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FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008011633601

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REGISTRATION & DISCLOSURE

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

RE: Advanced Equities, Inc., Respondent
(CRD No. 35545)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Advanced Equities, Inc. ("Member") 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 Member alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Member 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

Advanced Equities, Inc. became registered with the Securities and Exchange Commission (SEC) on December 7, 1993 and became a member of FINRA on May 18, 1994. The Member conducts a general securities business on a fully disclosed basis. The Member's membership with FINRA and registration with the SEC remain currently in effect. While the Member has no relevant disciplinary history, it has been cautioned in the past about promptly reporting events under Rule 3070.

OVERVIEW

The Member failed to promptly amend Form U4 Uniform Applications for Securities Industry Registration or Transfer Form ("Form U4") for two registered representatives, to disclose the settlement of civil litigation for an amount over \$10,000, in violation of Article V, Section 2 (c) of NASD By-Laws, which was replaced on July 30, 2007, with Article V, Section 2(c) of FINRA By-Laws and

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NASD Rule 2110. The Member also failed to promptly amend a Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") after it received a civil complaint, seeking over \$5,000 in damages, against a registered representative whose registration was terminated within two years of the receipt of the complaint, in violation of Article V, Section 3 (b) of FINRA By-Laws and NASD Rule 2110. In addition, the Member failed to promptly report ten events detailed in Rule 3070(a) within 10 business days, as required by NASD Rule 3070(b), in violation of NASD Rule 3070.

FACTS AND VIOLATIVE CONDUCT

Failure to Promptly Amend Two Forms U4.

1. Article V, Section 2 (c) of NASD By-Laws, (which was replaced on July 30, 2007, with Article V, Section 2(c) of FINRA By-Laws) states that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments, which should be filed with FINRA not later than 30 days after learning of the facts or circumstances giving rise to the amendment.
2. From 2004 through 2008, the Form U4 included question 14I(1)(c), which stated that:

Have you ever been named as a respondent/defendant in an *investment-related* consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:

....

(c) was settled for an amount of \$10,000 or more?

3. On June 30, 2000, GW and other members of the public filed a class action lawsuit in the Western District of Kentucky against the Member and KD and CB, who are General Registered Principals of the Member. The lawsuit alleged that the plaintiffs were defrauded by among others, KD and CB, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as well as, Rule 10b-5 promulgated thereunder. The complaint constituted an investment-related, consumer-initiated, written complaint, which was required to be reported on KD's and CB's Form U4.
4. On or about March 24, 2004, the lawsuit filed against the Member, KD and CB was settled for \$2,650,000. Despite knowing that the lawsuit was settled on March 24, 2004 for more than \$10,000, the Member failed to amend KD's and CB's Form U4 to disclose the settlement until March 18, 2008. Therefore, the amendment to KD's and CB's Form U4 was 1,422

days late.

5. As set forth above, the Member violated Article V, Section 2(c) of NASD and FINRA By-Laws and NASD Conduct Rule 2110 by failing to timely amend KD's and CB's Form U4 to report the settlement of the lawsuit.

Failure to Promptly Amend a Form U5.

6. Article V, Section 3 (b) of FINRA By-Laws states that a member shall notify FINRA in the event that the member learns of facts or circumstances causing any information set forth in a Form U5 to become inaccurate or incomplete. This amendment is required to be filed no later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.

7. In 2007, Form U5 included question 7E(1)(a), which states that:

In connection with events that occurred while the individual was employed or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 7(E)(1) or 7(E)(2) above, which:

(a) would be reportable under question 14(3)(a) on Form U4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U4 by your firm.

8. Question 14(3)(a) on the Form U4 requires representatives to disclose if within the past 24 months they were the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported which alleges that the representative was involved in a sales practice violation and contains a claim for compensatory damages of \$5,000 or more.
9. DC was a general securities registered with the Member until his registration was terminated on July 2, 2007.
10. On August 28, 2007, the Member received an arbitration complaint against the Firm and DC, which among other charges, contained a charge that DC made unsuitable recommendations to a member of the public regarding DC's investment recommendations. The complaint sought compensation of at least \$115,292.
11. Despite receiving the complaint against DC on August 28, 2007, the Member failed to amend DC's Form U5 to disclose the receipt of the complaint until October 24, 2007. Therefore, the amendment to DC's Form U5 was 26 days late.

12. As set forth above, the Member violated Article V, Section 3(b) of FINRA By-Laws and NASD Conduct Rule 2110 by failing to timely submit an amended Form U-5 reporting the investment-related written complaint against DC.

Failure to Promptly File Reports of Events Pursuant to NASD Rule 3070.

13. NASD Rule 3070(a) states that "each member shall promptly report to the Association whenever such member or person associated with the member:
- (1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;
 -
 - (7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgment, award, or settlement is for an amount exceeding \$25,000;
 -
 - (10) is the subject of any disciplinary action taken by the member against any person associated with the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or otherwise disciplined in any manner which would have significant limitation on the individual's activities on a temporary or permanent basis."
14. Pursuant to NASD Rule 3070(b), each member is required to report the events listed in Rule 3070(a) no later than 10 business days after the member knows, or should have known, of the existence of the facts requiring the reports.

15. On December 13, 2006, the Member determined to suspend WB, one of its registered representatives, for 30 days. The Member failed to report its action as required by NASD Rule 3070 (a)(10) until January 16, 2007, which was 19 days late.
16. On April 23, 2007, the Member terminated the registration of TS, one of its registered representatives, because he violated the Member's policies. The Member failed to report its action as required by NASD Rule 3070 (a)(10) until May 22, 2007, which was 15 days late.
17. On May 4, 2007, the Member suspended CD, one of its registered representatives, because it was investigating possible violations of NASD Rule 2110, and then terminated his employment with the Member on May 18, 2007. The Member failed to report that he had suspended CD pending its investigation as required by NASD Rule 3070 (a)(10) until May 30, 2007, which was 10 days late.
18. On September 20, 2007, the Member received notice that FINRA had accepted a Letter of Acceptance, Waiver and Consent, under which the Member consented to findings that it violated NASD Rules. The Member failed to report that it had been found to have violated NASD Rules as required by NASD Rule 3070 (a)(1) until October 8, 2007, which was 4 days late.
19. On December 19, 2006, the Member entered into a settlement agreement with creditors of VisionTek, Inc., to resolve securities related civil litigation. The amount of the settlement was \$1,500,000. The Member failed to report its action as required by NASD Rule 3070 (a)(7) until January 9, 2007, which was 9 days late.
20. On December 19, 2006, DB, a registered principal of the Member, entered into a settlement agreement with creditors of VisionTek, Inc., to resolve securities related civil litigation. The amount of the settlement was \$1,500,000. The Member failed to report this settlement by DB as required by NASD Rule 3070 (a)(7) until February 22, 2008, which was 415 days late.
21. On December 19, 2006, KD, a registered principal of the Member, entered into a settlement agreement with creditors of VisionTek, Inc., to resolve securities related civil litigation. The amount of the settlement was \$1,500,000. The Member failed to report this settlement by KD as

required by NASD Rule 3070 (a)(7) until February 22, 2008, which was 415 days late.

22. On March 24, 2004, the Member entered into a settlement agreement related to the purchases of Pixelon, Inc., to resolve securities related civil litigation. The amount of the settlement involved the creation of a fund in the amount of \$2,650,000. The Member failed to report its action as required by NASD Rule 3070 (a)(7) until February 25, 2008, which was 1,418 days late.
23. On March 24, 2004, DB, a registered principal of the Member, entered into a settlement agreement related to the purchases of Pixelon, Inc., to resolve securities related civil litigation. The amount of the settlement involved the creation of a fund in the amount of \$2,650,000. The Member failed to report this settlement by DB as required by NASD Rule 3070 (a)(7) until February 25, 2008, which was 1,418 days late.
24. On March 24, 2004, KD, a registered principal of the Member, entered into a settlement agreement related to the purchases of Pixelon, Inc., to resolve securities related civil litigation. The amount of the settlement involved the creation of a fund in the amount of \$2,650,000. The Member failed to report this settlement by KD as required by NASD Rule 3070 (a)(7) until February 25, 2008, which was 1,418 days late.
25. As set forth above, the Member violated NASD Conduct Rules 2110 and 3070 by failing to timely file with FINRA two Rule 3070 reports on a timely basis.

- B. I also consent to the imposition of the sanctions of a censure and a fine of \$10,000.

The Member agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. The Member has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

- A. To have a Complaint issued specifying the allegations against it;
- 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 Member 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 Member 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 Member 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 it; and
- C. If accepted:
1. this AWC will become part of the Member's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Member'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 Member 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 Member 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 Member right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The Member may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Member 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.



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Re: Advanced Equities, Inc. Regarding Examination No. 20080116336

April 16, 2009

This Statement of Corrective Action is submitted by the Respondent. It does not constitute factual or legal finding by FINRA, nor does it reflect the views of FINRA or its staff.

Based on the prior FINRA examination No. 20080116336 the following was determined:

The Member failed to promptly amend Form U4 Uniform Applications for Securities Industry Registration or Transfer Form ("Form U4") for two registered representatives, to disclose the settlement of civil litigation for an amount over \$10,000, in violation of Article V, Section 2 (c) of NASD By-Laws, in which was replaced on July 30, 2007, with Article V, Section 2 (c) of FINRA By-Laws and NASD Rule 2110. The Member also failed to promptly amend a Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") after it received a civil complaint, seeking over \$5,000 in damages, against a registered representative whose registration was terminated within two years of the receipt of the complaint, in violation of Article V, Section 3 (b) of FINRA By-Laws and NASD Rule 2110. In addition, the Member failed to promptly report ten events detailed in Rule 3070 (a) within 10 business days, as required by NASD Rule 3070 (b), in violation of NASD Rule 3070.

Based on the above listed finding the following corrective actions have been put into place:

As a result of the last FINRA exam, we have implemented two changes with respect to our 3070 and U-4, U-5 filings. The first was to make Kim Haupin, our Compliance/AML Officer directly responsible for the filing of these reports.

Additionally, we are now taking a broader view of when and on what facts a 3070 needs to be filed, and when a U-4 and U-5 needs to be amended. We believe this broader view coupled with the decision to make one person directly responsible for the filings should adequately address this issue..

Sincerely,

Douglas Colombo
Chief Compliance Officer
Advanced Equities, Inc.