

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0120050083-02

TO: Department of Enforcement
NASD

RE: W.R. Hambrecht + Co., LLC
CRD No.45040

Pursuant to Rule 9216 of NASD Code of Procedure, W.R. Hambrecht + Co., LLC (Respondent, WRH 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 the firm 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 the firm; 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 the firm;
 - 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. 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 finding 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.

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:

The firm became a member of NASD in July 1998 and its membership is current. The firm has not been the subject of relevant disciplinary action by NASD, the Securities and Exchange Commission or a state securities regulatory agency in the past five years.

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 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. On or about May 13, 2005, WRH underwrote an offering of common stock of Overstock.com on a firm commitment basis. The offering was conducted pursuant to the firm's "OpenFollowOn" auction system. Approximately eight minutes before the close of the auction, in an effort to meet a perceived regulatory minimum deal size, the firm submitted a bid indicating its intent to purchase 200,000 shares that had not been bid for in the auction without identifying itself as the bidder. Pursuant to its rules, the auction did not identify any auction participants. After fully allocating shares to all of the bidders in the auction, WRH allocated 82,500 shares for which it did not have orders (the "Shares") to its market-making account and sold the Shares the next day in the after-market at prevailing prices. As a result of the after-market sales, WRH received approximately \$77,239.00 in profits.
 2. The preliminary prospectus did not disclose that WRH would or could submit a bid indicating its intent to purchase shares in the auction. The final prospectus did not disclose that WRH had sold the Shares at prevailing market prices and realized a profit on the transactions.
 3. By submitting a bid in the live-auction and purchasing shares offered in the auction in a proprietary capacity without disclosure, WRH engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.
 4. The profit realized on the proprietary transactions executed by WRH at prevailing market prices constituted "underwriting compensation" as that term is used in NASD Conduct Rule 2710. By omitting to disclose such compensation, WRH violated NASD Conduct Rules 2710(c)(2)(C) and 2110.
- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

Censure and a fine in the amount of \$127,329.00. The fine includes disgorgement of financial benefit in the amount of \$77,239.00.

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

III.

OTHER MATTERS

- A. Respondent understands that the firm 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 the firm 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 the firm 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 the firm proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that a person duly authorized thereunto 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.

2/9/2007
Date

W.R. Hambrecht + Co., LLC

By: Frederick C. Cullen

Its: CO-CEO

Reviewed by: HARRISON CLAY, GENERAL COUNSEL

[Signature]
Counsel for Respondent
Accepted by NASD:

March 8, 2007
Date

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

[Signature]
Jacqueline D. Whelan, Regional Counsel
NASD Department of Enforcement
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NASD Acting District Director

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