

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##
E1020040891-01

TO: Department of Enforcement
NASD

RE: Clayton, Dunning & Company, Inc.
(BD No. 42533)

Pursuant to Rule 9216 of NASD Code of Procedure, Clayton Dunning & Company, Inc (hereinafter "Respondent" or "CDC") 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:

CDC has been a member of NASD since May 15, 1997. CDC primarily engages in equity transactions and private placement underwritings.

CDC has no formal 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 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:

From April 24, 2002 to November 1, 2004, CDC failed to develop and implement an anti-money laundering program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et. seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury.

Specifically, CDC failed to implement an adequate Customer Identification Program in that CDC did not adequately verify the identify of new customers to the firm.

Based on the foregoing, CDC violated NASD Conduct Rules 3011 and 2110.

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

- Respondent to be censured; and
- Respondent to be fined \$10,000.

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 herein 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 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.

7/26/05
Date

Respondent Clayton Dunning & Company, Inc.

By: 

Title: AS PRESIDENT

Name: Ara Proudian

Accepted by NASD:

August 25, 2005
Date



Paul Hare
Regional Attorney, District 10
Department of Enforcement

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

Attachment