

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20042000228-01

TO: Department of Market Regulation
NASD

RE: **Calton & Associates, Inc.,** Respondent
CRD No. 20999

Pursuant to Rule 9216 of the NASD Code of Procedure, Calton & Associates, Inc. ("CALT" 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 CALT alleging violations based on the same factual findings.

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

CALT 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:

CALT has been a member of NASD since December 15, 1987, and its registration is currently in effect. CALT does not have any prior relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

CALT 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 CALT;
- 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, CALT 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.

CALT 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

The staff of NASD's Department of Market Regulation ("the staff") conducted a review, No. 20042000228 (formerly known as MRD200444820), of CALT's compliance with NASD Trade Reporting and Compliance Engine ("TRACE") rules during the period October 1, 2003 to December 31, 2003 ("the review period").

- A. CALT 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. CALT failed to report to TRACE 333 transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 45 minutes of the time of execution. These late transactions constituted 65 percent of all transactions in TRACE-eligible securities that CALT was required to report to TRACE during the review period.
 2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6230(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 3. 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 TRACE reporting. Specifically, the firm'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.
 4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure and a \$10,000 fine (a \$5,000 fine for the TRACE violations and a \$5,000 fine for the supervision violation), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph three. 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 three; 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. CALT 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. CALT 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. CALT 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 CALT proposes to pay any fine imposed.
- C. CALT specifically and voluntarily waives any right to claim that CALT is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

