

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C8A050034

TO: Department of Enforcement
NASD

Re: Fifth Third Securities, Inc. ("Fifth Third")
(CRD No. 628)

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

Respondent 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 Respondent; and,
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rules 8310 and IM-8310-2; and,
 - d. Respondent 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 allegations in this AWC or create the impression

that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that Fifth Third's 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:

Fifth Third became registered as a broker-dealer on September 11, 1939 and its registration as a broker-dealer and membership with NASD remain in effect. Fifth Third has conducted and conducts a general securities business and is an underwriter for municipal bonds. Within the last five years, Fifth Third's disciplinary history includes:

an AWC that was issued on February 26, 2002 for Continuing Education Regulatory Element, with a fine of \$15,000;

an AWC that was issued on November 17, 2003 for violations of MSRB Rules G14 and G27 for failing to report the correct time of execution to MSRB in transactions for which the firm had recording and reporting obligations, with a fine of \$20,000; and

a cease and desist order and fine by the Securities and Exchange Commission, for 14 political contributions during 1997 through 2001, made by officers of two banks affiliated with Fifth Third, to candidates for elective offices responsible for, or having the authority to appoint persons who were responsible for hiring brokers, dealers or municipal securities dealers for municipal securities business by certain units of state and local government in the State of Ohio ("the Issuers"). Each of these contributions triggered a two-year ban on Fifth Third's municipal securities business with the Issuers. Within two years of these political contributions, Fifth Third sought and was selected to participate in, 24 municipal securities transactions, including negotiated underwritings of municipal securities offered by the Issuers. Despite the bans on municipal securities business with the Issuers, Fifth Third engaged in these transactions totaling \$2.3 billion and earned approximately \$1,000,000, for which it was ordered to pay a civil penalty of \$1,000,000

1.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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;

- 14-0000
- 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, Respondent 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.

Respondent 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

- A. Respondent 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, 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. Article V, Section 3 of NASD's By-Laws provides that, following the termination of the association with a member of a person who is registered with it, such member shall, not later than 30 days after such termination, give notice of the termination of such association to NASD, and concurrently provide to the person whose association has been terminated a copy of said notice as filed with NASD. A member that does not submit such notification and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by NASD. In the event a member learns of facts or circumstances causing any information set forth in a termination notice (Form U5) filed with NASD to become inaccurate or incomplete, the member must notify NASD, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice. The Form U-5 is required to be filed with NASD within 30 calendar days of the registration termination of the registered representative.

2. From February 2002 until July 2003, Fifth Third filed Forms U-5 Uniform Termination Notice for Securities Industry Registration for 734 individuals whose registrations were terminated. Of the 734 registrations that were terminated during the 29-month period in question, the Forms U-5 for 152 registered representatives (20%) were submitted late, in violation of Article V, Section 3 of NASD By-Laws and NASD Conduct Rule 2110.
3. Municipal Securities Rulemaking Board ("MSRB") Rule G-36 requires, in pertinent part, that each broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Securities Exchange Rule 15c2-12 shall send to the Board within one business day after receipt of the official statement from the issuer, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, the final official statement and completed Form G36.
4. During the period from on or about July 1, 2001 through March 31, 2003, Fifth Third failed to file the MSRB Forms G36 for the primary offering of at least 28 municipal underwritings, within 10 business days after the final agreement to purchase, offer or sell the securities; of the aforementioned 28 municipal securities, Fifth Third also failed to file the MSRB Forms G36 for 19 municipal underwritings within one business day after receipt of the official statement from the issuer, in violation of MSRB Rule G-36.
5. In connection with the delays noted in paragraph 2 and 4, Fifth Third failed to enforce its written supervisory procedures in that:
 - a) after repeated late submissions by approximately 17 managers of Fifth Third's Offices of Supervisory Jurisdiction, of Forms U-5 for individuals whose registrations were terminated, it failed to ensure that all Forms U-5 were timely filed in NASD's Central Registration Depository within 30 calendar days, as required by Article V Section 3 of NASD By-Laws, in violation of NASD Conduct Rules 2110 and 3010(b); and
 - b) it failed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons were in compliance with applicable MSRB rules and requirements, in that, after repeated late submissions by its associated persons, Fifth Third failed to ensure that all MSRB Forms G-36 were timely submitted to the MSRB, in violation of MSRB Rule G-27(c).
- B. Respondent also consents to the imposition, at a maximum, of the sanctions of:
 - a censure; and
 - a fine of \$79,750.

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

III.

OTHER MATTERS

- A. Respondent 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. Respondent 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. Respondent 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. Respondent 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.

Respondent certifies that a duly authorized officer has read and understands 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 Respondent to submit it.

Fifth Third Securities, Inc.

4/27/05
Date

Shanda Gentry
By Shanda Gentry
Its Compliance Officer

Reviewed by:

R. J. Smiley
Counsel for Respondent

Accepted by NASD:

May 3, 2005
Date

Carlotta A. Romano
Carlotta A. Romano
Senior Vice President and Regional Director
Signed on behalf of the Director of ODA
by delegated authority