

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**20050000523-02**

**TO:** Department of Market Regulation  
NASD

**RE:** **Trillium Trading LLC**, Respondent  
Broker-Dealer  
CRD No. 120064

**Cary S. Grill**, Respondent  
Registered Representative  
CRD No. 2480195

**David B. Lazarus**, Respondent  
Registered Representative  
CRD No. 2738374, and

**David E. Schwarz**, Respondent  
Registered Representative  
CRD No. 4395610

Pursuant to Rule 9216 of NASD Code of Procedure, Trillium Trading LLC (the "firm" or "TRIL"), Cary S. Grill ("Grill"), David B. Lazarus ("Lazarus"), and David E. Schwarz ("Schwarz") (collectively, the "Respondents") 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 TRIL, Grill, Lazarus or Schwarz alleging violations based on the same factual findings.

TRIL, Grill, Lazarus and Schwarz 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 the Respondents; and

## 3. If accepted:

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

The Respondents also understand that their 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:

TRIL has been a member of NASD since October 30, 2002 and its registration remains in effect. The firm has no relevant disciplinary history.

Grill entered the securities industry in August 1993. During the period relevant to this matter, Grill was registered with TRIL, and he is currently registered with TRIL. Grill has no relevant disciplinary history.

Lazarus entered the securities industry in April 1996. During the period relevant to this matter, Lazarus was registered with TRIL, and he is currently registered with TRIL. On August 10, 2005, Lazarus was fined \$30,000, suspended for 42 days from associating with any member firm in any capacity, and ordered to pay restitution for violations of NASD Conduct Rules 2110, 2120, 3310, and IM-3310, as well as Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder.

Schwarz entered the securities industry in April 2001. During the period relevant to this matter, Schwarz was registered with TRIL, and he is currently registered with TRIL. Schwarz has no relevant disciplinary history.

**I.****WAIVER OF PROCEDURAL RIGHTS**

The Respondents 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 them;
- 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 Respondents 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.

The Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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 20050000523, staff of NASD's Department of Market Regulation ("staff") investigated quotation and trading activity in the Nasdaq Stock Market's Modified Opening Process ("MOP") during the period October 18, 2004 through October 27, 2004 ("review period").

- A. TRIL 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 October 18, 2004, in response to industry demand for improvements to the pre-market trading session, Nasdaq phased in Opening Enhancements to SuperMontage, including the MOP. Nasdaq modified the pre-opening trading environment for all Nasdaq-listed stocks to improve price discovery and to minimize the creation and duration of locked and crossed markets leading into the open of the normal trading day.
2. Nasdaq created a new order type for Nasdaq-listed securities, the Extended Hours Day Order ("X Order"). Members were able to enter X Orders beginning at 7:30 a.m. on either an attributable or a non-attributable basis, using the SIZE Market Participant Identifier ("MPID") for non-attributable orders. X Orders were available for execution beginning at 9:25 a.m. and continuing until the end of the trading day. If not executed by that time, X Orders were cancelled automatically from the system and returned to the entering party.
3. To preserve and enhance the price discovery process that occurred prior to the market open, Nasdaq implemented the MOP and opened all quotes and pre-opening eligible orders at 9:25 a.m., making those quotes and orders available for execution.
4. All quotes and limit price X Orders were awakened at 9:25 a.m. Any order or quote whose limit price did not lock or cross the book was added to the book in strict time priority. Orders or quotes whose limit prices locked or crossed the book were placed in an "In Queue" state, also in time priority. Upon completion of the wake-up process, within seconds after 9:25 a.m., the Nasdaq Market Center began executing quotes and X Orders that were held In Queue in strict time priority. X orders that were not executable, and In Queue quotes and orders that are not executable, were added to the book. Once this process was complete, the system resumed processing the input queue of quotes and X Orders as needed to maintain an unlocked market.
5. Firms had three options for determining the price at which their carryover quotes were opened at 9:25 a.m.: (1) the last quotation price entered during the previous day; (2) the last quotation price the firm entered after 7:30 a.m. and before 9:25 a.m.; or (3) the quote limits for Nasdaq, which at the time were \$ .01 (bid) and \$ 2,000 (ask). During the review period, many Nasdaq participants programmed their quotation management systems to select the first option, carrying over the final quotation entered during the previous trading day.
6. During the review period, eight of TRIL's proprietary traders ("Trillium traders"), including Grill, Lazarus and Schwarz, posted quotations anonymously in the MOP that were published to the marketplace as Nasdaq's inside quotations by submitting X Orders using the SIZE MPID.

7. The eight Trillium traders knowingly and intentionally posted both a bid price and an asked price for the same security. The X Orders were submitted as soon after 7:30 a.m. as possible.
8. The eight Trillium traders knowingly and intentionally posted a bid price that was higher than the asked price in the same security.
9. When the eight Trillium traders posted both quotations, they did not intend to both buy at the posted bid price and sell at the posted asked price.
10. Rather, the eight Trillium traders intended to monitor the momentum of the securities during the pre-open market and cancel one of the orders prior to 9:25 a.m., either the bid or the offer, that they believed would not be likely to get a favorable execution at 9:25 a.m. In some instances, the Trillium traders cancelled both the bid and the offer prior to 9:25 a.m. when neither the bid nor the offer would provide a particularly beneficial execution. The traders' objective was to gain a favorable execution by trading with Nasdaq market makers who left posted the last quotation prices that they had entered the previous day, and their "stale" quotations no longer reflected the current price for the security.
11. The eight Trillium traders published X Orders that purported to quote a bid price and an asked price for such securities without believing that both quotations represented bona fide bids and offers for such securities.
12. The conduct described in paragraphs one through 11 constitutes separate and distinct violations of NASD Conduct Rules 2110, 3310 and IM-3310.
13. During the review period, TRIL failed to supervise adequately the quotation and trading activity of its Trillium traders during the MOP. TRIL failed to delegate to its supervisors the responsibility to review the orders placed by Trillium traders, and as a result, TRIL failed to detect the Trillium traders' quotation practices during the MOP.
14. During the review period, TRIL'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 compliance with NASD Rule 3310 and IM-3310. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the review of orders entered by Trillium traders: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures

should be documented. Instead, TRIL relied solely on the proprietary electronic order entry system's Order Checker to ensure that TRIL's orders complied with NASD rules and the federal securities laws and regulations.

15. The conduct described in paragraphs 13 and 14 constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

B. Grill 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. The facts set forth in paragraphs A.1. through A.5. are incorporated herein by reference.
2. During the review period, Grill posted quotations anonymously in the MOP, by submitting X Orders using the SIZE MPID. Some of the posted quotations were published during the MOP to the marketplace as Nasdaq's inside quotations.
3. Grill knowingly and intentionally posted both a bid and an offer for the same security as soon after 7:30 a.m. as possible. Grill knowingly and intentionally entered a bid that was priced higher than the offer in the same security. While Grill posted both quotations when the MOP opened, he did not intend to both buy at the posted bid and sell at the posted offer. Rather, Grill intended to monitor the momentum of the securities during the pre-open market and cancel one of the orders prior to 9:25 a.m., either the bid or the offer, that he believed would not be likely to get a favorable execution at 9:25 a.m. In some instances, Grill cancelled both the bid and the offer prior to 9:25 a.m., when neither the bid nor the offer would provide a particularly beneficial execution.
4. The conduct described in paragraphs one to three constitutes separate and distinct violations of NASD Conduct Rules 2110, 3310 and IM-3310.

C. Lazarus 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. The facts set forth in paragraphs A.1. through A.5. are incorporated herein by reference.

2. During the review period, Lazarus posted quotations anonymously in the MOP, by submitting X Orders using the SIZE MPID. Some of the posted quotations were published during the MOP to the marketplace as Nasdaq's inside quotations.
  3. Lazarus knowingly and intentionally posted both a bid and an offer for the same security as soon after 7:30 a.m. as possible. Lazarus knowingly and intentionally entered a bid that was priced higher than the offer in the same security. While Lazarus posted both quotations when the MOP opened, he did not intend to both buy at the posted bid and sell at the posted offer. Rather, Lazarus intended to monitor the momentum of the securities during the pre-open market and cancel one of the orders prior to 9:25 a.m., either the bid or the offer, that he believed would not be likely to get a favorable execution at 9:25 a.m. In some instances, Lazarus cancelled both the bid and the offer prior to 9:25 a.m., when neither the bid nor the offer would provide a particularly beneficial execution.
  4. The conduct described in paragraphs one to three constitutes separate and distinct violations of NASD Conduct Rules 2110, 3310 and IM-3310.
- D. Schwarz 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. The facts set forth in paragraphs A.1. through A.5. are incorporated herein by reference.
  2. During the review period, Schwarz posted quotations anonymously in the MOP, by submitting X Orders using the SIZE MPID. Some of the posted quotations were published during the MOP to the marketplace as Nasdaq's inside quotations.
  3. Schwarz knowingly and intentionally posted both a bid and an offer for the same security as soon after 7:30 a.m. as possible. Schwarz knowingly and intentionally entered a bid that was priced higher than the offer in the same security. While Schwarz posted both quotations when the MOP opened, he did not intend to both buy at the posted bid and sell at the posted offer. Rather, Schwarz intended to monitor the momentum of the securities during the pre-open market and cancel one of the orders prior to 9:25 a.m., either the bid or the offer, that he believed would not be likely to get a favorable execution at 9:25 a.m. In some instances, Schwarz cancelled both the bid and the offer prior to 9:25 a.m., when neither the bid nor the offer would provide a particularly beneficial execution.

4. The conduct described in paragraphs one to three constitutes separate and distinct violations of NASD Conduct Rules 2110, 3310 and IM-3310.
- E. The Respondents also consent to the imposition, at a maximum, of the following sanctions:
1. Respondent TRIL is censured, and fined \$225,000 (\$50,000 for the quotation practices and \$175,000 for supervision).
  2. Respondent TRIL is jointly and severally liable for the respective fines of Respondents Grill, Lazarus and Schwarz, as described in paragraphs II. E. 4 through 6.
  3. Respondent TRIL consents to an undertaking to revise the firm's supervisory procedures with respect to the deficiencies described in paragraphs II. A. 13 and 14.

Within 60 business days of acceptance of this AWC by the NAC, a registered principal of the firm 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 supervisory procedures to address the deficiencies described in paragraphs II. A. 13 and 14; and (3) the date the revised procedures were implemented.

4. Respondent Grill consents to a \$10,000 fine, jointly and severally with Respondent TRIL, and a suspension for a period of one month from association with any member firm in all capacities, except that Respondent Grill is permitted to work in the Human Resources Department of Respondent TRIL during the period of his suspension.
5. Respondent Lazarus consents to a \$10,000 fine, jointly and severally with Respondent TRIL, and a suspension for a period of two months from association with any member firm in all capacities.
6. Respondent Schwarz consents to a \$10,000 fine, jointly and severally with Respondent TRIL, and a suspension for a period of one month from association with any member firm in all capacities.

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

**III.****OTHER MATTERS**

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree 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 they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondents Grill, Lazarus and Schwarz understand that if they are barred or suspended from associating with any NASD member, they 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, they may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension, except as noted herein. (See NASD Rule 8310 and IM-8310-1.)

Respondents certify that they 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 the Respondents to submit it.

Date: 03/20/06

Trillium Trading LLC, Respondent

By: [Signature]  
Name: Rosemarie Johnson  
Title: Chief Operating Officer

Date: \_\_\_\_\_

Cary S. Grill, Respondent

Date: \_\_\_\_\_

David B. Lazarus, Respondent

Date: \_\_\_\_\_

David E. Schwarz, Respondent

Reviewed by:

[Signature]  
Counsel for Respondents

Accepted by NASD:

6/15/06  
Date

Th R Gira  
Thomas R. Gira  
Executive Vice President and Deputy  
Department of Market Regulation

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

Respondents certify that they 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 the Respondents to submit it.

Trillium Trading LLC, Respondent

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Cary S. Grill, Respondent

Date: \_\_\_\_\_

David B. Lazarus, Respondent

Date: 3/16/06

David E. Schwarz  
David E. Schwarz, Respondent

Reviewed by: [Signature]  
Counsel for Respondents

Accepted by NASD:

6/15/06  
[Signature]  
Date

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

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

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Trillium Trading LLC, Respondent

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Cary S. Grill, Respondent

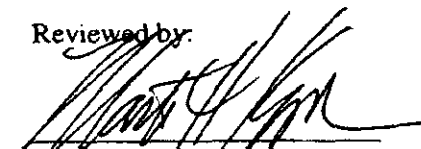
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David B. Lazarus, Respondent

Date: \_\_\_\_\_

David E. Schwarz, Respondent

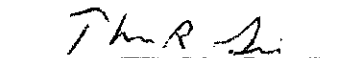
Reviewed by:

  
Counsel for Respondents

Accepted by NASD:

Date

6/15/06

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

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

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Trillium Trading LLC, Respondent

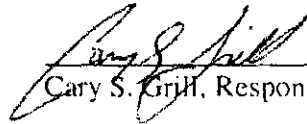
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Title: \_\_\_\_\_

Date: 04/05/06

  
Cary S. Grill, Respondent

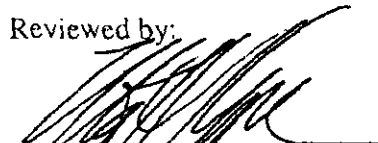
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David B. Lazarus, Respondent

Date: \_\_\_\_\_

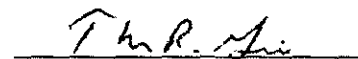
\_\_\_\_\_  
David E. Schwarz, Respondent

Reviewed by:

  
Counsel for Respondents

Accepted by NASD:

6/15/06  
Date

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

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