

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050092

TO: Market Regulation Department
NASD

RE: Empire Financial Group, Inc., Respondent
Broker-Dealer
CRD No. 28759

Pursuant to Rule 9216 of NASD Code of Procedure, Empire Financial Group, Inc. ("EFGI" 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 in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against EFGI alleging violations based on the same factual findings.

EFGI 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 Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, 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 EFGI; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against EFGI;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm'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. EFGI 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 the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

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

- Empire Financial Group, Inc. entered the securities industry on October 25, 1991 as a member of NASD and its registration remains in effect. EFGI has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

EFGI 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 EFGI;
- 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, EFGI 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.

EFGI 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

In connection with 20042000222 (MRD200444728), the staff of NASD's Department of Market Regulation (the "staff") conducted an investigation of the firm's compliance with trade reporting requirements pertaining to the transactions the firm reported to the Automated Confirmation Transaction Service ("ACT") for the period of September 1, 2003 through December 31, 2003 (the "review period").

- A. EFGI 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. EFGI failed, within 90 seconds after execution, to transmit through ACT 262 last sale reports of transactions in Nasdaq National Market ("NNM") securities and Nasdaq Small Cap ("SC") securities. These transactions constitute 4 percent of all eligible transactions (6,347) in NNM and SC securities that EFGI was required to report to ACT during the review period.
 2. EFGI failed, within 90 seconds after execution, to transmit through ACT 714 last sale reports of transactions in Over-The-Counter ("OTC") Equity securities. These transactions constitute 8 percent of all eligible transactions in OTC Equity securities that EFGI was required to report to ACT during the review period.
 3. EFGI failed, within 90 seconds after execution, to transmit through ACT 284 last sale reports of transactions in Consolidated Quotations Service ("CQS") securities. These transactions constitute 7 percent of all eligible transactions (4,200) in CQS securities that EFGI was required to report to ACT during the review period.
 4. The conduct described in paragraphs one through three above constitutes a pattern or practice of late trade reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 5. EFGI failed, within 90 seconds after execution, to transmit through ACT 221 last sales reports of transactions in OTC Equity securities and failed to designate through ACT such last sale reports as late.
 6. EFGI incorrectly designated as "SLD" through ACT 21 last sale reports of transactions in OTC Equity securities reported to ACT within 90 seconds of execution.

7. The conduct described in paragraphs five and six above constitute separate and distinct violations of NASD Marketplace Rule 6620(a).
8. The firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and the Rules of the Association concerning trade reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for (i) the identification of the person (s) responsible at the firm to ensure compliance with the applicable rules; (ii) a statement of the step (s) that such person (s) should take to ensure compliance therewith; (iii) a statement as to how often such person (s) should take such step (s); and (iv) a statement as to how enforcement of such written supervisory procedures should be documented at the firm.
9. The conduct described in paragraph eight above constitutes a separate and distinct violations of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$20,000 (consisting of a \$15,000 fine for trade reporting violations and a \$5,000 fine for inadequate written supervisory procedures), and an undertaking to revise EFGI's written supervisory procedures with respect to the areas described in paragraph eight. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph eight; and (3) the date the revised procedures were implemented.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. EFGI understands that EFGI may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. EFGI understands that EFGI 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. EFGI agrees to pay any monetary sanctions imposed on EFGI 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 EFGI proposes to pay any fine imposed.
- C. EFGI specifically and voluntarily waives any right to claim that EFGI is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Empire Financial Group, Inc. 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 EFGI to submit it.

5-4-05
Date

Respondent
Empire Financial Group Inc.

By: D. Proctor
Name: Darryl Proctor
Title: Compliance Officer

Reviewed by:

Counsel for Respondent

Accepted by NASD:

7/7/05
Date

Thomas R. Gira
Thomas R. Gira
 Executive Vice President and Deputy
 Department of Market Regulation
 Signed on behalf of the Director of
 ODA, by delegated authority