

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E052003030703

TO: Department of Enforcement
NASD

RE: Jefferies & Company, Inc., Respondent
Member
CRD No. 2347

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent ("Jefferies" 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 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 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 it;
 - 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 or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm 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:

Jefferies & Company, Inc. ("Jefferies" or "the firm") has been a member of NASD since March 1, 1963. Its principal offices are located in Los Angeles, California; and it maintains additional offices around the world. The firm employs approximately 838 registered persons, who operate from 17 OSJ offices and six non-OSJ branch offices.

Jefferies operates pursuant to the fully computing exemptive provisions of SEC Rule 15c3-3. It engages in general securities, market making, research, investment banking, investment advisory, mergers and acquisitions, and various other securities business, as well as a securities lending and financing business. The firm clears its own securities transactions and it provides clearing services to approximately 49 other broker/dealers. Jefferies' affiliated businesses include domestic and foreign broker/dealers, investment advisory firms and transaction processing firms.

The firm has the following relevant disciplinary history:

1.

The firm entered into an AWC, effective on or about September 28, 2005, agreeing to the entry of findings that the firm committed violations in the following areas:

- (a) 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 NASD rules, concerning front running and trade reporting – riskless principal/capacity, in violation of NASD Conduct Rules 2110 and 3010; and
- (b) 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 NASD Rules, including SEC Rule 11Ac1-6, customer crosses; the Three Quote Rule; SEC Rule 11Ac1-5, trade reporting – riskless principal and long/short, the Bid Test Rule, and the One Percent Rule; in violation of NASD Conduct Rules 2110 and 3010.

For those and other violations, the firm was censured and fined \$125,500; and it undertook to revise its written supervisory procedures with respect to those areas.

2.

The firm entered into an AWC, effective on or about September 6, 2005, agreeing to the entry of findings that firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to SEC Rule 15c2-11 and NASD Rule 6740; in violation of NASD Conduct Rules 2110 and 3010.

For that and other violations, the firm was censured and fined \$12,500; and it undertook to revise its written supervisory procedures with respect to those areas.

3.

The firm entered into an AWC, effective on or about June 22, 2005, agreeing to the entry of findings that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD Rules, concerning OATS reporting; in violation of NASD Conduct Rules 2110 and 3010.

For that and other violations, the firm was censured and fined \$100,000. The firm had revised its supervisory system in that area.

4.

The firm entered into an AWC, effective on or about April 21, 2004, agreeing to the entry of findings that the firm committed violations in the following areas:

- (a) 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 trade reporting

(riskless principal transactions) and best execution (three quote rule), in violation of NASD Conduct Rules 2110 and 3010; and

- (b) The firm failed to enforce its written supervisory procedures with respect to limit order display, in violation of NASD Conduct Rules 2110 and 3110.

For those and other violations, the firm was censured and fined \$27,500; and it undertook to revise its written supervisory procedures in those areas.

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 it;
- 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

- A. The firm hereby accepts and consents, 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:

1.

On February 4, 2003, Brown-Forman Corporation ("Brown-Forman") announced an offer to purchase up to 6,800,000 shares of its Class B common stock in a modified "Dutch Auction" partial tender offer. Brown-Forman also reserved the right to purchase up to approximately 790,607 additional shares of Class B stock, representing 2% of the current outstanding shares. The "Dutch Auction" procedure allowed shareholders to select the price at which they were willing to sell their shares within the range of \$63 to \$73 per share. The deadline for tendering shares was March 4, 2003.

On March 4, 2003, in response to the Brown-Forman tender offer, Jefferies, acting in a principal capacity through one of its registered representatives, GFS, tendered 158,000 shares of Brown-Forman Class B common stock to Brown-Forman at a price of \$69 per share.

More than 7,740,000 shares were tendered by Brown-Forman shareholders at a price of \$70.50 or less. Following the March 4 deadline, Brown-Forman exercised its right to purchase 790,607 additional shares of its Class B common stock. The total number of shares to be purchased, 7,590,607, represented 98.05% of the shares tendered, and Brown-Forman elected to purchase the tendered shares on a pro-rated basis. Under the terms of the tender offer, the tendered shares were to be delivered to Brown-Forman within five trading days after the tender deadline. Because it had tendered 158,000 shares, Jefferies became obligated to deliver 154,925 shares of Class B common stock to Brown-Forman by March 11, 2003. Brown-Forman demanded that Jefferies deliver the shares pursuant to its tender, but the firm failed to deliver them.

SEC Rule 14c-4 governs partial tender offers. In relevant part, Rule 14c-4(b)(1) prohibits any person from tendering a security in a partial tender offer for his own account unless at the time of tender he has a net long position in the subject security equal to or greater than the amount tendered, and will deliver the subject securities or cause them to be

delivered within the time period specified in the tender offer. Jefferies did not have a net long position, as defined in Rule 14e-4, in Brown-Forman Class B common stock, either at the time of its tender or at the time when it was obligated to deliver the shares.

The foregoing acts, practices and conduct constitute a violation of SEC Rule 14e-4 and NASD Conduct Rule 2110 by Jefferies & Company, Inc.

2.

During the period from January 1, 2003, until on or about October 30, 2003, GFS was a registered representative employed by Jefferies as a manager of the International Securities Lending Group in its Stock Loan Department. GFS's registration with Jefferies was terminated on or about October 30, 2003.

GFS was responsible for securities lending, borrowing and financing transactions, which were not a part of Jefferies' securities business subject to regulation under NASD Rules. In addition, GFS was responsible for managing certain customer accounts and for trading securities in certain proprietary accounts at Jefferies and an affiliated broker/dealer. Those activities were a part of Jefferies' securities business subject to regulation under NASD Rules.

During the period from January 1, 2003, until on or about October 30, 2003, Jefferies' supervisory system failed to designate an appropriately registered principal or principals to supervise GFS in those of his activities that were subject to regulation under NASD Rules. It therefore failed to create or implement a supervisory system, or to adopt written supervisory procedures, that were reasonably designed to achieve compliance with securities laws and regulations, and NASD Rules, applicable to GFS's activities.

The foregoing acts, practices and conduct constitute a violation of NASD Conduct Rules 3010(a) and 2110 by Jefferies & Company, Inc.

3.

During the period from January 1, 2003, until on or about December 31, 2003, Jefferies' Corporate Actions Department, also known as the Reorganization Department, was responsible for the firm's processing of corporate reorganization events, both for the firm's customers and for its proprietary accounts. Such events included tender offers, mergers and acquisitions, debt retirements, stock splits, capital refinancings and calls of debt securities or preferred stock.

Jefferies' supervisory system was reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD Rules, by its Corporate Actions Department. During the period from January 1, 2003, until on or about December 31, 2003, however, Jefferies did not establish, maintain and enforce written supervisory procedures setting forth that portion of its supervisory system that governed the activities of the Corporate Actions Department.

The foregoing acts, practices and conduct constitute a violation of NASD Conduct Rules 3010(b) and 2110 by Jefferies & Company, Inc.

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

Jefferies & Company, Inc. shall be censured and fined \$100,000.

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 that 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 it 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.

Oct. 31, 2005
Date

Jefferies & Company, Inc.,
Respondent

By: Cathleen Shine
Cathleen Shine
Its Senior Vice President and
Deputy General Counsel

Accepted by NASD:

December 15, 2005
Date

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

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