

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
2004200018701

TO: Market Regulation Department
NASD

RE: Jefferies and Company, Inc., Respondent
CRD No. 2347

Pursuant to Rule 9216 of NASD Code of Procedure, Jefferies and Company, Inc. ("JEFF" 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 JEFF alleging violations based on the same factual findings.

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

JEFF 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:

JEFF entered the securities industry on March 1, 1963 as a member of NASD and its registration remains in effect. JEFF has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

JEFF 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 JEFF;
- 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, JEFF 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.

JEFF 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, 20042000187 (MRD200343882, MRD200445743, and MRD200445875), arose out of the Market Regulation Department staff's review of JEFF's compliance with SEC Rule 15c2-11 and NASD Marketplace Rule 6740 during the period of December 10, 2003 through April 28, 2004.

- A. JEFF 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:
1. On December 10, 2003, JEFF published 24 quotations for 18 OTC Equity Securities, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the Pink Sheets, and (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; or (iii) did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotations did not represent a customer's indication of unsolicited interest.
 2. On April 20, 2004, JEFF published a quotation for Franklin Mining, Inc. ("FMNJ"), an OTC Equity Security, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the Pink Sheets, and: (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; or (iii) did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotation did not represent a customer's indication of unsolicited interest.
 3. On April 26, 27, and 28, 2004, JEFF published quotations for Biocurex, Inc. ("BOCX"), an OTC Equity Security, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the Pink Sheets, and: (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; or (iii) did not have a reasonable basis

under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotations did not represent a customer's indication of unsolicited interest.

4. The conduct described in paragraphs one, two, and three constitutes separate and distinct violations of SEC Rule 15c2-11 and NASD Conduct Rule 2110.
 5. For each quotation described in paragraphs one, two, and three, JEFF failed to file a Form 211 with the NASD at least three business days before JEFF's quotations were published or displayed in a quotation medium.
 6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Marketplace Rule 6740 and NASD Conduct Rule 2110.
 7. The firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and the Rules of NASD concerning SEC Rule 15c2-11 and NASD Rule 6740. Specifically, the firm's supervisory system did not include written supervisory procedures providing for (i) the identification of the person (s) responsible at the firm to ensure compliance with the applicable rules; (ii) a statement of the step (s) that such person (s) should take to ensure compliance therewith; (iii) a statement as to how often such person (s) should take such step (s); and (iv) a statement as to how enforcement of such written supervisory procedures should be documented at the firm.
 8. The conduct described in paragraph seven above constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.
- B. JEFF also consents to the imposition, at a maximum, of the following sanctions:

A censure, a fine of \$12,500 (consisting of a \$7,500 fine for the OTC Compliance violations and a \$5,000 fine for inadequate written supervisory procedures), and an undertaking to revise JEFF's written supervisory procedures with respect to the areas described in paragraph seven. 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 paragraph eight; 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. JEFF understands that JEFF may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. JEFF understands that JEFF 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. JEFF agrees to pay any monetary sanctions imposed on JEFF 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 JEFF proposes to pay any fine imposed.
- C. JEFF specifically and voluntarily waives any right to claim that JEFF is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Date 6/29/05

By: Cathleen Shure
Name: Cathleen Shure
Title: Deputy General Counsel

9/6/05 -
Date

20042000187/MRD200343882, MRD200445743, MRD200445878(sp)