

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE4050009**

TO: Department of Enforcement
NASD

RE: Linsco/Private Ledger Corp.
One Beacon Street, 22nd Floor
Boston, Massachusetts 02108-3106
BD No. 6413

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent Linsco/Private Ledger Corp. ("LPL") 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 it alleging violations based on the same factual findings.

LPL 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 it; and
3. If accepted:
 - a. this AWC will become part of LPL'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 LPL's 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. LPL 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 LPL's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

LPL 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:

Linsco/Private Ledger Corp. has been an NASD member since 1983. Its principal offices are located in Boston, Massachusetts. It has no relevant formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

LPL 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 ("SEC") and a U.S. Court of Appeals.

Further, LPL 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.

LPL 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. Findings

LPL 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

1. This matter involves violations of NASD Rule 2830(k), which prohibits member firms from favoring or disfavoring the sale or distribution of mutual fund shares on the basis of brokerage commissions received by the firm, prohibits member firms from arranging for a specific amount or percentage of brokerage commissions to be directed to the firm conditioned on the firm's sale of mutual fund shares, and prohibits member firms from recommending the purchase of mutual fund shares on the basis of brokerage commissions received or expected to be received by the firm from any source.
2. From January 2001 through December 2003, LPL maintained shelf space (or revenue sharing) programs in which participating mutual fund complexes paid a fee in return for preferential treatment, which included enhanced access to the firm's sales force, participation in firm meetings and placement of promotional material on the firm's internal website. One fund complex paid all, and some paid part of their fees for participating in the programs by directing over \$14.4 million in brokerage commissions to LPL. Those commission payments violated NASD Conduct Rules 2830(k) and 2110.

The FundsPLUS and Participating Sponsor Programs

3. The FundsPLUS and the Participating Sponsor programs were developed by LPL prior to 2001. In return for a fee, mutual funds participating in the FundsPLUS and Participating Sponsor programs were given preferential treatment over other funds which could be purchased through LPL.¹ The benefits included enhanced access to LPL's sales force, including participation in top producer meetings, training events, and educational telephone calls to the sales force; having their funds identified as participants in the programs on LPL's internal website; placing content in LPL's internal communications; and the ability to present written materials to the sales force. These benefits were available to participating fund complexes on a preferred basis.

¹ The fund complexes in the Participating Sponsor program were given reduced access and benefits for a reduced fee.

4. LPL sold funds offered by approximately 135 fund complexes and included only 29 fund complexes in its FundsPLUS and Participating Sponsor programs.
5. In order to participate in the FundsPLUS program, mutual fund complexes were required to pay LPL an average of between 8 and 15 basis points annually on the total mutual fund assets invested in the fund complex by LPL's broker-dealer customers. In order to participate in the Participating Sponsor program, mutual fund complexes were required to pay LPL between 20 and 40 basis points on the gross amount of sales of the participating fund to LPL's broker-dealer customers. The fees were in addition to the regular sales concession paid by the fund complexes to LPL.

Use of Directed Brokerage Commissions

6. Mutual fund complexes generally use a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds they distribute and manage. The selection of executing brokers is generally within the discretion of the mutual fund complex advisor, subject to the requirement of obtaining best execution.
7. One participant in the FundsPLUS program and several participants in the Participating Sponsor program determined to pay part or all of the fees required to participate in the programs by directing brokerage commissions for portfolio transactions to, or for the benefit of, LPL through third party "step out" arrangements. These fund complexes directed portfolio transactions to a broker-dealer and a clearing firm which it used for trade execution, but arranged for the executing broker-dealer and clearing firm to remit a portion of the commissions generated by the fund complex to LPL. This allowed the mutual fund distributors or advisors to avoid using their own funds to pay the fees, instead using assets of the mutual funds.

Resulting Rule Violations

8. Conduct Rule 2830(k) is designed to prevent arrangements in which brokerage commissions, which are fund assets, are used to compensate member firms for selling fund shares. The rule is also designed to ensure that execution of portfolio transactions by brokerage firms is guided by the principle of "best execution" and not by other considerations.² The rule provides, in pertinent part:

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of

² Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 29, 2004); Notice to Members 84-40.

brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

* * *

(6) No member shall, ... (B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies..., if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source

9. As described above, LPL received over \$14.4 million in directed brokerage commissions from twelve mutual fund complexes during the period from January 2001 through December 2003 as payment for participation in LPL's FundsPLUS and Participating Sponsor programs. The mutual fund complexes received a number of benefits by participating in the programs, including enhanced access to the firm's sales force and placement of sales material on the firm's internal website. By receiving brokerage commissions to pay for the fund complexes' participation in the programs, LPL violated NASD Conduct Rules 2830(k) and 2110.

B. Sanctions

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

1. A censure; and
2. A fine of \$3,602,398.

The sanctions imposed herein shall be effective on a date set by the 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 pursuant to the terms of this AWC.

- 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.

The undersigned certifies on behalf of Respondent that I have read and understand all of the provisions of this AWC and have 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 me to submit it.

Linsco/Private Ledger Corp.

April 29, 2005
Date

By: Stephanie L. Brown

Name: STEPHANIE L. BROWN
MANAGING DIRECTOR
GENERAL COUNSEL

Title: _____

Reviewed by:

[Signature]
Counsel for Firm

Accepted by NASD:

6/7/05
Date

[Signature]
Director and Chief Counsel
Department of Enforcement
Signed on behalf of the Director of ODA,
by delegated authority