

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**CLG050033**

**RECEIVED****2005 FEB 17 A 9 40****NASD REGULATION, INC.**  
**MARKET REGULATION**

**TO: Department of Market Regulation**  
**NASD**

**RE: BNP Paribas Brokerage Services, Inc., Respondent**  
**Broker-Dealer**  
**CRD No. 31394**

Pursuant to Rule 9216 of the NASD Code of Procedure, BNP Paribas Brokerage Services, Inc. ("BNPS" or "the firm") 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 the firm alleging violations based on the same factual findings.

The firm 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 Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, 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 the firm; and
3. If accepted:
  - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD against the firm;
  - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm'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. the firm 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 the firm's

testimonial obligations or right to take legal positions in litigation in which NASD is not a party.

The firm also understands that the firm's experience in the securities industry and the firm's disciplinary history may be factors that will be considered in deciding whether to accept this AWC.

BNP Paribas Brokerage Services, Inc. became a member of NASD on January 18, 1996, and its registration remains in effect. The firm has no relevant disciplinary history.

# I.

## WAIVER OF PROCEDURAL RIGHTS

The firm 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 the firm;
- 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, the firm 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.

The firm 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

This matter arose out of the Department of Market Regulation's review, in MRD200338921, for the period of July 2000 through December 2002 (the "review period") the firm's short interest reporting.

- A. The firm 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 any adjudication of any issue of law or fact, to the entry of the following findings by NASD:
1. BNPS failed to report its short interest positions to NASD Regulation, Inc. for the months July 2000 through December 2002.
  2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rule 3360.
  3. BNPS's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning the reporting of the firm's short interest. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken to ensure the accuracy of the firm's short interest reporting; (2) a statement as to how often such steps should be taken; and 3) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
  4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure and a \$110,000 fine (\$50,000 for the failure to report and \$60,000 for the supervision violation), and an undertaking to revise the firm's supervisory procedures with respect to the areas described in paragraphs one and three. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT**,

LEGAL SECTION, MARKET REGULATION  
DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE,  
MD 20850, a signed, dated letter, providing the following  
information: 1) a reference to this matter; 2) a representation that  
the firm has revised its written supervisory procedures to address  
the deficiencies described in paragraphs three and four; and 3) the  
date the revised procedures were implemented.

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

### III.

#### OTHER MATTERS

- A. The firm 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. The firm 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 the Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm 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 firm certifies that the firm 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 the firm to submit it.

14 Feb 2005  
Date

Respondent,  
BNP Paribas Brokerage Services, Inc.

By: Thomas J. Mahoney

Name: THOMAS J. MAHONEY

Title: CHIEF EXECUTIVE OFFICER

Accepted by NASD:

3/22/05  
Date



Cameron K. Funkhouser  
Senior Vice President  
Department of Market Regulation  
Signed By delegated authority on behalf of  
the Director of ODA

Attachment: Standard Election of Payment Form