

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##**

20050001403-01

**TO: Department of Market Regulation
NASD**

**RE: William Blair & Company L.C.C., Respondent
Broker-Dealer
CRD No. 1252**

Pursuant to Rule 9216 of NASD Code of Procedure, William Blair & Company L.C.C. (the "firm" or "WBLR") 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 WBLR alleging violations based on the same factual findings.

WBLR 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 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 WBLR; and
3. If accepted:
 - a. this AWC will become part of WBLR's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against WBLR;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about WBLR'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. WBLR may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise,

20050001403 (incl. 20050002524 and 20050009075) (lc)

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 WBLR's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

WBLR 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:

The firm has been a member of NASD since March 7, 1944 and its registration remains in effect. On May 5, 2005, an AWC became final in which WBLR was censured and fined \$15,000 for violations of SEC Rule 11Ac1-4 (the "Limit Order Display Rule," now SEC Rule 604 of Regulation NMS), NASD Marketplace Rule 6955 regarding the Order Audit Trail System ("OATS"), and NASD Membership and Registration Rule 1032(f).

I.

WAIVER OF PROCEDURAL RIGHTS

WBLR 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, WBLR 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.

WBLR 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.

II.

ACCEPTANCE AND CONSENT

In 20050001403 (formerly MRD200446028), the staff of NASD's Department of Market Regulation ("staff") reviewed WBLR's compliance with the Limit Order Display Rule during the period January 2, 2004 through March 31, 2004.

In 20050002524 (formerly MRD200445292), the staff conducted the 2004 Trading and Market Making Surveillance ("TMMS") Examination of the firm. The staff reviewed the following items:¹

- 25 customer sell transactions, for compliance with NASD Rules 3110 and 3370;
- 25 proprietary sale transactions, for compliance with NASD Rule 3370;
- 25 customer sale transactions in Nasdaq National Market ("NNM") securities, for compliance with NASD Rule 6130;
- Eight short sale transactions in NNM securities, for compliance with NASD Rule 3350;
- Two customer sale transactions in Consolidated Quotations Service ("CQS") securities, for compliance with SEC Rule 10a-1 (tick test);
- 25 limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rules 11Ac1-1 (now known as SEC Rule 602) and 11Ac1-4 (now known as SEC Rule 604);
- Three "non-displayed" limit orders and applicable marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320;
- 22 limit and market orders and 55 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and Automated Confirmation Transaction Service ("ACT") rules;
- Seven orders for Nasdaq securities in soft dollar accounts, for compliance with trade reporting rules and the safe harbor limitations of SEC Section 28(e);
- 25 orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5 (now known as SEC Rule 605);
- Four security/size/order data statistics regarding 12 orders published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5 (now known as SEC Rule 605);
- data published on the firm's quarterly order routing report for the quarter ended September 30, 2004, for compliance with SEC Rule 11Ac1-6 (now known as SEC Rule 606);

¹ Unless otherwise noted, all items reviewed are from trade dates February 17 and 18, 2004.

- 50 orders in NNM or SmallCap ("SC") securities submitted to OATS, for compliance with NASD Rule 6955;
- Nine orders in OTC Bulletin Board ("OTCBB") and over-the-counter ("OTC") equity securities, for compliance with NASD Rules 3110(b) and 2320;
- Ten persons engaged in the firm's trading and market making activities from trading staff in February 2004, for compliance with NASD registration rules;
- 192 order/trade records prepared and maintained in connection with the above samples from various trades dated February 2004, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 718 trades reported to ACT or the Trade Reporting and Comparison Service ("TRACS") in connection with the above samples for various trades dated during February 2004, for general compliance with NASD trade reporting and ACT rules;
- 34 customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10;
- The firm's establishment and implementation of "regular and rigorous" reviews of the execution quality of orders sent to other market centers and internalized, based on written supervisory procedures in effect during February 2004, for compliance with NASD Rules 2320 and 3010; and
- the firm's establishment and implementation of a supervisory system and written supervisory procedures, based on written supervisory procedures in effect during February 2004, for compliance with NASD Rule 3010.

In 20050009075, the staff reviewed WBLR's compliance with the Limit Order Display Rule during the period October 1, 2004 through December 30, 2004.

- A. WBLR 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:

20050001403 – Limit Order Display Rule (1Q04)

1. During the review period, WBLR transmitted to OATS 85 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained incorrect protected limit order price, the incorrect order route timestamp, or incorrect cancellation time. These inaccurate and/or incomplete reports represented 85 percent of sampled reports transmitted by the firm during the review period.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
3. 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 (formerly SEC Rule 11Ac1-4). Specifically, firm relied on an automated

system to ensure compliance with SEC Rule 604, but the firm failed to conduct independent reviews of limit orders to ensure that the automated compliance system was working as intended.

4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050002524 – 2004 TMMS Examination

5. During the review period, WBLR transmitted to OATS 13 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained incorrect order route times. These inaccurate and/or incomplete reports represented 26 percent of sampled reports transmitted by the firm during the review period.
6. During the review period, WBLR failed to submit required information to OATS regarding one order.
7. The conduct described in paragraphs five and six constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20050009075 – Limit Order Display Rule (4Q04)

8. On 18 occasions during the review period, WBLR failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved WBLR's bid or offer in each such security; or when the order was priced equal to WBLR'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 WBLR's bid or offer in each such security.
9. The conduct described in paragraph eight constitutes separate and distinct violations of SEC Rule 604.
10. During the review period, WBLR transmitted to OATS 77 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, in 53 instances, WBLR failed to submit a Route Report to OATS; and in 24 instances, WBLR failed to report the correct price to OATS. These inaccurate and/or incomplete reports represented 77 percent of sampled reports transmitted by the firm during the review period.
11. The conduct described in paragraph ten constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

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

A censure and a fine of \$25,000.

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

III.**OTHER MATTERS**

- A. WBLR 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. WBLR 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. WBLR 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. WBLR specifically and voluntarily waives any right to claim that WBLR is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

WBLR certifies that it has read and understands 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 WBLR to submit it.

Date: 1-8-07

William Blair & Company L.C.C.

By:

Kenneth L. Wagner

Name:

Kenneth L. Wagner

Title:

Chief Compliance Officer

Reviewed by:

[Signature]

Counsel for Respondent

Accepted by NASD:

2/15/07
Date

Thomas R. Gira

Thomas R. Gira
Executive Vice President
Department of Market Regulation

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