

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E112004034501

TO: Department of Enforcement
NASD

RE: Boston Capital Securities, Inc., Respondent
BD No. 14611

Pursuant to Rule 9216 of NASD Code of Procedure, 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 finding 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 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:

Boston Capital Securities, Inc. ("BCSI") has been a member of the NASD since October 1984. The firm's principal office is located in Boston, Massachusetts and it employs approximately twenty-five registered persons. The firm has no branch offices and is primarily engaged in the sale of tax-advantaged securities, structured as limited partnerships, in primary distributions. BCSI has no prior disciplinary history.

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 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 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

1. From August 2004 through April 2005, BCSI conducted a public offering of approximately \$60 million in Direct Participation Program ("DPP") certificates without obtaining the necessary NASD approval. Moreover, BCSI continued the public offering after receiving notice from NASD's Corporate Financing Department that, in connection with its review of the documents and information filed by the firm, it needed additional information about the structure of the offering.
2. In connection with a 2002 public offering of DPP certificates, BCSI received underwriting compensation that was not fair and reasonable. Specifically, BCSI received excessive compensation of approximately \$700,000.
3. In the prospectus for that 2002 offering, BCSI inaccurately disclosed certain items of its underwriting compensation.
4. During 2002-2005, BCSI failed to establish and maintain a reasonable and adequate supervisory system and written supervisory procedures relating to the firm's underwriting of securities public offerings.

BACKGROUND

5. BCSI's revenue is derived primarily from the sale of tax-advantaged securities, structured as limited partnerships, in primary distributions. The firm is an affiliate of Boston Capital Tax Credit Fund V L.P. ("Tax Credit Fund V"), Boston Capital Tax Credit Fund IV L.P. ("Tax Credit Fund IV") and similar entities (collectively, "Tax Credit Funds"). The Tax Credit Funds issue Beneficial Assignee Certificates ("certificates"), which are equivalent to limited partnership interests, in connection with a DPP. Based on the type of real estate acquired by the limited partnerships (e.g., multi-family residential, apartment complexes used for low-income housing), the certificates offer low-income and/or historic rehabilitation tax credits. Those tax credits can reduce an investor's federal income tax liability (dollar-for-dollar limited to \$8,750 annually depending on tax bracket and net passive income). The minimum investment is \$5,000 with additional investments permitted in increments of \$1,000.
6. BCSI acts primarily as a wholesaler of the certificates issued by the Tax Credit Funds, but it also sells directly to retail investors. Two series of certificates are sold in each public offering. The offering of the first series is completed before sales begin on the second.

BCSI CONDUCTED A PUBLIC OFFERING WITHOUT OBTAINING THE REQUIRED NASD PRE-CLEARANCE

7. NASD Conduct Rule 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements) provides that "[n]o member or person associated with a member shall participate in any manner in any public offering of securities subject to this Rule, Rule 2720 or Rule 2810 unless documents and information as specified herein relating to the offering have been filed with and reviewed" by NASD's Corporate Financing Department. Moreover, the member cannot commence any sales unless

the Corporate Financing Department has provided it with an opinion that it has no objections to the proposed underwriting.

8. In 2004, Tax Credit Fund V determined to offer its Series 49/50 certificates to the public (the "Series 49/50 offering").
9. On or about July 26, 2004, BCSI's outside counsel filed the Series 49/50 offering registration statement with NASD and the U.S. Securities & Exchange Commission ("SEC").
10. On August 10, 2004, the SEC declared that the Series 49/50 registration statement was effective.
11. On August 11, 2004, BCSI's outside counsel notified the firm that it could now commence sales of the Series 49/50 certificates. The firm and its outside counsel, however, had still not obtained the necessary "no objection" opinion from NASD's Corporate Financing Department.
12. On or about August 23, 2004, BCSI commenced selling the Series 49 certificates.
13. On August 24, 2004, NASD's Corporate Financing Department issued a Defer Opinion Letter to BCSI, with a copy to its outside counsel, requesting additional information about the Series 49/50 offering and certain changes to the registration statement. The Corporate Financing Department required a response to those comments before it could issue a "no objection" opinion.
14. Following receipt of the Defer Opinion Letter, BCSI continued the sale of the Series 49 certificates.
15. From August 23, 2004 to April 29, 2005, BCSI sold approximately \$60 million in Series 49 certificates without obtaining the required "no objection" opinion from NASD's Corporate Financing Department.
16. It was not until May 16, 2005, that BCSI, through its outside counsel, provided a written response to the Defer Opinion Letter. That response did not disclose that the firm had already sold \$60 million in Series 49 certificates.
17. Based on the foregoing, BCSI violated NASD Conduct Rules 2710(b)(4)(B) and 2110.

EXCESSIVE UNDERWRITING COMPENSATION AND INACCURATE PROSPECTUS DISCLOSURE

18. NASD Conduct Rule 2810(b)(4)(A) provides that "[n]o member or person associated with a member shall underwrite or participate in a public offering of a direct participation program if the organization and offering expenses are not fair and reasonable, taking into consideration all relevant factors."
19. Underwriting compensation may not exceed 10 percent of the gross proceeds of the offering, regardless of the source, with the exception that up to an additional 0.5

percent may be reimbursed to underwriters for *bona fide* due diligence expenses. Only expenses incurred by broker/dealers in the process of performing due diligence qualify for this additional amount. Organization and offering expenses ordinarily include legal, printing, accounting and other fees of the issuer attributable to the preparation of a program for registration and subsequently offering interests to the public. See NASD Conduct Rule 2810(b)(4)(B) and Notices to Members 82-51 and 85-29.

20. Moreover, NASD Conduct Rule 2710(c)(2)(C) requires disclosure, in the prospectus or a similar document, of all items of underwriting compensation.
21. In May 2002, BCSI submitted to NASD's Corporate Financing Department its underwriting compensation proposal in connection with the Tax Credit Fund IV's Series 43/44 public offering (the "Series 43/44 offering"). The firm disclosed an aggregate of 10.5 percent in compensation, which included 0.5 percent for *bona fide* due diligence. In July 2002, NASD's Corporate Financing Department issued a "no objection" opinion in that the disclosed underwriting compensation terms appeared to be within the allowable limits.
22. Subsequently, BCSI commenced the Series 43/44 offering, selling a total of \$63,399,600 in certificates. The firm, in connection with those sales, received compensation totaling 11.59 percent of the gross offering proceeds. Accordingly, the firm exceeded the 10.5 percent limit on underwriting compensation by 1.09 percent, receiving approximately \$700,000 in excessive compensation.
23. Therefore, in its May 2002 filing with NASD's Corporate Financing Department and in the prospectus for the Series 43/44 offering, BCSI underreported its expected underwriting compensation by 1.09 percent. The firm also mischaracterized wholesaling and marketing costs as organization and offering costs. Those costs, which accounted for the 1.09 percent in undisclosed underwriting compensation, were paid for by an affiliate of the firm. Wholesaling expenses of a broker/dealer are considered underwriting compensation regardless of the source of payment.
24. Based on the foregoing, BCSI violated NASD Conduct Rules 2810(b)(4), 2710(c)(2)(C) and 2110.

DEFICIENT SUPERVISORY SYSTEM AND PROCEDURES

25. During 2002-2005, BCSI failed to establish and maintain an adequate supervisory system and written procedures relating to the firm's underwriting of securities public offerings, including such areas as compensation, prospectus disclosure and obtaining required regulatory clearances. The firm did not ensure in those areas that its written supervisory procedures were updated, maintained and enforced; and that they were reasonably designed to achieve compliance with the applicable rules and regulations. For example:
 - BCSI did not provide for adequate follow-up and review to ensure that the public offerings received the necessary regulatory approvals, that the firm complied with underwriting compensation limitations, and that there was accurate and complete prospectus disclosure.

- The firm's system for forecasting and accounting for underwriting expenses was inadequate. Throughout the relevant period, BCSI and its affiliates shared common operating and accounting procedures and systems. The firm's procedures were not reasonably designed to ensure that its wholesaling and related expenses/reimbursements for each offering were recorded separately from those of the issuer. As a result, BCSI improperly allocated certain underwriting expenses as issuer costs.
- BCSI lacked written procedures relating to its underwriting of securities public offerings.

26. Based on the foregoing, BCSI violated NASD Conduct Rules 3010 and 2110.

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

BCSI is censured, and fined in the amount of \$1,200,000.

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

- 1) BCSI shall undertake to review its supervisory system and procedures concerning underwriting of public offerings for compliance with the requirements of NASD Conduct Rules 2710 and 2810, other NASD rules and the federal securities laws and regulations.
- 2) Within 90 calendar days of the issuance of this AWC, an officer of BCSI will certify to NASD in writing that it has completed its review, implemented necessary revisions to its supervisory system and written procedures, employed adequate staffing and resources, and has established systems and procedures, reasonably designed to achieve compliance with those laws, regulations, and rules concerning the firm's underwriting of public offerings. BCSI's certification shall also describe the specific actions taken by the firm, including the systems and procedures developed and implemented, that are reasonably designed to achieve future compliance with those requirements.
- 3) The certification, along with the updated 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 BCSI 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

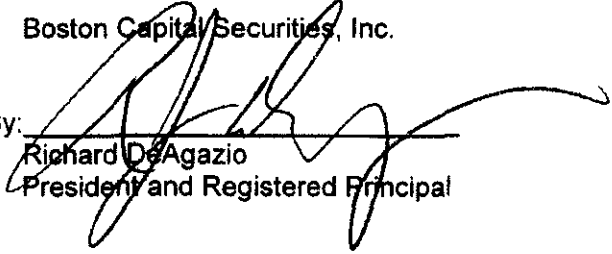
- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent further understands that it may not deny the charges or make any statement that is inconsistent with the AWC in 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. Respondent 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. 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 the AWC.

Respectfully submitted,

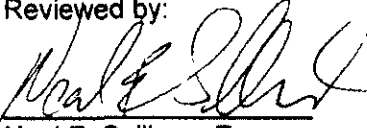
Boston Capital Securities, Inc.

By:


Richard DeAgazio
President and Registered Principal

2/9/06
Date

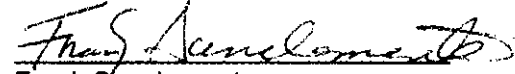
Reviewed by:


Neal E. Sullivan, Esq.
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Washington, DC 20036-3406

Accepted by NASD:

3/21/06
Date

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



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Boston Capital Securities, Inc. Statement of Corrective Action

This Statement of Corrective Action is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its Staff.

BCSI believes that it has corrected the conditions that led to the violations addressed by the AWC, and has adopted policies and procedures reasonably designed to prevent any such violations in the future.

1. As part of the AWC, BCSI has agreed to undertake a review of its supervisory procedures to confirm compliance with applicable NASD rules and federal securities laws in connection with its underwriting activities. Within 90 days of having signed the AWC, an officer of BCSI will certify that it has completed this review; implemented any necessary changes to its supervisory system and written procedures; employed adequate staffing and resources; and established systems and procedures reasonably designed to achieve compliance with relevant rules.
2. BCSI has already begun the process described above. For example, BCSI has developed a regulatory approvals checklist, and has adopted supervisory procedures reasonably designed to prevent any future offering from being offered or sold prior to BCSI having received all required regulatory approvals (including the required NASD approval).
3. BCSI will monitor, in a more proactive manner, the status of any outstanding regulatory requests that are being handled by outside counsel to ensure that they are being addressed accurately and promptly.
4. BCSI has modified its accounting practices so that the marketing and wholesaling expenses at issue in this AWC are properly paid for from BCSI's underwriting compensation, which can not exceed 10% of the gross proceeds of the Fund. BCSI will ensure that any future prospectus disclosures regarding compensation accurately reflect the underwriting compensation received.
5. BCSI recently hired a new General Counsel and a new Chief Compliance Officer who are working together to establish and maintain stronger supervisory policies, procedures, and controls.
6. Finally, BCSI has retained new corporate and regulatory outside counsel.