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NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CLG050080

TO: Department of Market Regulation
NASD

RE: Harry R. Monsky, Respondent
CRD No. 1420260

Pursuant to Rule 9216 of NASD Code of Procedure, I, Harry R. Monsky, submit 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 me alleging violations based on the same factual findings.

I understand 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 Market Regulation and National Adjudicatory Council ("NAC") 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 me; and
3. If accepted:
 - a. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against me;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about my 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. I 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

200420000067/MRD200253099 (TSC)

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provision affects my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

I also understand that my 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:

I became registered in the securities industry in October 1985 as a general securities representative of a member of this Association. I ceased to be associated with a member on June 20, 2000. On November 3, 2001, NASD accepted an AWC by which I was fined \$1,000 for functioning in a capacity requiring registration when my registration was inactive.

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WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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.

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II.

ACCEPTANCE AND CONSENT

A. Harry R. Monsky ("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:

1. During the period December 28, 2001 through January 3, 2002 ("the review period"), Respondent had ownership and control of two personal brokerage accounts at an on-line broker-dealer, an Individual Retirement Account ("IRA") and a taxable margin account. This matter does not involve trading in any customer-related accounts.
2. On December 28, 2001, Respondent entered a limit order to sell 150,000 shares of Genome Solutions, Inc. ("GNSL") out of his IRA account and entered a near-simultaneous limit order to buy the same number of shares in his taxable margin account. The limit orders were placed at identical prices in the after-hours market, at \$2.16, which was lower than the closing price of \$2.49 bid and \$2.50 ask. Respondent's broker routed these orders to an ECN, which matched Respondent's two limit orders, executing the trade between his accounts.
3. On January 2, 2002 and January 3, 2002, Respondent entered limit orders to sell 50,000 and 100,000 shares of GNSL out of his taxable margin account and entered near-simultaneous limit orders to buy the same number of shares in his IRA account. On January 2, 2002, Respondent entered a limit order to sell 50,000 shares of GNSL at \$2.42, which was higher than the closing price of \$2.28 bid and \$2.38 ask. On January 3, 2002, Respondent entered a limit order to sell 100,000 shares of GNSL at \$2.50, which was higher than the closing price of \$2.45 bid and \$2.48 ask. Respondent's broker routed these orders to the ECN, which matched his two limit orders, executing the trades between Respondent's accounts.
4. As a result of these transactions, 150,000 shares of GNSL were traded from Respondent's IRA account to his taxable margin account on December 28, 2001, and then traded back to his IRA account on January 2, 2002 and January 3, 2002, with a gain of approximately \$47,000 in his taxable margin account and a corresponding loss in his IRA account.
5. Respondent's trading knowingly or recklessly created a false appearance of market activity in GNSL, in trades effected at prices that did not reflect the true supply and demand for GNSL.
6. The conduct described in paragraphs one through five constitutes separate and distinct violations of NASD Conduct Rules 2110, 2120, and 3310, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

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B. Respondent consents to the imposition, at a maximum, of the following sanctions:

A. suspension from association with any member firm for a period of one month, and a \$35,000 fine.

III.

OTHER MATTERS

A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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. I agree to pay any monetary sanctions imposed on me upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which I propose to pay any fine imposed.

C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

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I certify that I have read and understand all of the provisions of this AWC and have 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 me to submit it.

6/16/05
Date

Harry R. Monsky
Harry R. Monsky

Reviewed by:

Pat S. Conti
Counsel for Respondent.

Accepted by NASD:

6/21/05
Date:

Thomas R. Gira by [Signature]
Thomas R. Gira
Executive Vice President & Deputy
Department of Market Regulation

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

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