Dean Floyd, Counsel, at (240) 386-6867.

*Thomas R. Gira*  
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Thomas R. Gira  
Executive Vice President  
Department of Market Regulation, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Regional Director  
One World Financial Center  
200 Liberty Street  
New York, NY 10281

Evan Barnes, Esq.  
Counsel for Respondent  
Kelley Drye & Warren LLP  
400 Atlantic Street  
Stamford, CT 06901

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20110261562-01**

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

RE: Murphy & Durieu, Respondent  
Broker-Dealer  
CRD No. 6292

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC (“Nasdaq”) Code of Procedure, Murphy & Durieu (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, 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 became a member of FINRA on August 9, 1972 and a member of Nasdaq on July 12, 2006. The firm’s FINRA and Nasdaq registrations remain in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

The firm has no relevant disciplinary history.

**SUMMARY**

In matter 20110261562, the Trading and Market Making Surveillance staff (“TMMS”) of the Department of Market Regulation (the “staff”) reviewed the firm’s compliance with Nasdaq rules during the period from February 2 through February 22, 2011 (the “review

period"). Attached as Exhibit 1 is a list of the items the staff reviewed in connection with its examination.

### **FACTS AND VIOLATIVE CONDUCT**

1. During the review period, the firm entered 60 orders into the Nasdaq Market Center that failed to indicate the correct capacity. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4611(a)(6).
2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of Nasdaq. At a minimum, adequate written supervisory procedures addressing trading and market making topics should describe the following:
  - (a) specific identification of the individual(s) responsible for supervision;
  - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
  - (c) the frequency of such reviews; and
  - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimal requirements for adequate written supervisory procedures in the following subject areas: Accuracy of Execution Capacity Entered Into Nasdaq [(a), (b), (c), (d)]; Other Trading Rules (Accuracy of the short sale and long sale indicator entered into Nasdaq) [(a), (b), (c), (d)]. The conduct described in this paragraph constitutes a violation of Nasdaq Rule 3010.

- B. The firm also consents to the imposition, at a maximum, of the following sanctions: a censure; a fine of \$12,500 (consisting of a \$7,500 fine for the Nasdaq Rule 4611 violations and a \$5,000 fine for the supervision violation); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.2. Within 30 business days of acceptance of this AWC by the Nasdaq Review Council, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto: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 to address the deficiencies described in this paragraph; and (3) the date the revised procedures were implemented.

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

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 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 Market

Regulation 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. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about the firm’s disciplinary record;
  - 3. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  - 4. 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.

5-21-13  
Date

Murphy & Durieu  
Respondent

By: Lawrence Stanton  
Name: Lawrence Stanton

Title: CPO

Reviewed by:

Evan Rosen  
Counsel for Respondent  
Murphy & Durieu

Accepted by Nasdaq:

6/14/13  
Date

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

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

**Exhibit No. 1**

**2011 Market Regulation Examination Samples**  
**Murphy Durieu ("MURF")**  
**Exam No. 20110261562**  
**Sample Source/Period\*: February 2-8, 2011**

<u>Sample Size</u>	<u>Sample Description</u>
168	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
181	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
358	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
37	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
60	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
103	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equity Rule 7.16 long/short reporting requirements
35	Orders for compliance with best execution requirements of NASD Rule 2320 0 Held orders from the Held Order Protection Review 10 Not Held orders from the Not Held Order Review 0 Order executed with a .PRP (Prior Reference Price) trade modifier 25 Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
1	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
754	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
39	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
17	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
4	Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
23	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
25	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
4091	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110

**Exhibit No. 1**

**2011 Market Regulation Examination Samples**  
**Murphy Durieu ("MURF")**  
**Exam No. 20110261562**  
**Sample Source/Period\*: February 2-8, 2011**

<u>Sample Size</u>	<u>Sample Description</u>
535	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 or Nasdaq Rule 3010 requirements