

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51864 / June 17, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11813

In the Matter of

MARKETXT, INC. AND IRFAN
MOHAMMED AMANAT,

Respondents.

ORDER MAKING FINDINGS AND
REVOKING BROKER-DEALER
REGISTRATION PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AS TO MARKETXT, INC.

I.

On February 9, 2005, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against MarketXT, Inc. (“MarketXT” or “Respondent”).

II.

Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Making Findings and Revoking Broker-Dealer Registration Pursuant to Section 15(b) of the Securities Exchange Act of 1934 as to MarketXT, Inc. (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that

¹ The findings herein are made pursuant to MarketXT's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

1. **MarketXT**, a Delaware corporation formed in May 1997, has been registered with the Commission as a broker-dealer since November 20, 1998. During the relevant period, MarketXT maintained its offices in New York City. MarketXT was a member of the National Association of Securities Dealers (“NASD”). In January 2000, MarketXT secured a no-action letter from the Division of Market Regulation that effectively permitted it to act as an Electronic Communications Network (“ECN”), as defined by Rule 11Ac1-1 under the Exchange Act. The Division of Market Regulation revoked the no-action letter on August 8, 2002, after the NASD ordered MarketXT to cease doing business.

Background

FRAUDULENT WASH TRADES/MATCHED ORDERS

Summary

2. The Nasdaq Stock Market (“Nasdaq”) participated in the Consolidated Tape Association (“CTA”) plan, a national market system plan established pursuant to Rule 11Aa3-2 under the Exchange Act, which administered the Consolidated Tape. Nasdaq received revenues for trades it reported to the Consolidated Tape in stocks listed on the New York Stock Exchange (“NYSE”) and American Stock Exchange (“Amex”). In an effort to compete with other market centers for market-data fees, Nasdaq publicized the advantages of trading in listed stocks on Nasdaq, known as “Intermarket” to NASD members. During the relevant period, Nasdaq, like other market centers, rebated a portion of the consolidated tape revenue it received to qualifying NASD members, based on the number of transactions the firm executed on Nasdaq.

3. During a three-day period in March 2002, MarketXT, an ECN, reported thousands of wash trades and matched orders on the Nasdaq. MarketXT’s Chief Technology Officer, Irfan Amanat (“Amanat”) executed wash trades and matched orders through an automated trading program that he ran through accounts at a broker-dealer affiliated with MarketXT, Momentum Securities, LLC (“Momentum”). The reported wash trades and matched orders did not reflect actual market supply and demand. Rather, Amanat created the program to report trades for the purpose of permitting MarketXT to earn market-data rebates from Nasdaq.

4. Specifically, Amanat operated the program in his personal account as well as in a proprietary trading account that was opened at Momentum specifically to earn rebates. From March 25 through March 27, 2002, Amanat used the program to order the purchase and sale of small lots of three Exchange-Traded Funds (“ETFs”), listed on the Amex: QQQs (the Nasdaq-100 Index Tracking Stock), SPYs (SPDR Trust Series 1), and DIAs (the DIAMONDS, Trust Series 1). In total, MarketXT reported over 16,000 wash trades and matched orders in the three ETFs during March 2002, mostly during the three-day period at the end of the quarter. As a result of the fraudulent wash trades and matched orders, MarketXT qualified for the rebate during the first quarter of 2002 and received approximately \$50,000 in rebates from Nasdaq.

Background

5. In January 2002, MarketXT became the first ECN to participate in Nasdaq's SuperSOES, through its ITS/CAES system ("Computer Assisted Execution Service").

6. In late 2001, Amanat had become aware of Nasdaq's Market Data Rebate Program in the course of discussions with Nasdaq officials about MarketXT's participation in SuperSOES. In early 2002, Amanat received a two-page memorandum from Nasdaq entitled "NASDAQ InterMarket: Creating a Negative Cost Trading Environment." As the memorandum described, firms reporting InterMarket trades to the Nasdaq in NYSE-listed and Amex-listed stocks could actually make money on the trades (have a "negative cost"). The Nasdaq memorandum made clear that the more trading reported by InterMarket participants, the more profitable the rebate program would be to the firm. The memorandum stated:

Currently any Nasdaq InterMarket participant who accounts for 500 or more average daily trades in Tape A (NYSE) or Tape B (Amex), but not in combination, during a calendar quarter qualifies for our tape revenue sharing program. Nasdaq InterMarket participants doing significant trading volumes often find that their amount of revenue rebate is significantly larger than their amount of transaction fee paid. As a result, InterMarket participants often operate in a negative trading cost environment (*i.e.* the rebate checks Nasdaq InterMarket writes you will be larger than the transaction checks you write us.)

The Nasdaq memorandum pointed out that the rebate amount for Tape B stocks, or Amex-listed stocks, was over ten times higher than the rebate for Tape A.

7. At the time, MarketXT was reporting insignificant amounts of listed stocks to the Nasdaq, virtually all in Tape A stocks.

Amanat Resolved to Qualify MarketXT for the March 2002 Quarter

8. Amanat, on MarketXT's behalf, decided to attempt to qualify MarketXT for the rebate trading program for the quarter ending March 2002. On or around March 6, 2002, a Nasdaq official e-mailed Amanat "background information" on Nasdaq's market-data rebate policy. In response, Amanat asked whether MarketXT could qualify for the March 2002 quarter. On March 11, Amanat heard from Nasdaq that with less than three weeks left in the quarter, MarketXT was averaging only 49 "revenue" trades per day, far less than the required daily average of 500 trades. In other words, MarketXT needed to average over 1,768 revenue trades per day in the remaining trading days of the quarter to qualify for Tape B rebates.

9. Amanat had designed and was using automated programs to profit from arbitrage opportunities involving other ECNs through his personal account at Momentum. These programs used limit orders. The arbitrage programs also did not generate anywhere near the 500-trade average required to qualify for the tape rebates. For example, on March 20, Amanat wrote the following to one of Momentum's traders: "Only 171 qualifying trades today so far! Damn, I needed 2000."

10. A proprietary trading account was then set up for Amanat at Momentum. The new account was referred to as a "rebate trading inventory account" (the "SIGNR" account).

11. At or around that time, Amanat wrote a program without any arbitrage features, designed solely to generate tape rebates. The program, dubbed “RLevi2,” automatically placed buy or sell market orders at timed intervals, originally set at approximately five to six seconds. According to Amanat, this program was designed to cover every purchase with a sell at the same timed interval. Since all purchase and corresponding sell orders were at the market price, they were both executed simultaneously, without any involvement by other market participants. In other words, wash trades and matched orders were the result of the program’s design.

12. Amanat selected three ETFs listed on Amex as suitable securities for generating a large amount of trading volume, QQQs, SPYs and DIAs.

13. With one week left in the March 2002 quarter, Amanat and others at Momentum were still trying to meet the Nasdaq threshold of the 500-trade daily average. On Friday, March 22, a Momentum trader asked Amanat by e-mail for the number required to qualify, also asking, “do I need to open an account to trade etfs so we can get the rebates?” In one e-mail, Amanat replied, “Sheesh-It’s close. If we don’t ramp up next week we won’t make it.” In another e-mail, Amanat wrote: “We needed about 30,000 transactions this quarter. We’ve had about 15-20,000, so maybe we need 10,000 more. I’ll get the exact #.”

14. Amanat asked Nasdaq officials for the information a few minutes later: “Could either of you send me an update on how many transactions on Tape A and Tape B MarketXT has done so far, and how much more we need to qualify?” When he received a printout on MarketXT’s activity through March 19, Amanat asked: “So can you tell me how many more trades are needed to qualify for Tape A and B? Is it about 18,000 trades needed?” Moments later, a Nasdaq employee replied, “right-18,000 trades gets you qualified for Tape B. Tape A, well, we’ll get their [sic] next quarter.”

15. Amanat then provided his brother, who was the Chief Executive Officer of both MarketXT and Momentum, with this information a few hours later. In an e-mail with the subject “Rebate,” Amanat wrote on Friday afternoon, “I am 18,000 trades short for the tape revenue—I was hoping to be able to trade next week with my account. Otherwise I’ll have to rely on [the SIGNR account].”

Wash Trades on Monday, March 25, 2002

16. On the morning of Monday, March 25, Amanat began running the RLevi2 program on MarketXT in his personal account at Momentum in order to generate the required 18,000 trades. Beginning at 10:42 AM, Amanat used the program to execute market orders to buy and sell 100-share lots of DIAs. At 11:44 AM, Amanat wrote to two traders, under the subject “ETF Trades!”: “1008 trades and counting! Thanks ... for the help[;] I gotta get to 3600 a day for the next 5 days to make it.”

17. Amanat continued to run the program until 1:30 PM on March 25, trading in QQQs and SPYs, as well as DIAs. By day’s end, he had made 1,696 wash trades in DIAs and 105 wash trades in QQQs in his personal account at Momentum.

18. The unusual activity on March 25 caught the attention of an individual who worked with Amanat as a programmer. That morning, the programmer was watching the ETF

market on his computer screen and noticed 100-share prints of DIAs on MarketXT exactly six seconds apart. The programmer found the transactions unusual because DIAs, which are much less liquid and trade less than QQQs and SPYs, had not traded much on MarketXT in the past. Thinking there might be a problem, the programmer investigated and discovered that all of the orders and executions were internal to the firm. The programmer immediately concluded that someone, most likely Amanat, was “painting the tape.” The programmer mentioned this to his co-workers and reported it to a Momentum employee. Additionally, traders then reported to Amanat that the programmer had been complaining about the wash trades and “painting the tape.”

Wash Trades and Matched Orders on Tuesday, March 26, 2002

19. Amanat continued to try to meet the threshold for qualifying for the rebate, shortening the interval between each trade. On the morning of March 26, Amanat began putting in market orders on MarketXT for 500-share lots of SPYs in the SIGNR account, and then for 100-share lots in his personal account. On March 26, Amanat executed wash trades within his personal account and within the SIGNR account, as well as matched orders between his personal account and the SIGNR account. Shortening the interval between each pair of trades to one or two seconds, Amanat placed approximately 1,654 wash trades or matched orders of SPYs on March 26. That day, Amanat also ran an arbitrage program in DIAs and QQQs, with limit orders, some of which also resulted in wash trades.

Wash Trades And Matched Orders on Wednesday, March 27, 2002

20. After two days of running the RLevi2 program of market orders for ETFs in both his personal account and the SIGNR account, Amanat had added thousands of trades to MarketXT’s qualifying trades but was still far from the 18,000 requirement for the week. On March 27, Amanat began running the program in both accounts, in both SPYs and QQQs. He also reduced the interval between each pair of orders to one second, and placed thousands of matching buy and sell orders in both the SIGNR and his own account. This activity, from approximately 9:42 AM to 1:00 PM resulted in over 11,000 wash trades and matched orders in SPYs on MarketXT. Amanat also ran the program in QQQs in both accounts, placing matched buy and sell orders for them in both accounts.

21. The trading in SPYs attracted attention from Nasdaq operations, resulting in a telephone inquiry to MarketXT at around 12:40 PM. A Market Operations official asked whether there were “system problems,” or if MarketXT was somehow stuck in a “loop.” The Nasdaq official said he had noticed the high frequency, which was out of the ordinary for MarketXT and for that symbol. The wash trades and matched orders in SPYs stopped at approximately 1:00 PM., approximately the time that Momentum compliance officials ordered Amanat to stop the trading.

Rebate Payment from Nasdaq

22. Amanat continued his effort to be paid rebates by Nasdaq for the trades. On Thursday, March 28, he sent the following e-mail to Nasdaq:

... [C]ould you send me the list of trades we’ve done on Tape A and B, and tell me if we qualified (crossing my fingers here!)

Because of the fraudulent wash trades and matched orders Amanat executed, MarketXT met the required threshold. In June 2002, Nasdaq notified MarketXT that it would be paid \$49,965.66 as the firm's portion of tape revenue rebated by Nasdaq to qualifying member firms. The monies were wired to MarketXT's account on June 11, 2002.

NET CAPITAL AND BOOKS AND RECORDS VIOLATIONS

Summary

23. From approximately September 30, 2001 through July 30, 2002, MarketXT had serious financial problems, and was operating without the required net capital. During this time, MarketXT effected securities transactions.

24. At all relevant times, MarketXT was subject to a minimum net capital requirement of the greater of \$5,000 or 6 2/3% of its aggregate indebtedness.

25. Beginning with its quarter ended September 30, 2001, MarketXT recorded and reported zero liabilities. The purported basis for MarketXT's reporting of zero liabilities was an "assumption agreement" pursuant to which MarketXT's parent, an unregistered entity, assumed all of MarketXT's existing liabilities as of September 1, 2001, as well as all obligations that had accrued or would accrue through the period ending August 31, 2002. Without any expenses (or liabilities), Market XT appeared to maintain net capital far higher than the minimum requirement.

26. Broker-dealers must report all expenses and liabilities on their books and records. According to Generally Accepted Accounting Principles ("GAAP"), an entity must record each expense incurred by it in its business and record any corresponding liability on its books and records. In particular, GAAP requires an entity to record on its books and records all expenses for which it is the primary obligor. Under GAAP (FAS 140), an entity can remove a liability from its balance sheet only if it is extinguished. In order for liabilities to be extinguished, one of the following must have occurred: (1) the obligation was paid, or (2) the debtor was legally released from being the primary obligor, either judicially or by the creditor. From approximately September 30, 2001 through July 30, 2002, neither of these conditions was met for liabilities MarketXT did not report.

27. MarketXT entered into the assumption agreement with its parent purportedly to shift its expenses to its parent, and MarketXT relied upon the assumption agreement to justify recording zero liabilities. As discussed above, however, under GAAP, an agreement between a broker-dealer and its affiliate to allocate an expense to the affiliate will not by itself serve to extinguish the broker-dealer's liability because the broker-dealer remains responsible for the expense to the third-party and to the affiliate. Creditors never released MarketXT from its obligations to them. Therefore, MarketXT was required to book those liabilities. Thus, MarketXT's accounting treatment provided a misleading portrait of its net capital.

Origin of Assumption Agreement

28. After September 11, 2001, when MarketXT's downtown office space became unusable because of the terrorist attacks, the firm was faced with a huge rent obligation—over \$9

million—resulting from its termination of its lease. MarketXT did not disclose this liability in its FOCUS Report filed for the month ended September 30, 2001. Rather, MarketXT entered into an agreement with its parent to assume this liability, as well as other liabilities. The assumption agreement, prepared in September or October 2001, acknowledged that MarketXT’s parent had historically “been liable for MarketXT’s debts,” and provided that for some unstated consideration,

[The parent] hereby assumes the following obligations from MarketXT:

1. All existing obligations of MarketXT, as of September 1, 2001, as described in Exhibit A attached hereto.
2. All obligations that accrue from the time period between September 1, 2001, and August 31, 2002.

The agreement further provided that MarketXT would not accrue any offsetting liability to the parent as a result of the assumption of the liabilities.

Liabilities Improperly Taken Off of MarketXT’s Books

29. Upon execution of the agreement, MarketXT’s Fin-OP debited MarketXT’s outstanding liabilities and credited capital contributions to reflect the assumption of liabilities by the parent company. The Fin-OP then amended MarketXT’s September 30, 2001 FOCUS Report to record no liabilities. As discussed above, for instance, the FOCUS Report failed to disclose MarketXT’s rent obligation of over \$9 million.

30. For all future quarters, the Fin-Op debited all of MarketXT’s expenses to reflect the costs of its ongoing business, and correspondingly credited capital contributions. The Fin-Op’s accounting practice caused MarketXT to appear to be solvent.

December 31, 2001 Financial Statements

31. MarketXT’s annual financial statements for its year ended December 31, 2001, continued inaccurately to reflect zero liabilities, based on the assumption agreement. According to the financial statements, MarketXT maintained excess net capital of \$739,305 as of December 31, 2001. The firm’s net capital, however, was actually negative, after a disastrous year in which the firm suffered almost \$20 million in net losses, and became liable for abandoning its office space near the World Trade Center.

32. As disclosed in the notes to the financial statements, MarketXT recorded an expense for abandoning two leases of almost \$7 million. MarketXT claimed that it had transferred this liability, as well as an additional \$2 million in expenses, to its parent. According to the notes to the financial statements, the parent contributed \$9,178,351 to its subsidiary by assuming the same amount in liabilities. The financial statements were filed as part of MarketXT’s Form X-17A-5. However, they lacked both a net capital computation and the required oath by a duly authorized officer of the firm. MarketXT’s outside auditor flagged the assumption agreement as an issue in its audit report, as well as in a note to the financial statements, warning about MarketXT’s reliance on its parent. The audit report stated:

[T]he company's accumulated losses and its reliance on the parent to assume the company's liabilities raise substantial doubt about its ability to continue as a going concern. The 2001 consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

The note accompanying the financial statements explained that, "[s]hould the Parent be unable to pay any or all of the assumed obligations of MarketXT, MarketXT will be required to fulfill its obligations."

June 30, 2002 Net Capital Computation

33. In its June 30, 2002 FOCUS Report, MarketXT reported excess net capital of \$3,023,840, again reporting zero liabilities on the basis of the assumption agreement. MarketXT was subsequently informed of its responsibility to record liabilities directly relating to its operations that had not been paid by the parent company. MarketXT then filed an amended FOCUS Report disclosing a net capital deficit of \$3,378,713. Both FOCUS Reports were inaccurate. In fact, MarketXT had a net capital deficit of at least \$10,158,709. Specifically, MarketXT's capital situation was:

Net Capital	(\$9,365,119)
Required Net Capital	<u>793,590</u>
Net Capital Deficit	(\$10,158,709)

34. As of June 30, 2002, MarketXT's actual liabilities were almost \$12,000,000. For example, MarketXT had the following material liabilities:

Trade rebates payable due to Momentum	\$ 5,682,511
Payable to Clearing Firm	2,565,490
Payable to Factoring Firm	1,810,557
Payable to Nasdaq	1,052,890
Trade rebates payable due to Other Broker-Dealer	506,735
Settlement agreement for former office space	180,000
Other accounts payable	<u>105,072</u>
Total	<u>\$11,903,255</u>

In addition to understating the amount of a number of liabilities, MarketXT had improperly transferred the following liabilities to its parent: \$2,565,490 owed to MarketXT's clearing firm; \$1,810,557 owed to a factoring firm; \$1,052,890 owed to Nasdaq for transaction services; and \$5,682,511 owed to Momentum, a client to whom MarketXT owed trade rebates. None of these MarketXT creditors had agreed to substitute MarketXT's parent as obligor on the debts.

35. MarketXT also failed properly to account for its allowable assets, which are used to calculate a broker-dealer's net capital. As of June 30, 2002, MarketXT maintained approximately \$2.5 million in four separate bank accounts, which constituted an allowable asset. Additionally, MarketXT included its clearing deposit with its clearing firm as an allowable asset.

However, on July 19, 2002, MarketXT's clearing arrangement with its clearing firm was terminated and the clearing firm collected the funds in MarketXT's clearing account to partially satisfy MarketXT's liability to the clearing firm. Because the amount owed to the clearing firm as of June 30, 2002 was much greater than the amount on deposit, a lien was in effect and MarketXT was prohibited from withdrawing funds from the account. Therefore, MarketXT should have treated the clearing deposit as a non-allowable asset and therefore not usable for net capital purposes. Hence, MarketXT overstated its allowable assets by \$500,718.

36. Because MarketXT failed to properly record its expenses and liabilities, MarketXT failed to maintain accurate books and records, including ledgers, trial balances and net capital computations.

37. In July 2002, both the SEC staff and NASD examiners questioned the calculation of MarketXT's net capital. On July 29, 2002, the NASD ordered MarketXT to cease operating.

VIOLATIONS

38. As a result of the conduct described above, MarketXT willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder which prohibit any person from using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of securities. For example, MarketXT engaged in manipulative trading of securities through the execution of thousands of wash trades and matched orders. As MarketXT knew, or recklessly disregarded, the wash trades and matched orders had a deceptive impact on the marketplace, and/or deceptively qualified MarketXT for tape revenue rebate that actually belonged to other exchanges. Additionally, MarketXT engaged in a scheme to obtain tape revenue fraudulently. Each wash trade and matched order that was executed in ETFs was in furtherance of the scheme for MarketXT to obtain tape revenue from the CTA (through Nasdaq), thereby defrauding other exchanges of their fair share of the available pool of revenues.

39. As a result of the conduct described above, MarketXT willfully violated Section 15(c)(1)(A) of the Exchange Act which prohibits a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or contrivance. As MarketXT knew, or recklessly disregarded, the wash trades and matched orders had a deceptive impact on the marketplace, and/or deceptively qualified MarketXT for tape revenue rebate that actually belonged to other exchanges. Additionally, MarketXT engaged in a scheme to obtain tape revenue fraudulently. Each wash trade and matched order that was executed in ETFs was in furtherance of the scheme for MarketXT to obtain tape revenue from the CTA (through Nasdaq), thereby defrauding other exchanges of their fair share of the available pool of revenues.

40. As a result of the conduct described above, MarketXT willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 which prohibit a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce, or attempt to induce the purchase or sale of, any security while not maintaining minimum net capital. For example, from approximately September 30, 2001 through July 30, 2002, while it was effecting securities transactions, MarketXT failed to maintain adequate net capital.

41. As a result of the conduct described above, MarketXT willfully violated Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2) and 17a-3(a)(11). Rule 17a-3(a)(2) requires brokers or dealers to maintain “[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.” Rule 17a-3(a)(11) requires brokers or dealers to maintain a “record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date. For example, MarketXT maintained inaccurate ledgers reflecting its expenses and liabilities. MarketXT also willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-5 which require certain broker-dealers, such as MarketXT, to file reports, such as FOCUS reports containing a net capital computation. MarketXT filed inaccurate FOCUS reports for the year ended December 31, 2001 and for the quarter ended June 30, 2002.

Additional Findings

42. The Commission finds it necessary and appropriate in the public interest that MarketXT’s registration as a broker-dealer be revoked pursuant to Section 15(b)(4) of the Exchange Act.

Disgorgement and Civil Penalties

43. Respondent has submitted a sworn Statement of Financial Information dated April 22, 2005, and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent MarketXT’s Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. MarketXT, Inc.’s registration as a broker-dealer is revoked pursuant to Section 15(b)(4) of the Exchange Act.

B. Respondent shall pay disgorgement of \$49,965.66 plus prejudgment interest, but that payment of such amount is waived and the Commission is not imposing a penalty against

Respondent based upon Respondent's sworn representations in its Statement of Financial Information dated April 22, 2005, and other documents submitted to the Commission.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest and a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Jonathan G. Katz
Secretary