

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO20080161568-01

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

RE: Howe Barnes Hoefler & Arnett, Inc., Respondent
Broker-Dealer
CRD No. 2240

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Howe Barnes Hoefler & Arnett, Inc. ("HOWE" or 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.¹

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

HOWE has been a member of FINRA, and its predecessor NASD, since October 16, 1936, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

¹ FINRA notes that while potential violations of NASD Rule 2320 and SEC Rule 17a-3 were also identified in this review, these potential violations are the subject of a separate investigation and therefore the potential violations are not subject to this AWC.

SUMMARY

In connection with matter no. 20080161568, the Trading and Market Making Surveillance ("TMMS") staff reviewed the trading activity of the firm, set forth in Exhibit 1, for trade dates December 3, 2008 and December 4, 2008 (the "review period"), unless otherwise noted.

FACTS AND VIOLATIVE CONDUCT

In connection with matter no. 2008161568, the staff found that;

1. During the review period, the firm transmitted to OATS 66 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm submitted 58 of the 66 reports with incorrect Report information, eight of the reports with inaccurate Account Type information, and seven reports with incorrect Report information and inaccurate Account Type information. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
2. The firm failed to properly disclose, on 42 occasions, all pertinent information to a customer on the customer confirmation. Specifically, the firm failed to disclose a commission equivalent or markup/markdown on the customer confirmation (38 instances) and failed to disclose the correct capacity on the customer confirmation (four instances). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

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

A censure and a fine of \$12,500 comprised of the following fines: (1) \$7,500 for 66 violations of NASD Rule 6955(a) and (2) \$5,000 for 42 violations of SEC Rule 10b-10.

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.

8/1/11
Date

By: 201

Name: DEAN A. FOLIAS

Reviewed by:

Accepted by FINRA:

9/20/11
Date

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2008 Market Regulation Examination Samples
 Howe Barnes Hoefer Arnett, Inc.
 ("HOWE")
 Exam No. 20080161568

Sample Source/Period*: December 3 and 4, 2008

<u>Sample Size</u>	<u>Sample Description</u>
152	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
3	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
149	Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
	<u>149</u> for general trade reporting requirements
	2 for Cancellation of reported trade requirements
	133 for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
	<u>5</u> for compliance with the use of the .PRP (Prior Reference Price) trade modifier
	<u>9</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>0</u> for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
	<u>27</u> for Sale Indicator requirements
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631
0	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
55	Orders for compliance with best execution requirements of NASD Rule 2320
	<u>26</u> 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
	<u>14</u> '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
1	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
59	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
70	Customer confirmations prepared and maintained in connection with select samples
	<u>70</u> for compliance with SEC Rule 10b-10 disclosure requirements
	<u>0</u> for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements

* unless otherwise noted
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2008 Market Regulation Examination Samples
Howe Barnes Hoefer Arnett, Inc.
("HOWE")
Exam No. 20080161568

Sample Source/Period*: December 3 and 4, 2008

<u>Sample Size</u>	<u>Sample Description</u>
30	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
25	Data sets published for October 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)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
6	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
168	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110