

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE4050010

TO: Department of Enforcement
NASD

RE: AllianceBernstein Investment Research and Management, Inc.
1345 Avenue of the Americas
New York, New York 10105-0096
BD No. 14549

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent AllianceBernstein Investment Research and Management, Inc. ("ABIRM") 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.

ABIRM 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 ABIRM'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 ABIRM'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. ABIRM 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 ABIRM's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

ABIRM 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:

AllianceBernstein Investment Research and Management, Inc. has been an NASD member since 1984. Its principal offices are located in New York, New York. It has no relevant formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

ABIRM 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, ABIRM 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.

ABIRM 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

ABIRM 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 arranging for a specific amount or percentage of brokerage commissions to be directed to firms conditioned on the firms' sale of mutual fund shares.
2. From January 2001 through December 2003, ABIRM participated in shelf space (or revenue sharing) programs with numerous broker-dealers in which it paid a fee to those firms in return for those broker-dealers agreeing to provide preferential treatment, such as enhanced access to the firms' sales forces, participation in firm meetings, placement of promotional material on the firms' internal websites and inclusion on the firms' recommended lists. ABIRM paid part of its fees for participating in these programs by directing over \$13 million in brokerage commissions to these firms. Those commission payments violated NASD Conduct Rules 2830(k) and 2110.

The Shelf Space Programs

3. ABIRM is a subsidiary of Alliance Capital Management L.P. ("Alliance Capital"). Alliance Capital is the investment adviser to the mutual funds distributed by ABIRM.
4. Between January 2001 and December 2003, numerous broker-dealers that sold Alliance Capital funds maintained shelf space, revenue sharing or partnership programs. ABIRM paid fees to allow the funds distributed by ABIRM to participate in these programs. The sponsors of the programs agreed to give funds distributed by ABIRM preferential treatment over other funds which could be purchased through the broker-dealers. While the benefits provided by the broker-dealers were different at each firm, they included enhanced access to the firms' sales force, including participation in top producer meetings and training events; having Alliance Capital funds identified on the firms' internal websites; having the funds identified on the firms' recommended lists; and providing

content for, or participating in, client seminars and meetings. These benefits were not available to non-participating fund complexes.

5. ABIRM participated in shelf space, revenue sharing or partnership programs with approximately 176 broker-dealers between 2001 and 2003.

Use of Directed Brokerage Commissions

6. Like most mutual fund complexes, Alliance Capital generally uses a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds it sponsors and manages. The selection of executing brokers is generally within the discretion of the Alliance Capital trading desk, subject to the requirement of obtaining best execution.
7. In order to participate in the shelf space, revenue sharing or partnership programs, ABIRM was required to pay the broker-dealers amounts conditioned upon the sales of Alliance Capital funds by those broker-dealers. The exact amount to be paid by ABIRM was based upon the gross amount of sales of Alliance Capital funds by the broker-dealer, the total Alliance Capital fund assets under management at the broker-dealer from previous sales, or a combination of the two.
8. To pay part of the fees required to participate in 17 of the programs, ABIRM arranged for over \$13 million in brokerage commissions to be directed to the broker-dealers between 2001 and 2003. ABIRM provided the Alliance Capital trading desk with commission targets based upon sales or assets under management for each of the broker-dealers. This allowed ABIRM to avoid using its own funds to pay the fees, instead using assets of the mutual funds.
9. ABIRM paid a portion of its shelf space fees by arranging trades directly with the broker-dealers or affiliates, subject to best execution. Through Alliance Capital, it directed portfolio transactions to the institutional trading desks or institutional trading affiliates of the broker-dealers for execution, using the commissions generated by these directed transactions as payment of its program fees.
10. For firms which could not execute Alliance Capital's trades, ABIRM paid a portion of the fees required to participate in the programs through third party "step out" arrangements. Under these arrangements, Alliance Capital directed portfolio transactions to the broker-dealer's clearing firm, but arranged for the clearing firm to remit a portion of the commissions generated by Alliance Capital to the broker-dealer.

Resulting Rule Violations

11. 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.¹ The rule provides, in pertinent part:

(3) No member shall ... request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sale or promise of sales of shares of an investment company.

12. As described above, ABIRM directed over \$13 million in brokerage commissions to 17 broker-dealers as payment for participation in their shelf space, revenue sharing or partnership programs. Firms offered a number of benefits to ABIRM and others participating in the programs, including enhanced access to the firms' sales force, participation in firm meetings, placement of promotional material on the firms' internal websites and inclusion on the firms' recommended lists. By directing brokerage commissions to pay for its participation in the programs, ABIRM 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 \$3,984,087.60.

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

¹ Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 29, 2004); *Notice to Members* 84-40

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.

AllianceBernstein Investment Research and Management, Inc.

May 12, 2005
Date

By:

Name:

Title:

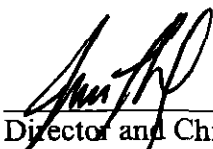
Colin T. Burke
Colin T. Burke
SVP, Counsel and
Assistant Secretary

Reviewed by:

R. A. Smith
Counsel for Firm

Accepted by NASD:

6/7/05
Date



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