

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E3A20030495-02**

RECEIVED
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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Berry-Shino Securities, Inc., Respondent
FINRA Member Firm
CRD No. 38098

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Berry-Shino Securities, Inc. (BSSI or Respondent) submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

BSSI became a member of FINRA (formerly known as National Association of Securities Dealers, Inc. or NASD) in September 1995. The firm is currently a member of FINRA. The firm has one office and six registered individuals. Its primary business involves participation in the private placement of securities.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm was named in the following disciplinary actions:

C3A050020 (May 18, 2005) in which the firm consented to findings that it failed to file Rule 3070 reports in a timely manner, failed to promptly amend Forms U-4 and U-5, and charged excess options commissions and to sanctions of a censure

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and a fine of \$45,050.00, of which \$10,000 was joint and several with the responsible principal; and

C3A030001 (December 10, 2003) in which a Hearing Panel found that the firm charged unfair and excessive commissions on retail agency transaction in listed options and executed options transactions without having obtained required information and documentation from the customers and imposed sanctions of a censure and a fine of \$52,500.00, jointly and severally with the responsible principal.

OVERVIEW

Between August 1, 2002 and September 30, 2003 (relevant period), BSSI, acting through a principal (PB) in its then-branch office in New York (NY Office), facilitated improper market timing and late trading of mutual fund shares by seven customers of BSSI. Approximately 800 improper market timing transactions occurred during the relevant period. Further, BSSI, acting through PB, accepted orders for the purchase and sale of mutual funds after the close of trading on the New York Stock Exchange for execution at that day's Net Asset Value (NAV), which constituted facilitation of improper late trading. Finally, the firm failed to supervise PB and to establish, maintain and enforce a supervisory system and written procedures for PB's mutual fund trading business in a manner reasonable designed to achieve compliance with applicable rules.

FACTS AND VIOLATIVE CONDUCT

1. PB joined BSSI in July 2002. PB advised MS that PB intended to facilitate market timing and other short-term mutual fund trading transactions for approximately seven customers, six of whose accounts were managed by two individuals. BSSI's existing clearing firm declined to clear PB's mutual fund transactions and BSSI arranged to clear them through another clearing firm (new clearing firm).
2. During the relevant period, PB submitted orders to purchase and sell mutual fund shares received from the seven customers. The prospectuses for the mutual funds bought and sold by PB's customers contained representations communicating that the fund companies and distributors did not intend for the funds to serve as vehicles for short-term trading and market timing. Some of the prospectuses contained limitations upon the number of purchases, sales and/or exchanges that the fund would permit in a given time period.
3. From time to time during the relevant period, the mutual funds would forward to the new clearing firm, and the new clearing firm would forward to PB, notifications (block notices) that the mutual fund intended to limit, restrict or

prohibit further purchases, sales and/or exchanges by one or more of PB's customers.

4. From time to time during the relevant period, to circumvent the limitations, restrictions and prohibitions contained in the block notices and evade detection by the mutual funds, PB would facilitate the opening of a new account for a customer that was the subject of one or more block notices. PB would also facilitate the transfer of funds from an existing account in the customer's name to the new account. PB would then facilitate further mutual fund transactions by the customer using the new account.
5. From time to time during the relevant period, PB assigned representatives other than himself as the representative of record, and assigned other BSSI offices than the NY Office as the branch of record, for his mutual fund trading customers. These steps were taken in furtherance of efforts to circumvent limitations, restrictions and prohibitions imposed upon future trading in his customers' accounts and evade detection of such efforts by the mutual funds.
6. As a result of the conduct described in paragraphs 3-5 above, BSSI, acting through PB, facilitated improper market timing transactions. This constituted a violation of NASD Conduct Rule 2110 by BSSI.
7. From time to time during the relevant period, PB accepted orders to purchase and sell mutual fund shares after 4:00 PM Eastern Time. The prospectuses for the mutual funds represented that the funds determined NAV as of the close of trading on the New York Stock Exchange, which customarily occurs at 4:00 PM Eastern Time.
8. Pursuant to Rule 22e-1(a) of the Investment Company Act of 1940, mutual fund shares must be sold or redeemed at a price based upon the NAV next computed after the order to purchase is received. Thus, orders received after 4:00 PM Eastern Time should receive the next day's NAV. Contrary to these requirements, PB submitted the orders for execution as if they had been received before 4:00 PM Eastern Time. Therefore, the orders improperly received that day's NAV.
9. As a result of the conduct described in paragraphs 7 and 8, above, BSSI, acting through PB, facilitated impermissible late trading of mutual funds by the PB customers. This constituted a violation of NASD Conduct Rule 2110 by BSSI.
10. Pursuant to NASD Conduct Rule 3010, BSSI was required to supervise PB in a manner reasonably designed to achieve PB's compliance with laws, rules

and regulations applicable to the business in which he engaged. Further, BSSI was required to establish and maintain a supervisory system, and establish, maintain and enforce written supervisory procedures, pertaining to PB's mutual fund trading business that were reasonably designed to achieve compliance with laws, rules and regulations applicable to that business.

11. At the time PB became associated with BSSI, the firm knew that certain of PB's customers intended to engage, and subsequently did engage, in frequent trading and market of mutual funds. From time to time, copies of the block notices received by the new clearing firm and forwarded to PB were also sent to the firm's main office.
12. During the relevant period, BSSI did not supervise PB in a manner reasonable designed to achieve compliance with laws, rules and regulations applicable to the business in which he engaged. Further, BSSI was required to establish and maintain a supervisory system, and establish, maintain and enforce written supervisory procedures, pertaining to PB's mutual fund trading business that were reasonably designed to achieve compliance with laws, rules and regulations applicable to that business.
13. By failing to supervise PB, to establish and maintain a supervisory system, and to establish, maintain and enforce written supervisory procedures, as described in paragraphs 11 and 12 above, BSSI violated NASD Conduct Rules 3010 and 2110.

B. Respondent also consents to the imposition of the following sanctions:

Censure and a fine in the amount of \$157,085.97, which includes the disgorgement of compensation received by BSSI in the amount of \$7,085.97.

BSSI agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. BSSI has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

BSSI specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

BSSI specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, BSSI 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.

BSSI further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

BSSI understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against BSSI; and
- C. If accepted:
1. this AWC will become part of BSSI's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 4. BSSI 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. BSSI may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. BSSI may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. BSSI 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 FINRA, nor does it reflect the views of FINRA or its staff.

BSSI 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; that the firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

12/19/07
DATE

Berry-Shino Securities, Inc.

By: [Signature]
Title: President

Reviewed by:
[Signature]
Timothy Feil, Esq.
Finkelstein & Feil, LLP
Counsel for Respondent

Accepted by FINRA:

01/09/2008
Date

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

[Signature]
Jacqueline D. Whelan, Senior Counsel
FINRA Department of Enforcement
1 Montgomery Street, Suite 2100
San Francisco, CA 94104
415-217-1121: FAX 415-217-1201
jacqueline.whelan@finra.org

**ATTACHMENT A
OFFER OF SETTLEMENT NO. E3A20050037
BERRY-SHINO SECURITIES, INC.**

RESTITUTION SCHEDULE

Customer Account No.	Amount
	\$170.00
	\$25.00
	\$100.00
	\$25.00
	\$25.00
	\$120.00
	\$155.00
	\$50.00
	\$150.00
	\$75.00
	\$300.00
	\$150.00
	\$375.00
	\$55.00
	\$25.00
	\$40.00
	\$100.00
	\$25.00
	\$100.00
	\$100.00
	\$100.00
	\$125.00
	\$25.00
	\$20.00
	\$200.00
	\$300.00
	\$20.00
	\$250.00
	\$535.00
	\$100.00
	\$725.00
	\$50.00
	\$160.00
	\$30.00
	\$20.00
	\$20.00
	\$30.00
	\$30.00
	\$390.00
	\$30.00
	\$70.00

Customer Account No.	Amount
	\$30.00
	\$650.00
	\$200.00
	\$1,550.00
	\$500.00
	\$150.00
	\$725.00
	\$210.00
	\$175.00
	\$50.00
	\$50.00
	\$50.00
	\$60.00
	\$110.00
	\$723.00
	\$25.00
	\$50.00
	\$15.00
	\$20.00
	\$20.00
	\$250.00
	\$180.00
	\$30.00
	\$60.00
	60.00
	\$400.00
	\$77.00
	\$60.00
	\$390.00
	\$160.00
	\$190.00
	\$30.00
	\$325.00
	\$4,850.00
	\$2,225.00
	\$475.00
	\$950.00
	\$100.00
	\$50.00
	\$200.00
	\$250.00
	\$225.00
	\$100.00
	\$250.00
	\$20.00
	\$20.00
	\$20.00

Customer Account No.	Amount
	\$100.00
	\$710.00
	\$210.00
	\$180.00
	\$23.00
	\$190.00
	\$1,675.00
	\$60.00
	\$75.00