

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

**Certified, Return Receipt Requested**

**TO: Interactive Brokers LLC  
David M. Battan  
Executive Vice President & General Counsel  
One Pickwick Plaza  
2<sup>nd</sup> Floor  
Greenwich, CT 06830**

**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: April 5, 2013**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110274228-01**

**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 are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

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 if a fine has been imposed.

Interactive Brokers LLC  
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If you have any questions concerning this matter, please contact Russell Fecteau, Counsel,  
at (240) 386-5061.

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

Signed on behalf of NASDAQ

Enclosure

FINRA District 11 – Boston  
Elizabeth F. Page  
Director  
99 High Street  
Suite 900  
Boston, MA 02110

David M. Battan, Esq.  
EVP & General Counsel  
Counsel for Respondent  
Interactive Brokers LLC  
1725 Eye Street, N.W., Suite 300  
Washington, D.C. 20006

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20110274228-01**

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

RE: Interactive Brokers LLC, Respondent  
Broker-Dealer  
CRD No. 36418

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, Interactive Brokers 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 Nasdaq since July 12, 2006, and a member of FINRA since January 6, 1995, and both registrations remains in effect. The firm does not have any relevant prior disciplinary history.

**SUMMARY**

In connection with 20110274228, the Trading Analysis Staff of FINRA's Department of Market Regulation (the "staff") reviewed the trading activity of the firm's customers and the firm's related supervisory system during the period of January 3, 2011 through March 4, 2011 (the "NQ Review Period").

## **FACTS AND VIOLATIVE CONDUCT**

1. The firm's supervisory system that was designed to prevent and detect the firm's customers' possible wash sales and marking the close activity was deficient during the NQ Review Period.

### **Reviews for Potential Wash Sales**

2. During the NQ Review Period, the firm's systems failed to prevent and detect 18 transactions in the common stock of Perfumania Holdings, Inc. ("PERF") that resulted from matched limit orders that were entered by the same customer account at the firm. Four of the subject transactions constituted 100% of the total daily volume in PERF, and one transaction constituted 50% of the total daily volume in PERF.
3. The firm had a report to prevent and detect potential wash sales, but a system error allowed the wash sale transactions to be executed. The firm did not know the reason for the system error that otherwise would have prevented and detected the potential wash sales.
4. The occurrence of the system problem, coupled with, among other things, the firm's inability to identify the cause of the system problem and the undetected high percentage of total daily volume in PERF shares on certain trading days, rendered the firm's supervisory system deficient at the time.

### **Reviews for Potential Marking the Close Activity**

5. In addition to the foregoing, most of the subject customer transactions (13) were executed within the last two minutes before the market closed, and three additional customer transactions were executed within the last seven minutes before the market closed. Further, many of the customer transactions were the last media reported trades of the day.
6. The firm had a report to detect potential marking the close activity, but the firm only reviewed such customer activity when, in addition to other criteria, the trading activity occurred on certain consecutive trading days. Although the firm identified some of the potential marking the close activity in this matter, it nonetheless failed to adequately follow-up on the activity because, in addition to other criteria, that activity also did not occur on certain consecutive trading days.
7. As a result of the conduct described above, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of Nasdaq concerning the prevention and detection of potentially manipulative trading activity. Specifically, the firm's supervisory system was not reasonably designed, and lacked adequate controls, to prevent and detect possible wash sales and marking the close

activity conducted by the firm's customers. The conduct described in this paragraph constitutes violations of Nasdaq Rules 2110 and 3010.

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

**A censure; a \$25,000 fine; and an undertaking to revise the firm's supervisory system with respect to potential wash sale and marking the close activity. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its supervisory system to address potential wash sale and marking the close activity; and, (3) the date that the revisions were implemented.**

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

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 FINRA'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

Accepted by Nasdaq:

4/5/13  
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**

The firm 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;
- The installment payment plan.<sup>1</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
Respondent  
Interactive Brokers LLC

3/22/13  
Date

By: [Signature]  
Name: David M. Batten  
Title: E.V.P. + General Counsel

<sup>1</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.