

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050001802-01

TO: Market Regulation Department
NASD

RE: Choice Investments, Inc., Respondent
CRD No. 17665

Pursuant to Rule 9216 of NASD Code of Procedure, Choice Investments, Inc. ("COCE") 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 COCE alleging violations based on the same factual findings.

COCE 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, 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 COCE; and
3. If accepted:
 - a. this AWC will become part of COCE's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against COCE;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about COCE'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. COCE 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. Nothing in this provision affects COCE's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

COCE 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:

COCE entered the securities industry on April 3, 1986 as a member of NASD and its registration remains in effect. COCE does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

COCE 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 COCE;
- 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, COCE 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.

COCE 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

The staff of NASD's Department of Market Regulation ("the staff") conducted a review of COCE's compliance with NASD's Trade Reporting and Compliance Engine ("TRACE") rules during the period of April 1, 2004 through June 30, 2004 ("review period").

- A. COCE 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. COCE failed to report to TRACE 14 transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 45 minutes of the time of execution.
 2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6230(a).
 3. These late transactions constituted 87 percent of all transactions in TRACE-eligible securities that COCE was required to report to TRACE during the review period.
 4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6230(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 5. COCE failed to report to TRACE the correct time of trade execution for 16 transactions in TRACE-eligible securities.
 6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Marketplace Rule 6230(c)(8).
 7. COCE failed to show the correct time of execution on the memorandum of 16 brokerage orders.
 8. The conduct described in paragraph seven constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
 9. During the review period COCE failed to enforce its written supervisory procedures, which specified the proper procedure for (i) reporting TRACE-eligible securities into the TRACE system, and (ii) recording execution times on the memoranda of brokerage orders.
 10. The conduct described in paragraph nine constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure and a fine of \$20,000 (a fine of \$10,000 for TRACE violations, a fine of

\$5,000 for recordkeeping violations, and a fine of \$5,000 for supervision violations).

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

III.

OTHER MATTERS

- A. COCE understands that COCE may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. COCE understands that COCE 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. COCE agrees to pay any monetary sanctions imposed on COCE 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 COCE proposes to pay any fine imposed.
- C. COCE specifically and voluntarily waives any right to claim that COCE is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Choice Investments, Inc. 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 COCE to submit it.

3/23/2004

Date _____

Choice Investments, Inc.

Respondent

By: Donald A. Syme
Name:

Title: *Pres. D. C. S.*

Reviewed by:

Counsel for Respondent

Accepted by NASD:

Date 5/22/06

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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3/23/2006

Date

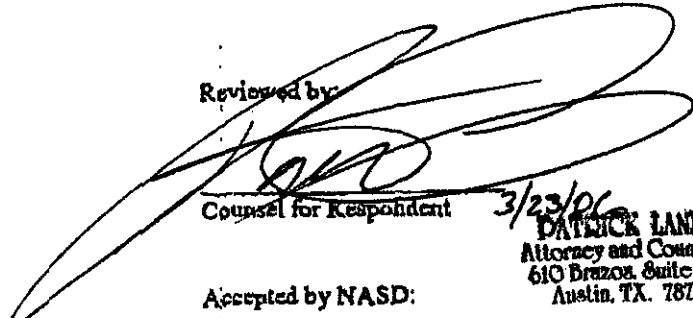
Choice Investments, Inc.

Respondent

By: Donald A. Gira
Name:

Title: President

Reviewed by:


Counsel for Respondent

3/23/06
PATRICK LAMLEY
Attorney and Counselor
610 Brazos, Suite 500
Austin, TX. 78701

Accepted by NASD:

Date

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

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