

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060075238-01**

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

RE: **Jefferies & Company, Inc., Respondent**
Broker-Dealer
CRD No. 2347

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Jefferies & Company, Inc. ("JEFF" 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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

JEFF has been a member of FINRA since March 1, 1963, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

JEFF has the following relevant disciplinary history:

- On July 11, 2007, an AWC became final in which the firm was censured and fined \$525,000 for violations of NASD Rules 2110, 3010, 3350, 3370, 4632, 4642, 6130, 6230, 6420, 6620, 6640 (formerly 6740) and 6955; and SEC Rules 10b-10, 15c2-11, 200(g), 203(b) and 605 (formerly SEC Rule 11Ac1-5).
- On October 6, 2005, an AWC became final in which the firm was censured and fined \$125,500 for violations of NASD Rules 2110, 3010, 3110, 3370, 4632, 6130, 6620 and 6955; and SEC Rules 10b-10, 11Ac1-4 (currently SEC Rule 604), 11Ac1-5 (currently SEC Rule 605), 17a-3 and 17a-4.

- On July 7, 2005, an AWC became final in which the firm was censured and fined \$100,000 for violations of NASD Rules 2110, 3010 and 6955.

SUMMARY

In connection with matter 20060075238, the staff of FINRA's Department of Market Regulation (the "staff") conducted JEFF's Trading and Market Making Surveillance ("TMMS") Examination for 2007, evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing the items listed in Appendix 1 for trade dates December 12 and 13, 2006 (the "2007 TMMS Exam review period").

In connection with matter 20070118606, the staff conducted JEFF's TMMS Examination for 2008, evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing the items listed in Appendix 2 for trade dates December 6 and 7, 2007 (the "2008 TMMS Exam review period").

FACTS AND VIOLATIVE CONDUCT

1. During the 2007 TMMS Exam review period, JEFF: (a) failed to report to the NASD/Nasdaq Trade Reporting Facility (the "TRF") the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross for 57 transactions in Reportable Securities; (b) failed to report to the TRF the correct PRP time for one transaction in a Reportable Security; (c) failed to report to the TRF the correct capacity for 11 agency cross transactions; (d) failed to report to the TRF one last sale report of a transaction in a designated security; (e) failed to report to the TRF the cancellation of two trades previously submitted to the TRF; (f) failed to submit to the TRF, for the offsetting, "riskless" portion of 108 riskless principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal;" (g) incorrectly submitted to the TRF, for the offsetting, riskless portion of one riskless principal transaction in a designated security, a tape or "media" report with a capacity indicator of "principal;" (h) incorrectly reported in an agency capacity the principal leg of three riskless principal transactions reported to the TRF; (i) failed to report to the TRF the correct capacity for seven principal transactions; (j) inaccurately reported to the OTC Reporting Facility ("OTCRF") the capacity for the street leg of three riskless principal transactions; (k) inaccurately reported to the OTCRF the capacity for the street leg of four riskless principal transactions while also inaccurately media-reporting the customer leg of those same four riskless principal transactions; (l) inaccurately media-reported to the OTCRF the customer leg of one riskless principal transaction; (m) failed to report to the OTCRF the correct capacity for one principal transaction; (n) double media-reported to the OTCRF two separate transactions; and (o) failed to report to the OTCRF the correct

capacity for one riskless principal transaction. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130.

2. During the 2007 TMMS Exam review period, JEFF transmitted to OATS 20 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm: (a) in seven instances, incorrectly submitted a Route (RT) Report; (b) in five instances, incorrectly submitted a New Order (NW) Report, Execution (EX) Report and three RT Reports instead of the required combined Order Execution (OE) Reports; (c) in three instances, incorrectly submitted an RT Report and failed to report an execution; (d) in two instances, incorrectly submitted a combined Order Route (OR) Report instead of the required NW Report; (e) in one instance, incorrectly submitted an OR Report instead of the required NW Report and failed to report an execution; (f) in one instance, incorrectly submitted an OR Report instead of the required OE Report; and (g) in one instance, incorrectly submitted an NW Report instead of the required OE Report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. During the 2007 TMMS Exam review period, JEFF: (a) on 16 occasions, failed to provide written notification disclosing to its customer its correct capacity in the transaction; (b) on three occasions, failed to provide written notification disclosing to its customer that the transaction was executed at an average price; (c) on three occasions, failed to provide written notification disclosing to its customer its correct capacity in the transaction, that the transaction was executed at an average price and that it was a market maker in each such security; and (d) on three occasions, failed to provide written notification disclosing to its customer its correct capacity in the transaction and the correct form of remuneration. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
4. During the 2007 TMMS Exam review period, JEFF: (a) failed to correctly mark its trading ledger as "long" or "short" in 162 instances; (b) failed to show the terms and conditions on the memorandum of two brokerage orders; and (c) failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of one brokerage order. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and/or 17a-4 and NASD Rule 3110.
5. During the 2008 TMMS Exam review period, JEFF: (a) failed to report to the FINRA/Nasdaq Trade Reporting Facility (the "FNTRF") the correct capacity in which it executed 146 transactions in Reportable Securities; (b) failed to report to the FNTRF the correct execution time for two transactions in Reportable Securities; and (c) failed to correctly report a riskless principal trade to the FNTRF in four instances, thrice by media-reporting the customer leg as principal and once by failing to simply submit a riskless principal clearing entry as required. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130.

6. During the 2008 TMMS Exam review period, JEFF incorrectly designated as ".PRP" to the FNTRF 10 last sale reports of transactions in designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a)(5)(G).
7. During the 2008 TMMS Exam review period, JEFF transmitted to OATS 14 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm:
(a) in five instances, incorrectly submitted a "Time Order" special handling code that was not applicable; and (b) in nine instances, submitted a Cancel/Replace (CR) report with an inaccurate share quantity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
8. During the 2008 TMMS Exam review period, JEFF: (a) on seven occasions, failed to provide written notification disclosing to its customer all the capacities in which the firm executed a multiple-capacity transaction; (b) on seven other occasions, failed to provide written notification disclosing to its customer its correct capacity in the transaction and the correct form of remuneration; (c) on four occasions, failed to provide written notification disclosing to its customer the correct form of remuneration; and (d) on one occasion, failed to provide written notification disclosing to its customer that it was a market maker in such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
9. The firm's supervisory system during the 2007 TMMS Exam review period did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimal requirements for adequate written supervisory procedures for the following regulatory areas: **Order Handling and Execution (One Percent Rule)** [(a), (b), (c) and (d)]; **Best Execution (Execution of Orders Routed to and Executed by Other Parties Based on Order-by-order Basis, and Execution of Orders Routed to and Executed by Other Parties Based on Aggregate Routing Decisions)** [(a), (b), (c) and (d)]; **Trade Reporting (Third Party Reporting)** [(a), (b), (c) and (d)]; **Sale Transactions (Determining Whether a Sale is Long or Short, Marking the Ticket and Reporting Short Sale Indicators)** [(a), (b), (c) and (d)]; and **Other Rules (Books and Records)** [(a), (b), (c) and (d)]. In addition, the firm failed to provide sufficient documentary evidence that,

during the 2007 TMMS Exam review period, it performed the supervisory reviews set forth in its written supervisory procedures concerning **Trading Halts**. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 3010.

B. The firm also consents to the imposition of the following sanctions:

A censure; fines totaling \$70,000 (comprised of \$25,000 for the firm's trade-reporting violations, \$25,000 for the firm's OATS-reporting violations, \$7,500 for the firm's SEC Rule 10b-10 violations, \$2,500 the firm's recordkeeping violations and \$10,000 for the firm's supervisory violations); **and an undertaking** to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.9.

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, or an e-mail from a work-related account of the registered principal to **MarketRegulationComp@finra.org**, 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 I.A.9; and (3) the date(s) the revised procedures were implemented.

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

The firm 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

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

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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, the firm specifically and voluntarily waives any right to claim bias or prejudice 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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

The firm 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 FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary records;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. 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. The firm 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 the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's 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 the firm to submit it.

3/16/10
Date

Respondent

Jefferies & Company, Inc.

By: Lloyd H. Feller

Name: LLOYD H. FELLER

Title: GC

Reviewed by:

Michael D. Solomon
Counsel for Respondent
Michael Solomon, Esq.
Managing Director and Associate
General Counsel, Regulatory Matters
Jefferies Execution Services, Inc.
520 Madison Avenue, 10th Floor
New York, NY 10022

Accepted by FINRA:

4/5/10
Date

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

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