

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF - 0401150001**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: SMH Capital Inc. (BD # 20580)
Michael S. Rosen (CRD # 1449872)
Jack D. Seibald (CRD # 1245816)
Anthony M. Gallo (CRD # 4561693)

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, SMH Capital Inc. ("SMH"), Michael S. Rosen ("Rosen"), Jack D. Seibald ("Seibald"), and Anthony M. Gallo ("Gallo") (collectively, "Respondents") submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Respondents hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA:

1. BACKGROUND

SMH Capital Inc. (previously known as Sanders Morris Harris Inc.) and its predecessors have been members of FINRA (f/k/a National Association of Securities Dealers or NASD) since October 1987. SMH maintains its principal place of business in Houston, Texas and operates its Prime Brokerage Services Division ("the PBS Division") from New York City. SMH engages in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research. SMH has approximately 425 registered employees.

Michael S. Rosen, age 44, became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) in 1986. He became an associated person with SMH in July 2000. Rosen is registered as a General

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Securities Representative (Series 7), a General Securities Principal (Series 24), Series 4 (Options Principal), a Series 55 (Equity Trader), and a Series 63.

Jack D. Seibald, age 46, became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) in 1986. He became registered as an associated person with SMH in July 2000. Seibald is registered as a General Securities Representative (Series 7) and a General Securities Principal (Series 24).

Anthony M. Gallo, age 46, became associated with SMH in April 2002.

Neither SMH nor any of the individual Respondents has any relevant prior disciplinary history.

2. OVERVIEW

In July 2000, SMH expanded its business by acquiring Blackford Securities Corporation, which became SMH's PBS Division. SMH began offering a variety of services to hedge fund clients through its PBS Division. From July 2000 through at least December 2005 ("the relevant period"), however, it did not have adequate policies and procedures in place to supervise certain of the division's activities. For most of the relevant period, the firm did not have written procedures governing soft dollar payments and the supervision of SMH employees who provided services to hedge fund clients. As a result, SMH allowed improper payments of approximately \$325,000 in soft dollars to one hedge fund manager. SMH did not have adequate procedures concerning the contents of hedge fund sales materials prepared and disseminated by the firm and distributed sales literature that did not adequately disclose material investment risks to potential investors in accordance with NASD Notice to Members 03-07. From at least January 2003 to December 2004, SMH failed to retain e-mails and instant messages sent to and received by certain employees in the PBS Division. Gallo, an employee in the PBS Division, engaged in activities requiring him to be registered without obtaining the necessary registration.

Rosen and Seibald, two former Blackford employees, helped operate SMH's PBS Division while simultaneously managing four hedge funds that received prime brokerage services from SMH. To address the potential conflicts that arose from their dual roles, the offering documents for one share class for one fund, as well as an agreement among SMH, the two brokers, and a company that introduced investors to the hedge fund, stated that Rosen and Seibald would not share, directly or indirectly, in any commissions SMH earned from trading for the fund class. In April 2002, SMH, Rosen, and Seibald modified Rosen's and Seibald's compensation structure so that they shared in the PBS Division's profit pool, derived in part from commissions SMH earned on the fund's trading. As a result, contrary to the above restrictions, from April 2002 to June 2004, Rosen and Seibald shared indirectly in commissions SMH earned on the fund's trading but did not amend the fund's offering document.

3. FACTS

a. SMH's Prime Brokerage Services Division

In July 2000, SMH expanded its business by acquiring Blackford Securities Corporation, a firm that had been providing prime brokerage services to hedge funds. SMH's newly created PBS Division, operating out of offices on Long Island and in Manhattan, began to seek new, start-up hedge funds that could begin trading on its "prime brokerage services platform." The PBS Division offered a wide range of services to fund managers who joined its platform, including office space, telephones, internet access, computers, back office accounting, equity research, capital introduction, marketing assistance, and other forms of technical infrastructure and support. For some hedge funds, SMH dedicated certain employees to work for the fund as traders, analysts, or financial accountants.

The fund clients that utilized SMH's prime brokerage services platform directed a portion of their trading through SMH. During the relevant period, the firm collected trading commissions that ranged from approximately 1.5 to 6 cents per share, in many instances depending on the volume of trading and the level of services that the fund manager opted to receive from SMH.

Some of SMH's hedge fund clients did not join SMH's prime brokerage services platform, choosing instead to open soft dollar accounts at SMH to pay for services received from third party vendors with trading commissions. A manager would direct trades to SMH, based upon an understanding that a certain percentage of SMH's trading commissions would be credited to the fund's soft dollar account. For example, if SMH charged a particular fund 5 cents per share for a trade, it might credit 2.5 cents per share of that commission to the fund's "soft dollar account." As the soft dollar account accumulated positive balances, the fund manager submitted or caused to be submitted to SMH invoices from third party vendors who had provided services. SMH then paid the invoices from the balances accumulated in the fund's soft dollar account.

During the relevant period, SMH's PBS Division, at one point employing approximately 15 employees, established relationships with more than 15 different hedge funds. Most operated from SMH's prime brokerage services platform, but at least seven funds used SMH to maintain soft dollar accounts. The PBS Division developed into an important part of SMH's business.

b. SMH Did Not Customize Its Supervisory Procedures or Compliance Policies to Cover its New Prime Brokerage Services Business Activity.

Prior to acquiring Blackford, SMH's supervisory procedures were designed to cover the firm's traditional brokerage business. Therefore, at the time it decided to enter a significant new line of business servicing hedge funds, SMH did not have supervisory systems or procedures in place specifically tailored to address issues arising from its newly developed prime brokerage services business, such as

determining whether invoices should be paid with funds that had accumulated in soft dollar accounts and whether hedge fund sales materials contained the necessary risk disclosures and otherwise comported with advertising guidelines issued under NASD Notice to Members 03-07. It also did not have adequate systems and procedures in place to ensure that SMH employees who provided services to funds utilizing the PBS Division's platform were appropriately supervised.

Soon after it started its PBS Division, SMH recognized that it needed to update its written supervisory procedures and compliance policies to address these and other issues arising from its new business activities. Nevertheless, during the relevant period, SMH operated with inadequate supervisory policies or procedures that were not specifically tailored to its PBS Division activities. The firm's lack of adequate supervisory procedures and systems contributed to the rule violations described below.

c. SMH Failed to Have Adequate Procedures in Place to Police Soft Dollar Payments and, as a Result, Improperly Paid \$325,000 From a Soft Dollar Account to a Hedge Fund Manager.

In March 2003, SMH entered into a "soft dollar account" arrangement with FCM, which managed three separate hedge funds. By the end of 2003, FCM's soft dollar account had accumulated a balance of over \$270,000.

On January 1, 2004, FCM submitted an invoice to SMH requesting that SMH issue two checks totaling almost \$325,000: one for \$75,000 to an individual for "consulting services" and another for \$249,640 to FCM for "research expense reimbursements." There were several red flags concerning this invoice. It requested, in part, that SMH pay FCM directly for expenses incurred by a third party. The invoice did not describe what research had purportedly been provided to FCM; when the research had been provided; or who had provided the research. The invoice also failed to describe the "consulting services" the individual provided. FCM did not provide SMH with any invoice or backup documentation from the individual consultant or from the research provider to support the January 1 requests for payment. The invoice on its face was suspect. A reasonable inquiry would have revealed that the invoice should not have been paid from the soft dollar account because the expenses were not allowable under applicable laws and rules. Nevertheless, on January 14, 2004, SMH sent FCM a check for \$75,000 payable to the individual and a check for \$249,640 payable to FCM, completely depleting FCM's soft dollar account at the time.

When it received the January 1 FCM invoice, SMH lacked written supervisory policies and procedures to govern how it would review and pay invoices for soft dollar payments and who would be responsible for such review. As a result, the firm did not conduct reasonable due diligence before paying the FCM invoice for soft dollar reimbursement. Despite the red flags, SMH took no steps to determine whether FCM was relying on the soft dollar safe harbor under Section 28(e) of the Securities Exchange Act of 1934, and, if not, whether FCM had disclosed to its clients that FCM was operating outside the safe harbor. SMH also did not determine whether the

payment for "research expense reimbursement" was supported by an invoice to SMH from a research provider, or whether the "research" had been provided. Although SMH instructed its employees to pay invoices only if they were backed up by supporting documentation, none of the SMH employees who approved the January 1 invoice from FCM followed that unwritten procedure.

d. SMH Improperly Allowed Rosen and Seibald to Share in Commissions Earned on Whiteford International Trading.

Rosen and Seibald helped manage SMH's PBS Division after the firm acquired Blackford Securities in 2000 and, in 2002 were asked to, and did, assume management responsibilities for the division. During this period, they were also serving as the managers and investment advisors for four separate hedge funds, including an offshore fund named Whiteford International ("the WI Fund"). Consequently, Rosen and Seibald had a duty to the WI Fund to direct trades to the brokerage firm that could achieve best execution while also having a financial incentive to direct trades to SMH. In October 2001, Rosen and Seibald hired an outside firm, FG, to help find overseas investors for the WI Fund. To address this conflict, FG, Rosen, Seibald and SMH executed an agreement dated October 15, 2001, stating: "[SMH] warrants that ... bonuses or other cash ... paid to Jack D. Seibald and Michael S. Rosen will not be based, in whole or in part, on compensation earned by [SMH] for brokerage transactions effected for [the WI Fund]."

Rosen and Seibald created a separate "B Class" of shares for the WI Fund. The "Conflicts of Interest" section of the Private Placement Memorandum (PPM) for that class stated:

Rosen and Seibald are registered representatives of [SMH]. [SMH] has agreed, however, that no bonuses or other cash ... paid to Rosen and Seibald will be based, in whole or in part, on compensation earned by [SMH] for brokerage transactions effected for the Fund.

From October 2001 to April 2002, Rosen and Seibald did not share in the WI commissions. They continued to receive a salary from SMH, and their compensation was not tied directly or indirectly to the commissions from, or the level of, WI trading. By April 2002, FG had introduced many new investors into the WI Fund, and the fund had become one of the largest funds operating on the SMH platform. Even though Rosen and Seibald had been responsible for bringing this business to SMH, they were not receiving any of the benefit from the fund's trading.

In April 2002, SMH, Rosen and Seibald negotiated a new agreement that allowed Rosen and Seibald to receive bonuses from a "profit pool" derived from the overall profitability of the PBS Division. Because the profit pool included at least some money that was earned from the trading of the WI Class B shares, however, Rosen's and Seibald's new compensation arrangement was contrary to the terms of the October 15, 2001 agreement and the terms of the WI Fund PPM. Nevertheless, Rosen and Seibald did not amend, and continued to disseminate, the PPM which incorrectly stated that the

brokers would not share, in whole or in part, in the commissions generated through trading by the WI Fund. Rosen and Seibald continued to participate in the profit pool until June 30, 2004.

e. SMH Prepared and Disseminated Hedge Fund Sales Materials that Omitted Necessary Disclosures.

Among the services it offered, SMH helped introduce some of the funds on its platform to potential investors. As part of this effort, the PBS Division drafted and disseminated one-page fact summaries and helped hedge fund managers prepare and disseminate other sales materials, including flip-books and PowerPoint presentations. Because these materials constituted sales literature under NASD Advertising Rules, they needed to be fair and balanced and contain all material information and appropriate risk disclosures. Because the materials were used to sell interests in hedge funds, they also should have contained specific disclosures, as set forth in Notice to Members 03-07, that described the particular risks associated with hedge fund investing. As sales literature disseminated to investors, these materials needed to be approved by a registered principal, signed, dated, and maintained in SMH's files for three years.

SMH did not include certain necessary risk disclosure in these sales materials. The materials did not include some of the specific risk disclosures identified in Notice to Members 03-07, including that hedge funds:

- often engage in leveraging and other speculative investment practices that may increase the risk of investment loss;
- can be highly illiquid;
- are not required to provide periodic pricing or valuation information to investors;
- may involve complex tax structures;
- are not subject to the same regulatory requirements as mutual funds; and
- often charge high fees.

Moreover, between 2000 and late 2005, SMH's written supervisory procedures and compliance policies did not specifically address how the firm and its employees should prepare, approve, disseminate, file and/or maintain these sales materials as required by NASD rules. As a result, SMH disseminated hedge fund sales materials that had not been approved, and the materials were not properly filed and/or maintained after use.

Finally, contrary to an express SMH procedure, PBS Division employees who prepared and disseminated the sales materials did not forward copies of their materials to SMH Compliance.

f. SMH Failed to Retain E-mails and Instant Messages.

From at least January 1, 2003 to December 8, 2004, SMH failed to retain internal e-mails sent between various employees of the firm. Although the firm had established

an e-mail retention system that prepared backup tapes, those tapes were overwritten after a few weeks. The e-mails contained on the backup tapes were not otherwise retained, resulting in the loss of those e-mails. Moreover, from August 2003 until December 8, 2004, e-mails sent to certain employees of the PBS Division were lost because the firm did not properly configure its retention system and therefore failed to retain the e-mails sent to those employees.

SMH also failed to retain instant messages sent or received by certain of its employees. SMH's written supervisory procedures noted that firm employees could not use instant messaging for business related customer communications until the firm had established a mechanism that could archive and maintain instant messages. Nevertheless, SMH sometimes allowed certain of its employees to communicate via instant messaging before the firm had established a system to capture and retain such communications. For example, SMH did not implement a system to retain instant messages sent or received by employees in its PBS Division until March 2004, but it allowed Rosen, Seibald, and other employees in the division to use instant messaging to communicate with fellow employees, traders and customers prior to that date without retaining those messages.

The staff's requests in this investigation sought production of e-mail and instant messages that SMH had failed to retain. Therefore, SMH's failure to retain e-mail and instant messages from employees in its PBS Division hampered the staff's ability to investigate the firm's activities.

g. An Unregistered SMH Employee Named Anthony Gallo Engaged in Activities that Required Registration.

SMH hired Anthony Gallo in April 2002. The firm told Gallo that, as an unregistered employee, he was not permitted to sell SMH's services or conduct any marketing for SMH's hedge fund clients. However, between 2002 and 2005, Gallo contacted some former colleagues who were starting hedge funds and introduced them to SMH's prime brokerage services platform; he encouraged fund managers to open soft dollar accounts at SMH and direct trades to the firm; and he sent sales materials concerning hedge funds operating on SMH's platform to potential investors. Gallo needed to be registered to engage in each of these activities.

SMH's compliance procedures did not specify the types of prime brokerage services related activities that could be undertaken only by registered employees. Furthermore, the firm's written supervisory procedures did not clarify how supervisors of unregistered employees should monitor employees' activities to confirm that they were not engaging in activities that required registration. SMH failed to adequately oversee Gallo's activities.

4. VIOLATIONS

a. SMH Violated NASD Rules 3010 and 2110 By Failing to Adopt Policies and Procedures Tailored to its Hedge Fund Business.

NASD Rule 3010 requires member firms to establish both supervisory systems and written supervisory procedures specifically tailored to address the various areas of the members' business and the various activities of its registered and associated persons. In Notice to Members 99-95, NASD noted:

A firm's existing supervisory system may become outdated or ineffective as a result of changes in the firm's business lines, products, practices, or new or amended securities laws. In such instances, the written supervisory procedures must be updated to properly reflect any necessary changes to the supervisory system.

As described above, after it acquired its prime brokerage services business from Blackford, SMH failed to establish, maintain and enforce adequate procedures and systems that: a) were tailored to ensure that its hedge fund, prime brokerage services, and soft dollar activities were in compliance with the federal securities laws and NASD rules; and b) pertained to supervision of employees who provided services to funds utilizing the PBS Division's platform. Accordingly, the firm violated NASD Rules 3010 and 2110.

b. SMH Violated NASD Rules 3010 and 2110 by Failing to Have Policies and Procedures Governing the Payment of Soft Dollars.

As described above, SMH violated NASD Rules 3010 and 2110 when it made payments of almost \$325,000 to a hedge fund manager despite red flags that should have caused the firm to reject the invoice. By not establishing written supervisory procedures governing soft dollar accounts, and by failing to follow its own unwritten policies, SMH violated NASD Rule 3010.

c. SMH, Rosen and Seibald Violated NASD Rule 2110 By Altering the Brokers' Compensation So They Shared in Commissions from Hedge Fund Trading.

As described above, by agreeing to alter Rosen and Seibald's compensation arrangements to allow them to earn money based, in part, on trading commissions they had agreed not to receive, SMH, Rosen and Seibald engaged in activity that was not consistent with high standards of commercial honor or just and equitable principles of trade. As a result, SMH, Rosen and Seibald violated NASD Rule 2110.

d. SMH Violated NASD Rules 2210 and 2110 By Preparing and Disseminating Unapproved Hedge Fund Sales Materials that Failed to Disclose Material Facts and By Not Retaining Such Materials.

As described above, SMH prepared and/or disseminated hedge fund sales materials, including one-page fact summaries and flip-books, provided to potential investors. These documents constituted "communications with the public" and "sales literature" under NASD Rules. The materials were not fair and balanced because they omitted specific risk disclosures identified in Notice to Members 03-07. Furthermore, they were not approved and dated by a registered principal, and they were not maintained by SMH in a separate file for three years. Accordingly, SMH violated NASD Rules 2210(d)(1), 2210(b)(1), 2210(b)(2)(A) and 2110.

e. SMH Violated Section 17(a) of the Securities Exchange Act, Exchange Act Rule 17a-4, and NASD Rules 3110 and 2110.

NASD Rule 3110 requires member firms to make and preserve books, accounts, records, memoranda and correspondence in conformity with the applicable rules, regulations and policy statements of the SEC and FINRA and specifically requires that member firms comply with Rule 17a-4 of the Securities Exchange Act of 1934. Rule 17a-4(b)(4) under Section 17(a) of the Exchange Act requires broker-dealers to "preserve for a period of not less than 3 years ... [o]riginals of all communications received and copies of all communications sent by the [broker-dealers] (including inter-office memoranda and communications) relating to its business as such." Rule 17a-4 applies to e-mail and instant messages.

As described above, from at least January 1, 2003 to December 8, 2004, SMH failed to capture, retain and preserve certain electronic communications, including e-mails and instant messages, thus violating Section 17(a) of the Securities Exchange Act, Rule 17a-4 thereunder, and NASD Rules 3110 and 2110.

f. SMH and Gallo Violated NASD Membership and Registration Rule 1031 and NASD Rule 2110.

NASD Membership and Registration Rule 1031 requires all persons engaged in the securities business of a member who are functioning as representatives to be registered with FINRA (f/k/a National Association of Securities Dealers or NASD) in the category of registration appropriate to the functions which they are performing. As described above, while Gallo was an unregistered employee of SMH, he engaged in a number of securities business activities that required registration. Therefore, Gallo violated NASD Membership and Registration Rule 1031 and NASD Rule 2110. SMH violated the same provisions by permitting Gallo to engage in the activity without being registered.

B. Respondents also consent to the imposition of the following sanctions:

1. Respondent SMH consents to the imposition of the following sanctions:

- a. A censure; and
- b. A fine in the amount of \$450,000.

2. Respondent Rosen consents to the imposition of the following sanctions:

- a. A suspension from associating in all capacities with any member firm for 20 days; and
- b. A fine in the amount of \$100,000.

3. Respondent Seibald consents to the imposition of the following sanctions:

- a. A suspension from associating in all capacities with any member firm for 20 days to commence upon the completion of Respondent Rosen's suspension; and
- b. A fine in the amount of \$100,000.

4. Respondent Gallo consents to the imposition of the following sanctions:

- a. A suspension from associating in all capacities with any member firm for 10 days;
- b. A fine in the amount of \$15,000; and
- c. An undertaking to have Gallo qualify as a registered representative by taking the Series 7 examination within 90 days of Notice of Acceptance of this AWC and passing the examination before engaging in any activities that require registration.

5. SMH further consents to perform the following undertakings:

(a) SMH shall retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the matters described in this AWC, including but not limited to:

- (1) its overall supervisory system relating to its hedge fund and prime brokerage services business;

- (2) its system for receiving commission payments from hedge fund customers for the services provided by the PBS Division;
- (3) its system for opening and maintaining soft dollar accounts, including the procedures relating to the monitoring, reviewing and approving of all payments made in the soft dollar accounts;
- (4) its system for designating registered SMH employees as supervisors for each individual registered and/or associated with SMH and for ensuring unregistered individuals do not act as supervisors;
- (5) its system for supervising non-registered employees to ensure that they do not engage in activities that require registration;
- (6) its system for drafting, reviewing, approving, disseminating, filing, and retaining hedge fund sales materials; and
- (7) its system for maintaining and preserving electronic communications, including e-mails and instant messages.

(b) SMH shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.

(c) SMH shall cooperate with the Independent Consultant in all respects, including by providing staff support. SMH shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, SMH shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval; SMH shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the FINRA.

(d) SMH shall, at the conclusion of the review, which shall be no more than 150 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum:

- (1) the adequacy of SMH's policies, systems, procedures and training relating to the supervisory system categories discussed in Section C.5.(a) above;
- (2) a description of the review performed and the conclusions reached; and
- (3) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training.

(e) SMH shall require the Independent Consultant to enter into a written agreement that provides that, for the period of engagement and for a period of two

years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with SMH, or any of its present or former affiliates, officers, directors, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SMH or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

(f) Within 60 days after delivery of the Written Report, SMH shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. SMH shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and the FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall:

- (1) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and
- (2) provide SMH with a written decision reflecting his or her determination.

(g) SMH will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

(h) Within 30 days after the issuance of the latter of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), SMH shall provide the FINRA staff with a written implementation report, certified by an officer of SMH, attesting to, containing documentation of, and setting forth the details of, the Firm's implementation of the Independent Consultant's recommendations.

Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted, and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondents Rosen, Seibald and Gallo understand that if they are barred or suspended from associating with any FINRA member, they become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, they may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents 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.

Respondents further specifically and voluntarily waive any right to claim that a person violated the *ex parte* prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

Respondents understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents;
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' disciplinary records;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. Respondents 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. Respondents may not take any positions in any proceedings brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of if this AWC. Nothing in this provision affects Respondents' rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and
- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 FINRA, nor does it reflect the views of FINRA or its staff.

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, that they have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce them to submit it.

11/14/07
Date

SMH Capital Inc.

By: B T Morris
Ben T. Morris
Chief Executive Officer

Date

By: _____
Michael S. Rosen

Date

By: _____
Jack D. Seibald

Date

By: _____
Anthony M. Gallo

Reviewed by:

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Counsel for SMH Capital Inc., Michael Rosen and Jack Seibald

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SMH Capital Inc.

By: _____
Ben T. Morris
Chief Executive Officer

Date

11/14/07
Date

By: 
Michael S. Rosen

By: _____
Jack D. Seibald

Date

By: _____
Anthony M. Gallo

Date

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Counsel for SMH Capital Inc., Michael Rosen and Jack Seibald

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SMH Capital Inc.

By: _____
Ben T. Morris
Chief Executive Officer

Date

By: _____
Michael S. Rosen

Date

11/14/07

Date

By: _____
Jack D. Seibald

Date

By: _____
Anthony M. Gallo

Reviewed by:

Mark J. Hyland, Esq.
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004
Ph: (212) 574-1541 Fax: (212) 480-8421
Counsel for SMH Capital Inc., Michael Rosen and Jack Seibald

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, that they have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce them to submit it.

SMH Capital Inc.

By: _____
Ben T. Morris
Chief Executive Officer

Date

By: _____
Michael S. Rosen

Date

By: _____
Jack D. Seibald

Date

11/14/07

Date

By: 

Anthony M. Gallo

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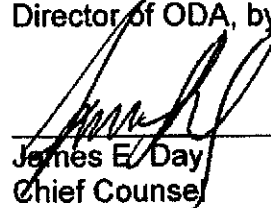
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Accepted by FINRA:

1/9/08

Date

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



James E. Day
Chief Counsel

FINRA Department of Enforcement
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Washington, DC 20006-1334