

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E1020041022-01

TO: Department of Enforcement
NASD

RE: Balfour Investors, Incorporated Respondent
(BD No. 7382).

Jay Goldsmith, President
(CRD No. 224459), and

Harry Freund, Chairman
(CRD No. 214182)

Pursuant to Rule 9216 of NASD Code of Procedure, We, Balfour Investors, Inc. ("Balfour"), Jay Goldsmith ("Goldsmith") and Harry Freund ("Freund") (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 Respondent 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 record, the 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 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. 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 right 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:

Balfour has been a member of NASD since April 19, 1977.

Freund first became registered with NASD through a former member firm as a General Securities Representative ("GSR") in 1968. Since April 19, 1977, Freund has been registered through an association with Balfour as a GSR and General Securities Principal ("GSP") and is Chairman, co-Compliance Officer and approximately fifty percent owner of Balfour.

Goldsmith first became registered with NASD through a former member firm as a GSR in 1967. Since April 19, 1977, Goldsmith has been registered through an association with Balfour as a GSR and GSP and is President, co-Compliance Officer and approximately fifty percent owner of Balfour.

Respondents have no relevant disciplinary history within the past ten years with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

1.

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 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 May 2004 through July 2004, pursuant to SEC Rule 15c3-1, Balfour had a minimum net capital requirement of \$100,000. On the following five dates, while conducting a securities business, Balfour acting through Goldsmith and Freund, failed to maintain its minimum net capital:

- a. On Thursday, May 6, 2004, Balfour maintained \$98,754 in net capital, a deficiency of \$1,245.
- b. On Friday, May 14, 2004, Balfour maintained \$81,163 in net capital, a deficiency of \$18,836.

- c. On Wednesday, May 19, 2004, Balfour maintained \$86,163 in net capital, a deficiency of \$13,836.
- d. On Tuesday, July 20, 2004, Balfour maintained \$91,548 in net capital, a deficiency of \$8,451.
- e. On Thursday, July 22, 2004, Balfour maintained \$92,364 in net capital, a deficiency of \$7,635.

By reason of the foregoing, Balfour violated SEC Rule 15c3-1 and NASD Conduct Rule 2110. Goldsmith and Freund violated NASD Conduct Rule 2110.

- B. Respondents also consent to the imposition, at a maximum, of the following sanctions:
 - 2 Balfour, Goldsmith, and Freund to be censured; and
 - 3 Balfour, Goldsmith, and Freund to be jointly and severally fined \$10,000.

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 Respondents 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 upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which Respondents propose to pay any fine imposed. Respondents specifically and voluntarily waive any right to claim that Respondents 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 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 Respondents to submit it.

Date

11/18/05

Balfour Investors, Incorporated
(BD No. 7382)

By:

Jay Goldsmith, President

Date

11/28/05

Jay Goldsmith
(CRD No. 224459)

Date

11/28/05

Harry Freund
(CRD No. 214182)

Julian Rainero, Esq.
Counsel for Respondents
Bingham McCutchen LLP
Suite 800
1120 20th Street, NW
Washington, DC 20036

Accepted by NASD:

January 11, 2006
Date Paul Hare

Regional Attorney, District 10
Department of Enforcement. Signed
on behalf of the Director of ODA, by
delegated authority

NASD District Director
Hans Reich
Senior Vice President
NASD, District 10