

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION
20050001510-01

TO: Department of Market Regulation
NASD

RE: C.E. Unterberg, Towbin, LLC, Respondent
Broker/Dealer
CRD Number 24790

Pursuant to Rule 9216 of NASD Code of Procedure, C.E. Unterberg, Towbin, LLC ("CEUT" 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 CEUT alleging violations based on the same factual findings.

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

20050001510 (formerly MRD200447633) (tn)

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- d. CEUT 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 CEUT's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

CEUT 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 relevant history are as follows:

CEUT has been a member of NASD since July 1989, and the firm's registration remains in effect. CEUT does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

CEUT 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 CEUT;
- 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, CEUT 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.

CEUT 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 20050001510, formerly identified as MRD200447633, the staff of the Department of Market Regulation of NASD (the "staff") conducted a review of CEUT's compliance with NASD's Trade Reporting and Compliance Engine ("TRACE") rules during the period April 1, 2004 through June 30, 2004 ("the review period"). The staff also reviewed CEUT's written supervisory procedures and supervisory system with respect to TRACE reporting.

- A. CEUT 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:
1. CEUT failed to report to TRACE 257 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 approximately 62 percent of all transactions in TRACE-eligible securities that CEUT was required to report to TRACE (409) 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. CEUT'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. At the beginning of the review period, CEUT's supervisory system did not include any written supervisory procedures concerning TRACE reporting. During the review period, CEUT revised its supervisory system to include written supervisory procedures concerning TRACE reporting. The written supervisory procedures adopted during the review period did not provide for: (1) a statement of the supervisory step(s) to be taken by the identified person(s); and (2) 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. CEUT also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$15,000 (comprised of a \$10,000 fine for the TRACE late reporting violations and a \$5,000 fine for the supervision violations).

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

III.

OTHER MATTERS

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

C.E. Unterberg, Towbin, LLC certifies that a duly authorized officer has read and understood 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 CEUT to submit it.

C.E. Unterberg, Towbin, LLC

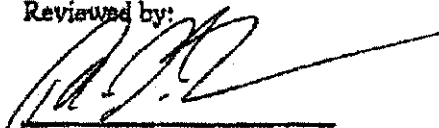
Date: 23 February 2006

By:

Name: Andrew L. Torno

Title: Chairman & CEO

Reviewed by:


Counsel for Respondent

Accepted by NASD:

4/6/06
Date


Thomas R. Glra
Executive Vice President & Deputy
Market Regulation

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

Attachments:
Standard Election of Payment Form