

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090170055-01**

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

RE: Brean Murray, Carret & Co., LLC, Respondent
Broker-Dealer
CRD No. 23723

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Brean Murray, Carret & Co., LLC (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.

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

The firm has been a member of FINRA since December 23, 1988, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In connection with matter no. 20090170055, Trading and Market Making Surveillance ("TMMS") staff reviewed the trading activity of the firm, set forth in Exhibit 1, for the trade dates, June 16, 2009 through 26, 2009, unless otherwise noted.

FACTS AND VIOLATIVE CONDUCT

1. The firm failed on 17 occasions to provide written notification disclosing to its customer its correct capacities in the transaction and also failed to provide written

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notification disclosing to its customer that, on two of these occasions, it was a market maker in each security when it acted as principal for its own account and, on seven of these occasions, the transaction was executed at an average price and these written notifications also did not include the firm's correct capacity in the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

2. The firm failed to establish, maintain, and enforce written policies and procedures that were reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within any applicable exception, and if relying on an exception, are reasonably designed to assure compliance with the terms of the exception. The conduct described in this paragraph constitutes a violation of SEC Rule 611(a)(1) of Regulation NMS.
3. The firm failed to take reasonable steps to establish that the intermarket sweep orders it routed met the definitional requirements set forth in Rule 600(b)(30) of Regulation NMS. The conduct described in this paragraph constitutes a violation of SEC Rule 611(c) of Regulation NMS.
4. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: Order Handling-SEC Rule 606 [(b)]; Best Execution-Order by Order Routing and Regular & Rigorous [(d)]; Anti-intimidation/Coordination-Educate Personnel [(b), (c), (d)]; Trade Reporting-NASDAQ order entry [(a), (b), (c), (d)]; Sale Transactions-SEC Rule 200(a)&(g), Short Sale Reporting [(b)], Regulation SHO Rule 204, Prompt Delivery, Short Sale Orders and Aged Fails, Naked Short Selling Antifraud Rule [(a), (b), (c), (d)]; Other Trading Rules-Clearly Erroneous Transactions, Accurate Buy, Short Sale, and Long Sale Entry in NASDAQ System [(a), (b), (c), (d)]; and Other Rules-Books & Records [(b), (c), (d)], Review for Compliance of Incoming, Outgoing, and Internal Electronic Communication [(b)].

The firm also failed to provide documentary evidence that on the trade dates reviewed in the TMMS examination it performed the supervisory reviews set forth in its written

supervisory procedures concerning Order Audit Trail System. The conduct described in these paragraphs constitutes a violation of FINRA Rules 2010 and NASD Rule 3010.

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

A censure, fine of \$17,500 (consisting of \$5,000 for customer confirmations, \$5,000 for SEC Rule 611, and \$7,500 for supervision) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs 2-4.

Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraphs 2-4; and (3) the date the revised procedures were implemented.

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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's 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.

Jan 19, 2011
Date

Respondent
Brean Murray, Carret & Co., LLC

By: Kenneth J. Kirsch

Name: Kenneth J. Kirsch

Title: Chief Financial Officer

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name

Accepted by FINRA:

2/11/11
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

2009 Market Regulation Examination
Brean Murray, Carret and Company
Exam No. 20090170055 Sample Source/Period*: June 16-26, 2009

Exhibit No. 1

<i>Sample Size</i>	<i>Sample Description</i>
71	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
10	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
638	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
54	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
54	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
11	Orders for compliance with best execution requirements of NASD Rule 2320 <u>Q</u> Held orders from the Held Order Protection Review <u>10</u> Not Held orders from the Not Held Order Review <u>Q</u> Orders executed with a .PRP (Prior Reference Price) trade modifier <u>1</u> Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
55	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
78	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
12	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; Nasdaq Rule Series 1020, 1030, 1040
2	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
76	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
1370	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
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 and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611

2009 Market Regulation Examination
Brean Murray, Carret and Company
Exam No. 20090170055 Sample Source/Period*: June 16-26, 2009

Exhibit No. 1

<i>Sample Size</i>	<i>Sample Description</i>
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010 requirements
N/A	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.
N/A	Trades reported to the ADF/TRACS for compliance with FINRA Rule 6282
N/A	ADF orders and quotes accessed by other market participants for compliance with FINRA Rule 6250 requirements to submit Order and Order Response reports