

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. E3B2004021901**

TO: Department of Enforcement  
NASD

RE: Haywood Securities (USA) Inc., Respondent  
Member  
CRD No. 42072

and

David Brian Elliott, Respondent  
Canada Limited Registered Representative  
CRD No. 2814225

and

John David Shepherd, Respondent  
General Securities Principal  
CRD No. 2814215

and

Nancylee Girling, Respondent  
Canada Limited Registered Representative  
CRD No. 3185670

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

Respondents 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"), 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 them; and

3. If accepted:

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

Respondents also understand that their 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:

Haywood Securities (USA) Inc. ("Haywood USA" or "the Firm") has been a member of NASD since October 28, 1997. Its principal offices are in Vancouver, British Columbia, Canada. The Firm conducts a general securities business and operates pursuant to the (k)(2)(i) and (k)(2)(ii) exemptive provisions of SEC Rule 15c3-3. It clears transactions through another member firm and is also authorized to self-clear transactions.

David Brian Elliott entered the United States securities industry in October 1997 as an associated person of Haywood USA. He has been registered through Haywood USA as a Canada Limited Registered Representative since March 1999.

John David Shepherd entered the United States securities industry in October 1997 as a Canada Limited Registered Representative of Haywood USA. He has been registered through Haywood USA since October 1997, initially as a Canada Limited Registered Representative and, since March 1998, as a General Securities Principal.

Nancylee Girling entered the United States securities industry in February 1999 as an associated person of Haywood USA. She has been registered through Haywood USA as a Canada Limited Registered Representative since March 1999.

Respondents Haywood USA, Elliott, Shepherd and Girling have not been the subject of prior formal disciplinary action by NASD, other self-regulatory organizations, the Securities and Exchange Commission, or any U.S. state or foreign regulator.

## **I.**

### **WAIVER OF PROCEDURAL RIGHTS**

Respondents 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 them;
- 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, Respondents 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.

Respondents 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. Respondents 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, to the entry of the following findings by NASD:

#### Background

NASD Conduct Rule 3050 governs accounts opened or maintained by associated persons of member firms with member firms other than their employer member firms. When a member firm (the "executing member") knows that a person associated with another member firm (the "employer member") has or will have a financial interest in, or discretionary authority over, any existing or proposed account, Rule 3050(b) requires that the executing member:

- (1) notify the employer member in writing, prior to the execution of a transaction for such account, of the executing member's intention to open or maintain such account;
- (2) upon written request by the employer member, transmit duplicate copies of confirmations, statements or other information with respect to such account; and
- (3) notify the associated person of its intention to provide such notice and information to the employer member.

#### Violations

1. On or about January 4, 2004, SCP, a registered representative of another NASD member firm, opened an account with Respondent Haywood USA in the name of DCI, a corporation wholly owned by SCP and his wife.

2. The Client Account Application Form ("Application") for the DCI account at Haywood USA was accompanied by a Trading Resolution and Certificate, which identified SCP as the President of DCI. But the Application and accompanying documents did not disclose that SCP was an associated person of another member firm. On a New Account

Signature Card, executed in connection with the opening of the DCI account, SCP falsely stated that no NASD restricted person had an interest in the account.

3. David Brian Elliott and John David Shepherd were the registered representatives responsible for the DCI account at Haywood USA. Nancy Lee Girling served as an assistant to Respondents Elliott and Shepherd and was also the trader responsible for an account maintained by SCP's employer member firm at Haywood USA.

4. When the DCI account was opened at Haywood USA, Respondents Elliott, Shepherd and Girling knew that SCP was an associated person of another member firm, knew that he had a financial interest in the DCI account, and knew that he would exercise discretionary authority over that account.

5. Respondent Elliott discussed the opening of the DCI account with SCP. Respondent Girling obtained information from SCP in order to complete the Application for the DCI account. Respondent Shepherd reviewed the Application and accompanying documents and signed the Application as the responsible registered representative.

6. Respondents Elliott, Shepherd and Girling did not inform the management or Chief Compliance Officer of Haywood USA that an associated person of another member firm had a financial interest in the DCI account or that such a person would exercise discretionary authority over that account.

7. Prior to executing transactions for the DCI account, Respondent Haywood USA, acting through Respondents Elliott, Shepherd and Girling, did not notify SCP's employer member firm, in writing or otherwise, of its intention to open the DCI account. Nor did it notify SCP of its intention to provide such notice to his employer member firm.

8. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3050(b) by Respondents Haywood USA, Elliott, Shepherd and Girling. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondents Haywood USA, Elliott, Shepherd and Girling.

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

1. Respondent David Brian Elliott shall be suspended from associating

with any member of NASD in any capacity for a period of 10 business days. In addition, Respondents Haywood Securities (USA) Inc. and David Brian Elliott shall be fined \$15,000, jointly and severally.

2. Respondent John David Shepherd shall be suspended from associating with any member of NASD in any capacity for a period of 10 business days. In addition, Respondents Haywood Securities (USA) Inc. and John David Shepherd shall be fined \$15,000, jointly and severally.

3. Respondents Haywood Securities (USA) Inc. and Nancylee Girling shall be censured and fined \$10,000, jointly and severally.

4. In addition, Respondent Haywood Securities (USA) Inc. shall be fined \$10,000.

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

### **III.**

#### **OTHER MATTERS**

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment forms showing the method by which they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondents understand that if they are barred or suspended from association with any NASD member, they become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondents may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

Respondents certify that they 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 them to submit it.

Haywood Securities' (USA), Inc.

SEP 13 2006

Date

By:

Robert C. Blanchard  
President & Chief Executive Officer

SEP 13 2006

Date

David Brian Elliott  
Respondent

SEP 13 2006

Date

John David Shepherd  
Respondent

SEP 13 2006

Date

NancyLee Girling  
Respondent

Reviewed by

C. Dean Little  
Counsel for Respondents  
Blank Law & Technology, P.S.  
2001 Western Avenue, Suite 250  
Seattle, WA 98121

Accepted by NASD:

November 22, 2006  
Date

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

David Utevsky  
David Utevsky  
Regional Counsel  
NASD Department of Enforcement  
601 Union Street, Suite 1616  
Seattle, WA 98101  
(206) 624-0790

NASD District Director  
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NASD, District 3—Seattle  
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