

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20042000138-01

**TO: Department of Market Regulation
NASD**

**RE: Raymond James & Associates, Inc., Respondent
Broker-Dealer
CRD No. 705**

Pursuant to Rule 9216 of the NASD Code of Procedure, Raymond James & Associates, Inc. ("RAJA" 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 in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against RAJA alleging violations based on the same factual findings.

RAJA 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 RAJA; and
3. If accepted:
 - a. this AWC will become part of RAJA's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against RAJA;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about RAJA'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. RAJA 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 RAJA's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

RAJA 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 history are as follows:

RAJA has been a member of NASD since August 21, 1964 and its registration remains effective. RAJA has the following relevant disciplinary history:

- On March 15, 2001, an AWC became final pursuant to which RAJA was censured and fined \$25,000 for violations of SEC Rule 11Ac1-4 and NASD Conduct Rules 2110 and 2320.
- On January 31, 2000, an AWC became final pursuant to which RAJA was fined \$7,500 for violations of SEC Rule 11Ac1-4 and NASD Conduct Rules 2110 and 2320.
- On July 26, 1999, an AWC became final pursuant to which RAJA was fined \$7,000 for violations of SEC Rules 10b-10 and 11Ac1-4 and NASD Conduct Rules 2110 and 3010.

I.

WAIVER OF PROCEDURAL RIGHTS

RAJA 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 RAJA;
- 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, RAJA specifically and voluntarily waives any right to claim bias or prejudice 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.

RAJA 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

In connection with 20042000138/MRD200342655, the 2003 Trading and Market Making Surveillance Examination ("2003 TMMS Exam") of RAJA, the staff of NASD's Department of Market Regulation (the "staff") reviewed the following items:¹

- Thirty customer transactions and 20 proprietary transactions, for compliance with NASD Rules 3110, 3350, 3370 and 6130.
- Fifty limit orders, for compliance with NASD Rule 2110 and IM-2110-2.
- Twenty-five limit orders that were either received or open on trade dates September 24, 2003 and September 25, 2003, for compliance with NASD Rule 2320.
- Twenty-five market orders, for compliance with NASD Rule 2320.
- Fifty orders, for compliance with NASD Rules 4632 and 6130.
- Ten open limit orders, for compliance with NASD Rule 3220.
- Forty-nine orders handled by the firm during the month of August 2003, for compliance with SEC Rule 11Ac1-5.
- Report on routing of customer orders for quarter ending September 2003, for compliance with SEC Rule 11Ac1-6.
- Written supervisory procedures and the supervisory system in effect for September 2003, for compliance with NASD Rule 3010.
- Procedures for the "regular & rigorous" reviews of the execution quality of orders sent to other market centers or internalized in effect for September 2003, for compliance with NASD Rules 2320 and 3010.
- Registration records of trading area personnel, for compliance with NASD Rules 1021 and 1031.

¹ Unless otherwise noted, all such items are from trade dates September 24, 2003 and September 25, 2003.

- Fifty-four orders received by the firm in August/September 2003, which were eligible for reporting to the Order Audit Trail System ("OATS"), for compliance with NASD Rules 6954 and 6955.
- Firm's overall books and records, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.
- Ten transactions, for compliance with NASD Rules 2320 and 3110.

In connection with 20050002999/MRD200447679, the 2004 Trading and Market Making Surveillance Examination ("2004 TMMS Exam") of RAJA, the staff reviewed the following items:²

- Fifty customer sale transactions and 30 proprietary sale transactions, for compliance with NASD Rules 3110 and 3370.
- Fifty customer sale transactions and 226 proprietary sale transactions, for compliance with NASD Rule 6130(d)(6).
- Two proprietary short sales, for compliance with NASD Rule 3350.
- Thirty limit orders, for compliance with NASD Rules IM 2110-2, 2320 and 6541.
- Three "non-displayed" limit orders and 6 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320.
- One hundred four executions of customer orders, for compliance with NASD Rules 4632(d)(3), 4642(d)(3), 6620(d)(3) and 6130.
- Fifty-six executions of customer orders, including 45 reported with a .W modifier, for compliance with NASD Rules 5430(a)(6), 5430, 4632 and 6130.
- Three trades reported with a .PRP modifier, for compliance with NASD Rules 5430(a)(9), 5430, 4632, 6130 and 2320. An additional 314 trades reported with a .PRP modifier between August 1, 2004, and February 28, 2005, for compliance with NASD Rules 5430(a)(9), 5430, 4632 and 6130.
- Five open limit orders requiring price adjustments on trade date August 4, 2004, for compliance with NASD Rule 3220.
- Twenty-five orders received during August 2004, and 20 orders received during June 2004, for compliance with the SEC Rule 11Ac1-5 requirements related to order classification (covered/not covered) and categorization of covered orders into specified size/type categories.
- Data for four covered order size/type categories published for June 2004, for compliance with SEC Rule 11Ac1-5 requirements related to the calculation of specified statistical data for each category.
- Procedures and documentation used to produce and publish quarterly reports of order routing practices, for compliance with SEC Rule 11Ac1-6 for the first quarter of 2004.
- Written supervisory procedures and the supervisory system in effect for August 2004, for compliance with NASD Rule 3010.

² Unless otherwise noted, all such items are from trade dates August 3, 2004 and August 4, 2004.

- Procedures for the "regular & rigorous" reviews of the execution quality of orders sent to other market centers or internalized in effect for August 2004, for compliance with NASD Rules 2320 and 3010.
- Registration records for 22 persons in the firm's trading area, for compliance with NASD Rules 1021 and 1031.
- Fifty orders received by the firm, which were eligible for reporting to OATS, for compliance with NASD Rules 6954 and 6955.
- Fifteen customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 2320 and 3110(b).
- One hundred seventy-three order records related to the activity reviewed in the above samples, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.

Finally, in connection with 20050001428/MRD200446035, the staff conducted a review of RAJA's compliance with the SEC's rule for handling customer limit orders (SEC Rule 11Ac1-4) during the period January 2, 2004 through March 31, 2004 (the "first quarter 2004").

A. RAJA 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:

20042000138/MRD200342655 (2003 TMMS Exam)

1. During the period September 24, 2003 through September 25, 2003, RAJA failed on 12 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
2. The conduct described in paragraph one constitutes separate and distinct violations of SEC Rule 10b-10.
3. For the month of August 2003, RAJA made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to shares being reported as having been executed away when the shares were in fact executed at the market center and as to the actual Average Realized Spread, including the markup, in the reported price for two orders in the firm's published data.
4. The conduct described in paragraph three constitutes separate and distinct violations of SEC Rule 11Ac1-5(b).

20050002999/MRD200447679 (2004 TMMS Exam)

5. During the period August 3, 2004 through August 4, 2004, RAJA failed to report to Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 70 transactions in eligible securities.
6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
7. RAJA incorrectly designated as ".W" through ACT 23 last sale reports of transactions in Nasdaq National Market ("NNM") securities.
8. The conduct described in paragraph seven constitutes separate and distinct violations of NASD Marketplace Rules 4632 and 5430.
9. RAJA incorrectly designated as ".PRP" through ACT 219 last sale reports of transactions in NNM securities.
10. The conduct described in paragraph nine constitutes separate and distinct violations of NASD Marketplace Rules 4632 and 5430.
11. RAJA incorrectly reported to ACT the second leg of 46 "riskless" principal transactions in NNM securities, incorrectly designated the capacity of such transactions as principal, and incorrectly media-reported such transactions.
12. The conduct described in paragraph 11 constitutes separate and distinct violations of NASD Marketplace Rule 4632(d)(3)(E).
13. RAJA transmitted to OATS seven reports that contained a Routed Order ID number that failed to match to a Nasdaq Market Center trade report.
14. The conduct described in paragraph 13 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.

20050001428/MRD200446035 (Order Handling Review)

15. During the first quarter 2004, RAJA failed on 26 occasions to display immediately 26 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved RAJA's bid or offer in each such security; or when the order was priced equal to RAJA's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis*

change in relation to the size associated with RAJA's bid or offer in each such security.

16. The conduct described in paragraph 15 constitutes separate and distinct violations of SEC Rule 11Ac1-4.
17. During the first quarter 2004, RAJA failed to report to OATS the correct route time on 60 OATS-reportable orders and the correct times of cancellation on three OATS-reportable orders.
18. During the first quarter 2004, RAJA failed to transmit to OATS execution reports for 26 OATS-reportable orders and a route report for one routed order.
19. The conduct described in paragraphs 17 and 18 constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.

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

A censure and a fine of \$37,500 (comprised of \$5,000 for the SEC Rule 10b-10 violations and \$5,000 for the SEC Rule 11Ac1-5 violations pursuant to the 2003 TMMS Exam, \$5,000 for the AC1-reporting violations, \$7,500 for the transaction-reporting violations and \$2,500 for the OATS-reporting violations pursuant to the 2004 TMMS Exam, and \$7,500 for the Limit Order Display violations and \$5,000 for the OATS-reporting violations pursuant to the 2004 Order Handling Review).

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

III.**OTHER MATTERS**

- A. RAJA understands that RAJA may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. RAJA understands that RAJA 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. RAJA agrees to pay any monetary sanctions imposed on RAJA upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which RAJA proposes to pay any fine imposed.**
- C. RAJA specifically and voluntarily waives any right to claim that RAJA is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.**

