

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ## E1020030187-01

TO: Department of Enforcement
NASD

RE: Fleet Securities, Inc. ("Fleet Securities") (BD No. 13071)

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

Respondent 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent'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. Respondent 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 Respondent's testimonial obligations or right to take legal positions in litigation in which NASD is not a party.

Respondent 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:

Fleet Securities became a member of NASD and the New York Stock Exchange in March 1983. Fleet Securities was a wholly owned subsidiary of Bank of America Corporation until its purchase by Automatic Data Processing, Inc. ("ADP") in November 2004. At that time, Fleet Securities became known as ADP Clearing & Outsourcing Services, Inc., which is an ADP business unit. All matters relevant to this AWC occurred prior to November 2004.

Fleet Securities has the following relevant disciplinary history. On June 30, 2000, an AWC was accepted in which Fleet Securities was censured and fined \$7,500 for trade reporting violations, which included submitting late trade reports to the Automated Confirmation Transaction Service ("ACT") and failing to designate these transactions as late in ACT. Additionally, on June 27, 2000, an AWC was accepted in which Fleet Securities was censured and fined \$100,000 for various violations resulting from its market making activities, which included ACT trade reporting violations.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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, Respondent 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.

Respondent 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. Respondent 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) NASD staff reviewed 60 random transactions reported by Fleet Securities to ACT during the time period February 1, 2003 to April 30, 2003. Its review included transactions in the Nasdaq National Market ("NNM"), over-the-counter bulletin board ("OTCBB") and the Third Market. NASD's review uncovered the following:
 - a. Fleet Securities failed, within 90 seconds after execution, to transmit through ACT 10 last sales reports of transactions;
 - b. Fleet Securities failed to designate through ACT that 7 of these transactions were late; and
 - c. Fleet Securities inaccurately reported to ACT that it had acted as a principal in 38 of these transactions.

Accordingly, Fleet Securities violated NASD Marketplace Rules 4632, 6130, 6420 and 6620.

- 2) Additionally, NASD staff's review of the order tickets for the 60 random transactions identified above revealed that Fleet Securities failed to record on 27 of the order tickets the execution times in seconds.

Accordingly, Fleet Securities violated SEC Rule 17a-3 and NASD Conduct Rule 3110.

- 3) NASD staff reviewed 156 transactions that Fleet Securities reported to the Municipal Securities Rulemaking Board ("MSRB"). NASD's review uncovered the following:

- a. Fleet Securities reported 40 of these transactions to the MSRB with the incorrect executing broker symbol; and
- b. Fleet Securities failed to timely report 28 of these transactions to the MSRB.

Accordingly, Fleet Securities violated MSRB Rule G-14.

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

- 1) A censure; and
- 2) A fine of \$20,000.

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

III.

OTHER MATTERS

- A. Respondent 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. Respondent 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. Respondent 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.
- C. Respondent 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.

Respondent certifies that it has 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 it to submit it.

RESPONDENT:

ADP Clearing & Outsourcing Services, Inc.

7/19/05
Date

By: Kenneth Lampert
Kenneth Lampert
Chief Compliance Officer

Reviewed by:

Adam Behar
Counsel for ADP Clearing & Outsourcing Services, Inc.
Adam S.T. Behar, General Counsel

Accepted by NASD:

8/19/05
Date

Adam Lipnick
Adam Lipnick
Regional Counsel