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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. SAF2004040801**

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

RE: Access Financial Group, Inc., Respondent
CRD No. 33065

Richard Konst, Respondent
CRD No. 273746

Pursuant to NASD Rule 9216 of FINRA Code of Procedure, Respondents Access Financial Group, Inc. and Richard Konst 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, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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 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

Access Financial Group, Inc. ("Access"), which has its principal place of business in Chicago, Illinois, has been a registered broker-dealer and a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1994. The firm's principal business involves mortuary trust agreements. Access has no relevant disciplinary history.

Richard Konst entered the securities industry in September 1972. He was first registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as a General Securities Representative in February 1973. Konst has been associated with Access since August 1994, and first became registered as a General Securities Principal in March 1995. At all

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times relevant to this AWC, Konst was registered as a General Securities Principal of Access. Konst has no disciplinary history.

OVERVIEW

This matter involves violations of NASD Rules in connection with market timing activity effected by two hedge fund customers (the "Hedge Fund Clients") of Access. The market timing activity occurred as part of an arbitrage trading strategy by the Hedge Fund Clients that utilized frequent trading in the sub-accounts of variable annuities. From March 2002 through September 2003, Access acted as a selling agent through its broker-dealer division, and enabled the Hedge Fund Clients to engage in deceptive practices regarding market timing in the sub-accounts of variable annuities through accounts maintained at Access.

In early 2002, an investment advisor to the Hedge Fund Clients met with Konst and other Access personnel to discuss the possibility of purchasing variable annuities through Access, to implement an arbitrage trading strategy involving market timing that involved hedging positions in sub-accounts of variable annuities against positions in other indices. In employing the strategy, the Hedge Fund Clients initially used a series of entities, typically limited liability corporations, before using individuals and corporate entities as nominees to purchase variable annuity contracts. The use of nominees was not disclosed to the insurance companies. After Access agreed to assist the Hedge Fund Clients, Access executed selling agreements with insurance companies that had been identified by the investment advisor.

The prospectuses for the variable annuities stated that the products were not appropriate for market timing. The use of nominees to conduct this trading obscured the identity of the owners of the variable annuity contracts from the insurance companies and impeded those companies from effectively monitoring, detecting and preventing market timing activity by those accounts. Access enabled the Hedge Fund Clients to engage in this activity by purchasing these contracts, which they used to carry out frequent transfers among the sub-accounts of certain variable annuities without being detected by those insurance companies or by their respective sub-account fund managers.

Moreover, even after five insurance companies sent multiple notices to Access that the trading by the Hedge Fund Clients was disruptive and contrary to the language of the applicable prospectus and to the interests of long-term investors and should not be continued, Access continued to purchase variable annuity contracts for the Hedge Fund Clients. Access

also knew or should have known that the prospectuses for these variable annuities stated that the products were not appropriate for market timing.

As a result of Access's activities, the Hedge Fund Clients transferred assets between the sub-accounts of variable annuities from those five companies, after receiving restriction letters from the companies, that yielded profits to the Hedge Fund Clients of \$194,831.20. These profits came at the expense of long-term investors in the mutual funds. Access received \$113,000 in fees from the Hedge Fund Clients for administrative services rendered in connection with the variable annuity contracts they purchased through Access.

Access's conduct in facilitating market timing by the Hedge Fund Clients, including through the use of nominees, was contrary to high standards of commercial honor and just and equitable principles of trade, and thus violated NASD Conduct Rule 2110. Konst, who was the principal at Access responsible for supervision of variable annuity activities, failed to adequately supervise the activities of the firm with regard to the market timing by the Hedge Fund Clients, in violation of NASD Conduct Rules 2110 and 3010.

In addition, prior to October 2003, Access failed to preserve for three years, and/or to preserve in an accessible place for two years, electronic mail communications that related to its business as a broker or dealer, in violation of NASD Conduct Rules 2110 and 3110, as well as SEC Rules 17a-3 and 17a-4.

VIOLATIVE CONDUCT BY RESPONDENTS

1. Violation of NASD Conduct Rule 2110 by Access

a. Market Timing Generally

A mutual fund's share price typically does not fluctuate throughout the trading day, but the prices of the securities held by the fund do. The ever-changing portfolio security prices are aggregated into a single daily fund price known as the net asset value (NAV), which is generally fixed by a fund based on the closing price of its underlying securities as of the close of the major stock markets in the United States.

"Market timing" is the short-term, rapid trading in mutual fund shares to exploit inefficiencies in mutual fund pricing. For variable annuities, market timing is done through mutual funds held in the sub-accounts of those products. The practice allows market timers to engage in arbitrage based upon market information not reflected in that day's NAV — for

example, when the fund has in its portfolio particular holdings, such as foreign or thinly-traded securities, which are priced on a basis that does not include certain updated information. To capitalize on the inefficiencies, market timers typically buy and sell shares in mutual funds (directly or through variable annuities) on a short-term, round-trip basis, realizing quick gains and then retreating to their previous market position.

The rapid and substantial transfers that may result from market timing are disfavored by fund managers because some market timers attempt to profit from quickly cashing out of fund portfolios at the expense of the long-term investors in the funds. While not *per se* illegal, market timing can harm mutual fund shareholders in several ways. For example, market timing may dilute the value of long-term shareholders' interests in a mutual fund if the fund calculates its NAV using closing prices of its portfolio securities that are stale. Market timing also may cause a fund to manage its portfolio in a disadvantageous manner, by maintaining a larger percentage of its assets in cash or liquidating certain portfolio securities prematurely to meet higher levels of redemptions due to market timing. Additionally, a mutual fund may also incur increased brokerage and trading costs, as well as tax liabilities, related to the frequent purchases and redemptions associated with market timing. Long-term fund investors may ultimately bear the burden of paying these costs. In addition, trading profits obtained by market timers can result in losses to long-term mutual fund shareholders.

Accordingly, the potential for market timing to harm the interests of mutual fund investors has led many mutual funds and insurance companies to adopt policies intended to limit the number of purchases, redemptions, or exchanges investors are permitted to make, and to inform investors through their prospectuses or Statements of Additional Information that market timing and excessive trading are discouraged or prohibited. Many mutual funds also attempt to identify and block the trading practices of market timers. The exact policies implemented vary from fund to fund.

Variable annuities provide investors the opportunity to invest in mutual fund "sub-accounts." Investors in variable annuities allocate invested funds among a variety of sub-accounts. Investors may instruct the insurance company to transfer funds from one sub-account to another. The insurance company, in turn, initiates purchases and redemptions of mutual fund shares once per day on an "omnibus" basis for numerous clients. Sub-accounts of variable annuities generally offer a level of customer anonymity not available to market timers dealing directly with mutual funds because mutual fund companies cannot easily determine the identities of individual investors who have requested transfers of funds among a variable annuity's sub-accounts.

b. Restrictions on Market Timing in Variable Annuities Traded Through Access

Certain of the variable annuity products that the Hedge Fund Clients purchased through Access stated in their prospectuses that they restricted or discouraged market timing or excessive trading. In particular, five variable annuities that the Hedge Fund Clients used for market timing transactions, as described herein, stated the following in their prospectuses:

AXA Advisors/Equitable Life:

You should note that the Accumulator Plus contract is not designed for professional "market timing" organizations, or other organizations or individuals engaging in a market timing strategy, making programmed transfers, frequent transfers or transfers that are large in relation to the total assets of the underlying portfolio. These kinds of strategies and transfer patterns are disruptive to the underlying portfolios in which the variable investment options invest....

Equitable Accumulator Plus Prospectus dated May 1, 2002, at 29.

Glenbrook Life:

We reserve the right to limit transfers in any Contract Year, or to refuse any transfer request for a Contract Owner or certain Contract Owners, if:

we believe, in our sole discretion, that excessive trading by such Contract Owner or owners, or a specific transfer request or group of transfer requests, may have a detrimental effect on the Accumulation Unit Values of any Variable Sub-Account or the share prices of the corresponding Funds or would be to the disadvantage of other Contract Owners Year; or

we are informed by one or more of the corresponding Funds that they intend to restrict the purchase or redemption of Fund shares because of excessive trading or because they believe that a specific transfer or groups of transfers would have a detrimental effect on the prices of Fund shares.

AIM Lifetime Enhanced Choice Prospectus dated May 1, 2002, at 20.

Lincoln Financial Group:

Frequent transfers based on short-term expectations may increase the risk that a transfer will be made at an inopportune time. This contract is not designed for professional market timing organizations or other entities using programmed and frequent transfers. Repeated patterns of frequent transfers are disruptive to the operation of the subaccounts, and should [we] become aware of such disruptive practices, [we] may refuse to permit such transfers.

ChoicePlus Assurance Prospectus dated May 1, 2002, at 17.

People's Benefit Life:

The transfer privilege under the Policy is not intended to serve as a vehicle for short-term or frequent transfers. The Policy does not permit market timing/frequent transfers. As described above, frequent transfers among investment option portfolios disrupt portfolio management in the underlying mutual fund and tend to drive fund expenses higher.... Do not invest with us if you intend to conduct market timing/frequent transfer activity. If you do, we will immediately notify you and your agent that any additional requests for transfers will be subject to certain restrictions, including the permanent loss of electronic transfer privileges.

Advisors Edge Select Prospectus dated May 1, 2002, at 23.

Western Reserve Life:

The portfolios do not permit market timing. Do not invest with us if you are a market timer. When we identify you as a market timer, we will immediately notify your agent who will then notify you that any additional requests for transfers will be subject to certain restrictions, including the loss of electronic and telephone transfer privileges. The Contract you are purchasing was not designed for professional market timing organizations or other persons that use programmed, large, or frequent transfers. The use

of such transfers may be disruptive to the underlying portfolio and increase transaction costs.

Freedom Access Prospectus dated May 1, 2002, at 35.

c. The Use of Nominees to Purchase Variable Annuities Through Access

In mid-2002, Access's then-general counsel learned that the Hedge Fund Clients had retained an outside law firm to evaluate the possibility of using individual nominees to purchase variable annuity contracts on behalf of the Hedge Fund Clients. Later that year, Access's then-general counsel reviewed a nominee agreement that had been drafted by the law firm, and told Access's principals, including Konst, that the law firm had approved the use of the nominee agreements to purchase variable annuities for their arbitrage trading strategy.¹ However, Access and Konst knew or should have known of the restrictions Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life placed on market timing and excessive trading through their review of prospectuses or other sources of information, such as selling agreements. Access and Konst nevertheless agreed that Access would offer its brokerage services to the Hedge Fund Clients in connection with implementing the nominee strategy.

Between March 2002 and September 2003, the Hedge Fund Clients purchased through Access at least 35 variable annuity contracts for market timing purposes from Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life. To avoid purchasing the annuities in their own names, and to manage risk by spreading their investments among multiple contracts with different insurance companies, the Hedge Fund Clients used individuals as nominee owners of the annuity contracts. The beneficial owners of the contracts remained the Hedge Fund Clients and not the nominees. When the Hedge Fund Clients began using nominees in the fall of 2002, they failed to disclose important information to the insurance companies regarding the true beneficial owners of the contracts. Consequently, the use of nominees hindered the insurance companies from effectively monitoring, detecting and

¹ The nominee agreements specified that the hedge fund would provide the funds to be invested, direct the trading, and provide full indemnification to the nominee for any liabilities, taxes, expenses, damages, or other charges incurred as a result of the annuity purchase. The nominee agreed to serve as owner of record, to establish a bank account to facilitate deposits to and receive distributions from the annuity, and to establish a post office box address for receipt of notices regarding the annuity and the bank account.

preventing market timing activity by the Hedge Fund Clients by failing to disclose that the Hedge Fund Clients were the true owners of the contracts.

When Access submitted applications to Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life for variable annuity contracts on behalf of the Hedge Fund Clients, Access did not disclose that nominees were purchasing the contracts on behalf of the Hedge Fund Clients, who were the beneficial owners of those annuities. Access did not provide copies of the nominee agreements to the insurance companies, nor did it disclose the nature of the trading contemplated by the Hedge Fund Clients. The information Access omitted would have assisted the insurance companies and the mutual fund managers in their effort to monitor, detect and prevent disruptive market timing practices.

Between October 2002 and September 2003, Access representatives were notified in writing at least 9 times by Lincoln Financial that market timing and excessive transfers among sub-accounts by the Hedge Fund Clients were disruptive to the underlying funds, harmed long-term investors, and increased costs to the funds. Those letters stated that the "volume and frequency of your transfer activity has surpassed acceptable levels and has become detrimental to the operation of these funds." Seven of the letters from Lincoln Financial stated that the company would "be curtailing excessive subaccount transfer/market timing activity by exercising its contractual right to reject additional telephone, Interactive Voice Response, internet, overnight delivery services and facsimile transfer requests" for either the balance of the contract year or the life of the contract. Access representatives received similar warning or restriction letters from Equitable Life (at least 2 letters in March 2003), Glenbrook Life (at least 6 letters between September 2002 and January 2003), People's Benefit Life (at least 5 letters between July 2002 and September 2002) and Western Reserve Life (at least 2 letters in July 2002).

Despite the language of those letters, Access continued to facilitate market timing sub-account transfers on behalf of the Hedge Fund Clients in variable annuities from Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life. Once those letters were received, Access should have been aware that, despite the prior communications with counsel, the insurance companies were trying to prevent market timing activity in variable annuity sub-accounts, and Access was facilitating deceptive and improper market timing by the Hedge Fund Clients through the use of the nominee agreements. By continuing to facilitate such activities, Access acted contrary to the high standards of commercial honor and just and equitable principles of trade required by NASD Conduct Rule 2110.

After the date of the first warning or restriction letter from each insurance company, the Hedge Fund Clients realized \$194,831.20 in profit by continuing to execute market timing sub-account transfers in those annuities through Access. Access received \$113,000 in fees from the Hedge Fund Clients for administrative services rendered in connection with the variable annuity contracts they purchased through Access.

2. Violation of NASD Conduct Rules 3010 and 2110 by Access's General Securities Principal

Konst was the General Securities Principal at Access responsible for supervision of the firm's variable annuity business. As a result of his initial meeting with the investment advisor to the Hedge Fund Clients, Konst was aware in early 2002 that the Hedge Fund Clients intended to implement an arbitrage trading strategy that utilized market timing in the sub-accounts of variable annuities. In the fall of 2002, from conversations with Access's then-general counsel, Konst learned that the Hedge Fund Clients intended to use nominee agreements that failed to disclose their ownership of variable annuity contracts to the insurance companies.

Konst knew or should have known that Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life maintained policies seeking to limit excessive transfers among sub-accounts, and that the relevant prospectuses and other materials including selling agreements stated that annuity products offered through Access were not designed for market timing or excessive trading. He should also have known that the insurance companies considered market timing activity to be problematic and harmful, and that the Hedge Fund Clients were engaging in market timing activity through nominee agreements.

Between July 2002 and September 2003, Access received at least 24 letters from Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life stating that market timing and excessive transfers among sub-accounts by the Hedge Fund Clients were disruptive to the underlying funds, harmed long-term investors and increased costs to the funds. Those letters typically restricted the trading in annuities held by the Hedge Fund Clients, and while many of the letters were addressed to Konst, as a matter of Access policy, those letters were usually routed through another registered representative at Access who had administrative responsibilities for the accounts of the Hedge Fund Clients. Nonetheless, Konst was the principal responsible for supervising the firm's variable annuity business, and was designated as such in the firm's written supervisory procedures. After Equitable Life, Glenbrook Life, Lincoln Financial, People's Benefit Life and Western Reserve Life notified Access in writing that market timing and excessive transfers

among sub-accounts by the Hedge Fund Clients were disruptive to the underlying funds, harmed long-term investors, and increased costs to the fund, Konst took no action to oversee or supervise the continued market timing activity that was occurring through Access.

As a result of the foregoing, Konst failed to adequately supervise Access's variable annuity business and the market timing activities of the Hedge Fund Clients, in violation of NASD Rules 2110 and 3010.

3. Violation of NASD Conduct Rules 2110, 3110, and Section 17(a) of the Exchange Act of 1934 and SEC Rule 17a-4 by Access

Access's employees and registered representatives used electronic mail communications to conduct Access's business as a broker dealer. Access failed to preserve copies of all electronic mail communications for three years, and/or maintain electronic mail communications for the first two years in an accessible place. Before October 2003, Access did not have adequate systems or procedures in place to retain and/or make accessible electronic mail communications.

Rule 17a-4(b)(4) promulgated under Section 17(a) of the Securities Exchange Act of 1934 requires Access to "preserve for a period of not less than three years, the first two years in an accessible place... [o]riginals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such." Rule 17a-4 applies to, among other things, electronic communications. NASD Rule 3110 requires that "each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium and retention period shall comply with SEC Rule 17a-4."

As set forth above, prior to October 2003, Access failed to keep electronic communications for three years and/or failed to preserve electronic mail communications for the first two years in an accessible place. This conduct violated Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and NASD Rules 3110 and 2110.

B. Access consents to the imposition of the following sanctions:

1. A censure;

2. A fine of \$150,000, payable within 90 days of the issuance of this AWC;
3. Disgorgement of \$113,000 in administrative fees received from the Hedge Fund Clients, payable within 90 days of the issuance of this AWC; and
4. Within 90 days of the issuance of this AWC, Access shall pay \$194,831.20 in restitution, representing the profits realized by the Hedge Fund Clients from the improper market timing described above, to compensate the affected mutual funds. Access shall divide this payment among the affected variable annuity issuers as follows:
 - a) Equitable Life: \$107,208.69
 - b) Glenbrook Life: \$35,234.09
 - c) Lincoln National Life: \$12,580.55
 - b) People's Benefit Life: \$37,181.95
 - c) Western Reserve Life: \$2,625.91
5. Within 90 days of the issuance of this AWC, an officer of Access shall certify to FINRA that payments to the fund companies in the amounts listed in paragraph 4 have been made and shall provide FINRA with copies of cancelled checks or other documents evidencing such payment.

Konst consents to the imposition of the following sanctions:

1. A censure;
2. A fine of \$20,000, payable within 90 days of the issuance of this AWC; and
3. Requalification by examination as a General Securities Principal within 120 days of the date of this AWC. If Konst fails to requalify by examination as a General Securities Principal on or before that date, his registration as a General Securities Principal will be suspended on that date until such time as he passes the required examination.

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

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable.

Each Respondent has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

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

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; and
- 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-8310-2; 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 allegation in this AWC or creating the impression that the AWC is without factual basis. Respondents 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 Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- 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 statements that are 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, 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.

Access Financial Group, Inc.

Date: 9/12/07

By: [Signature]
Name: VICTOR CHIRAS
Title: CEO.

Date: 9-12-07

[Signature]
Richard Konst

Reviewed by:

[Signature]
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Accepted by FINRA:

10/9/07
Date

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

[Signature]
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