

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
No. 20050003966-01

TO: Market Regulation Department
NASD

RE: Fulcrum Global Partners LLC, Respondent
Broker-Dealer
CRD No. 104455

Pursuant to Rule 9216 of NASD Code of Procedure, Fulcrum Global Partners LLC ("FLCR" 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 Market Regulation Department and National Adjudicatory Council ("NAC") Review Subcommittee or Office 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.

FLCR 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.

FLCR has been a member of NASD since March 9, 2001. FLCR has the following prior relevant disciplinary history:

- On March 10, 2005, an AWC became final in which FLCR was censured and fined \$17,000 for violating the rules applicable to customer confirmation disclosures, transaction reporting, the Automated Confirmation Transaction Service ("ACT"), the Order Audit Trail System ("OATS") and supervision; and
- On March 25, 2004, an AWC became final in which FLCR was censured and fined \$75,000 for violating the rules applicable to the supervision of trading by the firm's employees, conflicts of interest involving the firm's employees and the treatment of rumors by the firm's research analysts.

I.

WAIVER OF PROCEDURAL RIGHTS

FLCR 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 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, FLCR 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.

FLCR 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 connection with 20050003966, the Market Regulation Department staff (the "staff") conducted a Trading and Market Making Surveillance Examination of FLCR's compliance with applicable trade reporting rules and other regulations. The on-site portion of this examination was conducted from January 18 through 21, 2005. The staff conducted a review, for trade dates December 6 through 17, 2004 (unless otherwise stated), of:

- 23 customer sale transactions, for compliance with NASD Rules 3110 and 3370;
- four proprietary sale transactions, for compliance with NASD Rules 3110 and 3370, and SEC Rule 10a-1;
- 130 customer and proprietary sales, for compliance with NASD Rule 6130;
- four short sale transactions in CQS securities, for compliance with SEC Rule 10a-1;
- 50 limit orders executed as principal, for compliance with NASD Rule 6541;
- 10 not held market orders and 19 related executions, for compliance with NASD Rule 2320;
- 36 limit and market orders and 50 related executions executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD transaction reporting and Nasdaq Market Center rules;
- nine orders in Nasdaq securities in soft dollar accounts and nine related executions, for compliance with the SEC Section 28(e) safe harbor limitations on soft dollar compensation and NASD transaction reporting rules;
- 25 transactions reported by FLCR in securities in which FLCR was a market center, for compliance with SEC Rule 11Ac1-5;
- four security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5;
- data published on the firm's quarterly order routing report concerning 17 orders, for compliance with SEC Rule 11Ac1-6;
- 11 customer transactions in OTCBB and/or OTC Equity Securities, for compliance with NASD Rules 2320 and 3110(b);
- 16 persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules;
- 247 order/trade records prepared and maintained for the above samples, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 319 transactions reported to Nasdaq Market Center or TRACS, for compliance with NASD transaction reporting and Nasdaq Market Center rules;

- 145 customer confirmations prepared and maintained for the above samples, for compliance with SEC Rule 10b-10;
- 50 orders in Nasdaq securities submitted to OATS, for compliance with NASD Rule 6955;
- FLCR's establishment and implementation of "regular and rigorous" reviews of execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010; and
- FLCR's establishment and implementation of a supervisory system and written supervisory procedures during December 2004, for compliance with NASD Rule 3010.

In connection with 20050005750, the staff conducted a review of FLCR's compliance with NASD's Order Audit Trail System ("OATS") rules during the period of October 1, 2004 through December 31, 2004 (the "4th Quarter 2004 review period").

- A. FLCR 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:

In connection with 20050003966:

1. FLCR incorrectly reported as riskless principal to Nasdaq Market Center two transactions in Nasdaq National Market securities.
2. FLCR failed to report as riskless principal to Nasdaq Market Center six transactions in Nasdaq National Market securities.
3. The conduct described in paragraphs one and two constitutes separate and distinct violations of NASD Marketplace Rule 4632(d).
4. FLCR failed to report as riskless principal to Nasdaq Market Center one transaction in an OTC Equity Security.
5. The conduct described in paragraph four constitutes a violation of NASD Marketplace Rule 6620(d).
6. FLCR failed to report to Nasdaq Market Center the correct symbol indicating whether FLCR executed 12 transactions in eligible securities in a principal, riskless principal or agency capacity.
7. The conduct described in paragraph six constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).

8. FLCR failed to accept or decline in Nasdaq Market Center one transaction in an eligible securities within twenty minutes after execution.
9. The conduct described in paragraph eight constitutes a violation of NASD Marketplace Rule 6130(b).
10. During the review period, FLCR transmitted to OATS six reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, FLCR failed in three instances to include the correct special handling code, and incorrectly reported two New Order Reports, instead of one, in connection with three OATS-reportable orders.
11. The conduct described in paragraph 10 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.
12. FLCR effected two short sales in a listed security below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan.
13. The conduct described in paragraph 12 constitutes separate and distinct violations of SEC Rule 10a-1.
14. FLCR failed on 132 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
15. The conduct described in paragraph 14 constitutes separate and distinct violations of SEC Rule 10b-10.
16. FLCR'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 Rules 11Ac1-5 and -6, NASD Marketplace Rule 6541; transaction reporting (including sale transaction reporting); NASD's Firm Quote Rule; NASD's rule concerning locked and/or crossed markets; and compliance with the requirements of the Section 28(e) safe harbor concerning soft dollar compensation. Specifically, the firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (1) 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.
17. The conduct described in paragraph 16 constitutes a violation of NASD Conduct Rules 2110 and 3010.

In connection with 20050005750:

18. On two days during the 4th Quarter 2004 review period, FLCR submitted to OATS 14,621 Reportable Order Events ("ROEs") after the 4:00 AM deadline that were marked late by OATS. These late reports represent more than 7% of all ROEs (202,900) submitted by FLCR to OATS during the review period.
19. FLCR failed to resubmit 5,179 rejected ROEs within the required five business days, which represented 95% of all rejected ROEs (5,442) submitted by FLCR to OATS during the 4th Quarter 2004 review period.
20. On two days during the 4th Quarter review 2004 period, FLCR submitted 5,442 ROEs, which OATS subsequently rejected for context or syntax errors. During the 4th Quarter 2004 review period, FLCR repaired and resubmitted 5,179 of the rejected ROEs, leaving 263 ROEs or 5% of its rejections unrepaired.
21. As a result of the failure to repair the rejected ROEs described in paragraph 20 above, FLCR failed to submit 263 ROEs to OATS thereby resulting in an inaccurate and/or incomplete audit trail.
22. The conduct described in paragraphs 18 through 21 above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and NASD Conduct Rule 2110.

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

A censure, a \$47,500 fine (composed of a \$10,000 fine for the violations of SEC Rule 10b-10, a \$5,000 fine for the violations of the Nasdaq Market Center rules, a \$5,000 fine for the violations of the transaction reporting rules, a \$5,000 fine for the violations of the OATS rules identified in 20030003966, a \$10,000 fine for the violations of the OATS rules identified in 20050005750, and a \$2,500 fine for the violations of SEC Rule 10a-1, and a \$10,000 fine for the violations of the supervision rules) and an undertaking to revise the FLCR's written supervisory procedures with respect to the areas described in paragraph 16. 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 paragraph eight; and, (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. FLCR 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. FLCR 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. FLCR 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 the *Election of Payment form* showing the method by which the firm proposes to pay any fine imposed.
- C. FLCR specifically and voluntarily waives any right to claim that FLCR is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

FLCR certifies that the firm 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 FLCR to submit it.

Respondent

Fulcrum Global Partners LLC

Dec 27/05
Date

By: _____
Name _____
Title _____

Reviewed by:

Counsel for Respondent

Accepted by NASD:

2/15/06
Date

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

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

Attachment
Standard Election of Payment Form