

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C06050001

TO: Department of Enforcement
NASD

RE: Milkie/Ferguson Investments, Inc.
CRD No. 17606

John Henry Merbler
Financial and Operations Principal
CRD No. 1464165

Pursuant to Rule 9216 of NASD Code of Procedure, Milkie/Ferguson Investments, Inc. and John Henry Merbler ("MFI" and "Merbler," respectively, or "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.

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

- 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 allegation 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.

The 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:

Milkie/Ferguson Investments, Inc. is currently, and was during all time 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 October 1986. The firm has no prior relevant disciplinary history.

John Henry Merbler became associated with NASD member firm MFI in January 1986. He obtained a Series 7 securities license in February 1986 and Series 24 and 63 licenses in August 1986. He subsequently obtained Series 27 and 66 securities licenses in October 1987 and March 2000, respectively. Merbler currently serves as MFI's Financial and Operations Principal. He has no prior disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

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

- 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, the 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. The Respondents hereby accept and consent, without admitting or denying the allegations or 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. During the period from approximately February 21, 2002, through at least October 11, 2002, Milkie/Ferguson Investments, Inc., acting through John Henry Merbler, permitted two registered representatives to act in a capacity requiring registration when such persons were deemed inactive for failing to complete the Regulatory Element of Continuing Education. The inactive periods for the registered representatives were 32 days and 228 days, respectively.

Such acts, practices, and course of conduct constitute separate and distinct violations of NASD Membership and Registration Rule 1120(a) and NASD Conduct Rule 2110 by Milkie/Ferguson Investments, Inc. and John Henry Merbler.

2. During the period from August 18, 2003 through May 8, 2004, Milkie/Ferguson Investments, Inc., acting through John Henry Merbler, failed to maintain blanket fidelity bond coverage when it inadvertently permitted its coverage to expire for almost nine months.

Such acts, practices, and course of conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3020 by Milkie/Ferguson Investments, Inc. and John Henry Merbler.

3. During the period from approximately January 2001 through January 2002, Milkie/Ferguson Investments, Inc., acting through John Henry Merbler, failed to timely report information regarding at least two customer complaints to NASD by the 15th day of the month following the calendar quarter in which the firm received the complaints. Specifically, one complaint was received by the firm on December 1, 2000, but not reported to NASD until January 9, 2002, almost one year late. The second complaint was received by the firm on July 3, 2001, but not reported to NASD until January 12, 2002, nearly three months late.

Additionally, the firm failed to report any information regarding a customer complaint that it received in August 2002.

Such acts, practices, and course of conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3070 by Milkie/Ferguson Investments, Inc. and John Henry Merbler.

4. During the period from May 1, 2001, through August 31, 2003, Milkie/Ferguson Investments, Inc., failed to timely report 22 of 49 municipal transactions to the MSRB.

Such acts, practices, and course of conduct constitute separate and distinct violations of MSRB Rule G-14 by Milkie/Ferguson Investments, Inc.

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

Milkie/Ferguson Investments, Inc.: a censure and a monetary fine in the amount of \$17,500, of which \$13,750 will be imposed jointly and severally with John Henry Merbler.

John Henry Merbler: a censure and a monetary fine in the amount of \$13,750, imposed jointly and severally with Milkie/Ferguson Investments, Inc.

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 an Election of Payment form showing the method by which they 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.

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 them to submit it.

11-12-04
Date

Milkie/Ferguson Investments, Inc.

By: Edward M. Milkie
(signature)

Name: EDWARD M. MILKIE
(printed name)

Title: PRESIDENT

Nov. 12 2004
Date

John H. Merbler
John Henry Merbler

Reviewed by:

Counsel for Respondents

Letter of Acceptance, Waiver and Consent
C06050001/Milkie/Ferguson Investments, Inc. and
John Henry Merbler

Accepted by NASD:

12/31/2004
Date

Virginia F. M. Jans / L.F.
Virginia F. M. Jans
Associate Vice-President and Director
Signed on behalf of the Director of ODA, by
delegated authority.