

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018059368301**

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

RE: Roth Capital Partners, LLC, Respondent
Broker-Dealer
CRD No. 15407

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (Nasdaq) Code of Procedure, Roth Capital Partners, LLC (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

Roth has been a Nasdaq member since July 2006 and a FINRA member since October 1985. The firm is headquartered in Newport Beach, California and employs approximately 122 registered individuals at its six branch offices. It is an investment banking firm focused on the small-cap public market, and services retail and institutional clients. Its investment banking services include raising capital, merger and acquisitions, research, sales, trading, and market making services.

The firm does not have any relevant disciplinary history.

SUMMARY

From July 2018 through August 24, 2021 (the review period), the firm established and maintained a system of risk management controls and supervisory procedures designed to manage the financial risk of its order entry activity. Certain of the firm's controls, however, were not reasonably designed to prevent the entry of erroneous orders, and the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. As a result, the firm violated Section 15(c)(3) of the Securities Exchange Act of 1934, as amended (Exchange Act) and Rules 15c3-5(b) and (c)(1)(ii) thereunder (Exchange Act Rule 15c3-5), and Nasdaq Rules

2010A and 3010 (for conduct prior to December 6, 2019) and Nasdaq Rules General 9, Section 1(a) and General 9, Section 20 (for conduct on and after December 6, 2019).¹

In addition, during the review period, Roth's written supervisory procedures (WSPs) failed to include any description of the steps its traders were required to take when completing their soft block reviews. They also did not require documentation of the reason why an order that had triggered a soft block was subsequently released and routed to an exchange. Moreover, the WSPs did not include any specific steps required to be performed in connection with the annual review of the firm's market access controls. Although the firm's WSPs improved over the course of the review period, they continued to rely upon static parameters that were too large to be effective, and failed to account for the individual characteristics of a security. Roth subsequently updated its WSPs concerning the issues described herein. As a result, the firm violated Nasdaq Rules 2010A and 3010, and thereafter Nasdaq Rules General 9, Section 1(a) and General 9, Section 20.

Finally, during the review period, Roth failed to adequately document its annual reviews of the business activity of the firm in connection with market access, and therefore violated Exchange Act Rule 15c3-5(e)(1) and Nasdaq Rules 2010A and 3010, and thereafter Nasdaq Rules General 9, Section 1(a) and General 9, Section 20.

Accordingly, Roth violated Rule 15c3-5 of the Exchange Act, specifically Rules 15c3-5(b), (c)(1)(ii), and (e), and Nasdaq Rules 3010 and General 9, Section 20, and 2010A and General 9, Section 1(a).

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

1. Exchange Act Rule 15c3-5(b) requires a broker-dealer with market access to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of its business.
2. Exchange Act Rule 15c3-5(c)(1)(ii) requires broker-dealers to establish financial risk management controls and supervisory procedures reasonably designed to "prevent 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. Exchange Act Rule 15c3-5(e) requires a broker-dealer with market access to establish, document, and maintain a system for "regularly reviewing the effectiveness of the risk management controls and supervisory procedures

¹ Effective December 6, 2019, Nasdaq Rule 3010 (now, General 9, Section 20) was renumbered and relocated under the General 9 title ("Regulation") in the Nasdaq rulebook. See Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098). Moreover, effective December 6, 2019, Nasdaq Rule 2010A (now, General 9, Section 1(a)) was also renumbered and relocated under the General 9 title ("Regulation") in the Nasdaq rulebook. See Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

required by paragraphs (b) and (c)” of the Rule “and [a system] for promptly addressing any issues.” Exchange Act Rule 15c3-5(e)(1) specifically requires the 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 its risk management controls and supervisory procedures, and to conduct that review in accordance with written procedures and document each such review.”

4. Nasdaq Rule 3010(a) provides, in part, 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.” Effective December 6, 2019, Nasdaq Rule 3010 was relocated to General 9, Section 20.
5. Nasdaq Rule 2010A provides, in relevant part, that a member “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

6. The firm’s single order share and price variance controls led to the firm sending a clearly erroneous order to Nasdaq on July 27, 2018. Instead of handling a 50,000-share order on a volume weighted average price (VWAP) basis, Roth erroneously sent to Nasdaq a market order to sell 50,000 shares. This error resulted in executions as far away as 5.55% from the National Best Bid and Offer (NBBO) at order entry into Nasdaq. The firm, however, promptly discovered the error, and submitted, within 30 minutes, a clearly erroneous execution (CEE) petition to Nasdaq, which then cancelled 9,061 shares of the 50,000-share order.
7. Specifically, during the review period, the firm had a maximum share count control, which served as its sole single order size control. This control was too large to be reasonably designed to prevent the entry of erroneous orders absent additional reasonably designed controls. It relied on a static number (500,000 shares) that did not take into consideration the trading characteristics of individual securities. Furthermore, Roth did not provide any rationale for its decision to set its maximum share count control at that level. Although Roth did, during the review period, make certain improvements to its maximum share count control, the control was a static control that was too large to be effective, and did not account for the individual characteristics of the securities being traded.
8. Moreover, during the review period, the firm had a maximum price variance control of 20% through the NBBO, which served as its sole single order price control. This static price 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 firm’s control exceeded the numerical guidelines for CEEs under Nasdaq’s rules,

and the firm did not have a documented rationale for why the control was set at this level. Although Roth did, during the review period, make certain improvements to its maximum price variance control, it still failed to account for the specific characteristics of a security.

9. By virtue of the foregoing, Respondent violated Exchange Act Rules 15c3-5(b) and (c)(1)(ii) and Nasdaq Rules 3010 and General 9, Section 20, and 2010A and General 9, Section 1(a).
10. Additionally, during the review period, the firm completed annual review documents from 2018 to 2020, which were designed to comply with the requirement of Exchange Act Rule 15c3-5(e). Although Roth provided certifications that these reviews were completed, Roth did not evidence the specific supervisory steps taken, and reviews undertaken, to ensure that it performed the annual review. Accordingly, the firm failed to adequately document its annual review of the business activity of the firm in connection with market access.
11. By virtue of the foregoing, Respondent violated Exchange Act Rule 15c3-5(e)(1) and Nasdaq Rules 3010 and General 9, Section 20, and 2010A and General 9, Section 1(a).
12. Finally, during the review period, the firm's WSPs related to its single order size and price controls, and its annual review of its market access controls, were not reasonably designed. Specifically, its WSPs failed to include any policies or procedures that described the steps its traders were required to take when completing their soft block reviews. They also did not require documentation of the reason why an order that had triggered a soft block was subsequently released and routed to an exchange. Moreover, the WSPs did not include any specific steps required to be performed in connection with the annual review of the firm's market access controls. Although the firm's WSPs improved during the review period, they still continued to rely upon static parameters that were too large to be effective, and failed to account for the individual characteristics of a security.
13. By virtue of the foregoing, the firm violated Nasdaq Rules 3010 and General 9, Section 20, and 2010A and General 9, Section 1(a).

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

1. a censure; and
2. a \$62,500 fine.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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.

