

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050001900

TO: Department of Market Regulation
NASD

RE: HSBC Securities (USA) Inc.
f/k/a HSBC Brokerage (USA) Inc.
BD No. 19585

Pursuant to Rule 9216 of the NASD Code of Procedure, HSBC Securities (USA) Inc. (the "firm" or "HSBC") 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 the 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 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 the 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 the firm'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. 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 finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects

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

The firm also understands that its experience in the securities industry and its disciplinary history may be factors that will be considered in deciding whether to accept this AWC.

HSBC became a member of the Association in 1987, and its registration remains in effect. The conduct and activities addressed herein were undertaken by a former affiliate, HSBC Brokerage (USA) Inc. HSBC Brokerage (USA) Inc. and HSBC Securities (USA) Inc. merged on January 1, 2005, effectively terminating HSBC Brokerage (USA) Inc. as a separate legal entity. HSBC Securities (USA) Inc. is the successor-in-interest to HSBC Brokerage (USA) Inc. and it assumes its legal and regulatory responsibilities.

HSBC has the following relevant disciplinary history:

- In October 2005, NASD accepted HSBC's AWC (20050000176) in which the firm agreed to a censure and a fine of \$8,000, \$5,000 of which was for failing to have in place adequate written supervisory procedures relating to compliance with OATS reporting obligations from April through June 2004, in violation of NASD Conduct Rules 2110 and 3010.
- In August 2002, NASD accepted HSBC's AWC (CMS020140) in which the firm agreed to a censure and a fine of \$10,000, \$5,000 of which was for failing to have in place adequate written supervisory procedures relating to SEC Rule 11Ac1-1, NASD Conduct Rule 3320, and NASD Marketplace Rule 4613(b), from October through December 2000, in violation of NASD Conduct Rules 2110 and 3010.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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, 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

This matter is the result of the Department of Market Regulation's review in investigation no. 20050001900 of HSBC's fixed income trading from April 1 through June 30, 2004.

- A. The firm 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. In five instances on May 24, 2004, HSBC sold municipal securities for its own account to a customer and failed to sell such security at a price that was fair and reasonable, taking into consideration all relevant factors, including market conditions with respect to such security at the time of the transaction, the expense involved in effecting the transaction, that the firm was entitled to a profit, and the total dollar amount of the transaction. In each instance, HSBC's markup or markdown was higher than any other comparable transaction in the security from January 1 through June 30, 2004.

The five transactions are the following:

- a. *Southern Minnesota Municipal Power Agency Power Supply*, CUSIP 843375QL3, due 1/1/2014, Zero Coupon AAA/AAA/AAA. On May 24, 2004, HSBC purchased 45 bonds at \$35.201 from a broker/dealer and one minute later sold them at \$37.198 to a customer for a markup of 5.67% and a profit of \$898.65.

There were 105 reported trades in this bond between January 1 and June 30, 2004. For example, on February 11, 2004, a broker/dealer charged a combined markup/markdown of 2.93% on the purchase and sale of 30 bonds between two customers. On February 25, 2004, a broker/dealer charged a markup of 2.99% on the sale of 40 bonds to a customer. On April 7, 2004, a broker/dealer charged a markup of 1.94% on the sale of 100 bonds to a customer. On April 15, 2004, a broker/dealer charged a 3.14% markdown on a purchase of 5 bonds from a customer.

- b. *Auraria Higher Edu Ctr Colo PKGENTERPRISE Rev, CUSIP 051531AY7, due 4/1/2024, Zero coupon, Aaa/AAA/AAA. On May 24, 2004, HSBC purchased 75 bonds at \$33.549 from a broker/dealer and ten minutes later sold them at \$35.073 to a customer for a markup of 4.54% and a profit of \$1,143.00.*

There were 29 reported trades in this bond between January 1 and June 30, 2004. For example, on May 5, 2004, a broker/dealer charged a markdown of 0.58% on the purchase of 200 bonds from a customer. On May 14, 2004, a broker/dealer charged a markdown of 0.18% on the purchase of 500 bonds from a customer.

- c. *Manhattan Beach Calif Uni School District, CUSIP 562785DS1, due 9/1/2025, Zero coupon, Aaa/AAA/AAA. On May 24, 2004, HSBC purchased 100 bonds at \$29.348 from a broker/dealer and two minutes later sold them at \$30.84 to a customer for a markup of 5.08% and a profit of \$1,492.00.*

There were 21 reported trades in this bond between January 1 and June 30, 2004. For example, on January 29, 2004, a broker/dealer charged a markup of 3.1% on a sale of 50 bonds to a customer. On February 12, 2004, a broker/dealer charged a markup of 2.14% on the sale of 50 bonds to a customer.

- d. *San Bernardino Calif City Uni School District, CUSIP 796711QH5, due 8/1/2023, Zero coupon, Aaa/AAA/AAA. On May 24, 2004, HSBC purchased 115 bonds at \$36.67 from a broker/dealer and two minutes later sold them at \$38.167 to a customer for a markup of 4.08% and a profit of \$1,721.55.*

There were 18 reported trades in this bond between January 1 and June 30, 2004. For example, on March 26, 2004, a broker/dealer charged a markup of 1.25% on the sale of 60 bonds to a customer. On April 5, 2004, a broker/dealer charged

a markdown of 1.50% on the purchase of 15 bonds from a customer; On April 6, 2004, a broker/dealer charged a markup of 1.35% on the sale of 15 bonds to a customer. On April 7, 2004, a broker/dealer charged a markup of 1.90% on the sale of 100 bonds to a customer.

- e. *Los Angeles County Calif Schools Regionalized Business Services CTFS*, CUSIP 545152HP8, due 8/1/2028, Zero coupon, Aaa/AAA/AAA. On May 24, 2004, HSBC purchased 150 bonds at \$24,689 from a broker/dealer and six minutes later sold them at \$26.06 to a customer for markup of 5.55% and a profit of \$2,056.50.

There were 18 reported trades in this bond between January 1 and June 30, 2004. For example, on March 11, 2004, a broker/dealer charged a 2.5% markdown on a purchase of 200 bonds from a customer. On April 27, 2004, a broker/dealer charged a markdown of 2.07% on a purchase of 180 bonds from a customer.

2. The conduct described in paragraph one constitutes separate and distinct violations of MSRB Rule G-30.
 3. During the review period, HSBC's written supervisory procedures for its municipal bond trading department were not reasonably designed to ensure compliance by the firm and its associated persons with MSRB Rules and federal securities laws and regulations, specifically concerning fair pricing and NASD Rules concerning mark-ups. The written procedures failed to prescribe in sufficient detail how a designated principal shall monitor for and review compliance with the fair pricing of municipal securities.
 4. The conduct described in paragraph three constitutes a violation of MSRB Rule G-27.
- B. The firm also consents to the imposition, at a maximum, of the following sanctions:
- A censure and a total fine of \$17,500 — \$10,000 for violations of Rule G-30 and \$7,500 for the supervision violation of Rule G-27.
 - Restitution by HSBC to the investor(s) listed on Exhibit A attached hereto in the total amount of \$1,329.53 (representing the amount paid by the investor(s) for markups/downs exceeding 4%), 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 (May 24, 2004) until the date this Letter of Acceptance, Waiver and Consent is

accepted by the National Adjudicatory Council. A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the Compliance Assistant, Legal Section, Department of Market Regulation, 9509 Key West Avenue, Rockville, MD 20850 no later than 60 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate any customer 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.

- In addition, within 30 days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to the Compliance Assistant, Legal Section, Department of Market Regulation, 9509 Key West Avenue, Rockville, MD 20850, a signed, dated letter, providing the following information: (i) a reference to this matter; (ii) a representation that the firm has revised its supervisory procedures to address the deficiencies described in Paragraph II. A.3; and (iii) the date the revised procedures were implemented.

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

III.

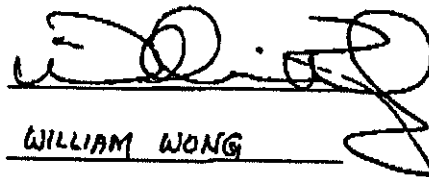
OTHER MATTERS

- A. The firm 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. Respondent 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 the Election of Payment form showing the method by which the firm 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.

Respondent,
HSBC Securities (USA) Inc.

1/12/07
Date

By: 

Name: WILLIAM WONG

Title: MANAGING DIRECTOR, CHIEF
COMPLIANCE OFFICER

Reviewed by: 
Counsel for HSBC Securities (USA) Inc.

Accepted by NASD:

1/16/07
Date


Thomas R. Gira
Executive Vice President
Department of Market Regulation

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

Attachment:

Standard Election of Payment Form

Exhibit A

Case No. 20050001900

Item	Trade Date	Firm	Issue	Volume	Trade 1 Time	Trade 1 Price	Trade 2 Time	Trade 2 Price	Mark-up (%)	Profit	Profit Exceeding 4.00%
1	5/24/2004	HSBK	843373QL3	45000	10:46:00	37.198	10:47:00	35.201	5.37%	\$898.65	265.03
2	5/24/2004	HSBK	051531AY7	75000	10:38:00	35.073	10:48:00	33.549	4.35%	\$1,143.00	136.53
3	5/24/2004	HSBK	562785DS1	100000	11:15:00	29.348	11:17:00	30.84	5.08%	\$1,492.00	318.08
4	5/24/2004	HSBK	796711QH5	115000	10:27:00	36.67	10:29:00	38.167	4.08%	\$1,721.55	34.73
5	5/24/2004	HSBK	545152HP8	150000	14:03:00	24.689	14:09:00	26.06	5.55%	\$2,056.50	575.16

Total: \$1,329.53