

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070095212**

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

RE: David DeMartino, Respondent
Registered Representative
CRD No. 4547962

Pursuant to Rule 9216 of FINRA Code of Procedure, David DeMartino ("DeMartino" or "Respondent") 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 me alleging violations based on the same factual findings described herein.

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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

DeMartino entered the securities industry in July 1998 as a non-registered representative for Bankers Trust Company where he remained until April 2001. From 2001 until April 2004, DeMartino was employed as an investment banking associate and then as an equity research associate at Deutsche Bank Securities, Inc. DeMartino obtained a Series 7 license in August 2002. In April 2004, DeMartino was employed by Credit Suisse First Boston, LLC ("Credit Suisse" or the "Firm") now known as Credit Suisse Securities, (USA) LLC, as an equity research analyst where he remained until December 4, 2005.

The December 13, 2005 Form U-5 Uniform Termination Notice for Securities Industry Registration filing by Credit Suisse, identified the reason for DeMartino leaving the Firm on December 4, 2005 as "job elimination."

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Although DeMartino is not currently registered or associated with any member firm, he remains subject to FINRA's jurisdiction.

RELEVANT PRIOR DISCIPLINARY HISTORY

DeMartino does not have any prior disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

OVERVIEW

At the time of the relevant events, DeMartino was a lead research associate at Credit Suisse. DeMartino and members of the research team to which he was assigned, covered a number of publicly traded medical companies, including an NYSE listed company ("XYZ"). On May 24, 2005, DeMartino was informed by the research analyst ("research analyst") who led the research team, that the research analyst had obtained certain information from the CEO of XYZ relating to XYZ's expected updated earnings guidance, the day before the official public release of the company's updated earnings guidance. The research analyst instructed DeMartino to draft a short preview research note containing the information with the intent to publish the information that evening. Following the conversation, DeMartino selectively disseminated to the Firm's healthcare trader and a Firm client the information that the CEO had disclosed to the research analyst, with an admonition to keep the information confidential. Subsequently, Credit Suisse traded in shares of XYZ, prior to the public release of such information. By selectively disseminating the information that the research analyst had received from the CEO, DeMartino violated NASD Conduct Rule 2110.

FACTS

1. On February 1, 2005, XYZ publicly announced its initial earnings per share ("EPS") guidance for 2005 in the range of \$2.00 to \$2.20 per share. XYZ was expected to announce updated second quarter and full year 2005 EPS guidance in April 2005, in connection with its first quarter 2005 results.
2. However on April 19, 2005, XYZ deferred providing updated second quarter and full year 2005 EPS guidance until its scheduled May 25, 2005 research analyst meeting at an annual conference held in Paris focusing on scientific and business developments in the cardiovascular medicine industry.
3. During the week of May 24, 2005, the research analyst was in Paris for the annual conference. On May 24th, while at the conference, the research analyst approached the CEO of XYZ and had a brief conversation with him. During the conversation,

the research analyst asked the CEO if there were going to be "any surprises tomorrow," referring to the scheduled XYZ analyst meeting. The CEO responded that there would be no surprises and that market share was still up.

4. The research analyst then asked the CEO, in violation of Firm policy, whether earnings guidance was going to go below \$2.00, to which, according to the research analyst, the CEO responded "that's the number I'm shooting for, give or take a penny." The CEO also stated that XYZ had recently made some acquisitions that were increasing its spending.

DeMartino Selectively Disseminated XYZ's Updated EPS Guidance to a Firm Healthcare Trader and a Client

5. Immediately following his conversation with the CEO, the research analyst called DeMartino and a junior research associate, and briefed them on his conversation with the CEO, including the CEO's comments regarding XYZ's expected updated EPS guidance.
6. The research analyst instructed DeMartino to draft a short preview research note containing the EPS guidance information with the intent to publish it that evening before the XYZ analyst meeting the next day.
7. Shortly after speaking with the research analyst, DeMartino called the Firm's healthcare trader and conveyed the information he had received from the research analyst, with an admonition to keep the information confidential.
8. After the conversation with his research team, the research analyst (without the knowledge of DeMartino) quickly sent 23 separate emails from his Blackberry to 19 individuals at 17 Firm clients, and to 31 sales personnel at the Firm and its Canadian and European affiliates disclosing the EPS guidance information that he had learned from the CEO, warning in all but one email to keep the information quiet.
9. All but one of the emails had the subject line "[XYZ] analyst meeting tomorrow." Many of the emails included the phrase "quick heads up ahead of tomorrow's analyst meeting" in the opening paragraph. With a few small variations in wording, all of the emails contain the following core statements:

Just sat down with [CEO] here in Paris. Sounds like they're going to bring down 2005 EPS guidance to \$1.98-2.02 (vs current consensus of \$2.06). They're going to talk about DES share back up at 58-59%, but spend (mostly) R&D goes up since they made those 4 acq'ns this year (...), 3 of which came with burn.

10. All but one of the emails - and all of the emails sent directly by the research analyst to Firm clients - contained some sort of admonition to

keep the information confidential.

- 15 of the emails contain the following closing statement "Don't want to get in trouble...keep btwn us for now."
 - 4 of the emails contain the following closing statement "Don't want to get on his bad side...keep btwn us for now."
 - 1 email sent to four Credit Suisse sales personnel has an opening paragraph that includes the statement: "Pass around but tell them to keep it on QT - don't want to get on CEO's bad side."
11. The research analyst also forwarded to DeMartino, one of the emails described above, which the research analyst had already sent to a Firm client, and which contained the admonition "Don't want to get in trouble...keep btwn us for now." In the forwarded email, the research analyst instructed DeMartino to call a Firm client and provide him with the information.
12. DeMartino called the Firm client and conveyed the information he had received from the research analyst, with an admonition to keep the information confidential.

**The Firm Healthcare Trader Who Received DeMartino's Disclosure
Regarding XYZ's Updated EPS Guidance Traded Shares of XYZ**

13. After speaking with DeMartino, the Firm healthcare trader, who asserts he had planned to do the trades already, sold short 50,000 shares of XYZ at the following times:
- At 12:59 p.m., a short sale of 25,000 shares of XYZ for a Credit Suisse proprietary account. The order was filled by 1:01 p.m.
 - At 1:01 p.m., the healthcare trader placed a second order for a short sale of 25,000 shares of XYZ for the same Credit Suisse proprietary account. The order was filled within six minutes.
14. The Firm's healthcare trader also received and executed several XYZ related client orders on May 24th. These client orders were placed after telephone conversations between a Credit Suisse sales trader who received one of the research analyst's emails regarding XYZ and representatives from the clients, wherein the sales trader disclosed the XYZ earnings guidance information he received from the research analyst. The Firm healthcare trader placed the following XYZ orders on behalf of these customers:
- At 1:42 p.m., the healthcare trader placed an order to sell long 25,000 shares of XYZ from customer ABC. The order was filled within minutes.

- At 2:14 p.m., customer DEF placed an order for the healthcare trader to sell long 82,500 shares of XYZ. The order was filled within minutes.
- At 2:15 p.m., customer DEF placed a second order that day for the healthcare trader to sell short 31,000 shares of XYZ.

Firm Approves and Publishes DeMartino's Team's Research Note

15. On May 24th at approximately 8:01 pm, DeMartino and the research analyst submitted a note for Firm approval and publishing. The Firm approved the note and published the note at 1:48 a.m. on May 25, 2005. The note read, in part, as follows:

- [XYZ] will host an analyst meeting tomorrow morning at 8am EST at EuroPCR in Paris. The hot topics will be updated 2005 guidance and ... market share recovery in the wake of March's ACC.
- New guidance. On [XYZ] 1Q05 earnings call, mgmt deferred updating guidance until tomorrow's analyst meeting, although it seemed the bottom end [of] the \$2.00-2.20 EPS range was realistic. We now expect the 2005 range to be revised to \$1.98-2.02, which compares to Street consensus of \$2.06.

May 25, 2005 XYZ Issued Updated EPS Guidance

16. On May 25, 2005, at the analyst conference in Paris, XYZ publicly announced its updated guidance for 2005. The updated EPS guidance was \$1.85-\$2.00 rather than \$2.00 "give or take a penny" that the CEO had communicated to the research analyst the day before. The press release containing the updated XYZ EPS guidance hit the wires at 9:00 a.m.
17. On May 24, 2005, XYZ's stock price opened at \$ 30.32. On May 26, 2005, XYZ's stock price closed at \$ 28.16

Firm's Policies and Procedures

18. At the time that the research analyst solicited the updated earnings guidance information from the CEO, the Firm maintained a policy pursuant to Regulation Fair Disclosure ("Regulation FD"), prohibiting analysts from seeking updates or reconfirmations of earlier earnings estimates or other forecast information.
19. The Firm also maintained a policy to prevent the misuse of market-sensitive information relating to research reports by any person associated with it. Specifically, Firm policy prohibited material research communications from being

disseminated to Sales and Trading personnel or Firm clients on a preferential or selective basis.

20. In order to avoid any appearance of selective dissemination, Firm policy required that all written equity research be cleared by the Firm's Legal and Compliance Department, and posted to First Call and Research & Analytics, prior to going to the Firm's sales force.
21. Despite these clear guidelines from the Firm, DeMartino selectively disclosed the information regarding XYZ's updated earnings guidance that DeMartino knew the research analyst had improperly solicited and received from the CEO the day before XYZ officially publicly released the updated guidance.

VIOLATIVE CONDUCT

Respondent violated NASD Conduct Rule 2110, in that he selectively disseminated information obtained from the CEO of an NYSE listed public company that the company was lowering its estimate of earnings per share the day before its official public release.

B. DeMartino also consents to the imposition of the following sanctions:

1. A fine of \$15,000; and
2. A suspension from associating with any member firm in any capacity for three months.

The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month bar noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 him;
- 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, Respondent 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.

Respondent 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

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

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has 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 him to submit it.

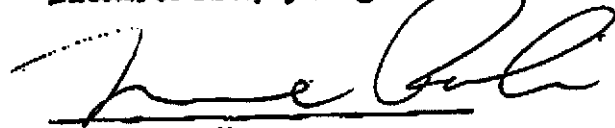
11/30/07
Date

David DeMartino
David DeMartino, Respondent

Accepted by FINRA:

12/3/07
Date

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



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Reviewed by:



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