

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050100

TO: Department of Market Regulation
NASD

RE: Jefferies & Company, Inc., Respondent
Broker/Dealer
CRD No. 2347

Pursuant to Rule 9216 of NASD Code of Procedure, Jefferies & Company, Inc. ("JEFF" 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. That experience and relevant history are as follows:

JEFF has been a member of NASD since March 1, 1963. It 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 an investigation, MRD200236750, conducted by the staff of NASD's Department of Market Regulation of JEFF's compliance with the Order Audit Trail System ("OATS") rules, NASD Marketplace Rule 6950 et seq., during the period April 1, 2001 through April 4, 2002.

- 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 or about the first quarter of 2001, JEFF began to develop an electronic order management system ("OMS") to automate the handling of orders received from its customers. JEFF understood that implementation of OMS would require the firm to submit to OATS certain information concerning the orders captured in OMS, including, among other things, information about new orders, cancellations and routes. In the first quarter of 2001, the firm also hired an OATS Administrator to, among other things, ensure that JEFF properly reported required information from OMS to OATS.
 2. JEFF began to implement OMS in stages beginning on or about April 3, 2001. The OATS Administrator claims he was not advised in advance of the OMS implementation, but discovered, in April 2001, from a review of information JEFF had reported to OATS, that certain JEFF account executives were using OMS to record and track pending customer orders. The OATS Administrator also realized that JEFF was not accurately reporting OMS information to OATS. Specifically, JEFF was incorrectly reporting executions of OMS orders as the receipt and execution of new orders.

3. The OATS Administrator understood that JEFF was required to report information for all OMS orders to OATS. He also realized that significant modifications to JEFF's OATS reporting system were required before JEFF could accurately report OMS information to OATS. Without consulting anyone at JEFF, the OATS Administrator decided in April 2001 to suppress OATS reporting of OMS information while such modifications were being made.
4. Throughout the remainder of 2001, additional JEFF account executives began to use OMS and by the end of 2001, JEFF had completed implementation of OMS. However, because the OATS Administrator had suppressed the reporting of OMS information, JEFF was not reporting any OMS information to OATS. NASD staff discovered JEFF's failure to report OMS information during an examination in December 2001. After the staff alerted JEFF to its non-reporting, the firm modified its OATS reporting system and finally began reporting OMS information to OATS on April 5, 2002. During the period from April 2001 to April 2002, however, as a result of the OATS Administrator's decision to suppress OATS reporting, JEFF failed to report to OATS at least 326,777 Reportable Order Events ("ROEs") relating to at least 129,569 orders in NASDAQ securities that were captured in OMS.
5. The conduct described in paragraphs one through four constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of NASD Conduct Rule 2110.
6. In addition from April 2001 through at least January 2002, the firm'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 OATS reporting. Specifically, although it had only recently hired the OATS Administrator, JEFF provided inadequate supervision over the OATS Administrator. The OATS Administrator worked out of JEFF's Los Angeles, California office, while his immediate supervisor worked 3,000 miles away in JEFF's Jersey City, New Jersey office. Moreover, the supervisor had very limited knowledge of, and no training or experience in, OATS. The supervisor simply contacted the OATS Administrator approximately once per month to ask if there were any problems. This supervisor lacked the requisite qualifications to supervise the OATS Administrator, and his monthly contact did not constitute adequate supervision.
7. Had the supervisor possessed the requisite qualifications, experience or training, he might have discovered the OATS violations. Moreover, the firm's written supervisory procedures were inadequate in failing to provide a method for the OATS Administrator's supervisor to perform a supervisory review of

the firm's overall OATS reporting. For example, a periodic review by the supervisor of a summary of the firm's OATS reporting could have shown that the number of reports JEFF was submitting to OATS was not increasing with the implementation of OMS. The lack of a significant increase in the number of reports JEFF was submitting to OATS as OMS was phased in should have been a "red flag" to JEFF that there was a problem with its OATS reporting.

8. The conduct described in paragraphs six through seven 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 fine of \$100,000 (\$75,000 for the OATS reporting violations and \$25,000 for the supervisory violations). The firm has revised its supervisory system to address the concerns raised in this AWC.

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.

Jefferies & Company, Inc.

2/24/05
Date

By: Lloyd H. Feller
Name: LLOYD H. FELLER
Title: General Counsel

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD:

7/7/05
Date

Thomas R. Gira
Thomas R. Gira
Senior Vice President

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

Attachment:

Election of Payment Form

**STATEMENT OF CORRECTIVE ACTION OF JEFFERIES & COMPANY,
INC.,
(MRD200236750)**

This Statement of Corrective Action is submitted by the Respondent Jefferies & Co., Inc. It does not constitute factual or legal findings by the NASD, nor does it reflect the views of the NASD, or its staff.

Jefferies & Company, Inc. submits this Statement of Corrective Action to describe the demonstrable steps it has taken to address the alleged violations contained in the Letter of Acceptance, Waiver and Consent ("AWC") to which this Statement is attached.

In 2001, Jefferies & Company, Inc. hired a former NASD OATS Team employee as its OATS Administrator to, among other things, ensure that Jefferies & Company, Inc. properly reported required information from OMS to OATS. As soon as Jefferies & Company, Inc. commenced the implementation of OMS, the OATS Administrator recognized that information was being reported incorrectly to OATS and determined to suppress OATS reporting of OMS transactions. All of the OATS non-reporting that were the subject of this AWC are the result of that single decision. As the staff is aware, shortly after the NASD discovered the OATS non-reporting, Jefferies & Company, Inc. developed and implemented corrective action to ensure that reports of transactions effected through OMS were reported.

The demonstrable steps that Jefferies & Company, Inc. has taken to prevent a recurrence of the alleged violations contained in the AWC are as follows:

1. A new OATS Administrator has been hired; and
2. An outside consultant was engaged to review and revise the firm's OATS procedures and policies and the firm implemented the outside consultant's recommendations.