

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. * 20050030783-02**

RECEIVED

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REGISTRATION & DISCLOSURE

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

RE: C.L. King & Associates, Inc. , Respondent
Broker-Dealer
CRD No. 6183

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Respondent C.L. King & Associates, Inc. ("KING" 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 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.

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:

BACKGROUND

KING has been a member of FINRA since May 1, 1972 and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In connection with matter 20050030783, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of KING's compliance with electronic blue sheet submission rules during the period January 1, 2005 through August 31, 2005 (the "initial review period").

In connection with matter 20060049435, the staff conducted KING's Trading and Market Making Surveillance ("TMMS") Examination for 2006, evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing, among others, the items listed in Appendix 1 for trade dates March 20 through 24, 2006 (the "2006 exam review period").

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In connection with matter 20070092171, the staff conducted KING's TMMS Examination for 2007, evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing, among others, the items listed in Appendix 2 for trade dates May 21 through 25, 2007 (the "2007 exam review period").

FACTS AND VIOLATIVE CONDUCT

1. During the initial 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 33 electronic blue sheets records. These inaccurate electronic blue sheets records represent six percent of all electronic blue sheets records (515) transmitted by the firm during the initial review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 8211.
2. During the 2006 exam review period, the firm transmitted to OATS 11 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm (a) in three instances failed to submit a combined order route ("OR") report as required, instead incorrectly submitting a new order ("NW") report and an execution ("EX") report; (b) in five instances failed to submit an OR report as required while also incorrectly submitting a reporting exception code of "T;" and (c) in three instances failed to submit a route ("RT") report as required, instead incorrectly submitting an EX report while also incorrectly submitting a reporting exception code of "T." These inaccurate and/or incomplete reports represented 22 percent of the sample of reports reviewed in the TMMS examination that the firm transmitted during the 2006 exam review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. During the 2007 exam review period, the firm transmitted to OATS 11 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm (a) in three instances failed to submit an OR report as required, instead incorrectly submitting an NW report and an RT report; (b) in eleven instances incorrectly submitted an EX report while also incorrectly submitting a reporting exception code of "T;" and (c) in one instance failed to submit an OR report as required, instead incorrectly submitting only an NW report. These inaccurate and/or incomplete reports represented 22 percent of the sample of reports reviewed in the TMMS examination that the firm transmitted during the 2007 exam review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
4. During the 2007 exam review period, the firm, on 94 occasions when it acted as principal for its own account or as riskless principal, incorrectly provide written notification disclosing to its customer that the firm had received a "commission" for executing the transaction, instead of disclosing its remuneration to be a "commission equivalent" or other suitable description. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

5. The firm's supervisory system during the 2006 and/or 2007 exam review periods did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
- (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimal requirements for adequate written supervisory procedures, as set forth in Exhibit A. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 3010.

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

A censure; fines totaling \$22,000 (comprised of \$5,000 for the firm's submission of inaccurate blue sheets; \$7,500 for its OATS-reporting violations; \$2,000 for its SEC Rule 10b-10 violations; and \$7,500 for its supervisory violations); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.5 and Exhibit A. 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, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, 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 I.A.5 and Exhibit A; 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 sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fines imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions 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 it;
- 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 records;
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 it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's 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.

12/2/08
Date

Respondent
C.L. King & Associates, Inc.

By: Gregg A. Miller

Name: Gregg A. Miller

Title: Compliance Officer

Reviewed by:

Matthew Farley
Counsel for C.L. King & Associates, Inc.
Matthew Farley
Drinker Biddle & Reath LLP
140 Broadway, 39th Floor
New York, New York 10005

Accepted by FINRA:

1/6/09
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Appendix # 1

2006 Trading and Market Making Surveillance Exam Samples C.L. King & Associates ("KING") Exam No. 20060049435 (included in 20050030783)

<u>Sample Size</u>	<u>Sample Description</u>	<u>Sample Source</u>
163	Customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates March 20-24, 2006.
71	Customer and proprietary sales, for compliance with NASD Rule 6130 (ACT Short Sale Reporting),	from trade dates March 20-24, 2006.
1	Short sale in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test),	from trade dates March 20-24, 2006.
9	Cancelled trades for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f), and 6620(f),	from trade dates March 20-24, 2006.
4	Limit and market orders, for compliance with NASD Rules 2110 (and IM-2110-2), 2111, 6541 and 2320, and SEC Rules 602 and 604,	from trade dates March 20-24, 2006.
10	Institutional, not held customer market orders, for compliance with NASD Rule 2320,	from trade dates March 20-24, 2006.
28	Limit and market orders and 50 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade dates March 20-24, 2006.
N/A	Data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the quarterly report ending March 2006.
10	Customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade dates March 20-24, 2006.
12	Persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trade dates March 20-24, 2006.
50	Orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates March 20-24, 2006.
101	Order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade dates March 20-24, 2006.

222	Trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade dates March 20-24, 2006.
112	Customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates March 20-24, 2006.
N/A	The firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during March 2006.
N/A	The firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,	based on WSPs in effect during March 2006.

Appendix # 2

2007 Trading and Market Making Surveillance Exam Samples C.L. King & Associates ("KING") Exam No. 20070092171 (included in 20050030783)

<u>Sample Size</u>	<u>Sample Description</u>	<u>Sample Source</u>
638	Customer and proprietary sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements,	from trade dates May 21-25, 2007.
21	Customer and proprietary short sales, reviewed for compliance with SEC Rule 203(b) security location requirements,	from trade dates May 21-25, 2007.
476	Customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Rules 6130, 4632 and 6620 sale indicator reporting requirements,	from trade dates May 21-25, 2007.
50	Customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements,	from trade dates May 21-25, 2007.
19	Cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Rules 4632(g), 6420(f), 6620(f) and 6130(f) trade report cancellation requirements,	from trade dates May 21-25, 2007.
10	Market orders with "not held" terms or from institutional customers, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements,	from trade dates May 21-25, 2007.
137	Principal and riskless principal trade executions effected otherwise than on an exchange, for compliance with NASD Rules 4632, 6420, 6620 and 6130 requirements for TRF and OTCRF reporting,	from trade dates May 21-25, 2007.
25	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements,	from trade dates May 21-25, 2007.
31	Trades reported to a TRF or OTCRF with a .RO or .RA modifier, for compliance with NASD Rules 6130,	from trade dates May 21-25, 2007.
N/A	Data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the quarterly report ending March 2007.
7	Customer orders in OTC equity securities, for compliance with NASD Rules 2320(g) and 3110(b) requirements to ascertain and document the best interdealer market for transactions in such securities,	from trade dates May 21-25, 2007.

<u>Sample Size</u>	<u>Sample Description</u>	<u>Sample Source</u>
50	Orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955, and Nasdaq Rules 6954 and 6955 requirement to submit OATS information,	from trade dates May 21-25, 2007.
115	Order/Trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade dates May 21-25, 2007.
341	Trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD Trade Reporting and ADF rules,	from trade dates May 21-25, 2007.
94	Customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements,	from trade dates May 21-25, 2007.
12	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040,	from list of trading and supervisory personnel for May 2007.
N/A	The firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during May 2007.
N/A	The firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,	based on WSPs in effect during May 2007.

C.L. King & Associates ("KING")
Matter No. 20050030783
(including 20060049435 and 20070092171)

For the regulatory areas listed below, the firm's written supervisory procedures during the 2006 and/or 2007 exam review periods failed to include one or more of the following:

- (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.
- **Order Handling** (Disclosure of Order Execution Information) [(a), (b) and (c)];
 - **OATS** (Consistency Between OATS and Trade Reporting, and Inter-Firm Routed Order ID Matching) [(b), (c) and (d)];
 - **Best Execution** (Orders Executed as Principal, Orders Executed as Agent, Orders Executed as Riskless Principal, Block Orders, Crossing Orders, Routing Orders, Orders with Conditions and Three-Quote Rule) [(b)];
 - **Anti-Intimidation/Coordination** (General) [(b)];
 - **Trade Reporting** (Riskless Principal Trade Reporting and Trades Reported on the Firm's Behalf) [(b)];
 - **Sale Transactions** (Short Sale Reporting, and Reporting of Accurate Short Sale Indicators for Customer and Proprietary Sale Transactions) [(b)];
 - **OATS** (Ensuring Accurate and Timely Reports by Firm or by Third Party on Firm's Behalf) [(b)];
 - **OATS** (Clock Synchronization) [(c)];
 - **Other Trading Rules** (Backing Away) [(d)];
 - **OATS** (Third Party Submissions) [(d)]; and
 - **Other Rules** (Chinese Walls and Books and Records) [(d)].

In addition, the firm failed to provide sufficient documentary evidence that, on the trade dates reviewed in the TMMS examinations, it performed the supervisory reviews set forth in its written supervisory procedures concerning each of the regulatory areas cited above as well as the following additional ones:

- **Supervisory Systems, Procedures, & Qualifications** (Registration and Education of Trading and Supervisory Personnel);
- **Order Handling** (Limit Order Display, Limit Order Protection, Market Order Protection, Quote Dissemination and Disclosure of Order Routing Information);

- **Best Execution** ("Not-Held" Orders and Execution of Market and Marketable Limit Orders Against Non-Displayed Limit Orders Priced Better Than Displayed Market);
- **Anti-Intimidation/ Coordination** (Educating Personnel as to Improper Conduct);
- **Trade Reporting** (Timely and Accurate Reporting, Trade Modifiers, Riskless Principal Reporting, Accepting Trades or Entering Matching Trades in Timely Manner, and Ensuring Accuracy of Firm's Trades Reported by Another Member or Third Party);
- **Sale Transactions** (Requirements of SEC Rules 200(g) and Rule 203(b)(3)(iii));
- **Soft Dollar Accounts and Trading** (Recordkeeping for and Monitoring of Soft Dollar Trades); and
- **OATS** (Rejections).