

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0220050158

TO: Department of Enforcement
NASD

RE: Torrey Pines Securities, Inc., Member Firm
CRD No. 17120

Jack C. Smith, Jr., Respondent
Financial and Operations Principal
CRD No. 427869

Pursuant to Rule 9216 of NASD Code of Procedure, Torrey Pines Securities, Inc. ("TPS") and Jack C. Smith, Jr. ("Smith") (collectively, the "Respondents") 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 Respondents alleging violations based on the same factual findings.

Respondents 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 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 them; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against them;

- b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' 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. Respondents 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 finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects their testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their 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:

TPS has been a member of NASD since on or about May 23, 1986, and its principal place of business is located in San Diego, California. TPS conducts a general securities business.

Smith entered the securities industry in 1987 as a General Securities Representative and a Compliance Registered Options Principal with TPS. In 1988, he became registered with TPS as a Financial and Operations Principal. Smith has been TPS's President since 1987.

Neither TPS nor Smith has been the subject of any relevant disciplinary action by the Securities and Exchange Commission, NASD, state regulators, or other self-regulatory organizations.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents 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 them;

- 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, Respondents 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.

Respondents 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 its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the 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:

1. Background

Prior to September 14, 2004, TPS was required to maintain minimum net capital in the amount of \$250,000. On or about September 21, 2004, NASD amended TPS' Membership Agreement, whereby NASD reduced the firm's minimum net capital obligation to \$100,000. Smith requested the reduction and in support thereof, explained to NASD that TPS no longer intended to receive securities or customer checks payable to the firm.

2. Membership Agreement Violations

In its Membership Agreement, TPS, acting through Smith, represented that it would not receive any checks payable to the firm. Between December 1, 2004 and June 30, 2005 (the "Relevant Period"), TPS, acting through Smith, received more than eighty (80) checks made payable to the firm rather than to its clearing firm.

Based thereon, TPS and Smith violated NASD Conduct Rules 1014 and 2110.

3. Net Capital Violations

By receiving customer checks payable to the firm, TPS' minimum net capital during the Relevant Period was increased to \$250,000. At times during the Relevant Period, TPS, acting through Smith, failed to comply with Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder, in that it used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain minimum required net capital, as more fully set forth on Schedule "A" attached hereto and incorporated herein by this reference.

Based thereon, TPS violated Section 15(c) of the Exchange Act, Rule 15c3-1 thereunder and NASD Conduct Rule 2110, and Smith violated NASD Conduct Rule 2110.

4. Supervision Violations

Upon receiving its Amended Membership Agreement on or about September 21, 2004, TPS, acting through Smith, amended its written supervisory procedures and supervisory system to prohibit its receipt of customer checks payable to the firm. During the Relevant Period, however, TPS, acting through Smith, reasonably failed to enforce its written procedures and, as a result, continued to receive customer checks payable to the firm.

Based thereon, TPS and Smith violated NASD Conduct Rules 3010 and 2110.

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

The Respondents each shall be censured and fined \$15,000, for which they will be jointly and severally liable.

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

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on them 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 they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondents certify that they 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 us to submit it.

Sept 6, 2006
Date

TORREY PINES SECURITIES, INC.

[Signature]
By: Jack C. Smith, Jr.
Its: President

Sept 6, 2006
Date

[Signature]
Jack C. Smith, Jr., individually

Reviewed by:

RUSHALL & MCGEEVER

[Signature]
Eileen McGeevee, Esq.,
Counsel for Respondents
1903 Wright Place, Suite 250
Carlsbad, CA 92008

Accepted by NASD:

[Signature]
Date

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

[Signature]
David A. Greene
Deputy Regional Chief Counsel
NASD Department of Enforcement
300 South Grand Ave., Suite 1600
Los Angeles, CA 90071
(213) 613-2634; (213) 617-1570

NASD District Director

Joseph M. McCarthy, Associate Vice
President and Acting District Director
NASD, District 2
300 South Grand Ave., Suite 1600
Los Angeles, CA 90071