

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##
20050000181-01

RECEIVED

2007 APR 25 A 11: 20

TO: Market Regulation Department
NASD

RE: **America's Growth Capital, LLC**, Respondent
Broker-Dealer
CRD No. 125958

Pursuant to Rule 9216 of NASD Code of Procedure, America's Growth Capital, LLC (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 the firm alleging violations based on the same factual findings.

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

The firm 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 July 1, 2003 and its registration remains in effect. The firm does not have any disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm 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 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm 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.

The firm 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

This matter arose out of a review, 20050000181, conducted by the staff of the Department of Market Regulation of NASD of the firm's compliance with Order Audit Trail System ("OATS") reporting requirements for the period January 1, 2004 through March 31, 2005.

- A. The firm 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. During the period January 1, 2004 through December 31, 2004, the firm failed to submit to OATS approximately 85,938 route reports for orders it routed to other market participants for handling and/or execution. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
 2. During the period January 1, 2005 through March 31, 2005, the firm failed to timely report to OATS 2,735 Reportable Order Events ("ROEs"). These late ROEs represented 22 percent of all ROEs (12,169) submitted by the firm to OATS during the period January 1, 2005 through March 31, 2005. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
 3. The firm'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 OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken by the identified person(s) responsible for supervision with respect to the applicable rules; and (2) 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.

- B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure, a fine of \$20,000 (composed of a \$15,000 fine for the OATS violations and a \$5,000 fine for the supervision violation) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph three. 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 paragraph three; 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. The firm 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. 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 NASD, nor does it reflect the views of NASD or its staff.
- B. The firm 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 the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

4/17/07

Date

By: M. B. [Signature]

Title: CEO, CCO

Counsel for Respondent

Date 5/25/07

5



RECEIVED

April 17, 2007

Beatrice Bisio, Counsel
NASD
9509 Key West Avenue
Rockville, MD 20850

Dear Ms. Bisio:

This Corrective Action Statement is submitted by America's Growth Capital, LLC ("AGC"). It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff. This response is in reference to NASD's Transmittal of Letter of Acceptance, Waiver and Consent (AWC) (Exam Investigation No. 20050000181).

We acknowledge the Acceptance & Consent findings as outlined in the AWC. From January, 2004 to March, 2005, we have transitioned through two Chief Compliance Officers. Our most recent Chief Compliance Officer terminated his employment on 2/26/07 upon learning of our plans to remove him at the end of February, 2007. To improve our compliance efforts, our CEO, Benjamin Howe, has assumed the role of Chief Compliance Officer. We have also engaged a third-party consulting firm who will act as a resource in our compliance efforts, reviewing our WSPs, updating them as required, and working with appropriate AGC staff to assist in the integrity of our compliance program. This firm, National Regulatory Services (NRS), will review multiple facets of our compliance program and will be available on an on-going basis for consultation.

We have revised our OATS Written Supervisory Procedures requiring the trading personnel to conduct daily monitoring of all of the OATS reports and then submitted for review by the compliance department. These reports include the FORE Status Notification, Firm Reporting Statistics, Order Trade Matching Statistics, Route/NES Order Match Statistics, ROE Rejections, and Late Reports. Again, these revised procedures call for our compliance personnel to conduct reviews of the OATS monitoring process carried out by trading personnel.

Since the time of review, AGC has taken extensive measures to correct any OATS related issues. AGC takes the role of compliance very seriously, as such, we have implemented a proactive structure to address and resolve any and all future OATS and supervisory related OATS issues.

Regards,

M. Benjamin Howe
Chief Executive Officer &
Chief Compliance Officer