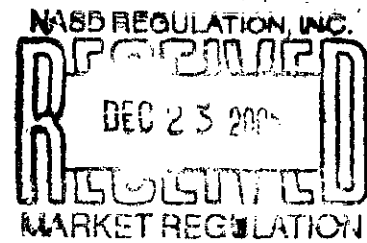


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20042000233-01

TO: Market Regulation Department
NASD

RE: Hill, Thompson, Magid & Co., Inc., Respondent
Broker-Dealer
CRD No. 2202



Pursuant to Rule 9216 of NASD Code of Procedure, Hill, Thompson, Magid & Co., Inc. ("HILL" or the "firm") 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 HILL alleging violations based on the same factual findings.

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

HILL 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:

HILL has been a member of NASD since October 25, 1940 and its registration remains effective. On July 26, 2004, an AWC became final in which HILL was censured and fined \$8,000 for violations of SEC Rule 10a-1. On September 4, 2002, an AWC became final in which HILL was censured and fined \$21,500 for violations of NASD Rules 4632 (\$2,500); 4642 (\$2,500); 6130 (\$2,000); 6240 (\$2,500) and 6630 (\$2,000) and SEC Rule 11Ac1-4 (\$10,000).

I.

WAIVER OF PROCEDURAL RIGHTS

HILL 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 HILL;
- 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, HILL 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.

HILL 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 the 2004 Trading and Market Making Surveillance Examination of HILL, 20042000233 (formerly MRD200445069), the staff of NASD's Department of Market Regulation (the "staff") reviewed the following items from trade dates February 18, 2004 and February 19, 2004 (the "2004 review period"):

- 11 customer sale transactions, for compliance with NASD Rules 3110 and 3370 and SEC Rule 10a-1;
- Two proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1;
- 112 sales in Nasdaq National Market ("NNM") securities, for compliance with NASD Rule 6130;
- 51 limit orders in market making securities for compliance with NASD Rule 2110, IM-2110-2, 6440 and 2320, and SEC Rule 11Ac1-4;
- 52 marketable orders received while holding non-displayed limit orders in the same security, for compliance with NASD Rule 2320;
- 59 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules;
- One trade in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320;
- 25 trades reported in market making securities, for compliance with SEC Rule 11Ac1-5;
- 28 total orders security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5;
- 25 customer transactions in OTCBB and/or OTC equity securities, for compliance with NASD Rules 3110(b) and 2320;
- 11 persons engaged in the firm's trading and market making activities, for compliance with NASD registration rules;
- 276 order/trade records prepared and maintained, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 301 trades reported to ACT, for compliance with NASD Trade Reporting and ACT rules;
- Seven customer trade confirmations, for compliance with SEC Rule 10b-10.

In connection with the 2005 Trading and Market Making Surveillance Examination of HILL, 20050006171, the staff reviewed the following items from trade dates January 25, 2005 and January 26, 2005 (the "2005 review period"):

- 63 customer and proprietary sales of NNM securities for compliance with NASD Rule 6130;
- Five short sales of NNM securities for compliance with NASD Rule 3350;
- 50 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;
- 50 limit and market orders executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD's trade reporting and ACT rules;
- HILL's establishment and implementation of written supervisory procedures for compliance with NASD Rule 3010;
- 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;
- 28 monthly orders execution report for compliance with SEC Rule 11Ac1-5;
- 25 customer transactions in OTCBB and/or OTC equity securities for compliance with NASD Rules 3110(b) and 2320;
- 11 persons engaged in the firm's trading and market making activities for compliance with NASD's registration rules;
- 211 order/trade records prepared and maintained for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 150 trades reported to ACT or TRACS for compliance with NASD's trade reporting and ACT rules;
- 16 customer trade confirmations for compliance with SEC Rule 10b-10;
- 63 customer and proprietary sales transactions for compliance with SEC Rules 200(g) and 203(b);
- Three short sales in Consolidation Quotation Service ("CQS") securities for compliance with SEC Rule 10a-1;
- Four open buy limit orders and stop sell limit orders in securities traded ex-dividend for compliance with NASD Rule 3220; and
- 50 orders in NNM or SC securities submitted to the Order Audit Trail System ("OATS") for compliance with NASD Rule 6955.

- A. HILL 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:

MRD200445609

1. During the 2004 review period, HILL transmitted to OATS 27 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports omitted routed order identifications. These inaccurate and/or incomplete reports represented 56 percent of all reports transmitted by HILL in the OATS sample from the 2004 review period.
2. The conduct described in paragraph one constitutes a separate and distinct violation of NASD Marketplace Rule 6955(a) and violation of NASD Conduct Rule 2110.
3. During the 2004 review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning: NASD Conduct Rule 2320 best execution of customer orders; NASD Marketplace Rule 3370 affirmative determination; NASD Marketplace Rule 6130 trade reporting; SEC Rule 10a-1 tick test; SEC Rule 11Ac1-1 order handling and SEC Rule 11Ac1-5 order execution reports.
4. The conduct described in paragraph three constitutes a separate and distinct violation of NASD Conduct Rules 2110 and 3010.

20050006171

5. During the 2005 review period, Hill failed on three occasions to provide documentation evidencing the classification of an order.
6. The conduct described in paragraph five constitutes separate and distinct violations of SEC Rule 11Ac1-5.

7. During the 2005 review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning NASD Marketplace Rule 6440 Order Handling Rule; NASD Marketplace Rule 2320 best execution of customer orders; NASD Marketplace Rule 6130 ACT reporting requirements; SEC Regulation SHO Rule 202 threshold securities; NASD Marketplace Rule 5262 locked and crossed markets; and NASD Marketplace Rule 6955 OATS.
8. The conduct described in paragraphs seven constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

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

A censure and a fine of \$25,000 (composed of \$10,000 for the supervision violations in both 20042000233 and 20050006171, \$7,500 for the 11Ac1-5 violations in 20050006171, and \$7,500 for the OATS violations in 20042000233), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph nine above. 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, provided 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 nine above; 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. HILL understands that HILL may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. HILL understands that HILL 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. HILL agrees to pay any monetary sanctions imposed on HILL 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 HILL proposes to pay any fine imposed.
- C. HILL specifically and voluntarily waives any right to claim that HILL is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

HILL certifies that HILL 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 HILL to submit it.

12/20/05
Date

Respondent
Hill, Thompson, Magid & Co., Inc.

By: Patrick E. Baker Jr.
Name: Patrick E. Baker, Jr.
Title: General Counsel

Reviewed by:

Patrick E. Baker Jr.
Counsel for Respondent

Accepted by NASD:

2/15/06
Date

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