BUSINESS CONDUCT RULES:
FREQUENTLY ASKED QUESTIONS

1: What factors may be considered in assessing a potential violation of the rules regarding manipulative trading behavior, including spoofing and layering type of activities?

Nasdaq Regulation may consider a variety of factors in assessing whether conduct violates the Rules, including, but not limited to:

- whether the market participant's intent was to induce others to trade when they otherwise would not;
- whether the market participant's intent was to affect a price rather than to change his position;
- whether the market participant's intent was to create misleading market conditions;
- market conditions in the impacted market(s) and related markets;
- the effect on other market participants;
- the market participant's historical pattern of activity;
- the market participant's Order entry and cancellation activity;
- the size of the Order(s) relative to market conditions at the time the Order(s) was placed;
- the size of the Order(s) relative to the market participant's position and/or capitalization;
- the number of Orders;
- the ability of the market participant to manage the risk associated with the Order(s) if fully executed;
- the duration for which the Order(s) is exposed to the market;
- the duration between, and frequency of, non-actionable messages;
- the queue position or priority of the Order in the Order Book;
- the prices of preceding and succeeding bids, offers, and trades;
- the change in the best offer price, best bid price, last sale price, or other price that results from the entry of the Order; and
- the market participant's activity in related markets.

2: Is there a specific amount of time an Order should be exposed to the market to demonstrate that it does not constitute manipulative trading behavior?

Although the amount of time an Order or Quote is exposed to the market may be a factor that is considered when determining whether the Order or Quote constituted a disruptive, and therefore manipulative, trading practice, there is no prescribed safe harbor. Nasdaq Regulation will consider a variety of factors, including exposure time, to determine whether an Order or Orders constitute manipulative activity.

3: Is it a violation of the rules to modify or cancel an Order once it has been entered?

An Order or Quote, entered with the intent to execute a bona fide transaction that is subsequently modified or cancelled due to a perceived change in circumstances does not constitute a violation of the Rules.

4: Will Orders that are entered by mistake constitute a violation of Exchange Rules?

An unintentional, accidental, or "fat-finger" Order will not constitute a per se violation of the Rules, but such activity may be a violation of other Exchange Rules, including, but not limited to Rules on supervision controls to prevent entry of erroneous orders. Market participants are expected to take steps to mitigate the occurrence of errors, and their impact on the market.

This is particularly true for entities that run algorithmic trading applications, or otherwise submit large numbers of automated orders to the market. In certain cases erroneous trades may be referred to FINRA for further investigation.

5: Does a partial fill of an Order or Quotes demonstrate that the Order did not violate the Rules?

While execution of an Order, in part or in full, may be one indication that an Order was entered in good faith, an execution does not automatically cause the Order to be considered compliant. Orders must be entered in an attempt to consummate a bona fide trade. A variety of factors may lead to a violative Order ultimately achieving an execution. Nasdaq Regulation will consider a multitude of factors in assessing whether the Rules has been violated.

6: Is a market participant prohibited from making a two-sided market with unequal quantities (e.g., 100 bid at 10 offered)?

No. Market participants are not precluded from making unequal markets as long as the Orders or Quotes are entered for the purpose of executing bona fide transactions. If either (or both) Order(s) or Quotes are entered with prohibited intent, including recklessness, such activity will constitute a violation of the Rules.

7: Is the use of Hidden Orders or Quotes considered misleading under the Rules?

No. The use of Hidden Orders, in and of itself, is not considered a violation of the Rules. However, a violation may exist if a Hidden Order is used as part of a scheme to mislead other market participants; for example, if a market participant pre-positions an reserve size order on the bid and then layers larger displayed quantities on the offer to create artificial downward pressure that results in the reserve Order being partially or completely filled.

8: Is a market participant allowed to enter Order(s) at various price levels throughout the Order Book in order to gain queue position, but subsequently cancel those Orders as the market changes?

It is understood that market participants may want to achieve queue position at certain price levels, and given changing market conditions may wish to modify or cancel those Orders. In the absence of other indicia that the Orders were entered for non-bona fide or manipulative purposes, they would not constitute a violation of the Rules.

9: How does Nasdaq Regulation define "high standards of commercial honor and just and equitable principles of trade?

Whether a market participant intends to disrupt the orderly conduct of trading or the fair execution of transactions or demonstrates a reckless disregard for the orderly conduct of trading or the fair execution of transactions may be evaluated only in the context of the specific instrument, market conditions, and other circumstances present at the time in question. Volatility alone, however, will not be presumptively interpreted as disorderly or disruptive as market volatility can be consistent with markets performing their price discovery function.

10: What factors will Nasdaq Regulation consider in determining if an act was done with the prohibited intent or reckless disregard of the consequences?

Proof of intent is not limited to instances in which a market participant admits its state of mind. Where the conduct was such that it more likely than not that it was intended to produce a prohibited disruptive consequence, intent may be found. Claims of ignorance, or lack of knowledge, are not acceptable defenses to intentional or reckless conduct. Recklessness has been commonly defined as conduct that "departs so far from the standards" of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing.

11: Are Orders or Quotes entered for the purpose of igniting momentum in the market prohibited by Nasdaq Rules?

Trades would be deemed to violate the Rules if it is determined that the intent was to disrupt the orderly conduct of trading or the fair execution of transactions, if the conduct was reckless, or if the conduct distorted the price discovery process. Further, this activity may violate the Rules if the momentum igniting Orders were intended to be canceled before execution, or if the Orders were intended to mislead others. If the conduct was intended to create artificially high or low prices, this may also constitute a violation of the Rules.

12: Is changing from buying to selling with respect to an Order prohibited by the Rules?

Nasdaq Regulation recognizes there are many variables that can cause a market participant to change their perspective of the market. The Rules do not prohibit a market participant from changing its bias from short (long) to long (short). However, certain activity may be considered manipulative to the marketplace. For example, repeated instances of a market participant cancelling Orders on one side of the market and then entering Orders in the other direction that are large enough to turn the market (i.e., being of a sufficient quantity to sweep the entire quantity on the Order Book at the particular price level and create a new best bid or best offer price) can be disruptive to the orderly conduct of trading or the fair execution of transactions.

13: What type of pre-open activity is prohibited by the Rules?

As described in question 1, any activity that influences a market price may be considered when reviewing manipulative trading behavior. This includes Order activity during the Pre-Market Session (4 - 9.30 AM) that influences a price visible to the market, such as the indicative opening price, if the purpose of that Order activity is not to execute a bona fide transaction.

14: Does Nasdaq Regulation consider cancelling an Order utilizing self-match prevention technology indicative of an Order being in violation of the Rules?

The means by which an Order is cancelled, in and of itself, is not an indicator of whether an Order violates the Rules. The use of self-match prevention technology in a manner that causes a disruption to the market may constitute a violation of the Rules. Further, if the resting Order that was cancelled was non-bona fide, it would be considered to have been entered in violation of the Rules.

15: Are Stop Orders entered for purposes of protecting a position prohibited by the Rules?

Market participants may enter Stop Orders as a means of minimizing potential losses with the hope that the Order will not be triggered. However, it must be the intent of the market participant that the Order will be executed if the specified condition is met. Entry of such an Order is not prohibited by this Rule.

16: Is a market participant precluded from entering Orders that may be considered large for a particular market, and thus may have a potential impact on the market?

The size of an Order or cumulative Orders may be deemed to violate the Rules if the entry results in disorderliness in the markets, including, but not limited to, price or volume aberrations. Accordingly, market participants should be cognizant of the market characteristics of the products they trade and ensure that their Order entry activity does not disrupt the market.

Nasdaq uses advanced technology from SMARTS and FINRA to monitor the market for layering, spoofing and other manipulation and works with FINRA to bring cases in appropriate situations.