

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050000667-01

TO: Department of Market Regulation
NASD

RE: Empire Financial Group, Inc., Respondent
Broker-Dealer
CRD No. 28759

Pursuant to Rule 9216 of NASD Code of Procedure, Empire Financial Group, Inc. ("EFGI" or "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 Market Regulation Department 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 allegation 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:

EFGI has been an NASD member since October 25, 1991 and its registration remains in effect. EFGI has no relevant 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 it;
- 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, 20050000667 (formerly, MRD200446476) conducted by the staff of NASD's Department of Market Regulation (the "staff") of the firm's compliance with the best execution rule, NASD Conduct Rule 2320, during the period January 1, 2004 to March 31, 2004.

- A. The firm 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. In 19 transactions for or with a customer, EFGI failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, as reflected on Exhibit A, which is attached hereto.
 2. The conduct described in paragraph one, above, constitutes separate and distinct violations of NASD Rules 2110 and 2320.
 3. In two instances EFGI sold, and in one instance bought, an eligible security for its own account while it held an unexecuted market order for such security.
 4. In two instances EFGI bought, and in one instance sold, an eligible security for its own account while it held an unexecuted limit order for such security.

5. The conduct described in paragraphs three and four, above, constitutes separate and distinct violations of NASD Marketplace Rules 6440(f)(1) and (2), respectively.

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

A censure, a fine of \$15,000 (consisting of a \$10,000 fine for the best execution violations and a \$5,000 fine for the violations of Rule 6440), and an undertaking to provide restitution to the investors listed on Exhibits A and B hereto in the total amount of \$192.53, 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. A registered principal of the firm 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 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 any customer 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 customer last resided.

The sanction 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 it proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter

The firm 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 the firm to submit it.

JAN 3, 2006
Date

Respondent
Empire Financial Group, Inc.

By: Robert Gaeta
Name: ROBERT GAETA
Title: ASST. CHIEF COMPLIANCE OFFICER

Reviewed by:

Counsel for Respondent

Accepted by NASD:

2/6/06
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

AWC Incident No.	Wells Incident No.	Date	MPID	B/S/ X	Volume	SECID	Price	Contra ID	Report Time	Execution Time	Modifier	Inside Bid or Ask at Execution	Correct Price*	No. of Shares Requiring Restitution	Restitution
1	1	1/17/2004	EPGI	B	500	SGI	1.83		9:50:48	9:50:47		1.85	1.85	500	10.00
2	2	1/12/2004	EPGI	S	400	LU	3.88		15:56:02	15:56:02		3.87	3.87	400	4.00
6	6	1/20/2004	EPGI	S	200	LU	4.84		9:33:37	9:33:37		4.83	4.83	200	2.00
7	7	1/20/2004	EPGI	S	100	LU	4.84		9:33:48	9:33:48		4.83	4.83	100	1.00
8	8	1/20/2004	EPGI	S	100	GM	54.49		9:35:23	9:35:23		54.46	54.46	100	3.00
9	9	1/20/2004	EPGI	S	500	CKC	8.01		10:34:07	10:34:07		8.00	8.00	500	5.00
10	10	1/20/2004	EPGI	S	100	ET	15.25		15:56:20	15:56:20		15.24	15.24	100	1.00
11	11	1/21/2004	EPGI	S	300	NOK	20.43		10:46:14	10:46:13		20.42	20.42	300	3.00
12	12	1/21/2004	EPGI	S	500	ELX	29.33		13:52:23	13:52:23		29.31	29.31	500	10.00
13	13	1/22/2004	EPGI	S	1000	LU	4.2		9:43:19	9:43:18		4.18	4.18**	1000	10.00
14	14	1/23/2004	EPGI	B	163	T	19.75		11:43:51	11:43:50		19.76	19.76	163	1.63
15	15	1/27/2004	EPGI	B	1000	LU	4.56		9:32:15	9:32:14		4.56	4.57**	1000	10.00
16	16	2/9/2004	EPGI	S	500	RCG	1.75		13:12:40	13:12:39		1.74	1.74	500	5.00
17	17	2/9/2004	EPGI	S	200	PCS	9.39		9:32:36	9:32:35		9.37	9.37	200	4.00
18	18	2/12/2004	EPGI	B	1000	SGI	4		9:58:50	9:58:49		4.02	4.02	1000	20.00
19	19	2/12/2004	EPGI	S	2020	ET	14.96		12:08:13	12:08:12		14.95	14.95	2020	20.20
20	20	2/12/2004	EPGI	S	800	ET	14.96		12:08:51	12:08:51		14.95	14.95	800	8.00
21	21	2/18/2004	EPGI	S	110	QQQ	37		17:18:11	17:18:10	T	36.97	36.97	110	3.30
22	22	2/23/2004	EPGI	B	1000	LU	4.06		14:39:19	14:39:19		4.10	4.10	1000	10.00
23	23	3/2/2004	EPGI	S	100	UMC	5.78		9:45:10	9:45:10		5.77	5.77	100	1.00
24	24	3/9/2004	EPGI	B	1000	PMJ	1.21		15:31:27	15:31:27		1.22	1.22	1000	10.00
25	25	3/18/2004	EPGI	S	100	AXJ	7.09		9:41:40	9:41:39		7.08	7.08	100	3.00
* Unless otherwise noted, the price represents the best bid or ask during the reasonable duration of time at and around the time of execution.														Total Restitution = \$146.13	
** Denotes the second best bid or ask.															

AWC Incident No.	Wells Incident No.	Date	MPID	B/S/ X	Volume	SECID	Price	Contra ID	Report Time	Execution Time	Modifier	Correct Price*	No. of Shares Requiring Restitution	Restitution
3	3	1/14/2004	EFGI	B	310	ET	13.9		9:35:12	9:35:12		13.95	100	5.00
												13.94**	210	8.40
4	4	1/16/2004	EFGI	S	1000	LU	4.8		9:34:19	9:34:19		4.78	1000	20.00
5	5	1/16/2004	EFGI	B	1400	NOK	20.9		15:38:19	15:38:19		20.91	1400	14.00
9	9	1/20/2004	EFGI	S	500	CKC	6.01		10:34:07	10:34:07		6.00	500	5.00
11	11	1/21/2004	EFGI	S	300	NOK	20.43		10:46:14	10:46:13		20.42	300	3.00
14	14	1/23/2004	EFGI	B	163	T	19.75		11:43:51	11:43:50		19.76	163	1.63
* Unless otherwise noted, the price represents the best bid or ask during the reasonable duration of time at and around the time of execution.														
** Denotes the second best bid or ask.														
													Total Restitution =	\$57.03