

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050033981-01**

RECEIVED

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REGISTRATION & DISCLOSURE

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

RE: Howe Barnes Hoefer & Arnett, Inc., Respondent
Broker-Dealer
CRD No. 2240

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Howe Barnes Hoefer & Arnett, 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.

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

The firm has been a member of FINRA since October 16, 1936 and its registration remains effective.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

FACTS AND VIOLATIVE CONDUCT

In 20050033981, FINRA's Department of Market Regulation (the "staff") conducted a review of the firm's compliance with NASD Rules applicable to the Trade Reporting and Compliance Engine ("TRACE") during the period July 1, 2005 through September 30, 2005.

In 20060067187, the staff conducted a Trading and Market making surveillance ("TMMS") examination for 2006, and reviewed the items listed in Exhibit 1 for trade dates October 11 and 12, 2006, unless otherwise noted.

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1. The firm failed to report to TRACE 41 transactions in TRACE-eligible securities within 15 minutes of the time of execution. These 41 late reports constituted approximately 20 percent of the total number of trade reports (201) in TRACE eligible securities that the firm reported to TRACE during the review period. The firm failed to report to TRACE the correct time of trade execution for the same 41 transactions. The firm failed to include its mark-up/mark-down in the final price of 39 principal transactions reported to TRACE (38 of these transactions are included in the 41 transactions with late and inaccurate execution times). The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230.
2. 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 the TRACE reporting requirements. 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 Rules 2110 and 3010.

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3. During the review period, the firm incorrectly marked 12 sale orders as short and failed to mark 111 sale orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
4. The firm's supervisory system 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 minimum requirements for adequate written supervisory procedures, in the following subject areas as described in Exhibit 2. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

5. The firm failed to provide documentary evidence that on the trade date(s) reviewed in the TMMS examination, it performed the supervisory reviews set forth in its written supervisory procedures concerning: **Supervisory System, Procedures & Qualifications** [NASD Rules 1020-1060 - ensure personnel are properly registered]; **Order Handling** [SEC Rule 604 and 602 - Limit Order Display, Quote Dissemination Rules; NASD Rules 2110, IM-2110-2 and 6541 - Limit Order Protection Rules; NASD Rule 2111 - Market Order Protection; and SEC Rule 605 - Disclosure of Order Execution]; **Best Execution** [NASD Rule 2320(a) best execution: to ensure a favorable price, while trading as a riskless principal, for agent orders and for block sized, not held, market and marketable limit orders, orders routed to and executed by other parties based on order-by-order routing decisions by the member, and orders routed to and executed by other parties based on aggregate routing decisions by the member (i.e. Regular & Rigorous reviews)]; **Trade Reporting** [NASD Rules 4632, 4642, 5430, 6130 and 6620 - ensuring compliance with reporting trades to the FINRA/NASDAQ TRF, use of trade modifiers, Reporting Riskless Principal Trades, and ensuring trades are accurately reported on member's behalf]; **Other Trading Rules** [NASD Rules 3340, 4120, 4120A & 6545 - ensure compliance with prohibitions on trading or quoting during a trading halt and NASD Rules 3320, IM-3320, 4613(b) & 4613A(b) ensure compliance with requirements to refrain from "backing away" from quotes and staffing trading desk adequately]; and **OATS** [NASD Rule 6953 - clock synchronization]. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

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

A censure and a total fine of \$15,000 (consisting of \$5,000 for the TRACE violations, \$5,000 for the Regulation SHO violations and \$5,000 for the supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs two and four. Within 60 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 these paragraphs; and (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine 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 sanction(s) imposed in this matter.

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

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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

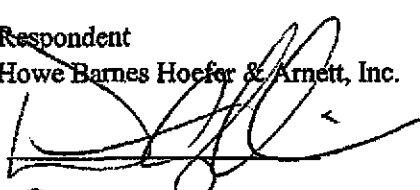
The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11-4-09

Date

Respondent

Howe Barnes Hofer & Arnett, Inc.

By: 

Name: Daniel E. Coughlin

Title: President + CEO

Reviewed by:



Attorney Name Matthew C. Bohn

Counsel for Respondent

Firm Name Howe Barnes Hofer & Arnett, Inc.

Address 222 S Riverside Plaza

City/State/Zip Chicago, Illinois 60606

Phone Number 312 655-3000

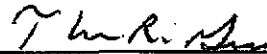
Accepted by FINRA:

11/6/09

Date

Signed on behalf of the

Director of ODA, by delegated authority



Thomas R. Gira

Executive Vice President

Department of Market Regulation

2006 TMMS Exam Samples
Howe Barnes Hoefler & Arnett ("HOWE")
Exam No. 20060067187

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
466	Customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates October 11-12, 2006.
321	Customer and proprietary sales, for compliance with NASD Rule 6130 (ACT Short Sale Reporting),	from trade dates October 11-12, 2006.
0	Short sales in NNM securities, for compliance with NASD Rule 3350 (Bid Test),	from trade dates October 11-12, 2006.
0	Short sales in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test),	from trade dates October 11-12, 2006.
11	Cancelled trades for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f), and 6620(f),	from trade dates October 3-12, 2006.
11	Limit and market orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 2111, 6541 and 2320, and SEC Rules 602 and 604,	from trade dates October 11-20, 2006.
0	"Non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320,	from trade dates October 11-12, 2006.
10	Institutional, not held customer market orders, for compliance with NASD Rule 2320,	from trade dates October 11-13, 2006.
31	Limit and market orders and 51 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade dates October 11-12, 2006.
N/A	Order for Nasdaq securities in soft dollar accounts and 0 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	N/A
1	Open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade dates October 11-12, 2006.
N/A	Trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	N/A
0	Trades in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320,	from trade dates October 11-12, 2006.

Exhibit # 1

**2006 TMMS Exam Samples
Howe Barnes Hoefler & Arnett ("HOWE")
Exam No. 20060067187**

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
25	Orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,	from trade dates October 11-12, 2006.
6 Groups (25 orders)	Security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	from the month of August 2006.
N/A	Data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the quarterly report ending September 2006.
9	Customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade dates October 11-12, 2006.
8	Persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in October 2006.
50	Orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates October 11-13, 2006.
152	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 October 11-20, 2006.
234	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 October 11-20, 2006.
104	Customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates October 11-12, 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 October 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 October 2006.

2006 TMMS Exam
Howe Barnes Hoefer & Arnett ("HOWE")
Exam No. 20060067187

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.

Bracketed letters indicate missing elements of written supervisory procedures.

Supervisory System, Procedures & Qualifications:

- NASD Rules 3010(a)(6) & (b)(3) - ensure personnel are qualified [(a), (c) and (d)] and
- NASD Rules 1020-1060 - ensure personnel are properly registered [(b)].

Order Handling:

- SEC Rule 606 - regarding compliance for routed orders [(a), (b), (c) and (d)];
- SEC Rule 604 and 602 - Limit Order Display and Quote Dissemination Rules [(b), (c) and (d)];
- NASD Rules 2110, IM-2110-2 and 6541 - Limit Order Protection Rules [(b), (c) and (d)];
- NASD Rule 2111 - Market Order Protection [(b)]; and
- SEC Rule 605 - Disclosure of Order Execution [(b)].

Best Execution:

- NASD Rules 2320(g) and 3110(h) - regarding the Three-Quote Rule [(a), (b), (c) and (d)];
- NASD Rule 2320(a) regarding orders routed to and executed by other parties based on order-by-order routing decisions by the member [(b) and (d)];
- NASD Rule 2320(a) regarding orders routed to and executed by other parties based on aggregate routing decisions by the member (i.e. Regular & Rigorous reviews) [(b) and (d)];
- NASD Rule 2320(a) - ensuring a favorable price; ensure compliance while trading: as a riskless principal; agent orders; and block sized orders [(c) and (d)]; and
- NASD Rule 2320(a) - regarding best execution of not held, market, and marketable limit orders [(b)].

Trade Reporting:

- NASD Rules 4632, 4642, 5430, 6130 and 6620 - regarding compliance when reporting trades to the FINRA/NASDAQ Trade Reporting Facility and when using trade modifiers [(b), (c) and (d)];
- NASD Rules 4632, 4642, 5430, 6130 and 6620 - ensuring trades are accurately reported on member's behalf [(b) and (d)]; and
- NASD Rules 4632, 4642, 5430, 6130 and 6620 - regarding acceptance of trades reported by another member (or entering a matching trade) in a timely manner [(c) and (d)].

2006 TMMS Exam
Howe Barnes Hoefler & Arnett ("HOWE")
Exam No. 20060067187

Sales Transactions:

- SEC Rule 200 - regarding compliance with requirements to determine whether a sale is long or short [(b) and (d)];
- SEC Rule 200 & NASD Rule 3110(b) - ensuring "long" and "short" orders are properly marked [(b) and (d)];
- SEC Rule 203 & NASD 3370 - regarding locate requirements [(b) and (d)];
- SEC Rule 202 - ensuring compliance with requirements to refrain from accepting short sale orders for threshold securities in which the member has aged fails, unless the member borrows securities being sold prior to execution [(b) and (d)]; and
- NASD Rules 6130, IM-6130 & 6130A - ensuring compliance to report accurate short sales; [(b) and (d)].

Other Trading Rules:

- NASD Rules 3340, 4120, 4120A & 6545 - ensuring compliance with prohibitions on trading or quoting during a trading halt [(b) and (d)] and
- NASD Rules 3320, IM-3320, 4613(b) and 4613A(b) - refraining from "backing away" from quotes and staffing trading desk adequately [(b) and (d)].

OATS:

- NASD Rule 6953 - clock synchronization [(d)].

Other Rules:

- SEC Rules 17a-3 & 17a-4 - accurately prepare and maintain required books and records pertaining to the trading areas [(a), (b), (c) and (d)].