

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

CLG050050

**TO: Market Regulation Department
NASD**

**RE: William Blair & Company, L.L.C.
CRD No. 1252**

Pursuant to Rule 9216 of NASD Code of Procedure, William Blair & Company, L.L.C. ("WBLR" or the "firm") 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 WBLR alleging violations based on the same factual findings.

WBLR 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 Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, 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 WBLR; and
3. If accepted:
 - a. this AWC will become part of WBLR's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against WBLR;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about WBLR'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. WBLR 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 allegation in this AWC or

create the impression that the AWC is without factual basis. Nothing in this provision affects WBLR's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

WBLR 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:

WBLR entered the securities industry in March of 1944 as a member of NASD and its registration remains in effect. WBLR has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

WBLR 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 WBLR;
- 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, WBLR 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.

WBLR 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

In Market Regulation Review No. MRD200340757 (Star # 2004200015), the Market Regulation Department staff ("the staff") conducted a Trading and Market Making Surveillance Examination of WBLR's compliance with the rules applicable to market making. The on-site portion of the examination was conducted from June 30, 2003 through July 3, 2003. The staff conducted a review¹ of:

- 28 customer sale transactions for compliance with NASD Conduct Rules 3110 and 3370 and SEC Rule 10a-1;
- 16 proprietary sale transactions for compliance with NASD Conduct Rule 3370 and SEC Rule 10a-1;
- 41 sales in Nasdaq National Market ("NNM") securities for compliance with NASD Rule 6130;
- 24 limit orders executed as principal for compliance with NASD Conduct Rules 2110 and 2320, NASD Marketplace Rule 6440, and SEC Rules 11Ac1-1 and 11Ac1-4;
- 10 "non-displayed" limit orders and marketable orders in those securities executed as principal for compliance with NASD Conduct Rule 2320;
- 6 market orders executed as principal for compliance with NASD Conduct Rule 2320;
- 46 orders in NNM, Small Caps ("SC"), Over-the-counter ("OTC"), and Consolidated Quotation System ("CQS") securities regarding trade reporting of riskless principal trades for compliance with NASD Marketplace Rules 4632, 4642, 6130, 6420 and 6620;
- 1 order in a NNM or SC security reported with a "PRP" modifier for compliance with NASD Conduct Rule 2320 and NASD Marketplace Rule 4632;
- Firm's establishment and implementation of written supervisory procedures concerning the rules applicable to trading and market making in effect during April 2003, for compliance with NASD Conduct Rules 3010;
- Firm's implementation of the supervisory system in effect during April 2003, for compliance with NASD Conduct Rule 3010;
- Firm's establishment and implementation of "Regular and Rigorous" reviews in effect during April 2003 to help ensure best execution is obtained for orders sent to other market centers for execution, for compliance with NASD Conduct Rule 3010;
- Registration status of persons responsible for supervision of the firm's trading and market making activities in effect during April 2003, for compliance with NASD Membership and Registration Rules 1020 to 1040;
- 7 customer transactions in OTCBB and/or OTC equity securities reviewed for NASD Conduct Rules 2320 and 3110;

¹ Unless otherwise noted, all reviews were for trade dates April 22 and 23, 2003.

- Preparation and maintenance of books and records for compliance with NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4; and,
- 111 trades reported to Nasdaq systems for compliance with NASD Rule 6130 and the 4600 and 6000 series Rules.

In Market Regulation Review No. MRD200235951, the staff conducted a review of WBLR's compliance with the rules applicable to limit order display and the Order Audit Trail System ("OATS") during the period January 2, 2002 through March 31, 2002 (the "review period").

- A. WBLR 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:

In connection with MRD200340757 (Star # 20042000015):

1. WBLR failed to register with NASD as a Limited Representative - Equity Trader one person associated with WBLR where such person, with respect to transactions in equity, preferred or convertible debt securities, was engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities.
2. The conduct described in paragraph one constitutes a violation of NASD Membership and Registration Rule 1032(f).

In connection with MRD200235951:

3. During the review period, the firm failed to display immediately 37 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved WBLR's bid or offer in each such security; or when the order was priced equal to WBLR's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with WBLR's bid or offer in each such security.
4. The conduct described in paragraph three constitutes separate and distinct violations of SEC Rule 11Ac1-4.
5. During the review period WBLR transmitted to OATS 58 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate prices and inaccurate Account Type Codes and omitted route reports.

6. The conduct described in paragraphs five constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.

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

A censure and a fine of \$15,000 (\$5,000 for the registration violation, \$5,000 for the limit order display violations, and \$5,000 for the OATS violations).

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

III.

OTHER MATTERS

- A. WBLR understands that WBLR may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. WBLR understands that WBLR 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. WBLR agrees to pay any monetary sanctions imposed on WBLR 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 WBLR proposes to pay any fine imposed.
- C. WBLR specifically and voluntarily waives any right to claim that WBLR is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

William Blair & Company, L.L.C. 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 WBLR to submit it.

3/18/2005
Date

William Blair & Company, L.L.C.
Respondent

By: Kathleen A. Wieland
Name: Kathleen A. Wieland
Title: Principal and Director
of Compliance

Reviewed by: Philip J. Berman / Foley & Lardner
[Signature]
Counsel for Respondent

Accepted by NASD:

5/2/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

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