

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION

20050022304-01

TO: Department of Market Regulation
NASD

RE: Capital Portfolio Management, Inc., Respondent
Broker/Dealer
CRD Number 29302

Pursuant to Rule 9216 of NASD Code of Procedure, Capital Portfolio Management, Inc. ("CPMI" 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 CPMI alleging violations based on the same factual findings.

CPMI 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 CPMI; and
3. If accepted:
 - a. this AWC will become part of CPMI'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 CPMI'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

20050022304 (tn)

000073352 2005

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

CPMI 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:

CPMI has been a member of NASD since March 1992, and the firm's registration remains in effect. CPMI does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

CPMI 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 CPMI;
- 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, CPMI 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.

CPMI 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 20050022304, the staff of the Department of Market Regulation of NASD (the "staff") conducted a review of corporate bond transactions executed by CPMI during the period April 1, 2005 through June 30, 2005 (the "review period"), for compliance with the rules and regulations relating to fixed income fair pricing and NASD's mark-up policy. The staff also reviewed CPMI's written supervisory procedures and supervisory system with respect to corporate bond pricing.

A. CPMI 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 each of the seven instances reflected on Exhibit 1, CPMI bought/sold a security for its own account from/to another broker-dealer and failed to sell/buy such security to/from a CPMI customer 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. Some specific relevant circumstances were that:
 - a. none of the subject bonds was a bond in which CPMI held a position in its proprietary account;
 - b. none of the bonds at issue was wholly illiquid, as each enjoyed a fair amount of trading on the dates in question, ranging from no fewer than eight reported transactions to as high as 62 reported transaction in each respective bond for the same trade date;
 - c. in five of seven instances, the price CPMI charged its customer represented the highest price of the day reported for the respective bond and was \$1.50 to \$3.00 higher than the next highest price; and
 - d. in several instances, there were a number of comparable transactions that were executed by other broker-dealers on the same date in the apparent capacity of riskless principal, each one involving a markup or markdown much lower than the more than four percent charged by CPMI, ranging in some cases to as low as 0.24 percent to as high as 1.95 percent.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2440, and IM-2440.

3. CPMI'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 fair pricing and mark-ups.
4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$30,000 (comprised of a \$25,000 fine for the excessive mark-up violations and a \$5,000 fine for the supervision violation), an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph three, and restitution by Respondent to the parties involved in the transactions listed on Exhibit 1 hereto in the total amount of \$2,134, 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 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, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, no later than 120 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate any party 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 party last resided. Within 30 business days of acceptance of this AWC by the NAC, 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 written supervisory procedures to address the deficiencies described in paragraph three; and, (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. CPMI 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. CPMI 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. CPMI specifically and voluntarily waives any right to claim that CPMI is unable to pay, now or at any time hereafter, any monetary sanction imposed in this *matter*.

Capital Portfolio Management, Inc. 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 CPMI to submit it.

Capital Portfolio Management, Inc.

Date: 9/6/06

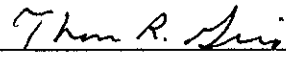
By: 
Name: PATRICK V. DYER
Title: PRESIDENT

Reviewed by:

Counsel for Respondent

Accepted by NASD:

12/14/06
Date


Thomas R. Gira
Executive Vice President & Deputy
Market Regulation

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

Attachments:
Standard Election of Payment Form

Exhibit 1**Capital Portfolio Management, Inc.
20050022304**

Item	Date	Cusip ID	Qty.	Trade 1 Time	Trade 1 Price	Trade 2 Time	Trade 2 Price	Restitution
1	5/13/05	247126AE50	50	11:04:00	70.4	11:04:00	73.4	\$444
2	6/3/05	667280AF80	30	12:05:00	57	12:05:00	59.5	\$237
3	6/3/05	667280AF80	20	12:05:00	57	12:05:00	59.5	\$158
4	6/6/05	667280AF80	30	14:32:00	56.5	14:32:00	59	\$242
5	6/14/05	667280AF80	40	15:40:00	52.75	15:40:00	55.25	\$367
6	6/14/05	896778AE70	30	15:40:00	71.5	15:40:00	74.5	\$257
7	6/14/05	52729NAS90	50	12:51:00	54.75	12:51:00	57.25	\$429



CAPITAL PORTFOLIO MANAGEMENT, INC.

Aspen Mill Professional Building
54 Scott Adam Road, Suite 207
Hunt Valley, Maryland 21030
Telephone (410) 667-4575 • (800) 695-4648

September 8, 2006

Via Facsimile and Overnight Mail

NASD
c/o Timothy Nagy
9509 Key West Avenue
Rockville, MD 20850-3329

Corrective Action Statement

The firm now requires a bond information worksheet with every secondary corporate bond trade. The information on the comprehensive worksheet assist the principal by gathering and documenting the relevant information required during the supervision process.

The firm will also provide representation that the appropriate areas of the Written Supervisory System have been update within the allotted 30 business days.

**** This Corrective Action Statement is submitted by the respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD**