

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ## CE2050008

TO: Department of Enforcement
NASD

RE: J.P. Morgan Securities Inc.
CRD # 18718

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent J. P. Morgan Securities Inc. ("J.P. Morgan" 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 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 made 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 Rule 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 allegation 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 Respondent'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:

J. P. Morgan Securities Inc. currently is, and at all times relevant to this AWC was, a broker-dealer with its primary offices located in New York, New York. The firm has been a member of NASD since 1987. J.P. Morgan is the successor-in-interest to Hambrecht & Quist LLC ("H&Q"). H&Q became a registered broker-dealer and member of NASD on May 13, 1968. On December 9, 1999, The Chase Manhattan Corporation ("CMC") acquired the parent corporation of H&Q. On February 1, 2000, H&Q was merged into Chase Securities Inc., a broker-dealer subsidiary of CMC. On December 31, 2000, CMC acquired J.P. Morgan. On May 1, 2001, the two CMC securities affiliates were merged and became J.P. Morgan Securities Inc. There are currently approximately 4,350 registered representatives in J.P. Morgan's 104 branch offices. The firm has no relevant disciplinary history.

I.

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 Respondent;
- 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

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 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.

A. Sale of PlanetRx.com Prior to Expiration of Lock-Up Period

1. On or about January 15, 1999, H&Q SERV*IS Ventures Management, LLC ("H&Q SERV"), an entity affiliated with H&Q, purchased 61,160 pre-IPO PlanetRx.com, Inc. ("PlanetRx") Series B preferred shares.¹

2. On October 6, 1999, PlanetRx sold shares to the public through an initial public offering ("IPO"). H&Q was a co-manager of PlanetRx's IPO. Upon completion of the IPO, the PlanetRx shares purchased by H&Q SERV automatically converted to common stock. Pursuant to NASD's Corporate Financing Rule, Conduct Rule 2710, as a result of H&Q's participation in PlanetRx's underwriting, the pre-IPO shares acquired by H&Q SERV were deemed to be underwriting compensation.

3. At the time of the PlanetRx IPO, Conduct Rule 2710(c)(7)(A)(i) required that securities deemed to be underwriting compensation not be sold for a period of one year following the effective date of the offering.²

4. During its review of the terms of the PlanetRx offering, NASD's Corporate Financing Department determined that the proposed underwriting compensation was excessive. To lower the amount of underwriting compensation deemed to be received by a participant in an underwriting, Rule 2710 provides for a discount in calculating the amount of underwriting compensation if an underwriter agrees to restrict securities from being sold beyond the one year period required by the rule.

¹ In total, H&Q SERV purchased 418,520 PlanetRx pre-IPO Series B preferred shares. The remaining 357,360 shares were transferred to a limited partner and were not subject to any lock-up agreement.

² Effective March 22, 2004, this specific provision was modified to require that securities deemed to be underwriting compensation not be sold for a period of 180 days. NASD Conduct Rule 2710(g)(1).

5. In order to have the terms of the offering approved, H&Q represented to NASD's Corporate Financing Department that the shares held by H&Q SERV would not be sold for three years from the effective date of the IPO, or October 6, 2002. The PlanetRx registration statement stated that these shares "will be restricted from sale, transfer, assignment or hypothecation for a period of three years from the effective date of the offering, except to the underwriters and members of the selling group and/or their officers or partners (but not directors)."

6. H&Q SERV sold the shares on January 29, 2002, prior to the expiration of the three-year period agreed to by the firm. J.P. Morgan did not receive any profit as a result of this sale.

7. J.P. Morgan, through H&Q, violated Conduct Rule 2110 by failing to take reasonable steps to ensure that its representations to NASD, specifically that shares held by H&Q SERV would not be sold for three years from the effective date of the IPO, would be adhered to.

B. Sale of coolsavings.com Prior to Expiration of Lock-Up Period

8. On or about December 23, 1999, H&Q California, an entity affiliated with H&Q, purchased 15 pre-IPO shares of coolsavings.com inc. ("coolsavings") Series A convertible preferred stock.

9. On May 19, 2000, coolsavings sold shares to the public through an IPO. H&Q co-managed that IPO. Upon completion of the IPO, the coolsavings shares owned by H&Q California were automatically converted into 19,262 shares of common stock. Pursuant to Conduct Rule 2710, as a result of H&Q's participation in the coolsavings underwriting, the pre-IPO shares acquired by H&Q California were deemed to be underwriting compensation.

10. At the time of the coolsavings IPO, NASD Conduct Rule 2710(c)(7)(A)(i) required that securities deemed to be underwriting compensation not be sold for a period of one year following the effective date of the offering.

11. In order to have the terms of the offering approved, H&Q represented to NASD's Corporate Financing Department that the shares held by H&Q California would not be sold or transferred for one year from the effective date of the IPO, or May 19, 2001, except for transfers to officers or partners to whom the restriction also applied. The coolsavings registration statement stated that the holders of these pre-IPO shares "have agreed for a period of one year from the date of this prospectus not to sell, transfer, assign, pledge or hypothecate these shares."

12. On November 6, 2000, H&Q California transferred 2,568 shares of coolsavings common stock to D.S., and on December 14, 2000, H&Q California

transferred 1,284 shares of coolsavings common stock to C.G. Both D.S. and C.G. were officers of H&Q at the time.

13. D.S. and C.G. sold their shares on May 11, 2001 and January 8, 2001, respectively, prior to the expiration of the one-year period agreed to by the firm and required by NASD rules. H&Q did not receive any profit as a result of these sales.

14. The sales that occurred less than one year after the effective date of the coolsavings IPO violated the provisions of NASD Conduct Rule 2710(c)(7)(A)(i). J.P. Morgan, through H&Q, violated Rules 2710 and 2110 by failing to take reasonable steps to ensure that shares held by the two H&Q officers were not sold in less than one year as required by Rule 2710(c)(7)(A)(i). J.P. Morgan, through H&Q, also violated Conduct Rule 2110 by failing to take reasonable steps to ensure that its representations to NASD -- that shares held by its affiliated entity would not be sold for one year from the effective date of the IPO -- would be adhered to.

C. Sale of Net2Phone Prior to Expiration of Lock-Up Period

15. On or about May 13, 1999, D.R. and T.B. each acquired 6,000 pre-IPO shares of Net2Phone, Inc. ("Net2Phone") Series A convertible preferred stock. D.R. and T.B. were officers of H&Q at the time.

16. On July 29, 1999, Net2Phone sold shares to the public through an IPO. H&Q was a joint book-running manager of that IPO. Upon completion of the IPO, the Net2Phone shares owned by D.R. and T.B. automatically converted to common stock. Pursuant to Conduct Rule 2710, as a result of H&Q's participation in Net2Phone's underwriting, the pre-IPO shares acquired by the two H&Q officers were deemed to be underwriting compensation.

17. At the time of the Net2Phone IPO, NASD Conduct Rule 2710(c)(7)(A)(i) required that securities deemed to be underwriting compensation not be sold for a period of one year following the effective date of the offering.

18. During its review of the terms of the Net2Phone offering, NASD's Corporate Financing Department determined that the proposed underwriting compensation was excessive.

19. In order to have the terms of the offering approved, H&Q represented to NASD's Corporate Financing Department that 4,800 of the shares held by each of the two H&Q officers would not be sold for three years from the effective date of the IPO, or July 29, 2002. The Net2Phone registration statement stated that H&Q and persons associated with it would enter into written agreements with Net2Phone providing that they would not "sell, transfer, assign, pledge or hypothecate any shares of [Net2Phone] capital stock owned by them that are deemed to be underwriting compensation" for periods of one and three years from the date of the prospectus.

20. D.R. and T.B. sold their shares on October 31, 2000 and April 23, 2002, respectively, prior to the expiration of the three-year period agreed to by the firm and required by NASD rules. H&Q did not receive any profit as a result of these sales.

21. J.P. Morgan, through H&Q, violated Conduct Rule 2110 by failing to take reasonable steps to ensure that its representations to NASD that shares held by the two H&Q officers would not be sold for three years from the effective date of the IPO would be adhered to.

D. Sale of Liberate Technologies Prior to Expiration of Lock-Up Period

22. On or about April 27, 1999, K.H., an officer of H&Q at the time, purchased 1,042 pre-IPO shares of Liberate Technologies ("Liberate") Series E preferred stock.

23. On July 27, 1999, Liberate sold shares to the public through an IPO. H&Q co-managed that IPO. Upon completion of the IPO, the Liberate shares owned by K.H. automatically converted to common stock. Pursuant to Conduct Rule 2710, as a result of H&Q's participation in Liberate's underwriting, the pre-IPO shares acquired by the H&Q officer were deemed to be underwriting compensation.

24. At the time of the Liberate IPO, NASD Conduct Rule 2710(c)(7)(A)(i) required that securities deemed to be underwriting compensation not be sold for a period of one year following the effective date of the offering.

25. In order to have the terms of the offering approved, H&Q represented to NASD's Corporate Financing Department that the shares held by the H&Q officer would not be sold for one year from the effective date of the IPO, or July 27, 2000. The Liberate registration statement stated that the H&Q officer has "agreed not to sell, pledge, transfer or hypothecate [his] shares for a one year period from the effective date of this offering."

26. K.H. sold his shares on July 19, 2000, prior to the expiration of the one-year period agreed to by the firm and required by NASD rules. H&Q did not receive any profit as a result of this sale.

27. The sale of the Liberate shares that occurred less than one year after the effective date of the IPO violated the provisions of NASD Conduct Rule 2710(c)(7)(A)(i).

28. J.P. Morgan, through H&Q, violated Rules 2710 and 2110 by failing to take reasonable steps to ensure that shares held by the H&Q officer were not sold in less than a year as required by Rule 2710(c)(7)(A)(i). J.P. Morgan, through H&Q, also violated Conduct Rule 2110 by failing to take reasonable steps to ensure that its representations to NASD -- specifically that shares held by the H&Q officer would not be sold for one year from the effective date of the IPO -- would be adhered to.

E. Lack of Adequate Supervisory Systems

29. J.P. Morgan's supervisory system, including its written procedures, contained inadequate policies or procedures for monitoring restrictions on sales of securities held by individuals associated with J.P. Morgan which could not be sold for specified periods of time pursuant to NASD Conduct Rule 2710. J.P. Morgan's supervisory system also contained inadequate policies or procedures for monitoring restrictions on sales of securities which H&Q had represented to NASD would not be sold for specified periods in connection with obtaining approval of the terms of an offering. By failing to establish and maintain an adequate supervisory system, including written procedures, reasonably designed to ensure that shares would not be sold prior to when permissible under Rule 2710 or prior to the period represented by the firm to NASD, J.P. Morgan violated NASD Conduct Rules 3010(a) and (b) and 2110.

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

1. A censure; and
2. A fine of \$150,000.

III.

OTHER MATTERS

A. Respondent understands that Respondent 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 Respondent 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 Respondent 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 Respondent proposes to pay any fine imposed.

C. Respondent specifically and voluntarily waives any right to claim that Respondent is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that Respondent 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, have been made to induce Respondent to submit it.

March 10, 2005
Date

Paul Brando
J. P. Morgan Securities Inc.
Respondent

By: PAUL BRANDOW, President
[Name and title]

Reviewed by:

Steven N. Macthinger
Counsel for Respondent

Accepted by NASD:

4/19/05
Date

Thomas B. Dawson
Director and Chief Counsel
Department of Enforcement
Signed on behalf of the Director of ODA,
By delegated authority