

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070083220-01**

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

RE: David A. Noyes & Company, Respondent
Broker-Dealer
CRD No. 205

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, David A. Noyes & Company (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 1939. Its registration remains in effect. The firm has no relevant disciplinary history.

FACTS AND VIOLATIVE CONDUCT

This matter is the result of the Department of Market Regulation's 2007 Trading and Market Making Surveillance Examination in review number 20070083220. The on-site portion of the examination took place on April 23-27, 2007. Attached as an exhibit is a list of items the staff reviewed during the on-site examination for trade dates February 5-16, 2007 (the "review period").

1. During the review period, the firm failed to report to the NASD/Nasdaq Trade Reporting Facility or the OTC Reporting Facility the correct symbol indicating whether the firm executed 97 transactions in Reportable Securities

in a principal, riskless principal, or agency capacity. In addition, the firm failed in six instances to report the short sale or short exempt indicator for short sales. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130.

2. During the review period, the firm transmitted to OATS 44 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate timestamps, incorrect order-type codes, and incorrect information for proprietary transactions in a market-making security. These inaccurate and/or incomplete reports represented 88% percent of the OATS reports reviewed in the TMMS examination. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. During the review period, the firm in ten instances failed to provide an order memorandum and in 59 instances failed to memorialize correctly order information, order receipt time, or the order type code. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rules 17a-3 and 17a-4 and NASD Rule 3110.

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

A censure and a fine of 12,500 (\$5,000 for trade reporting violation, \$5,000 for OATS violations, and \$2,500 for recordkeeping violations).

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 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 Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 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 FINRA Rule 8313; 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 undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf 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.

Date 01/27/2009

Respondent

David A. Noyes & Company

By: Arthur J. Wyman

Name: ANDREW J. WYKRETOWICZ

Title: CHIEF COMPLIANCE OFFICER

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

2/23/09
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

2007 MRE Exam Samples
David A. Noyes & Company ("NOYS")
Exam No. 20070083220

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
27	Customer and proprietary sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements.	From trade dates February 5-16, 2007.
26	Customer and proprietary short sales, reviewed for compliance with SEC Rule 203(b) security location requirements.	From trade dates February 5-16, 2007.
30	Customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Rules 6130, 4632 and 6620 sale indicator reporting requirements.	From trade dates February 5-16, 2007.
N/A	Customer and proprietary sales reported to the ADF/TRACS, for compliance with NASD Rule 4632A sale indicator reporting requirements.	N/A
0	Short sales in Nasdaq Global Market securities executed otherwise than on an exchange, for compliance with NASD Rule 5100 bid test requirements.	From trade dates February 5-16, 2007.
0	Short sales in exchange-listed securities executed otherwise than on an exchange, for compliance with SEC Rule 10a-1 tick test requirements.	From trade dates February 5-16, 2007.
4	Customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements.	From trade dates February 5-16, 2007.
0	Cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Rules 4632(g), 6420(f), 6620(f) and 6130(f) trade report cancellation requirements.	From trade dates February 5-16, 2007.
N/A	Cancellations of trades reported to ADF/TRACS, for compliance with NASD Rule 4632A(l) trade report cancellation requirements.	N/A
92	Limit and market orders executed as principal, for compliance with the order protection and best execution requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and 2320, and Nasdaq Rules 2110, IM-2110-2, 2111 and 2320	From trade dates February 5-16, 2007.
0	Limit orders for NMS stocks in which the member acts as an exchange or OTC market maker, for compliance with the display requirements of SEC Rule 602, 604 and Nasdaq Rule 3390.	From trade dates February 5-16, 2007.
0	Market orders with "not held" terms or from institutional customers, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements.	From trade dates February 5-16, 2007.

2007 MRE Exam Samples
David A. Noyes & Company ("NOYS")
Exam No. 20070083220

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
0	Market orders executed as principal, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements.	From trade dates February 5-16, 2007.
0	Order memoranda for net trades effected by non-institutional and institutional customers, for compliance with NASD Rule 2441 documentation requirements.	From trade dates February 5-16, 2007.
0	Net trading agreements with institutional customers, for compliance with NASD Rule 2441 documentation requirements.	From trade dates February 5-16, 2007.
92	Principal and riskless principal trade executions effected otherwise than on an exchange for 92 limit or market orders, for compliance with NASD Rules 4632, 6420, 6620 and 6130 requirements for TRF and OTCRF reporting.	From trade dates February 5-16, 2007.
N/A	Principal and riskless principal trade executions effected otherwise than on an exchange for 50 limit or market orders, for compliance with NASD Rule 4632A requirements for ADF/TRACS reporting.	N/A
0	NASD Market Surveillance breaks for principal and riskless principal trades, for compliance with NASD Rules 4632, 6420, 6620, 6130 and 4632A requirements for TRF, OTCRF and ADF/TRACS reporting.	From trade dates February 5-16, 2007.
N/A	Trade executions effected otherwise than on an exchange for 0 orders in Nasdaq-listed or exchange listed securities, received from customers with accounts subject to a soft dollar agreement, for compliance with the SEC '34 Act section 28(e) safe harbor which limits the accrual of soft dollar credits for riskless principal transactions to those reporting in compliance with NASD Rules 4632 and 6420.	N/A
0	Open limit orders to buy and/or open stop orders to sell securities that traded ex-dividend, for compliance with NASD Rule 3220 and Nasdaq Rule 4761.	For ex-dividend dates February 6-20, 2007.
0	Trades reported to a TRF or OTCRF with a .PRP modifier, for compliance with NASD Rules 4632, 6420, 6620 and 2320.	From trade dates February 5-16, 2007.
N/A	Trades reported to ADF/TRACS with a .PRP modifier, for compliance with NASD Rule 4632A.	N/A
0	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements.	From trade dates February 5-16, 2007.

2007 MRE Exam Samples
David A. Noyes & Company ("NOYS")
Exam No. 20070083220

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
N/A	Datasets published for on the monthly order execution report, for compliance with SEC Rule 605 requirement to publish accurate data. (A "dataset" is all required statistical data for a single order category, with each category representing a single unique combination of a security, order type and order size, as described in Rule 605.)	N/A
N/A	Quarterly order routing report, for compliance with SEC Rule 606 requirements.	Quarterly report published for January-March 2007.
10	Customer orders in OTC equity securities, for compliance with NASD Rules 2320(g) and 3110(b) requirements to ascertain and document the best interdealer market for transactions in such securities.	From trade dates February 5-16, 2007.
83	Orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955, and Nasdaq Rules 6954 and 6955 requirement to submit OATS information.	From trade dates February 5-16, 2007.
N/A	ADF orders and/or quotes which were accessed by others, for compliance with NASD Rule 4300A requirements to submit Order and Order Response reports.	N/A
190	Order/Trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.	From trade dates February 5-16, 2007.
186	Trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD Trade Reporting and ADF rules.	From trade dates February 5-16, 2007.
23	Customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements.	From trade dates February 5-16, 2007.
8	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040.	List of trading and supervisory personnel for February 2007.

**2007 MRE Exam Samples
David A. Noyes & Company ("NOYS")
Exam No. 20070083220**

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
All, as provided by the member	The member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Rule 3010 requirements to establish an implement a system that is reasonably designed to prevent and detect violations of applicable securities rules.	WSPs provided by the member for February 2007, and documentation of supervisory reviews conducted for February 2007.
N/A	The member's "Regular & Rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Rules 2320 and 3010.	N/A
N/A	Trades reported by the ATS/ECN to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for compliance with requirements of NASD Rules 6130(c)(5) and/or 6130A(b)(5).	N/A
N/A	Trading halts declared during the on-site portion of the examination, for which NASD staff observed the operation of the ATS.	N/A