

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
2004200007701

TO: Department of Market Regulation
NASD

RE: **Electronic Brokerage Systems, LLC**, Respondent
Broker-Dealer
CRD No. 104031

Pursuant to Rule 9216 of the NASD Code of Procedure, Electronic Brokerage Systems, LLC ("BELZ" or the "firm") 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 the firm alleging violations based on the same factual findings.

The firm 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 Market Regulation Department and National Adjudicatory Council ("NAC") Review 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 the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by the NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm'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. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

BELZ also understands that the firm's experience in the securities industry and the firm's disciplinary history may be factors that will be considered in deciding whether to accept this AWC.

BELZ has been a member of NASD since March 26, 2001, and its registration remains in effect. BELZ has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

BELZ 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 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, BELZ 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.

BELZ 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. 20042000077/MRD200340540, the staff of NASD's Department of Market Regulation (the "staff") conducted a review of BELZ's compliance with NASD's Order Audit Trail System ("OATS") rules during the period of January 1, 2003 to March 31, 2003 (the "review period"), and July 1, 2002 to February 12, 2003.

- A. BELZ 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, BELZ failed to timely report to OATS 4,908 Reportable Order Events ("ROEs"). These late ROEs represented 31 percent of all ROEs (15,831) submitted by BELZ to OATS during the review period.
 2. During the review period, the firm submitted to OATS 170 reports with respect to equity securities traded on the Nasdaq Stock Market (the "subject reports") that were not in the electronic form prescribed by NASD and were repairable. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS website. The firm did not correct or replace 170 of the subject reports, or 100 percent of the subject reports.
 3. During the period July 1, 2002 to February 12, 2003, BELZ failed to submit all required information to OATS on 156 business days.
 4. The conduct described in paragraphs one, two and three above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a), and a violation of NASD Conduct Rule 2110.
 5. During the review period, BELZ failed to enforce its written supervisory procedures which specified that the firm would conduct a weekly review to ensure that all required ROEs were submitted to OATS, and a daily review to ensure that rejected ROEs were repaired.
 6. BELZ's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the rules of NASD concerning OATS. Specifically, BELZ's supervisory system did not include written supervisory procedures providing for a statement as to how the

completion of the step(s) included in the written supervisory procedures should be documented.

7. The conduct described in paragraphs five and six above constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. BELZ also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$40,000 (consisting of a \$30,000 fine for the OATS violations and a \$10,000 fine for the supervision violations).

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

III.

OTHER MATTERS

- A. BELZ understands that it may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. BELZ 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 NASD nor does it reflect the views of NASD or its staff.
- B. BELZ agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and has attached the Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. BELZ specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

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