

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO E8A2004013003

To: Department of Enforcement
NASD

Re: Direct Access Brokerage Services, Inc.
Broker-Dealer
CRD No. 30057

Pursuant to Rule 9216 of NASD Code of Procedure, Direct Access Brokerage Services, Inc. ("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 Respondent;
 - 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 findings 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

Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal positions 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:

Direct Access Brokerage Services, Inc. ("Member") became registered with NASD on February 2, 1993 and became registered with the Securities and Exchange Commission ("SEC") on May 20, 1985. The Member's registration with NASD and the SEC remain currently in effect.

On June 10, 2005, Respondent was fined \$5,000 in an AWC for violations of NASD Marketplace Rule 6620 in that it failed, within 90 seconds after execution, to transmit through the NASDAQ Market Center 143 last sale reports of transactions in OTC Equity securities and failed, within 90 seconds after execution, to transmit through the NASDAQ Market Center 139 last sale reports of transactions in OTC Equity securities and failed to designate through NASDAQ Market Center such last sale reports as late.

On March 28, 2003, NASD issued an AWC in which Respondent was fined \$5,000 for incorrectly reporting with a capacity indicator of "P" through the Automated Confirmation Transaction Service ("ACT"), 25 last sale reports of transactions in OTC Equity securities that it executed in a riskless principal capacity, and incorrectly designated as ".PRP" through ACT, 27 last sale reports of transactions in OTC/OTCBB securities, in violation of NASD Marketplace Rules 6620.

On October 18, 2000, NASD issued an AWC in which Respondent was censured and fined \$10,000 for failing, within 90 seconds after execution, to transmit through ACT, last sale report transactions for transactions in NASDAQ National Market, NASDAQ Smallcap, and OTC equity securities; failing to designate through ACT last sale reports as late; and incorrectly designated as ".sld" through ACT last sale reports of transactions in NASDAQ National Market, NASDAQ Smallcap, and OTC equity securities, transactions reported within 90 seconds of the execution, in violation of NASD Marketplace Rules 4632, 4642, 6420, and 6620, and NASD Conduct Rule 2110.

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 Respondent;

- 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 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. From approximately May 14, 2004 through approximately August 14, 2004, the Member incorrectly reported to ACT the "second leg" of eight (8) NASDAQ National Market ("NNM") riskless principal transactions, for which it was not the Member with the obligation to report the transactions. This conduct constitutes separate and distinct violations of NASD Marketplace Rule 4632.
2. From approximately May 14, 2004 through approximately August 14, 2004, the Member executed twenty (20) short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. This conduct constitutes separate and distinct violations of NASD Marketplace Rule 6130.
3. From approximately May 14, 2004 through approximately August 14, 2004, the Member executed five (5) transactions based on a prior reference point in time and failed to report each of these transactions to ACT with a prior reference point modifier. This conduct constitutes separate and distinct violations of NASD Marketplace Rule 5430(a)(10).

4. From approximately May 14, 2004 through approximately August 14, 2004, the Member failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations and with the applicable Rules of NASD, in violation of NASD Rules 2110 and 3010(b), in that they failed to 1) correctly state procedures with respect to the reporting of equity trades executed on a prior reference point basis; 2) state the steps to be taken by the person responsible at the Member for ensuring compliance with such laws, regulations and rules; and 3) state how often such person should take such steps.

- B. Respondent also consents to the imposition of, at a maximum:
- (i) a censure; and
 - (ii) a fine of \$17,500.

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 and has attached an Election of Payment form showing the method by which Respondent 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.

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