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NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20042000210-01

TO: Department of Market Regulation
NASD

RE: Bear, Stearns & Co., Inc.
Broker-Dealer
CRD No. 79

Pursuant to Rule 9216 of NASD Code of Procedure, Bear, Stearns & Co., Inc., ("BEST" 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 BEST alleging violations based on the same factual findings.

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

BEST 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:

BEST became a member of NASD in December 1936 and its registration is currently in effect. On June 24, 2003, NASD accepted BEST's AWC pursuant to which BEST was censured and fined \$20,000 for trade reporting violations.

I.

WAIVER OF PROCEDURAL RIGHTS

BEST 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 BEST;
- 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, BEST 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.

BEST 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 arises out of a Trading and Market Making Surveillance Examination ("TMMS"), No. 20042000210, and two trade reporting reviews, Nos. 20050001023 and 20042000272, conducted by the staff of NASD's Department of Market Regulation ("the staff"). The staff reviewed the following:

20042000210¹

- Nineteen customer sell orders for compliance with NASD Rules 3110 and 3370;
- Thirty-one proprietary sale transactions for compliance with NASD Rule 3370;
- Seventy-nine customer and propriety sales in NNM securities for compliance with NASD Rule 6130;
- Five short sales in CQS securities for compliance with SEC Rule 10a-1;
- Fifty limit orders executed as principal for compliance with NASD Rules 2110 (and IM-2110-2), 2320, 6440, and 6541 and SEC Rules 11Ac1-1 and 11Ac1-4;
- Twenty-five non-displayed limit orders and two marketable orders in the same securities received while holding the non-displayed orders for compliance with NASD Rule 2320;
- Forty-three limit and market orders and fifty-one trades executed in a principal or riskless principal capacity for compliance with NASD ACT and trade reporting rules;
- Twenty-four orders in Nasdaq securities in soft-dollar accounts and 50 related executions for compliance with trade reporting rules and safe harbor limitations of SEC Section 28(e);
- Four open buy limit orders and stop sell limit orders in securities traded ex-dividend for compliance with NASD Rule 3220;
- Four trades in NNM/SC securities reported with a .PRP modifier for compliance with NASD Rules 4632 and 2320;
- Twenty-five orders in securities for which the firm was a market center for compliance with order size/type classification requirements of SEC Rule 11Ac1-5;

¹ All items reviewed are from trade date January 21, 2004 unless noted otherwise.

- Five security/size/order data statistics published in the December 2003 and March 2004 monthly order execution report for compliance with SEC Rule 11Ac1-5;
- Data published in the quarterly order routing report for the fourth quarter 2003 for compliance with SEC Rule 11Ac1-6;
- Ten customer transactions in OTCBB and OTC equity securities for compliance with NASD Rules 3110(b) and 2320;
- Two-hundred and twenty-eight order/trade records for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110;
- Two-hundred and fifty-seven trades reported to ACT or TRACS for compliance with NASD ACT and trade reporting rules;
- Ten persons engaged in the firm's trading and market making activities for compliance with NASD registration rules;
- The firm's establishment and implementation of "regular and rigorous" reviews in effect during January 2004 of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010;
- The firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010;
- Forty-six customer trade confirmations for compliance with SEC Rule 10b-10; and
- Fifty orders in Nasdaq securities submitted to the Order Audit Trail System "OATS" for compliance with NASD Rule 6955.

20050001023

- BEST's compliance with NASD trade reporting rules during September 1, 2003 through December 31, 2003.

20042000272

- BEST's compliance with NASD trade reporting rules during January 1, 2004 through April 30, 2004.

- A. BEST hereby accepts and consents, without admitting or denying the 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:

20042000210

1. BEST failed to report to the Nasdaq Market Center the correct symbol indicating whether BEST executed 24 transactions in eligible securities in a principal, riskless principal, or agency capacity.
2. BEST failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for one transaction in eligible securities.
3. BEST failed to report to the Nasdaq Market Center the contra side executing broker in three transactions in eligible securities.
4. The conduct described in paragraphs one, two, and three constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
5. BEST failed to report the correct number of shares through the Nasdaq Market Center in one last sale report of a transaction in an eligible security.
6. The conduct described in paragraph five constitutes a violation of NASD Marketplace Rule 6420(c)(2).
7. BEST executed four proprietary short sales in listed securities at a price that was below the last sale price of the security.
8. The conduct described in paragraph seven constitutes separate and distinct violations of SEC Rule 10a-1.

20050001023

9. BEST failed, within 90 seconds after execution, to transmit through the Nasdaq Market Center 266 last sale reports of transactions in OTC Equity securities. These transactions constitute four percent of the transactions reviewed that BEST was required to report to the Nasdaq Market Center during the review period.

10. The conduct described in paragraph nine constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
11. Of the 266 last sale reports, BEST failed, within 90 seconds after execution, to transmit through the Nasdaq Market Center 24 last sale reports of transactions in OTC Equity securities and failed to designate through the Nasdaq Market Center such last sale reports as late.
12. The conduct described in paragraph 11 constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).
13. BEST incorrectly designated as ".T" through the Nasdaq Market Center 19 last sale reports of transactions in OTC Equity securities executed during normal market hours.
14. The conduct described in paragraph 13 constitutes separate and distinct violations of NASD Marketplace Rule 6620(a)(3).

20042000272

15. BEST failed, within 90 seconds after execution, to transmit through Nasdaq Market Center 352 last sale reports of transactions in CQS securities. These transactions constitute three percent of the transactions reviewed that BEST was required to report to Nasdaq Market Center during the review period.
16. The conduct described in paragraph 15 constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.

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

A censure and a \$42,000 fine (consisting of a \$10,000 fine for the trade and ACT reporting violations and a \$2,000 fine for the SEC Rule 10a-1 violations in 20042000210; a \$15,000 fine for the trade reporting violations in 20050001023; and a \$15,000 fine for the trade reporting violations in 20042000272).

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

III.

OTHER MATTERS

- A. BEST understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. BEST 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. BEST 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 has attached an Election of Payment form showing the method by which BEST proposes to pay any fine imposed.
- C. BEST specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

BEST certifies that BEST 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 BEST to submit it.

Respondent
Bear, Stearns & Co., Inc.

Date 6/2/06

By: [Signature]

Name: Gary N Distall

Title: Senior Managing Director

Reviewed by:

Counsel for Respondent

Accepted by NASD:

7/20/06
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