

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20042000071-01

TO: Department of Market Regulation
NASD

RE: **Allen & Company LLC**, Respondent
Broker-Dealer
CRD No. 1042

Pursuant to Rule 9216 of NASD Code of Procedure, Allen & Company LLC ("ALLN") 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 ALLN alleging violations based on the same factual findings.

ALLN 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 ("ODA"), 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 ALLN; and
3. If accepted:
 - a. this AWC will become part of ALLN's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against ALLN;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about ALLN'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-8310-2; and

- d. ALLN 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 create the impression that the AWC is without factual basis. Nothing in this provision affects ALLN's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

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

ALLN has been a member of NASD since November 9, 1964. On October 16, 2002, an AWC became final wherein ALLN was censured and fined \$9,000 for supervision violations as well as violations of Section 7(c) of the Securities Exchange Act of 1934, Section 220.8 of Regulation T and NASD Conduct Rule 2520.

I.

WAIVER OF PROCEDURAL RIGHTS

ALLN 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 ALLN;
- 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, ALLN 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.

ALLN 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

This matter arose out of the following reviews conducted by the staff of NASD's Department of Market Regulation:

1. MRD200340281 / 20042000071¹, the 2003 Trading and Market Making Surveillance Examination of ALLN, a review the following items:²
 - 18 sale transactions for compliance with affirmative determination requirements;
 - 46 sale transactions for compliance with short sale reporting requirements;
 - Nine customer sale transactions for compliance with NASD Conduct Rule 3110;
 - 18 sale transactions for compliance with SEC Rule 10a-1 regarding marking of sell order tickets;
 - one limit order received by ALLN for compliance with the limit order protection requirements;
 - one limit order received by ALLN for compliance with SEC Rule 11Ac1-4;
 - 15 limit and market orders executed in a principal or riskless principal capacity for compliance with capacity reporting requirements;
 - five customer transactions for compliance with best execution obligations;
 - one transaction in a non-Nasdaq security for compliance with NASD Conduct Rule 2320(g) and NASD Conduct Rule 3110;
 - Registration status of nine persons engaged in the firm's trading and market making activities;
 - Nine customer confirmations for compliance with SEC Rule 10b-10;
 - 1,150 order memoranda for compliance with NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4;
 - 579 transactions for compliance with the rules applicable to trade reporting and ACT reporting;
 - 25 transactions reported in market making securities, and the underlying orders, for compliance with SEC Rule 11Ac1-5 order classification requirements for trades reported during March 2003;

¹ On January 3, 2005 the NASD implemented a new matter tracking system. The new number assigned to this matter is referenced above following the original number assigned by the previous tracking system.

² Unless stated otherwise, samples were from trade dates March 18, 2003 and March 19, 2003.

- For the March 2003 report, six security/size/order data statistics, and the related underlying orders, published on the firm's monthly order execution report for compliance with SEC Rule 11Ac1-5;
 - Data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6 for the quarter ended March 2003;
 - The firm's establishment and implementation of regular & rigorous reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rules 2320 and 3010; and
 - ALLN's written supervisory procedures for trade reporting, market making and trading practices.
2. MRD200447036 / 20042000277, the 2004 Trading and Market Making Surveillance Examination of ALLN, a review the following items:³
- 40 sale transactions for compliance with affirmative determination requirements;
 - Eight sale transactions for compliance with short sale reporting requirements;
 - 13 sale transactions for compliance with SEC Rule 10a-1;
 - 25 customer sale transactions for compliance with NASD Conduct Rule 3110;
 - 40 sale transactions for compliance with SEC Rule 10a-1 regarding marking of sell order tickets;
 - one limit order received by ALLN for compliance with the limit order protection requirements;
 - one limit order received by ALLN for compliance with SEC Rule 11Ac1-4;
 - one order executed in a principal or riskless principal capacity for compliance with capacity reporting requirements;
 - one customer transaction for compliance with best execution obligations;
 - 10 transactions in non-Nasdaq securities for compliance with NASD Conduct Rule 2320(g) and NASD Conduct Rule 3110;
 - Registration status of seven persons engaged in the firm's trading and market making activities;
 - 25 customer confirmations for compliance with SEC Rule 10b-10;
 - 74 order memoranda for compliance with NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4;
 - 74 transactions for compliance with the rules applicable to trade reporting and ACT reporting;
 - 12 orders in securities for which the firm was a market center, for compliance with SEC Rule 11Ac1-5 order classification requirements;
 - For the June 2004 report, 10 security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 11Ac1-5;
 - Data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6 for the quarters ended June 2004 and September 2004;

³ Unless stated otherwise, samples were from trade date June 17, 2004 and June 18, 2004.

- The firm's establishment and implementation of regular & rigorous reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rules 2320 and 3010; and
 - ALLN's written supervisory procedures for trade reporting, market making and trading practices.
- A. ALLN hereby accepts and consents, 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 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:

MRD200340281 / 20042000071

1. In two instances ALLN failed to execute orders promptly.
2. In an additional two instances, ALLN failed to execute orders promptly. In these two transactions for or with a customer, ALLN failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price was as favorable as possible under prevailing market conditions, as reflected on Exhibit A, which is attached hereto and incorporated herein by reference.
3. ALLN failed to fully execute three market orders.
4. The conduct described in paragraphs one through three constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2320.
5. ALLN failed to report to ACT the correct symbol indicating whether ALLN executed 448 transactions in eligible securities in a principal or agency capacity.
6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
7. ALLN'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 locked and crossed markets, ACT reporting and trade reporting. Specifically, ALLN's supervisory system did not include written supervisory procedures providing for: (1) 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.

8. The conduct described in paragraph seven constitutes a violation of NASD Conduct Rules 2110 and 3010.

MRD200447036 / 20042000277

9. For the second calendar quarter of 2004 and the third calendar quarter of 2004, ALLN made available a report on its routing of non-directed orders for each quarter that included incomplete information as to the venues to which orders were routed. Specifically, ALLN failed to disclose the identity of all of the venues to which the largest number of total non-directed orders were routed, and identified those venues as "unspecified route venue".
10. The conduct described in paragraph nine constitutes separate and distinct violations of SEC Rule 11Ac1-6(b).
11. ALLN'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 ACT reporting, ACT reporting of short sale indicators and SEC Rule 11Ac1-6. Specifically, ALLN's supervisory system did not include written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules [except as to SEC Rule 11Ac1-6]; (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)[except as to SEC Rule 11Ac1-6]; and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
12. The conduct described in paragraph 11 constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. ALLN also consents to the imposition, at a maximum, of the following sanctions:
- A censure.
 - A fine of \$35,000 (composed of a \$7,500 fine for the best execution violations, a \$7,500 fine for the ACT reporting violations, a \$10,000 fine for the supervision violations (composed of a \$5,000 fine for the violations in 20042000071, and a \$5,000 fine for the violations in 20042000277), and a \$10,000 fine for the SEC Rule 11Ac1-6 violations).
 - Restitution by Respondent to the investor listed on Exhibit A hereto in the total amount of \$119.00, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until

the date this Letter of Acceptance, Waiver and Consent is accepted by the National Adjudicatory Council. A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 no later than 120 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.

- An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs seven and 11. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent 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 paragraphs seven and 11; 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. ALLN understands that it may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. ALLN 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 NASD, nor does it reflect the views of NASD, or its staff.
- B. ALLN agrees to pay any monetary sanctions imposed on ALLN upon notice that this AWC has been accepted and that such payments are due and payable, and has attached the Election of Payment form showing the method by which ALLN proposes to pay any fine imposed.

- C. ALLN specifically and voluntarily waives any right to claim that ALLN is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Allen & Company LLC certifies that it has read and understands 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 ALLN to submit it.

Allen & Company LLC

Sept 8, 2005
Date

By: Mindy Faneli
Name: Rosemary Faneli
Title: Chief Compliance Officer

Reviewed by:

Counsel for Respondent

Accepted by NASD:

10/31/05
Date

Thomas R. Gira
Thomas R. Gira,
Executive Vice President and Deputy
Department of Market Regulation

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

ALLN

EXHIBIT A

								Restitution	
Trade Date	MMID	SECID	Order Receipt Time	Execution Time	Cust B/S/X	Volume	Price	Restitution Calculation	Restitution Figures
3/13/2003	ALLN	MSFT	10:50:41	10:52:10	B	100	25.63	de minimus	
3/3/2003	ALLN	AMGN	13:12:32	13:17:13	S	1700	54.31	0.07 x 1700	\$119.00