

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

**Certified, Return Receipt Requested**

**TO: Ben James Raatz  
1034 W. Altgeld St.  
Chicago, IL 60614**

**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: January 3, 2017**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20080148227-04**

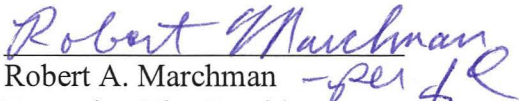
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **January 3, 2017** by the Nasdaq Review Council’s Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Form U4 (Uniform Application for Securities Industry Registration or Transfer) 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 U4. Please also note that this disciplinary action may change and/or advance the date by which you must complete your continuing education.

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 and/or disgorgement if such has been imposed.

Ben James Raatz  
Page 2

If you have any questions concerning this matter, please contact Joel S. Vengrin, Senior Counsel,  
at (240) 386-6814.

  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation

Signed on behalf of NASDAQ

Enclosure

FINRA District 8 – Chicago  
Edward Wegener  
Vice President and Regional Director  
(Via email)

Anthony F. Fata, Esq.  
Cafferty, Clobes Meriwether &  
Sprengel, LLP  
150 South Wacker Dr., Suite 3000  
Chicago, IL 60606  
312-782-4880  
afata@caffertyclobes.com  
*Counsel for Ben James Raatz*

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 20080148227-04

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

RE: Ben James Raatz, Respondent  
Associated Person  
CRD No. 4637287

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, I, Ben James Raatz ("Respondent" or "Raatz"), submit 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 me alleging violations based on the same factual findings described herein.

I.

**ACCEPTANCE AND CONSENT**

- A. I hereby accept and consent, 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**

Raatz first became associated with Great Point Capital LLC ("Great Point") in 2004. In July 2006, Great Point registered with Nasdaq and Raatz became registered with Nasdaq as a General Securities Representative and Equities Trader. Raatz remained registered with Nasdaq until December 22, 2010, when Great Point filed a Form BDW terminating its registration with Nasdaq. Raatz remained employed as a securities trader with Great Point, which again registered with Nasdaq from January 26, 2015 to May 27, 2016. Accordingly, Raatz was last associated with a Nasdaq member firm on May 27, 2016. Raatz is currently employed by Great Point as a trader. Raatz has no disciplinary history.

Although Respondent is no longer registered or associated with a Nasdaq member firm, he remains subject to Nasdaq's jurisdiction, pursuant to Nasdaq Rule 1031(f)(1), for purposes of this AWC because the violative conduct cited herein occurred while he was registered or associated with a Nasdaq member, and this AWC was accepted within two years after the date upon which he ceased to be associated with a Nasdaq member firm.

**SUMMARY**

This matter originated from an investigation conducted by the Market Manipulations Investigation Team of FINRA's Department of Market Regulation ("Market Regulation") using multiple Market Regulation sources, including Cross Market Surveillance.

During the period from August 29, 2008 through December 22, 2010 (the "relevant period"), on three separate days Raatz engaged in the following trading. Raatz placed imbalance-only orders to sell a certain security in the Nasdaq Opening Cross. Raatz also placed orders to purchase the same security in the Nasdaq Continuous Book, generally waiting until the last seconds before the Nasdaq Opening Cross to place the orders. Instances where Raatz placed these purchase orders in the last seconds at prices at or above the Nasdaq inside offer and which resulted in purchase of the full size at the Nasdaq inside offer unduly contributed to an increase in the price of the security in the Nasdaq Continuous Book as well as the price of the Nasdaq Opening Cross for the security. As a result, Raatz violated Nasdaq Rule 2110.

### **FACTS AND VIOLATIVE CONDUCT**

#### **The Nasdaq Opening Cross**

During the relevant period, Nasdaq operated two trading books before the market opened at 9:30 a.m.: the Nasdaq Continuous Book, which was open to market participants to place orders and execute trades during extended hours trading between 7:00 a.m. and 9:30 a.m., and the Nasdaq Opening Book, which accepted orders between 7:00 a.m. and 9:30 a.m. to be executed at the Nasdaq Opening Cross at 9:30 a.m.

During the two minutes prior to the Opening Cross, Nasdaq permitted market participants to submit imbalance-only, or "IO," orders in the Opening Book to provide liquidity to offset pre-open buy or sell imbalances in the Opening Book. To facilitate these IO orders, Nasdaq disseminated Opening Book imbalance data through Nasdaq Order Imbalance Indicator ("NOII") messages at five-second intervals beginning at 9:28:00 a.m. until the Opening Cross.

At the Opening Cross, orders in the Opening Book and orders in the Continuous Book were brought together to create a single Opening Cross price, which became Nasdaq's official opening price for each such security. Thus, transactions effected in the Continuous Book during the two minutes preceding the Opening Cross directly affected the Opening Cross price. Typically, the inside offer in the Continuous Book at 9:30:00 a.m. became the price at which orders in the Opening Book were executed in the Opening Cross.

#### **Respondent's Trading in the Nasdaq Opening Cross and Continuous Book**

During the relevant period, Raatz utilized information from the initial NOII message to identify the following three securities in the Opening Book that exhibited large buy-side imbalances relative to the average daily trading volume of the securities, indicating a potential lack of liquidity to fill buy orders.

Security	Ticker	Date	Size of Initial Buy Imbalance
Sutron Corp.	STRN	February 20, 2009	312,330
Delta Petroleum Corp.	DPTR	March 11, 2009	273,793
AgFeed Industries, Inc.	FEED	June 1, 2009	367,421

For each security identified above, Raatz entered a series of IO orders to sell the identified securities in the Opening Book to be executed at the Opening Cross. After entering the IO sell orders for these securities, Raatz generally waited until the final dissemination of NOII information at or about 09:29:55, and shortly before the Opening Cross, to place orders to purchase the same security in the Continuous Book by entering a series of progressively higher-priced buy orders that were often priced at or above the Nasdaq inside offer. The aggressively-priced buy orders, which resulted in progressively higher priced purchases on Nasdaq, where buy orders were entered after the final NOII message at 9:29:55, rendered the Opening Cross more opaque to other potential participants.

The series of progressively higher-priced purchase transactions in the Continuous Book by Raatz unduly contributed to an increase in the price of the security in the Continuous Book as well as the price of the Opening Cross for the security. As a result, these purchases contributed to Raatz obtaining advantageous pricing on his IO sell orders, which executed at the higher resulting Nasdaq Opening Cross price.

Based on the foregoing conduct, Raatz failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2110.

B. I also consent to the imposition of the following sanctions:

A suspension from associating with any Nasdaq member in any capacity for 60 calendar days; a fine of \$37,750; and total disgorgement of \$16,921,<sup>1</sup> plus pre-judgment interest, at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2) ("interest"), to Nasdaq for financial benefits received as follows:

1. For STRN -- \$635 plus interest from February 20, 2009 until the date this AWC is accepted by the Nasdaq Review Council;
2. For DPTR -- \$5,386 plus interest from March 11, 2009 until the date this AWC is accepted by the Nasdaq Review Council; and
3. For FEED -- \$10,900 plus interest from June 1, 2009 until the date this AWC is accepted by the Nasdaq Review Council.

I agree to pay the monetary sanction(s) in accordance with my executed Election of Payment Form.

<sup>1</sup> The disgorgement amount takes into consideration that Great Point retained, and Raatz did not receive, an aggregate of approximately \$206,703 of financial benefit from transactions in subject securities on the respective trade dates.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any Nasdaq member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any Nasdaq member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See Nasdaq Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand that:

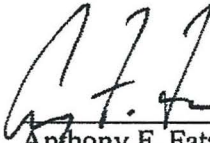
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
  - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against me;
  - 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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, have been made to induce me to submit it.

12/22/16  
Date

Respondent  
By:   
Name: Ben Raatz  
Title: Ben Raatz

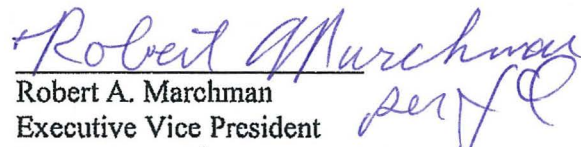
Reviewed by:

  
12/22/16

Anthony F. Fata, Esq.  
Cafferty, Clobes Meriwether & Sprengel, LLP  
150 South Wacker Dr., Suite 3000  
Chicago, IL 60606  
312-782-4880  
afata@caffertyclobes.com  
*Counsel for Ben James Raatz*

Accepted by Nasdaq:

1-3-2017  
Date

  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation

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



**ELECTION OF PAYMENT FORM**

Respondent intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

A firm check or bank check for the full amount

Wire transfer

Respectfully submitted,

Respondent

12/22/16

Date

By: 

Name: Ben Raatz

Title: \_\_\_\_\_

**Billing and Payment Contact**

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. *Please DO NOT submit payment until Nasdaq has sent you an invoice.*

Billing Contact Name: Ben Raatz

Billing Contact Address: 1034 W. Altgeld St. Chicago, IL 60614

Billing Contact Email: benraatz@gmail.com

Billing Contact Phone Number: 608-770-6468