

RECEIVED

RECEIVED

2008 JAN -2 P 4: 52

REGISTRATION & DISCLOSURE

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050024894-01

DEC -3 P 3: 24

FINANCIAL INDUSTRY
MARKET REGULATION

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Hill Thompson Magid & Co. Inc., Respondent
Broker-Dealer
CRD No. 125363

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Hill Thompson Magid & Co. Inc., (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

BACKGROUND

The firm has been a member of FINRA (f/k/a NASD) since October 25, 1940 and its registration remains in effect. The firm's relevant disciplinary history is set forth in Appendix 1 attached to this AWC. The Department of Market Regulation staff ("staff") conducted an examination and several reviews of the firm, which are described in Appendix 1 attached to this AWC.

I.

ACCEPTANCE AND CONSENT

- 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 FINRA, or to which FINRA 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 FINRA:

FACTS/VIOLATIVE CONDUCT BY RESPONDENT

20060040507

1. The firm incorrectly designated as ".W" to the Trade Reporting Facility, six last sale reports of transactions in designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 4632(a)(4).

000016003 2008

2. The firm failed to report to the Trade Reporting Facility the cancellation of one transaction in a designated security previously submitted to the Trade Reporting Facility. The conduct described in this paragraph constitutes a violation of NASD Marketplace Rule 4632(g)(1).
3. The firm failed to accept or decline in the OTC Reporting Facility, eight transactions in Reportable Securities within twenty minutes after execution. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(b).
4. The firm failed to report the correct time of execution to the Trade Reporting Facility in one last sale report of a transaction in a designated security. The conduct described in this paragraph constitutes a violation of NASD Marketplace Rule 6130(d)(4).
5. The firm failed to report to the Trade Reporting Facility the correct symbol indicating whether the firm executed eight transactions in Reportable Securities in a principal or agency capacity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
6. The firm failed to report to the OTC Reporting Facility the correct symbol indicating whether the firm executed two transactions in Reportable Securities in a principal or agency capacity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
7. The firm incorrectly reported to Nasdaq the second leg of four "riskless" principal transactions in designated securities because it incorrectly designated the capacity of such transactions as "agent." The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6420(d).
8. The firm failed to report to the OTC Reporting Facility the cancellation of two transactions in OTC Equity securities previously submitted to the OTC Reporting Facility. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(f)(1).
9. The firm failed to submit to the OTC Reporting Facility, for the offsetting, "riskless" portion of two "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(d).
10. The firm incorrectly reported to the OTC Reporting Facility the second leg of two "riskless" principal transactions in designated securities because it incorrectly designated the capacity of such transactions as "agent." The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(d).
11. The firm incorrectly designated as ".PRP" to the OTC Reporting Facility one last sale report of a transaction in an OTC Equity security. The conduct described in this paragraph constitutes a violation of NASD Marketplace Rule 6620(a)(6).

12. During the 2006 TMMS review period, the firm executed 27 short sale orders and failed to properly mark the order tickets as short for those orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
13. During the 2006 TMMS review period, the firm effected six short sales of securities registered on a national securities exchange at or below the price at which the last sale of each security, regular way, was reported pursuant to an effective transaction reporting plan. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10a-1.
14. During the 2006 TMMS review period, 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 FINRA, concerning order handling and short sales. Specifically, the firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (1) the 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. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.
15. During the 2006 TMMS review period the firm failed to enforce its written supervisory procedures concerning best execution, SEC Rule 605 (disclosure of order execution information), NASD Marketplace Rule 6130 (third party trade reporting) and NASD Marketplace Rule 5262 (ITS/CAES Market Maker rules). The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050025076

16. During the period January 1, 2005 through August 31, 2005 (the "EBS review period"), the firm failed to report accurate trading information through the submission of electronic blue sheets in response to requests for such information by FINRA. Specifically, the firm failed to include the short sale indicator for 2,908 electronic blue sheets records. These inaccurate electronic blue sheets records represent 12 percent of all electronic blue sheets records (23,386) transmitted by the firm during the EBS review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 8211 and 8213.

17. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities law and regulations, and the Rules of FINRA, concerning the submission of electronic blue sheet data, as required by NASD Procedural Rules 8211 and 8213. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the 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. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050024894

18. During the period January 7, 2005 through June 30, 2005, the firm had a fail to deliver position in three threshold securities: Commerce One, Inc. ("CMRCQ"), DayStar Technologies, Inc. ("DSTI"), and Penton Media, Inc. ("PTON"), at a registered clearing agency for thirteen consecutive settlement days and failed to immediately thereafter close out the fail to deliver positions by purchasing securities of like kind and quantity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3).
19. The firm had a fail to deliver position at a registered clearing agency in CMRCQ, DSTI and PTON, threshold securities, for thirteen consecutive settlement days, and, until the firm closed out the fail to deliver positions by purchasing securities of like kind and quantity, it failed to borrow the security or enter into a *bona fide* arrangement to borrow the security prior to executing two proprietary short sales in CMRCQ; four proprietary short sales in DSTI; and one proprietary short sale in PTON. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3)(iii).

20060070193

20. During the period July 1, 2006 through September 30, 2006, the firm had a fail to deliver position in a threshold security, AirNet Communications Corporation ("ANCCQ"), at a registered clearing agency for thirteen consecutive settlement days and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3).
21. The firm had a fail to deliver position at a registered clearing agency in ANCCQ, a threshold security, for thirteen consecutive settlement days, and, until the firm closed out the fail to deliver position by purchasing securities of like kind and quantity, it failed to borrow the security or enter into a *bona fide* arrangement to borrow the security prior to executing 112 proprietary short sales in ANCCQ. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3)(iii).

22. The firm failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 33 transactions in ANCCQ. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
23. The firm executed 22 short sale transactions in ANCCQ and failed to report each of these transactions to the Nasdaq Market Center with a short sale modifier. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130.

B. The firm also consents to the imposition of the following sanctions:

A censure and fine of \$87,500 and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs 14 and 17. 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 this paragraphs 14 and 17; and, (3) the date the revised procedures were implemented.

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

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that payment is due and payable. The firm has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("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.

III.

OTHER MATTERS

The firm understands that:

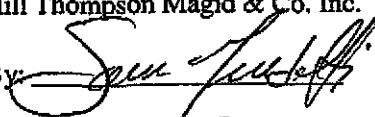
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. 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. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

The firm 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; that the firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11/29/07
Date

Respondent

Hill Thompson Magid & Co. Inc.

By: 

Name: SAM GUIRETTI

Title: DIRECTOR OF COMPLIANCE

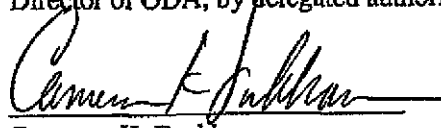
Reviewed by:

 11/30/07
Counsel for Respondent
Michael R. Troachio

Accepted by FINRA:

1/2/08
Date

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



Cameron K. Funkhouser
Senior Vice President
Department of Market Regulation

Attachments