

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100216047-01**

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

RE: Wilson-Davis & Co., Inc., Respondent
Broker-Dealer
CRD No. 3777

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Wilson-Davis & Co., Inc. ("WDCO" 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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

WDCO has been a member of FINRA, and its predecessor NASD, since December 23, 1968, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

SUMMARY

In connection with FINRA Matter No. 20100216047, the Trading and Market Making Surveillance ("TMMS") staff reviewed the trading activity of the firm, set forth in the attached Exhibit No. 1, for trade dates October 11, 2010 through October 22, 2010 (the "review period"), unless otherwise noted.

FACTS AND VIOLATIVE CONDUCT

In connection with FINRA Matter No. 20100216047, the staff found that:

1. The firm failed to provide on twelve occasions, in connection with transactions where the firm acted as principal, written notification to its customer that the price disclosed on the confirmation was the reported trade price of the transaction. The firm failed on three occasions to provide written notification disclosing to its customer that the transaction was executed at an average price. The firm, on one occasion when it acted as principal for its own account, failed to provide written notification disclosing to its customer the correct reported trade price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
2. The firm incorrectly marked short sale executions as long on the trading ledger in seventy-one instances. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rules 17a-3 and 17a-4.
3. For the review period, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incomplete information as the firm failed to classify an order in nine instances. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
4. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) Specific identification of the individual(s) responsible for supervision;
 - (b) The supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) The frequency of such reviews; and
 - (d) How such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the above-cited minimum requirements for adequate written supervisory procedures in the following subject areas: Order Handling (Disclosure of Order Routing Information; Market Orders; and Disclosure of Order Execution Information) – (b); Sale Transactions (Prompt Delivery of Sale Transactions; Refraining from Accepting Short Sale Orders w/o Pre-Borrowing; and Naked Short Selling Anti-Fraud Rule) – (b); Other Rules (Monitoring Electronic Communications) – (c)

and (d); and Use of Multiple MPIDs – (a), (b), (c) and (d). The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and NASD Rule 3010.

The firm failed to provide documentary evidence that, on the trade dates reviewed in the TMMS Examination, it performed the supervisory reviews set forth in its written supervisory procedures concerning: Supervisory System, Procedures and Qualifications (Registration); Anti-Intimidation/Coordination (Educating Personnel); Sale Transactions (Order Marking); Other Trading Rules (Trading Halts; Erroneous Trade Filings – Controls and Supervisory Processes to Ensure Accuracy and Integrity of Orders; Accurate and Appropriate Clearly Erroneous Trade Filings; and Detection of Potential Order Entry Errors); and Other Rules (Sub-Penny Orders smaller than \$.01 and \$.0001). The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and NASD Rule 3010.

B. The firm also consents to the imposition of the following sanctions:

A censure and a \$27,500 fine (\$5,000 for customer confirmation reporting violations; \$7,500 for books and records violations; \$10,000 for disclosure of order execution information violations; and \$5,000 for supervision).

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

The firm 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

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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, the firm 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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

The firm 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 FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. This AWC will become part of the firm’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. This AWC will be made available through FINRA’s public disclosure program in response to public inquiries about the firm’s disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. The firm 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. The firm 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 the firm's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf 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 the AWC's 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 the firm to submit it.

6-21-13
Date


Wilson-Davis & Co., Inc.,
Respondent

By: 

Name: Lyle W Davis

Title: Sec/Treas

Reviewed by:




Richard F. Ensor, Esq.
Vantus Law Group, PC
6995 Union Park Center, Suite 100
Salt Lake City, Utah 84047
Phone: (801) 833-0506
Fax: (801) 931-2500

Counsel for Respondent

Accepted by FINRA:

7/15/13
Date

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


Gerard P. Finn
Chief Counsel, Legal Section
Department of Market Regulation

2010 Market Regulation Examination Samples
 Wilson-Davis Company, Inc. ("WDCC")
 Exam No. 20100216047
 Sample Source/Period*: October 2010

<u>Sample Size</u>	<u>Sample Description</u>
59	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
10	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
153	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
29	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
51	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short reporting requirements
165	Non-tape reported trades to the TRF, ADF or OTCRF with a Related Market Center Indicator reviewed for compliance with FINRA Rules 7230A, 7330(h), and 7130(d)(2)
41	Cancelled Trades reviewed for reporting requirements to the TRF, ADF, and OTCRF for compliance with FINRA Rules 6380A, 6282, and 6622
12	Additional MPIDs and Sponsored Access activity for compliance with FINRA, Nasdaq, BATS and SEC Rules.
N/A	ATS/ECN subscriber trades reported to the TRF, OTCRF or ADF for compliance with FINRA Rules 6380, 6622, and 6282
1	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
12	Orders for compliance with best execution requirements of NASD Rule 2320
	2 Held orders from the Held Order Protection Review
	0 Not Held orders from the Not Held Order Review
	0 Order executed with a .PRP (Prior Reference Price) trade modifier
	10 Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
100	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
3	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with FINRA Rule 5330 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with FINRA Rule 2124 requirements
57	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements

2010 Market Regulation Examination Samples
Wilson-Davis Company, Inc. ("WDCO")
Exam No. 20100216047
Sample Source/Period*: October 2010

<u>Sample Size</u>	<u>Sample Description</u>
34	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
19	Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
14	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
219	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
155	Sell records prepared and maintained in connection for the proprietary sales review with SEC Rules Rules 17a-3 and 17a-4, and NASD Rule 3110
782	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
N/A	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements
N/A	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.
N/A	Trades reported to the ADF/TRACS for compliance with FINRA Rule 6282
N/A	ADF orders and quotes accessed by other market participants for compliance with FINRA Rule 6250 requirements to submit Order and Order Response reports