

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION

20050006366-01

TO: Department of Market Regulation
NASD

RE: Fimat USA, LLC, Respondent
Broker/Dealer
CRD Number 36118

Pursuant to Rule 9216 of NASD Code of Procedure, Fimat USA, LLC ("FMAT") 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 FMAT alleging violations based on the same factual findings.

FMAT 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 FMAT; and
3. If accepted:
 - a. this AWC will become part of FMAT'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 FMAT'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. **FMAT 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 FMAT's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.**

FMAT 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 relevant history are as follows:

FMAT has been a member of NASD since March 1996, and the firm's registration remains in effect. FMAT does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

FMAT 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 FMAT;**
- 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, FMAT 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.

FMAT 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 20050006366, the staff of the Department of Market Regulation of NASD (the "staff") conducted a review of FMAT's compliance with the rules applicable to the Order Audit Trail System ("OATS") during the period October 1, 2004 through December 31, 2004.

A. FMAT 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. FMAT failed to timely report to OATS 1,938 Reportable Order Events ("ROEs"). These late ROEs represented more than 34 percent of all ROEs (5,561) submitted by FMAT to OATS during the review period.
2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.
3. During the review period the firm failed to enforce its written supervisory procedures, which specified that the designated principal must conduct a daily review of the OATS website to ensure that all OATS files are accepted and to identify any late OATS reports.
4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.

D. FMAT also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$10,000 (comprised of a \$5,000 fine for the late OATS reports and a \$5,000 fine for the failure to enforce written supervisory procedures).

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

III.

OTHER MATTERS

- A. **FMAT understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent 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. **FMAT 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 have attached the election of payment form showing the method by which it proposes to pay any fine imposed.**
- C. **FMAT specifically and voluntarily waives any right to claim that FMAT is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.**

Fimat USA, LLC certifies that a duly authorized officer has read and understood 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 FMAT to submit it.

Fimat USA, LLC

Date:

12/12/05

By:

Name:

Title:

me: V. L.
le: V. L.

TRACENT BANKING
SENIOR EXECUTIVE VICE PRESIDENT
MANAGEMENT CONSULTING
FINANCIAL PRODUCTS & SERVICES - THE AMERICAS
FINAT USA, LLC

Reviewed by:

Counsel for Respondent

Accepted by NASD:

Date _____

1/9/06

Thomas R. Gira

**Executive Vice President & Deputy
Market Regulation**

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

Attachments:

Standard Election of Payment Form