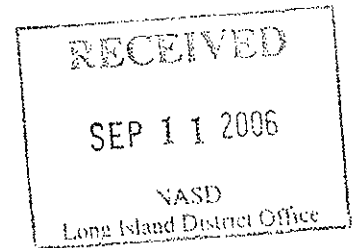


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ELI2003001101



TO: Department of Enforcement
NASD

RE: EKN Financial Services Inc.
(formerly known as Ehrenkrantz King Nussbaum, Inc.)
[BD No. 113525]

Anthony Ottimo, Sr.
[CRD No. 2974369]

Thomas Michael Giugliano
[CRD No. 2804591]

Michael Patrick Benvenuto
[CRD No. 1839351]

William Thomas Baker
[CRD No. 1804430]

Pursuant to Rule 9216 of NASD Code of Procedure, EKN Financial Services Inc. (formerly known as Ehrenkrantz King Nussbaum, Inc.) ("EKN"), Anthony Ottimo ("Ottimo"), Thomas Michael Giugliano ("Giugliano"), Michael Patrick Benvenuto ("Benvenuto"), and William Thomas Baker ("Baker") (collectively, "Respondents") submit 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 Respondents alleging violations based on the same factual findings.

Respondents understand 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 Respondents; and

3. If accepted:

- a. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against Respondents;
- b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary records;
- 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. 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. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their 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:

EKN has been a member of NASD since November 2001.¹

Ottimo is the Chairman and Chief Executive Officer of EKN. Ottimo entered the securities industry on or about November 25, 1997 as a General Securities Representative ("GSR") of a member of NASD. Ottimo has been registered with NASD as a GSR, General Securities Principal ("GSP") and Options Principal ("OP") through EKN since in or about October 2001.

Benvenuto is the Chief Financial Officer and Financial and Operations Principal ("FINOP") of EKN. Benvenuto entered the securities industry on or about July 14, 1988 as a FINOP of a member of NASD. Benvenuto has been registered with NASD as a GSR, GSP and FINOP through EKN since in or about February 2002. He became registered as an Equity Trader ("ET") with NASD through EKN in or about April 2004.

¹ Prior to November 2001, under different management, EKN was registered as a broker-dealer with the CRD No. 31140. The original EKN was formed in 1986 and withdrew and terminated its registration with NASD on or about January 2, 2002.

On or about November 27, 1990, Benvenuto entered into an AWC with NASD for violations of SEC Rules 15c3-1 and 17a-3. Pursuant to this AWC, he was suspended for ninety days as a FINOP and ten days in all capacities. He was also censured, fined \$15,000, and required to re-qualify as a FINOP. On or about February 28, 1991, Benvenuto's registration with NASD was revoked for his failure to pay the fine assessed under the AWC. The revocation was rescinded on or about July 16, 1991 upon total payment of the \$15,000 fine.

Giugliano is the President of EKN. Giugliano entered the securities industry on or about October 11, 1996 as a GSR of a member of NASD. Giugliano has been registered with NASD as a GSR and GSP through EKN since in or about October 2001.

Baker is the Head Trader at EKN. Baker entered the securities industry on or about April 19, 1988 as a GSR of a member of NASD. Baker has been registered with NASD as a GSR, GSP, ET and OP through EKN since in or about December 2001.

Ottimo, Giugliano, and Baker do not have any disciplinary history with the Securities and Exchange Commission, any state securities regulator, or self-regulatory organization.

I.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against Respondents;
- 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, 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 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. 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 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. This matter arises from EKN's involvement in private investments in public equity transactions ("PIPEs"). In the PIPE transactions, described more fully below, an underwriter or "placement agent" privately placed restricted securities of a public company with investors meeting certain criteria. In connection with these PIPEs, the investors enter into a purchase agreement with the public company committing the investors to purchase a certain number of the restricted shares at a specified price. Under the terms of the purchase agreements entered into by EKN, and described in greater detail below, EKN agreed that it had no present intention to distribute the shares. The restricted shares cannot be sold until the public company files a resale registration statement with the SEC within a specified period and the registration statement is declared effective. At that point and only at that point, can the investors then re-sell the shares to the public. In the situations described below, EKN sold shares short, after the PIPEs were publicly announced, but before the PIPEs were declared effective. Between January 2004 and May 2004, EKN entered into purchase agreements with Authentidate Holding Corp. ("ADAT"), Radyne Comstream ("RADN") and Escalon Medical Corp. ("ESMC") to purchase restricted shares in those companies via PIPEs. More specifically,
 - a. On or about January 28, 2004, EKN entered into a purchase agreement with ADAT for the purchase of 75,000 shares of ADAT in a PIPE transaction. The 75,000 ADAT shares were

"restricted" and remained restricted until April 27, 2004. Only upon the removal of the restriction on the shares of ADAT on April 27, 2004, were the 75,000 shares deposited into EKN's proprietary trading account. Between January 29, 2004 and February 20, 2004, EKN sold short 75,000 shares of ADAT in EKN's proprietary trading account, in anticipation of receiving the PIPE shares on April 27, 2004. EKN did this without either owning unrestricted shares or borrowing unrestricted shares in ADAT to cover the short sales. At all times, EKN intended to cover these short sales with the restricted shares purchased in the PIPE transaction.

- b. On or about February 17, 2004, EKN, acting through a related entity, Wheatley Capital ("Wheatley"), entered into a purchase agreement with RADN for the purchase of 75,000 shares of RADN in a PIPE transaction. That same day, EKN wired \$694,000 from EKN's business checking account into Wheatley's business checking account, which in turn wired the funds out for the purchase of the PIPE shares. The 75,000 RADN shares were "restricted" and remained restricted until April 7, 2004. Between February 17, 2004 and April 12, 2004, EKN sold short 75,000 shares of RADN in EKN's proprietary trading account. EKN did this without either owning unrestricted shares or borrowing unrestricted shares in RADN to cover the short sales. EKN intended to cover the short sales with the restricted shares purchased, through Wheatley, in the PIPE transaction. Once the restriction was lifted on the RADN shares purchased via the PIPE, on April 14, 2004, EKN purchased the entire 75,000 shares of RADN from Wheatley in an agency cross trade. On April 22, 2004, EKN then used the 75,000 shares received from Wheatley to cover its existing 75,000 shares short position that it had established in its proprietary trading account.
- c. On or around March 17, 2004, EKN, acting through a related entity, MFN LLC ("MFN"), entered into a purchase agreement with ESMC for the purchase of 20,000 shares of ESMC in a PIPE transaction. On March 17, 2004, the same day that MFN purchased the PIPE shares of ESMC, EKN sold short 19,500 shares of ESMC in its proprietary trading account with the intent to cover these short sales with the restricted shares purchased, through MFN, in the PIPE transaction. On March 22, 2004, EKN sold short an additional 500 shares of ESMC. EKN made these short sales without either owning unrestricted shares or borrowing unrestricted shares in ESMC.

to cover the short sales. On April 20, 2004, the PIPE shares were registered with the SEC and became unrestricted. On April 30, MFN sold the 20,000 shares to EKN in an agency cross transaction. EKN then used the 20,000 shares received from MFN to cover its existing 20,000 shares short position that it had established in its proprietary trading account.

Short selling private placement shares that are not yet available for sale is an unlawful distribution of the stock and such conduct violates the registration provisions of the federal securities laws under Section 5 of the Securities Act of 1933. More specifically, EKN, the PIPE investor, was selling its PIPE shares at the time of the short sales before the resale registration statement were effective. With respect to its transactions in ADAT, RADN and ESMC, EKN engaged in the short sales without borrowing unrestricted shares of the shorted stocks and while, at all times, intending to cover the short sales with the restricted shares purchased in the PIPE transactions. By engaging in this conduct, EKN, Ottimo, Giugliano and Baker, acted in contravention of Section 5 of the Securities Act of 1933, thereby violating NASD Conduct Rule 2110.

2. From on or about November 20, 2002 through on or about October 12, 2003, EKN failed to maintain adequate written supervisory procedures ("WSPs") in the following areas:
 - a. EKN did not designate principals to supervise the review of: (a) advertising, sales literature and the Internet; (b) supervision of the electronic filing of forms; (c) background investigations; (d) supervision of statutorily disqualified individuals; (e) speaking engagements and media participation; (f) overseeing reviews of direct contacts with the public and cold-calling; and, (g) OATS reporting.
 - b. EKN did not adequately address fees charged to customers, commission schedules, how fees will be reviewed and by whom, and the WSPs did not address or designate responsibility for the use of customer funds and securities.
 - c. EKN did not clarify whether its branch office was an Office of Supervisory Jurisdiction ("OSJ") or a non-OSJ branch and did not include a designation of a licensed GSP for that office.

By reason of the foregoing, EKN violated NASD Conduct Rules 3010 and 2110.

3. From on or about July 9, 2002 through on or about October 12, 2003, EKN did not have adequate procedures in place, pursuant to NASD Conduct Rule 2711, to address the area of research, the supervision of research activities and the separation of the Research Department from the Institutional Sales and Trading Department. By reason of the foregoing, EKN violated NASD Conduct Rules 2711 and 2110.
4. On multiple occasions, EKN, acting through Benvenuto, allowed the firm to conduct a securities business while under net capital. EKN failed to maintain required minimum net capital on the following dates: February 5, 2004, March 4, 2004 through April 21, 2004, and May 14, 2004. During these periods, EKN operated pursuant to the (k)(2)(ii) exemptive provisions of SEC Rule 15c3-3. For net capital purposes, EKN is classified in the C5 category with a minimum net capital requirement of \$100,000. However, the firm bases its minimum requirement on the computation of aggregate indebtedness, which sets its minimum net capital requirement to the greater of \$100,000 or 6 2/3% of aggregate indebtedness. Therefore, the required minimum net capital for EKN fluctuates from month to month.
 - a. On February 5, 2004, EKN's minimum net capital requirement was \$185,446.94. On that date, while conducting a securities business, EKN, acting through Benvenuto, maintained net capital of (\$329,571.06) and had a net capital deficiency of \$515,018. This deficiency was primarily due to a misclassification of approximately \$775,000 worth of shares purchased by EKN via a PIPE transaction.
 - b. For each day, beginning March 4, 2004 through April 21, 2004, EKN failed to maintain its required minimum net capital of \$131,015, due primarily to EKN making investments in non-marketable securities worth approximately \$1,332,750 and loans made by EKN of \$694,000 and \$1,000,000. EKN mischaracterized a portion of the loans as collateral, which resulted in net capital deficiencies on each of these days. For example:
 - i. On March 4, 2004, while conducting a securities business, EKN, acting through Benvenuto, maintained net capital of (\$833,766) and had a net capital deficiency of \$964,781.
 - ii. On March 31, 2004, while conducting a securities business, EKN, acting through Benvenuto, maintained

net capital of (\$1,568,873) and had a net capital deficiency of \$1,699,888.

- iii. On April 21, 2004, while conducting a securities business, EKN, acting through Benvenuto, maintained net capital of (\$78,764.98) and had a net capital deficiency of \$209,779.98.
- c. On May 14, 2004, EKN's minimum net capital requirement was \$125,000. On that date, while conducting a securities business, EKN, acting through Benvenuto, maintained net capital of (\$627,799) and had a net capital deficiency of \$752,799.

By reason of the foregoing, Benvenuto violated NASD Conduct Rule 2110 and EKN violated SEC Rules 15c3-1(a)(2) and NASD Conduct Rule 2110.

- 5. From on or about November 20, 2002 through in or around December 2005, EKN, acting through Ottimo and Giugliano, permitted associated person LO to act in a capacity at EKN, requiring registration as a GSR and GSP without being properly registered in such capacities. LO was involved in various aspects of business at EKN, including, but not limited to, (a) traveling on behalf of EKN and its holding company, Margate Capital, Inc. ("Margate") to London in connection with an initial public offering on the Alternative Investment Market ("AIM") of the London Stock Exchange ("LSE"); (b) being on the Board of Directors of both Margate and EKN from at least December 2003 through August 2004, during which he approved capital infusions from Margate into EKN; (c) monitoring and reporting monthly commission information to Ottimo and Giugliano; (d) collecting a salary from EKN; (e) recruiting and interviewing prospective employees for positions at EKN; and, (f) conducting sales meetings to brokers at EKN in connection with the Margate public offering. During that same time period, EKN, acting through Ottimo and Giugliano, permitted LO to act in a capacity at EKN requiring registration as a GSR and GSP without being properly registered in those capacities. By reason of the foregoing, EKN, Ottimo, and Giugliano violated NASD Membership and Registration Rules 1021 and 1031 and NASD Conduct Rule 2110 and acted in contravention of NASD IM-1000-3.
- 6. EKN failed adequately to maintain its books and records, as follows:
 - a. From in or about October 2001 through on or about April 24, 2003, EKN employed a "Statutorily Disqualified" individual, SS, but was

unable to provide any documentation to reflect that SS was under "heightened supervision" at the firm;

- b. From on or about June 30, 2003, through on or about October 31, 2003, EKN failed to maintain copies of "Instant Message" communications for certain EKN registered representatives; and,

By reason of the foregoing, EKN violated SEC Rules 17a-3 and 17a-4 and NASD Conduct Rules 2110 and 3110.

7. From on or about January 1, 2003, through on or about October 14, 2003, EKN failed to report ten customer complaints to NASD's Rule 3070 reporting system. By reason of the foregoing, EKN violated NASD Conduct Rules 3070 and 2110.

B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

- A censure against EKN;
- A six-month suspension against EKN from engaging in any PIPEs transactions;
- A fine of \$200,000, of which \$100,000 constitutes partial disgorgement of EKN's profits from the PIPEs-related transactions discussed in Section II.A (1) above. Of the remaining fine:
 - \$35,000 shall be joint and several with Ottimo;
 - \$35,000 shall be joint and several with Giugliano;
 - \$15,000 shall be joint and several with Benvenuto;
 - \$15,000 shall be joint and several with Baker;
- A thirty (30) calendar day suspension, in a principal capacity, against Ottimo;
- A thirty (30) calendar day suspension, in a principal capacity, against Giugliano;
- A ten (10) business day suspension, in a principal capacity, against Baker; and,
- A six-month suspension, in a FINOP capacity, against Benvenuto.,

Ottimo's suspension shall commence on a date set by NASD staff. Giugliano's suspension shall commence following the conclusion of Ottimo's suspension.

Baker's suspension shall commence on a date set by NASD staff. Benvenuto's suspension shall commence following the conclusion of Baker's suspension.

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

III.

OTHER MATTERS

- A. Respondents understand that they 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 NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment forms showing the method by which Respondents propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondents understand that if they are barred or suspended from associating with any NASD 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, Respondents may not be associated with any NASD 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.)

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, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondents to submit it.

9/8/06
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Reviewed by:

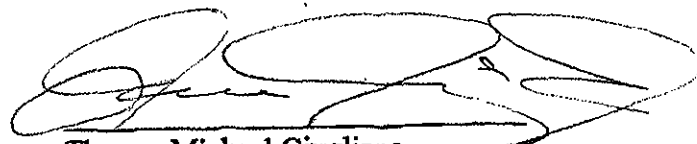

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Counsel for Respondents

EKN Financial Services Inc.

By: 
Anthony Ottimo, Sr.
Chief Executive Officer


Anthony Ottimo, Sr.


Thomas Michael Giugliano


Michael Patrick Benvenuto


William Thomas Baker

Accepted by NASD:

11/2/06
Date

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

Vaishali S. Shetty

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