

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20042000208-01

TO: Department of Market Regulation
NASD

RE: **Harris Nesbitt Corp.**, Respondent
Broker-Dealer
CRD No. 16686

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

HRNB 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 HRNB; and
3. If accepted:
 - a. this AWC will become part of HRNB's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against HRNB;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about HRNB'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. HRNB 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 finding in this AWC or create

the impression that the AWC is without factual basis. Nothing in this provision affects HRNB's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

HRNB 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 October 29, 1985 and its registration remains in effect. On June 24, 2004, NASD censured and fined the firm \$4,500 for failing to disclose on customer confirmations that transactions were executed at an average price, in violation of SEC Rule 10b-10; and for failing to make publicly available a quarterly report on the routing of non-directed orders, in violation of SEC Rule 11Ac1-6.

On June 24, 2004, NASD fined the firm \$5,000 for failing to report transactions with the correct short sale modifier to the Automated Confirmation Transaction Service ("ACT"), incorrectly reporting long sales as short sales in ACT, and failing to report the correct capacity symbol to ACT, in violation of NASD Rule 6130.

I.

WAIVER OF PROCEDURAL RIGHTS

HRNB 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, HRNB 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.

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HRNB 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 MRD200444526/20042000208,¹ the staff of NASD's Department of Market Regulation ("staff") conducted a Trading and Market Making Surveillance ("TMMS") Examination of the firm. The staff reviewed the following items:²

- Thirty-five customer sell transactions, for compliance with NASD Rules 3110 and 3370,
- Fifteen proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1 (marking the ticket long or short),
- Forty-one customer and proprietary sales in NNM securities, for compliance with NASD Rule 6130,
- One short sale in NNM securities, for compliance with NASD Rule 3350,
- Twenty-eight limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rule 11Ac1-1 (now SEC Rule 602 of Regulation NMS) and 11Ac1-4 (now SEC Rule 604 of Regulation NMS),
- One "non-displayed" limit order to price improve marketable orders received in the same securities while holding the "non-displayed" order, for compliance with NASD Rule 2320,
- Thirty-one limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,

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 January 20 and 21, 2004, except for 1) the December 2003 report made in compliance with SEC Rules 11Ac1-5; 2) the report for the quarter ended December 2003 made in compliance with SEC Rules 11Ac1-6; and 3) order/trade records prepared and maintained in connection with the above samples, which include records from various dates in December 2003 and January 2004; 4) customer trade confirmations, which include confirmations from the trade month January 2004; and 5) the supervisory items, where the staff reviewed the written supervisory procedures in effect during January 2004.

- Seven orders for NASDAQ securities in soft dollar accounts and 63 related executions, for compliance with trade reporting rules and the safe harbor limitations of Section 28(e) of the Securities Exchange Act of 1934,
- Twenty-three 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 (now SEC Rule 605 of Regulation NMS),
- Four security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5 (now SEC Rule 605 of Regulation NMS),
- Data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6 (now Rule 606 of Regulation NMS),
- Ten customer orders in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,
- Eight institutional not-held market orders for compliance with NASD Rule 2320,
- One hundred thirty-six 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,
- Two hundred ninety-one trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,
- Sixty-nine customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,
- Twenty persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,
- The firm's establishment and implementation of "regular and rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rule 3010, and
- The firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010.

A. HRNB hereby accepts and consents, without admitting or denying the 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. HRNB failed to properly report 21 "riskless" principal transactions to ACT, now known as the Nasdaq Market Center.

2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 4632(d).✓
3. HRNB failed to report to Nasdaq Market Center the correct symbol indicating whether HRNB executed three transactions in eligible securities in a principal or agency capacity.
4. HRNB 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.
5. The conduct described in paragraphs three and four constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).✓
6. HRNB incorrectly designated as “.SLD” through Nasdaq Market Center one last sale report of a transaction in an eligible security reported to Nasdaq Market Center within 90 seconds of execution.
7. The conduct described in paragraph six constitutes a violation of NASD Marketplace Rule 6420.✓
8. HRNB, on 40 occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security.
9. HRNB failed on 42 occasions to provide written notification disclosing to its customer its correct capacity in the transaction.
10. HRNB failed on 9 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
11. The conduct described in paragraphs eight through ten above constitutes separate and distinct violations of SEC Rule 10b-10.✓
12. For the month of December 2003, HRNB made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to the following categories: Total Executed Away; Total Executed by the Market Center; Shares from 0-9, 10-29, 30-59, and 60-299; Average Realized Spread; Average Effective Spread; Price Improved Shares; Price Improved Average Amount; Price Improved Average Time; At-the-Quote Average Time; Outside-the-Quote Shares; Outside-the-Quote Average Amount; and Outside-the-Quote Average Time.

13. The conduct described in paragraph 12 constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
- B. HRNB also consents to the imposition, at a maximum, of the following sanctions:
- A **censure** and a **fine of \$22,500** (consisting of \$7,500 for ACT/trade reporting violations; \$7,500 for SEC Rule 10b-10 violations; and \$7,500 for SEC Rule 605 violations).

III.

OTHER MATTERS

- A. HRNB 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. HRNB 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. HRNB 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. HRNB specifically and voluntarily waives any right to claim that HRNB is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

HRNB 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 HRNB to submit it.

Date: JUNE 5, 2006

Harris Nesbitt Corp.

By: Peter C. Hinman

Name: PETER HINMAN

Title: CHIEF OPERATING OFFICER

Reviewed by:

Mary M. Dunbar
Counsel for Respondent

Accepted by NASD:

7/7/06
Date

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

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