

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050001158-01

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: **Empire Financial Group, Inc.**, Respondent
Broker/Dealer
CRD Number 28759

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Empire Financial Group, Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Empire Financial Group, Inc. has been a member of the Financial Industry Regulatory Authority ("FINRA"), formerly known as NASD, since October of 1991, and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On February 6, 2006, an AWC became final in which the firm was censured, fined \$15,000, and agreed to pay restitution of \$192.53 plus interest for violations of NASD Rules 2110, 2320, and 6440.

On October 31, 2005, an AWC became final in which the firm was censured and fined \$7,500 for violations of NASD Rules 2110, 3010, and 6130(d).

On October 31, 2005, an AWC became final in which the firm was censured and fined \$25,000 for violations of NASD Rules 2110, 3010, and 6955(a).

20050001158 (incl. 20050004894; 20050023265; 20050026537; 20060064969; 20060065703; and 20060067603)
(TN)

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On July 7, 2005, an AWC became final in which the firm was censured and fined \$20,000 for violations of NASD Rules 2110, 3010, and 6620(a).

On December 31, 2004, an AWC become final in which the firm was censured and fined \$9,000 for violations of NASD Rules 2110 and 6620(a).

SUMMARY

The staff of the Department of Market Regulation conducted the following reviews:

- 20050001158, a review of the firm's compliance with SEC Rule 604 for the period April 1, 2004 through September 30, 2004;
- 20050004894, a review of the firm's compliance with NASD's Trade Reporting rules during the period September 1, 2004 through December 31, 2004;
- 20050023265, a review of the firm's compliance with SEC Rule 604 for the period April 1, 2005 through June 30, 2005;
- The 2005 Trading and Market Making Surveillance ("TMMS") Examination of the firm, 20050026537, a review of the items set forth on Exhibit #1;
- 20060049871, a review of the firm's compliance with SEC Rule 604 for the period January 1, 2006 through February 28, 2006;
- 20060064969 and 20060065703, reviews of the firm's compliance with NASD's Trade Reporting rules during the period May 1, 2006 through August 31, 2006; and
- The 2006 TMMS Examination, 20060067603, a review of the items set forth on Exhibit #2.

FACTS AND VIOLATIVE CONDUCT

20050001158

1. On 109 occasions during the period of April 1, 2004 through September 30, 2004, the firm failed to display immediately 93 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The conduct

described in this paragraph constitutes separate and distinct violations of SEC Rule 604 of Regulation NMS.

2. The firm'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 SEC Rule 604. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the 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. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050004894

3. The firm failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 3,580 last sale reports of transactions in OTC Equity securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
4. The firm failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 188 last sale reports of transactions in OTC Equity securities and failed to designate to the OTC Reporting Facility such last sale reports as late. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
5. The firm'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 trade reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the 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. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050023265

6. On 37 occasions during the period of April 1, 2005 through June 30, 2005, the firm failed to display immediately 37 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 604 of Regulation NMS.

20050026537

7. In 25 transactions for or with a customer, the firm 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 3, which is attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2320.
8. The firm executed 18 short sale orders and failed to properly mark the orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
9. The firm failed on 43 occasions to provide written notification disclosing to its customer its correct capacity in the transaction. In addition, the firm, on 22 occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

20060049871

10. On 83 occasions during the period of January 1, 2006 through March 31, 2006, the firm failed to display immediately 62 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 604 of Regulation NMS.

20060064969

11. The firm failed, within 90 seconds after execution, to transmit to Nasdaq 105 last sale reports of transactions in eligible securities. These transactions constitute more than five percent of the transactions reviewed that the firm was required to report to Nasdaq during the review period. The conduct described in this paragraph constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.

20060065703

12. The firm failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 149 last sale reports of transactions in OTC Equity securities. These transactions constitute approximately four percent of the transactions reviewed that the firm was required to report to the OTC Reporting Facility during the review period. The conduct described in this paragraph constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.

20060067603

13. The firm failed to report to the appropriate trade reporting facility the correct symbol indicating whether the firm executed 29 transactions in Reportable Securities in a principal, riskless principal, or agency capacity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
14. The firm incorrectly designated as ".PRP" to the Nasdaq two last sale reports of transactions in eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6420(a)(8).
15. In six transactions for or with a customer, the firm 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 4, which is attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2320.
16. The firm, on 12 occasions when it acted as principal for its own account, disclosed its compensation as a commission instead of a commission equivalent. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

B. The firm also consents to the imposition of the following sanctions:

A censure, a fine of \$70,000, restitution by Respondent to the investors listed on Exhibits 3 and 4 hereto in the total amount of \$3,042.10, 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, and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs two and five.

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 paragraphs two and five ; and, (3) the date the revised procedures were implemented.

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 firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("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 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.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. 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 finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

Date 2/15/08

By: K O L

Title: Chief Operating Officer

Counsel for Respondent

3/5/08
Date

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**Empire Financial Group, Inc. ("EFGI")
MRE Examination Review Samples
20050026537**

NASD staff reviewed the following samples during the examination:

- Customer and Proprietary Sales -- Twenty (20) customer sale transactions and ninety-seven (97) proprietary sale transactions for trade dates 10/19/05 and 10/20/05 reviewed for compliance with NASD Rules 3350, 6130, and SEC Regulation SHO Rules 200(g) and 203.
- Customer Orders Review -- Eighty-six (86) customer orders for trade dates 10/19/05 and 10/20/05 reviewed for compliance with NASD Rules IM-2110-2, 2320, 3110, 4632 6130, 6541 and 6955.
- Crossing of Customer Market Orders or Marketable Limit Orders with Non-displayed Limit Orders -- Nine (9) limit orders that were open on trade dates 10/19/05 and 10/20/05.
- Disclosure of Order Execution Information -- Six (6) order type/size categories handled by the firm during the month of September 2005 reviewed for compliance with SEC Regulation NMS Rule 605.
- Disclosure of Order Routing Information -- Report on routing of customer orders for quarter ending September 2005 reviewed for compliance with SEC NMS Regulation NMS Rule 606.
- Written Supervisory Procedures (Including Procedures Related to the Regular and Rigorous Assessment of the Quality of Executions Received on Orders Sent to Other Members, ATSs, or Exchanges) in effect October 2005 reviewed for compliance with NASD Rule 3010.
- Registration of Trading Area Personnel reviewed for compliance with NASD Rules 1021 and 1031.
- OATS Reportable Events -- Sixty-two (62) orders received by the firm on trade dates 10/19/05 and 10/20/05 that were eligible for OATS reporting, reviewed for compliance with NASD Rule 6955.
- Cancelled Trades -- Twenty-five (25) cancelled executions from trade dates 10/19/05 and 10/20/05 were reviewed for compliance with NASD Rules 3110, 4632, 6130, 6420, 6620 and SEC Rule 17a-3.
- Order Handling Review -- Thirty-one (31) orders for trade dates 10/19/05 and 10/20/05 reviewed for compliance with NASD Rules 2320, 2440 and 6440.
- Customer Confirmations -- One hundred eighty two (182) customer confirmations for trade dates 10/19/05 and 10/20/05 reviewed for compliance with SEC Rule 10b-10.
- Firm's Overall Books and Records reviewed for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.

**Empire Financial Group, Inc. ("EFGI")
2006 TMMS Exam – Review Samples
20060067603**

Customer and Proprietary Sales – Eleven (11) customer sale transactions and twenty four (24) proprietary sale transactions for trade dates 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rules 3110, 3350, and 6130 and SEC Regulation SHO.

Order Protection – Eleven (11) limit orders and fifteen (15) market orders for trade dates 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rules 2110, 2111 and IM-2110-2.

Riskless Principal and Non-Riskless Principal Transaction Reporting – Seventy (70) orders for trade dates 09/19/06 and 09/20/2006 which resulted in the staff reviewing 113 trade reports, reviewed for compliance with NASD Rules 4632 and 6130.

Crossing Review – One (1) order for trade dates 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rule 2320.

Institutional Order Review – Thirteen (13) orders for trade dates 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rule 2320.

Cancelled Trades – Twenty four (24) cancelled executions on trade date 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rules 3110 and 6130 and SEC Rule 17a-3.

Prior Reference Price Trades – Four (4) trades for trade dates 09/19/2006 and 09/20/2006 reviewed for compliance with NASD Rules 4632 and 2320.

Disclosure of Order Execution Information – Five (5) order type/size categories and twenty-five (25) orders handled by the firm during the month of August 2006 reviewed for compliance with SEC Rule 605.

Disclosure of Order Routing Information – Report on routing of customer orders for quarter ending September 2006 reviewed for compliance with SEC Rule 606.

Written Supervisory Procedures (Including Procedures Related to the Regular and Rigorous Assessment of the Quality of Executions Received on Orders Sent to Other Members, ATSS, or Exchanges) in effect September 2006 reviewed for compliance with NASD Rule 3010.

Registration of Trading Area Personnel reviewed for compliance with NASD Rules 1021 and 1031.

OATS Reportable Events – Fifty (50) orders received by the firm on trade date 09/19/2006 & 09/19/2006 for OATS reporting, reviewed for compliance with NASD Rule 6955.

Execution of Orders in OTCBB and OTC Equity Securities – Ten (10) transactions for trade dates 09/19/06 and 09/20/06 reviewed for compliance with NASD Rules 2320 and 3110.

Firm's Overall Books and Records reviewed for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.

Empire Financial Group, Inc.
20050026537

<u>PEL Exh.</u>	<u>Item No.</u>	<u>Trade Date</u>	<u>Security</u>	<u>Qty.</u>	<u>Cust. Exec. Price</u>	<u>EFGI Exec. Price / NBBO</u>	<u>Restitution</u>
1	26	10/19/05	GILD	800	46.09	46.17	64.00
1	27	10/19/05	ADSK	1,545	42.36	42.39	46.35
1	38	10/20/05	GILD	1,300	45.18	45.09	117.00
1	62	10/19/05	SOLN	2,500	8.75	8.80	125.00
1	81	10/19/05	GSAC	5,000	0.22	0.224	20.00
1	83	10/19/05	GOOG	100	306.85	306.97	12.00
1	84	10/20/05	AGFL	5,000	1.26	1.25	50.00
2	1	10/19/05	AFNN	52,000	0.1	0.101192	62.00
2	2	10/19/05	AFNN	25,000	0.128	0.126	50.00
2	3	10/19/05	AFNN	100,000	0.0747	0.075	30.00
2	5	10/19/05	EPHM	135,000	0.065	0.062926	280.00
2	6	10/19/05	INQC	83,000	0.049	0.05	83.00
2	7	10/19/05	NHYF	8,000	0.04	0.05	80.00
2	9	10/19/05	NHYF	8,000	0.048	0.05	16.00
2	11	10/19/05	RKMB	18,600	0.0910	0.093656	49.40
2	15	10/19/05	SBAM	4,500	0.475	0.480	22.50
2	16	10/19/05	SFNH	3,000	2.31	2.29333	50.00
2	17	10/19/05	SFNH	10,500	2.235	2.25	157.50
2	21	10/20/05	AFNN	110,000	0.081	0.082727	190.00
2	23	10/20/05	EMTK	60,000	0.0118	0.012	12.00
2	24	10/20/05	GARS	10,000	0.185	0.182	30.00
2	26	10/20/05	QRVI	500,000	0.0017	0.0016	50.00
2	27	10/20/05	SBAM	5,600	0.395	0.40	28.00
2	28	10/20/05	SFNH	3,500	2.13	2.115714	50.00
2	30	10/20/05	CEG	5,100	50.72	50.87588	795.00

Total: \$2,469.75

Exhibit No. 4

Empire Financial Group, Inc.
20060067603

<u>PEL Exh.</u>	<u>Item No.</u>	<u>Trade Date</u>	<u>Security</u>	<u>Qty.</u>	<u>Cust. Exec. Price</u>	<u>EFGL Exec. Price / NBBO</u>	<u>Restitution</u>
4	4	09/19/06	GOOG	300	402	402.17	51.00
4	17	09/19/06	MRVL	2,500	20.825	20.82	46.35
4	19	09/19/06	GOOG	500	398.36	398.15	105.00
5	26	09/20/06	SECU	50,000	0.138	0.1351	145.00
5	28	09/20/06	TJSS	37,527	0.203	0.205	75.00
7	4	09/19/06	IPWG	15,000	0.60	0.61	150.00

Total: \$572.35