

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. **** 20050000069-01**

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: **Evolution Financial Technologies, LLC**, Respondent
Broker-Dealer
CRD No. 104249

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Respondent, Evolution Financial Technologies, LLC ("EVOF" 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against EVOF alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

In connection with 20050013557, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of (1) EVOF's supervision of certain trading activity by three different traders at the firm during the period March 26, 2003 through January 16, 2004 (the "initial review period"); and also (2) the firm's written supervisory procedures relating to manipulative trading activity.

In connection with 20050000069, the staff conducted a review of EVOF's repair and resubmission of Reportable Order Events ("ROEs") that had been rejected by the Order Audit Trail System ("OATS") during the period July 1, 2004 through September 30, 2004 (the "secondary review period").

- A. EVOF 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

EVOF, formerly known as Sonic Technologies LLC ("GESE"), has been a member of FINRA, formerly NASD, since September 25, 2000, and its registration remains in effect. EVOF has the following relevant disciplinary history:

20050000069 (includes 20050013557) (GMB)

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- On August 2, 2005, an AWC became final pursuant to which EVOF was censured and fined \$17,500 for violations of NASD Rule 6955, relating to the firm's failure to repair and resubmit 54,336 ROEs that had been rejected by OATS, and NASD Conduct Rules 2110 and 3010.

FACTS AND VIOLATIVE CONDUCT

1. During the initial review period, three traders employed by EVOF engaged in manipulative trading activity whereby they each repeatedly obtained unfair, advantageous price gains by placing non-bona-fide, odd-lot trades (often for only a single share) on one side of various market makers' quotations, in order to cause their quotations to automatically decrement,¹ immediately followed by the placement of a full-size order of 100 or more shares on the other side of the same quotations. In sum, each trader had entered the larger orders for the purpose of receiving a more favorably priced execution at the new QBBO, which he had deceptively created by the execution of his earlier one-share or odd-lot orders. The conduct described in this paragraph constituted separate and distinct violations by each trader of NASD Conduct Rules 2110, 2120, 3310 and IM-3310, as well as Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.²
2. EVOF's supervisory system during the initial review period did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD Rules, concerning manipulative trading activity. Specifically, the firm failed to establish, maintain and enforce supervisory procedures reasonably designed to monitor for and detect the manipulative trading activity engaged in by its traders, despite having been apprised by the staff of specific concerns relating to one of the firm's trader's use of odd-lot trading to achieve unfair, advantageous price gains at the expense of market makers who were utilizing proprietary trading systems that automatically decremented their bids and offers. Furthermore, the firm's supervisory system did not include written supervisory procedures providing for: (a) the identification of the person(s) responsible for supervision with respect to the applicable rules; (b) a statement of the supervisory step(s) to be taken by the identified person(s); (c) a statement as to how often such person(s) should take such step(s); and (d) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

¹ The market makers were utilizing proprietary trading systems that automatically decremented their bids and offers in the subject securities to prices that were inferior to the Nasdaq Best Bid or Offer ("QBBO") after they executed the one-share or odd-lot order that the EVOF trader had entered, provided that, at the time of this execution, the market makers' quotation size was 100 shares with no reserve size. The market makers' proprietary trading systems maintained a consistent spread between the bid and the offer so that if their bid (offer) was decremented, then their offer (bid) would automatically be revised by a corresponding amount.

² See matter 20050000291, pursuant to which the three traders were suspended from association with any member FINRA firm for periods of 45 days to three months, and fined from \$10,000 to \$30,000.

3. During the secondary review period, EVOF submitted to OATS 232,404 ROEs that were rejected by OATS for context or syntax errors. These rejected ROEs represented 0.19% percent of all ROEs (120,266,053) transmitted by the firm to OATS during the secondary review period. The firm did not repair any of the rejected ROEs, representing 100 percent of all rejected ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
4. During the secondary review period, EVOF failed to enforce its written supervisory procedures which specified that the "designated OATS principal [would] conduct a daily review of the OATS website" to identify and repair rejected ROEs; would "be responsible for the repair of the rejections and resubmitting the repaired data to OATS;" and would document the supervisory review of the OATS data "by printing 'ROE Rejections Summary' on the OATS Web interface on the following day, with actions taken at the event of any rejections." The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

B. EVOF also consents to the imposition of the following sanctions:

A censure; total fines of \$40,000 (consisting of \$25,000 for the supervision failures in connection with the manipulative trading activity by three of the firm's traders, \$10,000 for the OATS rejection-repair failures, and \$5,000 for the failure to enforce the firm's written supervisory procedures relating to the repair and resubmission of ROEs rejected by OATS); and an undertaking to revise the firm's supervisory procedures with respect to the deficiencies described in paragraph I.A.2. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of EVOF shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, DEPARTMENT OF MARKET REGULATION, 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 I.A.2; and (3) the date(s) on which the revised procedures were implemented.

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

EVOF agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. EVOF has submitted an Election of Payment form showing the method by which the firm proposes to pay the fines imposed.

EVOF specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

II.**WAIVER OF PROCEDURAL RIGHTS**

EVOF specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, EVOF 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.

EVOF 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.

III.

OTHER MATTERS

EVOF understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. This AWC will become part of EVOF's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about EVOF's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 5. EVOF 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. EVOF may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects EVOF's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. EVOF may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

EVOF certifies that the firm has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the firm has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Date 12/5/07

Respondent
Evolution Financial Technologies, LLC

By: Ken R. Soper

Name: Glen R. Stifelman

Title: Chief Compliance Officer

Reviewed by:

Counsel for Evolution Financial Technologies, LLC

Accepted by FINRA:

1/15/08
Date

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

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

This Corrective Action Statement is submitted by Evolution Financial Technologies, LLC. (CRD# 104249). It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff

Evolution would like to show via a Corrective Action Statement, the Compliance changes that have occurred at the Firm regarding OATS and Odd-Lot Trading since May of 2006.

In May of 2006, Glen Stifelman was hired as the Firm Chief Compliance Officer (CCO). Mr. Stifelman has overhauled the entire Compliance Department at the Firm over the time he has been here. Here is how OATS and Odd-Lot Trading are currently handled:

OATS

Evolution would also like FINRA to consider how much improvement has taken place in our OATS reporting since the time of this violation. The Firm conducted a complete OATS overhaul putting in place new procedures for reviewing and responding to OATS issues on a daily basis. Enclosed is a disk which contains a daily OATS spreadsheet which is used by the Firm. This assists in tracking any OATS problem.

The Firm hired a new CTO in August of 2006 who assisted in the changes in OATS. The Firm replaced its synchronized time clock and added new software to maintain its accuracy. Exception reports exist to track any OATS issue.

Evolution's new procedures include contacting the NASD the same day with any OATS problem, receiving a case number, and following through any issue until its completion. This ensures that any OATS problem is immediately diagnosed repaired and reported back to FINRA.

Lastly and most importantly, the Firm's OATS report cards show a tremendous improvement. I have enclosed Evolution's June of 2007 report card. As you can see the Firm was #1 in Late Reporting, had no unmatched executions, and is in the upper tier of all other categories in our pier group. These numbers have been consistently good for the last several months.

Trading Supervision

As part of my compliance overhaul of Evolution, I rewrote the Firm's entire compliance manual. Part of that rewrite included new odd lot trading procedures (which are enclosed with this letter). Also, with help from the Technology Department of Evolution, starting in September of 2006, Compliance began to receive a daily automated spreadsheet with all the odd lot transactions done by the Firm's prop traders and customers. I have enclosed a sample of this spreadsheet on the disk enclosed. Trades on the spreadsheet are randomly reviewed daily on a T+1 basis. All trades highlighted in yellow have been investigated to ensure they are not part of any manipulative trading scheme. Items that

are marked ok show that there is no such scheme. If Compliance suspects or can not determine if an odd lot trade is manipulative, and email is sent to the trader asking for an explanation of their trading strategy (as well as to their supervisors (if applicable)). I have enclosed for you one such email and the response.

As part of the Firm's continuing education and annual compliance meeting, odd lot transaction and the consequences of using them were discussed in great detail. Each trader (and customer) was provided with the NYSE Information Memo 04-14 describing that odd lot trading on the exchanges was not allowed. All traders were also schooled in what would be considered manipulative trading practices on NASDAQ/ECN securities.