

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

Certified, Return Receipt Requested

**TO: Pershing LLC
J. Derek Penn
Managing Director
Head of Equity Sales & Trading
One Pershing Plaza
10th Floor
Jersey City, NJ 07399**

**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: March 18, 2011

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100215972-01

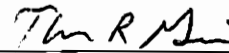
Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed 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 will be notified by the Registration and Disclosure Department regarding sanctions, and NASDAQ's Finance Department will send you an invoice regarding the payment of any fine.

Pershing LLC
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If you have any questions concerning this matter, please call Gary Jackson, Counsel, at (240) 386-6126.



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

Signed on behalf of NASDAQ

Enclosure

FINRA District 9 – New Jersey
Gary K. Liebowitz
Regional Director
581 Main Street
7th Floor
Woodbridge, NJ 07095-1164

Edward S. Knight, Chief Regulatory Officer
The NASDAQ Stock Market LLC
9600 Blackwell Road
Rockville, MD 20850

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100215972-01

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

RE: Pershing LLC, Respondent
Broker-Dealer
CRD No. 7560

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, Pershing 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

The firm has been a member of FINRA since May 4, 1973, and its registration remains in effect. The firm has been a member of The NASDAQ Stock Market since July 12, 2006, and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm has the following relevant prior disciplinary history: on March 30, 2009, Nasdaq accepted an AWC in which the firm was fined \$5,000 for 17 order entry parameter violations of Nasdaq Rule 4755 (20080120649).

SUMMARY

In Review No. 20100215972, the staff of the FINRA Department of Market Regulation (“the staff”) conducted a Trading and Market Making Surveillance Examination (“TMMS Examination”), which included a review of the items set forth on Exhibit 1, for the trade dates of February 24 and 25, 2010 (“the review period”).

FACTS AND VIOLATIVE CONDUCT

During the review period, the firm entered 187 orders into the Nasdaq Market Center that failed to correctly indicate whether the orders were a buy, short sale or long sale. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4755.

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

A censure and a fine of \$10,000.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment 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(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 prejudice 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 Nasdaq'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 firm certifies that it 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.

2-22-11
Date

Respondent
Pershing LLC

By: J. Derek Penn

Name: A. Derek Penn

Title: MD - Head of Equity Sales & Trading

Reviewed by:

Counsel for Respondent

Accepted by Nasdaq:

3/18/11
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

ELECTION OF PAYMENT FORM

Pershing LLC intends to pay the fine proposed in Section I of the Letter of Acceptance, Waiver and Consent by the following method (check one):

- NASDAQ will send the firm an invoice for the full amount; or
- The installment payment plan (only if approved by Department of Regulation and the National Adjudicatory Council).¹

Respectfully submitted,

Pershing, LLC

By: _____

Name: _____

Title: _____

2-22-11
Date

¹ The installment payment plan is only available for fines of \$5,000 or more. Certain interest payments, minimum initial and monthly payments, and other requirements apply. You must discuss these terms with FINR staff prior to requesting this method of payment.

2010 Market Regulation Examination Samples
Pershing LLC ("PERT")
Exam No. 20100215972
Sample Source/Period*: February 24 and 25, 2010

<u>Sample Size</u>	<u>Sample Description</u>
223	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
6	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
282	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
229	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
263	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short reporting requirements
31	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
60	Orders for compliance with best execution requirements of NASD Rule 2320
50	Held orders from the Held Order Protection Review
0	Not Held orders from the Not Held Order Review
0	Order executed with a .PRP (Prior Reference Price) trade modifier
10	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
50	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
10	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
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
75	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
8	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10

2010 Market Regulation Examination Samples
Pershing LLC ("PERT")
Exam No. 20100215972
Sample Source/Period*: February 24 and 25, 2010

<u>Sample Size</u>	<u>Sample Description</u>
53	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 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
15	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; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
10	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
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
482	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
517	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, Nasdaq Rule 3010, or BATS Rule 5.1 requirements