

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

**Certified, Return Receipt Requested**

**TO: HAP Trading, LLC  
Michael Joseph  
COO/CFO/CCO**

**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: July 26, 2012**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110265711-01**

**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.

HAP Trading, LLC  
Page 2

If you have any questions concerning this matter, please Carly M. Kostakos, Counsel, at (240) 386-5059.



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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

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

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 20110265711-01

FINRA

2012 JUN 13 AM 11:58

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

RE: HAP Trading, LLC, Respondent  
Broker-Dealer  
CRD No. 44257

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, HAP Trading, 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 January 14, 2010, and its registration remains in effect. The firm has no relevant disciplinary history.

**SUMMARY**

In connection with Review No. 20110265711, the Trading and Market Making Surveillance ("TMMS") staff of the Department of Market Regulation (the "TMMS staff") conducted the 2011 TMMS Examination wherein the staff reviewed the items set forth on Exhibit 1, which is attached hereto and incorporated herein by reference, primarily for trade dates March 30, 2011 and March 31, 2011, unless otherwise noted (the "TMMS review period").

## FACTS AND VIOLATIVE CONDUCT

During the TMMS review period, the firm failed to properly mark 67 sell orders as long or short, and also entered 6 orders into the Nasdaq Market Center that failed to correctly indicate whether the orders were a buy, short sale or long sale. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO and Nasdaq Rule 4755.

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

A censure and fine of \$10,000.

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. NASDAQ will send the firm an invoice for the full amount of the monetary sanction.

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. 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
  - 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.

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.

6/11/2012  
Date

HAP Trading, LLC  
Respondent

By: Michael Joseph  
Name: Michael Joseph

Title: COO/CFD/CCO

Reviewed by:

\_\_\_\_\_  
Counsel for Respondent  
Firm Name  
Address  
City/State/Zip  
Phone Number

Accepted by Nasdaq:

7/26/12  
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

**2011 Market Regulation Examination Samples**  
**HAP Trading, LLC ("HAPX")**  
**Exam No. 20110265711**  
**Review Period\*: March 30, 2011 and March 31, 2011**

<u>Sample Size</u>	<u>Sample Description</u>
546	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
376	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
0	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
40	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements and Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into Nasdaq OMX BX Exchange execution system for compliance with Nasdaq OMX BX Rule 4755(a) long/short reporting requirements
0	Sell orders entered into Nasdaq OMX PHLX Exchange execution system for compliance with Nasdaq OMX PHLX Rule 3305(a) long/short reporting requirements
40	Sell orders entered into BATS/BATS-Y Exchange execution systems for compliance with BATS Rule 11.19 and BATS-Y Rule 11.19 long/short reporting requirements
0	Sell orders entered into EDGA/EDGX Exchange execution systems for compliance with EDGA Rule 11.15 and EDGX Rule 11.15 long/short reporting requirements
40	Sell orders entered into NYSE-Arca Exchange execution system for compliance with NYSE-Arca Equities Rule 7.16(a) long/short reporting requirements
N/A	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
N/A	Orders for compliance with best execution requirements of NASD Rule 2320
N/A	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
N/A	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
N/A	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
N/A	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
N/A	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
N/A	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements

\* unless otherwise noted

2011 Market Regulation Examination Samples  
HAP Trading, LLC ("HAPX")  
Exam No. 20110265711  
Review Period\*: March 30, 2011 and March 31, 2011

Sample

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FINRA  
2012 JUL 17 PM 12: 08



Michael Joseph  
Chief Operating Officer  
Chief Financial Officer  
HAP Capital Advisors, LLC

HAP Trading, LLC  
33 Whitehall Street, 6<sup>th</sup> Floor  
New York, NY 10004

June 11, 2012

Carly M. Kostakos  
Counsel, Legal Section  
Department of Market Regulation  
9509 Key West Avenue  
Rockville, MD 20850-3329

**Re: STAR No. 20110265711 Response** (Revised submission dated 7/13/2012)

Dear Ms. Kostakos,

Please accept this document as the firm's Statement of Corrective Action related to the issues outlined in your letter dated June 5, 2012.

The firm identified a deficiency in its systems that could cause orders to be mis-marked. We developed a plan to fix the problem and test its robustness and subsequently put the plan into action. The result was the deficiency was rectified.

The firm developed a daily automated surveillance report aptly titled "Order Side Audit Report". This report analyses all trade activity and reports any exceptions for investigation. The report is monitored by the firm's Compliance Department. This review is documented and all exceptions are logged and follow-up on as needed. A sample report may be found at the end of this document as Exhibit A.

Should you have any questions concerning this response or should you require additional documentation, please feel free to contact me at 212-380-5186 or via E-mail at [mjoseph@hap-capital.com](mailto:mjoseph@hap-capital.com).

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by Nasdaq, nor does it reflect the views of Nasdaq or its staff.

Sincerely,

  
Michael Joseph  
Chief Operating Officer  
Chief Financial Officer  
Chief Compliance Officer

" Exhibit A "

**Michael Joseph**

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**From:** SQLPROD02 <sqlprod02@dbmail.hap-capital.local>  
**Sent:** Thursday, June 07, 2012 5:01 PM  
**To:** Michael Joseph; Jeffrey Pretat; Jeff Billeter; Greg Bayard; Jin Xu; Database Department  
**Subject:** Order Side Audit for 06/07/2012

**Order Side Audit for 06/07/2012**

There are no exceptions to report.