

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

20060041582-01

**TO: Market Regulation Department
NASD**

**RE: ACAP Financial, Inc., Respondent
Broker-Dealer
CRD No. 7731**

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

ACAP 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, 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 ACAP; and
3. If accepted:
 - a. this AWC will become part of ACAP's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against ACAP;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about ACAP'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. ACAP 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 ACAP's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

ACAP 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:

ACAP has been a member of NASD since December 12, 1978. The firm has following relevant disciplinary history:

- On May 11, 2006, NASD accepted an AWC, which censured and fined ACAP \$20,000 for trade reporting and supervision violations.
- On November 25, 2003, NASD accepted an AWC, which fined ACAP \$5,000 for trade reporting violations.

I.

WAIVER OF PROCEDURAL RIGHTS

ACAP 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 ACAP;
- 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, ACAP 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.

ACAP 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

In connection with 20060041582, the staff of NASD's Department of Market Regulation conducted a review of ACAP's compliance with NASD Rules applicable to trade reporting during the period September 1, 2005 through December 31, 2005 (the "review period").

- A. ACAP 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. ACAP failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 126 last sale reports of transactions in OTC Equity securities. These transactions constitute 4 percent of the transactions reviewed that the firm was required to report to the OTC Reporting Facility during the review period. The conduct described in this paragraph constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 2. Of the 126 transactions described in paragraph one, ACAP failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 49 last sale reports of transactions in OTC Equity securities and failed to designate to the OTC Reporting Facility such last sale reports as late. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
 3. ACAP incorrectly designated as "SLD" to the OTC Reporting Facility three last sale reports of transactions in OTC Equity Securities reported to the OTC Reporting Facility within 90 seconds of execution. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620.

4. ACAP failed to transmit through the OTC Reporting Facility seven last sale reports of transactions executed outside normal market hours in OTC Equity securities and failed to designate such last sale reports as "T". The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(a)(3).
5. ACAP'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 trade reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: a statement of the supervisory step(s) to be taken by the identified person(s). The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.
6. During the review period, the firm failed to enforce its written supervisory procedures which specified that the Head of Trading was to indicate his review of trade reporting by initialing and dating the order tickets reviewed. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

B. ACAP also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$20,000 (composed of \$10,000 for the trade reporting violations and \$10,000 for the supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph five. 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 paragraph five; and, (3) the date the revised procedures were implemented.

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

III.**OTHER MATTERS**

- A. ACAP understands that ACAP may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. ACAP understands that ACAP 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. ACAP agrees to pay any monetary sanctions imposed on ACAP 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 ACAP proposes to pay any fine imposed.
- C. ACAP specifically and voluntarily waives any right to claim that ACAP is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

ACAP certifies that ACAP 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 ACAP to submit it.

3/27/07
Date

ACAP Financial, Inc.

By: [Signature]

Name: Kirk Ferguson

Title: Pres

Reviewed by:

Counsel for Respondent

Accepted by NASD:

4/10/07
Date

[Signature]
Thomas R. Qira
Executive Vice President
Department of Market Regulation

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