

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E3A20040356-03

TO: Department of Enforcement
NASD

RE: Synergy Investment Group, LLC, Member, Respondent
CRD No. 46035
and
Jeffrey Jones, General Securities Principal, Respondent
CRD No. 4188324

Pursuant to Rule 9216 of NASD Code of Procedure, we 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 us alleging violations based on the same factual findings.

We 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our 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. We 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 our testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

We also understand that my 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:

Synergy Investment Group, LLC ("Synergy" or "the firm") became a member of NASD in June 1999. Its membership is current. The firm has been the subject of two previous disciplinary actions, both of which were resolved by means of Letters of Acceptance, Waiver and Consent in 2004. In one matter, the firm was found to have failed to report information pursuant to NASD Conduct Rule 3070 and, in the other matter, to have reported transactions to the OATS system improperly and failed to establish supervisory procedures for OATS reporting.

Jones first became associated with an NASD member in 2001 when he joined Synergy Investment Group, LLC as a general securities representative and principal. His registrations are current. He was named as a respondent in the two actions described above, but has not otherwise been the subject of disciplinary action by NASD, the SEC or a state securities regulatory body.

1.

WAIVER OF PROCEDURAL RIGHTS

We 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 us;
- 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, we 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.

We 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. We hereby accept and consent, 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:
1. During the period from July 2001 through July 2003, Synergy, acting through Jones, did not establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with applicable laws, rules and regulations with respect to its "on line" and "deep discount" businesses. These businesses were intended for circumstances in which customers submitted unsolicited orders to either an on-line trading platform at the clearing firm or to a representative for submission to the clearing firm. The firm's system did not include provisions to prevent representatives from using customer passwords to engage in on-line trading in customer accounts without customer authorization and without disclosing to Synergy that the representative, not the customer, was entering orders. Further, the firm did not review activity in on-line accounts for suitability.
 2. The firm's supervisory procedures required a principal of the firm to assess the ability of each customer who wished to participate in the on-line trading program to verify that the customer was able to use the offsite order system. The firm, acting through Jones, did not enforce that procedure with respect to customer BJB and, therefore, failed to discover that BJB was not able to utilize the system and that a representative was using her password to engage in excessive trading in her account.
 3. Synergy, acting through Jones, did not supervise representative David Leyshon in a manner reasonably designed to achieve compliance with applicable laws, rules and regulations in connection with the BJB account, in that:
 - a. The firm's principals recognized that Leyshon should receive heightened supervision because of his history in the securities business, but did not communicate the requirement for heightened supervision to his supervisor;
 - b. Leyshon was permitted to conduct his securities activities from his home and to use the on-line system when Synergy did not have effective means to monitor the transactions in the BJB account for suitability; and

- c. The firm did not respond to "red flags" indicating that customer BJB was not entering on-line orders for her account and that the activity in the account was excessive and unsuitable for BJB.

The foregoing acts and omissions constituted separate and distinct violations of NASD Conduct Rule 3010 by Synergy and Jones. Further, the conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Synergy and Jones.

B. We also consent to the imposition, at a maximum, of the following sanctions:

1. Synergy and Jones shall be fined jointly and severally in the amount of \$25,000.00
2. Synergy shall be censured and Jones shall be suspended from association with any member of NASD in any principal capacity for a period of 10 business days.
3. Synergy shall:
 - (a) Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to NASD staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the firm's on-line and "deep discount" business.
 - (b) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
 - (c) Cooperate with the Independent Consultant in all respects, including by providing staff support. Synergy shall place no restrictions on the Independent Consultant's communications with NASD staff and, upon request, shall make available to NASD staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Synergy shall not terminate the relationship with the Independent Consultant without the NASD staff's written approval; Synergy shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the NASD.
 - (d) At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and NASD staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures and training relating to the firm's on-line and "deep discount" business; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and
 - (e) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any other employment, consultant, attorney-client, auditing or other professional relationship with Synergy, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the NASD staff, enter in to any employment, consultant, attorney-client,

auditing or other professional relationship with Synergy or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- (4) Within 30 days after delivery of the Written Report, Synergy shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and the NASD staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- (5) Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Synergy shall provide the NASD staff with a written implementation report, certified by an officer of Synergy, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- (6) Upon written request showing good cause, the NASD staff may extend any of the procedural dates set forth above.

The fine and suspension imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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. We agree to pay any monetary sanctions imposed on us 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 we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we 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 us to submit it.

3/20/06
Date

Synergy Investment Group, LLC

By: [Signature]
Its: Director of Compliance

[Signature]
Jeffrey D. Jones

Reviewed by:

Attorney Name
Counsel for Respondent

Accepted by NASD:

March 29, 2006
Date

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

[Signature]
Jacqueline D. Whelan
Regional Counsel
NASD Department of Enforcement
525 Market Street, Suite 300
San Francisco, CA 94105
415-882-1222; 415-357-9831

NASD District Director

Joseph M. McCarthy, Associate Vice
President and Director, NASD District 3
370 - 17th Street, Suite 2900
Denver, CO 80202
303-446-3190