

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

Certified, Return Receipt Requested

**TO: Xambala Capital, LLC
Mr. David Dearmey
Chief Financial Officer
640 W. California Avenue
Suite 220
Sunnyvale, CA 94086**

**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: January 24, 2017

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20150444790-01

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **January 24, 2017** 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.

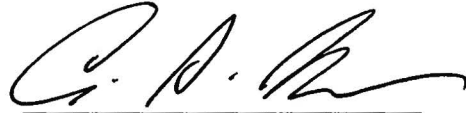
You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in 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.

Xambala Capital, LLC
Page 2

If you have any questions concerning this matter, please contact Elyse D. Kovar, Senior Counsel,
at (646) 430-7050.



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

Signed on behalf of NASDAQ

Enclosure

FINRA District 2 – Los Angeles
Donald K. Lopezi
Senior Vice President and Regional Director
(Via e-mail)

Counsel for Respondent
Jennifer Zordani, Esq.
Zordani Law, P.C.
Suite 2000
120 N. LaSalle Street
Chicago, IL 60602

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150444790-01

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

RE: Xambala Capital, LLC, Respondent
Broker-Dealer
CRD No. 158871

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC (“Nasdaq”) Code of Procedure, Xambala Capital, 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 is a U.S. broker-dealer registered with multiple equity exchanges, including Nasdaq. The firm became a member of Nasdaq on January 29, 2014, and its registration remains in effect. The firm is a high-frequency proprietary trading firm. The firm has no relevant disciplinary history.

SUMMARY

In connection with Matter No. 20150444790, the staff of the Market Making Analysis Section of the Department of Market Regulation (the “staff”) reviewed Intermarket Sweep Orders (“ISOs”)

routed by the firm to Nasdaq during the period between February 10, 2014 and January 8, 2015 (“Review Period I”).¹

In connection with Matter No. 20150468029, the staff reviewed, on behalf of Nasdaq, the firm’s compliance with rules regarding locked and crossed markets during the period between February 19, 2015 and June 22, 2015 (“Review Period II”).

FACTS AND VIOLATIVE CONDUCT

Matter No. 20150444790

1. During Review Period I, the firm failed to take reasonable steps to establish that the ISOs it had routed met the definitional requirements set forth in Rule 600(b)(3) of Regulation NMS, in that it failed to capture FINRA Alternate Display Facility (“ADF”) quote data, including instances in which the ADF reflected a superior price to the limit price of the firm’s ISOs. As a result, on multiple instances the firm improperly traded through ADF protected quotations at the time it had routed ISOs to Nasdaq, and did not comply with the aforementioned ISO requirements. The foregoing conduct constitutes a violation of Rule 611(c) of Regulation NMS.
2. During Review Period I, the firm failed to establish, maintain and enforce adequate supervisory systems, including adequate written supervisory procedures, reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within any applicable exception, and if relying on the exception, are reasonably designed to assure compliance with the terms of the exception. Specifically, the firm’s supervisory systems and reviews of its ISOs failed to detect and prevent trade-throughs of ADF protected quotations. The foregoing conduct violated Nasdaq Rules 2010A and 3010.

Matter No. 20150468029

3. During Review Period II, the firm failed to reasonably avoid displaying, and engaged in a pattern or practice of displaying, quotations that locked or crossed a protected quotation, in that it entered ISOs on Nasdaq that locked or crossed a quotation previously disseminated pursuant to an effective national market system plan and failed to simultaneously route an ISO to execute against the full displayed size of the locked or crossed protected quote. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rules 4613(e) and 4755(a)(4).
4. During Review Period II, the firm failed to establish, maintain and enforce adequate supervisory systems, including adequate written supervisory procedures, reasonably designed to ensure compliance with rules governing locked and crossed markets.

¹ Parallel actions are concurrently being brought on behalf of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc. and Bats EDGX Exchange, Inc. in connection with Matter No. 20150444790.

Specifically, in connection with a trading strategy used by the firm involving the submission of Day ISOs to Nasdaq, which resulted in the aforementioned instances of locked or crossed markets, the firm had been unaware that a coding error and system timing issue had caused the firm to not send simultaneous ISOs as required. The foregoing conduct violated Nasdaq Rules 2010A and 3010.

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

- A censure and a fine in the amount of \$30,000 (\$20,000 for violations of rules governing ISOs and related supervision; and \$10,000 for violations of rules governing locked and crossed markets and related supervision).
- An undertaking to submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, no later than 30 days after the AWC becomes final, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, acknowledging that the firm revised its written supervisory procedures to address the deficiencies described in paragraph I.A.2 and I.A.4, and the date on which the revised procedures 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 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.

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:

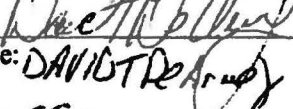
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- 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 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.**

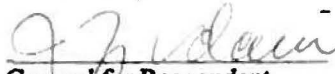
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, 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.

12/23/16
Date

Xambala Capital, LLC
Respondent


By: 
Name: DAVID R. ARUNDEL
Title: CFO

Reviewed by:


Counsel for Respondent
Jennifer Zordani, Esq.
Zordani Law, P.C.
Suite 2000
120 N. LaSalle Street
Chicago, IL 60602

Accepted by Nasdaq:

1/24/2017
Date


Eric S. Brown
Chief Counsel
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

Respectfully submitted,

Respondent
Xambala Capital, LLC

12/23/16
Date

By: [Signature]
Name: DAVID T. ARNEY
Title: CFO

Billing and Payment Contact

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. **Please DO NOT submit payment until Nasdaq has sent you an invoice.**

Billing Contact Name: DAVID T. ARNEY
Billing Contact Address: 640 California Suite 220 Sunnyvale, CA 94086
Billing Contact Email: dave@xambala.com
Billing Contact Phone Number: 847-624-1879