

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C10050016

TO: Department of Enforcement
NASD

RE: Divine Capital Markets LLC
[BD No. 118212]

Pursuant to Rule 9216 of NASD Code of Procedure, Divine Capital Markets LLC ("Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. Respondent 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 allegation in this AWC or

create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Respondent has been a member of NASD since on or about April 10, 2002. On or about January 30, 2003, Respondent entered into an AWC related to alleged violations of NASD Marketplace Rules 6620(a)(1), 6620(a)(3) and NASD Conduct Rule 2110. Respondent paid a fine of \$5,000.00, in connection with the AWC. On or about August 13, 2002, Respondent entered into an AWC related to alleged violations of NASD Marketplace Rules 4632(a)(1), 4632(c)(3), 4642(c)(3), 4643, 6620(c)(3), 6620(a)(1), 6130(d)(6) and NASD Conduct Rules 2110 and 3350(a). Respondent was censured and paid a fine of \$15,000.00 in connection with the AWC.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent 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.

Respondent further specifically and voluntarily waives any right to claim that a person

violated the *ex parte* prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

On August 30, 2002, Respondent's minimum net capital requirement was \$250,000. Respondent accepted and deposited customer funds into the firm's bank sub-account, which was not a bank escrow account, thereby automatically increasing the firm's minimum net capital requirement to \$250,000 from \$100,000. For August 30, 2002, while conducting a securities business, Respondent calculated its net capital to be \$153,300.70, while the staff computed the firm's net capital to be \$44,927.97. The staff's calculation reflected a net capital deficiency of \$205,072.03 on August 30, 2002.

On September 30, 2002, Respondent's minimum net capital requirement was \$100,000.00. For September 30, 2002, while conducting a securities business, Respondent calculated its net capital to be \$109,569.00, while the staff computed the firm's net capital to be \$13,795.77. The staff's calculation reflected a net capital deficiency of \$86,204.23 on September 30, 2002.

On December 31, 2002, Respondent's minimum net capital requirement was \$100,000.00. For December 31, 2002, while conducting a securities business, Respondent calculated its net capital to be \$101,641.00, while the staff computed the firm's net capital to be \$13,229.08. The staff's calculation reflected a net capital deficiency of \$86,770.92 on December 31, 2002.

By reason of the foregoing, Respondent violated SEC Rule 15c3-1 and NASD Conduct Rule 2110.

During the period August 20, 2002 through October 31, 2002, Respondent served as placement agent for a best efforts mini/max contingency offering for debentures of Powder River Basis and Gas Company. During the

contingency period of the offering, Respondent failed to ensure that the money or other consideration received was promptly transmitted to either (1) a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency had occurred, or (2) a bank which had agreed in writing to hold all such funds in escrow for the persons who had the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency had occurred. By reason of the foregoing, Respondent violated SEC Rule 15c2-4 and NASD Conduct Rule 2110

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:
- A censure and fine of \$10,000.00.
- C. The sanctions imposed herein shall be effective on a date set by NASD Staff.

III.

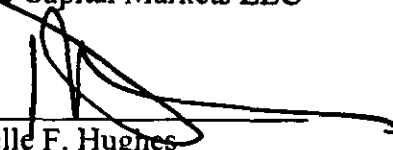
OTHER MATTERS

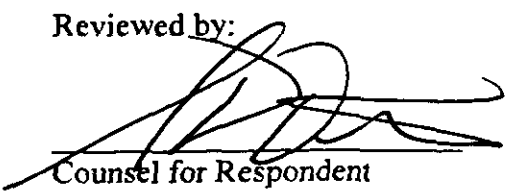
- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which Respondent proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent 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, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

2-17-05
Date

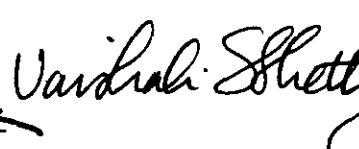
DIVINE CAPITAL MARKETS LLC
Divine Capital Markets LLC

By: 
Danielle F. Hughes
President

Reviewed by:

Counsel for Respondent

Accepted by NASD:

4/6/05
~~2-17-05~~
Date

 
Vaishali S. Shetty
Senior Regional Attorney

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