

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Hany Samir Awadalla,
CRD No. 2074306

Respondent.

Disciplinary Proceeding
No. CAF030058

Hearing Officer – Dana R. Pisanelli

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 6, 2005

INTRODUCTION

Disciplinary Proceeding No. CAF030058 was filed on February 17, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondent Hany Samir Awadalla submitted an Offer of Settlement ("Offer") to Complainant on May 4, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent Awadalla has been registered with NASD as a general securities representative since 1990. Awadalla was associated with Robertson Stephens, Inc. from June 1997 until August 2002. Prior to working at Robertson Stephens, Awadalla was associated with several other NASD member firms, including Merrill Lynch, Pierce, Fenner & Smith, Inc., and UBS Securities, LLC. Awadalla is currently associated with NASD member firm Wells Fargo Securities, LLC. Awadalla has no disciplinary history.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

In June 2001, Awadalla, a Managing Director in investment banking at Robertson Stephens, threatened an official at ResMed, Inc. ("ResMed"), a public company, in an attempt to obtain a larger fee for Robertson Stephens' corporate finance services than the company was willing to pay. Specifically, Awadalla threatened the Vice President and Corporate Secretary of ResMed that unless Robertson Stephens was paid \$1 million for participating in ResMed's June 2001 convertible bond offering, Robertson Stephens' research analyst would be instructed to drop research coverage of ResMed. By virtue of this conduct, Awadalla failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Conduct Rule 2110.

Robertson Stephens, B/D No. 41271, was a registered broker-dealer and member of NASD. The Firm was headquartered in San Francisco, California and had several branch offices.

The Firm's business included investment banking and publication of research reports. On July 12, 2002, FleetBoston Financial Corporation, Robertson Stephens' parent company, announced its intention to wind down the Firm. Robertson Stephens' Form BDW became effective as to NASD on May 16, 2003.

During the period relevant to this Offer, a Principal in the Life Sciences Group within the Investment Banking Department of Robertson Stephens served as the Firm's primary investment banking contact (the "Relationship Manager") for ResMed. During this period, the Relationship Manager worked in the Firm's New York City office.

ResMed is a respiratory medical device manufacturer, specializing in products for the diagnosis and treatment of sleep disordered breathing. ResMed became a public company in 1995. Robertson Stephens served as lead manager of ResMed's initial public offering. ResMed shares are currently traded on the New York Stock Exchange (NYSE: RMD) and the Australian Stock Exchange (ASX: RMD).

ROBERTSON STEPHENS' RESEARCH COVERAGE OF RESMED

Following ResMed's initial public offering, Robertson Stephens provided research coverage of ResMed. During the period relevant to this Offer, Robertson Stephens regularly published research reports on ResMed. For example, during the one-year period from May 2000 through April 2001, Robertson Stephens published eleven research reports on ResMed. ResMed personnel considered the research analyst who covered ResMed for Robertson Stephens to be one of the best research analysts covering the company. In addition to being well-educated about ResMed's products, the analyst had a medical background that gave him additional insight into the company and its long-term prospects.

On May 2, 2001, Robertson Stephens issued a research report raising its rating for ResMed from “Long-Term Attractive” to “Buy.” Robertson Stephens followed this report with reports issued on May 16, 2001 and June 5, 2001 maintaining the “Buy” rating.

RESMED’S CONVERTIBLE BOND OFFERING

On June 11, 2001, ResMed announced that it intended to raise \$150 million (plus an additional amount if the over-allotment option was exercised) through a private placement of convertible subordinated notes due 2006 (the “Convertible Bond Offering” or “CBO”). The lead managers for the CBO were two other investment banking firms. Prior to this announcement, but after ResMed selected the lead managers, ResMed sought other investment banks to participate in the CBO as secondary managers.

In early June 2001, ResMed’s Vice President and Corporate Secretary (the “ResMed official”) contacted the Relationship Manager by telephone to offer Robertson Stephens the opportunity to participate as a secondary manager in the CBO. The ResMed official told the Relationship Manager that ResMed was offering Robertson Stephens a fee of approximately \$350,000 for its participation in the CBO. During the negotiations, the Relationship Manager told the ResMed official that unless Robertson Stephens was paid \$1 million to participate in the CBO, he would instruct the firm’s research analyst to drop research coverage of ResMed and Robertson Stephens would not participate in the offering.

Following that conversation, the Relationship Manager sought Awadalla’s counsel regarding the fee negotiations with ResMed. Awadalla agreed to assist the Relationship Manager with the negotiations. Thereafter, on or about the day after that initial conversation between the Relationship Manager and the ResMed official, Awadalla, with the Relationship Manager on the line, called the ResMed official to discuss Robertson Stephens’ potential participation in the

CBO. Awadalla told the ResMed official that unless Robertson Stephens was paid \$1 million to participate in the CBO, the Firm's research analyst would be instructed to drop research coverage of ResMed and Robertson Stephens would not participate in the CBO.

The threat made by Awadalla was an attempt to coerce ResMed into paying Robertson Stephens more for its participation in the CBO than ResMed was willing to pay. The ResMed official informed ResMed's CEO of the threat made by Awadalla. Even though the ResMed personnel believed that the threat would be carried out, they decided that ResMed would not succumb to the threat and, accordingly, after several additional phone calls in which Awadalla did not participate, the negotiations ended. Robertson Stephens did not participate in the CBO. On June 20, 2001, Robertson Stephens issued a report lowering its rating on ResMed from a "Buy" to a "Market Perform". This was the last research report on ResMed that Robertson Stephens published. ResMed continued to receive research coverage from several other banks.

By virtue of his threat to drop research coverage of ResMed unless Robertson Stephens was paid \$1 million for its participation in the CBO, Awadalla failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured and fined \$75,000. The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

By: 

Gary M. Lisker
Counsel, Department of Enforcement
on behalf of the Director of ODA, pursuant to
delegated authority