

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E3A2005002701

TO: Department of Enforcement
NASD

RE: Bathgate Capital Partners LLC, Respondent
Member Firm
CRD No. 38923

Pursuant to Rule 9216 of NASD Code of Procedure, 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 finding 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:

Bathgate Capital Partners ("Bathgate Capital") entered the securities industry in October 1995 as a member of NASD. Bathgate Capital is currently an NASD member. Bathgate Capital has not previously been the subject of any disciplinary action by NASD, the Securities and Exchange Commission, other self-regulatory organization or any state regulator.

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. Failure to Retain Books and Records

SS is a registered representative, resident in Bathgate Capital's Office of Supervisory Jurisdiction in Denver, Colorado. In or about December 2003, Bathgate Capital instructed SS to use the firm's e-mail system containing a system to monitor, preserve and retain e-mails ("the e-mail retention system"). Bathgate Capital's procedures prohibited registered representatives from using home or non-firm sponsored electronic equipment to send business-related e-mails. Subsequently, despite its prohibition, Bathgate Capital learned that SS was at times using his personal e-mail provider, EarthLink, to send and receive business-related e-mail correspondence. Bathgate Capital again advised SS to use the firm e-mail system, but that if he did use his personal EarthLink e-mail provider for business-related e-mail, he must copy the firm's compliance officer on all such incoming and outgoing business-related e-mail correspondence.

During the approximate time period from December 2003 through July 2005 ("the relevant time period"), SS sent and received electronic correspondence that related to Bathgate Capital's securities business both from his Bathgate Capital and EarthLink e-mail accounts. However, despite several warnings from the firm, SS at times did not use the firm's e-mail system for business-related e-mails and, when using EarthLink, SS seldom copied or forwarded to Bathgate Capital incoming and outgoing business-related e-mail correspondence. If SS deleted an EarthLink e-mail, that communication could not be retrieved.

Bathgate's compliance with SEC Rule 17a-4 was inadequate because the firm failed: i) to retain and preserve all of SS's EarthLink business-related e-mail for the relevant time period; and ii) to preserve all of SS's EarthLink business-related e-mail in a non-erasable and non-rewritable format. Moreover, the firm's supervisory systems and procedures were not reasonably designed to achieve compliance with Rule 17a-4 since they did not adequately provide for capturing,

retaining and preserving SS's EarthLink e-mail communications when he failed to copy or forward business related e-mails to the firm.

As a result of the circumstances described above, Bathgate violated SEC Rule 17a-4 and NASD Conduct Rules 3010, 3110 and 2110.

2. Failure to Inspect OSJ Branch Office

SS's office was subject to annual inspection pursuant to both NASD Rule 3010(c) and the firm's own written procedures. However, the firm failed to conduct an annual inspection of SS's office in 2004. As a result of the foregoing, Bathgate violated NASD Conduct Rules 3010(c) and 2110.

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

A censure and a fine in the amount of \$50,000.

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 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.

4-5-07
Date

Richard T. Huebner
Bathgate Capital Partners, LLC

By: Richard T. Huebner
Senior Managing Partner

Reviewed by:

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4-24-07
Date

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

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Bathgate Capital Partners LLC

STATEMENT OF CORRECTIVE ACTION

Respondent Bathgate Capital Partners LLC ("BCP") submits the following Statement of Corrective Action in connection with the attached Letter of Acceptance, Waiver and Consent dated and executed by Respondent on April 5, 2007. This Statement of Corrective Action is submitted by the Respondent, BCP. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

E-Mail System Enhancements

From approximately December 2003 to the present, BCP has twice made significant improvements to its e-mail retention and monitoring system. In approximately the Fall of 2003, BCP installed a new network operating system and a Microsoft Exchange network for e-mail, using MS Outlook as the e-mail software program. In approximately December 2005, BCP installed software on its network that works in conjunction with the firm's e-mail software to scan all e-mail traffic and to isolate certain e-mail messages based upon the presence of certain terms. The system also has enhanced searching and indexing functions. The e-mail capture system is manufactured by Erado Message Control Solutions. BCP reviewed several e-mail capturing and content filtering products before selecting the Erado system. BCP understands that Erado is widely used in the broker-dealer community. The Erado system was operational by approximately the end of January 2006.

E-Mail Procedures Strengthened

BCP's e-mail and correspondence procedures set forth in its Supervisory Procedures Manual (the "Manual") have been periodically revised in order to be consistent, and comply, with NASD and SEC rules. Of particular relevance, §5.9.3 of the Manual, which was part of the Manual prior to the commencement of NASD's investigation, states, in part:

"Business-related communication with customers or prospective customers must not be sent from a home computer or non-Company sponsored electronic equipment."

Since the Erado system was installed at BCP in approximately January 2006, it was isolating in a folder copies of certain e-mail messages based upon scanning all e-mail traffic for certain compliance-related key words. All isolated e-mail messages were being reviewed by BCP's Compliance Manager and designated E-Mail Reviewer, on at least a weekly basis, and SS's e-mail on a daily basis. Even with the relatively small size of the BCP firm, approximately 1,500 e-mail messages were being isolated each day. However, due to the high volume of these isolated e-mails, BCP implemented new procedures to review e-mail. This consists primarily of the E-Mail Reviewer conducting spot checks of registered representative's e-mails on a weekly basis, except for SS, all of whose e-mail is reviewed on a daily basis. BCP estimates that its

personnel send and receive a total of approximately 6,000 e-mails each day.

Internal Discipline of SS

When BCP learned in approximately June/July 2005 that SS was not complying with the e-mail procedures set forth in the Manual (*i.e.*, despite repeated directives to the contrary, he continued at times to use his EarthLink e-mail account for business-related communications), internal disciplinary proceedings were instituted and SS was fined \$15,000 by BCP in September 2005. In addition, BCP instructed SS to close his EarthLink account. SS confirmed that he had done so.

Training Enhancements

At annual training sessions, all registered representatives associated with the firm are reminded, as they were prior to NASD's investigation, that they may only use the BCP e-mail system for business-related e-mail correspondence. BCP now requires all of its registered representatives to confirm in writing, annually, that they do not use e-mail providers other than the BCP e-mail system for all business-related e-mail correspondence. Further, BCP has implemented through The Compliance Department, Inc. a new online training program for its registered representatives that are tailored to there area of business, which also includes a new supervision module.