

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057166104**

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

RE: Wolverine Execution Services, LLC, Respondent
Broker-Dealer
CRD No. 120719

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, Wolverine Execution Services, 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

Wolverine has been a member of Nasdaq since July 2006. Its registration remains in effect. The firm’s single branch is in Chicago, Illinois where it employs approximately 46 registered representatives and generally provides execution services for institutional clients. Wolverine does not carry customer accounts. The firm does not have any relevant disciplinary history.

SUMMARY

Between May 2016 and March 2019, the firm inaccurately marked sell orders as long rather than short and failed to affix a short sale indicator in 12,592 instances on Nasdaq in violation of Regulation SHO (“Reg. SHO”) Rule 200(g), promulgated under the Securities Exchange Act of 1934, as amended, and Nasdaq Rule 4702(a). Additionally, during the month of February 2018, the firm failed to document compliance with the locate requirement in 294,960 instances on Nasdaq in violation of Reg. SHO Rule 203(b). During these periods, the firm also failed to establish and maintain written supervisory procedures

(“WSPs”) and a supervisory system reasonably designed to achieve compliance with the above-cited rules in violation of Nasdaq Rules 2010A and 3010(a).¹

FACTS AND VIOLATIVE CONDUCT

Reg. SHO Rule 200(g) Violations

1. Reg. SHO Rule 200(g) requires broker-dealers to mark all sell orders of any equity security as “long,” “short,” or “short exempt.” The broker-dealer selling an equity security may only mark an order as “long” in the event that the seller is deemed to own the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.
2. Nasdaq Rule 4702(a) requires that, “Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.”
3. From May 2016 through March 2019, Wolverine engaged in riskless principal trading for two of its customers. Wolverine incorrectly entered those orders in the same manner in which it had received them, such that if it received an order to sell long, it would enter a sell long order into the Exchange, even if Wolverine was not actually long. As a result, the firm mismarked 12,592 short sale orders sent to Nasdaq as long when the firm was actually short and failed to affix a short sale indicator to those orders. The conduct described in this paragraph constitutes violations of Reg. SHO Rule 200(g) and Nasdaq Rule 4702(a).

Reg. SHO Rule 203(b) Violations

4. Pursuant to Regulation SHO Rule 203(b)(1): “A broker dealer may not accept a short order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker dealer has: (i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with this paragraph (b)(1).” This rule is generally referred to as the “locate requirement.” The SEC’s Frequently Asked Questions Concerning Regulation SHO² clarify that a broker-dealer may obtain an assurance from a customer that the customer can obtain securities from another identified source in time to settle the trade. The broker-dealer must still document the locate, and the documentation should include the source of the securities cited by the customer, as well as reasonable grounds to rely on the customer’s assurances.

¹ Effective December 6, 2019, Nasdaq Rule 3010 (now, General 9, Section 20) and Rule 2010A (now, General 9, Section 1(a)) were respectively renumbered and relocated under the General 9 title (“Regulation”) in the Nasdaq rulebook. *See* Securities Exchange Act Release No. 34-87778 (December 17, 2019) (SR-NASDAQ-2019-098).

² *See* U.S. Securities and Exchange Commission, Division of Market Regulation, Responses to FAQs Concerning Regulation SHO.

5. During February 2018, Wolverine failed to document compliance with Reg. SHO Rule 203(b). The firm relied on its clients to attest that they have a locate for short sales, and configured its order management system (“OMS”) so that when a client entered a short sale order, an electronic window prompt requested that the client attest that it met the locate requirement and allowed the customer to provide related information. If a client did not affirm that it had a locate, the trade would not be routed. Throughout February 2018, Wolverine failed to retain records reflecting the client attestations or other documentation reflecting the reasonable grounds for the client’s attestation. The firm therefore failed to properly document compliance with the locate requirement in 294,960 instances for orders entered as short sales into Nasdaq. The conduct described in this paragraph constitutes violations of Reg. SHO Rule 203(b).

Supervision Violations

6. During all relevant periods, Nasdaq Rule 3010(a) provided 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.”
7. During all relevant periods, Nasdaq Rule 2010A provided that, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”
8. From May 2016 through March 2019, Wolverine’s written supervisory procedures (“WSPs”) relating to short sale order marking stated that “[b]ecause the Firm does not have access to its clients’ positions, the Firm generally must rely on clients to accurately represent their positions when marking sell orders ‘long’ or ‘short.’” However, Wolverine’s supervisory system, including its WSPs, failed to address how it would supervise for compliance with Reg. SHO Rule 200(g) and related exchange-based short sale indicator requirements, including Nasdaq Rule 4702, for orders that it executed in a riskless principal capacity. The conduct described in this paragraph constitutes a violation of Nasdaq Rules 2010A and 3010.
9. Additionally, during the month of February 2018, the firm’s WSPs with respect to compliance with the Reg. SHO Rule 203(b) locate requirement provide that prior to entering short sale orders, clients must contact their clearing firms to obtain a locate, and that Wolverine’s OMS will request confirmation that these steps have been taken. The Firm’s WSPs further stated that the Chief Compliance Officer (“CCO”), or his delegate, shall on at least a quarterly basis, verify that this confirmation system is functioning properly and shall document this review within a supervisory checklist. However, the Firm’s supervisory system, including its WSPs, failed to address the requirement that the Firm document compliance with the locate requirement and maintain those documents. Although Wolverine would periodically verify that the attestation function was operating properly, the firm failed to keep records of its customers’ attestations or other documentation reflecting the reasonable grounds for

the client's attestation. The conduct described in this paragraph constitutes a violation of Nasdaq Rules 2010A and 3010.

B. The firm also consents to the imposition of the following sanctions:³

- A censure; and
- A fine in the amount of \$170,000, of which \$29,650 shall be paid to Nasdaq (consisting of \$15,175 for Reg. SHO 200(g) and Nasdaq Rule 4702; \$7,800 for Reg. SHO 203(b); and \$2,500 for supervision of Reg. SHO 200(g) and Nasdaq Rule 4702, and \$4,175 for supervision of Reg. SHO 203(b)).

Acceptance of this AWC is conditioned upon acceptance of a similar settlement agreements in this matter between the firm and NYSE Arca, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and FINRA.

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 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(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

³ Related disciplinary action on behalf of FINRA, NYSE Arca, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. for the similar and/or additional violations are being taken concurrently in conjunction with this matter.

- 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 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.

May 7, 2021

Date

Wolverine Execution Services, LLC
Respondent

By: David Cavicke

Name: David Cavicke

Title: Chief Legal Officer

Reviewed by:

Attorney Name
Counsel for Respondent
Firm name
Address
City/State/Zip

Accepted by Nasdaq:

May 24, 2021

Date

Andy Hubbartt
Andy Hubbartt
Senior Counsel
Department of Enforcement

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