

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. E072003004201

TO: NASD Department of Enforcement

**RE: Cardinal Capital Management, Inc.
CRD No. 24605**

**Hershel F. Smith, Jr., Registered Principal
CRD No. 427817**

**Christopher A. Sweeney, Registered Principal
CRD No. 823375**

Pursuant to Rule 9216 of the NASD Code of Procedure, Cardinal Capital Management, Inc. ("CCM"), Hershel F. Smith, Jr., and Christopher A. Sweeney (collectively, "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 Respondents; and**
- 3. If accepted:**
 - a. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against Respondents;**
 - 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' 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:

Cardinal Capital Management, Inc. became an NASD member in August 1989. CCM's NASD membership was cancelled on February 15, 2005; its SEC registration was terminated on March 13, 2005.

Christopher A. Sweeney entered the securities industry in 1976 with NASD member Merrill Lynch. He became employed by CCM in September 1995, where he was registered as a general securities principal and representative, and as a municipal securities principal. He was last registered, until February 8, 2005, with NASD member Westpark Capital, Inc. He currently is not registered with an NASD member.

In December 2002, pursuant to a Letter of Acceptance, Waiver and Consent, CCM was fined \$5,000 by NASD for executing principal equity transactions without a registered equity trader and \$7,500 for failing to report four events required to be reported under NASD Conduct Rule 3070. In addition Christopher Sweeney was fined \$2,500 for failing to register as an equity trader and \$5,000 for failing to supervise CCM's compliance with Rule 3070. (NASD Disc. Proc. No. C07020101).

In August 2004, pursuant to a Letter of Acceptance, Waiver and Consent, CCM was censured and fined \$18,500 (\$12,500 of which was joint and several with Christopher Sweeney and \$5,000 of which was joint and several with another individual), for: (1) failing to maintain correspondence of registered representatives; (2) failing to prepare a written needs analysis and training plan for calendar year 2000, as required by NASD Membership and Registration Rule 1120, and permitting two registered representatives to act in registered capacities when their registrations were inactive; (3) conducting a securities business while failing to maintain its minimum capital requirement, inaccurately calculating its net capital, maintaining inaccurate books and records, and filing inaccurate FOCUS reports; and (4) filing five quarterly reports required under NASD Conduct Rule 3070 in an untimely manner. Christopher Sweeney was censured and fined \$12,500, jointly and severally with CCM for (1) failing to maintain correspondence of registered representatives; (2) failing to prepare a written needs analysis and training plan for calendar year 2000, as required by NASD Membership and Registration Rule 1120, and permitting two registered representatives to act in registered capacities when their registrations were inactive; and (3) filing five quarterly reports required under NASD Conduct Rule 3070 in an untimely manner. (Disc. Proc. No. C07040073).

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In January 2005, pursuant to an Offer of Settlement, CCM was censured and fined \$35,000 (\$10,000 of which was joint and several with Christopher Sweeney), and suspended from engaging in solicited penny stock transactions in customer accounts for eighteen months, for various violations of the penny stock rules, recordkeeping rules, and for failing to reasonably supervise its penny stock business. Christopher Sweeney was fined \$10,000 (jointly and severally with CCM) and suspended from association with any NASD member in all principal capacities for six months.

According to CRD records, Hershel F. Smith, Jr. entered the securities industry in 1951 with an NASD member, where he became registered as a general securities representative. He was registered with CCM as a general securities principal and representative, among other things, from January 1990 until January 2005. He was most recently registered with NASD member Westpark Capital, Inc., until February 8, 2005. He has no prior relevant disciplinary history.

I. WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under the 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 prejudice 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 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. Respondent CCM, acting through Respondents Smith and Sweeney, engaged in a course of conduct involving the unregistered offer and sale of common stock and promissory notes of CC.Net (CCM's parent company) in violation of Section 5 of the Securities Act of 1933, and NASD Conduct Rule 2110, in that: (1) from on or about September 7, 2002, through on or about January 27, 2005, Respondent CCM, acting through Respondents Smith and Sweeney, engaged in the unregistered offer and sale of approximately 4,277,628 shares of CC.Net common stock, owned by Smith, Sweeney, and another individual associated with CCM, to about 159 public investors in about 238 transactions; and (2) from about March 2001, through about June 2004, Respondent CCM, acting through Respondents Smith and Sweeney, engaged in the unregistered offer and sale of at least 28 promissory notes issued by CC.Net to 16 investors, totaling \$2,035,000.
2. In connection with the unregistered offer and sale of the CC.Net common stock and Notes described above, CCM, acting through Respondents Smith and Sweeney, failed to establish and maintain a supervisory system reasonably designed to achieve compliance by CCM and its registered representatives with applicable sales practice rules, and failed to reasonably supervise its registered representatives in connection therewith, in violation of NASD Conduct Rules 2110 and 3010(a). In this regard, CCM registered representatives made material misrepresentations and failed to disclose material facts to customers in connection with the sales of the CC.Net stock described above. In addition, Respondents failed to ensure full disclosure of all material facts, including the risks associated with the purchase of the Notes, to the Note purchasers.
3. In or about October 2003, Respondent CCM, acting through Respondents Smith and Sweeney, sent a sales communication to CC.Net shareholders that contained exaggerated statements and price predictions concerning CC.Net stock, in violation of NASD Conduct Rules 2110 and 2210(d)(1).
4. From July 2001 until October 2003, and from December 2003 until August 2004, Respondent CCM, acting through Respondents Smith and Sweeney, caused CC.Net shares to be reflected on customer account statements at prices that had no reasonable basis, in violation of NASD Conduct Rule 2110.
5. In connection with the Notes offering described above, Respondents Smith and Sweeney personally guaranteed the repayment of the notes when they had no reasonable basis for believing that they could fulfill that obligation, in violation of NASD Conduct Rule 2110.
6. In connection with the unregistered sales of CC.Net common stock described above, Respondent CCM, acting through Respondents Smith and Sweeney, failed to prepare and preserve records for each transaction as required by Securities Exchange Act ("SEA") Rule 17a-3 and 17a-4, and failed to reflect said transactions on the firm's books and records, in violation of SEA Rules 17a-3 and 17a-4, and NASD Conduct Rules 2110 and 3110.

7. In 2003, Respondent CCM, acting through Respondent Smith, issued \$100,000 in CC.Net promissory notes to customers R&VM, without their knowledge or authorization, in violation of NASD Conduct Rules 2110 and 2310.
 8. From on or about October 25, 2002, until on or about December 20, 2002, in connection with the private placement of Xstream Beverage Group, Ltd. stock, Respondent CCM, acting through Respondents Smith and Sweeney, held \$46,750 in customer subscription funds in a firm bank account before forwarding the funds to the issuer, in violation of NASD Conduct Rules 2110 and 2330(a).
 9. Respondent CCM, acting through Respondents Smith and Sweeney, failed to provide information requested by the staff pursuant to Rule 8210 letters dated July 2, 6, 8, and 15, 2004; August 26, 2004; and October 6 and 21, 2004, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.
- B. Respondents also consent to the imposition, at a maximum, of the following sanctions:
- Cardinal Capital Management, Inc.:** expulsion from NASD membership.
- Christopher A. Sweeney:** a bar from association with any NASD member in all capacities.
- Hershel F. Smith, Jr.:** a bar from association with any NASD member in all capacities.
- 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. 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 Smith and Sweeney understand that if they are barred or suspended from association with any NASD member, they 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, they 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.)

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 them to submit it.

5-17-05

Date

Christopher A. Sweeney
Respondent5-17-05

Date

Hershel F. Smith, Jr.
RespondentCardinal Capital Management,
Inc.By: Hershel F. Smith, Jr.
Name: Hershel F. Smith Jr.
Title: Chairman

Reviewed by:

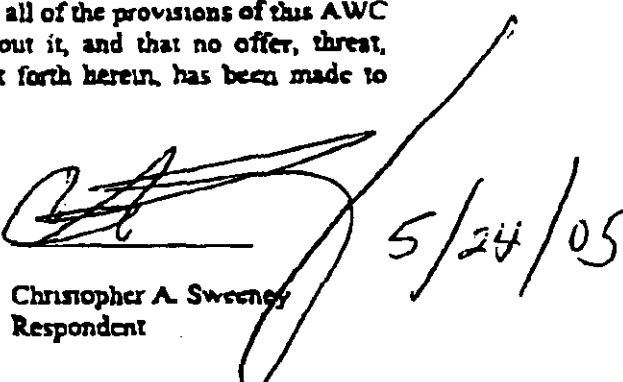
Carl F. SchoepplCarl F. Schoeppl, Esq.
Counsel for Respondents

Accepted by NASD:

7-22-05
DateDaniel F. Stefek
Daniel F. Stefek, District DirectorSigned on behalf of the Director of
ODA, by delegated authority

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 them to submit it.

Date


Christopher A. Sweeney
Respondent

Date

Hershel F. Smith, Jr.
Respondent

Cardinal Capital Management,
Inc.

By: _____

Name:

Title:

Reviewed by:

Carl F. Schoeppl, Esq.
Counsel for Respondents

Accepted by NASD:

Date


Daniel J. Stefek, District Director

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