

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE2050014

TO: Department of Enforcement
NASD

RE: Hornor, Townsend & Kent, Inc.
CRD No. 4031

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent Hornor, Townsend & Kent, Inc. ("HTK" or "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 it;
 - 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 creating 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:

HTK is a broker-dealer with its primary office located in Horsham, Pennsylvania. The firm has been a member of NASD since 1969. There are currently approximately 1,300 registered representatives in its 76 branch offices. The firm has no relevant disciplinary history.

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

HTK 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:

Summary

During the period from January 1, 2003 through December 31, 2003, HTK failed to establish and maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions and, as a result, violated NASD Rules 3010 and 2110. Late trading, as referred to herein, is the practice of accepting and entering orders to buy or sell mutual fund shares after 4:00 p.m. Eastern Time, the time as of which mutual funds typically calculate their net asset value (NAV), while providing a price for those orders based on the NAV already determined as of 4:00 p.m.¹

HTK's supervisory systems and procedures were deficient in several ways. For instance, HTK's systems were not reasonably designed to prevent or restrict representatives from accepting and entering orders received from customers after 4:00 p.m. for execution at the current day's NAV. HTK's procedures did not require verification of time of receipt of the order from the customer. The firm's written procedures also failed to instruct representatives that late trading was prohibited and did not require supervisory review or approval of mutual fund orders submitted after 4:00 p.m.

HTK also failed to preserve certain mutual fund trading records for three years and failed to create records reflecting the time of receipt of mutual fund orders starting May 2, 2003. As a result, HTK violated Section 17(a) of the Securities Exchange Act of 1934 ("the Exchange Act"), Rules 17a-3(a)(6) and 17a-4(b)(1) thereunder, and NASD Conduct Rules 3110(a) and 2110.

Background

Most mutual funds are priced once per day at market close. Trades received at or after market close must be priced at the next day's NAV. The purpose of this "forward pricing" rule is to place all purchasers of mutual fund shares on equal footing as to price and information on any one day. Broker-dealers that accept and enter late trades for their customers unfairly provide the possibility of an information advantage over other

¹ Late trading is a violation of Rule 22c-1 under the Investment Company Act of 1940 and NASD Rule 2110.

investors based on after-close news that could affect the mutual fund's holdings, but which is not reflected in the NAV pricing for that day. Member firms executing mutual fund orders must establish and maintain supervisory systems and procedures reasonably designed to detect and prevent the occurrence of late trading.

HTK Failed to Establish and Maintain Systems and Procedures Reasonably Designed to Prevent and Detect Late Trading²

During the relevant period, HTK failed to establish, maintain and enforce supervisory systems and written procedures that were reasonably designed to prevent and detect late trading. While HTK's order tickets stated that mutual fund orders were required to be received by 3:30 p.m. for same day execution, the firm had no procedures in place designed to enforce this requirement. Moreover, HTK's systems failed to prevent or restrict representatives from accepting and entering orders received from customers after 4:00 p.m. for execution at the current day's NAV. In fact, until February 19, 2003, registered representatives could submit trades for execution until 6:00 p.m., two hours after the market close. From February 19, 2003 through November 30, 2003, orders could be executed until 4:30 p.m., and from December 1, 2003 through February 17, 2004, orders could be executed until 4:15 p.m. HTK's procedures did not require verification of time of receipt of the order from the customer.

In addition, HTK's written procedures failed to instruct representatives that late trading was prohibited. HTK also failed to have procedures in place regarding the time mutual fund orders could be placed into its order entry system, and the firm's written supervisory procedures did not require supervisory review or approval of mutual fund orders submitted after 4:00 p.m. The firm also failed to conduct surveillance or auditing to identify the execution and processing of late trades.

NASD Rule 3010 requires member firms to establish and maintain supervisory systems and written procedures reasonably designed to achieve compliance with the federal securities laws and NASD rules. HTK failed to establish and maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions and, as a result, violated NASD Rules 3010 and 2110.

HTK Failed to Maintain Certain Records of Mutual Fund Transactions

As of May 2, 2003, Exchange Act Rules 17a-3(a)(6) and 17a-4(b)(1) required member firms to create and preserve records reflecting the time of receipt of orders to purchase or sell securities, including shares of mutual funds. Despite this requirement, HTK failed to create and maintain records reflecting the time of receipt of orders to purchase or sell mutual fund shares until June 2004.

² During the period from January 1, 2003 through December 31, 2003, HTK processed approximately 81,635 mutual fund orders. Of these, approximately 442 orders, or 37 per month, on average, were processed after 4:00 p.m. where the firm's records contained no indication that the orders were received from the customer before 4:00 p.m.

As a result of the foregoing, HTK violated Section 17(a) of the Exchange Act, Rules 17a-3(a)(6) and 17a-4(b)(1) thereunder, and NASD Rules 3110(a)³ and 2110.

SANCTIONS

HTK consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- A fine in the amount of \$150,000.

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 it 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 understand 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.

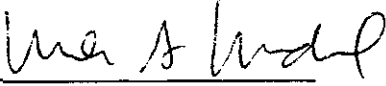
Hornor, Townsend & Kent, Inc.

³ NASD Rule 3110(a) requires that member firms comply with Exchange Act Rules 17a-3 and 17a-4.

Date: 6/21/05

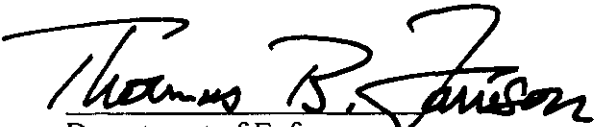
By: 
Name: Larry L. Mast
Title: President

Reviewed by:


Mark S. Mandel, Esq.
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
Counsel for Respondent

Accepted by NASD:

7/6/05
Date


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