

RECEIVED

2007 JUN 13 P 2:01

RECEIVED
2007 JUN 26 P 6:22
REGISTRATION & DISCLOSURE

NASD

LETTER OF ACCEPTANCE, WAIVER AND CONSENT

MARKET REGULATION

20050006510-01

TO: Department of Market Regulation
NASD

RE: BTIG, LLC
Broker-Dealer
CRD No. 122225

Pursuant to Rule 9216 of the NASD Code of Procedure, BTIG, LLC (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 until it has been reviewed and accepted by NASD's Department of Market Regulation and the 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 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 the 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-8310-3; 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 finding 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 the NASD is not a party.

20050006510 (includes 20050007285) (MJD/DMR)

000109178 2001

The firm also understands that its experience in the securities industry and its disciplinary history may be factors that will be considered in deciding whether to accept this AWC.

The firm became a member of NASD in December 2002, and its registration remains in effect. It has the following relevant disciplinary history:

- In March 2007, NASD accepted the firm's AWC (20060039749) in which it agreed to a censure and a \$15,000 fine, which included a violation of Conduct Rules 2110 and 3010(b) for having inadequate written supervisory procedures relating to trading options.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the 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, 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**

This matter is the result of two Department of Market Regulation reviews: (i) number 20050006510 into the firm's compliance with Order Audit Trail System ("OATS") rules from February 10, 2003, to December 31, 2004; and (ii) number 20050007285 into the firm's short sale trading in April and May 2004.

- A. The firm 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:

20050006510

1. From February 10, 2003, to December 31, 2004, the firm failed to submit 570,222 orders to OATS on 422 business days. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
2. From October 1 to December 31, 2004, the firm transmitted to OATS 5,528 execution reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the execution reports were transmitted in error and instead should have been OATS route reports. These inaccurate and/or incomplete reports represented 75 percent of all reports (7,418) transmitted by the firm during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20050007285

3. In April and May 2004, the firm effected five short sales in a certain security for the firm's proprietary account and failed to make an affirmative determination that the firm could borrow the security or otherwise provide for delivery of the security by settlement date. The firm accepted 102 customer short sale orders in certain securities and, for each order, failed to annotate an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for delivery by settlement date. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 3370.
4. In April and May 2004, the firm failed to preserve the memoranda of 19 brokerage orders for a period of not less than three years, the first two in an accessible place. The conduct described in this paragraph constitutes

separate and distinct violations of SEC Rule 17a-4 and NASD Conduct Rule 3110(a).

5. In April and May 2004, the firm failed to show the time of entry and/or execution on the memoranda of 69 brokerage orders. The firm failed to show the correct time of entry or execution on the memoranda of 31 brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110(a).

20050006510 and 20050007285

6. From February 10, 2003, to December 31, 2004, 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 OATS reporting. During April and May 2004, 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 NASD Conduct Rules 3110(b)(1) (marking customer tickets) and 3370 (prompt receipt and delivery of securities). Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) identification of the persons responsible for supervision with respect to compliance with short sales obligations, marking customer tickets, and trader report inputting; (2) a statement of the supervisory steps to be taken by the identified persons; (3) a statement as to how often such persons should take such steps; and (4) a statement as to how the completion of the steps included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

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

A censure and a total fine of \$42,500, made up of a \$25,000 fine for the OATS violations, a \$7,500 fine for violations of Conduct Rule 3370, a \$2,500 fine for violations of SEC Rules 17a-3 and 17a-4 and Conduct Rule 3110, and a \$7,500 fine for violations of Conduct Rules 2110 and 3010.

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

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC, which is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 the Election of Payment form showing the method by which the firm 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.

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.

Respondent,
BTIG, LLC

6/15/07
Date

By: [Signature]

Name: Kevin Chesser

Title: Managing Director

Reviewed by:

[Signature]
Counsel for BTIG, LLC

Accepted by NASD:

6/25/07
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

Attachment:

Standard Election of Payment Form