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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070094713**

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

RE: Sterne, Agee & Leach, Inc. ("the Firm"), Respondent
Member Firm of NASD since 1936 and the New York Stock Exchange, LLC since 1982.
CRD# 791

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, 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 it alleging violations based on the same factual findings described herein.

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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

The Firm was incorporated on September 18, 1964 in the state of Delaware. The Firm is a full service brokerage firm based in Birmingham, Alabama and currently maintains 31 branch offices, employs approximately 353 registered representatives, and services approximately 32,000 direct customers.

RELEVANT PRIOR DISCIPLINARY HISTORY

The Firm has the following relevant disciplinary history:

In NYSE Hearing Panel Decision 04-67, dated April 27, 2004, the Firm consented to findings that it made a deposit into its special reserve account that caused an overdraft in the account from which the deposit was made, filed an inaccurate FOCUS report, failed to submit accurate account type indicators, and failed to supervise a branch office. For these violations, the Firm consented to a censure and a fine of \$80,000.

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OVERVIEW

In November and December 2004, the Firm failed on four occasions to properly prepare its customer reserve formula computations, which required numerous adjustments to its reserve account ranging from \$1,129,510 to \$7,630,500, and it failed to maintain accurate books and records with regard to those computations.

FACTS

Inaccurate Customer Reserve Formula Computation

Background

Section 15(c)(3) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Securities and Exchange Commission (S.E.C.) to promulgate rules relating to the financial responsibility of broker-dealers, including with respect to their "acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances." In this regard, the S.E.C. has adopted two rules: Exchange Act Rule 15c3-1, the "net capital rule," which establishes minimum capital requirements for firms, and Exchange Act Rule 15c3-3, the "customer protection rule," which is intended to prevent a broker-dealer from putting its customers' assets at risk in the conduct of the broker-dealers' proprietary activities.

The customer protection rule has two operational requirements. Exchange Act Rule 15c3-3(b)(1) requires that a broker-dealer promptly obtain and thereafter maintain physical possession or control of all customers' fully paid and excess margin securities. Where customer securities that should be under a broker-dealer's control are not, the broker-dealer must take prompt action to remedy the deficiency. For example, where securities purchased for customers from another broker-dealer have not been received ("fails to receive"), the broker-dealer must purchase them from another source, also known as "buying in" the securities. Similarly, if a customer sells a security, other than government or mortgage-backed securities or in a pre-disclosed short sale, and fails to deliver them when required ("fails to deliver"), the broker-dealer generally must buy the customer in.

A second operational requirement of the customer protection rule is that set forth in Exchange Act Rule 15c3-3(e)(1), which requires every broker or dealer to (a) perform a weekly calculation in accordance with the formula set out in Exhibit A to the Rule (the "Customer Reserve Formula"), and (b) deposit in a special bank account (the "Customer Reserve Account") either cash in an amount, or "qualified securities" having a value, equal to the results of the reserve formula.

Generally speaking, the reserve formula is the difference between (a) the amount that a broker-dealer owes its customers in the aggregate or has raised from using customers' securities ("credits"), and (b) the amount that customers in the aggregate owe to the broker-dealer ("aggregate debit items" or "ADI"). Exchange Act Rule 15c3-3(e)(2) requires broker-dealers to maintain a Customer Reserve Account balance equal to the

amount by which total "credits" exceed total "debits," as determined by the Customer Reserve Formula. If total credits exceed total debits, a firm must deposit the difference in the Customer Reserve Account. Exchange Act Rule 15c3-3(e)(3) generally requires that reserve requirement computations and reserve requirement deposits be made on a weekly basis. Firms that compute net capital using the aggregate indebtedness or the basic method must reduce ADI by 1%. See 15c3-3 (Exhibit A, Note E [3]). Firms like Sterne Agee, which compute net capital using the appropriate alternative method must reduce ADI by 3%. See *Id.* and SEC Rule 15c3-1(a)(1)(ii)(A).

Facts

Between November 30 and December 23, 2004, the Firm violated Exchange Act Rule 15c3-3 four times by erroneously computing its customer reserve.

In the Firm's Customer Reserve Formula computation prepared as of November 30, 2004, the number of customers' securities that were "fails-to-receive" had to be reduced by \$1,286,166 from \$14,492,628 to \$13,206,462. The number of customers' securities that were "fails-to-deliver," not older than 30 calendar days, had to be reduced by \$7,630,500 from \$9,797,926 to \$2,167,426. As a result of the adjustments, excess of total debits over credits were reduced from \$8,004,512 to \$1,889,094. Since total credits exceeded total debits, however, there was no hindsight deficiency.

The Firm's Customer Reserve Formula computations prepared for December 10, 2004, December 17, 2004, and December 23, 2004, each required net adjustments to customers' related "fails-to-receive" and "fails-to-deliver," as well as an adjustment to the 3% ADI.

On these three dates in December 2004, the Firm failed to make the required adjustments to the Customer Reserve Formula computations and failed to ensure its accuracy. The Firm failed to prepare the adjustments that were required at the time of the computation, and thus, the Firm failed to accurately calculate its reserve formula.

Failure to Keep Accurate Books and Records

Background

Section 17(a) of the Securities Exchange Act of 1934, and Exchange Act Rule 17a-3 (a)(11) thereunder, requires, in pertinent part, that every member organization shall "make and keep accurate books and records relating to its business . . . [a] record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to § 240.15c3-1."

NASD Rule 3110(a) states that, "Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium,

and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934."

Facts

The Firm erroneously computed its customer reserve and, therefore, maintained inaccurate records of its Customer Reserve Formula. In addition, upon learning of these miscalculations, the Firm performed revised calculations but is unable to provide records of these recalculations. The Firm was obligated to keep records of accurate computations and of the recalculations it performed, but failed to do so.

VIOLATIVE CONDUCT

As a result of the conduct described above, the Firm violated:

1. Section 15(c) of the Securities Exchange Act of 1934 and Rule 15c3-3, thereunder, in that it failed to properly prepare its customer reserve formula computations as set forth in the "Formula for Determination of Reserve Requirements for brokers and Dealers";
2. Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3 (a)(11) thereunder and NASD Rule 3110(a) in that it failed to keep accurate books and records with regard to the computation of its customer reserve formula; and
3. NASD Rule 2110 in that it failed, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.

OTHER FACTORS

B. The Firm consents to the imposition of the following sanctions:

1. A Censure; and
2. A Fine of \$60,000.

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 Formal Complaint issued specifying the allegations against the Firm;
- 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, 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 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

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 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 me; 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 me;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. 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 Firm certifies that it has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the Firm 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 the Firm to submit it.

5-28-08
Date

Respondent
Sterne Agee & Leach, Inc.

By: Ronald DeLuca
Ronald DeLuca, Director of Compliance

Reviewed by:

Jul R.
Julian Rainero
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Bracewell & Giuliani
1177 Avenue of the Americas
New York, New York 10036
Ph: 212- 508-6142

Accepted by FINRA:

June 24, 2008
Date

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

Susan Light
Susan Light
Senior Vice President
FINRA Department of Enforcement
14 Wall Street
New York, NY 10005
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