

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. *** 20060051748-01**

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

RE: Hapoalim Securities USA, Inc., Respondent
Broker-Dealer
CRD No. 266

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Respondent Hapoalim Securities USA, Inc. ("ERNS" 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 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

In connection with matter 20060051748, the staff of FINRA's Department of Market Regulation (the "staff") conducted ERNS's Order Entry and Trading ("OET") Examination for 2006, evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing the items listed in Appendix 1 for trade dates April 10 through 21, 2006 (the "exam review period").

- 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

ERNS has been a member of FINRA since December 9, 1939 and its registration remains in effect. The firm has the following relevant disciplinary history:

- On November 9, 2004, an AWC became final pursuant to which the firm was fined \$10,000 for affirmative determination and books & records violations.
- On June 24, 2004, an AWC became final pursuant to which the firm was censured and fined \$11,000 for registration, best execution and confirmation violations.

RECEIVED
2006 SEP 25 A 4:48
REGISTRATION & DISCLOSURE
RECEIVED
2006 SEP - 2 P 7 19
NASD REGISTRATION, MARKET REGULATION

FACTS AND VIOLATIVE CONDUCT

1. During the exam review period, the firm transmitted to the Order Audit Trail System ("OATS") 39 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports failed to include required routing information, containing only a new order (NW) report, but failing to contain an order route (OR) report. These inaccurate and/or incomplete reports represented 78 percent of the sample of reports that the firm transmitted to OATS on the trade dates reviewed in the OET examination. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
2. The firm failed on 14 occasions during the exam review period to provide written notification disclosing to its customer its correct capacity in the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
3. During the exam review period, the firm executed four short sale orders the records for which it failed to properly mark as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
4. During the exam review period, the firm failed to show the correct time of entry on the memorandum of six brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
5. 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 minimal requirements for adequate written supervisory procedures, in the following subject areas: **Supervisory Systems, Procedures, and Qualifications** (Registration and Continuing Education) [as to (b), (c) and (d)]; **Best Execution** (Execution of Market and Marketable Limit Orders) [as to (d)]; and **Sales Transactions: SEC Rule 200(g) and SEC Rule 203(b)(3)(iii)** [as to (a) and (b)]. In addition, the firm failed to provide documentary evidence that during the exam review period it performed the supervisory reviews set forth in its written supervisory procedures concerning **Best Execution** (Execution of Market and Marketable Limit Orders); **Anti-Intimidation and**

Coordination; Trade Reporting (Trade Modifiers and Third-Party Reporting); and Sales Transactions (Reporting of Short Sale Indicators, SEC Rule 200(g) and SEC Rule 203(b)(3)(iii)). 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; fines totaling \$15,000 (comprised of \$5,000 for the firm's OATS-reporting violations; \$1,000 for its SEC Rule 10b-10 violations; \$2,500 for its SEC Rule 200(g) violations; \$1,500 for its recordkeeping violations; and \$5,000 for its supervisory violations); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.5. 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.5; and (3) the date the revised procedures were implemented.

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

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fines 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 sanctions imposed in this matter.

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 it;
- 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 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 ("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 records;
 - 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.

August 28, 2008
Date

Respondent
Hapoalim Securities USA, Inc.

By: [Signature]

Name: JOHN J. MURABITO
CHIEF EXECUTIVE OFFICER

Title: _____

Reviewed by:

[Signature]
Counsel for Hapoalim Securities USA, Inc.

Accepted by FINRA:

9/23/08
Date

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

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

2006 Order Entry and Trading Exam Samples
Hapoalim Securities USA, Inc. ("ERNS")
Exam No. 20060051748

<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 10 – 21, 2006
50	customer and proprietary sales, for compliance with NASD Rule 6130;	from trade dates April 10 – 21, 2006
4	cancelled trades, for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f), and 6620(f);	from trade dates April 10 – 21, 2006
6	not held customer market orders, for compliance with NASD Rule 2320;	from trade dates April 10 – 21, 2006
8	limit and market orders and 8 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules;	from trade dates April 10 – 21, 2006
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606;	from report for 2nd Quarter of 2006
8	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules;	from trading staff in April, 2006
50	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955;	from trade dates April 10 – 21, 2006
106	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 10 – 21, 2006
176	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 10 – 21, 2006
46	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10;	from trade dates April 10 – 21, 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 April 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 April 2006