

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##

20042000248-01

2005 DEC 14 P 12: 24
NATIONAL SECURITIES
MARKET REGULATION

TO: Department of Market Regulation
NASD

RE: Carlin Equities, LLC, Respondent
CRD No. 31295

Pursuant to Rule 9216 of NASD Code of Procedure, Carlin Equities, LLC ("CLYP") 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 CLYP alleging violations based on the same factual findings.

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

CLYP 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:

CLYP has been a member of NASD since July 9, 1993 and its registration remains in effect.

On October 7, 2004, NASD accepted an AWC that censured and fined CLYP \$35,000 for NASD Marketplace Rule 6955 violations and failure to enforce written supervisory procedures.

On May 7, 2004, NASD accepted an AWC that censured and fined CLYP \$10,000 for NASD Marketplace Rules 6130 and 6620 violations.

On October 6, 2003, NASD accepted an AWC that censured and fined CLYP \$10,000 for NASD Marketplace Rule 6955 violations and deficient supervisory procedures.

I.

WAIVER OF PROCEDURAL RIGHTS

CLYP 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 CLYP;
- 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, CLYP 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.

CLYP 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 ("TMMS") examination, 20042000248 (MRD200445254), of CLYP, the staff of NASD's Department of Market Regulation (the "staff") reviewed the following items from trade dates February 9 through 20, 2004 (the "2004 TMMS review period"):

- 34 customer sale transactions for compliance with NASD Conduct Rules 3110 and 3370 and SEC Rule 10a-1;
- 10 proprietary sale transactions for compliance with NASD Conduct Rule 3370 and SEC Rule 10a-1;
- two short sales in Nasdaq National Market ("NNM") securities for compliance with NASD Conduct Rule 3350;
- 50 limit orders in market making securities for compliance with NASD Conduct Rule 2320, NASD Marketplace Rule 6440 and SEC Rule 11Ac1-4 (now SEC Rule 604);
- 25 marketable orders received while holding "non-displayed" limit orders for the same securities for compliance with NASD Conduct Rule 2320;
- 53 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 ("ACT") rules;
- Agency/principal and/or riskless principal trades reviewed for compliance with SEC Section 28(e) safe harbor on soft dollar compensation;
- two trades in NNM or SmallCap ("SC") securities reported with trade reporting modifiers for compliance with NASD Conduct Rule 2320 and NASD Marketplace Rule 4632;
- trades reported in market making securities for compliance with SEC Rule 11Ac1-5 (now SEC Rule 605);
- security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 605;
- data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6 (now SEC Rule 606);

- the firm's establishment and implementation of "regular and rigorous" reviews of the execution quality of orders sent to other market centers for execution for compliance with NASD Conduct Rules 2320 and 3010;
- 23 customer orders in Over the Counter Bulletin Board ("OTCBB") and/or Over the Counter ("OTC") Equity securities for compliance with NASD Conduct Rules 2320 and 3110(b);
- 10 persons engaged in the firm's trading and market making activities for compliance with NASD registration rules;
- 241 order/trade records for compliance with NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 215 trades reported to ACT for compliance with NASD trade reporting and ACT rules; and
- the firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Conduct Rule 3010.

In connection with the 2005 TMMS exam, 20050007331, of CLYP, the staff reviewed the following items from trade dates January 25 and 26, 2005 (the "2005 TMMS review period"):

- 54 customer and proprietary sale transactions for compliance with SEC Rules 200(g) and/or 203(b);
- 174 customer and proprietary sales for compliance with NASD Marketplace Rule 6130;
- one short sale in Consolidated Quotation Service ("CQS") securities for compliance with SEC Rule 10a-1;
- 23 limit orders executed as principal for compliance with NASD Conduct Rules 2110, IM-2110-2, 2320, NASD Marketplace Rules 6440 and 6541 and SEC Rules 11Ac1-1 (now SEC Rule 602) and 604;
- 33 limit and market orders and 51 related transactions executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD trade reporting and ACT rules;
- 24 orders for NASDAQ securities in soft dollar accounts and 50 related transactions for compliance with trade reporting rules and the safe harbor limitations of SEC Section 28(e);
- two security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 605;
- data published on the firm's quarterly order routing report for compliance with SEC Rule 606;
- 24 customer transactions in OTCBB and OTC Equity securities for compliance with NASD Conduct Rules 2320 and 3110(b);
- nine persons engaged in the firm's trading and market making activities for compliance with NASD registration rules;

- 167 order/trade records prepared and maintained for general compliance with NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 168 trades reported to ACT for general compliance with NASD trade reporting and ACT rules;
- 10 customers trade confirmations for compliance with SEC Rule 10b-10;
- 50 orders in NNM or SC securities submitted to the Order Audit Trail System ("OATS") for compliance with NASD Marketplace Rule 6955;
- 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 Conduct Rules 2320 and 3010;
- the firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Conduct Rule 3010.

In connection with 20050000139 (MRD200449121), the staff conducted a review of CLYP's compliance with OATS rules during the period July 1, 2004 through September 30, 2004.

In connection with 20050006499, the staff conducted a review of CLYP's compliance with OATS and trade reporting rules during the period October 1, 2004 through December 31, 2004.

In connection with 20050026783, the staff conducted a review of CLYP's compliance with OATS reporting requirements during the period April 1, 2005 through June 30, 2005.

In connection with 20050014702, the staff conducted a review of CLYP's compliance with OATS rules during the period October 1, 2003 through September 30, 2004.

- A. CLYP 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:

20042000248 (MRD200445254)

1. During the 2004 TMMS review period, CLYP accepted 13 customer short sale orders in certain securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the securities on behalf of the customer or that the firm could borrow the securities on behalf of the customer for delivery by settlement date.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rule 3370.

3. During the 2004 TMMS review period, CLYP reported through the Nasdaq Market Center or TRACS one last sale report of a transactions in Nasdaq National Market securities it was not required to report.
4. During the 2004 TMMS review period, CLYP failed to report through the Nasdaq Market Center or TRACS three last sale reports of transactions in Nasdaq securities.
5. During the 2004 TMMS review period, CLYP incorrectly designated as ".PRP" through the Nasdaq Market Center or TRACS one last sale report of a transaction in a Nasdaq security.
6. The conduct described in paragraphs three through five constitutes a violation of NASD Marketplace Rule 4632.
7. During the 2004 TMMS review period, CLYP failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for one transaction in an eligible security.
8. The conduct described in paragraph seven constitutes a violation of NASD Marketplace Rule 6130(d).
9. During the 2004 TMMS review period, CLYP reported through the Nasdaq Market Center 22 last sale reports of transactions in OTC Equity securities it was not required to report.
10. During the 2004 TMMS review period, CLYP failed to report through the Nasdaq Market Center nine last sale reports of transactions in OTC Equity securities.
11. The conduct described in paragraphs nine and 10 constitutes separate and distinct violations of NASD Marketplace Rule 6620.
12. For the period March through June 2004, CLYP failed to make available reports on the covered orders in national market system securities that it received for execution from any person.
13. The conduct described in paragraph 12 constitutes separate and distinct violations of SEC Rule 605.
14. During the 2004 TMMS review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the following securities laws and regulations, and the Rules of NASD: NASD membership and registration rules 1021 and 1031, NASD Marketplace Rule 2320 (crossing customer orders), SEC Rule 605 (disclosure of order execution information), NASD Marketplace Rule 6130 (short sale indicator reporting), NASD Conduct Rule 3370 (affirmative determination), and Chinese Walls. Specifically, the firm's supervisory system 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); (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.

15. During the 2004 TMMS review period the firm failed to enforce its written supervisory procedures concerning NASD Marketplace Rule 6955.
16. The conduct described in paragraphs 14 and 15 constitutes violations of NASD Conduct Rules 2110 and 3010.

20050007331

17. During the 2005 TMMS review period, CLYP reported through the Nasdaq Market Center or TRACS one last sale report of a transaction in a Nasdaq National Market security it was not required to report.
18. During the 2005 TMMS review period, CLYP failed to report through the Nasdaq Market Center or TRACS 71 last sale reports of transactions in Nasdaq securities.
19. The conduct described in paragraphs 17 and 18 constitutes separate and distinct violations of NASD Marketplace Rule 4632.
20. During the 2005 TMMS review period, CLYP failed to report to the Nasdaq Market Center the correct symbol indicating whether CLYP executed 26 transactions in eligible securities in a principal or agency capacity.
21. The conduct described in paragraph 20 constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
22. During the 2005 TMMS review period, CLYP reported through the Nasdaq Market Center six last sale reports of transactions in OTC Equity securities it was not required to report.
23. The conduct described in paragraph 22 constitutes separate and distinct violations of NASD Marketplace Rule 6620(b).
24. During the 2005 TMMS review period, CLYP failed in 15 instances to submit required information to OATS.
25. The conduct described in paragraph 24 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
26. During the 2005 TMMS review period, the firm 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.
27. The conduct described in paragraph 26 constitutes separate and distinct violations of SEC Rule 203(b).
28. During the 2005 TMMS review period, CLYP failed on five occasions to provide written notification disclosing to its customers (1) that the transactions were executed at an average price, (2) the correct capacity in the transactions, and (3) that it was a market maker in each such security.

29. The conduct described in paragraph 28 above constitutes separate and distinct violations of SEC Rule 10b-10.
30. During the 2005 TMMS review period, CLYP failed to show the time of execution on the memorandum of 18 brokerage orders, and failed to document the customer name or account number of the memorandum of three brokerage orders.
31. The conduct described in paragraph 30 constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
32. During the 2005 TMMS review period, CLYP failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of one brokerage order.
33. The conduct described in paragraph 32 constitutes a violation of SEC Rule 17a-4 and NASD Conduct Rule 3110.
34. During the 2005 TMMS review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the following securities laws and regulations, and the Rules of NASD: NASD Marketplace Rule 6541 (order handling); NASD Conduct Rule 2320 (three quote rule); NASD Marketplace Rule 4632 (third party trade reporting); SEC Rule 200, NASD Conduct Rule 3110, and NASD Marketplace Rule 6130 (short sales); NASD Marketplace Rule 6955 (OATS); and SEC Rule 17a-3 and SEC Rule 17a-4 (books and records). Specifically, the firm's supervisory system 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); (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.
35. During the review period the firm failed to enforce its written supervisory procedures with respect to SEC Rules 202 and 202T and NASD Conduct Rules 2320, 3350 and 3370.
36. The conduct described in paragraphs 34 and 35 constitutes violations of NASD Conduct Rules 2110 and 3010.

20050000139 (MRD200449121)

37. During the period July 1, 2004 through September 30, 2004, CLYP transmitted to OATS 308,564 Route or Combined Order/Route reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, OATS was unable to link the Route or Combined Order/Route reports to a related order report submitted to SuperMontage or SelectNet. These inaccurate and/or incomplete reports represented 95 percent of all reports transmitted by the firm during the period.
38. The conduct described in paragraph 37 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20050006499

39. During the period October 1, 2004 through December 31, 2004, CLYP failed to report through the Nasdaq Market Center or TRACS 327 last sale reports of transactions in Nasdaq securities.
40. The conduct described in paragraph 39 constitutes separate and distinct violations of NASD Marketplace Rule 4632.

20050026783

41. During the period April 1, 2005 through June 30, 2005, the firm submitted to OATS 3,818 reports with respect to equity securities traded on the Nasdaq Stock Market (the "subject reports") that were not in the electronic form prescribed by NASD and were repairable. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS website. The firm did not correct or replace 1,619 of the subject reports, or 42 percent of the subject reports.
42. The conduct described in paragraph 41 above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20050014702

43. During the period October 1, 2003 through September 30, 2004, CLYP transmitted to OATS 499,604 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports failed to match with the identified receiving firm's related new order report. These inaccurate and/or incomplete reports represented 97 percent of the match eligible route reports transmitted by CLYP during the period.
44. The conduct described in paragraph 43 above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

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

A censure and fine of \$77,000 consisting of:

- \$16,000 in connection with 20042000248 comprised of: \$5,000 for deficient supervisory procedures, \$3,000 for NASD Marketplace Rules 4632, 5430, 6130 and 6620 (trade reporting) violations, \$5,000 for SEC Rule 605 violations, \$3,000 for NASD Conduct Rule 3370 violations.
- \$33,500 in connection with 20050007331 comprised of: \$5,000 for deficient supervisory procedures, \$7,500 for NASD Marketplace Rules 4632, 5430, 6130 and 6620 (trade reporting) violations, \$3,000 for SEC Rule 203 violations, \$3,000 for SEC Rule 17a-3 and 17a-4 violations, \$2,500 for SEC Rule 10b-10 violations, and \$12,500 for NASD Marketplace Rule 6955 violations.
- \$7,500 for NASD Marketplace Rule 6955 violations in 20050000139.
- \$5,000 for NASD Marketplace Rule 4632 violations in 20050006499.
- \$7,500 for NASD Marketplace Rule 6955 violations in 20050026783.
- \$7,500 for NASD Marketplace Rule 6955 violations in 20050014702.

and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs 14 and 34. 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 paragraphs 14 and 34; 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. CLYP 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. CLYP 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. CLYP 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 CLYP proposes to pay any fine imposed.
- C. CLYP specifically and voluntarily waives any right to claim that CLYP is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

CLYP certifies that it 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 CLYP to submit it.

12/12/2006
Date

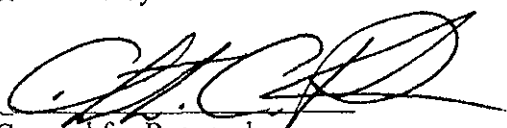
Respondent
Carlin Equities, LLC

By: 

Name: Jeremy Frommer

Title: President

Reviewed by:


Counsel for Respondent

Accepted by NASD:

2/9/07
Date

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

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