

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E3A2005004302

TO: Department of Enforcement
NASD

RE: Fox & Company Investments Inc., Respondent
Broker-Dealer
CRD No. 18517

Pursuant to Rule 9216 of NASD Code of Procedure, Fox & Company Investments Inc. ("Respondent" 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 the firm 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 the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm'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 the firm'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:

Respondent has been a member of NASD since July 1987 and its membership is current.

In March 2006, Respondent was fined \$20,000 and censured for maintaining inaccurate books and records, filing inaccurate FOCUS reports and failing to file in a timely and accurate manner, several amendments to the Forms U-5 of three registered representatives.

In December 2003, Respondent was fined \$35,000 and censured for conducting a securities business while failing to maintain the minimum net capital, failing to maintain accurate books and records and submitting FOCUS Reports that contained materially inaccurate computations of net capital.

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 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 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:**

- 1) From July 2003 to August 2005, Respondent failed to timely and accurately update the Uniform Termination Notice for Securities Industry Termination ("Form U-5") of four former registered representatives for six out of seven events that required regulatory disclosure.**

The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD By-Laws Article V, Section 3(b) and NASD Conduct Rule 2110 by the firm.

- 2) From April 2005 to June 2005, Respondent failed to timely and accurately report eleven out of thirty-seven municipal bond transactions to the Municipal Securities Rulemaking Board ("MSRB"). Furthermore, Respondent erroneously made two reports to the MSRB for transactions that did not actually occur.**

The aforementioned acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-14 by the firm.

- 3) From April 2005 to June 2005, Respondent failed to make and keep current certain records of municipal securities transactions. Out of thirty-seven order tickets reviewed, twenty-two order tickets lacked information required by MSRB Rule G-8, to wit:**

- a. All twenty-two order tickets, which related to customer transactions, bore no time of receipt of the order;**
- b. Three order tickets had an inaccurate or blank price of execution; and**
- c. Three order tickets had an inaccurate or blank time of execution.**

The aforementioned acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-8 by the firm.

- 4) From April 2005 to June 2005, Respondent failed to adopt and maintain written supervisory procedures reasonably designed to achieve compliance with MSRB Rules G-8 and G-14.

The aforementioned acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-27 by the firm.

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

A censure and fine in the amount of \$25,000.

The sanction 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 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 the firm 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 I propose 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 the firm to submit it.

8-1-06
Date

Fox & Company Investments, Inc.
Respondent

Mary L. Wade
By: Mary L. Wade, President

Accepted by NASD:

9/8/06
Date

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

John S. Ham
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