

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION
20042000142-01

TO: Department of Market Regulation
NASD

RE: Forge Financial Group, Inc., Respondent
Broker/Dealer
CRD Number 100020

Pursuant to Rule 9216 of NASD Code of Procedure, Forge Financial Group, Inc. ("FRGP") 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 FRGP alleging violations based on the same factual findings.

FRGP 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 FRGP; and
3. If accepted:
 - a. this AWC will become part of FRGP's permanent disciplinary record and may be considered in any future actions brought by 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 FRGP'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. FRGP 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 FRGP's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

FRGP 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 relevant history are as follows:

FRGP and its predecessors have been members of NASD since January 2000, and the firm's registration remains in effect. FRGP has the following relevant disciplinary history:

- On October 6, 2004, an AWC became final in which FRGP was censured and fined \$25,000 for violations of NASD Rules 2110, 3010, 6620(a) and 6955.
- On October 28, 2002, an AWC became final in which FRGP was censured and fined \$10,000 for violations of NASD Rules 2110, 4632, 4642, 6420 and 6620.

I.

WAIVER OF PROCEDURAL RIGHTS

FRGP 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 FRGP;
- 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, FRGP 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.

FRGP 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 MRD200342689, the staff of the Department of Market Regulation (the "staff") conducted a review of FRGP's compliance with NASD's trade reporting rules during the period May 1, 2003 through August 31, 2003.

In connection with MRD200444715, the staff conducted a review of FRGP's compliance with the trade reporting rules during the period September 1, 2003 through December 31, 2003. The staff also reviewed the firm's supervisory system and written supervisory procedures with respect to trade reporting.

In connection with the 2004 Trading and Market Making Surveillance Examination of FRGP, 200447754, the staff reviewed the following items from trade dates July 19-23, 2004:

- 36 proprietary sale transactions for compliance with NASD Rules 3110, 3350, 3370 and 6130;
- 50 customer orders for compliance with NASD Rules 2320, 3110 and 6130;
- 51 orders and 55 corresponding trade reports for compliance with NASD Rules 4632 and 6130;
- 22 orders handled by the firm during the month of June 2004 for compliance with SEC Rule 11Ac1-5;
- The report on routing of customer orders for the quarter ending June 2004 for compliance with SEC Rule 11Ac1-6;
- The firm's written supervisory procedures for compliance with NASD Rule 3010;
- The registration status of persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules; and
- 52 orders in NNM and Nasdaq SmallCap ("SC") securities for compliance with NASD Rule 6955.

- A. FRGP hereby accepts and consents, without admitting or denying the allegations 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:

MRD200342689

1. FRGP failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service ("ACT") 101 last sale reports of transactions in Nasdaq securities. These transactions constitute more than three percent of the transactions reviewed that FRGP was required to report to ACT during the period May 1, 2003 through August 31, 2003.
2. The conduct described above in paragraph one constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
3. FRGP failed to report the correct time of execution through ACT in 28 late, last sale reports of transactions in Nasdaq securities.
4. FRGP failed, within 90 seconds after execution, to transmit through ACT 27 last sale reports of transactions in Nasdaq securities and failed to designate through ACT such last sale reports as late.
5. FRGP incorrectly designated as "T" through ACT six last sale reports of transactions in Nasdaq securities executed during normal market hours.
6. The conduct described in paragraphs three through five constitute separate and distinct violations of NASD Marketplace Rule 5430(a).

MRD200444715

7. FRGP failed, within 90 seconds after execution, to transmit through ACT 488 last sale reports of transactions in OTC Equity securities. These transactions constitute more than seven percent of the transactions reviewed that FRGP was required to report to ACT during the period September 1, 2003 through December 31, 2003.
8. The conduct described above in paragraph seven constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.

9. FRGP failed, within 90 seconds after execution, to transmit through ACT 442 last sale reports of transactions in OTC Equity securities and failed to designate through ACT such last sale reports as late.
10. The conduct described in paragraph nine constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
11. The firm'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, the firm's supervisory system did not include written supervisory procedures reasonably designed to ensure that transactions were reported timely and accurately
12. The conduct described in paragraph 11 constitutes a violation of NASD Conduct Rules 2110 and 3010.

MRD200447754

13. FRGP failed to show the terms and conditions on the memorandum of three brokerage orders.
14. FRGP failed to show the correct time of entry on the memorandum of nine brokerage orders.
15. The conduct described in paragraphs 13 and 14 constitute separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
16. FRGP effected six short sales in certain securities for the firm's proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date.
17. The conduct described in paragraph 16 constitutes separate and distinct violations of NASD Conduct Rule 3370.
18. FRGP failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 13 transactions in eligible securities.
19. FRGP failed to report to ACT the correct symbol indicating whether FRGP executed seven transactions in eligible securities in a principal or agency capacity.

20. The conduct described in paragraphs 18 and 19 constitute separate and distinct violations of NASD Marketplace Rule 6130(d).
21. FRGP incorrectly reported to ACT two transactions with the ".W" modifier.
22. The conduct described in paragraph 21 constitutes separate and distinct violations of NASD Marketplace Rule 5430(a).
23. FRGP failed to submit, for the offsetting, "riskless" portion of six "riskless" principal transactions in NNM securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal."
24. The conduct described in paragraph 23 constitutes separate and distinct violations of NASD Marketplace Rule 4632(a).
25. FRGP failed to submit, for the offsetting, "riskless" portion of three "riskless" principal transactions in OTC Equity Securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal."
26. The conduct described in paragraph 25 constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
27. FRGP failed to make publicly available a profit sharing disclosure for internalized order flow in its report on its routing of non-directed orders in covered securities during the second calendar quarter of 2004.
28. The conduct described in paragraph 27 constitutes a violation of SEC Rule 11Ac1-6(b).

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

A censure and a fine of \$50,000 (comprised of a \$7,500 fine for the trade reporting violations identified in MRD200342689, a \$7,500 fine for the trade reporting violations identified in MRD200444715, a \$5,000 fine for the supervision violations identified in MRD200444715, a \$5,000 fine for the recordkeeping violations, a \$5,000 fine for the affirmative determination violations, a \$10,000 fine for the trade reporting violations identified in MRD200444754, and a \$10,000 fine for the violation of SEC Rule 11Ac1-6), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph 11. 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 11; 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. FRGP understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent 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. FRGP 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 have attached the election of payment form showing the method by which it proposes to pay any fine imposed.
- C. FRGP specifically and voluntarily waives any right to claim that FRGP is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

