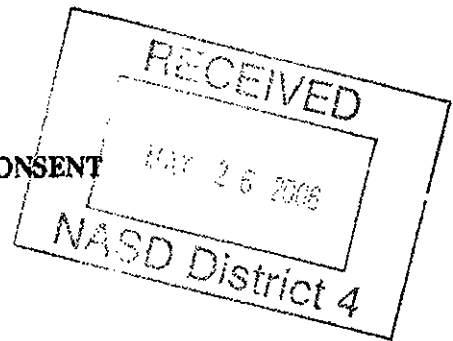


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0420030634-02



**To: Department of Enforcement
NASD**

**Re: Archer Alexander Securities Corporation
Member (CRD No. 41555)**

Pursuant to NASD Procedural Rule 9216, Archer Alexander Securities Corporation (AASC) 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 AASC alleging violations based on the same factual findings.

AASC 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 Enforcement and the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA), pursuant to NASD Procedural Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against AASC; and
3. If accepted:
 - a. This AWC will become part of AASC's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against AASC;
 - b. This AWC will be made available through NASD's public disclosure program in response to public inquiries about AASC's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Procedural Rule 8310 and IM-8310-2; and
 - d. AASC 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 AASC's testimonial obligations or rights to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

AASC also understands that its 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:

AASC has been a member of NASD since December 1996. AASC conducts a general securities business from its main office located in Overland Park, Kansas. AASC has not been the subject of prior disciplinary action by NASD.

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I. WAIVER OF PROCEDURAL RIGHTS

AASC 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 AASC;
- 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.

Furthermore, AASC 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.

In addition, AASC specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural 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. AASC hereby accepts and consents, 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:

Background on Market Timing

Market timing is the short-term buying and selling of mutual fund shares to exploit inefficiencies in the pricing of mutual fund shares. The net asset value of mutual funds is typically calculated once per day, at 4:00 p.m. Eastern time. Because mutual funds are typically priced only once per day, market timers may have an opportunity to engage in arbitrage based on market information that may not be reflected in that day's net asset value. This is especially true for international mutual funds. In order to accomplish arbitrage, market timers typically buy and sell shares on a short-term basis, realizing quick gains and then retreating to the previous market position.

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Market timing is not illegal *per se*. However, it may harm mutual fund shareholders by diluting the value of their shares. This harm is caused by raising transaction costs for mutual funds, such as taxes and trading costs, and by requiring funds to retain more assets in liquid investments with lower returns, including cash positions. Many prospectuses for mutual funds explicitly prohibit market timing, and many mutual fund companies routinely review trading in their funds to detect market timers. Once market timing is discovered, a mutual fund company may send restriction letters to broker-dealers to block or restrict further trading in the mutual fund company's funds. A mutual fund company may also block brokers or entire branches from executing further transactions.

AASC's Facilitation of Market Timing

In August 2002, J.T. was a broker associated with AASC. J.T. had two large hedge firm clients who were trading in accounts held through AASC and clearing through AASC's clearing firm (Clearing Firm A). By August 2002, these clients had been engaging in short-term trading of international mutual funds – best described as market timing – for several months.

Clearing Firm A had received at least twenty notifications from ten mutual fund companies restricting the short-term trading in the AASC accounts of the two hedge firm companies. Clearing Firm A forwarded these restrictions to AASC. Many of these notifications included blocking all transactions in these accounts. In August 2002, Clearing Firm A sent a letter to J.R., AASC's president. The letter stated that Clearing Firm A had become aware of market timing transactions in the AASC accounts. In this letter, Clearing Firm A notified AASC that it would no longer accept orders that appeared to be market timing transactions in AASC's accounts.

The hedge fund companies promptly closed the accounts held at AASC. To retain this business, J.T. and J.R. approached M.S., another AASC broker, with a new business arrangement. J.T. and J.R. proposed that the two hedge fund companies open accounts at an investment advisory firm owned by M.S. (Advisory Firm A). J.T. would register with Advisory Firm A so that he could continue to service these clients' accounts. AASC would approve of and supervise this business by receiving duplicate statements from Advisory Firm A's clearing firms. The management fees generated by this business would be split as follows: 88.5% to J.T., 8.5% to AASC, and 3% to Advisory Firm A. This agreement was memorialized in writing, and J.R. signed this agreement on behalf of AASC.

From October through December 2002, the two hedge fund companies opened multiple accounts at Advisory Firm A. The names on the accounts were not similar, but the names and addresses of the account holders were identical. Trading began in those accounts shortly after they were opened and consisted entirely of short-term trading of international mutual funds. This trading was accomplished as follows: representatives from the two hedge fund companies would compile lists of trades to be completed on various days, and J.T. would execute those trades in the Advisory Firm A accounts. Many of these transactions violated the restrictions that the mutual fund companies had attempted to implement when the hedge fund companies were trading in their AASC accounts. By moving the accounts to Advisory Firm A, the hedge fund

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companies were able to circumvent the trading restrictions imposed by the mutual fund companies.

The accounts for the hedge fund companies were initially cleared through the clearing firm with which Advisory Firm A had a pre-existing custodial arrangement (Clearing Firm B). In February and March 2003, Clearing Firm B received trading restrictions from at least six mutual fund companies that prohibited the continued short-term trading of international mutual funds. Clearing Firm B communicated these restrictions to Advisory Firm A by letter, fax or email. The hedge fund companies circumvented these restrictions by moving funds to their other Advisory Firm A accounts and continuing the short-term trading of international mutual funds in those other accounts. J.T. continued to execute the trades requested by the hedge fund companies, even though such trading was clearly in violation of the restrictions that the mutual fund companies were attempting to implement.

In addition, Advisory Firm A initiated custodial arrangements with two other clearing firms. In December 2002, the two hedge fund companies began opening Advisory Firm A accounts that cleared through these two other clearing firms. Again, the hedge fund companies opened multiple accounts with dissimilar names, but with identical names and addresses for the account holders. Trading began in these accounts shortly after they were opened and consisted entirely of short-term trading of international mutual funds. By using multiple accounts that cleared through different clearing firms, the hedge fund companies circumvented the trading restrictions implemented by the mutual fund companies. In fact, the use of multiple clearing firms was necessary because some of the clearing firms had blocked any Advisory Firm A accounts from trading in certain mutual funds.

J.T. also started his own investment advisory firm (Advisory Firm B). AASC received duplicate statements from the clearing firms for these accounts as well. In February 2003, the two hedge fund companies opened multiple accounts with Advisory Firm B and proceeded to execute market timing transactions in these accounts that were in violation of the trading restrictions that had been placed on their AASC and Advisory Firm A accounts. J.T. retained 90% of the management fees earned on these accounts, and AASC received the remaining 10% of these fees. Again, by opening new accounts at Advisory Firm B, the hedge fund companies were able to circumvent the trading restrictions put in place by the mutual fund companies.

This activity continued until the market timing scandals were exposed in September 2003. From November 2002 through September 2003, the two hedge fund companies completed 528 trades in their Advisory Firm A and Advisory Firm B accounts that were in violation of the trading restrictions implemented by the mutual fund companies. The total of the funds traded in these transactions is \$239,463,265.22. AASC received \$38,450.10 in management fees associated with the accounts where the market timing was occurring.

NASD Conduct Rule 2110 requires persons associated with NASD members to observe high standards of commercial honor and just and equitable principles of trade. By facilitating the market timing activities of the two hedge fund companies, as described above, AASC violated NASD Conduct Rule 2110.

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AASC's Failure to Retain Electronic Communications

From March 2002 through December 2003, AASC failed to preserve copies of electronic communications sent or received by associated persons in the offices away from AASC's main office in Overland Park, Kansas. Although AASC retained e-mails that were sent within its main office, AASC did not have a system to retain emails sent to or received in branch offices where other associated persons worked. AASC had at least ten branch offices open during this time period. AASC's failure to retain electronic communications hampered NASD's investigation of this matter, as AASC was unable to produce all relevant communications during this time period.

SEC Rule 17a-4(b)(4) requires broker-dealers to preserve, for three years, all communications sent and received by them relating to their business. This rule applies to electronic communications. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Rel. No. 34-38245 (Feb. 5, 1997). Moreover, NASD Rule 3110 requires NASD members to comply with SEC Rule 17a-4. Thus, by failing to retain e-mails for the required three-year period, AASC violated Section 17(a) of the Securities Exchange Act, SEC Rule 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110.

- B. AASC also consents to the imposition, at a maximum, of the following sanctions:

AASC shall be censured and shall pay a \$108,450.10 fine, which includes the disgorgement of AASC's \$38,450.10 of profits relating to the market timing activities.

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

III. OTHER MATTERS

- A. AASC understands that it may attach a Statement of Corrective Action to this AWC, which is a statement of demonstrable corrective steps taken to prevent future misconduct. AASC 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. AASC agrees to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable. AASC has attached an Election of Payment form showing the method by which they propose to pay any fine imposed.
- C. AASC specifically and voluntarily waives any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

AASC certifies that this AWC has been read and that all provisions of this AWC are understood, and that AASC 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 AASC to submit it.

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**ARCHER ALEXANDER
SECURITIES CORPORATION**

5-25-06
Date

By: John S Raydo
John S. Raydo, President

Reviewed by:

Paul G. Schepers
Paul G. Schepers, Esq.
Counsel for Respondent
Archer Alexander Securities

Accepted by NASD:

10-30-06
Date

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

James M. Stephens
James M. Stephens, Regional Counsel

NASD District Director

Thomas D. Clough
120 West 12th Street, Suite 800
Kansas City, MO 64105
(816) 802-4700