

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##

20050016221-01

TO: Department of Market Regulation
NASD

RE: Ameritrade, Inc., Respondent
CRD No. 5633

Pursuant to Rule 9216 of NASD Code of Procedure, Ameritrade, Inc. ("FOMA" 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 FOMA alleging violations based on the same factual findings.

FOMA 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 FOMA; and
3. If accepted:
 - a. this AWC will become part of FOMA's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against FOMA;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about FOMA'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. FOMA 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

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this provision affects FOMA's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

FOMA 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:

FOMA has been a member of NASD since February 1971, and its registration remains in effect. It has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

FOMA 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, FOMA 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.

FOMA 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 arose out of a review of the OATS compliance conducted by the staff of the Market Regulation Department of NASD (the "staff") for the period January 1, 2005 through March 31, 2005, 20050016221.

- A. FOMA 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. During the review period, the firm failed to timely report to OATS 950,221 Reportable Order Events ("ROEs"). These late ROE's represented 7.2 percent of all ROEs (13,160,679) submitted by FOMA 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).
- B. FOMA also consents to the imposition, at a maximum, of the following sanctions:
 - 1. A censure; and
 - 2. A fine of \$10,000

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

III.

OTHER MATTERS

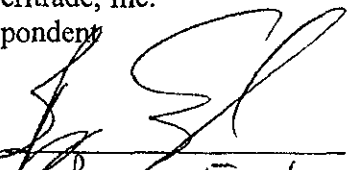
- A. FOMA understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. FOMA understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. FOMA 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 the firm proposes to pay any fine imposed.

- C. FOMA 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.

FOMA 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 FOMA to submit it.

1/31/07
Date

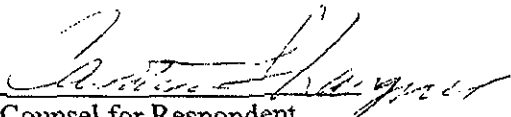
Ameritrade, Inc.
Respondent

By: 

Name: Bryce Engel

Title: President and Chief Brokerage
Operations Officer

Reviewed by:


Counsel for Respondent

Accepted by NASD:

2/26/07
Date


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

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

On February 15, 2005, Ameritrade contacted Mr. McEvoy to report the problem. At that time, Mr. McEvoy instructed Ameritrade to use his telephone number and the date of that conversation as a reference number rather than a ticket number. He also asked Ameritrade to inform him before we submitted to the test environment, to ensure that we did not overload the test system. Between February 15 and March 7, the Firm worked to test the recreated data in the OATS test environment to ensure the stability of the submissions.

As we proceeded to sort out our submissions in the test environment, the Firm experienced several issue symbol rejects. We had experienced similar problems with these same symbols previously in the production environment, therefore, the Firm decided to open a ticket with the OATS help desk. On March 7, 2005, we opened up ticket # 872170, so that OATS could update the validity dates of certain NASDAQ symbols. This ticket was evidently elevated to Millicent Johnson in the Market Regulation Department. On March 15th, we explained the situation to her and, at her request, emailed her a list of the symbols we needed to have updated.

When we spoke again with Ms. Johnson on March 21st, she indicated that we could now submit to production and, if we experienced any issue symbol rejects, to note in our books and records her instruction that we did not have to repair them. Ms. Johnson asked Ameritrade how many late ROE's we would be submitting to OATS and when we told her it would be 968,203, she directed us to wait until Thursday, March 24th so that OATS could have more time to process the extra ROE's over the Easter weekend.

The foregoing steps taken in close coordination with NASD OATS staff, culminating in our submission on March 24th, gave rise to 66,939 Late New Order Reports, 403,869 Late Combined Order Route Reports, 464,383 Late Route Reports, 9,608 Late Cancel Reports and 5,358 Late Cancel Replace Reports.

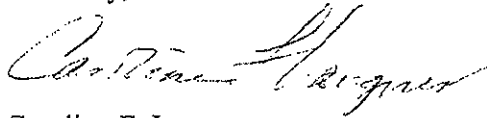
Ameritrade was well aware that, notwithstanding its prompt remedial efforts, submitting these repairs would generate numerous late reports. As explained above, the Firm's supervisory system identified the issue promptly, and triggered a series of remedial measures, including notifying NASD OATS staff of the problem and our proposed solution. Thereafter, the Firm kept NASD OATS apprised of its actions to remedy the situation and make appropriate repairs.

Throughout this process, we worked closely with NASD supervisors and with the OATS help desk to ensure that the Staff anticipated our forthcoming repairs so that it could isolate any further challenges that might be associated with any

symbols that were no longer OATS reportable, and other similar issues. These steps demonstrate Ameritrade's commitment to work with NASD OATS to further the overall reliability of OATS reportable data and should not expose Ameritrade to disciplinary action.

Thank you for this opportunity to explain the circumstances of the submissions in question and to highlight the functionality of Ameritrade's supervisory systems and procedures. If you have additional questions, please do not hesitate to contact me at [REDACTED]
[REDACTED]

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline F. Langner".

Caroline F. Langner
Associate General Counsel