

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006003890001

To: Department of Enforcement
NASD

Re: A.C.R. Securities, Inc.
Member (BD No. 43645)

Pursuant to NASD Procedural Rule 9216, A.C.R. Securities, Inc. (ACR) 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 ACR alleging violations based on the same factual findings.

ACR 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 Enforcement and the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA), pursuant to NASD Procedural Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against ACR; and
3. If accepted:
 - a. This AWC will become part of ACR's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against ACR;
 - b. This AWC will be made available through NASD's public disclosure program in response to public inquiries about ACR's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Procedural Rule 8310 and IM-8310-2; and
 - d. ACR 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 ACR's testimonial obligations or rights to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

ACR 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:

ACR has been a member of NASD since May 1998. ACR conducts a general securities business from its main office located in Cedarhurst, NY. ACR has no prior disciplinary history with the Securities and Exchange Commission, any self-regulatory organization, or any state securities regulator.

I. WAIVER OF PROCEDURAL RIGHTS

ACR 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 ACR;
- 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.

Furthermore, ACR 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.

In addition, ACR specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural 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

- A. ACR 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:

ACR's Failure to Retain Electronic Communications

From February 2002 through January 2006, ACR did not have a system to retain electronic communications and failed to preserve copies of electronic communications relating to its business sent or received by ACR and its sole registered representative, AR. ACR was unable to produce electronic communications for the period prior to September 20, 2005, because shortly before that date it changed its computer and did not transfer the electronic communications from the old computer to the new computer. Neither ACR nor AR communicated with customers via electronic communications during the period under review.

SEC Rule 17a-4(b)(4) requires broker-dealers to preserve, for three years, all communications sent and received by them relating to their business. This rule applies to electronic

communications. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Rel. No. 34-38245 (Feb. 5, 1997). Moreover, NASD Rule 3110 requires NASD members to comply with SEC Rule 17a-4. Thus, by failing to retain e-mails for the required three-year period, ACR violated Section 17(a) of the Securities Exchange Act of 1934, SEC Rule 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110.

- B. ACR also consents to the imposition, at a maximum, of the following sanctions:
1. ACR shall be censured and shall pay a \$10,000 fine.
 2. Within 30 days of the issuance of this AWC, an officer of A.C.R. shall certify to NASD that the Firm has reviewed its procedures regarding e-mail retention and has established systems and procedures reasonably designed to achieve compliance with the laws, regulations, and rules concerning the retention of electronic mail communications.
 3. The sanctions imposed herein shall be effective on a date set by NASD staff.

III. OTHER MATTERS

- A. ACR understands that it may attach a Statement of Corrective Action to this AWC, which is a statement of demonstrable corrective steps taken to prevent future misconduct. ACR 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. ACR 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. ACR has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. ACR 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.

ACR certifies that this AWC has been read and that all provisions of this AWC are understood, and that ACR 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 ACR to submit it.

A.C.R. SECURITIES, INC.

Date July 5, 2006

By: Austin C. Rybstein, President
Austin C. Rybstein, President

Accepted by NASD:

Date July 14, 2006

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

Samuel L. Barkin
Samuel L. Barkin, Regional Counsel
NASD

Two Jericho Plaza, 2nd Floor
Jericho, NY 11753
(516) 949-4217
(516) 949-4201 (fax)

NASD Deputy District Director

Patricia A. Cappeto
2 Jericho Plaza
2nd Floor - Wing A
Jericho, NY 11753
(516) 949-4200