

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E1020030088-01

TO: Department of Enforcement
NASD

RE: C.E. Unterberg, Towbin, LLC. (BD No. 24790)
Respondent

and

Thomas I. Unterberg (CRD No. 451739)
Respondent

Pursuant to Rule 9216 of NASD Code of Procedure, C.E. Unterberg, Towbin, LLC. ("CEUT") and Thomas I. Unterberg ("Unterberg") (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 records;
 - 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 rights 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:

CEUT

CEUT, formerly known as Unterberg Harris, L.P., became a member of NASD on July 28, 1989. CEUT makes its primary business in the areas of investment banking, underwriting, research, consulting services, and market making.

CEUT does not have any relevant disciplinary history within the Securities and Exchange Commission, any self-regulatory organization or any other state securities regulator.

Unterberg

Unterberg first entered the securities industry in 1956. Unterberg first became registered with NASD in March 1965 through an association with a former member firm.

Unterberg has been registered with NASD through his association with CEUT since July 1989. He is registered as a General Securities Principal, General Securities Representative, and Municipal Securities Principal. Until December 2004, he was listed on the firm's Form BD as the firm's Chief Executive Officer and Chairman.

Unterberg does not have any prior disciplinary history with the Securities and Exchange Commission, any state securities regulator, or self-regulatory organization.

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 Respondents;

- 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 allegations or findings, and solely for the purposes of this proceeding 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. During the period July 1, 2002 through August 31, 2003, of 68 Uniform Termination Notices for Securities Industry Registration ("Forms U-5") filed by CEUT concerning registered persons, 14 Forms U-5 (or 20%) were untimely in that they were not filed within thirty days of the date of termination. By reason of the foregoing, CEUT violated Article V, Section 3(a) of NASD's By-Laws and NASD Conduct Rule 2110.
 - 2. From in or around January 2002 through the present, CEUT, acting through Unterberg, permitted JG to engage in activities that required registration as a General Securities Representative and General Securities Principal when JG was not so registered. JG's activities included, *inter alia*, soliciting investment banking business for CEUT and serving as CEUT's president from in or around January 2002 through in or around December 2003. By reason of the foregoing, CEUT and Unterberg

violated NASD Membership and Registration Rules 1021 and 1031 and NASD Conduct Rule 2110.

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

- Unterberg and CEUT to be censured;
- Unterberg and CEUT to be jointly and severally fined \$20,000; and
- CEUT to be fined an additional \$7,500.

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 Respondents 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 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 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, have been made to induce Respondents to submit it.

17 December 2005
Date

C.E. Unterberg, Towbin, LLC. (BD No. 24790)

By Andrew Arne

Print Name: Andrew Arne

Print Title: Chairman

Date

Thomas L. Unterberg

Counsel for Respondents

Accepted by NASD:

December 28, 2005

Date _____

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

William St. Louis
Deputy Regional Chief Counsel
NASD Department of Enforcement
One Liberty Plaza
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(212) 858-4036

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