

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20050001671-01

TO: Department of Market Regulation
NASD

RE: SG Americas Securities, LLC, Respondent
Broker Dealer
CRD 128351

Pursuant to Rule 9216 of NASD Code of Procedure, SG Americas Securities, LLC (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 the firm alleging violations based on the same factual findings.

The firm 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 the firm; and
3. If accepted:
 - a. this AWC will become part of the firm'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 any of the firm's disciplinary records;
 - 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. The firm 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 the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm 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:

The firm has been a member of NASD since April 23, 2004. As of April 26, 2004, the business unit responsible for the conduct that is the subject of this AWC was transferred from SG Cowen Securities Corporation ("SG Cowen") to the firm. SG Cowen had the following relevant disciplinary history:

- On September 29, 2004, an AWC was accepted by NASD in which SG Cowen was censured and fined \$800,000 for violations of the rules and regulations applicable to OATS reporting and supervision.
- On February 20, 2004, the New York Stock Exchange ("NYSE") censured and fined SG Cowen \$60,000 for various financial, operational, record keeping, and supervisory deficiencies that resulted in violations of SEC Rules 15c2-3, 17a-3, and 17a-4, and NYSE Rules 342, 440, and 476.
- On December 26, 2003, an AWC was accepted by NASD in which SG Cowen was censured, fined \$230,000, and required to undertake to revise its written supervisory procedures for violations of the rules and regulations applicable to limit order display, limit order protection, best execution, ACT reporting, and supervision.
- On December 16, 2003, SG Cowen entered into a non-prosecution agreement with the prosecuting attorney for Cuyahoga County (Ohio), under which the prosecuting attorney agreed not to bring any criminal, civil, or administrative action against SG Cowen relating to certain fraudulent conduct by a former employee who was a registered representative in a former branch office that was located in Cleveland, Ohio. Pursuant to the agreement, SG Cowen agreed to pay \$4.5 million to Cuyahoga County and the State of Ohio, which amount represented the forfeiture of certain fees generated by the former employee and payment of a portion of the costs of the investigation.

- Effective August 14, 2003, SG Cowen entered into consent orders with the NYSE and the SEC whereby SG Cowen was censured, ordered to cease and desist from committing or causing any future violations of Section 17(a) of the Exchange Act and Rule 17a-3, required to pay a total of \$5 million in fines to the United States and the NYSE, and ordered to undertake to participate in a special arbitration process and make accelerated payments to certain customers. The consent orders charged SG Cowen with violations of NYSE rules and the federal securities laws, including books and records and failure to supervise violations, stemming from its failure to reasonably supervise the same registered representative in the Cleveland branch office referred to in the item above during the 27-month period that it employed him from July 1998 through October 2000.
- On January 20, 2003, an AWC was accepted by NASD in which SG Cowen was censured, fined \$80,000, and required to undertake to revise its written supervisory procedures for violations of the rules and regulations applicable to best execution, locked/crossed markets, Trade-or-Move, firm quote compliance, trade reporting, and supervision.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm 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 it;
- 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.

The firm 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.

The firm 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 Market Regulation Review Number 20050001671,¹ the staff reviewed certain transactions executed by the firm's high yield bond desk from November 1, 2002 through April 30, 2004 (the "review period"), for compliance with the rules and regulations relating to Fair Pricing and NASD's Mark-Up Policy.

- A. The firm 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. During the review period, in each of the 13 instances reflected on Exhibit A, which is attached hereto and incorporated by reference, the firm bought a security for its own account from a customer or sold a security for its own account to a customer, and failed to buy or sell such security at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and that the firm was entitled to a profit.
 2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2440, and IM-2440.
 3. During the review period, the firm failed to create a memorandum of each brokerage order, and of any other instructions, given or received for the purchase or sale of securities, whether executed or unexecuted, for customer orders received by the high yield bond desk.
 4. The conduct described in paragraph three constitutes violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
 5. The firm's supervisory system for its high yield bond desk 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

¹ This matter was formerly referred to as Market Regulation Review Number MRD200446937.

Fair Pricing and NASD's Mark-Up Policy. Although the firm's supervisory system included written supervisory procedures concerning mark-ups and mark-downs, and the firm's supervisory and compliance personnel attempted to apply those procedures and NASD Conduct Rule 2440 and IM-2440, the firm failed to make reasonable efforts to determine that the designated supervisory and compliance personnel were sufficiently trained to carry out their assigned supervisory responsibilities. As a result, the firm's designated supervisory and compliance personnel failed to fully appreciate applicable legal requirements and guidance concerning Fair Pricing and NASD's Mark-Up Policy, and failed to reasonably detect and prevent violations of NASD Conduct Rule 2440 and IM-2440.

6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$3,750,000, restitution of \$728,674, plus interest as calculated below, and an undertaking to revise the firm's supervisory procedures with respect to the deficiencies described in paragraph II. A. 5. Within 60 business days of acceptance of this AWC, 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 supervisory procedures to address the deficiencies described in paragraph II. A. 5; and (3) the date the revised procedures were implemented.

Restitution shall be paid by Respondent to the seller involved in transaction one and to the buyers involved in transactions two through 13 described on Exhibit A (the "Recipients") in the total amount of \$728,674, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this Letter of Acceptance, Waiver and Consent is accepted. No later than 120 days after acceptance of this AWC, a registered principal of the firm shall submit to COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850:

- (1) A schedule showing (a) the amount of restitution paid to each Recipient, (b) the amount of interest paid to each Recipient, (c) the date restitution and interest was paid, and (d) any amounts paid to escheat, unclaimed-property or abandoned-property funds; and
- (2) Satisfactory proof of payment as detailed in (1), and of reasonable and documented efforts undertaken to effect restitution prior to making payments to escheat, unclaimed-property or abandoned-property funds.

If for any reason, Respondent cannot locate any Recipient after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.

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

III.

OTHER MATTERS

- A. The firm understands that it may attach to this AWC a Corrective Action Statement, which is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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. The firm 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 it proposes to pay any fine imposed.
- C. The firm 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.

The firm certifies that it 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 the firm to submit it.

SG Americas Securities, LLC
Respondent

October 26, 2005
Date

By: JM Driscoll
Name: John M. Driscoll
Title: Deputy Director of Litigation
SG Americas

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD:

10/27/05
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

Exhibit A

SG AMERICAS SECURITIES, LLC

No.	Transaction Date	Issue	Price to Seller	Price to Buyer	Mark-Up/ Mark-Down	Restitution
1	9/17/2002	ITCD.GC	11.25	14.25	21.05%	\$23,214
2	11/6/2002	GBTV.GA	70	75.75	8.21%	\$22,500
3	11/13/2002	GBTV.GA	70	78	11.43%	\$89,460
4	12/10/2002	LCMU.GA	15.25	17	11.48%	\$9,875
5	1/7/2003	RMCR.GA	53	60.75	14.62%	\$153,000
6	4/7/2003	AMPM.GA	27.5	32.5	18.18%	\$126,875
7	6/6/2003	GALU.GA	6	7	16.67%	\$156,401
8	6/11/2003	GSIG.GA	71	76.5	7.75%	\$16,224
9	6/18/2003	GALU.GA	5	7	40%	\$22,750
10	7/10/2003	GALU.GA	5.5	7.5	36.36%	\$51,750
11	7/21/2003	UNCO.GA	60	64.375	7.29%	\$27,500
12	8/5/2003	ARGP.GC	67.5	72	6.67%	\$16,875
13	8/12/2003	DINE.GA	45.5	49	7.69%	\$12,250
					Total:	\$728,674