

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

20060051153-01

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REGISTRATION & DISCLOSURE

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

RE: Bernard Herold & Co., Inc., Respondent
Broker-Dealer
CRD No. 6193

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Bernard Herold & Co., 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 entered the securities industry on May 10, 1972, as a member of FINRA and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On August 24, 2006, an NYSE Hearing Board accepted a Stipulation of Facts and Consent to Penalty and found that the firm committed recordkeeping and supervision violations and imposed sanctions of a censure and a fine of \$50,000.

FACTS AND VIOLATIVE CONDUCT

In connection with 20060051153, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of the firm's compliance with the short sale rules during the period January 17, 2006 through February 9, 2006 (the "short sales review period").

In connection with the 2006 Trading and Market Making Surveillance Examination of the firm, 20060064264, the staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates September 1, 2006 through September 15, 2006 (the "TMMS review period").

1. *During the TMMS review period, the firm failed to transmit required information to OATS on three business days. In addition, the firm transmitted to OATS 40 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate timestamps and omitted Account Type Codes. These inaccurate and/or incomplete reports represented more than 80 percent of the sample of reports that the firm transmitted to OATS on the trade dates reviewed in the TMMS examination. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).*
2. *During the short sale review period, the firm failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 285 transactions in eligible securities. During the TMMS review period, the firm failed to report to the OTC Reporting Facility the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross for 60 transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).*
3. *For the second and fourth calendar quarters of 2006, the firm made available a report on its routing of non-directed orders in covered securities during those quarters. These reports included incorrect information as to the identity of the routed venue and that there was a payment for order flow when no such payments were made during the second and fourth calendar quarters of 2006. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 606 of Regulation NMS.*

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: order handling, OATS and short sales [(a), (b), (c) and (d)]; supervisory system, procedures and qualifications and transaction reporting [(b) and (d)]; and best execution [(d)]. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$24,000 (consisting of a fine of \$4,000 for the OATS violations, a fine of \$5,000 for the transaction reporting violations, a fine of \$10,000 for the SEC Rule 606 violations and a fine of \$5,000 for the supervision violations) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.4. 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.4; 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.

9/3/08
Date

Respondent
Bernard Herold & Co., Inc.

By: [Signature]

Name: Lawrence Herold

Title: Pres.

Reviewed by:

[Signature]

Milton R. Gleit, Esq.
Counsel for Respondent
McCarthy Fingar LLP
11 Martine Avenue, 12th Floor
White Plains, NY 10606-1934

Accepted by FINRA:

9/30/08
Date

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

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

Exhibit A

Bernard Herold & Co., Inc.
20060051153 incl. 20060064264

FINRA staff reviewed the following samples during the TMMS examination and Short Sale Group review:

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
84	Customer sales transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates September 1-15, 2006
543	Customer sales, for compliance with NASD Rule 6130,	from trade dates September 1-15, 2006
3 Quarterly reports	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	2 nd , 3 rd , and 4 th quarters, 2006
10	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in September 2006
134	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 September 1-15, 2006
770	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 September 1-15, 2006
37	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates September 1-15, 2006
50	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates September 1-15, 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 September 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 September 2006.

Statement of Corrective Action

Re: STAR No. 20060051153
(including 20060064264)

Bernard Herold & Co., Inc. ("Respondent") submits this Corrective Action Statement in connection with the resolution of proposed charges arising out of the above-referenced examinations as more specifically set forth in the Letter of Acceptance, Waiver and Consent ("AWC") under consideration.

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY FINRA, NOR DOES IT REFLECT THE VIEWS OF FINRA, OR ITS STAFF.

1. With respect to the OATS violations, Respondent was aware from its daily reviews that the OATS reports of its clearing firm (Pershing LLC) were showing different order receipt times from the times Respondent was reporting to Pershing's computer system.

It was ultimately determined that the problem was resulting from our personnel not clicking a hidden button on the computer screen labeled "non-electronic" which omission caused Pershing's computer system to automatically default to the electronic mode that by-passed the time of the orders we were reporting and substituted the time the orders were received by Pershing.

Having been made aware of the strange nuance of Pershing's system, Respondent began clicking "non electronic" and the correct times of order receipt are now reported. The corrected procedure had already been implemented and was in operation at the time the examiners visited Respondent.

2. The incorrect Rule 6130(d) symbols involved use of "short exempt" for sales of restricted stock that could not be delivered within three days but would be deliverable within thirty-five days.

Subsequent to the examination period, the SEC terminated the "short exempt" designation entirely, perhaps indicative of the confusion within the industry as to its proper usage.

Respondent's procedures now provide for the order ticket for sales of restricted stock to be marked "short-restricted." The transaction then is given the "short" symbol and the "locate" field is noted as "restricted" to symbolize that the securities would be deliverable from four to thirty-five days.

3. Respondent routinely directs non-directed orders in NSM securities to either Pershing, its clearing firm, or Knight Equity Markets. Pershing's reports on behalf of its clients break down each clients' orders that Pershing re-routes to others for execution. The reports prepared by Transaction Auditing Group which Respondent published included the complete Pershing information showing actual order execution as provided by Pershing.

Respondent's reports now only provide our direct routing without taking any re-routing by Pershing into effect.

Rule 606 (a) (iii) requires inclusion of "a description of any arrangement for payment for order flow" [emphasis added]. Respondent has had such arrangement with Knight and has, in fact, received payments for order flow historically although not recently. However, based on the examination, Respondent will delete the reference to possible order flow payment unless and until such payments have been received during the period reported.

4. Revisions to Respondent's WSP have been and/or are in the process of being made to reflect among other things, the corrective actions described above as well as methodologies for recording the performance of the stated procedures.