

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050038

TO: Department of Market Regulation
NASD

RE: Prudential Equity Group, LLC, Respondent
Formerly known as Prudential Securities Incorporated
Broker/Dealer
CRD No. 7471

Pursuant to Rule 9216 of NASD Code of Procedure, Prudential Equity Group, LLC ("PEG" 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"), 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 or any other regulator 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 its experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. PEG entered the securities industry on November 2, 1939, as a member of this Association. The firm formerly did business under the name Prudential Securities Incorporated ("PSI") and has no relevant disciplinary history. The conduct described in this AWC solely occurred during the period of time when the firm was known as PSI.

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

In Market Regulation Review No. MRD200338879, the Market Regulation Department staff (the "staff") conducted a review of the firm's compliance with the rules and regulations applicable to short interest reporting from May 1995 through April 2003. The staff also reviewed the firm's written supervisory procedures concerning short interest reporting during this review period. The staff's review was conducted jointly with staffs of the New York Stock Exchange and American Stock Exchange.

- A. The firm hereby accepts and consents, without admitting or denying the allegations, 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 the following findings by NASD:
1. In 1995, the firm implemented an automated short interest reporting function, that is, the Short Interest Reporting Program (the "Program"). The Program, however, was incorrectly designed to net short and long positions in proprietary accounts. Accordingly, from at least May 1995 and continuing through April 2003, the firm calculated its short interest position for each security by netting all positions in that security, whether long or short, in its proprietary accounts.
 2. As a result, the monthly short interest reported to NASD by the firm during this eight year period was inaccurate in that certain short interest positions were underreported or not reported at all.
 3. Based upon a review of a 13 month sample of short interest reports from March 2000 through March 2003, the firm inaccurately reported or failed to report its short interest positions to NASD on approximately 1,383 occasions, and as a result, underreported or failed to report short interest positions of more than 1.4 million shares.
 4. The conduct described in paragraphs one through three constitutes separate and distinct violations of NASD Conduct Rule 3360.
 5. The responsibility for reporting short interest positions to NASD was assigned to Operations Regulatory Compliance ("ORC"). The ORC was responsible for the oversight of the Program and the filing of the reports. Upon request of NASD, the ORC verified that the short

interest positions filed with NASD corresponded to the original positions in the firm's stock records. The ORC did not review the basis for the calculation of the firm's short interest positions. In addition, the firm's written procedures concerning the supervision of short interest reporting codified the firm's incorrect practice of netting positions in proprietary accounts.

6. No modifications were made to the short interest reporting process at the firm from 1995 through April 2003. In addition, during this period the firm did not conduct any internal audits to determine whether the reporting process was in compliance with the regulatory requirements in effect throughout this period.
 7. From at least May 1995 through April 2003, the firm failed to reasonably and properly supervise its process for reporting short interest to NASD so as to detect and prevent violations of NASD Rule 3360, in that, it failed to conduct any reviews to determine whether it was using the correct method for calculating its short interest positions.
 8. In addition, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning short interest reporting. Specifically, the firm's supervisory system did not have adequate procedures in place regarding the calculation and reporting of short interest to NASD and the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rule; and (2) a statement as to how the completion of the supervisory step(s) included in the written supervisory procedures should be documented.
 9. The conduct described in paragraphs five through eight constitutes violations 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 fine of \$350,000 to be paid jointly to NASD, the American Stock Exchange, and the New York Stock Exchange.

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 which is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 an 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 it 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.

Prudential Equity Group, LLC

March 10, 2005
Date

By: Kenneth Tanji
Name: Kenneth Tanji
Title: Vice President

Reviewed by:

Harry J. Weiss
Harry J. Weiss, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP

Renee Kwait Retting
Renee Kwait Retting
Stephen J. Shine, Esq.
Prudential Equity Group, LLC

Accepted by NASD:

April 7, 2005
Date

Cameron K. Funkhouser
Cameron K. Funkhouser
Senior Vice President

Signed on behalf of the Director of
ODA, by delegated authority

Attachment:

Election of Payment Form