

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20090189702-01**

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

RE: LavaFlow, Inc., Respondent  
Broker-Dealer  
CRD No. 120444

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent LavaFlow, Inc., ("FLOW" 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.

**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**

FLOW has been a member of FINRA since November 13, 2002, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

The firm has no relevant disciplinary history.

## **SUMMARY**

In matter 20090189702, the Market Analysis Team of the Department of Market Regulation staff reviewed the trading activity of the firm from April 1, 2009 through June 30, 2009 (the "first review period").

In matter 20090201079, the Market Analysis Team of the Department of Market Regulation staff reviewed the trading activity of the firm from July 1, 2009 through September 30, 2009 (the "second review period").

In matter 20100231989, the Short Sales Team of the Department of Market Regulation staff reviewed the short sale trade reporting activity of the firm from July 27, 2009 through August 31, 2010 (the "third review period").

## **FACTS AND VIOLATIVE CONDUCT**

In connection with matters 20090189702 and 20090201079,

During the first and second review periods, in 29 instances, the firm failed to execute against delivered orders up to the firm's displayed, as well as its reserve, size. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6279.

In connection with matter 20100231989,

During the third review period, the firm executed 8,265,988 short sale transactions and failed to report each of these transactions to FINRA Trade Reporting Facility with a short sale modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6182.

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

A censure and a fine of \$180,000 comprised of a fine of \$10,000 for the display and reserve size execution violations and a fine of \$170,000 for the short sale violations.

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.

6-20-13  
Date

Respondent  
LavaFlow, Inc.

By: 

Name: Elaine H. Mandelbaum

Title: Managing Director

Reviewed by:

Richard G. Wallace



Counsel for Respondent

Foley & Lardner LLP

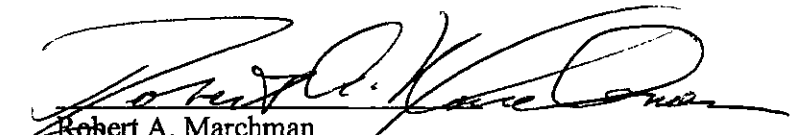
3000 K Street, NW, Suite 600

Washington, DC 20007

Accepted by FINRA:

7-25-13  
Date

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

  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation