

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
2005000022901

**TO: Department of Market Regulation  
NASD**

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

Pursuant to Rule 9216 of NASD Code of Procedure, Evolution Financial Technologies, LLC ("GESE") 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 GESE alleging violations based on the same factual findings.

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

GESE also understands that its experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

GESE has been a member of NASD since September 25, 2000. On March 26, 2004, an AWC became final wherein GESE was censured, fined \$10,000 and required to update its written supervisory procedures for short sales and supervision violations. On December 4, 2001, an AWC became final wherein GESE was fined \$5,000 for OATS violations.

#### I.

#### WAIVER OF PROCEDURAL RIGHTS

GESE 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 GESE;
- 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, GESE 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.

GESE 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, MRD200445110 / 20050000229<sup>1</sup>, conducted by the staff of the Department of Market Regulation of NASD of GESE's compliance with NASD Rules applicable to Order Audit Trail System ("OATS") reporting for the period October 1, 2003 through December 31, 2003 ("review period"). The staff also reviewed GESE's written supervisory procedures applicable to OATS that were in effect during the review period.

- A. GESE 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:
1. During the review period, GESE submitted to OATS 54,336 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 54,336 of the subject reports, or 100% percent of the subject reports.
  2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.
  3. GESE'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, GESE's supervisory system did not include written supervisory procedures providing for a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

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<sup>1</sup> On January 3, 2005 the NASD implemented a new matter tracking system. The new number assigned to this matter is referenced above following the original number assigned by the previous tracking system.

4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. GESE also consents to the imposition, at a maximum, of the following sanctions:

A censure, a fine of \$17,500 (composed of a \$10,000 fine for the OATS violations and a \$7,500 fine for the supervision violation) and an undertaking to revise the firm's written supervisory procedures with respect to the area 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. GESE understands that it may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. GESE 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. GESE agrees to pay any monetary sanctions imposed on GESE upon notice that this AWC has been accepted and that such payments are due and payable, and has attached the Election of Payment form showing the method by which GESE proposes to pay any fine imposed.
- C. GESE specifically and voluntarily waives any right to claim that GESE is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Evolution Financial Technologies, LLC 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 GESE to submit it.

3/28/05  
Date

**Evolution Financial Technologies, LLC**

By: Marshall J. Baron  
Name: Marshall Jay Baron  
Title: Vice President - Compliance

Reviewed by:

### Counsel for Respondent

**Accepted by NASD:**

7/31/05  
Date

Thomas R. Gira  
Thomas R. Gira,  
Executive Vice President & Deputy  
Department of Market Regulation

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

Evolution Financial Technologies, LLC 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 GESE to submit it.

Evolution Financial Technologies, LLC

April 8, 2005

Date

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Reviewed by:

Robert R. Bramnik

Counsel for Respondent

Robert R. Bramnik

Duane Morris, LLP

Accepted by NASD:

Date

Date

Thomas R. Gira,  
Executive Vice President & Deputy  
Department of Market Regulation

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