

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090205462**

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

RE: Olympus Securities, LLC, Respondent
CRD No. 114050

Pursuant to Rule 9216 of FINRA's Code of Procedure, Olympus Securities, LLC and its President, James M. Carrazza (collectively "Olympus" 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 Member alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

The 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

Olympus has been a FINRA regulated firm since February 1, 2002. Olympus's principal place of business is Montville, New Jersey. Olympus operates one branch office in addition to the main office and employs approximately 6 registered representatives. The majority of the firm's revenue is derived from agency commissions charged on the sale of NASDAQ/OTC securities. Olympus has no disciplinary history on CRD.

OVERVIEW

In December 2004 and from December 2006 through March 2007 (the "Relevant Period"), the Firm executed customer sell orders for 92,300,000 unregistered shares of Universal Express, Inc. ("USXP") stock, in violation of Section 5 of the 1933 Securities Act ("Section 5") and NASD Rule 2110. No exemption applied to the sale of these shares. The Firm also violated NASD Rules 3010 and 2110, in that its supervisory system was not reasonably designed to achieve compliance with Section 5. Customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions for total net proceeds of approximately \$198,000, resulting in nearly \$5,200 in commissions for the Firm. Moreover,

Olympus violated NASD Rule 3012, in that the Firm did not have a senior person, principal or otherwise independent individual performing day-to-day supervisory reviews over its producing manager.

FACTS AND VIOLATIVE CONDUCT

Universal Express, Inc. (USXP)

USXP was a publicly-traded Nevada corporation, with offices in New York and Florida, purportedly involved in the businesses of shipping and transportation. On March 24, 2004, the U.S. Securities and Exchange Commission (the "SEC" or "Commission") filed a complaint seeking a temporary restraining order and other emergency relief against USXP and others for their alleged involvement in the distribution of USXP common stock in violation of Section 5. The Commission's allegations included that from April 2001 through January 2004, USXP issued more than 500 million shares of unregistered stock for distribution to the public, issued a series of false press releases regarding funding commitments for the company, and made other false and misleading statements. The shares were issued purportedly as compensation under consulting agreements to co-defendants named in the lawsuit who sold to the public over 470 million shares of USXP for \$17.9 million. On February 21, 2007, the SEC successfully moved for summary judgment in *SEC v. Universal Express, Inc. et al*, 475 F. Supp. 2d 412 (SDNY 2007), *aff'd in a summary order sub nom., SEC v. Altomare*, 2008 U.S. App. Lexis 23408 (2d Cir. Nov. 13, 2008), *cert denied*, 129 S. Ct. 2745, 2009 U.S. Lexis 413 (June 1, 2009), which found that Universal Express violated Section 5 and that no exemption applied.

Customer Accounts Held at Olympus sold Unregistered Securities

During the Relevant Period, and after the Commission filed its complaint against USXP, the Firm executed customers' sale orders for over 92 million unregistered shares of USXP, earning the Firm nearly \$5,200 in commissions. No exemption applied to the sale of these shares. None of the USXP certificates that the Firm's customers deposited into their accounts contained any restrictive legends. The liquidation of these shares provided the account holders with approximately \$198,000 in proceeds. As discussed in more detail below, Olympus's supervisory system was not reasonably designed to achieve compliance with Section 5. Specifically, the Firm did not take any independent action to learn and/or verify the facts and circumstances surrounding the acquisition of the USXP shares, instead relying on its clearing firm to determine if the USXP shares were registered and freely tradable based on a mistaken belief that the clearing firm performed the required reasonable inquiry for purposes of compliance with Section 5.

AG account

AG, a corporate entity, opened a retail account at the Firm. Three stock certificates, which contained a total of approximately 89 million shares of USXP, were deposited into the AG account at Olympus. The three stock certificates bore no restrictive legends and were dated only three to seven days before AG deposited the certificates into the AG account. Olympus made a market in USXP for the shares of USXP deposited into the AG account. AG deposited its first

USXP stock certificate, for 27 million shares, on November 29, 2006. Beginning the same day and continuing through December 11, 2006, the AG account liquidated all 27 million shares of USXP. On January 24, 2007, a second certificate for 28 million shares of USXP stock was deposited into the AG account. Again, AG started liquidating the stock almost immediately, effecting four sales of USXP between January 24, 2007 and February 8, 2007. On February 23, 2007, only two days after the Commission was granted summary judgment, a third certificate of 34 million USXP shares was deposited into the AG account. From March 5, 2007 through March 13, 2007, the 34 million shares were liquidated in a series of six sale transactions. The Firm earned total of \$4,279 in commissions from the 89 million shares of USXP liquidated in the AG account.

IG account

IG, a limited company, deposited one USXP stock certificate, in the amount of 3,350,000 shares, into its Olympus account on December 6, 2004. The stock certificate bore no restrictive legends and was dated only two weeks before IG deposited the certificate into its account at the Firm. All 3,350,000 shares of USXP were liquidated in a series of five sales transactions between December 15, 2004 and December 29, 2004. The Firm received a total of \$895 in commissions from the 3,350,000 shares of USXP liquidated in the IG account.

Notwithstanding the red flags that the numerous stock certificates were dated close in time to when they were deposited, and that each of the customers discussed above immediately sold the shares after deposit, the Firm continued, during the Relevant Period, to rely on its clearing firm rather than make any independent inquiry of its own to verify whether the USXP shares were registered and/or whether they were freely tradable.

The Firm Violated NASD Rule 2110 by Selling Unregistered Securities in Violation of Section 5

Brokers are responsible for performing a critical gatekeeping function in order to prevent unregistered securities from illegally entering the public trading markets. Brokers who delegate their duty to inquire to others, including clearing firms and/or transfer agents, “do so at their peril.”¹ Section 5 prohibits the offer or sale of any security unless there is a registration in effect as to that security or there is an exemption available for that securities transaction. To establish a *prima facie* case of a violation of Section 5, Enforcement must show that (1) no registration with the SEC was in effect; (2) the respondents sold or offered to sell the security; and (3) respondents used the means of interstate commerce in connection with the offer or sale.² Although “[t]he provisions of section 5 shall not apply to ... brokers’ transactions executed upon customers’ orders or any exchange or in the over-the-counter market but not the solicitation of such orders,”³

¹ *John A. Carley*, Initial Decision Release No. 292, 2005 SEC LEXIS 1745 at *110-111 (July 18, 2005); *see also Wonsover v. SEC*, 205 F.3d 408, 411-412 (D.C. Cir. 2000); *Stead v. SEC*, 444 F.2d 713, 716 (10th Cir. 1971); *DOE v. Midas Securities, LLC*, No. 2005000075703, 2009 FINRA Discip. LEXIS 32 (O.H.O. May 12, 2009) (Hearing Panel held that brokers could not rely on clearing firms to determine if the shares they received for liquidation could be sold without violating the registration requirements of the Securities Act).

² *SEC v. Ralston Purina*, 346 U.S. 119 (1953); *SEC v. Murphy*, 626 F.2d 633, 640 (9th Cir. 1980).

³ 15 U.S.C. § 77d(4).

this exemption is available only when the broker has conducted a “reasonable inquiry” of the circumstances surrounding the customer’s sale.⁴

The SEC has imposed responsibilities on brokers, because of their responsibilities under certain circumstances to act as gatekeepers to the public markets, to conduct a “searching inquiry” to ensure they are not in violation of Section 5:

[A] dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. . . . [W]here the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.⁵

During the Relevant Period, the Firm offered and sold through the means of interstate commerce approximately 92.3 million unregistered shares. No exemption applied to the sale of these unregistered shares. The Firm thus participated in a distribution of unregistered shares in violation of Section 5 and NASD Rule 2110.

The Firm Violated NASD Rules 3010 and 2110

NASD Notice to Members (“NTM”) 99-45 explained that members are required to specifically tailor its supervisory systems to address all of the types of business that the member conducts. Under NASD Rule 3010(a), a member is obligated to “establish and maintain a system to supervise the activities of each registered representative . . . that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member.”⁶ Moreover, NASD Rule 3010(b)(1) requires each member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages. . . .”⁷ Failure to adopt supervisory procedures tailored to a member’s business is itself a violation of the rule.⁸

The Firm’s supervisory system was not reasonably designed to achieve compliance with Section 5. NASD Rule 3010 requires that firms establish and maintain procedures and controls that are

⁴ 17 C.F.R. § 230.144(g)(4); *Wonsover v. SEC*, 205 F.3d 408, 415 (D.C.Cir. 2000).

⁵ *Distribution by Broker-Dealers of Unregistered Securities*, Securities Act Rel. No. 4445, 1962 SEC LEXIS 74 (Feb. 2, 1962) (quoting *SEC v. Culpepper*, 270 F.2d 241, 251 (2d Cir. 1959)).

⁶ See *DOE v. Stonegate Partners, LLC*, Disciplinary Proceeding No. E112005002003, 2008 FINRA Discip. LEXIS 26 (OHO May 15, 2008); see also *DOE v. Kirlin Securities, Inc.*, Disciplinary proceeding No. EAF0400300001, 2007 FINRA Discip. LEXIS 15 (OHO Nov. 28, 2007).

⁷ *Id.*

⁸ See *DOE v. J. Alexander Securities, Inc.*, Complaint No. CAF010011, 205 NASD Discip. LEXIS 42 (OHO June 14, 2005).

tailored to their activities and are effective given their size, structure, and operations. Firms that accept delivery of shares in certificate form, and effect sales in those securities, cannot solely rely upon procedures of its clearing firm, as the Firm did, and instead must themselves have procedures and controls in place that are reasonably designed to prevent participation in illegal distributions of unregistered securities. The Firm's written supervisory procedures addressed the receipt and/or sale of penny stocks and restricted securities. Although the written supervisory procedures set forth certain steps to be taken to determine the status and tradability of deposited shares, they also allowed employees to rely instead on written verification from third parties that due diligence was performed.

In practice, the Firm relied on its clearing firm to determine whether the stock was free trading and believed that the clearing firm would take whatever action was necessary to determine whether shares were freely tradable. This reliance on another firm to discharge the Firm's obligations was inappropriate.

NASD Rule 3012 requires members to designate one or more principals who will establish, maintain and enforce a system of supervisory control policies and procedures that test and verify that the member's supervisory procedures are reasonably designed to comply with applicable securities laws and NASD rules, and amend those supervisory procedures where necessary. Rule 3012(a)(2)(A) requires that a person senior or otherwise independent to a producing manager perform the day-to-day supervisory reviews of the producing manager's account activity.

Due to the small size of Olympus, the Firm's President was also its producing manager and broker of record for all of the Firm's approximately one hundred customer accounts. During the Relevant Period, Olympus did not have a senior person, principal or otherwise independent individual performing day-to-day supervisory reviews over its producing manager, in violation of NASD Rule 3012.

By virtue of the foregoing, the Firm violated NASD Rules 3010 and 2110, and NASD Rule 3012.

VIOLATIONS

As a result of the conduct described above, the Firm violated the following rules:

1. The Firm violated NASD Rule 2110, by selling unregistered securities in violation of Section 5 of the Securities Act of 1933; and
2. The Firm violated NASD Rules 3010 and 2110 by failing to establish, maintain and enforce a system, to supervise the activities of its associated persons that were reasonably designed to detect and prevent the sale of unregistered securities, and violated NASD Rule 3012 in that it did not have a senior person, principal or otherwise independent individual performing day-to-day supervisory reviews over its producing manager.

SANCTIONS

Olympus consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$20,000.

Olympus 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

Olympus 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, Olympus 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.

Olympus 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

Olympus understands that:

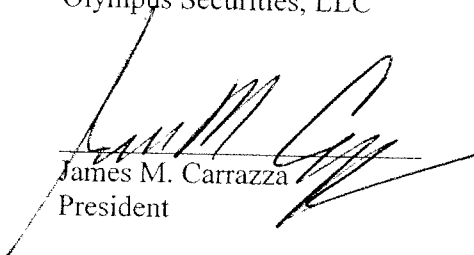
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Member; and
- C. If accepted:
 - 1. This AWC will become part of the Member’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Member;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-3; 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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, 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 the Firm to submit it.

Olympus Securities, LLC

SAH 12, 2010

Date


James M. Carrazza
President

Accepted by FINRA:

1-29-10
Date

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

Suzanne Elovic

Suzanne Elovic
Chief Counsel
FINRA Department of Enforcement
14 Wall Street
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