

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006003684702**

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Carlton Capital, Inc.
(BD No. 42533)

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Respondent submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Carlton Capital has been a member of FINRA since May 1997. Prior to June 2007, the Firm was known as Clayton Dunning & Company. Carlton Capital is 100 percent owned by Clayton, Dunning Group, Inc., and has approximately seven registered representatives and one office located at 48 Wall Street, New York, NY.

RELEVANT PRIOR DISCIPLINARY HISTORY

In August 2005, Carlton Capital entered into an AWC consenting to a censure, a \$10,000 fine, and findings that it failed to develop and implement an adequate anti-money laundering customer identification program. The Firm has no other disciplinary history.

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OVERVIEW

Between February 17, 2006 and August 31, 2008, Carlton Capital was subject to, but failed to fully comply with, the "Taping Rule," NASD Rule 3010(b)(2). In 2006, Carlton Capital provided certain representatives with access to unrecorded telephone lines in the office, allowed representatives to accept orders from customers on unrecorded telephone lines when the representatives were out of the office, and failed to catalog tape recordings by registered person. Between January 2007 and August 2008, Carlton Capital had a system in place that did not comply with the Taping Rule in that it recorded telephone calls to the hard drives of the computers on representatives' desks and was not password protected, allowing at least one representative to erase his recorded telephone calls.

FACTS AND VIOLATIVE CONDUCT

On February 17, 2006, Carlton Capital began tape recording telephone calls pursuant to the "Taping Rule," NASD Rule 3010(b)(2). The Taping Rule requires a member firm to adopt special supervisory procedures for telemarketing activities whenever a specified percentage of its registered persons consists of individuals who were employed within the last three years by a "disciplined firm," which, for purposes of the Taping Rule, includes a firm (or firms) that, in connection with sales practices involving the offer, purchase, or sale of any security, was expelled from membership or participation in any securities industry self-regulatory organization or has had its registration as a broker/dealer revoked by the SEC.

In 2006, Carlton Capital maintained two parallel telephone systems in order to circumvent the Taping Rule – representatives dialing out on an area code 646 line were recorded, while representatives who selected an area code 212 line were not. Carlton Capital intentionally gave certain representatives access to the unrecorded lines, which these representatives knew to be unrecorded and which the representatives used to communicate with Firm customers.

In 2006, the Firm also routinely allowed representatives to talk to and accept orders from customers on cell phones and other unrecorded lines when the representatives were out of the office, which was about 20 percent of the time.

Finally, while the Firm did retain the tape recordings of telephone calls made on the 646 lines in 2006, it did not catalog them by registered person as required.

Starting in January 2007, Carlton Capital installed a USB-based taping system that recorded telephone calls to the hard drives of the computers on representatives' desks. Employees were informed that only the President of the Firm was permitted access to the telephone recordings, but the data was not password protected and the Firm backed-up the data only once a year.

The system Carlton Capital installed in January 2007 did not comply with the Taping Rule, as evidenced by the fact that, in October 2007, Carlton Capital sought to access the recorded telephone calls of a representative it suspected of conducting business away from the Firm and discovered that his telephone calls from January to October 2007 had been deleted, likely by the representative himself.

Accordingly, Carlton Capital violated NASD Conduct Rules 3010(b)(2) and 2110.

B. Respondent also consents to the imposition of the following sanctions:

- a censure;
- a fine in the amount of \$40,000;
- a requirement that Carlton Capital comply with the requirements of NASD Conduct Rule 3010(b)(2) until February 17, 2012 (an additional three years); and
- a requirement that Carlton Capital retain an independent consultant as follows:
 - a. Carlton Capital shall:
 - i) Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to its compliance with the Taping Rule.
 - ii) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
 - iii) Cooperate with the Independent Consultant in all respects, including by providing staff support. Carlton Capital shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Carlton Capital shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval. Carlton Capital shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.
 - iv) At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i)

the adequacy of the Firm's policies, systems, procedures and training relating to its compliance with the Taping Rule; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training. And,

- v) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Carlton Capital, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Carlton Capital or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- b. Within 60 days after delivery of the Written Report, Carlton Capital shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- c. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Carlton Capital shall provide FINRA staff with a written Implementation Report, certified by an officer of Carlton Capital, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- d. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that 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 FINRA, nor does it reflect the views of FINRA or its staff.

Respondent 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; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

10/6/08
Date

Carlton Capital, Inc.
Respondent

By: Allen B. Ward

Reviewed by:

David Schrader, Esq.
Counsel for Respondent
Schrader & Schoenberg, L.L.P.
711 3rd Ave, Suite 1505
New York, NY 10017

Accepted by FINRA:

October 30, 2008
Date

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

Hugh C. Patton

Hugh C. Patton
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FINRA Department of Enforcement
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