

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C10040127

Department of Enforcement
NASD

Burnham Securities, Inc., Respondent
BD No. 22549

Pursuant to Rule 9216 of NASD Code of Procedure, Burnham Securities, Inc. ("Burnham" or "Respondent") submits 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 Burnham alleging violations based on the same factual findings.

Burnham understands 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 Burnham; and
3. If accepted:
 - a. this AWC will become part of Burnham's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Burnham's 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. Burnham 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 creating the impression that the AWC is without factual basis. Nothing in this provision affects Burnham's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Burnham also understands that its 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:

Burnham has been a member of NASD since October 25, 1988. The firm maintains its principal place of business at 1325 Avenue of the Americas, New York, New York. At all relevant times, Burnham engaged in mutual fund trading that was responsible for approximately 3% of the firm's revenue.

Burnham has no formal relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Burnham specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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, Burnham 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.

Burnham further specifically and voluntarily waives 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

Burnham hereby accepts and consents, 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:

Summary

During the period from February 1, 2002 through August 21, 2003, Burnham failed to establish and maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions and, as a result, violated NASD Rules 3010 and 2110.

"Late trading" refers to the practice of accepting and entering orders to buy or sell mutual fund shares after 4:00 p.m. Eastern Time, the time as of which mutual funds typically calculate their net asset value (NAV), at prices based on the prior NAV already determined as of 4:00 p.m. Eastern Time.¹

As described in below, Burnham's systems and procedures were deficient in a number of ways. Burnham had no procedures in place regarding the time mutual fund orders could be entered, its representatives were not required to enter orders promptly after receipt, and the firm's written supervisory procedures did not require supervisory review or approval of mutual fund orders entered after 4:00 p.m. Eastern Time.

Additionally, during the period from February 1, 2002 through August 21, 2003, Burnham failed to create records reflecting the time of entry of mutual fund orders, and during the period May 2, 2003 through August 21, 2003, Burnham failed to create records reflecting receipt of mutual fund orders. As a result, Burnham violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Rules 17a-3(a)(6) and 17a-4(b)(1) thereunder, and NASD Conduct Rules 3110 and 2110.

¹ Late trading is a violation of Rule 22c-1 under the Investment Company Act of 1940 and NASD Rule 2110.

Background

Most mutual funds are priced once per day at market close. Trades received at or after market close must be priced at the next day's NAV. The purpose of this "forward pricing" rule is to place all purchasers of mutual fund shares on equal footing as to price and information on any one day. Broker-dealers that accept and enter late trades for their customers unfairly provide the possibility of an information advantage over other investors based on after-close news that could affect the mutual fund's holdings, but which is not reflected in the NAV pricing for that day. Member firms executing mutual fund orders must establish and maintain supervisory systems and procedures reasonably designed to detect and prevent the occurrence of late trading.

Burnham Failed to Establish and Maintain Systems and Procedures Reasonably Designed to Prevent and Detect Late Trading

During the period from February 1, 2002 through August 21, 2003, of a sample of 263 mutual fund transactions processed by Burnham where the principal amount was \$1,000 or greater, approximately 250, or 95% of the mutual fund orders were processed after 4:00 p.m. where the firm's records contained no indication that the orders were received before 4:00 p.m.

Burnham failed to establish, maintain or enforce supervisory systems and written procedures that were reasonably designed to prevent and detect late trading. Burnham's systems did not prevent or restrict representatives from accepting and entering orders received from customers after 4:00 p.m. at the current day's NAV. Instead, under the system as it existed at Burnham, orders for mutual fund trades could be entered until 5:30 p.m. Eastern Time, one and one-half hours after the market close.

Burnham's written procedures also failed to instruct representatives that late trading was prohibited. Burnham failed to have procedures in place regarding the time mutual fund orders could be placed into its order entry system, representatives were not required to enter orders promptly after receipt, and the firm's written supervisory procedures did not require supervisory review or approval of mutual fund orders submitted after 4:00 p.m. Eastern Time. The firm also conducted no surveillance or auditing efforts to ensure that late trades were not being executed and processed.

As a result of the foregoing, Burnham violated NASD Rules 3010 and 2110.

Burnham Failed to Maintain Certain Records of Mutual Fund Transactions

At all relevant times, Exchange Act Rule 17a-3(a)(6) and 17a-4(b)(1) required member firms to create and preserve records reflecting the time of entry of orders to purchase or sell securities, including shares of mutual funds. During the period from February 1, 2002 through August 21, 2003, however, with respect to 212 of the 263 mutual fund

transactions reviewed, Burnham failed to create records reflecting the time of entry of the mutual fund orders.

Additionally, as of May 2, 2003, Exchange Act Rules 17a-3(a)(6) and 17a-4(b)(1) required member firms to create and preserve records reflecting the time of receipt of orders to purchase or sell securities, including shares of mutual funds. Despite this requirement, during the period May 2, 2003 through August 21, 2003, Burnham processed 62 mutual fund transactions but failed in each instance to create records reflecting receipt of orders to purchase or sell mutual fund shares.

As a result of the foregoing, Burnham violated Section 17(a) of the Exchange Act, Rules 17a-3(a)(6) and 17a-4(b)(1), and NASD Conduct Rules 3110 and 2110.

SANCTIONS

Burnham consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- A fine in the amount of \$85,000.

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

III.

OTHER MATTERS

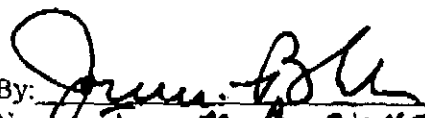
- A. Burnham understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Burnham understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Burnham agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Burnham specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Burnham certifies that it has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat,

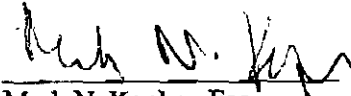
inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Burnham to submit it.

Burnham Securities, Inc.

Date: December 21st, 2004

By: 
Name: Jon M. Burnham
Title: CHAIRMAN

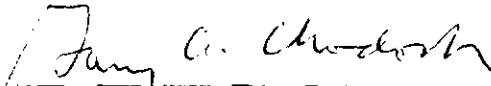
Reviewed by:



Mark N. Kaplan, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Counsel for Respondent

Accepted by NASD:

December 30, 2004
Date


Gary A. Chodosh
Regional Counsel
Department of Enforcement

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

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NO. 491 D02

Statement of Corrective Action
Burnham Securities Inc. CRD # 22549 ("Burnham" or the "Firm")

In connection with its submission of the Letter of Acceptance, Waiver and Consent ("AWC") attached hereto, Burnham provides this Statement of Corrective Action.

Statement of Corrective Action:

Burnham has taken corrective action and made changes in its policies and procedures. The order desk has been instructed to review all order tickets to assure that they are properly completed and time stamped prior to execution. No mutual fund order ticket may be executed unless it is time stamped to show time of receipt. In addition, no mutual fund order ticket may be executed after 4:00 pm unless it is time stamped as having been received prior to 4:00 pm. A supervisor must review all order tickets entered after 4:00 pm to assure that the foregoing procedure is complied with. In addition, once a month, two days of mutual fund order tickets selected randomly will be reviewed by a supervisor to confirm adherence to these procedures. At its annual compliance meeting in 2003, employees were notified of the NASD's review of the Firm's mutual fund order taking procedures. At its annual compliance meeting in 2004, the Firm's modified procedures will be reviewed with all relevant employees.

Total adherence to its compliance obligations remains Burnham's goal.

This Corrective Action Statement is submitted by the Respondent.
It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.