

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
2004200001804

TO: Department of Market Regulation
NASD

RE: David Lazarus, Respondent
Registered Representative
CRD No. 2738374

Pursuant to Rule 9216 of NASD Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against me alleging violations based on the same factual findings.

I understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
3. If accepted:
 - a. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against me;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about my disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. I 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 allegation in this AWC or create the

impression that the AWC is without factual basis. Nothing in this provision affects my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

I also understand that my experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

I entered the securities industry in April 1996 as a registered representative of a member of NASD. During all periods relevant to this matter, I was registered with Heartland Securities Corp. I am currently registered with Trillium Trading LLC. I have no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, 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.

I further specifically and voluntarily waive 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 acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

This AWC concerns matters arising from investigation MRD200236010/20042000018.

- A. I hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
1. On June 28, 2002, I knowingly and intentionally entered 31 priced limit orders to buy or sell a small number of shares of four Nasdaq securities into an Electronic Communications Network ("ECN"), at prices that I knew would improve, and were intended to improve, the National Best Bid or Offer ("NBBO") in such securities. I entered these orders for the purpose of obtaining automatic execution of larger orders I entered on the opposite side of the market by a Small Order Entry System ("SOES") market maker that guaranteed execution at inside market prices. I did not intend that the orders I entered that improved the NBBO would be executed.
 2. After entering orders into the ECN that improved the NBBO bid (offer), I knowingly and intentionally entered larger orders to sell (buy) shares of such securities in my trading account at HRLD because I knew, and intended, that these orders would be routed to SOES market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO.
 3. By knowingly and intentionally engaging in this course of conduct, I bought (sold) shares of these securities at prices that were lower (higher) than I would otherwise have been able to buy (sell) shares of these securities, but for my entry of the orders referenced in paragraph one above into the ECN.
 4. In all, I bought and sold these four Nasdaq securities, in the manner described in paragraphs one through three, in 31 instances, thereby obtaining a financial benefit of approximately \$1,413.35. These instances and the advantageous price gain calculations are reflected on Exhibit 1, which is attached hereto and incorporated herein by reference.
 5. By engaging in the conduct described in paragraphs one through three, I caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the securities, without believing

that those quotations represented bona fide bids or offers for the securities. I also caused to be published or circulated purchases and sales of securities that I did not believe were bona fide purchases and sales.

6. The conduct described in paragraphs one through five constitutes separate and distinct violations of NASD Conduct Rules 2110, 2120, 3310 and IM-3310 as well as Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

B. I also consent to the imposition, at a maximum, of the following sanctions:

A suspension of 42 days from associating with any member firm in any capacity;

A fine of \$30,000; and

Restitution to the parties involved in the transactions described on Exhibit 1 hereto (the "Recipients") in the total amount of \$1,413.35, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this Letter of Acceptance, Waiver and Consent is accepted by the National Adjudicatory Council. No later than 120 days after acceptance of this Letter of Acceptance, Waiver and Consent, I shall submit to COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850:

(1) A schedule showing (a) the amount of restitution paid to each Recipient, (b) the amount of interest paid to each Recipient, (c) the date restitution and interest was paid, and (d) any amounts paid to escheat, unclaimed-property or abandoned-property funds; and

(2) Satisfactory proof of payment as detailed in (1), and of reasonable and documented efforts undertaken to effect restitution prior to making payments to escheat, unclaimed-property or abandoned-property funds.

If for any reason, I cannot locate any Recipient after reasonable and documented efforts within such period, or such additional period agreed to by the staff, I shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III. OTHER MATTERS

- A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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 NASD, nor does it reflect the views of NASD or its staff.
- B. I agree to pay any monetary sanctions imposed on me upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which I propose to pay any fine imposed.
- C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. I understand that if I am barred or suspended from association with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

7/12/05
Date

David Lazarus
David Lazarus
Respondent

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD:

8/9/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President & Deputy
Department of Market Regulation

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

Exhibit 1
David Lazarus ADVANTAGEOUS PRICE GAIN CALCULATION

INCIDENTS WHERE A 100 SHARE SELL ORDER WAS SENT TO A SOES Market Participant										
Incident	Date	Security	Net Shares	Purchase Price	Prior Price	Price Difference	APG	Disadv. Firm	Advant Firm	Advant Account
1	6/28/2002	CLAC	485	0.57	0.61	\$0.04	\$19.40	TRAC	HRLD	David Lazarus
2	6/28/2002	CLAC	290	0.57	0.66	\$0.09	\$26.10	TRAC	HRLD	David Lazarus
3	6/28/2002	CLAC	290	0.57	0.66	\$0.09	\$26.10	TRAC	HRLD	David Lazarus
4	6/28/2002	CLAC	680	0.57	0.66	\$0.09	\$61.20	TRAC	HRLD	David Lazarus
5	6/28/2002	CLAC	485	0.57	0.66	\$0.09	\$43.65	TRAC	HRLD	David Lazarus
6	6/28/2002	CLAC	485	0.57	0.66	\$0.09	\$43.65	TRAC	HRLD	David Lazarus
7	6/28/2002	CLAC	485	0.57	0.66	\$0.09	\$43.65	TRAC	HRLD	David Lazarus
8	6/28/2002	CLAC	390	0.57	0.66	\$0.09	\$35.10	NITE, WIEN	HRLD	David Lazarus
10	6/28/2002	CLAC	485	0.59	0.68	\$0.09	\$43.65	TRAC	HRLD	David Lazarus
1	6/28/2002	HIRE	1170	0.66	0.75	\$0.09	\$105.30	NITE	HRLD	David Lazarus
3	6/28/2002	HIRE	680	0.62	0.75	\$0.13	\$88.40	NITE	HRLD	David Lazarus
4	6/28/2002	HIRE	290	0.63	0.8	\$0.17	\$49.30	NITE, WIEN	HRLD	David Lazarus
5	6/28/2002	HIRE	95	0.64	0.86	\$0.22	\$20.90	NITE	HRLD	David Lazarus
6	6/28/2002	HIRE	95	0.63	0.86	\$0.23	\$21.85	NITE	HRLD	David Lazarus
8	6/28/2002	HIRE	290	0.57	0.86	\$0.29	\$84.10	NITE	HRLD	David Lazarus
9	6/28/2002	HIRE	200	0.61	0.85	\$0.24	\$48.00	WIEN, NITE, MLNJ	HRLD	David Lazarus
1	6/28/2002	NVDC	680	0.28	0.32	\$0.04	\$27.20	TRAC	HRLD	David Lazarus
2	6/28/2002	NVDC	485	0.28	0.34	\$0.06	\$29.10	TRAC	HRLD	David Lazarus
3	6/28/2002	NVDC	680	0.28	0.34	\$0.06	\$40.80	TRAC	HRLD	David Lazarus
4	6/28/2002	NVDC	875	0.28	0.34	\$0.06	\$52.50	TRAC	HRLD	David Lazarus
5	6/28/2002	NVDC	680	0.28	0.34	\$0.06	\$40.80	TRAC	HRLD	David Lazarus
6	6/28/2002	NVDC	485	0.28	0.34	\$0.06	\$29.10	TRAC	HRLD	David Lazarus
7	6/28/2002	NVDC	680	0.28	0.34	\$0.06	\$40.80	TRAC	HRLD	David Lazarus
8	6/28/2002	NVDC	680	0.28	0.34	\$0.06	\$40.80	TRAC	HRLD	David Lazarus
9	6/28/2002	NVDC	680	0.28	0.34	\$0.06	\$40.80	TRAC	HRLD	David Lazarus
						Sub Total:	\$1,102.25			
INCIDENTS WHERE A 100 SHARE BUY ORDER WAS SENT TO A SOES Market Participant										
Incident	Date	Security	Net Shares	Selling Price	Prior Price	Price Difference	APG	Disadv. Firm	Advant Firm	Adv Account
9	6/28/2003	CLAC	290	0.68	0.58	\$0.10	\$29.00	WIEN	HRLD	David Lazarus
2	6/28/2003	ADLI	585	0.40	0.36	\$0.04	\$23.40	MLNJ, NITE	HRLD	David Lazarus
2	6/28/2003	HIRE	195	0.74	0.65	\$0.09	\$17.55	MLNJ	HRLD	David Lazarus
7	6/28/2002	HIRE	290	0.84	0.6	\$0.24	\$69.60	NITE, SCHB	HRLD	David Lazarus
10	6/28/2002	HIRE	485	0.90	0.66	\$0.34	\$164.90	NITE, TRAC	HRLD	David Lazarus
10	6/28/2003	NVDC	95	0.34	0.27	\$0.07	\$6.65	TRAC	HRLD	David Lazarus
						Sub Total:	\$311.10			
						Total:	\$1,413.35			