

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C3A050020

TO: Department of Enforcement
NASD

RE: Berry-Shino Securities, Inc., Member, Respondent
CRD No.38098

R. Matthew Shino, General Securities Principal, Respondent
CRD No. 1380293

Mary Daniel, Financial and Operations Principal, Respondent
CRD No. 4539009

Pursuant to Rule 9216 of NASD Code of Procedure, we [or Respondents] 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 us alleging violations based on the same factual findings.

We 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary records;
 - 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. We 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 our testimonial obligations or rights to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

We also understand that our 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:

Berry-Shino Securities, Inc. ("BSSI") became a member of NASD in September 1995 and it has been a member continuously since that time. The firm was the subject of an NASD disciplinary action in which it was fined jointly and severally with R. Matthew Shino in the amount of \$52,500.00 for violations relating to excessive commissions on options transactions and the failure to obtain certain information concerning options accounts.

R. Matthew Shino ("Shino") entered the securities industry in June 1985 as a representative of a member of NASD. He co-founded BSSI and has been associated with that firm in various principal capacities from the firm's inception to the present time. He was also named in the NASD disciplinary action referenced above and, in addition to the joint and several fine noted, was suspended in all principal capacities for a period of 10 business days.

Mary Daniel joined BSSI as the firm's bookkeeper in February 2000 and became the firm's Financial and Operations Principal in June 2002. She is presently associated with the firm in that capacity and has not previously been the subject of disciplinary action.

I.

WAIVER OF PROCEDURAL RIGHTS

We 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 us;
- 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, we 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.

We 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. We 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. Rule 3070 reporting: During the period from May 1, 2001 through August 28, 2003, BSSI, acting through Shino, failed to report four customer complaints and reported eight customer complaints late, in violation of NASD Conduct Rule 3070(c), and failed to report an arbitration award pursuant to NASD Conduct Rule 3070(a)(7), all in violation of NASD Conduct Rules 2110 and 3070 by Respondents BSSI and Shino;
 - 2. Filing of Form U-4 Amendments Pertaining to BSSI Representatives: During the period from May 1, 2001 through November 6, 2003, BSSI, acting through Shino, failed timely to amend a previously-filed Form U-4 pertaining to a representative of the firm to disclose a customer complaint and, with respect to a single arbitration claim naming multiple parties, amended two previously-filed Forms U-4 late and failed to amend a third previously-filed Form U-4, in contravention of Article V, Section 2(c) of the NASD By-laws

and in violation of NASD Conduct Rule 2110 by Respondents BSSI and Shino;

3. Filing of Initial and Amended Forms U-5 Pertaining to Former Representatives of BSSI: During the period from on or about March 31, 2001 through on or about April 17, BSSI acting through Shino, filed fifteen Forms U-5 more than 30 days following the termination of the individual's association with BSSI and failed timely to amend the previously-filed Forms U-5 of nine individuals formerly associated with BSSI, in contravention of Article V, Section 3 of the NASD By-laws and in violation of NASD Conduct Rule 2110 by Respondents BSSI and Shino;
4. Inaccurate Books and Records: During the period from December 2002 through May 2003, BSSI, acting through Daniel, the firm's Financial and Operations Principal, failed accurately to maintain the firm's financial records, in that the recordation of assets and liabilities, the calculation of a trial balance and the computation of net capital for the last business day of each such month was materially inaccurate, in violation of SEC Rule 17a-3 by Respondent BSSI and in violation of NASD Conduct Rule 2110 by Respondents BSSI and Daniel;
5. Inaccurate FOCUS Reports: The FOCUS Reports submitted by Daniel on behalf of BSSI for the months of December 2002 through May 2003 contained materially inaccurate net capital computations, in violation of SEC Rule 17a-5 by Respondent BSSI and in violation of NASD Conduct Rule 2110 by Respondents BSSI and Daniel;
6. Membership Agreement Violations: As a result of the material inaccuracies in the firm's books and records during the period from December 2002 through May 2003 that are described in paragraph 4 above, BSSI's net capital fell below the minimum required in the firm's membership agreements in effect during that period, in violation of NASD Conduct Rule 2110 by Respondent BSSI.
7. Violation of SEC Rule 15c2-4: During the period from approximately November 1, 2001 through approximately January 31, 2002, BSSI accepted funds for investment in a private placement in which the issuer's entitlement to the offering proceeds was subject to a minimum sales contingency, but did not forward the funds to an account established in accordance with SEC Rule 15c2-4, in violation of SEC Rule 15c2-4 and NASD Conduct Rule 2110 by Respondent BSSI;
8. Excessive Options Commissions: Between April 1, 2003 and August 31, 2003, BSSI, acting through persons then associated with the firm's former New York, NY branch, executed or caused the execution of approximately 83 transactions in long-term options for which customers were charged commissions that were excessive in light of all relevant factors, in violation of NASD Conduct Rule 2110 by Respondent BSSI; and

9. Inadequate Supervisory System: During the period from approximately June 1, 2001 through approximately December 31, 2003, the supervisory system of BSSI for the oversight of the New York branch office was not reasonably designed to achieve compliance with NASD Conduct Rule 2110 as it applies to the conduct described in paragraph 8 above, in violation of NASD Conduct Rules 2110 and 3010 by BSSI.

B. We also consent to the imposition, at a maximum, of the following sanctions:

1. Respondent BSSI shall be censured and fined in the amount of \$45,050.00, of which \$7,550.00 represents the disgorgement of the financial benefit to the firm from the options transactions commissions referenced in paragraph 8 above. \$10,000.00 of the fine shall be joint and several with Respondent Shino and \$5,000.00 shall be joint and several with Respondent Daniel.
2. Respondent BSSI shall implement the recommendations pertaining to its compliance, financial and operational and sales charge policies and procedures that are set forth in the report of the independent consulting firm that BSSI voluntarily retained prior this action. BSSI shall provide to NASD not more than 90 days following the date upon which this action becomes final a written report demonstrating that the firm has implemented the recommendations.
3. Respondent Shino shall be censured and fined in the amount of \$10,000.00 jointly and severally with Respondent BSSI.
4. Respondent Daniel shall be fined in the amount of \$5,000.00 jointly and severally with Respondent BSSI.

Payment of Fine: The fines imposed upon Respondent BSSI, together with interest as set forth in the promissory note to be executed in connection herewith, shall be payable in four equal installments. The first installment shall be due on or before 30 days following the date upon which this AWC becomes final. The three subsequent equal payments shall be due on or before June 1, 2005, December 1, 2005 and June 1, 2006, respectively. The portion of the fine that is joint and several with Respondent Daniel shall be discharged in connection with the first payment and the portion that is joint and several with Respondent Shino shall be allocated equally among the three remaining payments. The financial condition of Respondent BSSI, as evidenced by the firm's periodic financial reports to NASD, has been taken into consideration in the determination of the fine and the manner in which it is to be paid.

III.

OTHER MATTERS

- A. We understand that we, collectively or individually, may attach to this AWC a *Corrective Action Statement* that is a statement of demonstrable corrective steps taken to prevent future misconduct and/or a statement of mitigation that sets forth the circumstances in which the violations occurred. We understand that we 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. We agree to pay any monetary sanctions imposed on us as provided in Part II above.
- C. We specifically and voluntarily waive any right to claim at any time hereafter that we are, or any of us individually is, unable to pay any monetary sanction imposed in this matter.

4-27-05
Date

By: [Signature]
Name and title

4-27-05
Date


R. Matthew Shino, Respondent

4-27-05
Date


Mary Daniel, Respondent

Counsel for Respondent

5-18-2005
Date

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