

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060042951-01**

RECEIVED
2008 SEP 11 11:03
REGISTRATION & DISCLOSURE
MARKET REGULATION
3-41

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

RE: First American Capital and Trading Corporation, Respondent
Broker/Dealer
CRD No. 118812

Pursuant to Rule 9216 of the FINRA Code of Procedure, First American Capital and Trading Corporation ("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 March 18, 2002, and its registration remains in effect. The firm has no relevant prior disciplinary history.

SUMMARY

In Review No. 20060042951, the staff conducted a regulatory sweep regarding compliance with the Limit Order Display Rule for the review period of October 1, 2005 through December 31, 2005.

In Review No. 20060052305, the Trading and Market Making Surveillance staff of FINRA ("the staff") conducted an annual Trading and Market Making Surveillance Examination ("TMMS Examination"), which included a review of the items set forth on Exhibit No. 1, for the trade dates April 3, 2006 through April 17, 2006.

In Review No. 20070095773, the staff conducted a review of compliance with SEC Rule 605 for the review period of July 1, 2006 through March 31, 2007.

20060042951 (incl. 20060052305 and 20070095773) (GEJ)

000043277 2008

VIOLATIVE CONDUCT BY RESPONDENT

In connection with Review No. 20060042951:

1. During the review period, on 29 occasions the firm failed to display immediately 29 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 604 of Regulation NMS (formerly SEC Rule 11Ac1-4).
2. During the review period, the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data for 71 transactions. Specifically, the firm reported 71 orders to OATS without using the correct Account Type Code. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

In connection with Review No. 20070095733:

3. During the months of August 2006 through March 2007, the firm failed to make available a report for each calendar month on the covered orders in NMS stocks that it received for execution. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605.

In connection with Review Nos. 20060052305 and 20070095733:

4. During the review periods, 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 applicable Rules of NASD or the SEC. 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: soft dollars and trading; SEC Rule 605; and other trading rules (backing away, locked/cross markets) [(a), (b), (c), and (d)]; OATS reporting [(c) and (d)]; trade reporting [(b) and (d)];

supervisory system, procedures and qualifications [(a) and (d)]; order handling [(d)]; best execution [(d)]; short sale transactions [(d)]; and multiple MPIDs [(d)]. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$22,500 (consisting of \$5,000 for the SEC Rule 605 violations; \$5,000 for the Limit Order Display Rule violations; \$5,000 for the OATS reporting violations; and \$7,500 for the supervision violations; and an undertaking to revise its written supervisory procedures to address the deficiencies described in paragraph four above.

In addition, within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("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 four above; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments 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 the firm is unable to pay, now or at any time hereafter, the monetary sanctions 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 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 prejudice 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, pursuant to FINRA 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The firm understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the findings 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 a duly authorized officer has read and understood 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.

9/10/08
Date

First American Capital and Trading Corporation

By: [Signature]

Name: William Jo

Title: Chief Compliance Officer

~~Reviewed by:~~

~~Counsel for Respondent~~

Accepted by FINRA:

9/30/08
Date

[Signature]
Thomas R. Gira
Executive Vice President
Market Regulation

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

EXHIBIT 1

Scope of the Trading and Market Making Surveillance Examination (20060052305)

NASD staff reviewed the following samples during the examination:

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
50	customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates April 3- 17, 2006
50	customer and proprietary sale transactions, for compliance with NASD Rule 6130,	from trade dates April 3- 17, 2006
7	sale transactions in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test),	from trade dates April 3- 17, 2006
7	short sale transactions in NNM securities, for compliance with NASD Rule 3350	
19	cancelled trades for compliance with NASD Rules 3110, 4632(g), 4642(g), 4652(g), 6420(f), and 6620(f) and SEC Rule 17a-3(a)(6) and (a)(7),	from trade dates April 3- 17, 2006
7	limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rules 11Ac1-1 and 11Ac1-4,	from trade dates April 3- 17, 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 April 3- 17, 2006
43	limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade dates April 3- 17, 2006
0	orders for NASDAQ securities in soft dollar accounts and 84 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade dates April 3- 17, 2006
0	open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade dates April 3- 17, 2006

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
0	trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	from trade dates April 3- 17, 2006
0	trades in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320,	N/A
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 April 3- 17, 2006
28	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	from the report for April 2006.
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the report including April 2006.
10	customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	N/A
14	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in April 2006.
225	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 April 3- 17, 2006
1282	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 April 3- 17, 2006
29	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates April 3- 17, 2006
50	transactions in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates April 3- 17, 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, and	N/A

Sample

Size

N/A

Review Area

the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010.

Sample Source

based on WSPs in effect during April 2006.