

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015047957002**

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

RE: T.R. Winston & Company, LLC, Respondent
Broker-Dealer
CRD No. 10571

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, T.R. Winston & Company, 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

T.R. Winston became a FINRA member in June 1982, and a Nasdaq member in July 2006. The firm is headquartered in Bedminster, New Jersey, has three branch locations and employs 13 registered representatives. The firm engages in trading services for retail and institutional customers, proprietary trading, and acts as a distribution participant in public offerings.

The firm has no relevant disciplinary history.

SUMMARY

Since at least February 2015 through the present (the “review period”), T.R. Winston failed to establish and maintain a supervisory system, including written supervisory procedures (“WSPs”), that was reasonably designed to achieve compliance with Rule 101 of Regulation M of the Securities Exchange Act of 1934.

As a result, the firm violated Nasdaq General 9, Sections 20(a) and 1(a), and Nasdaq Rules 3010 and 2010A.

FACTS AND VIOLATIVE CONDUCT

1. This matter resulted from FINRA surveillance alerts regarding trading by T.R. Winston during the restricted period of a public offering.
2. Rule 101 of Regulation M provides in relevant part that “[i]n connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.” Rule 101 defines a covered security as “any security that is the subject of a distribution” Rule 101 defines a distribution participant as “an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.”
3. Nasdaq General Rule 9, Section 20(a) and its predecessor, Nasdaq Rule 3010(a),¹ require each member to establish and maintain a system to supervise the activities of each registered person and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.
4. A violation of Nasdaq General 9, Section 20(a) or Nasdaq Rule 3010 is also a violation of Nasdaq General 9, Section 1(a) and its predecessor, Nasdaq Rule 2010A,² which require a member to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of its business.
5. During the review period, one of T.R. Winston’s business lines included acting as a distribution participant in public offerings. The firm used a committee comprised of senior personnel to determine whether the firm would become engaged as a distribution participant. It was the committee’s responsibility to notify the compliance department and relevant supervisors once it approved the firm’s engagement as a distribution participant. The compliance department was then required to add the subject security to a restricted list, which was posted on a bulletin board in the firm’s trading room in its headquarters. A hard copy of the restricted list was also retained by a single employee in the firm’s compliance department.
6. The firm’s supervisory system, however, was not reasonably designed to achieve compliance with Rule 101.
7. The firm’s practice of posting the restricted list on a bulletin board only in the firm’s trading room at its headquarters was not a reasonable method to notify all

¹ Nasdaq General 9, Section 20(a) superseded Nasdaq Rule 3010 on December 6, 2019.

² Nasdaq General 9, Section 1(a) superseded Nasdaq Rule 2010A on December 6, 2019.

relevant personnel. Among other things, the firm's branch-office personnel did not have access to the bulletin board and therefore may not have been aware of the restricted securities.

8. In addition, the firm's WSPs failed to identify any supervisor or supervisors responsible for achieving compliance with Rule 101 and failed to set forth how the firm would identify any improper trading in restricted securities. In practice, no firm supervisor distributed the restricted list to the firm's other branch offices, reviewed trading activity in restricted securities at its branch offices, and the firm had no surveillance system or other method to identify improper trading in restricted securities at its branch offices.
9. In at least one instance, a firm employee unilaterally assessed the application of Rule 101 to a rights offering without any involvement by the committee or supervisory oversight. As a result, the firm acted as a distribution participant in a rights offering, the compliance department and relevant supervisors were not notified of the engagement, and the offering security was not placed on the firm's restricted list. In addition, the firm did not conduct supervisory reviews of the firm's or its employees' trading in the subject security. The firm and the same employee effected transactions in the security, improperly profiting \$50,000 each.
10. Therefore, the firm violated Nasdaq General 9, Sections 1(a) and 20(a), and Nasdaq Rules 3010(a) and 2010A.

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

- a censure;
- a total fine of \$75,000, of which \$37,500 will be paid to Nasdaq;³
- total disgorgement of \$50,000, of which \$25,000 will be paid to Nasdaq;⁴ and
- an undertaking to review and revise the firm's supervisory system, including its WSPs, with respect to the deficiencies described above concerning the firm's supervision for potential violations of Rule 101 while engaged as a distribution participant. Within 90 business days of acceptance of this AWC, a registered principal of the Respondent shall submit to Compliance Assistant, FINRA Department of Enforcement, 15200 Omega Drive, Third Floor, Rockville, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to EnforcementNotice@FINRA.org, providing the following information: (i) a reference to this Matter No; (ii) a representation that the firm has

³ The remainder of the fine will be paid to FINRA.

⁴ The remainder of the disgorgement will be paid to FINRA. FINRA determined not to impose prejudgment interest on the disgorgement because the fine and disgorgement taken together achieves the appropriate deterrence value of equitable disgorgement.

revised its supervisory system, including WSPs, to address the above findings; and (iii) the date(s) the firm addressed and corrected the supervisory deficiencies.

Acceptance of this AWC is conditioned upon acceptance of a parallel settlement agreement in related matters by FINRA.

The firm agrees to pay the monetary sanctions 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 sanctions 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.

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.

5/26/22
Date

T.R. Winston & Company, LLC
Respondent

By: Malissa A. Costine
Name: Malissa A. Costine
Title: Chief Compliance Officer

Reviewed by:
Michael Gilmore
Michael Gilmore, Esq.
Counsel for Respondent
Moss & Gilmore L.L.P.
129 Third Street
Mineola, NY 11501

Accepted by Nasdaq:
6/29/22
Date

Gary E. Jackson
Gary E. Jackson
Senior Counsel
Department of Enforcement

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