

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E072004001501

**TO: Department of Enforcement
NASD**

**RE: Franklin Ross, Inc., Respondent
Member
[CRD No. 43610]**

**Mark G. Ross, Respondent
General Securities Principal
[CRD No. 1287721]**

Pursuant to Rule 9216 of NASD Code of Procedure, 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 us alleging violations based on the same factual findings.

We 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our 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

000074147 2011

- d. We 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 our testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

We also understand that our 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:

Franklin Ross, Inc. ("FRI") became a NASD member firm in March 1998. FRI primarily engages in day trading and on-line/internet trading and has a current net capital requirement of \$5,000. It clears its transactions through Computer Clearing Services, Inc on a fully disclosed basis. FRI has a formal disciplinary history that involves an AWC issued in May 2001 in which FRI and Mark G. Ross ("Ross") were fined \$5,000 jointly and severally for employing a statutorily disqualified individual. In addition, FRI was fined \$14,500 in April 2002 as a result of another AWC, which involved violations in connection with an earlier private offering.

Mark G. Ross entered the securities industry in October 1985 as a general securities representative of a NASD member. Ross subsequently became registered as a general securities principal and an equity trader and has been employed by multiple NASD member firms. He is currently employed as president of FRI where he has been employed since June 1997. Ross has a prior disciplinary history that involves the AWC described above.

I.

WAIVER OF PROCEDURAL RIGHTS

We 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 us;
- 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, we 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.

We 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. We 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:

On or about April 28, 2003, FRI commenced an offering of units of its own common stock and warrants. Each unit consisted of one share of common stock and one warrant to purchase one share of common stock for \$0.60. The price of each unit was \$0.50. The offering was extended until at least January 31, 2004.

As of January 31, 2004, FRI, acting through Ross, had raised \$194,848 through the sale of 395,800 units to 14 investors, some of whom were non-accredited investors.

FRI, acting through Ross, represented in the private placement memorandum ("PPM") that was provided to investors that FRI had annual revenues for the period of 1999 – 2002 of \$2,827,917, \$3,037,290, \$667,043, and \$228,460, respectfully. The PPM fails to disclose the additional material facts that FRI had annual net operating losses during each of these years of (\$262,636), (\$2,616), (\$41,287), and (\$41,818), respectfully.

The PPM further represented that [REDACTED] was a director, V.P., and financial principal/compliance. However, it failed to disclose the material fact that in April 2002, FRI and [REDACTED] were respondents in a AWC issued by the NASD whereby FRI was fined \$14,500 and [REDACTED] was fined \$4,000 (jointly and severally with FRI). The PPM also failed to disclose the material fact that FRI and Ross were respondents in another AWC issued in May 2001 in which they were fined \$5,000 jointly and severally for employing a statutorily disqualified individual.

Such failure to disclose material facts in connection with the offer of securities constitutes separate and distinct violations of NASD Conduct Rule 2110 by both FRI and Ross.

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

FRI and Ross are censured and jointly and severally fined \$20,000.

FRI is suspended from engaging in any offering of securities on behalf of FRI or any affiliate of FRI for a period of one year.

Ross is suspended from association with any NASD member in a principal capacity for period of 10 business days.

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

III.

OTHER MATTERS

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

We certify that we 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.

Franklin Ross, Inc.

2-14-06
Date

By: [Signature]
Mark G. Ross, President

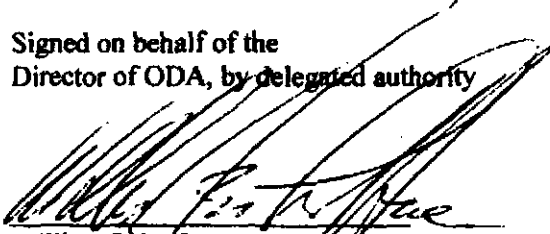
2-14-06
Date

By: [Signature]
Mark G. Ross, Respondent

Accepted by NASD:

3/7/06
Date

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



William Brice La Hue
Regional Counsel
NASD Department of Enforcement
One Securities Centre, Suite 500
3490 Piedmont Road, NE
Atlanta, Georgia 30305-4808

NASD District Director

Daniel Stefek
NASD, District 7
One Securities Centre, Suite 500
3490 Piedmont Road, NE
Atlanta, Georgia 30305-4808

Franklin Ross, Inc. (Examination No. EO7040015)
Corrective Action Statement

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

This Corrective Action ("this Statement") is hereby submitted by Franklin Ross, Inc. ("FRI") and Mark Ross, President of FRI in response to the attached Letter of Acceptance, Waiver and Consent ("AWC").

1. FRI acknowledges that its April 28, 2003 Offering Memorandum (the "2003 PPM"), in the Business Plan appended thereto, listed Statements of Income for calendar years 1999 through 2002, inclusive, and did not include related expense information which would have indicated that FRI had net losses for each of those years.

1.A. FRI, in presenting the income information, intended to disclose, and did disclose, that its revenues had declined precipitously from \$3,028,511 in 2000 to \$126,121 in 2002 (a 95.84% revenue decline).

1.B. In the Business Plan and in the body of the 2003 PPM, FRI advised prospective investors that the audited financial statements of the Company for calendar years 1999, 2000, 2001 and 2002 were available upon request. In addition, in several places in the 2003 PPM prospective investors were invited to request any additional information from FRI that they desired.

1.C. While the body of the 2003 PPM (under "FINANCIAL INFORMATION") stated that the Business Plan included "summaries of audited financial statements for the years ending December 31, 1999, 2000, 2001 and 2002". The intent of Mr. Ross in including the sales figures of FRI that were included was to show/disclose the significant decline in sales that had occurred over the three-year period being presented amounting to a decline in sales of over 90%. The net income (loss) figures were not intentionally omitted.

1.D. Promptly upon FRI having been apprised of the situation by the NASD staff, it terminated the 2003 PPM and restated its offering in the

February 1, 2004 Private Placement Memorandum (the "2004 PPM"), and in the 2004 PPM it included the loss figures for 1999 through 2002.

1.E. No complaint has been received from, and no concern has been raised by, any of the investors who invested as a result of the 2003 PPM.

1.F. All persons who invested as a result of the 2003 PPM received copies of the 2004 PPM.

1.G. Two persons who invested as a result of the 2003 PPM invested further amounts pursuant to the 2004 PPM which might indicate that the loss figures, by being included in the 2004 PPM, did not deter them.

2. FRI acknowledges that a statement in the biographical profile of Karen Z. Fischer in the Business Plan of the 2003 PPM to the effect that she enjoyed a "long and friendly business relationship with many of the local NASD, and SEC regulatory officials" could be deemed to be misleading in that a disciplinary action against her several years before was not disclosed.

2.A. [REDACTED] approximately 20-year securities career has been exceptional, with a single supervisory violation.

2.B. FRI concluded, in good faith, after due consideration and as part of the overall preparation of its 2003 PPM, that the violation by [REDACTED] did not rise to the level of a disclosable "risk factor". The reason for this is because, due to [REDACTED] long-standing good relationship with the NASD, she was advised that the originally proposed fine of \$5,000 would be reduced to \$4,000 so that it would not be disclosable on her U-4 as it would not rise to the level of being "material".

2.C. This issue was not brought to FRI's attention by the NASD until after the subject offering had been terminated; accordingly, there was no opportunity afforded to FRI to take prompt corrective action, which it would have taken as it did in connection with its summary financial information.

III. As noted herein, promptly upon receiving notification of a concern about the lack of loss figures, FRI terminated the 2003 PPM and at additional cost and expense prepared the 2004 PPM which included appropriate revisions to address the concern that had been noted. FRI

points out that no mention was at that time made of any concern regarding any biographical description of [REDACTED] or Mr. Ross.

IV. FRI points out that it is extremely proud of its 2003 PPM (and its 2004 PPM) which, while undergoing extreme scrutiny by the staff of the NASD over an extended period of time, resulted in its receipt of no comment/criticism (the alleged infractions being otherwise limited to the contents of the Business Plan). FRI's careful description of such factors as dilution, forward looking statements, risk factors (of which 22 were listed in the PPMs), terms of the offering, capitalization, etc. received no negative comments from the NASD staff, notwithstanding a year of review by the staff.

V. FRI provided a courtesy copy of the 2004 PPM to the NASD prior to its use. While it was already clearly understood by FRI that no "review" was being done of the 2004 PPM by the staff of the NASD, nonetheless the NASD received it and could have noted any incremental concerns it may have had in that FRI was using its best efforts to address any and all concerns. [REDACTED] and Mr. Ross' disciplinary record had not been included among the issues then raised by the NASD and, as noted herein, no corrective action was possible as to the PPMs.

FRI believes that the prompt, voluntary, demonstrable steps that were taken to correct the specified issues should cause the sanctions in the AWC to be reconsidered and reduced or eliminated. FRI has implemented new procedures to assure our compliance with all applicable rules.

Thank you for your consideration of this Statement. Franklin Ross, Inc. and Mr. Mark Ross respectfully request that the sanctions in the AWC be modified to the following:

FRI and Ross are censured and jointly and severally fined \$12,500 (versus \$20,000 in the AWC).

FRI is suspended from engaging in any offering of securities on behalf of FRI or any affiliates of FRI for a period of one year (no change to the AWC).

Ross will voluntarily terminate his principal status with FRI for a period of 90 days (versus a 10 business day suspension in the AWC).