

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ELI2005000604**

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

RE: EKN Financial Services, Inc., Respondent
Broker-Dealer
CRD No. 113525

Pursuant to NASD Rule 9216 of FINRA's 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

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 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:

BACKGROUND

Respondent has been a member of FINRA (formerly known as NASD) since November 2001.¹ As of September 30, 2007, the firm employed 51 registered employees and 12 non-registered personnel. Respondent's main office is located in Woodbury, New York. The firm currently maintains one active branch office, located at 44 Wall Street in New York City.

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

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RELEVANT PRIOR DISCIPLINARY HISTORY

On November 2, 2006, Respondent and certain of its principals entered into a Letter of Acceptance, Waiver and Consent ("AWC") with NASD under which they agreed to pay a fine and partial disgorgement of \$200,000 for acting in contravention of Section 5 of the Securities Act of 1933 ("Securities Act") and violating SEC Rules 15c3-1, 17a-3, 17a-4, NASD Membership and Registration Rules 1021 and 1031, and NASD Conduct Rules 2711, 2110, 3010, 3110 and 3070. Respondent was also censured and suspended for six months from engaging in any transactions related to private investments in public equity transactions, also known as PIPEs.

On or about August 10, 2006, Respondent entered into an AWC with NASD in connection with alleged violations of NASD Conduct Rules 3010, 3110, 2110 and NASD Marketplace Rules 6954(a), 6955(a). Respondent was censured, paid a fine of \$20,000 and agreed to revise its written supervisory procedures (WSPs) with respect to its Order Audit Trail System within thirty days of the acceptance of the AWC.

OVERVIEW

During the period from October 2003 through December 2006, Respondent violated various FINRA rules and regulations. Among the violations are: (i) failing to make disclosures or attestations in connection with research reports; (ii) failing to file, inaccurately filing or untimely filings of financial reports; (iii) failing to maintain required minimum net capital while conducting a securities business; (iv) failing to amend or file Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Uniform Termination Notices for Securities Industry Registration (Forms U5); (v) failing to report or report correctly customer complaints and employee suspensions to the Rule 3070 reporting system; (vi) failing to maintain certain books and records; (vii) inaccurately indicating market maker status on confirmations; and, (viii) permitting excessive commissions to be charged in equity retail transactions.

FACTS AND VIOLATIVE CONDUCT

- 1) From October 2003 through February 2005, in a review of approximately 77 research reports, Respondent failed to meet the disclosure requirements set forth in NASD Conduct Rule 2711(h) as follows:
 - a. Failed to define for six reports the meaning of each rating used in the ratings system, in violation of Rules 2711(h)(4) and 2110;
 - b. Failed to disclose for sixteen reports the percentage of securities rated by the firm at different ratings, in violation of Rules 2711(h)(5)(A) and 2110;
 - c. Failed to disclose for sixteen reports the percentage of subject companies within each of the three categories for whom the firm had provided

investment banking services within the previous twelve months, in violation of Rules 2711(h)(5)(B) and 2110;

- d. Failed to include the required disclosures for sixteen reports on the front page of the reports in a prominent, clear and comprehensive manner, in violation of Rules 2711(h)(10) and 2110;

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- e. Failed to provide a valuation method used to determine the price target and a disclosure of the risks that may have impeded achievement of the price targets in four research reports, in violation of Rules 2711(h)(7) and 2110.

Additionally, from April 2006 through January 2007, in connection with two research reports, Respondent failed to include the required disclosures on the front page of the reports in a prominent, clear and comprehensive manner, in violation of Rules 2711(h)(10) and 2110.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2711(h)(4), (5), (7) and (10) and 2110.

- 2) From October 2003 through February 2005, Respondent failed to maintain records of public appearances by research analysts. By reason of the foregoing, Respondent violated NASD Conduct Rules 2711(h)(12) and 2110.
- 3) From October 2003 through February 2005, Respondent failed to balance favorable discussions, with respect to two research reports, with disclosures of any risks associated with an investment in those securities. By reason of the foregoing, Respondent violated NASD Conduct Rules 2210(d)(1)(A) and 2110.
- 4) On October 16, 2003, EKN issued a research report on Genetronics Biomedical Corporation ("Genetronics") by its research analyst RL. On September 26, 2003, RL acquired 1,000 shares of Genetronics in an outside brokerage account during the period that he was restricted from purchasing the stock, pursuant to NASD Conduct Rule 2711(g)(2). EKN's failure to detect RL's violative conduct resulted from its failure to enforce its procedures for reviewing duplicate account statements for the brokerage accounts of its brokers, including its research analysts. By reason of the foregoing, EKN violated NASD Conduct Rules 3010(b) and 2110.
- 5) Respondent failed to conduct an annual attestation that the firm had adopted and implemented its research analyst rule procedures by April 1, 2004, as required pursuant to NASD Conduct Rule 2711(d)(2). By reason of the foregoing, Respondent violated NASD Conduct Rules 2711(i) and 2110.

- 6) For December 2004, Respondent did not properly accrue certain expenses and liabilities as incurred, including those in connection with its Expense Sharing Agreement with Wheatley Capital, Inc. This resulted in Respondent maintaining inaccurate balances in its general ledger and trial balance and filing an inaccurate Financial and Operational Combined Uniform Single ("FOCUS") report for December 2004. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder and NASD Conduct Rules 3110 and 2110.
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- 7) On April 28, 2006, Respondent conducted a securities business while failing to maintain the required minimum net capital of \$100,000:
- a. On that date, Respondent maintained net capital of (\$209,022.19), resulting in a net capital deficiency of (\$309,022.19). This difference was due primarily to the firm inaccurately characterizing a cash deposit in the amount of \$316,000 as "Additional Paid in Capital" when it more properly should have been treated as a loan made for net capital purposes. By reason of the foregoing, Respondent violated SEC Rule 15c3-1(a)(2)(ii) and NASD Conduct Rule 2110.
 - b. Respondent maintained inaccurate balances in its general ledger and trial balance for the period ending April 28, 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder and NASD Conduct Rules 3110 and 2110.
 - c. Respondent filed an inaccurate FOCUS report for April 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and NASD Conduct Rule 2110.
- 8) On November 30, 2006, Respondent conducted a securities business while failing to maintain the required minimum net capital of \$125,000:
- a. On that date, Respondent maintained net capital of (\$210,848.28), resulting in a net capital deficiency of (\$335,848.28). This difference was due primarily to unsubstantiated debits made to their payables. By reason of the foregoing, Respondent violated SEC Rule 15c3-1(a)(2)(ii) and NASD Conduct Rule 2110.
 - b. Respondent maintained inaccurate balances in its general ledger and trial balance for the period ending November 30, 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder and NASD Conduct Rules 3110 and 2110.
 - c. Respondent filed an inaccurate FOCUS report for November 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and NASD Conduct Rule 2110.

- 9) Respondent failed to timely file its FOCUS Part IIA Report for November 2006. The report was filed 11 business days late. The report was due on December 26, 2006, but was not filed until January 12, 2007. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-5(a)(2)(iii) thereunder and NASD Conduct Rule 2110.

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- 10) On December 29, 2006, Respondent conducted a securities business while failing to maintain the required minimum net capital of \$102,500:

- a. On that date, Respondent maintained net capital of (\$266,176.29), resulting in a net capital deficiency of (\$368,676.29). This difference was due primarily to unsubstantiated debits made to their payables. By reason of the foregoing, Respondent violated SEC Rule 15c3-1(a)(2)(ii) and NASD Conduct Rule 2110.
- b. Respondent maintained inaccurate balances in its general ledger and trial balance for the period ending December 29, 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder and NASD Conduct Rules 3110 and 2110.
- c. Respondent filed an inaccurate FOCUS report for December 2006. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and NASD Conduct Rule 2110.

- 11) Respondent failed to file, on a timely basis, its 2006 annual audit. The audit was due to FINRA by March 1, 2007. It was not received until March 21, 2007. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and NASD Conduct Rule 2110.

- 12) During the period from October 2003 through April 2006, Respondent failed to amend or file ten (10) Forms U4 and Forms U5 to reflect customer complaints, arbitrations and litigations and filed another eight (8) amendments late. From April 2006 through January 2007, Respondent failed to amend one (1) Form U5 and filed two (2) late. By reason of the foregoing, Respondent violated Article V, Sections 2 and 3 of FINRA's By-Laws and NASD Conduct Rule 2110.

- 13) Respondent failed to report the following to the Rule 3070 reporting system:

- a. From October 2003 through April 2006, Respondent failed to report fifty-seven (57) customer complaints, filed five (5) late, and filed fifteen (15) inaccurately.

- b. From October 2003 through January 2005, Respondent failed to report four (4) employee suspensions and one arbitration.
- c. From April 2006 to January 2007, Respondent failed to report nine (9) customer complaints, filed four (4) late, and filed five (5) inaccurately.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3070(c), 3070(b) and 2110.

14) During the period from January 1, 2004 through February 1, 2005, Respondent failed to maintain the following documentation in connection with trading at the firm:

- a. With respect to equity transactions, Respondent failed to maintain order tickets for twenty-six transactions;
- b. With respect to corporate debt transactions, Respondent failed to maintain confirmations for thirty-three transactions and failed to maintain order tickets for nineteen transactions;
- c. With respect to short sales transactions, Respondent failed to maintain confirmations for forty-one transactions and failed to maintain order tickets for forty-one transactions;
- d. With respect to mutual fund transactions, Respondent failed to maintain confirmations for thirty-three transactions and failed to maintain order tickets for thirty-two transactions;
- e. With respect to municipal transactions, Respondent failed to maintain and preserve confirmations and order tickets for 38 municipal transactions.

By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder and NASD Conduct Rules 3110 and 2110 and Municipal Securities Rulemaking Board (MSRB) Rule G-9.

15) From January 1, 2004 through February 1, 2005, Respondent failed to preserve and maintain the following:

- a. Time of order receipt, solicitation status or associated registered representative on 15 order tickets for municipal transactions.
- b. Customer name, execution price, time of order receipt, associated registered representative and solicitation status on 40 government security transactions.
- c. Time of order receipt, associated registered representative and solicitation status on order tickets for 23 corporate debt transactions.

By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder and NASD Conduct Rules 3110 and 2110 and MSRB Rule G-8.

16) From February 2005 through October 2005, Respondent failed to preserve and maintain, in an accessible place, written incoming and outgoing correspondence. By reason of the foregoing, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder and NASD Conduct Rules 3110 and 2110.

17) During the period from January 1, 2004 through April 21, 2006, Respondent indicated, on approximately 109 confirmations, that it was a market maker in a security when it was not. By reason of the foregoing, Respondent violated SEC Rule 10b-10 and NASD Conduct Rule 2110.

18) During the period April 21, 2006 through December 31, 2006, Respondent permitted excessive commissions to be charged in 88 equity retail transactions. These transactions resulted in a total of \$7,312.91 in excessive commissions being charged to Respondent's customers, which Respondent has since refunded back to the affected customers. By reason of the foregoing, Respondent violated NASD Conduct Rules 2440 and 2110.

OTHER FACTORS

B. Respondent also consents to the imposition of the following sanctions:

1. A fine of \$80,000; and,
2. Censure.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("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 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

Respondent understands 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 it; and

C. If accepted:

1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or ~~any other regulator against it;~~
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
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. 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

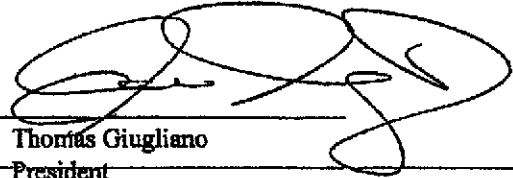
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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; that it has 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 Respondent to submit it.

EKN Financial Services, Inc.

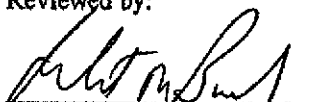
5/5/08

Date

By: 

Thomas Giugliano
President

Reviewed by:



Robert Bursky, Esq.
Counsel for Respondent
135 Crossways Park Dr.
Woodbury, New York 11797

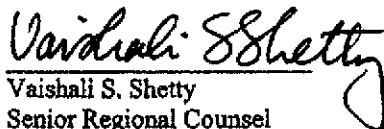
Accepted by FINRA:

Signed on behalf of the

5/19/08

Date

Director of ODA, by delegated authority



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