

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070090604-01**

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

RE: BMO Capital Markets Corp., Respondent
Broker-Dealer
CRD No. 16686

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FINRA
MARKET REGULATION

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Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BMO Capital Markets Corp. (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 became a member of FINRA on October 29, 1985. The firm's registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On July 11, 2006, FINRA accepted an AWC that censured and fined the firm \$22,500 for violations of SEC Rules 10b-10 and 605 and NASD Rules 4632(d), 6130(d), and 6420. On June 15, 2007, FINRA accepted an AWC that censured and fined the firm \$10,000 for violations of SEC Rule 604 and NASD Rules 2110, 5430(a), 6620(a) and 6620(a)(3).

SUMMARY

In connection with 20070090604, the staff of the Department of Market Regulation of FINRA (the "staff") reviewed the firm's compliance with Order Audit Trail System ("OATS") reporting requirements during the period January 1 through March 31, 2007 (the "OATS review period").

In connection with 20080136046, the staff conducted the 2008 Trading and Market Making Surveillance examination of the firm, wherein the staff reviewed the items set forth on Exhibit 1, which is attached and incorporated herein by reference, primarily for the trade dates May 14 and 15, 2008 (the "TMMS review period"). In addition, the staff reviewed the compliance of the firm's listed equity options ("LEO") desk with the OATS requirements during the period August 2007 to July 2008.

In connection with 20080138284, the staff reviewed the firm's compliance with trade reporting rules during the period September 1 through December 31, 2007 (the "trade reporting review period").

FACTS AND VIOLATIVE CONDUCT

20070090604

1. During the OATS review period, the firm transmitted to OATS 7,138 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 1,022 of these rejected ROEs during the OATS review period, representing 14.3 percent of all rejected repairable ROEs. As a result of the firm's failure to repair these ROEs, the firm failed to transmit 1,022 ROEs to OATS during the OATS review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20080136046

2. During the period August 2007 to July 2008, the firm's LEO desk failed to transmit 6,141 ROEs to OATS. These 6,141 ROEs represented 100 percent of the ROEs that the firm's LEO desk was required to transmit to OATS during the same period of time. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. During the TMMS review period, the firm failed on 29 occasions to provide written notification disclosing to its customer its correct capacity in the transaction. The firm, on 12 occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security. The conduct described in this paragraph constitutes separate and distinct

violations of SEC Rule 10b-10.

4. During the TMMS review period, the firm failed to show the terms and conditions, identify if the order was a market or limit order, and/or show the correct time of execution on the memorandum of 16 brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.
5. During the TMMS review period, 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 for its LEO Desk failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: Trade Reporting - trades reported on the firm's behalf [b]; Sales Transactions - order marking requirements, locate requirements, refraining from accepting short sales under Rule 203(b)(3) [b and d]; Trading Halts [a, b, c, and d]; OATS - accuracy of submissions, rejected data and inter-firm routed order ID matching [a, b, c, and d]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20080138284

5. During the trade reporting review period, the firm failed to accept or decline in the FINRA/Nasdaq Trade Reporting Facility and OTC Reporting Facility 594 transactions in Reportable Securities within 20 minutes after execution, approximately three percent of all transactions that the firm had an obligation to accept or decline as the OEID during the trade reporting review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(b) and a violation of NASD Rule 2110.

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

- A censure.
- A fine of \$35,000 (in 20070090604: \$5,000 for the NASD Rule 6955 violations; in 20080136046: \$10,000 for the NASD Rule 6955 violations, \$2,500 for the SEC Rule 10b-10 violations, \$2,500 for the SEC Rules 17a-3 and NASD Rule 3110 violations, and \$5,000 for the NASD Rules 2110 and 3010 violations; and in 20080138284: \$10,000 for the NASD Rules 2110 and 6130(b) violations).

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 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

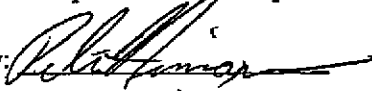
The firm understands that:

- 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.

Nov. 17, 2009
Date

Respondent
BMO Capital Markets Corp.

By: 

Name: Peter Hinman

Title: Chief Operating Officer

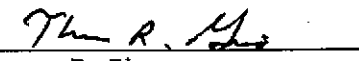
Reviewed by:

Attorney Name
Counsel for Respondent

Accepted by FINRA:

1/6/10
Date

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


Thomas R. Gira
Executive Vice President
Department of Market Regulation

2008 Market Regulation Examination Samples
 BMO Capital Markets Corp. ("BMOC")
 Exam No. 20080136046
 Sample Source/Period*: May 14 and 15, 2008

<u>Sample</u>	<u>Size</u>	<u>Sample Description</u>
	38	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
	9	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
1751		Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
	<u>1751</u>	for general trade reporting requirements
	<u>23</u>	for Cancellation of reported trade requirements
	<u>1751</u>	for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
	<u>0</u>	for compliance with the use of the .PRP (Prior Reference Price) trade modifier
	<u>4</u>	for compliance with the requirements of odd-lot trade reporting
	<u>0</u>	for compliance with the use of the .RA trade modifier (prices away from the market)
	<u>0</u>	for compliance with the use of the .RX trade modifier (exercise OTC options contract)
	<u>50</u>	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
	<u>1328</u>	for Sale Indicator requirements
0		Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631
793		Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110
0		Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604 and Nasdaq Rule 3390
22		Orders for compliance with best execution requirements of NASD Rule 2320
	0	Orders executed as principal for compliance NASD Rule 2320 and with the order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and Nasdaq Rules 2110, IM-2110-2, and 2111
	0	'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements
	<u>10</u>	Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
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
0		Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
83		Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements

2008 Market Regulation Examination Samples
BMO Capital Markets Corp. ("BMOC")
Exam No. 20080136046
Sample Source/Period*: May 14 and 15, 2008

<u>Sample</u>	<u>Size</u>	<u>Sample Description</u>
249		Customer confirmations prepared and maintained in connection with select samples <u>249</u> for compliance with SEC Rule 10b-10 disclosure requirements <u>28</u> for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
25		Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
0		Data sets published for <February 2008> monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
0		Orders underlying data sets reviewed for <February 2008> for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
2nd Quarter 2008		Quarterly Routing Report for compliance with SEC Rule 606 requirements
12		CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
All Provided		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612
153		Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110