

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

Certified, Return Receipt Requested

**TO: Merrill Lynch Professional Clearing Corp.
Mr. Gary E. Yetman
One Bryant Park
6th Floor
NY1-100-06-01
New York, NY 10036**

**FROM: The NASDAQ Options Market LLC ("Nasdaq")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Market Regulation
9509 Key West Avenue
Rockville, MD 20850**

DATE: June 25, 2015

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20130366433-03

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **June 23, 2015** 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.

Merrill Lynch Professional Clearing Corp.
Page 2

If you have any questions concerning this matter, please call Steven Tanner, Senior Counsel, at 646-430-7059.

A handwritten signature in black ink, appearing to read 'Eric Brown', written over a horizontal line.

Eric Brown
Chief Counsel, Legal Section
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq

Enclosure

FINRA District 10 – New York
Michael Solomon
Senior Vice President and Regional Director
(Via email)

THE NASDAQ OPTIONS MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130366433-03

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

RE: Merrill Lynch Professional Clearing Corp., Respondent
Broker-Dealer
CRD No. 16139

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq")¹ Code of Procedure, Merrill Lynch Professional Clearing Corp. (the "Firm" or "PRST") 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. PRST 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

PRST was approved for The NASDAQ Options Market LLC ("NOM") membership on March 12, 2008, and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

PRST does not have any relevant prior disciplinary history.

¹ All NASDAQ Options Market disciplinary matters are governed by The Nasdaq Code of Procedure.

SUMMARY

As part of its 2012 Options Cross Market Cycle Examination of PRST (the “2012 Cycle Exam”), the FINRA Market Regulation Trading and Financial Compliance Examination staff (the “staff”), on behalf of NOM, initially conducted a review for, among other things, the Firm’s compliance with Rule 200(g) of Regulation SHO, promulgated under the Securities Exchange Act of 1934 (“SEC Rule 200(g)”), for the period April 2012 through June 2012. Thereafter, as a result of its preliminary findings, staff expanded the period of review to include the period between July 2011 and April 2013 (the “review period”). As a result of its review, staff determined that the Firm had been incorrectly marking sell orders as “long” rather than “short” as a result of the order marking system employed by the Firm’s Automated Market Making desk failing to account for open, unexecuted sell orders in its calculation when marking a sell order “long” or “short”.

FACTS AND VIOLATIVE CONDUCT

Mismarking of Orders

1. During the review period, on 20 separate trade dates, staff sampled sell orders executed by the Firm where the Firm’s position in a particular security had changed from “long” to “short” during the trading day. As a result of its review, staff identified a total of 30 sell order executions that had been incorrectly marked as “long” rather than “short” by the Firm’s Automated Market Making desk.
2. The conduct described in paragraph one constitutes separate and distinct violations of SEC Rule 200(g).

Supervision Obligations

3. During the review period, PRST failed to have sufficient supervisory controls in place, including sufficient written supervisory procedures and an adequate supervisory system, and system of follow-up and review, designed to achieve compliance with SEC Rule 200(g). Although the Firm’s written supervisory procedures included a requirement to review a sample of ten sell orders each month to confirm that they are accurately marked, these procedures only became effective in July 2012, and failed to include an adequate sample size and frequency of review given the volume of equity orders entered by the Firm.
4. The conduct described in paragraph three constitutes a violation of Chapter III, Section 2(a)(i) of the NOM Rules and Nasdaq Exchange Rule 3010.

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

- a censure; and
- a fine of \$55,000, of which \$10,000 shall be payable to NOM.

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between PRST and each of the following self-regulatory organizations: (i) International Securities Exchange, LLC (ii) NASDAQ OMX PHLX LLC; (iii) BOX Options Exchange LLC; and (iv) NYSE Regulation, Inc. on behalf of NYSE Arca Inc. and NYSE MKT LLC. The balance of the \$55,000 fine shall be paid to these self-regulatory organizations.

PRST agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. PRST has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

PRST 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

PRST 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, PRST 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.

PRST 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

PRST 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 PRST's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the Firm;
 3. 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
 4. PRST 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

- D. PRST 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 PRST, 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.


4/13/2015
Date

Merrill Lynch Professional Clearing Corp.
Respondent

By: 
Name: Gary E. Yetman
Managing Director
Title:

Accepted by Nasdaq:

6/23/2015
Date


Eric S. Brown
Chief Counsel, Legal Section
Department of Market Regulation

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

ELECTION OF PAYMENT FORM

PRST intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.²
 - Monthly
 - Quarterly

Respectfully submitted,
Respondent
Merrill Lynch Professional Clearing Corp.

4/13/2015
Date

By: 
Name: Gary E. Yetman
 Managing Director

Title: _____

² The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.