

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20050000291-03

TO: Department of Market Regulation
NASD

RE: Enrique Aguilera,
Respondent
CRD No. 2762032

Pursuant to Rule 9216 of the NASD Code of Procedure, I, Enrique Aguilera ("I" or "Aguilera"), 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)

000070390 200

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 May 1996 and have been employed at the following NASD members: Sovereign Equity Management Corporation (later known as Tuscany Equity Management Corporation) from May 1996 through November 1996, as a general securities representative; Cortlandt Capital Corporation from January 1997 through May 1997, as a general securities representative; Duke & Co., Inc. from May 1997 through July 1997, as a general securities representative; Drake & Company, Inc. from June 1998 through October 1999, as a general securities representative; Paragon Capital Markets, Inc. from October 1999 through February 2000, as an assistant equities trader; Fleet Securities, Inc. (later merged with ADP Clearing & Outsourcing Services, Inc.) from February 2000 through December 2000, as an assistant equities trader; NDB Capital Markets, LP (later known as Deutsche Ixe, LLC) from December 2000 through July 2001, as an assistant equities trader; S.B. Cantor & Co., Inc. August 2001 through November 2001, as an equities trader; and Sonic Technologies, LLC (now known as Evolution Financial Technologies, LLC) from May 2002 through November 2, 2006, 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 Aguilera on January 16, 2004 (the "review date").

A. Aguilera 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, Aguilera was employed as a proprietary trader at Sonic Technologies, LLC (now known as Evolution Financial Technologies, LLC) ("GESE").
2. On the review date, Aguilera knowingly and intentionally entered through GESE's proprietary trading account into Nasdaq's SuperMontage 13 odd-lot orders (of seven shares each) to buy a particular Nasdaq security (the "subject security") from a Nasdaq market maker (the "market maker") that was utilizing an automated system to maintain a specific spread between its bid and offer for the subject security.

3. Aguilera entered these seven-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 of these orders. After each of Aguilera's seven-share orders was executed, the size of the market maker's quote decremented to an odd lot of 93 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 Aguilera's seven-share order.
4. When Aguilera entered his seven-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 Aguilera's seven-share buy order, thus providing him a more favorable quote in the subject security.
5. Accordingly, a short time after the QBBO changed, Aguilera 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 Aguilera's seven-share buy order.
6. The following is an example of Aguilera's conduct. On January 16, 2004 at 9:44:32, the QBBO on Nasdaq for Perry Ellis International ("PERY") was \$23.79 (bid) and \$24.49 (offer) and the market maker was the only market participant quoting the best offer of \$24.49. At 9:44:33, Aguilera entered a seven-share "immediate-or-cancel" buy order for PERY into Nasdaq's SuperMontage system, which was delivered to the market maker's inside offer and executed at \$24.49. Once the size of the market maker's offer was decremented to 93 shares, the market maker's offer was immediately updated to a higher price of \$24.99 and its bid was likewise increased to \$24.29, in order to maintain the pre-programmed spread between the market maker's bid and offer. The QBBO for PERY then became \$24.29 (bid) and \$24.50 (offer), with the market maker quoting alone at the new inside bid.
7. Within a second of receiving the execution on his seven-share order, at 9:44:34, Aguilera entered a 314-share sell order for PERY into Nasdaq's SuperMontage system priced at \$24.251, which was delivered to the market maker's inside bid of \$24.29. The market maker executed 100 shares of Aguilera's 314-share sell order.

at \$24.29, a price that was 50 cents higher than the previous inside bid of \$23.79. This execution resulted in an advantageous price gain to Aguilera of \$46.50.¹ Furthermore, the market maker lost a total of \$50.00 on the 100-share trade.² At 9:44:35, the QBBO for PERY changed to \$23.50 (bid) and 24.50 (offer).

8. By knowingly and intentionally engaging in this course of conduct, Aguilera was able, on behalf of his proprietary account at GESE, to sell shares of the subject security at prices that were higher than Aguilera would otherwise have been able to obtain, but for his entry and the execution of his seven-share buy orders.
9. In total, Aguilera bought and sold the subject security, in the manner described in paragraphs one through eight above, in 18 instances, thereby resulting in a total advantageous price gain of \$837.00 and a total loss to the market maker of \$900.00. (See Exhibit A attached hereto and incorporated by reference herein.)
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. Aguilera 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 two months, a \$15,000 fine to be due and payable upon re-association with a member firm following the two-month suspension, and restitution by Respondent to the market maker alluded to in Exhibit A in the total amount of \$900.00, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this Letter of Acceptance, Waiver and Consent is accepted by the National Adjudicatory Council. The Respondent shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST

¹ The advantageous price gain is derived from the dollar difference between the price at which Aguilera actually received an execution and the price at which he would have received an execution had the QBBO not been altered, thus 93 shares at a savings of 50 cents each for a total of \$46.50.

² The loss to the market maker is derived from the 50-cent difference between the market maker's bid prior to the seven-share execution (\$23.79) and the market maker's bid resulting from the seven-share execution (24.29), multiplied by the number of shares (100), thus 100 shares at 50 cents each for a total of \$50.00.

AVENUE, ROCKVILLE, MD 20850 no later than 120 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate the market maker after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the market maker was located.

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.

11-7-06
Date

Date _____

Enrique Aguilera, Respondent

Reviewed by:

Counsel for Respondent

Accepted by NASD

Date 12-11-06

Date _____

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

**Enrique Aguilera's Advantageous Price Gains
Sonic Technologies LLC (GESE)
20050000291/MRD200339976**

Exhibit A

No.	Trade Date	MPID	SECID	Report Time	Disposition Time	Disposition	B/S	Volume	Price	Contra Party	APG	MM Loss
1	01/16/04	GESE	PERY	9:33:37	9:33:37	Executed	B	7	24.7	MM1		
2	01/16/04	GESE	PERY	9:33:39	9:33:39	Executed	S	100	24.5	MM1	46.5	50
3	01/16/04	GESE	PERY	9:33:48	9:33:48	Executed	B	7	24.7	MM1		
4	01/16/04	GESE	PERY	9:33:49	9:33:49	Executed	S	100	24.5	MM1	46.5	50
5	01/16/04	GESE	PERY	9:33:53	9:33:53	Executed	B	7	24.7	MM1		
6	01/16/04	GESE	PERY	9:33:54	9:33:54	Executed	S	100	24.5	MM1	46.5	50
7	01/16/04	GESE	PERY	9:33:58	9:33:58	Executed	B	7	24.7	MM1		
8	01/16/04	GESE	PERY	9:33:59	9:33:59	Executed	S	100	24.5	MM1	46.5	50
9	01/16/04	GESE	PERY	9:34:02	9:34:02	Executed	B	7	24.7	MM1		
10	01/16/04	GESE	PERY	9:34:03	9:34:03	Executed	S	100	24.5	MM1	46.5	50
11	01/16/04	GESE	PERY	9:34:06	9:34:06	Executed	B	7	24.7	MM1		
12	01/16/04	GESE	PERY	9:34:07	9:34:07	Executed	S	100	24.5	MM1	46.5	50
13	01/16/04	GESE	PERY	9:34:19	9:34:19	Executed	B	7	24.7	MM1		
14	01/16/04	GESE	PERY	9:34:20	9:34:20	Executed	S	100	24.5	MM1	46.5	50
15	01/16/04	GESE	PERY	9:34:24	9:34:24	Executed	B	7	24.7	MM1		
16	01/16/04	GESE	PERY	9:34:25	9:34:25	Executed	S	100	24.5	MM1	46.5	50
17	01/16/04	GESE	PERY	9:34:31	9:34:31	Executed	B	7	24.7	MM1		
18	01/16/04	GESE	PERY	9:34:32	9:34:32	Executed	S	27	24.5	MM1		
19	01/16/04	GESE	PERY	9:34:40	9:34:40	Executed	B	7	24.7	MM1		
20	01/16/04	GESE	PERY	9:34:41	9:34:41	Executed	S	100	24.5	MM1	46.5	50
21	01/16/04	GESE	PERY	9:34:47	9:34:47	Executed	B	7	24.7	MM1		
22	01/16/04	GESE	PERY	9:34:48	9:34:48	Executed	S	42	24.5	MM1		
23	01/16/04	GESE	PERY	9:36:22	9:36:22	Executed	B	7	24.49	MM1		
24	01/16/04	GESE	PERY	9:36:23	9:36:23	Executed	S	28	24.29	MM1		
25	01/16/04	GESE	PERY	9:44:31	9:44:31	Executed	B	7	24.49	MM1		
26	01/16/04	GESE	PERY	9:44:32	9:44:32	Executed	S	100	24.29	MM1	46.5	50
27	01/16/04	GESE	PERY	9:44:33	9:44:33	Executed	B	7	24.49	MM1		
28	01/16/04	GESE	PERY	9:44:35	9:44:34	Executed	S	100	24.29	MM1	46.5	50
29	01/16/04	GESE	PERY	9:44:36	9:44:36	Executed	B	7	24.49	MM1		
30	01/16/04	GESE	PERY	9:44:37	9:44:37	Executed	S	100	24.29	MM1	46.5	50
31	01/16/04	GESE	PERY	9:44:38	9:44:38	Executed	B	7	24.49	MM1		
32	01/16/04	GESE	PERY	9:44:39	9:44:39	Executed	S	100	24.29	MM1	46.5	50
33	01/16/04	GESE	PERY	9:44:43	9:44:43	Executed	B	7	24.49	MM1		
34	01/16/04	GESE	PERY	9:44:44	9:44:44	Executed	S	14	24.29	MM1		
35	01/16/04	GESE	PERY	9:45:10	9:45:10	Executed	B	7	24.49	MM1		
36	01/16/04	GESE	PERY	9:45:11	9:45:11	Executed	S	100	24.29	MM1	46.5	50
37	01/16/04	GESE	PERY	9:45:12	9:45:12	Executed	B	7	24.49	MM1		
38	01/16/04	GESE	PERY	9:45:14	9:45:13	Executed	S	100	24.29	MM1	46.5	50
39	01/16/04	GESE	PERY	9:45:14	9:45:14	Executed	B	7	24.49	MM1		
40	01/16/04	GESE	PERY	9:45:15	9:45:15	Executed	S	100	24.29	MM1	46.5	50
41	01/16/04	GESE	PERY	9:45:16	9:45:16	Executed	B	7	24.49	MM1		
42	01/16/04	GESE	PERY	9:45:17	9:45:17	Executed	S	100	24.29	MM1	46.5	50
43	01/16/04	GESE	PERY	9:45:18	9:45:18	Executed	B	7	24.49	MM1		
44	01/16/04	GESE	PERY	9:45:19	9:45:19	Executed	S	100	24.29	MM1	46.5	50
45	01/16/04	GESE	PERY	9:45:21	9:45:21	Executed	B	7	24.49	MM1		
46	01/16/04	GESE	PERY	9:45:23	9:45:23	Executed	S	35	24.29	MM1		
									Total		837	900