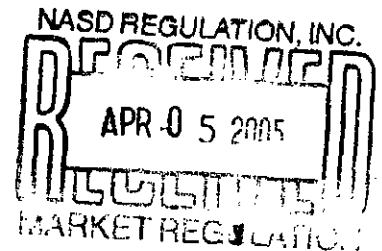


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

CLG050043

TO: Department of Market Regulation
NASD

RE: Joseph W. Leighton, Respondent
Registered Representative
CRD No. 722436



Pursuant to Rule 9216 of NASD Code of Procedure, I submit 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 me alleging violations based on the same factual findings.

I understand 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") 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 me; and
3. If accepted:
 - a. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against me;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about my 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. I 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 my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

I also understand that my 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:

I entered the securities industry in March 1989 as a registered representative of a member of NASD. During all periods relevant to this matter, I was registered with Knight Securities, LP. I am not currently registered with any member firm. I have no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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 acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Joseph Leighton, an institutional sales trader at Knight Securities, LLC (NITE)¹, defrauded NITE's institutional customers, taking improper advantage of customers' orders to obtain excessive profits for NITE and himself through deceptive means. During 1999 and 2000, Joseph Leighton generated tens of millions of dollars of excessive profits by pricing trades with certain customers in a manner that was contrary to those customers' understandings and to industry practice, and utilized deceptive trading practices that disguised his pricing and the amount of profits NITE made on trades with those customers.

Joseph Leighton also engaged in fraudulent trading in his "backbook" proprietary account at NITE by trading on the opposite side of his institutional customers' orders at prices that were disadvantageous to certain of his customers. Joseph Leighton received a higher percentage of profits generated from trades in his backbook account than he did on customer trades executed with NITE's market making account. Joseph Leighton did not disclose to certain of his customers that he was trading on the opposite side of their orders, or that he was doing so in an account for which he received greater profits.

Joseph Leighton's Fraudulent Trading With Institutional Customers

During 1999 and 2000, Joseph Leighton was responsible for trading for many of NITE's largest institutional customers. Joseph Leighton generated extraordinary profits for NITE. In 1999 and the first nine months of 2000, Joseph Leighton was responsible for generating nearly \$135 million of trading profits, approximately 30% of the trading profits of NITE's entire Institutional Sales Desk.

Joseph Leighton's excessive trading profits during 1999-2000 were the result of a course of deceptive trading practices with his institutional customers. NITE generally traded with its institutional customers on a "net" basis, so that NITE's compensation for trades with institutional customers was embedded in the price that institutional customers paid for trades. In accordance with the custom and expectation in the industry, certain of Joseph Leighton's institutional customers believed that the net prices they paid for trades

¹ The firm is now known as Knight Equity Markets, L.P. In December 2004, NITE entered into a joint settlement with NASD and SEC to settle charges that Joseph Leighton, its former institutional sales trader, defrauded the firm's institutional customers.

with NITE were based upon NITE's cost in acquiring (or selling) shares pursuant to their orders, plus a reasonable amount of compensation. However, Joseph Leighton did not price trades as those customers believed. Instead, he had NITE acquire positions based upon his institutional customers' orders, and then after the price of the stock moved, entered into trades with his customers based upon the price changes in the market, creating greater profits for NITE at the expense of those customers. If the price of the stock was moving in favor of NITE's position, Joseph Leighton delayed executions and traded with his customers at prices reflecting the positive price movement. If the price of the stock moved against NITE's position, Joseph Leighton executed trades with customers based upon prices at an earlier time, which were more advantageous to NITE. Joseph Leighton did not disclose to those customers how he priced trades, or the fact that he was not pricing trades based on NITE's costs. Joseph Leighton's course of trading deceived customers about NITE's cost of acquisition and the profits he was making on trades with them. Volatility in the price of the stock made it easier for Joseph Leighton to hide that he was pricing trades in a manner inconsistent with those customers' expectations. Joseph Leighton's trading practices with institutional customers are described in greater detail in an AWC with NITE, CMS040201, in which Joseph Leighton is referred to as the "Leading Sales Trader."

Joseph Leighton testified that he priced trades with customers based upon a benchmark of the volume weighted average price during the time the customer's order was open. However, unless they gave explicit instructions to the contrary, customers stated that they expected NITE to price their trades based upon NITE's costs in acquiring (or selling) the stock they ordered, not on a benchmark of an average price during the trading day. Joseph Leighton did not tell his customers that he was pricing trades with them based upon a benchmark of a volume weighted average price. Leighton and NITE had no documentation of any instructions to price using a volume weighted average, and could not specify the components of the weighted average calculation or how the benchmark was determined. Moreover, the prices of many of Joseph Leighton's trades with his customers were inferior to the volume weighted average price, and inconsistent with his claimed use of a volume weighted average price.

In short, Joseph Leighton traded at the expense of his customers by trading in a manner that created excessive profits for NITE and himself. Joseph Leighton had NITE accumulate positions based upon customers' orders, and then priced trades with customers after the market moved in a manner that benefited NITE (and himself), to the disadvantage of his customers. His customers did not know when, or at what prices, NITE acquired stock pursuant to their orders, and Joseph Leighton took advantage of that in trading with his customers, making excessive profits at their expense.

In all, during 1999-2000, the staff found similar trading patterns in filling dozens of orders from institutional customers, and noted that Leighton often made excessive profits per share.

Joseph Leighton's Fraudulent Trading in His "Back Book"

NITE allowed certain associated persons to trade in accounts known as "back books." NITE maintained that the back books were originally intended as an inventory control device for market makers, designed to allow market makers to accumulate positions that would not be affected by NITE's auto-execution system. However, NITE also allowed associated persons to use the back books as proprietary investment accounts for speculative investment. Traders with "back book" accounts received a higher payout percentage on profits generated in their back book accounts than they received for profits in their market making accounts, giving them greater incentive to generate profits in the back book accounts.

Joseph Leighton was one of the associated persons at NITE permitted to engage in proprietary trading for the firm in a back book account. Without disclosing it to his customers, Joseph Leighton engaged in trades in his back book account taking the opposite side of trades with his institutional customers, at prices that were extremely profitable for himself and disadvantageous to his customers.

Conclusion

As a result of the conduct described above, Joseph Leighton violated **Section 10 (b) of the Securities Exchange Act of 1934 ("Exchange Act")** and **Rule 10b-5** promulgated thereunder, and **NASD Conduct Rules 2110 and 2120**, by intentionally employing a scheme to defraud, engaging in a course of business that operated as a fraud on institutional customers of NITE, and employing deceptive and fraudulent devices in connection with the purchase and sale of securities to NITE's institutional customers.

B. I also consent to the imposition, at a maximum, of the following sanctions:

A censure:

Disgorgement of \$1,939,264.00, representing disgorgement of monies Joseph Leighton obtained in connection with the conduct described above, which Joseph Leighton shall pay in accordance with the terms of the Final Judgment entered against Joseph Leighton in the parallel civil injunctive proceeding filed by the U.S. Securities and Exchange Commission in this matter;

Prejudgment interest of \$660,282.78, which Joseph Leighton shall pay in accordance with the terms of the Final Judgment entered against Joseph Leighton in the parallel civil injunctive proceeding filed by the U.S. Securities and Exchange Commission in this matter;

A fine of \$750,000 to NASD, and a fine of \$750,000 that Joseph Leighton shall pay as a civil penalty in accordance with the terms of the Final Judgment entered against Joseph Leighton in the parallel civil injunctive proceeding filed by the U.S. Securities and Exchange Commission in this matter; and

A permanent bar from associating with any member firm in any capacity.

I agree that I will not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy, with regard to all fine/penalty amounts that I will pay pursuant to this AWC. I further agree that I will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine/penalty amounts that I will pay pursuant to this AWC, regardless of whether such fine/penalty amounts or any part thereof are added to a distribution fund account or otherwise used for the benefit of investors.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

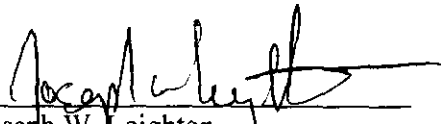
III.

OTHER MATTERS

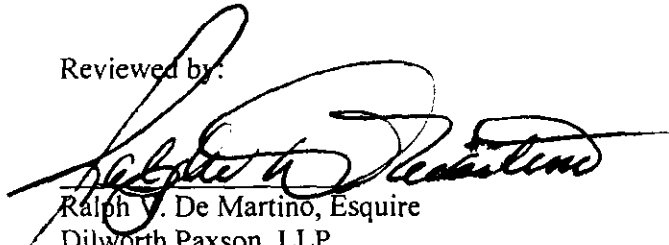
- A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. I agree to pay any monetary sanctions imposed on me 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 I propose to pay any fine imposed.
- C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. I understand that if I am barred or suspended from association with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

I certify 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.

3/18/05
Date

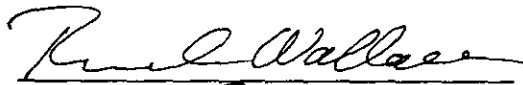

Joseph W. Leighton
Respondent

Reviewed by:


Ralph V. De Martino, Esquire
Dilworth Paxson, LLP
1818 N Street, N.W., Suite 400
Washington, DC 20036
(202) 466-9150

Accepted by NASD:

4/20/2005
Date


Thomas R. Gira *Richard Wallace*
~~Executive Vice President & Deputy~~
Department of Market Regulation

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