

FINRA

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120316465-01

2014 MAY -5 PM 3: 34

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, Lavaflow, Inc. (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 became a FINRA member on November 13, 2002. Its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In connection with the firm's 2012 Trading and Market Making Surveillance ("TMMS") Exam, Matter No. 20120316465, FINRA's Department of Market Regulation reviewed the trading activity of the firm set forth in Exhibit 1 for trade date May 9, 2012 (the "review period") for compliance with applicable SEC and FINRA rules.

FACTS AND VIOLATIVE CONDUCT

1. On 13 occasions during the review period, the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm incorrectly appended the "DIR" Special Handling Instructions code on reports to OATS. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

2. In 31 instances, the firm produced to FINRA a report of its brokerage order memoranda which contained inaccurate information. In 27 instances, the firm's report contained inaccurate information regarding the terms and conditions of an order. In four instances, the firm's report contained an inaccurate cancellation time for an order. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and FINRA Rule 4511.

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

Censure; and

A \$10,000 fine (\$7,500 for OATS reporting violations, \$2,500 for recordkeeping 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

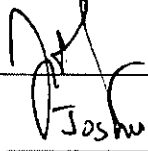
The firm understands that:

- 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: (i) testimonial obligations; or (ii) 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.

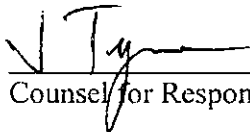
5/2/14
Date

Respondent
Lavaflow, Inc.

By: 
Name: Joshua E. Levine

Title: Managing Director

Reviewed by:


Counsel for Respondent

Accepted by FINRA:

May 27, 2014
Date

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


James L. Nixon
Chief Litigation Counsel
Department of Market Regulation

2012 Market Regulation Examination Samples
LAVA FLOW Inc. ("FLOW")
Exam No. 20120316465
Sample Source/Period*: 05/09/12

<u>Sample Size</u>	<u>Sample Description</u>
134	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
0	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
22	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
133	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
133	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
42	Sell orders entered into DirectEdge Exchange execution system for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
40	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equity Rule 7.16 long/short reporting requirements
75	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
44	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
4	Data sets published for Month Year 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)
7	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
309	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
133	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
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 or Nasdaq Rule 3010 requirements
0	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.