

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007010624101**

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REGISTRATION & DISCLOSURE

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

RE: H. Beck, Inc., Respondent
Member Firm
CRD No. 1763

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, we 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 us alleging violations based on the same factual findings described herein.

I

ACCEPTANCE AND CONSENT

- A. We 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

H. Beck, Inc. ("HBI") has been a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1954. The firm's main office is in Rockville, Maryland and it maintains branch offices nationwide. As of mid-February 2008, HBI had 466 active branches and about 750 registered persons. It conducts a general securities business on a fully disclosed basis. The firm has no relevant FINRA disciplinary history.

OVERVIEW

In 2005, FINRA began conducting a national examination designed to, among other things, monitor compliance with a 2003 breakpoint self assessment required of certain firms who sold front-end load mutual funds. FINRA's review of HBI found that the firm failed to complete a required self assessment accurately. This conduct violated NASD Conduct Rule 2110.

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Beginning in February 2001, HBI customers could open a fee-based brokerage account called an *Avail* account. By late 2003, HBI had over 500 customers with an *Avail* account. From at least January 1, 2004 through September 30, 2007, however, HBI failed to establish, maintain and enforce a supervisory system and written procedures that were reasonably designed to achieve compliance with its regulatory responsibilities relating to its fee-based brokerage business. The firm did not reasonably monitor the fee-based accounts to ensure that they continued to be appropriate for customers taking into account the services provided, cost, and customer preferences. As a result, HBI customers owning 25 fee-based accounts in which no transactions were effected from January 2005 through September 2007 paid a total of about \$32,431.56 in fees after the first year of inactivity in their respective accounts. This conduct violated NASD Conduct Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

A. BREAKPOINT SELF ASSESSMENT VIOLATIONS

Some mutual fund companies sell shares that charge front-end loads. These mutual fund companies typically offer discounts at certain pre-determined levels of investments, which are called "breakpoints." These discounts are commonly referred to as "breakpoint discounts."

In March 2003, FINRA required certain member firms that sold front-end load mutual funds to conduct a self assessment of breakpoint compliance (the "Self Assessment"). FINRA provided the firms with instructions and interpretative guidance on how to complete the Self Assessment and report the results.

Based on its evaluation of the submitted Self Assessment reports, FINRA directed about 450 member firms to send letters and claim forms to their customers who purchased front-end load mutual funds, notifying them that they might be due refunds as a result of the firms' failures to provide breakpoint discounts. In addition, FINRA directed approximately 175 of those firms with poor records of providing breakpoint discounts to complete a comprehensive review of transactions for possible missed breakpoints (the "Trade-by-Trade Review"). The level of remediation that FINRA required of member firms was based upon the data each firm reported in the Self Assessment. In addition, FINRA commenced formal disciplinary action against those firms that had the most serious deficiencies in awarding breakpoint discounts to customers.

In August 2003, FINRA issued Notice to Members 03-47, which, in providing guidance to firms on the capital treatment of breakpoint refunds issued through the Self Assessment and Trade-by-Trade Review processes, informed firms that FINRA expected that refunds would be made to customers expeditiously.

This matter grows out of a national examination that FINRA began conducting in 2005 regarding mutual fund breakpoints ("the Breakpoint Self Assessment Follow-Up Review"). The primary purpose of the Breakpoint Self Assessment Follow-Up Review was to verify compliance with the instructions for the Self Assessment and Trade-by-Trade Review and to assess whether firms timely and accurately completed remedial steps that FINRA required in 2003. The Breakpoint Self Assessment Follow-Up Review also sampled firms' efforts between 2004 and 2005 to assure that customers received breakpoint discounts on an ongoing basis.

In the Breakpoint Self Assessment Follow-Up Review, FINRA found that HBI did not accurately complete its Self Assessment. The firm's Self Assessment underreported the number of transactions with missed breakpoints. Had HBI accurately completed its Self Assessment, FINRA would have directed the firm to undertake additional remedial steps.

By reason of the aforementioned conduct, HBI violated NASD Conduct Rule 2110.

B. DEFICIENT SUPERVISION OF FEE-BASED BUSINESS

Background

In 1995, the Securities and Exchange Commission released the Report of the Committee on Compensation Practices, generally referred to as the Tully Report. The Tully Report discussed potential conflicts in broker compensation practices and encouraged broker-dealers to structure compensation so that it aligned the customer's and broker's interests. In particular, the report noted that transactional commissions can provide an incentive for a broker to encourage active trading by a customer and to recommend frequent buying and selling to generate more commissions. Such active trading may not be in the customer's interests. Fee-based accounts were suggested as one way to guard against such abuses.

In November 1999, the SEC issued a release indicating that broker-dealers could offer customers fee-based accounts as an alternative to a commission account. Many firms made such accounts available to customers.¹ Fee-based accounts, however, were not appropriate for all customers, particularly customers who traded infrequently.

In November 2003, NASD released Notice to Members 03-68 (NtM 03-68), which reminded members that "they must have reasonable grounds for believing that a fee-based program is appropriate for a particular customer, taking into account the services provided, cost, and customer preferences." NtM 03-68

¹ The SEC rule allowing broker-dealers to offer fee-based brokerage accounts was invalidated by a federal Court of Appeals decision issued in April 2007. *Financial Planning Association v. SEC*, 482 F.3d 481, 2007 U.S. App. LEXIS 7356 (D.C. Cir Mar. 30, 2007). Thus, broker-dealers were required to cease offering such accounts and close existing accounts.

warned that, "[i]t generally is inconsistent with just and equitable principles of trade—and therefore a violation of Rule 2110—to place a customer in an account with a fee structure that reasonably can be expected to result in a greater cost than an alternative account offered by the member that provides the same services and benefits to the customer." Nevertheless, the NtM acknowledged that factors other than costs could be considered in determining whether a fee-based account was appropriate for a customer.

NtM 03-68 stated that members should implement supervisory procedures to require periodic review of fee-based accounts to determine if they remain appropriate for customers owning them. The NtM recommended (at note 8) that, absent unusual circumstances, such a review be conducted annually. The NtM acknowledged that a retrospective finding that a customer would have been billed less in a commission-based account was not conclusive that the fee-based account was inappropriate for the customer. According to the NtM, such a finding should cause the member to give careful scrutiny to the cost issues.

NASD Conduct Rule 3010 requires each member firm to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable NASD rules.

Firms offering fee-based accounts were obligated to develop and implement a supervisory system and written supervisory procedures reasonably designed to monitor their fee-based accounts and the activity in them to determine if the fee-based account structure remained appropriate for customers taking into account the services provided, cost, and customer preferences.

HBI's Avail Fee-Based Brokerage Account

Beginning in February 2001, HBI customers could open a fee-based brokerage account called an *Avail* account. By late 2003, HBI had over 500 customers with an *Avail* account. Customers owning an *Avail* account were charged an annual fee (automatically deducted from the account in arrears on a quarterly basis) based on the total value of designated assets held in the account. HBI did not charge *Avail* account holders any minimum quarterly or annual fee.

Avail fees were not related to the number of transactions that occurred in an account. Thus, customers who traded actively gained an economic advantage by having an *Avail* account instead of a commission-based account. An *Avail* account, however, was not necessarily appropriate for customers who traded infrequently.

Deficient Supervisory System and Procedures for Fee-Based Business

From about February 2001, when HBI customers began opening *Avail* accounts, through about December 2003, HBI did not establish a system or written supervisory procedures to monitor its fee-based brokerage business. In response to NIM 03-68, HBI amended its *Avail* account agreement in February 2004 by adding two alternative statements concerning why the customer was opening a fee-based account. Customers were required to mark the statement, "that most closely correspond[ed] with [their] motivation for requesting this fee-based brokerage account." One alternative reflected, in substance, that cost considerations constituted the primary reason for opening an *Avail* account. The other alternative reflected, in substance, that non-cost factors, such as having his or her interests more closely aligned with the interests of the account representative, constituted the primary reason for opening an *Avail* account. HBI also created a "Client Acknowledgement Form" containing the same two statements that brokers were required to have existing *Avail* account owners complete.

In February 2004, HBI updated its Registered Representative Compliance Manual to address its fee-based brokerage program. The revised manual instructed registered representatives that they were required to have reasonable grounds for believing a fee-based program was appropriate for a particular customer taking into account the services provided, cost and the customer's preferences. Factors other than "hard cost," including aligning the customer's and representative's interests and the certainty and consistency of the costs incurred, could be considered in determining whether an *Avail* account was appropriate for a customer. For clients who chose a fee-based account for "cost related reasons," the manual required that their accounts be reviewed periodically to determine whether the program continued to be suitable.

Apart from the above-referenced statements in the Registered Representative Compliance Manual, HBI did not establish, maintain or enforce a supervisory system or written procedures for the periodic review and monitoring of *Avail* accounts. Nevertheless, in about early 2005 a compliance department employee was directed to review and analyze year-end 2004 data and identify customers who had selected the "cost" option on the *Avail* account agreement or Client Acknowledge Form and had paid fees exceeding the commissions they would have paid if their account had been a traditional commission-based account.

Although the employee performed the analysis, which reflected a number of accounts which had incurred fees greater than the commissions the account would have generated, the firm did not reasonably follow-up on the results of the review. For example, the firm had no substantive communications with the customers whose fees exceeded the commissions they would have paid in a traditional account. Moreover, HBI did not thereafter conduct any review of the activity in *Avail* accounts or monitor them to determine if they remained appropriate for customers who owned them taking into account the services provided, cost, and customer preferences. HBI failed to provide *Avail* customers whose accounts were inactive information concerning the relative costs of their fee-based account compared to an inactive commission-based account so the customers could evaluate independently whether staying in an *Avail* account was prudent or beneficial.

From January 2005 through September 2007, at least 77 fee-based accounts at the firm effected no transactions. The customers holding 25 of those accounts had identified cost considerations as their primary motivation for opening a fee-based account. Nevertheless, as a result of HBI's deficient supervisory system and procedures, the firm failed to communicate with those customers regarding the status of their account or otherwise determine if a fee-based account remained appropriate for them. During the referenced period, the 25 customers incurred a total of \$32,431.56 in fees after the first year of inactivity in their respective accounts.

Based on the foregoing, HBI, from at least January 1, 2004 through September 30, 2007, failed to establish, maintain and enforce a supervisory system and written procedures that were reasonably designed to achieve compliance with its regulatory responsibilities relating to its fee-based brokerage business.² Therefore, HBI violated NASD Conduct Rules 3010 and 2110.

B. We also consent to the imposition of the following sanctions:

- a censure;
- \$140,000 fine; and
- An order to pay restitution to the 25 customers listed on Attachment A hereto in the total amount of \$32,431.56, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), calculated from the date shown for each account on Attachment A hereto until the date this AWC is accepted by the NAC.³ Satisfactory proof of

² In September 2007, HBI terminated its fee-based brokerage business, closing all customers' *Avail* accounts and converting them to commission or advisory accounts.

³ The required restitution amount set forth in Exhibit A that HBI must pay to each of the 25 customers will be reduced by the amount of any documented payments the firm has already made, or makes before acceptance of this AWC, to such customers reimbursing them for fees incurred in their *Avail* accounts.

payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to FINRA staff no later than 120 days after acceptance of this AWC. If for any reason HBI cannot locate any customer identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, HBI shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

We agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. We have submitted an Election of Payment form showing the method by which we propose to pay the fine imposed.

We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

WAIVER OF PROCEDURAL RIGHTS

We 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 us;
- 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, we 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.

We further specifically and voluntarily waive 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

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

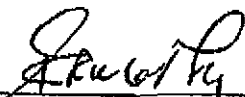
- D. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that we 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 us to submit it.

H. Beck, Inc.

6-13-08

Date

By: 
Eric G. Meyers, President

Reviewed by:



Ida W. Drain, Esq.
Counsel for H. Beck, Inc.
DicksteinShapiro LLP
1825 Eye Street, NW
Washington, DC 20006-5403

Accepted by FINRA:

6-13-08

Date

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



Michael J. Newman, Sr. Regional Counsel
Thomas M. Huber, Sr. Regional Counsel
FINRA Department of Enforcement
581 Main Street, Suite 710
Woodbridge, NJ 07095
732-596-2030; 202-721-6557 (fax)

H. Beck Inc. AWC

Exhibit A

Account #	Interest Calculation Start Date	Total Fees
	1/1/2005	\$ 489.38
	1/1/2005	\$ 354.30
	1/1/2005	\$ 841.40
	1/1/2005	\$ 415.12
	1/1/2005	\$ 418.18
	1/1/2005	\$ 296.59
	1/1/2005	\$ 1,372.25
	1/1/2005	\$ 166.05
	1/1/2005	\$ 755.81
	1/1/2005	\$ 409.47
	1/1/2005	\$ 895.91
	1/1/2005	\$ 443.40
	1/1/2005	\$ 682.44
	1/1/2005	\$ 15,576.56
	1/1/2005	\$ 226.96
	1/1/2005	\$ 156.13
	1/1/2005	\$ 684.67
	1/1/2005	\$ 162.60
	1/1/2005	\$ 188.47
	1/1/2005	\$ 1,013.27
	1/1/2005	\$ 116.11
	1/1/2005	\$ 426.03
	1/1/2005	\$ 1,939.75
	1/1/2005	\$ 1,868.62
	4/1/2006	\$ 2,532.07
TOTAL		\$ 32,431.56