

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20042000225-01

TO: Department of Market Regulation
NASD

RE: Southwest Securities, Inc., Respondent
Broker-Dealer
CRD No. 6220

Stuart M. Berwick, Respondent
General Securities Representative
General Securities Principal
Equity Trader
CRD No. 1031019

Louis J. Matrone, Respondent
General Securities Representative
General Securities Principal
Equity Trader
CRD No. 2206335

Pursuant to Rule 9216 of the NASD Code of Procedure, the undersigned submit 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 Southwest Securities, Inc. ("SWST" or "the firm"), Stuart M. Berwick ("Berwick") or Louis J. Matrone ("Matrone") (collectively, the "Respondents") alleging violations based on the same factual findings.

Respondents understand 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 Respondents; and

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

Respondents also understand that their 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:

SWST has been a member of NASD since May 30, 1972, and its registration remains in effect. SWST has the following relevant disciplinary history:

- On December 18, 2003, an AWC became final pursuant to which SWST was censured and fined \$10,000 for violations of NASD Marketplace Rule 6230 and NASD Conduct Rule 2110.
- On January 2, 2002, an AWC became final pursuant to which SWST was fined \$5,000 for violations of former NASD Marketplace Rule 6240 and NASD Conduct Rule 2110.

Berwick entered the securities industry in September 1987 as a General Securities Representative at Boettcher & Company, Inc. From September 1988 to September 1990, Berwick was employed at Lovett Underwood Neuhaus & Webb, Inc., where he was registered as a General Securities Representative. From September 1990 to December 1994, Berwick was employed at Wachovia Securities, LLC/Everen Securities, Inc., where he was registered as a General Securities Representative. From December 1994 to February 1998, Berwick was employed at Principal Financial Securities, Inc., where he

was registered as a General Securities Representative. In April 1998, Berwick joined SWST, where he was registered as a General Securities Representative and an Equities Trader. From March 2002 to October 2004, Berwick was simultaneously employed at May Financial Corporation, where he was likewise registered as a General Securities Representative and an Equities Trader. Berwick is currently registered at SWST as a General Securities Representative, a General Securities Principal and an Equities Trader. Berwick does not have any disciplinary history.

Matrone entered the securities industry in December 1991 as a Government Securities Limited Representative at G.X. Clarke & Co. From April 1993 to May 1994, Matrone was employed at Printon, Kane Group, Inc., where he was registered as a General Securities Representative and Government Securities Limited Representative. From June 1994 to April 1998, Matrone was employed at Rauscher Pierce Refsnes, Inc./Dain Rauscher Incorporated/RBC Dain Rauscher Inc., where he was registered as a General Securities Representative. From April 1998 to October 2004, Matrone was employed at SWST, where he was registered as a General Securities Representative, a General Securities Principal and an Equities Trader. Matrone is currently registered at Pulse Trading, Inc. as a General Securities Representative, a General Securities Principal and an Equities Trader. Matrone does not have any disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondents;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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 20042000225/MRD200444796, the 2004 Trading and Market Making Surveillance Examination ("2004 TMMS Exam") of SWST, the staff of NASD's Department of Market Regulation (the "staff") reviewed the following items:¹

- Thirty-five customer sale transactions, for compliance with NASD Rules 3110 and 3370 and SEC Rule 10a-1;
- Fifteen proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1;
- Fifty customer and proprietary sales in Nasdaq National Market ("NNM") securities, for compliance with NASD Rule 6130;
- Thirteen sales in CQS securities, for compliance with SEC Rule 10a-1;
- Fifty limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320; and SEC Rules 11Ac1-1 and 11Ac1-4;
- Twenty-five "non-displayed" limit orders and marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320;
- Eighty-five limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and Automated Confirmation Transaction Service rules;
- One open buy limit order and stop sell limit order in securities traded ex-dividend, for compliance with NASD Rule 3220;
- Twenty-five 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;
- Four security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5 (10 total orders);
- Various data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6;
- Ten customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320;
- Twenty persons engaged in the firm's trading and market making activities, for

¹ Unless otherwise noted, all such items are for trade dates January 12, 2004 through January 13, 2004.

- compliance with NASD Registration rules;
- Fifty orders in NNM and Nasdaq SmallCap securities, for compliance with NASD Rules 6954 and 6955;
- Two hundred and one 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;
- Thirty-five customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10;
- Various documents relating to 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 execution during January 2004, for compliance with NASD Rules 2320 and 3010; and
- Various documents relating to the firm's establishment and implementation of a supervisory system and written supervisory procedures in effect during January 2004, for compliance with NASD Rule 3010.

In connection with 20050000199/MRD200236927, the staff conducted a review of SWST's compliance with the Order Audit Trail Systems ("OATS") Rules during the period of March 1, 1999 through August 31, 2004.

In connection with 20050000717/MRD200341849, the staff conducted a review of SWST's compliance with the trade-through prohibition contained in NASD Marketplace Rule 5262 during the period of April 1, 2003 through June 30, 2003.

Finally, in connection with 20050001890/MRD200446284, the staff conducted a review of SWST's compliance with trade reporting rules for the Trade Reporting and Compliance Engine ("TRACE") during the period of January 1, 2004 through March 31, 2004.

- A. Respondents hereby accept and consent, 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:

20042000225/MRD200444796 (2004 TMMS Exam)

1. From October 2001 until October 2004, SWST failed to properly register Berwick, the firm's Director of Regulatory Oversight with supervisory responsibility, as a General Securities Principal. From June 2003 until October 2004, SWST failed to properly register Matrone, the firm's Head Trader with supervisory responsibility, as a General Securities Principal.
2. The conduct described in paragraph one constitutes separate and distinct violations by SWST of NASD Conduct Rule 1021 and a violation of NASD Conduct Rule 2110.

3. From October 2001 to October 2004, Berwick, SWST's Director of Regulatory Oversight with supervisory responsibility, failed to ensure that he was properly registered as a General Securities Principal.
4. The conduct described in paragraph three constitutes a violation by Berwick of NASD Conduct Rules 1021 and 2110.
5. From June 2003 to October 2004, Matrone, the firm's Head Trader with supervisory responsibility, failed to ensure that he was properly registered as a General Securities Principal.
6. The conduct described in paragraph five constitutes a violation by Matrone of NASD Conduct Rules 1021 and 2110.
7. During the period October 2001 to October 2004, the personnel at SWST designated as being responsible for the establishment, maintenance, and enforcement of the firm's supervisory system and written supervisory procedures with respect to compliance with the applicable securities laws and regulations, and the Rules of NASD, concerning Registration failed to detect that Berwick and Matrone were not properly registered as General Securities Principals. The firm's supervisory system thus failed to provide *for supervision reasonably designed to achieve compliance with applicable requirements for Registration*. Furthermore, the firm's supervisory system did not include written supervisory procedures providing for either the specific step(s) to be taken by the person(s) responsible for supervision with respect to the applicable rules that were reasonably designed to achieve compliance with those rules, or a statement as to how the completion of such step(s) should be documented.
8. The conduct described in paragraph seven constitutes a violation by SWST of NASD Conduct Rules 2110 and 3010.
9. SWST'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 topics described in the table on the following page. As indicated by check marks in the columns of the table, for each listed topic the firm's supervisory system in each area did not include written supervisory procedures providing for one or more of the following: (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) reasonably designed to achieve compliance with the rules; (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. Finally, the firm

was not able to produce evidence to the staff of completion of supervisory steps for the areas indicated in the table.

Topic	Deficiency				
	(1) Identification of person(s) responsible	(2) Supervisory steps	(3) How often performed	(4) Documentation of completion	Documentary evidence not provided to the staff
SEC Rule 11Ac1-1 [now Rule 602]		√			√
Riskless Principal Trade Reporting	√	√	√	√	√
SEC Rule 11Ac1-5 [now Rule 605]		√			
OATS		√			

10. The conduct described in paragraph nine constitutes a violation by SWST of NASD Conduct Rules 2110 and 3010.

11. SWST submitted three quarterly order routing information reports that incorrectly disclosed an "Unspecified Route Venue" to which the firm's orders were routed.

12. The conduct described in paragraph 11 constitutes separate and distinct violations of SEC Rule 11Ac1-6.

20050000199/MRD200236927 (1999-2004 OATS Data-Reporting Review)

13. During the period of March 1, 1999 through August 31, 2004, SWST failed to submit to OATS any Route reports related to Cancel/Replace reports (a total of 453,401 reports that were required to be submitted).

14. The conduct described in paragraph 13 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.

20050000717/MRD200341849 (Second Quarter 2003 Trade-Through Review)

15. During the period of April 1, 2003 through June 30, 2003, SWST, an ITS/CAES Market Maker, purchased or sold an ITS/CAES security in 22 instances, whether in a principal capacity or as an agent, at a price that was lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker.
16. The conduct described in paragraph 15 constitutes separate and distinct violations of NASD Marketplace Rule 5262 and a violation of NASD Conduct Rule 2110.

20050001890/MRD200446284 (First Quarter 2004 TRACE-Reporting Review)

17. SWST failed to report to TRACE 19,799 transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 45 minutes of the time of execution. These late transactions constituted 42 percent of all transactions in TRACE-eligible securities that SWST was required to report to TRACE during the period January 1, 2004 through March 31, 2004.
18. The conduct described in paragraph 17 constitutes separate and distinct violations of NASD Marketplace Rule 6230(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
19. SWST'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 TRACE trade-reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the specific step(s) to be taken by the person(s) responsible for supervision with respect to the applicable rules that were reasonably designed to achieve compliance with those rules.
20. The conduct described in paragraph 19 constitutes a violation of NASD Conduct Rules 2110 and 3010.

B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

As to SWST, Berwick and Matrone:

A censure and fine of \$40,000 for the registration violations pursuant to the 2004 TMMS Exam, \$20,000 of which shall be the joint and several obligation of Berwick and SWST, and \$10,000 of which shall be the joint and several obligation of Matrone and SWST. The remaining \$10,000 shall be the sole obligation of SWST.

As to SWST:

An additional fine of \$120,000 (comprised of \$10,000 for the order-routing disclosure violations pursuant to the 2004 TMMS Exam, \$40,000 for the OATS data-reporting violations pursuant to the 1999-2004 OATS Data-Reporting Review, \$20,000 for the trade-through violations pursuant to the Second Quarter 2003 Trade-Through Review, \$25,000 for the trade-reporting violations pursuant to the First Quarter 2004 TRACE-Reporting Review, and a total of \$25,000 for all the supervision violations – \$10,000 relating to registration, \$10,000 relating to the four regulatory areas identified in the table under paragraph II.A.9 above, and \$5,000 relating to TRACE trade-reporting), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs II.A.7, II.A.9 and II.A.19 above. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent 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 written supervisory procedures to address the deficiencies described in paragraphs II.A.7, II.A.9 and II.A.19 above; and (3) the date(s) on which such revised written supervisory procedures were implemented.

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

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable, and have attached an Election of Payment form showing the method by which they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondents certify that they have read and understand 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 Respondents to submit it.

Date: May 10, 2006

Reviewed by:


Counsel for Southwest Securities, Inc.

Southwest Securities, Inc.

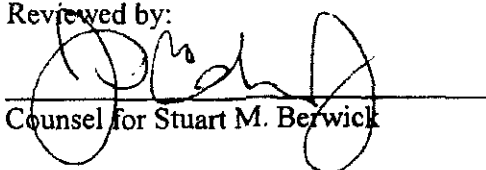
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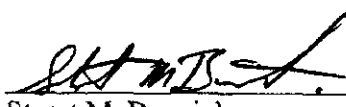
Name: Jerome S. Wade

Title: Vice President - General Counsel

Date: May 10th 2006

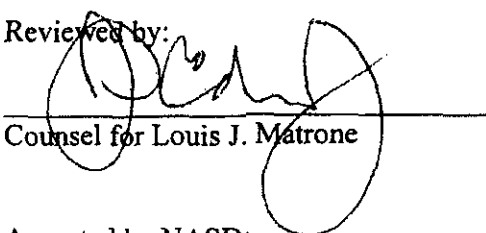
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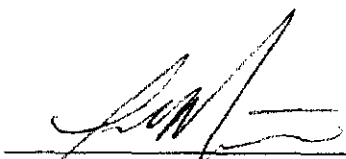

Counsel for Stuart M. Berwick


Stuart M. Berwick
Respondent

Date: 5/10/06

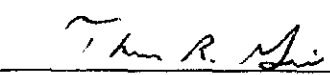
Reviewed by:


Counsel for Louis J. Matrone


Louis J. Matrone
Respondent

Accepted by NASD:

Date: 6/30/06


Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation
Signed on behalf of the Director of
ODA, by delegated authority