

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20042000170-01

TO: Department of Market Regulation
NASD

RE: **Aegis Capital Corp.**, Respondent
Broker-Dealer
CRD No. 15007

Pursuant to Rule 9216 of NASD Code of Procedure, Aegis Capital Corp. (the "firm" or "AGIS") 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 AGIS alleging violations based on the same factual findings.

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

AGIS 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:

The firm has been a member of NASD since July 20, 1984 and its registration remains in effect. On December 31, 2004, AGIS was censured and fined \$20,000 for violations of SEC Rule 15c2-11, NASD Marketplace Rule 6740, and Conduct Rules 2110 and 3010; as well as violations of NASD Marketplace Rules 6130(b) and 6620, and NASD Conduct Rule 2110.

On September 19, 2003, AGIS was censured and fined \$5,000 for violations of SEC Rule 11A1-4.

On August 15, 2001, AGIS was censured, fined \$40,000 and required to submit revised written supervisory procedures for violations of NASD Marketplace Rule 4642, SEC Rule 10b-10 and NASD Conduct Rule 3010.

I.

WAIVER OF PROCEDURAL RIGHTS

AGIS 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 it;
- 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, AGIS 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

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AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

AGIS further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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 MRD200341079/20042000094,¹ the staff of NASD's Department of Market Regulation ("staff") reviewed AGIS's compliance with the Limit Order Display Rule ("Display Rule") during the period January 2, 2003 through March 31, 2003.

In MRD200343796/20042000170, staff conducted a Trading and Market Making Surveillance ("TMMS") Examination of the firm. The staff reviewed the following items:²

- 35 customer sell orders for compliance with NASD Rules 3110 and 3370;
- seven proprietary sale transactions, for compliance with NASD Rule 3370;
- 20 customer sales in NNM securities, for compliance with NASD Rule 6130;
- 50 limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rule 11Ac1-1 and 11Ac1-4;
- four "non displayed" limit orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320;
- 50 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules;
- 23 orders for NASDAQ securities in soft dollar accounts and 26 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC Section 28(e);
- three open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220;

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

² Unless otherwise noted, all items reviewed are from trade dates November 10 through November 21, 2003, except for 1) orders and related executions for NASDAQ securities in soft dollar accounts which are from trade dates September 1 through September 20, 2003; 2) the October 2003 report (and trades contained therein) made in compliance with SEC Rules 11Ac1-5; 3) the October 2003 through December report made in compliance with SEC Rules 11Ac1-6; and 4) the supervisory items, where the staff reviewed the written supervisory procedures in effect in August 2003 and November 2003.

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- 19 orders in securities for which the firm was a market center for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5;
- security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5;
- data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6;
- the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rule 3010;
- 25 customer transactions in OTCBB and OTC equity securities for compliance with NASD Rules 3110(b) and 2320;
- 50 orders in NNM or SC securities submitted to the Order Audit Trail System ("OATS") for compliance with NASD Rule 6955;
- 8 persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules;
- 182 order/trade records prepared and maintained in connection with the above samples for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 687 trades reported to ACT or TRACS in connection with the above samples for general compliance with NASD Trade Reporting and ACT rules;
- 36 customer trade confirmations reviewed in connection with the above samples for compliance with SEC Rule 10b-10;
- the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010; and
- the firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010.

In MRD200450052/20050003964, staff conducted a TMMS Examination of the firm. The staff reviewed the following items:³

- 39 customer sell orders for compliance with NASD Rules 3110 and 3370;
- 49 proprietary sale transactions for compliance with NASD Rule 3370;
- 57 customer sales for compliance with NASD Rule 6130;
- one short sale in a NNM security for compliance with NASD Rule 3350;
- 54 limit orders and market transactions executed for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rule 11Ac1-1 and 11Ac1-4;

³ Unless otherwise noted, all items reviewed are from trade dates December 6-17, 2004, except for 1) the November 2004 and December 2004 reports (and trades contained therein) made in compliance with SEC Rules 11Ac1-5, and 2) the supervisory items, where the staff reviewed the written supervisory procedures in effect in November 2003.

- 50 limit and market order transactions executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD Trade Reporting and ACT rules;
- 25 orders in securities for which the firm was a market center for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5;
- 10 total orders regarding security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 11Ac1-5;
- data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6;
- 25 customer transactions in OTCBB and OTC equity securities for compliance with NASD Rules 3110(b) and 2320;
- 49 orders in NNM or SC securities submitted to OATS for compliance with NASD Rule 6955;
- 10 persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules;
- 287 order/trade records prepared and maintained in connection with the above samples for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 372 trades reported to ACT or TRACS in connection with the above samples for general compliance with NASD Trade Reporting and ACT rules;
- 36 customer trade confirmations reviewed in connection with the above samples for compliance with SEC Rule 10b-10;
- the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010; and
- the firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010.

A. AGIS 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:

MRD200341079/20042000094 – Limit Order Display Review

1. On 97 occasions during the period of January 2, 2003 through March 31, 2003, AGIS failed to display immediately 97 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved AGIS's bid or offer in each such security; or when the order was priced equal to AGIS's bid or offer and the national best bid or offer for each such security, and the size of the order

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represented more than a *de minimis* change in relation to the size associated with AGIS's bid or offer in each such security.

2. The conduct described in paragraph one constitutes separate and distinct violations of SEC Rule 11Ac1-4.

MRD200343796/20042000170 – 2004 TMMS Examination

3. AGIS failed to report to the Automated Confirmation Transaction Service ("ACT") (now known as the Nasdaq Market Center) the correct symbol indicating whether AGIS executed 452 transactions in eligible securities in a principal or agency capacity.
4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
5. AGIS failed to report through ACT the correct symbol indicating whether the transaction was a buy, sell or cross in two last sale reports of transactions in OTC Equity securities.
6. AGIS failed to report the correct number of shares through ACT in two last sale reports of transactions in OTC Equity securities.
7. The conduct described in paragraphs five and six constitutes separate and distinct violations of NASD Marketplace Rule 6620(c).
8. AGIS incorrectly reported to ACT the second leg of one "riskless" principal transaction in OTC Equity securities because AGIS incorrectly designated the capacity of such transaction as principal.
9. The conduct described in paragraph eight constitutes a violation of NASD Marketplace Rule 6620(d).
10. AGIS failed to submit required information to OATS in connection with 10 orders.
11. The conduct described in paragraph ten above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
12. AGIS failed on 17 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
13. The conduct described in paragraph 12 above constitutes separate and distinct violations of SEC Rule 10b-10.

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14. For the fourth calendar quarter of 2003, AGIS made publicly available a report on its routing of non-directed orders in covered securities during that quarter. This report included incorrect information as to the identity of the venues to which non-directed orders for Nasdaq securities were routed for execution, and the percentages of total non-directed orders for Nasdaq securities routed to the venues.
15. The conduct described in paragraph 14 constitutes separate and distinct violations of SEC Rule 11Ac1-6(b).
16. AGIS failed to show the terms and conditions on the memorandum of 50 brokerage orders.
17. AGIS failed to show the time of entry on the memorandum of 26 brokerage orders.
18. AGIS failed to show the time of execution on the memorandum of five brokerage orders.
19. AGIS failed to show the correct time of execution of the memorandum of six brokerage orders.
20. AGIS failed in one instance to make and keep a copy of the confirmation of the sale of securities for the account of a customer.
21. AGIS failed to show the contra side executing broker on the memorandum of 22 brokerage orders.
22. The conduct described in paragraphs 16 through 21 constitutes a violation of SEC Rule 17a-3 and NASD Conduct Rule 3110.
23. 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 registration and qualifications, limit order display, limit order protection, best execution, SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation/coordination, trade reporting, affirmative determination, bid test compliance, firm quote compliance, OATS, and books and records. Specifically, the firm's supervisory system did not include adequate written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in the written

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supervisory procedures should be documented; and/or the firm failed to provide evidence sufficient to demonstrate that it conducted supervisory reviews for compliance with respect to the applicable securities laws and regulations, and the Rules of NASD cited above.

24. The conduct described in paragraph 23 constitutes a violation of NASD Conduct Rules 2110 and 3010.

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25. AGIS failed to report to the Nasdaq Market Center the correct symbol indicating whether AGIS executed 206 transactions in eligible securities in a principal or agency capacity.
26. AGIS failed to report to Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for two transactions in eligible securities.
27. The conduct described in paragraphs 25 and 26 constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
28. AGIS failed to report through Nasdaq Market Center four last sale reports of transactions in OTC Equity securities.
29. The conduct described in paragraph 28 constitutes separate and distinct violations of NASD Marketplace Rule 6620(b).
30. AGIS incorrectly reported through Nasdaq Market Center the first leg of seven "riskless" principal transactions in OTC Equity securities because AGIS incorrectly designated the capacity of such transactions as agent.
31. AGIS incorrectly reported through Nasdaq Market Center the second leg of one "riskless" principal transaction in OTC Equity securities because AGIS incorrectly designated the capacity of such transaction as principal.
32. AGIS incorrectly reported through Nasdaq Market Center the second leg of one "riskless" principal transaction in OTC Equity securities because AGIS incorrectly designated the capacity of such transaction as agent.
33. The conduct described in paragraphs 30 through 32 constitutes separate and distinct violations of NASD Marketplace Rule 6620(d).
34. AGIS failed to submit required information to OATS in connection with 47 orders.

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35. AGIS transmitted to OATS one report that contained inaccurate, incomplete, or improperly formatted data. Specifically, the report failed to match to a Nasdaq Market Center trade report.
36. The conduct described in paragraphs 34 and 35 above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
37. AGIS failed on 17 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
38. The conduct described in paragraph 37 above constitutes separate and distinct violations of SEC Rule 10b-10.
39. For the months of November and December 2004, AGIS made available reports on the covered orders in national market system securities that it received for execution from any person. These reports included incorrect information as to the number of covered orders. Specifically, AGIS failed to include five covered orders in its execution statistics and included three covered orders that should not have been included in its execution statistics.
40. The conduct described in paragraph 39 constitutes separate and distinct violations of SEC Rule 11Ac1-5(b).
41. 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 the firm's supervisory system, procedures, and qualifications; order handling and execution; best execution; anti-intimidation/coordination; trade reporting; sale transactions; other trading rules; OATS; and rules relating to Chinese walls, and books and records. Specifically, the firm's supervisory system did not include adequate written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented; and/or the firm failed to provide evidence sufficient to demonstrate that it conducted supervisory reviews for compliance with respect to the applicable securities laws and regulations, and the Rules of NASD cited above.
42. The conduct described in paragraph 41 constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$50,000 (consisting of \$5,000 for limit order display in 20042000094; \$5,000 for trade reporting, \$5,000 for OATS, \$5,000 for 11Ac1-6, \$5,000 for books and records, \$5,000 for supervision in 20042000170; and \$5,000 for trade reporting, \$5,000 for OATS, \$5,000 for SEC Rule 10b-10, \$5,000 for 11Ac1-5 and \$5,000 for supervision in 20050003964); and an **undertaking** to revise the firm's supervisory procedures with respect to the deficiencies described in paragraph II. A. 25 and paragraph II. A. 43. Within 60 business days of acceptance of this AWC by the NAC, a registered principal of the firm 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 supervisory procedures to address the deficiencies described in paragraph II. A. 3; 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. AGIS understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. AGIS 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. AGIS 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 an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. AGIS specifically and voluntarily waives any right to claim that AGIS is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

AGIS certifies that it has read and understands 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 AGIS to submit it.

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Aegis Capital Corp.

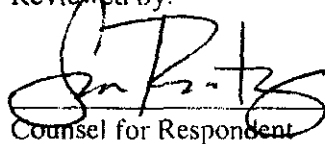
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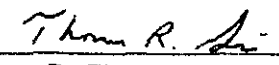
Reviewed by:


Counsel for Respondent

STEVEN R. KATZ, SICHENZIA ROSS FRIEDMAN PERENCE LLP

Accepted by NASD:

7/2/06
Date


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

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