

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2006005285901**

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REGISTRATION & DISCLOSURE

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

RE: Herbert Hupp, Respondent  
General Securities Principal  
CRD No. 1091286

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, I, Herbert Hupp, submit 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 me alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. I hereby accept and consent, 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**

On January 15, 1983, Herbert Hupp became registered as a General Securities Representative with a FINRA member. On February 27, 1991, Hupp became a General Securities Principal. Between the dates of September 9, 1999 and February 27, 2006, he was registered in these capacities with Stifel, Nicolaus & Company, Inc., a FINRA member. Between the dates of February 10, 2006 and December 31, 2006, Hupp was registered with another FINRA member firm. Hupp is not currently registered with any member firm and he does not have any prior disciplinary history.

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## **FACTS AND VIOLATIVE CONDUCT BY RESPONDENT**

### **Private Securities Transactions**

Between July 2002 and March 2003, Hupp participated, for compensation, in private securities transactions by selling privately issued stock of a company called ReBase. Hupp received a 7% commission on the stock sales and additional shares for himself at no charge. Eight of the purchasers were customers of Hupp's employing member firm and they invested a total of \$115,000. Hupp's commissions for these transactions totaled approximately \$8,050.

In 2003, Hupp participated, for compensation, in another episode of private securities transactions by soliciting customers to purchase privately issued stock of a company called Golden Blade Resources. Hupp received 33,000 shares (which he sold for \$29,040 in 2004) from Golden Blade Resources for these referrals. Four of the purchasers were customers of Hupp's employing member firm and they invested a total of \$55,000.

After ReBase failed, the company was reorganized into a company called Nafta. Between November 2003 and March 2004, Hupp participated, for compensation, in a third episode of private securities transactions by selling privately issued Nafta stock. Hupp received a 7% commission on the stock sales. Four of the investors were customers of Hupp's employing member firm and they invested a total of \$80,000. Hupp only forwarded \$55,000 of this money to Nafta, which resulted in \$2,750 in commissions.

Hupp failed to give written notice to his employing member firm of his intention to engage in any of these securities sales and failed to receive written approval from his employing member firm prior to engaging in any of these sales because his suspected these activities would not be approved by his firm. These acts described above constitute separate and distinct violations of NASD Rules 3040 and 2110.

### **Misuse of Customer Funds**

Between November 2003 and March 2004, Hupp misused approximately \$25,000 from two customers of Hupp's employing member firm that was intended for the purchase of securities (in the form of privately issued stock from a company called Nafta). Hupp used these funds for his personal expenses and not for the benefit of the customers, without their permission or knowledge. This act constitutes a violation of NASD Conduct Rules 2330(a) and 2110.

- B. I also consent to the imposition of the following sanctions:

A bar in all capacities.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended.

Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to NASD IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

## II.

### WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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**

I understand 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 me; and
- C. If accepted:
  - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its 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 me to submit it.

11-2-07

Date

Herbert Hupp

Herbert Hupp

Reviewed by:

Bradley W. Skolnik, Esq.  
Counsel for Respondent  
Stewart & Irwin, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Tel. (317) 639-5454

Accepted by FINRA:

11-16-07

Date

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

UnBo Chung

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