

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E1120030718-01

TO: Department of Enforcement
NASD

RE: Linsco/Private Ledger Corp., Respondent
Member Firm
BD No. 6413

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent Linsco/Private Ledger Corp. ("LPL" or the "firm") 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 LPL alleging violations based on the same factual findings.

LPL 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 LPL's 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 LPL's disciplinary records;
 - 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. LPL 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 LPL's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

LPL 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:

LPL has been a member of the NASD since February 1973. The firm's principal office is located in Boston, MA and has approximately 3,300-registered branch offices located throughout the United States. LPL conducts a general securities business on a self-clearing basis and employs in excess of 6,100 registered representatives.

On February 12, 2004, an AWC became final wherein NASD censured and fined LPL \$1,116,402.50, and ordered the firm to undertake certain remedial and corrective measures relating to providing refunds to customers who did not receive appropriate mutual fund Class A share breakpoint discounts. The sanctions were based on LPL's failure to provide mutual fund breakpoint discounts as described in relevant fund prospectuses in violation of NASD Conduct Rule 2110. On the same date, in a related settlement with the Securities and Exchange Commission (the "SEC"), LPL was ordered to pay a monetary civil penalty of \$1,116,402.50.

On March 31, 2000, a consent agreement became final wherein the North Dakota Office of the Securities Commissioner fined LPL \$25,000, and ordered the firm to undertake certain remedial and corrective measures relating to the firm's inadequate inspections of its Bismarck, North Dakota branch office and review of mutual fund exception reports that failed to timely detect and prevent several violative mutual fund transactions. Specifically, LPL agreed to review its supervisory system, use its best efforts to conduct annual inspections of North Dakota branch offices, and mail a written offer to pay customers partial refunds of net commissions earned by the firm and one of its registered representatives.

I.

WAIVER OF PROCEDURAL RIGHTS

LPL 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 ("SEC") and a U.S. Court of Appeals.

Further, LPL 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.

LPL 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. Findings

LPL 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:

Summary

This matter arises from a review of LPL's sales of Class B and Class C shares of mutual funds between January 1, 2002 and September 30, 2003 (the "review period"). Within the review period LPL effected transactions where it made recommendations to customers to purchase Class B and Class C shares through its registered representatives, known as financial advisors ("FAs"). In connection with its recommendations, LPL did not consider or adequately disclose, at the point of purchase, on a consistent basis, that an equal investment in Class A shares would generally have been more advantageous for certain customers. Accordingly, LPL will undertake a remediation plan that includes a review of more than 22,423 transactions involving at least 2,070 customer households.

In particular, the firm did not adequately consider that large investments in Class A shares of mutual funds entitle customers to breakpoint discounts on sales charges, generally beginning at the \$50,000 investment level, which are not available for investments in Class B and Class C shares. In fact, customers may be entitled to breakpoints based upon a single mutual fund purchase, multiple purchases in the same "family of funds," and/or mutual fund investments held, at the time of the new purchase, by members of the customer's "household," as that term is defined in the prospectus of the fund in which the shares are being purchased. Unlike Class A shares, Class B shares are also subject to contingent deferred sales charges ("CDSCs") for a period of time, generally six years, as well as higher ongoing Rule 12b-1 fees for as long as the Class B shares are held. The CDSCs and the higher ongoing Rule 12b-1 fees significantly affect the return on customers' mutual fund investments.

In addition, LPL's supervisory and compliance policies and procedures during the review period were not reasonably established, maintained and/or enforced so that the firm, at the point of each sale, provided adequate disclosure of, or consideration to, on a consistent basis, the benefits of the various mutual fund share classes as they applied to certain individual customers.

As a result of the foregoing, LPL violated NASD Conduct Rules 2110, 2310, and 3010.

Share Classes

1. LPL sells mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment.
2. For example, Class A shares are subject to a front-end load, or initial sales charge, when originally purchased, and have modest annual fund expenses, including Rule 12b-1 fees that are typically 0.25 percent. The majority of the front-end load is paid to the selling broker-dealer as a commission. The balance of the initial investment is paid for the fund's shares. Typically, the front-end load decreases as the size of the investment increases. This concept applies to both single purchases and to multiple purchases in the same family of funds that may be aggregated with the customer's other investments, as well as certain investments by the members of that customer's household, as permitted by the funds' prospectuses. For most investments in which the total dollar amount invested in a fund family is \$1 million or more, the front-end load is generally waived.¹ These discounts are commonly referred to as "breakpoints" and the discounts typically increase at each of the \$50,000, \$100,000, \$250,000, \$500,000 and \$1 million levels.
3. Generally, Class A share investments that, when aggregated, fall below \$50,000 are subject to an initial sales charge that can range from 3.00 to 5.50 percent. However, for an investment: (i) between \$50,000 and \$99,999 the sales charge can range from 2.50 to 4.50 percent; (ii) between \$100,000 and \$249,999 the sales charge can range from 2.00 to 3.50 percent; (iii) between \$250,000 and \$499,999 the sales charge can range from 1.50 to 2.50 percent; (iv) between \$500,000 and \$999,999 the sales charge can range from 1.25 to 2.00 percent; and (v) of \$1 million or more the sales charge generally is reduced to zero. These breakpoints reduce the commissions paid to the selling broker-dealers by a corresponding amount. Customers can receive the benefits of breakpoint discounts by, among other ways, making a single investment,

¹ A CDSC, generally totaling 1.00 percent, is typically charged for redemptions that occur within the first year following the investment.

aggregating purchases, employing rights of accumulation or utilizing letters of intent.²

4. In contrast, Class B shares do not carry any front-end sales charge and breakpoint discounts are not available regardless of the size of the investment. Instead of a front-end sales charge, Class B shares have significantly higher annual Rule 12b-1 fees (typically 1.00 percent) than Class A shares (typically 0.25 percent) and may be subject to a CDSC if redeemed prior to the expiration of a holding period specified in the prospectus. The amount of the CDSC is generally calculated as a percentage of the lesser of the initial amount invested or the investment's value at the time of the sale, declines each year and eventually disappears entirely. Class B shares usually convert to Class A shares, at no cost to the customer, after eight years.
5. Class C shares typically do not carry a front-end sales charge but may be subject to a 1.00 percent CDSC if the shares are redeemed within one year. Class C shares generally have significantly higher annual Rule 12b-1 fees (typically 1.00 percent). Class C shares never convert to Class A shares, thereby subjecting customers to higher expenses as long as the customers hold the Class C shares. Class C shares are generally preferable for customers who do not intend to hold their shares for a long time and are not investing enough to qualify for a breakpoint associated with Class A shares.
6. The different sales charges, availability of breakpoints and Rule 12b-1 expenses associated with different share classes have a direct effect on a mutual fund investment's return. The significance of these differences is that, at certain dollar levels and over certain holding periods, an equal investment in Class A shares generally will yield a better return than a similar investment in Class B or Class C shares.
7. With Class B shares, the mutual fund distributor, which is generally an affiliate of the mutual fund, advances a commission to the selling broker-dealer. Broker-dealers and their representatives may receive greater commissions from the sale of Class B shares than from the sale of the same amount of Class A shares if the sale would qualify for breakpoint discounts. Mutual fund complexes, through their distributors, recoup the commissions they advance for Class B shares through the substantially higher Rule 12b-1 fees and/or the CDSC. The different fee structures and characteristics of Class A, Class B and Class C shares, including the availability of breakpoint discounts with regard to purchases of Class A shares, are described in the mutual fund prospectuses and statements of additional information.
8. On certain occasions during the review period, LPL recommended and sold Class B and/or Class C shares of mutual funds to customers who, depending upon among

² A right of accumulation permits a customer or an eligible group of related customers (e.g., the customer, the spouse and minor children) to "accumulate" or combine existing holdings of shares of funds within the same fund "family" with additional purchases of shares of the same fund family for the purpose of achieving breakpoints and associated discounts. Customers may also qualify for breakpoints by executing a letter of intent, which is an agreement to make multiple purchases of Class A shares issued by a fund family over a period of time, usually around 13 months, which, when aggregated, equal an amount that qualifies for a breakpoint discount.

other things, the amount of the investment and the customer's contemplated holding period, would have benefited had they purchased Class A shares instead. Specifically, these customers made purchases of Class B and/or Class C shares in various mutual funds which, had they purchased Class A shares, could have qualified for breakpoints, through single purchases, aggregating multiple purchases, employing rights of accumulation or utilizing letters of intent. As a result of the customers' purchases of Class B shares, in some instances, LPL received greater commissions than it would have received had the clients purchased Class A shares instead. In particular, LPL earned approximately \$2.40 million more than it would have had it sold Class A shares of the same mutual funds.

Suitability Violations

9. NASD Conduct Rule 2310 requires that, before recommending a transaction, a member firm and its registered representatives shall have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is suitable for the customer. Further, NASD has long held that in recommending share classes of a mutual fund, a registered representative has an obligation to avoid increasing the costs that his or her customers pay. Also, a registered representative's recommendations must be consistent with his or her customer's best interests.
10. In recommending the purchase of mutual funds, a member firm and its registered representatives, must determine the suitability of the class of shares to be purchased as well as the suitability of the particular mutual fund. Primary considerations include the investment amount, the expected term of the investment, the fees and expenses associated with each class of shares, and the customer's personal and financial circumstances and investment objectives. These individual considerations must be balanced at the point of purchase by the member firm.
11. In determining the suitability of a particular share class, registered representatives must weigh the consequences of the class selection by considering the effect of the comparative sales loads and annual expenses for the customer's contemplated duration of the investment.
12. In certain instances during the review period, LPL, through its FAs, did not disclose at the point of purchase or adequately consider, on a consistent basis, the foregoing elements when making recommendations to customers to purchase Class B and Class C shares instead of Class A shares. In one instance, a LPL customer invested a total of \$131,816 in Class B shares, as opposed to Class A shares, in a balanced fund. By purchasing Class B shares instead of Class A shares, the customer did not receive the benefit of the breakpoint available with Class A shares, and was subjected to additional fees and expenses (Rule 12b-1 fees and CDSCs). A quantitative analysis at the point of sale would have revealed that if the customer were to sell the Class B shares at any point during the first 3 years following the investment, the customer,

under the hypothetical setting,³ would be disadvantaged by more than \$1,600.⁴ The analysis also would have revealed that, assuming the customer did not sell the initial investment, the disadvantage would increase over time, up through and following the date upon which the Class B shares would automatically convert to Class A shares.

13. By virtue of the aforementioned conduct, LPL violated NASD Conduct Rules 2110 and 2310.

**LPL's Supervisory and Compliance Policies and Procedures
Regarding Class B and Class C Shares Were Inadequate**

14. In connection with the aforementioned findings, LPL failed to establish, maintain and enforce supervisory and compliance policies and procedures that were reasonably designed to achieve compliance with the NASD rules described above. In particular, LPL's policies and procedures did not set forth a means to adequately identify purchases of Class B and Class C shares by customers for whom Class A shares would have been more economically beneficial.
15. For example the firm's Compliance Manual for the sale of mutual funds requires, among other things, that: (i) FAs provide sufficient information for customers to understand and evaluate the structure of multi-class mutual funds; (ii) FAs inform investors about the various fee structures available among front-end load, level-load or back-end load mutual funds, and the points at which reduced fees and charges are available; (iii) FAs advise customers as to why one type of fee may be higher or lower than another; and (iv) FAs explain how contingent deferred sales charges affect a customer's overall cost.
16. Although LPL had certain written policies requiring disclosures about the various classes of fund shares, LPL's procedures were not sufficient to ensure that FAs made adequate such disclosures to their customers, other than providing them with prospectuses. Among other things, for some of the review period, LPL's policies and procedures did not set forth a reasonable means to ensure that FAs, when recommending mutual fund shares to customers, (i) adequately disclosed that such shares were subject to higher annual fees that could have a negative impact on the customers' investment return, or (ii) once breakpoints become available, an equal investment in Class A shares could yield a higher return, and/or (iii) quantified the potential monetary difference between purchasing Class A shares, Class B shares and Class C shares for the period their customers' anticipated holding the investment.
17. The firm's policies and procedures also failed to emphasize adequately that customers could achieve breakpoints for Class A shares in most funds through the use of householding, letters of intent and rights of accumulation as provided for in

³ The example assumes an annualized rate of return, before expenses, of 5.00 percent. Also, the example utilizes the breakpoints and annual expenses applicable for each class, including Rule 12b-1 fees, and the CDSC schedule applicable to Class B shares, which are set forth in the relevant fund prospectus and, where appropriate, the statement of additional information for the fund.

⁴ The results could have been obtained by using either the "NASD Mutual Fund Expense Analyzer" or the "SEC Mutual Fund Cost Calculator," which have been available to the public since January 2002, and 2001, respectively.

the particular prospectus(es). For some of the review period, LPL further failed to require its FAs and/or its supervisory principals to conduct a quantitative analysis of the available mutual fund classes, based upon the particular fund's principal considerations, including applicable aggregation rights.

18. For some of the review period, the firm also failed to provide adequate training and guidance to its FAs and supervisors regarding the various classes of mutual funds; the impact that front-end loads, breakpoint discounts, annual expense differentials and CDSCs have on mutual fund investments; and the various ways to aggregate various accounts holdings and purchase amounts to achieve maximum breakpoints.
19. In addition, for some of the review period, LPL failed to have policies or procedures that adequately limited or prohibited the sale of Class C shares to customers: (i) who intended to invest \$1,000,000 or more in mutual funds in a particular fund family; (ii) who intended to invest \$500,000 or more in mutual funds in a particular fund family that charged a front-end load; or (iii) for whom a quantitative analysis of the various classes, and the customer's anticipated holding period, would reveal that an alternative class of funds likely would yield higher returns for the customer. Consequently, at times, certain FAs recommended and sold Class C shares when Class A shares would have been in the best interest of the customer.
20. In connection with the aforementioned conduct, LPL failed to establish, maintain and enforce supervisory and compliance policies and procedures that were reasonable designed to achieve compliance with NASD Conduct Rules 2110 and 2310, and therefore, violated NASD Conduct Rules 2110 and 3010.

B. Sanctions

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

1. A censure.
2. A fine of \$2.40 million.
3. Respondent agrees to complete the following undertakings:
 - a. LPL shall create a list of customers who purchased (i) \$50,000 or more of Class B shares between January 1, 2002 and the effective date of the AWC (the "relevant time period"), in any single fund family, which shall be aggregated by customer household⁵ and fund family in determining if the \$50,000 threshold was met; and (ii) Class C shares during the relevant time period which, when aggregated by customer household and fund family, total \$500,000 or more and involve payment of a front-end load, or \$1 million or more where no front-end load was paid. The list must include at least the customer's name(s) and contact information, any firm-based

⁵ "Household" includes all accounts that are related by at least two of the following three factors: (1) tax identification/social security numbers, (2) address, and (3) last or "key" name.

household identification number, the trade date, fund name, fund symbol and number of shares purchased, and the gross principal amount invested for every purchase. Every purchase transaction on the list is deemed a "Qualifying Purchase." When determining the list of Qualifying Purchases, LPL shall make such calculations based on the effective date of the AWC. However, Qualifying Purchases shall not include the following items i.-iii., and may not, at LPL's option, include the following items iv.-viii.:

- i. Purchases of Class B and Class C shares for which customers have previously settled and signed releases of claims against LPL;
- ii. Purchases of Class B and Class C shares which were later cancelled at no cost to the customer, or were cost-free exchanges;
- iii. Purchases of Class B shares, which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the relevant time period, total less than \$100,000, and involve a mutual fund that imposed a Class A share initial sales charge exceeding 4.00 percent for purchase amounts less than \$100,000;
- iv. Purchases of Class B shares, which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the relevant time period, total less than \$100,000, and where the customer (1) entered into a systematic withdrawal plan at the time of the Class B share purchase, and immediately began receiving systematic withdrawals from the Class B share purchase without incurring CDSCs, or (2) chose not to reinvest all capital gains and dividends from the Class B share purchase;
- v. Purchases of Class B shares, which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected to have a higher redemption value, determined as of the end of each year following the purchase date, in comparison to Class A shares in two or more years during the period beginning with the effective date of the AWC and ending on the date the Class B shares are scheduled to automatically convert to Class A shares under the terms of the fund prospectuses in effect at the time of the purchase;
- vi. Purchases of Class B shares, which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected, as of the date on which the Class B shares are scheduled to automatically convert to Class A shares, to have a value within \$100 of the projected value of Class A shares had the customers purchased Class A shares instead of Class B shares;
- vii. Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$100,000 or more in the mutual funds listed in "Schedule A" (attached); and

- viii. Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$250,000 or more in the mutual funds listed in "Schedule B" (attached).
- b. LPL may further remove Qualifying Purchases as long as it provides NASD with quantitative proof that the customer could not materially benefit⁶ from having the particular transaction converted to Class A shares and the removal of such Qualifying Purchase is not unacceptable to NASD.
- c. Within 120 days from the effective date of the AWC, LPL shall offer any customer, who made a Qualifying Purchase(s) and still holds all, or any portion of, such shares, the option of converting such Class B and/or Class C shares into Class A shares in such a manner that each customer is placed in substantially the same financial position, based on actual fund performance, in which such customer would have been with respect to the Qualifying Purchase(s) had the customer purchased Class A shares instead of Class B and/or Class C shares.
- d. Customers electing to convert any Qualifying Purchase shall receive:
- i. an amount of Class A shares equal to what the customer could have purchased on the date of the Qualifying Purchase utilizing the same amount of money, before application of any fees or expenses, invested in the Qualifying Purchase and applying the breakpoint sales charges associated with the Class A shares calculated as described herein; and
 - ii. an additional amount of Class A shares equal to the number of reinvestment shares (as of a trading day sufficiently preceding the conversion date to allow the execution of the necessary transactions) the customer acquired in connection with the Qualifying Purchase, converted on a share-for-share basis.
- e. Also, LPL shall pay cash to put those customers who made a Qualifying Purchase(s) and sold some or all of their Class B and/or Class C shares comprising the Qualifying Purchase(s) into substantially the same financial position, based on actual fund performance and redemption value, in which such customers would have been had the customers purchased Class A shares instead of Class B and/or Class C shares. In the event that a customer is entitled to a cash payment as specified in this subparagraph, and is also eligible to convert Class B shares that the customer continues to hold, LPL shall specify in its communication to the customer that the cash payment is not in lieu of the customer's right to convert all eligible Class B share holdings.

⁶ LPL will not be required to offer a customer conversion if the customer would not materially benefit from an offer of conversion because either the annual expense differential between Class A shares and Class B and/or Class C shares, the CDSC schedule, and/or the conversion year quantitatively are such that Class B and/or Class C shares may be substantially equal, or more appropriate, compared to Class A shares of the same fund, at particular investment levels.

- f. In performing the undertakings set forth in d. and e., above, each customer shall be entitled to breakpoints calculated based on the total of all opening Class B and/or Class C balances, depending upon the share class for which conversion and/or cash is being offered, aggregated by household and fund family, plus the total of all respective Class B and/or Class C share purchases aggregated by household and fund family during the relevant time period, without respect to any fund family limitation as to time less than the full relevant time period.
- g. In the event that any customer who made a Qualifying Purchase(s), elects to convert any of those Qualifying Purchases to Class A shares from Class B and/or Class C shares, and LPL is unable to effectuate such conversion for any reason, LPL shall pay cash to such customer in an amount that will place the customer in substantially the same financial position, based on actual fund performance and liquidation value, that such customer would have been in as of the effective date of the AWC had the customer made his or her Qualifying Purchase(s) in Class A shares instead of Class B and/or Class C shares.
- h. When calculating the financial position of any customer for purposes of conversion, LPL shall make such calculation based on the date of conversion, or on such date immediately prior to the date of conversion sufficient to allow the execution of the necessary transactions. When calculating the financial position of any customer for purposes of a cash payment, LPL shall make such calculation as of the date the investment was redeemed, in the case of closed or partially closed positions, or, in the event that the cash payment is required as a substitute for conversion, as close as practical to the date of remediation.
- i. Within 60 days from the effective date of the AWC, LPL shall submit to NASD for review a sample letter in plain English: (i) offering customers, according to the particular characteristics of their account and purchases, the opportunity to convert any or all of their Qualifying Purchases; (ii) explaining the economic advantages and disadvantages to the customer of the options; and (iii) stating that the customer should consult with a tax advisor to determine whether the conversion carries any federal, state, or local tax consequences. The letter shall not be unacceptable to NASD. Customers shall have 60 days from the mailing of the letters to accept the offer and advise LPL of their decision to accept. Customers who accept LPL's conversion offer with respect to a particular Qualifying Purchase must agree to convert all of the Qualifying Purchase shares held by the customer as of the date of the offer, and may not elect a partial conversion.
- j. LPL shall complete the remediation process within 270 days from the effective date of the AWC.
- k. Within 330 days following the effective date of the AWC, LPL shall file a report with NASD, through which it will identify and account for:

- i The Qualifying Purchases, including the customer's name(s) and contact information, any firm-based household identification number, the trade date, fund name, fund symbol, number of shares purchased, and the gross principal amount invested for each Qualifying Purchase;
- ii The transactions the firm removed from the list of Qualifying Purchases and the specific basis for each removal;
- iii Those transactions for which customers received a letter offering conversion;
- iv Those transactions for which customers received a cash payment, including details concerning the amount paid. Any cash payments resulting from the firm's inability to effect conversion shall be duly noted;
- v How the firm created and staffed a response center to field and respond to customer inquiries, including, the number of individuals used to staff the response center, how the response center staff members were trained to respond to customer inquiries, how and by whom the response center was supervised, and what tools and information were used to respond to customer inquiries;
- vi Each customer who had a Qualifying Purchase and contacted the firm concerning remediation, and that the firm maintained a record of each customer inquiry;
- vii Each transaction for which the customer accepted the firm's offer of conversion and/or cash, including the material terms thereof, number of shares and value transferred; and;

The firm's report must be submitted to NASD, certified to, and signed under penalty of perjury by, an officer of LPL who is currently registered with NASD. LPL shall preserve for a period of not less than three years from the effective date of the AWC and make available to NASD the records underlying the certification as the NASD shall request.

- l. In addition, LPL shall retain, at its own expense, an Independent Examiner, who shall not be unacceptable to NASD, to examine the firm's performance of its obligations under the terms of the AWC as reflected in its certified report.
- m. LPL shall exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Independent Examiner. At the conclusion of the examination, but not later than 420 days following the effective date of the AWC, LPL shall require the Independent Examiner to submit a written Final Report to LPL and to NASD. The Final Report must recite the efforts the

Examiner undertook to examine LPL's certified report, as well as the Examiner's findings.

- n. To ensure the independence of the Independent Examiner, LPL: (i) shall not have the authority to terminate the Examiner, without the prior written approval of NASD; (ii) shall compensate the Examiner, and persons engaged to assist the Examiner, for services rendered pursuant to the AWC at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Examiner and shall not seek to invoke the work product, attorney-client or any other doctrine or privilege to prevent the Examiner from transmitting any information, reports or documents to NASD.
- o. To further ensure the independence of the Independent Examiner, for the period of the engagement and for a period of two years from completion of the engagement, LPL, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Independent Examiner. Further, LPL, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with any firm with which the Independent Examiner is affiliated in performance of his or her duties under the AWC, or agents acting in their capacity, for the period of the engagement and for a period of two years after the engagement without prior written consent of NASD.
- p. LPL shall cooperate fully with the Independent Examiner and shall provide the Independent Examiner with prompt access to LPL's files, books, records and personnel as the Independent Examiner reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.
- q. For good cause shown, and upon receipt of a timely request from LPL, NASD may extend any of the procedural dates set forth above.

III.

OTHER MATTERS

- A. LPL understands that it may attach to this AWC a Corrective Action Statement that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that in this Statement it may not deny the charges or make any statement that is inconsistent with the AWC. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. LPL agrees to pay any monetary sanctions imposed on it within 20 days of notice that this AWC has been accepted.

2005 13:37 FAX

ENFORCEMENT

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C. LPL 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.

The undersigned certifies on behalf of LPL that I 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 me to submit it.

Linsco/Private Ledger Corp.

May 24, 2005
Date

By: Stephanie I Brown

Name: STEPHANIE I BROWN

MANAGING DIRECTOR

Title: GENERAL COUNSEL

Reviewed by:

Stephen M. [Signature]
Council for Respondent

Accepted by NASD:

12.19.05
Date

[Signature]
District Director - Boston District
Signed on behalf of the Director of
ODA, by delegated authority

SCHEDULE A

\$50,000 - \$99,999

AGGBX
GTHBX
DLTBX
DPIBX
DRCBX
PGMBX
PMCBX
PMDBX
PMMNX
PMUBX
PRCBX
PRNBX
XLSBX
DIMBX
PBCMX
PBHMX
PBHYX
PBNJX
PBNYX
PBPAX
PCAIX
PFABX
PMHYX
PMINX
PRGLX
SYLBX
HBDIX

SCHEDULE B

\$100,000 - \$249,999

GACBX
MBIFX
NBBGX
DIMBX
DRCBX
PGMBX
PMMNX
PMUBX
PRCBX
PRNBX
DLTBX
FPABX
LEIBX
FKSBX
NAGOX
PBCMX
PBHMX
PBNJX
PBNYX
PBPAX
PCAIX
PFABX
PMHYX
PMINX
SYLBX
FPABX
MGRBX