

 ORIGINAL

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

20050000291-02

**TO: Department of Market Regulation
NASD**

**RE: Derek R. Pines,
Respondent
CRD No. 4428120**

Pursuant to Rule 9216 of the NASD Code of Procedure, I, Derek R. Pines ("I" or "Pines"), submit 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 me alleging violations based on the same factual findings.

I understand 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 me; and
3. If accepted:
 - a. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against me;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about my 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. I 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

20050000291/MRD200339976 (GMB)

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allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

I also understand that my 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 history are as follows:

I entered the securities industry in July 2001 and have been employed at the following NASD members: Heartland Securities Corporation from July 2001 through February 2003, as a general securities representative; and Sonic Technologies, LLC (now known as Evolution Financial Technologies, LLC) from February 2003 through August 2005, as an equities trader. Currently, I am not associated with any NASD member firm. I do not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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 20050000291/MRD200339976, the staff of NASD's Market Regulation Department conducted an investigation of the trading activity of Pines on March 26, 2003 (the "review date").

A. Pines 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. On the review date, Pines was employed as a proprietary trader at Sonic Technologies, LLC (now known as Evolution Financial Technologies, LLC) ("GESE").
2. On the review date, Pines knowingly and intentionally entered through GESE's proprietary trading account into Nasdaq's SuperMontage 23 one-share orders to buy a particular Nasdaq security (the "subject security") from a Nasdaq market maker that was utilizing an automated system to maintain a specific spread between its bid and offer.
3. Pines entered these one-share buy orders against the inside offer when the market maker was quoting 100 shares at the Nasdaq Best Bid and Offer ("QBBO") and received executions for those orders. After each of Pines' one-share orders was executed, the size of the market maker's quote decremented to an odd lot of 99 shares. Because SuperMontage functionality does not allow market participants to display odd lots, in the instances cited above, the market maker's offer moved to the market maker's next price level after execution of Pines' one-share order.
4. When Pines entered his one-share buy orders, he was aware that the market maker was utilizing an automated quoting system that was designed to keep a consistent spread between the market maker's bid and offer in the subject security. As a result, when the market maker's offer increased, its bid also increased by a

corresponding amount to maintain a set spread between the market maker's bid and offer. This activity created a new QBBO from the same market maker that had executed Pines' one-share buy order, thus providing him a more favorable quote in the subject security.

5. Accordingly, a short time after the QBBO changed, Pines entered through GESE's proprietary trading account into Nasdaq's SuperMontage an order to sell at least 100 shares of the subject security and received an execution at the new QBBO from the same market maker that had executed Pines' one-share buy order.
6. The following is an example of Pines' conduct. On March 26, 2003 at 9:31:26, the QBBO on Nasdaq for Cognizant Technology Solutions ("CTSH") was \$67.38 (bid) and \$67.65 (offer) and the market maker was the only market participant quoting the best offer of \$67.65. At 9:31:28, Pines entered a one-share buy order for CTSH into Nasdaq's SuperMontage system, which was delivered to the market maker's inside offer and executed at \$67.65. Once the size of the market maker's offer was decremented to 99 shares, the market maker's offer was immediately updated to a higher price of \$68.15, immediately followed by a \$.01 reduction to \$68.14, and its bid was likewise increased to \$67.64, in order to maintain the pre-programmed spread between the market maker's bid and offer. The QBBO for CTSH then became \$67.64 (bid) and \$67.65 (offer), with the market maker quoting alone at the new inside bid.
7. Within a second of receiving the execution on his one-share order, at 9:31:28, Pines entered a 300-share sell order for CTSH into Nasdaq's SuperMontage system priced at \$67.64, which was delivered to the market maker's inside bid of \$67.64. The market maker executed 100 shares of Pines' 300-share sell order at \$67.64, a price that was 26 cents higher than the previous inside bid of \$67.38. This execution resulted in an advantageous price gain to Pines of \$25.74.¹ Furthermore, the market maker lost a total of \$49.00 on the 100-share trade.² At 9:31:29, the QBBO for CTSH changed to \$67.36 (bid) and \$67.65 (offer).
8. By knowingly and intentionally engaging in this course of conduct, Pines was able, on behalf of his proprietary account at GESE, to sell shares of the subject

¹ The advantageous price gain is derived from the dollar difference between the price at which Pines actually received an execution and the price at which he would have received an execution had the QBBO not been altered, thus 99 shares at a savings of 26 cents each for a total of \$25.74

² The loss to the market maker is derived from the 49-cent difference between the market maker's bid prior to the one-share execution (\$67.15) and the market maker's bid resulting from the one-share execution (\$67.64), multiplied by the number of shares (100), thus 100 shares at 49 cents each for a total of \$49.00.

security at prices that were higher than Pines would otherwise have been able to obtain, but for his entry and the execution of his one-share buy orders.

9. In total, Pines bought and sold the subject security, in the manner described in paragraphs one through eight above, in 23 instances. (See Exhibit A attached hereto and incorporated by reference herein.) On or shortly after the review date, these trades were cancelled by OESE. Had they not been cancelled, however, they would have resulted in a total advantageous price gain of \$222.75 and a total loss to the market maker of \$1,127.
10. The conduct described in paragraphs one through nine above constitutes separate and distinct violations 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.

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

A suspension from association with any member firm in all capacities for a period of 45 days and a \$10,000 fine to be due and payable upon re-association with a member firm following the 45-day suspension.

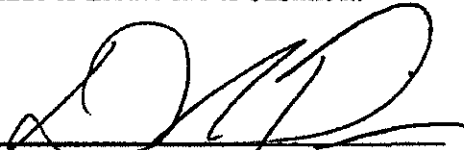
The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

III.**OTHER MATTERS**

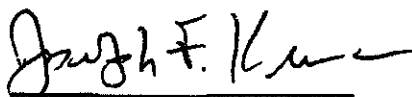
- A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. I agree to pay any monetary sanctions imposed on me upon notice that this AWC has been accepted and that such payments are due and payable, and have attached an Election of Payment form showing the method by which I propose to pay any fine imposed.
- C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. I understand that if I am barred or suspended from association with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

I certify that I have read and understand all of the provisions of this AWC and have 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 me to submit it.

9/8/06
Date


Derek R. Pines, Respondent

Reviewed by:


Counsel for Respondent

Accepted by NASD

DE 8-06
Date


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