

**NASDAQ OMX BX, INC.  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: National Financial Services LLC  
Richard J. O'Brien  
Senior Vice President/ Chief Compliance Officer  
One Destiny Way  
Mail Zone: WA1M  
Westlake, TX 76092**

**FROM: NASDAQ OMX BX, Inc. ("BOX")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Market Regulation  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: November 21, 2012**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100211739-01**

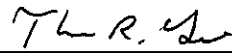
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed 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.

National Financial Services LLC  
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If you have any questions concerning this matter, please call Theresa Clarkson, Counsel,  
at (212) 858-4326.



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

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Regional Director  
One World Financial Center  
200 Liberty Street  
New York, NY 10281

Richelle Kennedy  
Vice President, Associate General Counsel  
FMR LLC Legal Department  
82 Devonshire St., F6B  
Boston, MA 02109

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

**NASDAQ OMX BX, Inc.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20100211739-01**

TO: NASDAQ OMX BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: National Financial Services LLC  
Broker-Dealer  
CRD No. 13041

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.<sup>1</sup> (the "Exchange")<sup>2</sup> and Rule 9216 of The NASDAQ Stock Market ("Nasdaq") Code of Procedure<sup>3</sup>, National Financial Services LLC (the "Firm" or "NFSC") 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, the Exchange will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. NFSC 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**

NFSC has been a FINRA member since January 31, 1983, and the Firm's registration remains in effect. The Firm became a Participant of the Boston Options Exchange ("BOX")<sup>4</sup> on January 13, 2004, when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX ("The Equities Rules") and the Grandfathered Rules of the Exchange.

<sup>2</sup> Please note, for purposes of this AWC, "Exchange" includes NASDAQ OMX BX, Inc.

<sup>3</sup> Additionally, this disciplinary matter is further governed by The Nasdaq Code of Procedure.

<sup>4</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

## **RELEVANT DISCIPLINARY HISTORY**

NFSC does not have any relevant disciplinary history.

## **SUMMARY**

In connection with matter 20100211739, on behalf of BOX, FINRA staff (the "staff") conducted a review of the Firm's reporting to the Options Clearing Corporation ("OCC") Large Options Positions Report ("LOPR") and its position limit compliance during the period between January 1, 2010 and August 6, 2010 (the "review period") for compliance with BOX Trading Rules Chapter III, Sections 2(a)(i), 7(b), and 10.

## **FACTS AND VIOLATIVE CONDUCT**

### **Options Position Limits**

1. Between January 21, 2010 and March 19, 2010 on 41 consecutive days of trading, two of NFSC's customers, who should have been explicitly identified as acting "In Concert", exceeded the position limit on both the bullish and bearish side of the market in SPDR S&P 500 ETF ("SPY").
2. The conduct described in paragraph one above constitutes separate and distinct violations of BOX Trading Rules Chapter III, Section 7(b).

### **Reporting of Position Limits**

3. During the period between January 19, 2010 and May 3, 2010, NFSC failed to properly aggregate three accounts under common control and report the accounts as "In Concert".
4. During the period between January 19, 2010 and August 6, 2010, NFSC failed to accurately report approximately 3,355,211 "Customer" positions to the OCC LOPR using the correct Account Type. Although the Firm had included the necessary customer information in the other LOPR fields for its options positions, NFSC erroneously had reported "Customer" positions as "Firm" in the Account Type field.
5. The conduct described in paragraphs three and four above constitutes violations of BOX Trading Rules Chapter III, Section 10.

### Supervision

6. During the review period, NFSC failed to maintain an adequate system of supervision, including adequate written supervisory procedures and effective monitoring, reasonably designed to achieve compliance with Exchange rules relating to the obligations connected to accounts required to be designated as "In Concert".
7. The conduct described in paragraph six above constitutes a violation of BOX Trading Rules Chapter III, Section 2(a)(ii).

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

**A censure and a total fine of \$65,000.**

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

NFSC 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 the staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

NFSC specifically and voluntarily waives the following rights granted under the Rules of the Exchange:

- A. To have a Formal Complaint issued specifying the allegations against the Firm in writing;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, NFSC 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.

NFSC 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

NFSC 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 NFSC and
- C. If accepted:
  1. This AWC will become part of NFSC'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 NFSC'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. NFSC 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 NFSC's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

- D. NFSC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. NFSC 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 NFSC, 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 NFSC to submit it.

9/24/12  
Date

National Financial Services LLC

By: [Signature]

Name: Richard T O'Brien

Title: Senior Vice President/COO

Reviewed by:

[Signature]  
Counsel for NFSC

Firm Name: National Financial Services

Address: 82 Devonshire St., Boston, MA

Telephone No.: 617-563-6051

Accepted by Nasdaq:

11/26/12  
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**

Nasdaq will send the firm an invoice for the full amount.

Respectfully submitted,  
National Financial Services LLC

9/26/12  
Date

By: Richelle Kennedy

Name: Richelle Kennedy

Title: Asst. Clerk