

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050003967-01

TO: Department of Market Regulation
NASD

RE: C. E. Unterberg, Towbin, LLC, Respondent
CRD No. 24790

Pursuant to Rule 9216 of the 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 the firm 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 ("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 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 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.

CEUT also understands that the firm's experience in the securities industry and the firm's disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and relevant disciplinary history are as follows:

CEUT has been a member of NASD since July 28, 1989, and its registration remains in effect. The firm's relevant disciplinary history is as follows:

- On September 9, 2005, an AWC became final wherein CEUT was censured, paid restitution to customers, performed an undertaking to revise its supervisory procedures and was fined a total of \$83,000 for violations including NASD Conduct Rule 3110, NASD Marketplace Rule 4632, NASD Marketplace Rule 6130, SEC Rule 10b-10 and SEC Rule 17a-3 violations.
- On January 28, 2003, an AWC became final wherein CEUT was censured and fined a total of \$14,000 for violations including NASD Conduct Rule 3110 and SEC Rule 17a-3.

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 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, 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**

20050003967 is the result of the 2005 Trading and Market Making Examination of CEUT conducted by the staff. In connection with 20050003967, the staff reviewed the following for trade dates December 13-17, 2004 (the "review period"):

- 24 customer sale orders for compliance with NASD Rules 3110 and 3370;
- 122 customer and proprietary sales for compliance with NASD Rule 6130;
- 50 limit orders for compliance with NASD Rules 2110 (and IM-2110-2) 6440, 6541 and 2320, and SEC Rule 11Ac1-1 and 11Ac1-4;
- one "non-displayed" limit order for compliance with NASD Rule 2320;
- 42 orders and 62 trades reviewed for limit and market orders executed in a principal or riskless principal capacity and the firm's compliance with capacity reporting under NASD Trade Reporting and ACT Rules;
- one trade in a Nasdaq National Market ("NNM") security with a prior referenced price ("PRP") modifier for compliance with NASD Rules 4632 and 2320;
- 24 orders in securities for which the firm was a market center for compliance with the order size and type classification requirements of SEC Rule 11Ac1-5, now known as SEC Rule 605;
- the security/size/order data statistics published on the firm's monthly order execution report from November 2004 for compliance with SEC Rule 11Ac1-5, now known as SEC Rule 605;
- data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6, now known as SEC Rule 606;
- 23 customer orders in Over-the-Counter Bulletin Board ("OTCBB") and OTC Equity securities for compliance with NASD Rules 3110(b) and 2320;
- the registration status of 12 persons engaged in the firm's trading and market making activities for compliance with NASD Registration Rules;
- 217 order/trade records for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 231 trades reported to the Nasdaq Market Center ("NMC"), formerly the Automated Confirmation Transaction Service ("ACT"), or Trade Reporting and Comparison Service ("TRACS") for compliance with NASD Trade Reporting Rules;
- 31 trade confirmations for compliance with SEC Rule 10b-10;
- CEUT's establishment and implementation of regular and rigorous reviews of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010; and
- CEUT's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010.

- 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 incorrectly reported to NMC (formerly ACT) the second leg of eleven riskless principal transactions in NNM securities and incorrectly designated the capacity of such transactions as principal.
 2. CEUT incorrectly reported to NMC the price of two riskless principal transactions in NNM securities.
 3. The conduct described in paragraph one and two constitutes separate and distinct violations of NASD Marketplace Rule 4632.
 4. During the review period, CEUT failed to report to the NMC the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for five transactions in eligible securities.
 5. CEUT incorrectly reported to NMC one last sale report of a stock transfer from CEUT's proprietary desk to CEUT's market making desk.
 6. The conduct described in paragraphs four and five constitutes separate and distinct violations of NASD Marketplace Rule 6130.
 7. CEUT incorrectly reported riskless principal transactions through NMC in two last sale reports of transactions in OTC Equity and OTCBB securities.
 8. The conduct described in paragraph seven constitutes separate and distinct violations of NASD Marketplace Rule 6620.
 9. CEUT, on eight occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security.
 10. CEUT failed on 13 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.
 11. The conduct described in paragraphs nine and 10 constitutes separate and distinct violations of SEC Rule 10b-10.
 12. CEUT failed to show the correct time of entry on the memorandum of two brokerage orders.

13. CEUT failed to show terms and conditions on the memorandum of 10 brokerage orders.

14. The conduct described in paragraphs 12 and 13 constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.

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

A censure, a fine of \$19,500 (consisting of a \$12,000 fine for the violations of NASD Marketplace Rules 4632, 6130 and 6620, a \$2,500 fine for the violations of SEC Rule 10b-10 and a \$5,000 fine for the violations of SEC Rule 17a-3 and NASD Conduct Rule 3110).

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 of demonstrable corrective steps taken to prevent future misconduct. CEUT 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. 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 has attached the Election of Payment form showing the method by which the firm 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, L.L.C. certifies that the firm 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 CEUT to submit it.

14 March 2007

Date

C.E. Unterberg, Towbin, L.L.C.

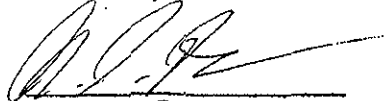
Respondent

By: 

Name: Howard R. Sutherland

Title: Managing Director - General Counsel

Reviewed by:


Counsel for Respondent

Accepted by NASD

3/29/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Market Regulation Department

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

Attachment:
Standard Election of Payment Form