

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016809701**

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement ("Enforcement")
Financial Industry Regulatory Authority ("FINRA")¹

RE: ICAP Electronic Broking LLC, Respondent
CRD No. 47477

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent ICAP Electronic Broking LLC ("ICAP" 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 ICAP alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. ICAP 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

ICAP operates an electronic trading system known as BrokerTec. The BrokerTec system electronically facilitates the execution of broker-dealer client and institutional customer orders primarily in United States Treasury Securities, Government Sponsored Enterprise ("GSE") Securities, and repurchase and reverse repurchase agreements. During January and February of 2008 ("the relevant period"), ICAP cleared its customers' U.S. Treasury, GSE and repurchase business on a delivery versus payment ("DVP") basis through the facilities of the Fixed Income Clearing Corporation and the Bank of New York ("BNY").

RELEVANT DISCIPLINARY HISTORY

ICAP has no relevant disciplinary history.

¹ In July 2007, the NASD, Inc. became FINRA.

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SUMMARY

During the relevant period, ICAP prepared a Customer Reserve Formula computation as of January 25, 2008 that reflected a deposit requirement of \$4,363,419, but failed to ensure that the deposit was timely made into the separate bank account that it maintained for the benefit of customers under Securities Exchange Act Rule 15c3-3; failed to include in its February 29, 2008 Customer Reserve Formula computation aged suspense credits of \$216,678 and commission rebates payable to customers of \$288,803; failed to send customer account statements at least quarterly, as required by NASD Conduct Rule 2340; failed to maintain a stock record in the form required by NASD Rule 3110 and Exchange Act Rule 17a-3; and failed to maintain adequate written possession and control procedures pursuant to Exchange Act Rule 15c3-3(d)(4).

VIOLATIVE CONDUCT BY RESPONDENT

NASD Conduct Rule 2110 and Exchange Act Rule 15c3-3.

Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 15c3-3 thereunder requires that broker-dealers maintain with a bank a separate account entitled "Special Reserve Bank Account for the Exclusive Benefit of Customers" (the "Reserve Bank Account"), into which the broker-dealer must deposit cash and/or qualified securities in amounts computed in accordance with a specified formula. Under the rule, broker-dealers are required to utilize this formula to make a weekly computation of the amount to be deposited into the Reserve Bank Account and to make requisite deposits on a timely basis.

The Firm had a deposit requirement of \$4,369,419 due by 10:00 a.m. on January 28, 2008. On that date, the Firm instructed its bank at 9:55 a.m. to wire \$4.5 million into the account. However, the Firm did not follow up on its instructions to ensure that such deposit was made timely, and the deposit was not made until 11:07 a.m.

In addition, the Firm failed to include certain credits in its February 29, 2008 Customer Reserve Formula computation: (i) aged suspense credits of \$216,678; and (ii) commission rebates payable to customers amounting to \$288,803. Although, after including these two additional credits, the Firm had sufficient funds on deposit in its Reserve Bank Account, the failure to include these two credit items, which required an adjustment to the Customer Reserve Formula computation, resulted in a violation of Exchange Act Rule 15c3-3.

NASD Conduct Rules 2110, 2340 and 3110 and Exchange Act Rules 15c3-3(d)(4) and 17a-3.

NASD Conduct Rule 2340 requires member firms to send a statement of account not less than once every calendar quarter to each customer whose account has a security

position regardless of whether there was any activity in the account during that quarter. ICAP held securities on behalf of customers in its customer custodial account at BNY. However, the Firm did not send customer account statements on at least a quarterly basis, as required by NASD Conduct Rule 2340, disclosing the customer positions held at the custodial bank.

NASD Conduct Rule 3110 requires member firms to make and preserve records prescribed by Exchange Act Rules 17a-3 and 17a-4, which require broker-dealers to create and preserve in an easily accessible manner, a comprehensive record of each securities transaction and their securities business in general.

Exchange Act Rule 17a-3(a)(5) requires broker-dealers to create a securities record or ledger reflecting separately for each security as of the clearance dates all long or short positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for its account or for the account of its customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

ICAP did not maintain a stock record in the form required by Exchange Act Rule 17a-3(a)(5). Although ICAP held securities on behalf of customers in its customer custodial account at BNY, and maintained records reflecting, among other things, the names of the customers that owned the securities and BNY as the location for such securities, the Firm's records were not in the stock record form required by Exchange Act Rule 17(a)(3)(5). For example, the Firm failed to maintain a securities record or ledger reflecting all long positions carried by such member "separately for each security" as of the clearance dates, pursuant to Exchange Act Rule 17a-3(a)(5).

Exchange Act Rule 15c3-3(d)(4) states that: "a broker or dealer which is subject to the requirements of Rule 15c3-3 with respect to physical possession or control of fully paid and excess margin securities shall prepare and maintain a current and detailed description of the procedures which it utilizes to comply with the possession or control requirements set forth in this section. The records required herein shall be made available upon request to the Commission and to the designated examining authority for such broker or dealer."

ICAP did not maintain adequate written possession or control procedures as required by Exchange Act Rule 15c3-3(d)(4).

In light of the above, Respondent violated NASD Rules 2110, 2340 and 3110 and Exchange Act Rules 15c3-3, 15c3-3(d)(4) and 17a-3.

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

A Censure and a fine of \$20,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff. ICAP agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

ICAP has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

ICAP specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

ICAP 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 the Firm;
- 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, ICAP 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.

ICAP 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

ICAP 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. ICAP 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. ICAP 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. ICAP may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. ICAP 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.

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

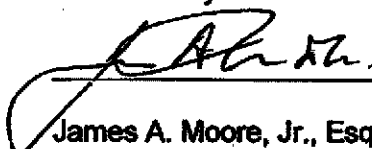
Date December 17, 2009

ICAP Electronic Broking LLC

By: 

David E. Rutter
Chief Executive Officer
ICAP Electronic Broking LLC
1100 Plaza Five
Jersey City, N.J. 07311-4996

Reviewed by:

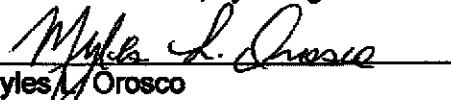


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Accepted by FINRA:

Signed on behalf of the

Director of ODA, by delegated authority


Myles J. Orosco

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Date

January 26, 2010