

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ## E1020031694-01**

**TO: Department of Enforcement
NASD**

**RE: John H. Gutfreund (CRD No. 232344)
Respondent**

Pursuant to Rule 9216 of NASD Code of Procedure, John H. Gutfreund ("Gutfreund" or "Respondent"), 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 or any other regulator 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 or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that his 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:

Respondent first entered the securities industry in 1953.

Respondent is not currently registered with NASD. However, since at least in or around January 2002, Respondent has been associated with C.E. Unterberg, Towbin, LLC. (BD No. 24790) ("CEUT"). From in or around January 2002 through December 9, 2003, Respondent was the President of CEUT.

In 1992 the Securities and Exchange Commission commenced a proceeding against Respondent and others. Respondent, who had been the Chairman and Chief Executive Officer of a broker-dealer, was charged with failing to properly supervise a trader who attempted to rig the market for Treasury notes. In connection with this matter, Respondent, agreed to pay a \$100,000 fine and was "ordered to comply with his undertaking not to associate in the future in the capacity of Chairman or Chief Executive Officer with any broker, dealer, municipal securities dealer, investment company or investment adviser regulated by the Commission" See JOHN H. GUTFREUND, Exchange Act Release No. No. 34-31554, 1992 SEC LEXIS 2939; 51 S.E.C. 93 (December 3, 1992)

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

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 Respondent;
- 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 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.

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. From in or around January 2002 through the Present, Respondent engaged in activities at and for CEUT that required him to be registered as a General Securities Representative and General Securities Principal. Respondent'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. Respondent was not registered as a General Securities Representative and General Securities Principal during this period. By reason of the foregoing, Respondent violated NASD Membership and Registration Rules 1021 and 1031 and NASD Conduct Rule 2110.

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

- A fine of \$25,000.00; and
- A Censure.

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

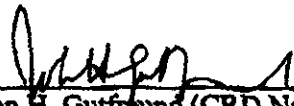
III.

OTHER MATTERS

- A. Respondent understands that he 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 he 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 Respondent 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 he proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondent understands that if he is barred or suspended from associating with any NASD member, he becomes 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, he 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).

Respondent certifies that he 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 Respondent to submit it.

15 December 2005
Date

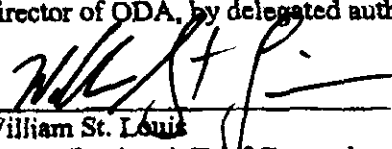

John H. Gutfreund (CRD No. 232344)


Counsel for Respondent

Accepted by NASD:

December 21, 2005
Date

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


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