

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

20050001666-01

**TO:** Department of Market Regulation  
NASD

**RE:** DebtTraders, Inc., Respondent  
Broker Dealer  
CRD 102120

Pursuant to Rule 9216 of NASD Code of Procedure, DebtTraders, Inc. (the "DEBT" or the "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 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 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 any of the firm's disciplinary records;
  - 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:

*The firm became a member of NASD on May 12, 2000. The firm filed a Form BDW with NASD on July 5, 2005. Upon information and belief based upon discussions between counsel for the firm and NASD, the firm has no prior disciplinary history. The firm ceased operations as of July 31, 2005, and is in the process of dissolving.*

## 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.

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

In Market Regulation Review Number 20050001666,<sup>1</sup> the staff reviewed DEBT's compliance with the rules and regulations relating to NASD's Mark-Up Policy and fair pricing determinations during the period of July 1, 2003 through February 29, 2004 (the "review period").

- 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 each of the 12 instances reflected on the attached Exhibit A, which is attached hereto and incorporated by reference, DEBT bought a security for its own account from a customer or sold a security for its own account to a customer, and failed to buy or sell such security at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and that the firm was entitled to a profit.
  2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2440, and IM-2440.
  3. DEBT failed to show the terms and conditions on the memorandum of 21 *brokerage orders*.
  4. The conduct described in paragraph three constitutes separate and distinct violations of SEC Rule 17a-3(a)(6) and NASD Conduct Rule 3110.
  5. DEBT failed to preserve for a period of not less than three years, the first two in an easily accessible place, confirmations of 21 purchases and sales of securities.
  6. The conduct described in paragraph five constitutes separate and distinct violations of SEC Rule 17a-4(b)(1) and NASD Conduct Rule 3110.

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<sup>1</sup> This matter was formally referred to as Market Regulation Review Number MRD200446939.

7. DEBT failed to preserve for a period of not less than three years, the first two in an easily accessible place, copies of electronic communications received and sent by DEBT relating to the handling of orders and transactions in TRACE-eligible securities.
8. The conduct described in paragraph seven constitutes separate and distinct violations of SEC Rule 17a-4(b)(4) and NASD Conduct Rule 3110.
9. DEBT failed to report to TRACE the correct contra-party, the correct number of bonds transacted and the correct price of the security in three transactions in TRACE-eligible securities.
10. The conduct described in paragraph nine constitutes separate and distinct violations of NASD Marketplace Rule 6230(c).
11. DEBT's supervisory system for its high yield and distressed bond desk 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 NASD's Mark-Up Policy and fair pricing determinations, SEC Rules 17a-3 and -4, and NASD Conduct Rule 3110. Specifically, with respect to NASD's Mark-Up Policy and fair pricing determinations, DEBT's written supervisory procedures did not provide for: (1) a statement of the supervisory step(s) to be taken by identified person(s) at DEBT; (2) a statement as to how often such person(s) should take such step(s); and (3) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. DEBT also failed to provide evidence that it enforced its written supervisory procedures and supervisory system concerning NASD's Mark-Up Policy and fair pricing determinations. Further, DEBT's written supervisory procedures inaccurately described that it executed transactions in corporate debt securities on an agency basis when, in point of fact, it executed transactions in such securities (including those referenced on the attached Exhibit A) on a principal or riskless principal basis. Regarding SEC Rules 17a-3 and -4, and NASD Conduct Rule 3110, DEBT's written supervisory procedures did not require associated persons to make and keep current, or otherwise preserve, memoranda of brokerage orders, given or received, for the purchase or sale of securities.
12. The conduct described in paragraph 11 constitutes violations of NASD Conduct Rules 2110 and 3010.

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

**Expulsion from membership in NASD.**

Restitution shall be paid by Respondent to the parties involved in the transactions described on Exhibit A (the "Recipients") in the total amount of \$119,973, 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 NAC. No later than 120 days after acceptance of this AWC, an authorized representative of the firm shall submit to COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850:

- (1) A schedule showing (a) the amount of restitution paid to each Recipient, (b) the amount of interest paid to each Recipient, (c) the date restitution and interest was paid, and (d) any amounts paid to escheat, unclaimed-property or abandoned-property funds; and
- (2) Satisfactory proof of payment as detailed in (1), and of reasonable and documented efforts undertaken to effect restitution prior to making payments to escheat, unclaimed-property or abandoned-property funds.

In light of DEBT's registration and operational status, the staff shall assist DEBT in determining the identity and contact information for each of the Recipients.

*If for any reason, Respondent cannot locate any Recipient 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 to this AWC a Corrective Action Statement, which 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.
- D. 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.

DebtTraders, Inc.  
Respondent

10/14/05  
Date

By: Dean Borne  
Name:  
Title:

Reviewed by:

10/27/05  
Counsel for Respondent

Accepted by NASD:

10/17/05  
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

**Exhibit A**

**DebtTraders, Inc.**

| #  | Transaction Date | Issue    | CUSIP     | Price to Seller | Price to Buyer | Markup/Markdown (percent) | Restitution |
|----|------------------|----------|-----------|-----------------|----------------|---------------------------|-------------|
| 1  | 7/8/2003         | UAL.HP   | 909317AF6 | 37              | 39.5           | 6.76                      | \$16,459    |
| 2  | 7/8/2003         | UAL.HQ   | 909317AG4 | 37              | 39.5           | 6.76                      | \$9,750     |
| 3  | 7/9/2003         | UAL.GS   | 909279AH4 | 19.75           | 21.5           | 8.86                      | \$24,400    |
| 4  | 7/30/2003        | AIRUS.GC | 00922KAC4 | 12.5            | 11.375         | 9.00                      | \$15,491    |
| 5  | 9/22/2003        | DVI.GB   | 233343AD4 | 23              | 21             | 8.70                      | \$905       |
| 6  | 9/30/2003        | CGO.GI   | 049164AM8 | 12              | 15             | 25.00                     | \$19,943    |
| 7  | 11/25/2003       | NWPS.GA  | 64928UAD0 | 26              | 28             | 7.69                      | \$7,000     |
| 8  | 12/19/2003       | USAR.QS  | 91154RAC7 | 33.5            | 35.5           | 5.97                      | \$6,143     |
| 9  | 1/5/2004         | WXS.GD   | 961238AF9 | 10              | 11.5           | 15.00                     | \$1,000     |
| 10 | 1/23/2004        | EX.GC    | 302051AE7 | 28.5            | 30             | 5.26                      | \$1,500     |
| 11 | 1/28/2004        | USAR.QS  | 91154RAC7 | 33.75           | 36             | 6.67                      | \$15,682    |
| 12 | 2/4/2004         | FLM.GF   | 339130AP1 | 16              | 18.5           | 15.63                     | \$1,700     |
|    |                  |          |           |                 |                | Total:                    | \$119,973   |