

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20042000139-01

TO: Department of Market Regulation
NASD

RE: Spencer Edwards, Inc., Respondent
Broker-Dealer
CRD No. 22067

Pursuant to Rule 9216 of NASD Code of Procedure, Spencer Edwards, Inc. ("SPIN") 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 SPIN alleging violations based on the same factual findings.

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

SPIN also understands that its experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

SPIN has been a member of NASD since November 1, 1988. On July 8, 2002, an AWC became final wherein SPIN was censured and fined \$10,000 for trade reporting violations.

I.

WAIVER OF PROCEDURAL RIGHTS

SPIN 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 SPIN;
- 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, SPIN 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.

SPIN 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 connection with MRD200342661 / 20042000139¹, the staff of NASD's Department of Market Regulation ("staff") conducted a review of SPIN's compliance with trade reporting requirements for the period May 1, 2003 through August 31, 2003. The staff also reviewed the firm's written supervisory procedures applicable to trade reporting.

In connection with MRD200448405 / 20050000769, the staff conducted a review of SPIN's compliance with trade reporting requirements for the period May 1, 2004 through August 31, 2004.

- A. SPIN 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:

MRD200342661 / 20042000139

1. During the period May 1, 2003 through August 31, 2003, SPIN failed, within 90 seconds after execution, to transmit through ACT 34 last sale reports of transactions in OTC Equity securities and failed to designate through ACT such last sale reports as late.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
3. During the period May 1, 2003 through August 31, 2003, SPIN failed, within 90 seconds after execution, to transmit through ACT 108 last sale reports of transactions in OTC Equity securities. These transactions constitute 10 percent of the transactions reviewed that SPIN was required to report to ACT in OTC Equity securities during the period May 1, 2003 through August 31, 2003.

¹ On January 3, 2005 the NASD implemented a new matter tracking system. The new number assigned to this matter is referenced above following the original number assigned by the previous tracking system.

4. The conduct described above in paragraph three constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
5. During the period May 1, 2003 through August 31, 2003, SPIN'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 trade reporting. Specifically, SPIN's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken by the person(s) responsible for supervision with respect to the applicable rules; and (2) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
6. The conduct described in paragraph five constitutes a violation of NASD Conduct Rules 2110 and 3010.

MRD200448405 / 20050000769

7. During the period May 1, 2004 through August 31, 2004, SPIN failed, within 90 seconds after execution, to transmit to the Nasdaq Market Center 70 last sale reports of transactions in OTC Equity securities and failed to designate to the Nasdaq Market Center such last sale reports as late.
 8. The conduct described in paragraph seven constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
 9. During the period May 1, 2004 through August 31, 2004, SPIN failed, within 90 seconds after execution, to transmit to the Nasdaq Market Center 122 last sale reports of transactions in OTC Equity securities. These transactions constitute more than eight percent of the transactions reviewed that SPIN was required to report to the Nasdaq Market Center in OTC Equity securities during the period May 1, 2004 through August 31, 2004.
 10. The conduct described above in paragraph nine constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
- B. SPIN also consents to the imposition, at a maximum, of the following sanctions:

Respondent has asserted a limited ability to pay and has submitted financial statements. In light of the financial status of Respondent, the fine imposed is \$10,000. Also imposed are a censure and an undertaking

to revise the firm's written supervisory procedures with respect to the areas described in paragraph five. 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 five; 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. SPIN 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. SPIN 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. SPIN agrees to pay any monetary sanctions imposed on SPIN 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 SPIN proposes to pay any fine imposed.
- C. SPIN has raised the issue of its inability to pay and understands that its assertion of inability to pay has been considered in connection with the monetary sanctions imposed in this matter and SPIN specifically and voluntarily waives any right to claim that its is unable to pay at any time hereafter, any monetary sanction imposed in this matter.

Spencer Edwards, Inc. 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 SPIN to submit it.

Spencer Edwards, Inc.

12-15-05
Date

By: Gordon D. Hle
Name: Gordon D. Hle
Title: President

Reviewed by:

Gordon D. Hle
Counsel for Respondent

Accepted by NASD:

1/26/06
Date

Thomas R. Gira
Thomas R. Gira,
Senior Vice President
Department of Market Regulation

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