

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E102004015504

TO: Department of Enforcement
NASD

RE: Fieldstone Services Corp.
Member
CRD No. 27851

Pursuant to Rule 9216 of NASD Code of Procedure, Fieldstone Services Corp. ("Fieldstone") 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 it alleging violations based on the same factual findings.

Fieldstone 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 it; and
3. If accepted:
 - a. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about its 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. Fieldstone may not take any action or make or permit to be made

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

Fieldstone 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:

Fieldstone has been an NASD member since April 30, 1991. On January 1, 2004, Fieldstone was acquired by the firm's current owner, Fieldstone Private Capital Group, Inc. The firm's main office is located in New York, NY. During the relevant period, Fieldstone had one office and approximately 20 registered representatives, and the firm generated most of its revenues from corporate debt brokerage and a smaller percentage from private placements of securities. In 2002, Fieldstone was suspended by NASD for approximately two months for failing to file its 2000 and 2001 audited annual reports on a timely basis. In December 2003, NASD accepted an AWC from Fieldstone whereby the firm was censured and fined \$20,000 for conducting a securities business during the period of that suspension and for failing to file its 2000 and 2001 annual audited reports in a timely manner.

I.

WAIVER OF PROCEDURAL RIGHTS

Fieldstone 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, Fieldstone 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.

Fieldstone 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. Fieldstone hereby accepts and consents, 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:

1. Books and Records/E-mail Retention Violations

Rule 17a-4 promulgated under the Securities Exchange Act of 1934 ("Exchange Act") requires that brokerage firms maintain and preserve, for a period of not less than three (3) years, electronic communications relating to the firm's business as a broker-dealer. In Notice to Members 01-80 and 03-33, NASD communicated to members their recordkeeping and supervisory obligations with respect to electronic communications, including e-mail.

From at least July 2002 to October 2005, Fieldstone failed to maintain and preserve all of its e-mail communications as required. Prior to April 2004, Fieldstone, once a month, electronically "backed-up" e-mails sent or received by the firm's employees. If an e-mail was deleted prior to the month-end "back up," however, it would not be retained. In April 2004, Fieldstone upgraded its e-mail archival system, but it was not until October 2005 that the firm implemented an e-mail archival and retention system that retained all e-mails relating to the firm's business as a broker-dealer.

Accordingly, Fieldstone violated Exchange Act Rule 17a-4 and NASD Conduct Rules 3110 and 2110.

2. Net Capital Rule Violations

During the period November 28, 2003 through April 4, 2004, Fieldstone failed to comply with Section 15(c) of the Exchange Act, and Rule 15c3-1 thereunder, in

that it used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain minimum required net capital, as more fully set forth below:

	<u>Net Capital</u>	<u>Requirement</u>	<u>Deficient Net Capital</u>
Month-end November 2003:	(\$187,168)	\$100,000	(\$287,168)
Month-end December 2003:	(\$252,266)	\$100,000	(\$352,266)
Month-end January 2004:	(\$497,924)	\$100,000	(\$597,924)
Month-end February 2004:	(\$406,916)	\$480,587	(\$887,503)
Month-end March 2004:	(\$513,280)	\$100,000	(\$613,280)

Fieldstone's net capital was deficient during this period due to the firm's failure to have a "Proprietary Accounts of Introducing Brokers and Dealers Agreement" ("PAIB") in effect with its clearing firm. As a result, funds Fieldstone held with the clearing firm could not be used as allowable assets in calculating its net capital. Fieldstone's conduct violated Section 15(c) of the Exchange Act, Rule 15c3-1 thereunder and NASD Conduct Rule 2110.

3. Annual Audit Filing Violations

Fieldstone failed to file its annual audited report for calendar year 2003 in a timely manner as required by Exchange Act Rule 17a-5. Accordingly, Fieldstone violated Exchange Act Rule 17a-5 and NASD Conduct Rule 2110.

4. NASD Membership Agreement and Supervision Violations

During the period November 1, 2003 through April 30, 2004, Fieldstone failed to comply with its membership agreement, which permitted the firm to engage in transactions involving fixed income and private placement securities. Specifically, the firm made a material change in its business activities by engaging in approximately 50 equity transactions. Accordingly, Fieldstone violated NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110.

Moreover, Fieldstone failed to establish, maintain and enforce written procedures to supervise the types of business in which it engaged. Specifically, the firm did not have any written supervisory procedures relating to the sale and trading of equities. Accordingly, Fieldstone violated NASD Conduct Rules 3010 and 2110.

5. Equity Trade Ticket/Confirmation Violations

A review of the trade tickets for the approximately 50 equity transactions executed by Fieldstone during the period November 1, 2003 through April 30, 2004 revealed that 48 of the tickets failed to contain either an order receipt or an order entry time. Accordingly, Fieldstone violated Exchange Act Rule 17a-3 and NASD Conduct Rules 3110 and 2110.

A review of the same group of order tickets revealed that that eight (8) of the transactions involved contemporaneous riskless principal trades. The customer confirmations issued to the customers, however, failed to indicate that these were riskless principal transactions. Accordingly, Fieldstone violated Exchange Act Rule 10b-10 and NASD Conduct Rule 2110.

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

Fieldstone shall be censured and fined \$150,000.

In addition, we shall comply with the following undertakings within the time periods specified below (unless otherwise extended by NASD staff):

1. Fieldstone shall undertake to review its system and procedures regarding the preservation of electronic mail communications for compliance with NASD rules and the federal securities laws and regulations. Within 180 calendar days of the issuance of this AWC, an officer of Fieldstone will certify to NASD in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning the preservation of electronic mail communications.
2. The certification, along with the procedures, must be submitted to NASD's Boston District Office staff. Although NASD staff may review the revised procedures, said review shall in no way constitute an approval of the revised procedures. The failure of NASD staff to alert Fieldstone to any deficiencies in the revised procedures shall not preclude NASD from instituting a subsequent disciplinary action as a result of deficiencies in the revised procedures.

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

III.

OTHER MATTERS

- A. Fieldstone understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future

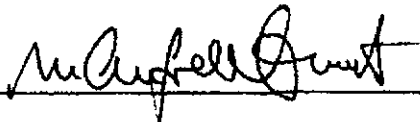
misconduct. Fieldstone further understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.

- B. Fieldstone 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 and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Fieldstone 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.

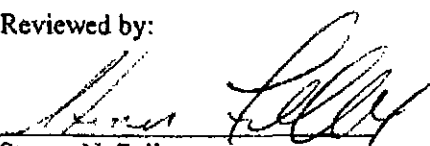
Fieldstone certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce it to submit it.

Fieldstone Services Corp.

7/28/06
Date

By: 

Reviewed by:


Steven N. Fuller
Nixon Peabody LLP
Counsel for Respondent

Accepted by NASD

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

9/7/06
Date

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