

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**20050010270-01**

**TO: Department of Market Regulation**  
**NASD**

**RE: A.G. Edwards & Sons, Inc., Respondent**  
**Broker Dealer**  
**CRD No. 4**

Pursuant to Rule 9216 of NASD Code of Procedure, A.G. Edwards & Sons, Inc. ("AGED" 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 AGED alleging violations based on the same factual findings.

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

AGED 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 disciplinary history are as follows:

AGED entered the securities industry on August 28, 1939 as a member of NASD and its registration remains effective.

On July 25, 2006, NASD accepted an AWC that found that AGED committed a supervision violation, a registration violation, and best execution violations relating to corporate bond transactions. NASD imposed sanctions of a censure, a \$125,000 fine, and restitution of \$17,017.50. On July 21, 2004, NASD accepted an AWC that found that AGED violated MSRB Rules G-17 and G-30(a) when the firm failed to ensure that certain transactions with customers between July 2002 and May 2003 were executed at prices that were fair and reasonable. NASD imposed sanctions of a censure, a fine of \$5,000 and restitution of \$4,549.90.

## I.

### WAIVER OF PROCEDURAL RIGHTS

AGED 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 AGED;
- 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, AGED 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.

AGED 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 20050010270, the staff of the Market Regulation Department of NASD (the "staff") conducted a review of AGED's compliance with NASD Conduct Rule 2320 during the period October 1, 2004 through December 31, 2004 (the "review period").

In connection with 20050019901, the 2005 Trading and Market Making Surveillance ("TMMS") examination of AGED, the staff reviewed the following items:<sup>1</sup>

- 25 customer sale transactions and 26 proprietary sale transactions, for compliance with Regulation SHO and NASD Rules 3110, 3350, 3370, and 6130.
- 50 limit orders, for compliance with NASD Rule 2110 and IM-2110-2.
- Two limit orders, for compliance with NASD 2320 (crossing review).
- 50 customer orders, which resulted in 260 trade reports, for compliance with NASD Rules 4632 and 6130.
- Five open limit orders, for compliance with NASD Rule 3220.
- One transaction reported to ACT with a .PRP modifier, for compliance with NASD Rules 2320, 4632, and 6130.
- Five order type/size categories and 25 orders handled by the firm during the month of May 2005, for compliance with SEC Rule 11Ac1-5 (currently SEC Rule 605).
- AGED's Order Routing Information Report on routing of customer orders for quarter that ended June 2005, for compliance with SEC Rule 11Ac1-6.

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<sup>1</sup> Unless state otherwise, samples were from trade date June 23, 2005.

- Written supervisory procedures in effect June 2005, for compliance with NASD Rule 3010.
- Registration of trading area personnel, for compliance with NASD Rules 1021 and 1031.
- 50 orders, for compliance with NASD Rule 6955.
- 25 cancelled executions, for compliance with NASD Rules 3110, 4632, 4642, 6420, 6620 and SEC Rule 17a-3.
- 10 transactions, for compliance with NASD Rules 2320 and 3110.
- AGED's books and records of orders and transactions cited above, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.

A. AGED 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 39 transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, as reflected on Exhibit A, which is attached hereto and incorporated herein by reference.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2320.
3. The firm failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 19 transactions in eligible securities.
4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).

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

**A censure and a fine of \$17,500 (consisting of a \$12,500 fine for the best execution violations in 20050010270 and a \$5,000 fine for the short sales trade reporting violations in 20050019901.)**

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

### III.

#### OTHER MATTERS

- A. AGED understands that AGED may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. AGED understands that AGED 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. AGED agrees to pay any monetary sanctions imposed on AGED 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 AGED proposes to pay any fine imposed.
- C. AGED specifically and voluntarily waives any right to claim that AGED is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

A.G. Edwards & Sons, Inc. certifies that A.G. Edwards & Sons, Inc. 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 A.G. Edwards & Sons, Inc. to submit it.

Date 3/6/2007

A.G. Edwards & Sons, Inc.  
Respondent

By: John B. Harrington  
Name: John B. Harrington

Title: V.P. Fixed Income Director

Reviewed by:

B  
Counsel for Respondent

Accepted by NASD:

3507-4/11/07  
Date

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

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

A.G. Edwards & Sons, Inc.  
MRD #s 20050010270 and 20050019901

**Statement of Corrective Action**

This Corrective Action Statement is submitted by the Respondent, A.G. Edwards & Sons, Inc. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

A.G. Edwards & Sons, Inc. has revised its systems and procedures for the execution of customer orders in exchange-listed preferred stock and marking of sell transaction reports to ACT. A.G. Edwards & Sons, Inc. believes these changes are reasonably designed to prevent future misconduct in these respects.

| AWC Incident Number | Date       | MPID | B/S/X | Volume | SECID  | Price | Contra | Report Time | Execution Time | Modifier | Inside Bid at Execution | Inside Ask at Execution | Correct Price | Number of Shares Requiring Restitution | Restitution Amount |
|---------------------|------------|------|-------|--------|--------|-------|--------|-------------|----------------|----------|-------------------------|-------------------------|---------------|----------------------------------------|--------------------|
| 1                   | 10/25/2004 | AGED | S     | 1960   | GPU    | 26    |        | 10:31:06    | 10:31:06       |          |                         | 25.99                   | 25.99         | 1960                                   | \$19.60            |
| 2                   | 10/25/2004 | AGED | S     | 188    | GPU    | 26    |        | 12:16:11    | 12:16:10       |          |                         | 25.99                   | 25.99         | 188                                    | \$1.88             |
| 3                   | 10/25/2004 | AGED | S     | 400    | ABNSG  | 24.77 |        | 13:42:04    | 13:42:04       |          |                         | 24.76                   | 24.76         | 400                                    | \$4.00             |
| 4                   | 10/25/2004 | AGED | S     | 400    | GPU    | 26    |        | 14:27:46    | 14:27:46       |          |                         | 25.99                   | 25.99         | 400                                    | \$4.00             |
| 5                   | 10/25/2004 | AGED | S     | 100    | GPU    | 26    |        | 14:52:22    | 14:52:21       |          |                         | 25.99                   | 25.99         | 100                                    | \$1.00             |
| 6                   | 10/29/2004 | AGED | S     | 793    | ABNSG  | 24.7  |        | 11:06:40    | 11:06:39       |          |                         | 24.69                   | 24.69         | 793                                    | \$7.93             |
| 7                   | 11/4/2004  | AGED | S     | 1000   | ABNSG  | 24.85 |        | 14:19:25    | 14:19:24       |          |                         | 24.84                   | 24.84         | 1000                                   | \$10.00            |
| 8                   | 11/5/2004  | AGED | S     | 800    | RBS\$M | 25.53 |        | 11:40:31    | 11:40:31       |          |                         | 25.5                    | 25.5          | 800                                    | \$24.00            |
| 9                   | 11/8/2004  | AGED | S     | 189    | ISP    | 25.25 |        | 13:42:15    | 13:42:15       |          |                         | 25.23                   | 25.23         | 189                                    | \$3.78             |
| 10                  | 11/8/2004  | AGED | S     | 250    | ISP    | 25.24 |        | 14:32:38    | 14:32:38       |          |                         | 25.22                   | 25.22         | 250                                    | \$5.00             |
| 11                  | 11/8/2004  | AGED | S     | 635    | ABNSG  | 24.7  |        | 15:05:52    | 15:05:52       |          |                         | 24.69                   | 24.69         | 635                                    | \$6.35             |
| 12                  | 11/8/2004  | AGED | S     | 1000   | ABNSG  | 24.7  |        | 15:20:47    | 15:20:47       |          |                         | 24.69                   | 24.69         | 1000                                   | \$10.00            |
| 13                  | 11/8/2004  | AGED | S     | 375    | ISP    | 25.24 |        | 15:41:55    | 15:41:54       |          |                         | 25.23                   | 25.23         | 375                                    | \$3.75             |
| 14                  | 11/9/2004  | AGED | S     | 200    | RBS\$M | 25.49 |        | 11:03:09    | 11:03:08       |          |                         | 25.48                   | 25.48         | 200                                    | \$2.00             |
| 15                  | 11/9/2004  | AGED | S     | 385    | RBS\$M | 25.49 |        | 11:11:04    | 11:11:03       |          |                         | 25.48                   | 25.48         | 385                                    | \$3.85             |
| 16                  | 11/10/2004 | AGED | S     | 100    | ABNSG  | 24.62 |        | 15:33:18    | 15:33:18       |          |                         | 24.61                   | 24.61         | 100                                    | \$1.00             |
| 17                  | 11/10/2004 | AGED | S     | 200    | ABNSG  | 24.62 |        | 15:38:41    | 15:38:41       |          |                         | 24.61                   | 24.61         | 200                                    | \$2.00             |
| 18                  | 11/11/2004 | AGED | S     | 767    | RBS\$M | 25.55 |        | 15:48:46    | 15:48:45       |          |                         | 25.5                    | 25.5          | 767                                    | \$38.35            |
| 19                  | 11/11/2004 | AGED | S     | 345    | RBS\$M | 25.55 |        | 15:49:59    | 15:49:59       |          |                         | 25.5                    | 25.5          | 345                                    | \$17.25            |
| 20                  | 11/12/2004 | AGED | S     | 1000   | ABNSE  | 24.2  |        | 14:47:54    | 14:47:54       |          |                         | 24.15                   | 24.15         | 1000                                   | \$50.00            |
| 21                  | 11/12/2004 | AGED | S     | 120    | ABNSE  | 24.2  |        | 14:55:13    | 14:55:12       |          |                         | 24.15                   | 24.15         | 120                                    | \$6.00             |
| 22                  | 11/12/2004 | AGED | S     | 405    | ABNSE  | 24.19 |        | 15:55:05    | 15:55:05       |          |                         | 24.18                   | 24.18         | 405                                    | \$4.05             |
| 23                  | 11/16/2004 | AGED | S     | 200    | ABNSE  | 24.2  |        | 15:11:42    | 15:11:42       |          |                         | 24.19                   | 24.19         | 200                                    | \$2.00             |
| 24                  | 11/18/2004 | AGED | S     | 500    | RBS\$M | 25.99 |        | 11:56:08    | 11:56:08       |          |                         | 25.98                   | 25.98         | 500                                    | \$5.00             |
| 25                  | 11/24/2004 | AGED | S     | 200    | ABNSG  | 24.99 |        | 14:12:07    | 14:12:07       |          |                         | 24.97                   | 24.97         | 200                                    | \$4.00             |
| 26                  | 12/1/2004  | AGED | S     | 1000   | MWR    | 25.16 |        | 10:27:36    | 10:27:35       |          |                         | 25.15                   | 25.15         | 1000                                   | \$10.00            |
| 27                  | 12/1/2004  | AGED | S     | 1000   | MWR    | 25.15 |        | 14:20:33    | 14:20:32       |          |                         | 25.14                   | 25.14         | 1000                                   | \$10.00            |
| 28                  | 12/2/2004  | AGED | S     | 400    | MWR    | 25.07 |        | 11:39:36    | 11:39:36       |          |                         | 25.05                   | 25.05         | 400                                    | \$8.00             |
| 29                  | 12/7/2004  | AGED | B     | 500    | CNP\$C | 25.36 |        | 13:32:37    | 13:32:36       |          | 25.37                   |                         | 25.37         | 500                                    | \$5.00             |
| 30                  | 12/7/2004  | AGED | S     | 155    | RVT\$B | 24.53 |        | 15:37:37    | 15:37:37       |          |                         | 24.52                   | 24.52         | 155                                    | \$1.55             |
| 31                  | 12/8/2004  | AGED | S     | 210    | ABNSE  | 24.39 |        | 14:37:33    | 14:37:32       |          |                         | 24.38                   | 24.38         | 210                                    | \$2.10             |
| 32                  | 12/17/2004 | AGED | S     | 682    | ABNSE  | 24.6  |        | 9:38:34     | 9:38:34        |          |                         | 24.59                   | 24.59         | 682                                    | \$6.82             |
| 33                  | 12/17/2004 | AGED | S     | 187    | ABNSE  | 24.6  |        | 10:01:02    | 10:01:02       |          |                         | 24.59                   | 24.59         | 187                                    | \$1.87             |
| 34                  | 12/17/2004 | AGED | S     | 274    | ABNSE  | 24.6  |        | 10:01:11    | 10:01:10       |          |                         | 24.59                   | 24.59         | 274                                    | \$2.74             |
| 35                  | 12/17/2004 | AGED | S     | 346    | ABNSE  | 24.6  |        | 10:43:08    | 10:43:07       |          |                         | 24.59                   | 24.59         | 346                                    | \$3.46             |
| 36                  | 12/22/2004 | AGED | S     | 400    | ABNSE  | 24.72 |        | 15:51:35    | 15:51:34       |          |                         | 24.71                   | 24.71         | 400                                    | \$4.00             |
| 37                  | 12/27/2004 | AGED | S     | 128    | ABNSE  | 24.83 |        | 11:39:32    | 11:39:31       |          |                         | 24.82                   | 24.82         | 128                                    | \$1.28             |
| 38                  | 12/27/2004 | AGED | S     | 490    | MWG    | 25.28 |        | 11:50:38    | 11:50:37       |          |                         | 25.27                   | 25.27         | 490                                    | \$4.90             |
| 39                  | 12/28/2004 | AGED | S     | 385    | MWG    | 25.29 |        | 14:31:22    | 14:31:21       |          |                         | 25.28                   | 25.28         | 385                                    | \$3.85             |
| Total =             |            |      |       |        |        |       |        |             |                |          |                         |                         |               |                                        | \$302.36           |