

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20042000025-01

RECEIVED

2006 MAR 22 P 3: 31

TO: Market Regulation Department
NASD

RE: Interactive Brokers LLC, Respondent
CRD No. 36418

Pursuant to Rule 9216 of NASD Code of Procedure, Interactive Brokers LLC ("IBKR") submits 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 IBKR alleging violations based on the same factual findings.

IBKR understands 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") Review Subcommittee or Office of Disciplinary Affairs, 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 IBKR; and
3. If accepted:
 - a. this AWC will become part of IBKR's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against IBKR;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about IBKR's 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. IBKR 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 IBKR's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

IBKR also understands that its 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:

IBKR entered the securities industry on January 6, 1995 and its registration remains in effect. IBKR has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

IBKR specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against IBKR;
- 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, IBKR specifically and voluntarily waives 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.

IBKR 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.

II.

ACCEPTANCE AND CONSENT

In Market Regulation Review No. 20042000025/MRD200237165, the staff of NASD's Department of Market Regulation (the "staff") reviewed IBKR's compliance with short interest reporting between October 1999 through July 2002 (the "review period").

- A. IBKR hereby accepts and consents, 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. During the review period, IBKR failed to report its Nasdaq short interest positions to NASD.
 2. Based upon a review of a 20 month sample review period of short interest reports from October 2000 through May 2002, IBKR failed to report 6,127 short interest positions to NASD and as a result, failed to report over 8.2 million shares as short.
 3. The conduct described in paragraph one and two constitutes separate and distinct violations of NASD Conduct Rule 3360.
 4. During the review period, the firm's supervisory system did not achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning short interest reporting. Specifically, IBKR relied upon a misunderstanding of a 1995 Intermarket Surveillance Group Memorandum ("ISG Memo") to require the submission of short interest positions in all equity securities to its Designated Examining Authority only. The ISG Memo, however, states that NASD members are to report short interest positions in Nasdaq securities to the NASD. As a result, IBKR failed to establish and maintain a supervisory system to achieve compliance with the Rules of NASD.
 5. The conduct described in paragraph four constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. IBKR also consents to the imposition, at a maximum, of the following sanctions:

A censure, a fine of \$95,000 (consisting of a \$85,000 fine for failing to report short interest and a \$10,000 fine for the supervision violation), and an undertaking to revise IBKR's written supervisory procedures with respect to the areas described in paragraph four. 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, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph four; and (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. IBKR understands that IBKR may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. IBKR understands that IBKR 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. IBKR agrees to pay any monetary sanctions imposed on IBKR upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which IBKR proposes to pay any fine imposed.
- C. IBKR specifically and voluntarily waives any right to claim that IBKR is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Interactive Brokers LLC certifies that it has read and understands all of the provisions of this AWC and has 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 IBKR to submit it.

3-20-06

Date

Interactive Brokers LLC
Respondent

By: 

Name:

David M. Baltan

Title:

Vice-President and General Counsel

Reviewed by:



Counsel for Respondent

Accepted by NASD:

5/4/06

Date



Cameron K. Funkhouser
Senior Vice President
Department of Market Regulation

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