

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NQ. 2006003681201

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: Weller Anderson & Co., Ltd., Respondent
CRD No. 23736

Fenner Reese Weller, Jr.
General Securities Principal
CRD No. 830278

Pursuant to Rule 9216 of NASD Code of Procedure, Weller Anderson & Co., Ltd. and Fenner Reese Weller, Jr. ("Respondents," collectively) submit 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 Respondents alleging violations based on the same factual findings.

Respondents understand 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 Enforcement 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 Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against them;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary record;

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

Respondents also understand that their 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:

Weller Anderson & Co., Ltd. is currently, and was during all times relevant hereto, a member of NASD and registered as a broker/dealer with the Securities and Exchange Commission. The firm became registered with NASD in February 1989. The firm's disciplinary history includes the following:

On November 30, 2005, NASD accepted a Letter of Acceptance, Waiver and Consent (No. E062004012101) in which the firm and Weller were censured and fined, jointly and severally, \$7,500 for violations of MSRB Rules G-2 and G-3.

Fenner Reese Weller, Jr. entered the securities industry in December 1976, as a General Securities Representative with an NASD member firm. From February 1978 until February 1996, he associated with five other member firms. In February 1996, Weller registered with Weller Anderson & Co., Ltd., where he currently serves as, among other things, the firm's General Securities Principal. During his career in the securities industry, Weller has obtained Series 3, 4, 5, 7, 12, 24, 55 and 63 licenses. His disciplinary history includes the November 30, 2005 action noted above.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

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- A. To have a Formal Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

- A. Respondents hereby accept and consent, 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. Contingent Securities Offering Violation

In May 2006, Weller Anderson, acting through Fenner R. Weller, Jr., commenced a best efforts, "minimum-maximum" offering conducted by Texas Alliance Title, LLC (TAT"). According to the TAT offering memorandum, the offering would raise a minimum of \$500,000 and a maximum of \$1,000,000. The offering period expired on July 31, 2006, but could be extended to August 31, 2006, at the issuer's discretion. The memorandum also represented that investor funds would be deposited into a bank escrow account until the minimum offering amount was raised, and that investor funds would be promptly returned if the minimum offering amount was not raised during the offering period.

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As of August 31, 2006, the TAT offering had raised only \$412,250 from approximately 579 investors. Even though the minimum offering amount was not raised during the offering period, Weller Anderson did not terminate the offering and return investor funds as required by the terms of the offering memorandum. Instead, on October 4, 2006, the firm distributed a letter to investors advising them that the terms of the offering had been materially changed to lower the minimum offering amount from \$500,000 to \$250,000, and asking them to reconfirm their interest in the offering under the revised terms. Attached to the letter was a document entitled, "*Election Notice*," which gave subscribers the opportunity to elect to participate in the new, amended offering, or to rescind their subscription. The *Election Notice* was a "negative consent" notice, which indicated that a failure to return the document "by October 15, 2006, will be deemed to be an election to accept the Amended Offer and a ratification of the Subscription Agreement."

The firm sent the letter and attachment to all 579 subscribers of record, and received 299, or almost 52%, completed *Election Notices* in response. Of the 299 *Election Notices* received back, eight customers rescinded their subscription and 291 elected to participate in the amended offering. Pursuant to the language in the *Election Notice*, the remaining 280 customers participated in the amended offering by default, in that they failed to return the *Election Notice* by the required date. Escrow was broken on December 4, 2006, when funds, less the amount withheld for rescinding customers, were released to the issuer. The rescinding customers' funds were not returned to them until December 26, 2006, almost four months after the expiration of the offering.

Weller Anderson's actions rendered false the representation in the TAT offering memorandum that investor funds would be promptly returned if the minimum offering amount was not obtained during the offering period, when it failed to terminate the offering and return investors funds after failing to raise the minimum offering amount during the offering period.

Such acts, practices, and conduct constitute separate and distinct violations of Sections 10(b) of the Securities Exchange Act of 1934 and Rule 10b-9 thereunder, and of NASD Conduct Rule 2110 by Weller Anderson & Co., Ltd., and Fenner R. Weller, Jr.

2. Deficient Supervisory Procedures

During the period from May 2006 through December 2006, Weller Anderson, acting through Fenner R. Weller, Jr., failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD Rules. Specifically, the firm's procedures did not have any provisions for contingent securities

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offerings, such as procedures for amending the terms of an offering, or procedures regarding the establishment or handling of escrow accounts.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 by Weller Anderson & Co., Ltd. and Fenner R. Weller, Jr.

- B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

Weller Anderson & Co., Ltd: A censure and a monetary fine in the amount of \$10,000 to be imposed jointly and severally with Fenner R. Weller, Jr.

Fenner Reese Weller, Jr.: A censure and a monetary fine in the amount of \$10,000 to be imposed jointly and severally with Weller Anderson & Co, Ltd.

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

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment Forms showing the method by which Respondents propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

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Respondents certify that they have read and understand all of the provisions of this AWC and have 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 Respondents to submit it.

7/25/07
Date

Weller Anderson & Co., Ltd.
By: Fenner R. Weller, Jr.
FENNER R. WELLER JR
Name
GENERAL PARTNER
Title

7/25/07
Date

Fenner R. Weller, Jr.
Fenner R. Weller, Jr., Respondent

Reviewed by:

Counsel for Respondents

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Accepted by NASD:

7/31/2007
Date

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

Karen E. Whitaker / wjjp
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12801 North Central Expressway, Suite 1050
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