

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION

20041000073-01

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
NASD

RE: Jefferies & Company, Inc., Respondent
Broker/Dealer
CRD Number 2347

Pursuant to Rule 9216 of NASD Code of Procedure, Jefferies & Company, Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and

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- d. 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. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

Jefferies & Company, Inc. has been a member of NASD since March 1963, and its registration remains in effect. The firm's relevant disciplinary history is as follows:

- On October 6, 2005, an AWC became final in which the firm was censured and fined \$125,500 for violations of NASD Rules 2110, 3010, 3110, 3370, 4632, 6130, 6620, and 6955, and SEC Rules 10b-10, 11Ac1-4, 11Ac1-5, 17a-3, and 17a-4.
- On September 6, 2005, an AWC became final in which the firm was censured and fined \$12,500 for violations of NASD Rules 2110, 3010, and then 6740 (currently 6640), and SEC Rule 15c2-11.
- On July 7, 2005, an AWC became final in which the firm was censured and fined \$100,000 for violations of NASD Rules 2110, 3010, and 6955.
- On April 27, 2004, an AWC became final in which the firm was censured and fined \$27,500 for violations of NASD Rules 2110, 3010, 3110, 4632, 6420, and 6620, and SEC Rule 10b-10.
- On November 25, 2003, an AWC became final in which the firm was censured and fined \$35,000 for violations of NASD Rules 2110, 3320, 4613, and 6620, and SEC Rule 11Ac1-1.

I.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, 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 Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

During an approximate two year period, the staff of NASD's Department of Market Regulation (the "staff") conducted numerous reviews, examinations, and investigations of the firm of varying scope and duration, which are described more fully in Appendix 1 to this AWC. This matter is a result of those reviews, examinations, and investigations.

- A. The firm hereby accepts and consents, without admitting or denying the findings, solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

OATS Matters

Examinations and reviews by the staff of the firm's compliance with the Order Audit Trail System ("OATS") rules between January 2004 and March 2006 found multiple deficiencies in the firm's OATS reporting. Specifically, the staff found the following:

- The firm failed to submit to OATS Reportable Order Events ("ROEs") for "not held" orders;
- The firm submitted Execution and Route or Combined/Order Route reports that failed to link to, respectively, related trade reports in the Automated Confirmation Transaction Service ("ACT") and related orders in SuperMontage;
- The firm reported Route or Combined/Order Route reports that failed to match the receiving firm's New Order report and vice versa;
- The firm failed to submit to OATS accurate order information and required Order Execution reports;
- The firm incorrectly submitted to OATS Execution Reports for transactions executed away from the firm;
- The firm failed to properly utilize the Combined Order Execution, Route and Combined Order/Route reports.

SEC Rule 10b-10

The firm failed in 19 instances to disclose certain required information on a customer confirmation.

SEC Rule 605

The firm failed to exclude orders submitted on a "not held" basis in the calculation of the firm's March 2004 execution quality statistics.

SEC Rule 15c2-11 and NASD Rule 6640 (formerly NASD Rule 6740)

In nine instances, the firm submitted a quotation for publication on a quotation medium, the Pink Sheets, without (1) having in its records the documents and information required by Rule 15c2-11(a) and (b); (2) having a reasonable basis under the circumstances for believing the information required by Rule 15c2-11(a) was accurate in all material respects and that sources of such information were reliable; or (3) submitting a Form 211 to NASD.

TRACE

Examinations and reviews by the staff of the firm's compliance with the Trade Reporting and Compliance Engine ("TRACE") rules between January 2005 and July 2006 found multiple deficiencies in the firm's TRACE reporting. Specifically, the staff found the following:

- The firm failed to report to TRACE the correct contra-party; and
- The firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes after execution.

Trade Reporting

Examinations and reviews by the staff of the firm's compliance with the trade reporting rules between January 2005 and January 2006 found multiple deficiencies in the firm's trade reporting. Specifically, the staff found the following:

- The firm submitted duplicate trade reports to ACT for transactions in Nasdaq National Market ("NNM") securities;
- The firm failed to report the correct capacity to ACT;
- The firm failed to correctly report transactions as "long" or "short;"
- The firm failed to correctly report "riskless" principal transactions in NNM, Nasdaq SmallCap, Consolidated Quotation System ("CQS") and OTC Bulletin Board securities; and
- The firm failed to properly utilize the ".PRP" modifier in transactions involving NNM securities.

Regulation SHO and NASD Short Sale Rules

Examinations and reviews by the staff of the firm's compliance with Regulation SHO between January 2005 and January 2006 revealed multiple instances in which the firm failed to accurately mark sales on the firm's trading ledger as "long" or "short."

Examinations and reviews by the staff of the firm's compliance with NASD Short Sales requirements between December 2003 and August 2005 found multiple deficiencies and rules violations. Specifically, the staff found the following:

- The firm executed customer short sales and proprietary short sales in securities in which the firm was not a bona fide market maker and failed to make the required "affirmative determination;"
- The firm executed customer short sale transactions in certain NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security; and
- The firm executed proprietary short sale orders in a security in which the firm was not a bona fide market maker and failed to fulfill the established "locate requirement."

Supervision

Examinations and review of the firm's supervisory system in effect between January 2004 and March 2006 revealed multiple deficiencies. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning several regulatory areas. Specifically, the firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The regulatory areas for which the firm failed to establish, maintain, and enforce adequate written supervisory procedures were:

- SEC Rule 605;
- SEC Rule 15c2-11 and then NASD Rule 6740 (currently Rule 6640);
- TRACE;
- Order handling and execution;
- Best Execution;
- Sales Transactions;
- OATS;
- Registration;
- Anti-Intimidation/Coordination;
- Trade Reporting;
- Soft Dollars;
- Books and Records; and
- Short Sales

Conclusion

The conduct described above constitutes violations of NASD Conduct Rules 2110, 3010, 3350, and 3370; NASD Marketplace Rules 4632, 4642, 6130, 6230, 6420, 6620, 6640 (formerly 6740), and 6955; and SEC Rules 10b-10, SEC Rule 200(g), SEC Rule 203(b) and SEC Rule 605 (formerly SEC Rule 11Ac1-5).

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

- A censure;
- A fine of \$525,000 (comprised of \$135,000 for OATS violations; \$20,000 for SEC Rule 605 violations; \$15,000 for SEC Rule 15c2-11 violations; \$20,000 for TRACE violations; \$40,000 for Trade Reporting violations; \$10,000 for SEC Rule 200(g) violations; \$15,000 for SEC Rule 10b-10 violations; \$70,000 for Short Sales violations; and \$200,000 for overall supervision violations);
- An undertaking to revise the firm's written supervisory procedures with respect to the areas described in Appendix 2. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in Appendix 2; and (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the findings or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD nor does it reflect the views of NASD or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and have attached the election of payment form showing the method by which it proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Jefferies & Company, Inc. certifies that a duly authorized officer has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Jefferies & Company, Inc. to submit it.

Jefferies & Company, Inc.

Date: 6/19/07

By: Lloyd H. Feller
Name: LYOYD H. FELLER
Title: General Counsel

Reviewed by:

Michael D. Solon
Counsel for Respondent

Accepted by NASD:

7/10/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Market Regulation

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

Attachments:
Standard Election of Payment Form
Appendix 1
Appendix 2