

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. E8A2003084601**

**TO: Department of Enforcement**  
**NASD**

**RE: NatCity Investments, Inc.**  
**CRD No. 17490**

Pursuant to Rule 9216 of NASD Code of Procedure, NatCity Investments, Inc. (NatCity 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 NatCity alleging violations based on the same factual findings.

NatCity 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 NatCity; and
3. If accepted:
  - a. this AWC will become part of NatCity's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against NatCity;
  - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about NatCity'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. NatCity 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects NatCity's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

NatCity 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:

NatCity became a member of NASD in or about May 1986, which membership remains effective. NatCity engages in a general securities business. NatCity's complete disciplinary history within the past five years with NASD is as follows:

In or about April 2003, NASD accepted a Letter of Acceptance, Waiver and Consent that resulted in a censure and fine of \$200,000 for violations of SEC Rule 17A-3 and NASD Rules 2110, 2340, and 3110. Without admitting or denying the allegations, NatCity consented to findings that registered representatives of the Respondent Member made oral and written material misrepresentations of fact to public customers regarding the maturity, call provision, liquidity, market risk, and interest rate of callable CDs; falsely represented the value of callable CDs held in customer accounts on monthly customer account statements; and failed to maintain accurate books and records.

In or about August 2002, NASD accepted a Letter of Acceptance, Waiver and Consent that resulted in the firm being fined \$5,000 for violations of NASD Rule 3070. The Respondent consented to findings that it failed to amend its registered representative's Form U-4 to disclose a material fact or to promptly report this information to NASD as required by NASD Rule 3070.

In or about September 2001, NASD accepted a Letter of Acceptance, Waiver and Consent that resulted in the firm being censured and fined \$10,000 for violations of SEC Rule 17A-4, NASD Rules 2110, 3070, 3110 and Marketplace Rules 4632 and 6420. NatCity consented to findings that it failed to report the time of execution and failed to report to NASD customer complaints by the 15<sup>th</sup> day of the month following the calendar quarter in which such complaints were received by the firm and failed to report to NASD conditions requiring disclosure to NASD within 10 business days.

I.

**WAIVER OF PROCEDURAL RIGHTS**

NatCity 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 NatCity;
- 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, NatCity 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.

NatCity 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. NatCity hereby accepts and consents, without admitting or denying the allegations or 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:

## **Background**

In December 1999, NatCity began selling "Pilot Plus" accounts, brokerage accounts for which customers paid an annualized fee in lieu of brokerage execution costs. This type of account is commonly referred to as a fee-based account.

NatCity Registered Representatives were able to enter trades in the Pilot Plus accounts either on-line or through NatCity's trading desk. Between 1999 and 2003, if a representative entered a trade on-line in a Pilot Plus account, NatCity required that the term "fee account" be entered in a specific field on the computer screen. If a representative entered a trade through the trading desk, the representative was required to notify the desk that the trade was within a Pilot Plus account.

*Under the Pilot Plus billing system, all equity and mutual fund transactions within Pilot Plus accounts that were placed in the order entry system were automatically billed as "no sales credit."*

In contrast, for fixed income and certain other transactions within Pilot Plus, NatCity did not have an automated system that marked the fixed income transactions to reflect that they should also be billed as "no sales credit" transactions. Instead, NatCity relied on the registered representative to make sure that transactions within Pilot Plus accounts were correctly identified.

For a time prior to 2003, NatCity coded Pilot Plus accounts with the notation "99%DSCNT" to indicate internally that the account was a Pilot Plus account. However, the order screens used by the fixed income desk did not capture this notation. When the firm realized that the fixed income desk was using a different system to access information about accounts and could not see the "99%DSCNT" coding on its computer screens, NatCity reverted back to relying on its representatives to notify the fixed income desk if a transaction was made in a Pilot Plus account.

NatCity was aware that its ability to prevent improper charges on debt security transactions was reliant upon each registered representative properly notifying trading desk personnel that a sales credit should not be applied. NatCity believed that any improper charges would be subsequently detected and reported to it by its clearing firm thereby allowing NatCity to take prompt corrective action. This incorrect assumption by NatCity personnel allowed the incorrect charges on this type of transaction to go undetected until August 2003.

After August 2003, NatCity for the first time developed a manual review process for its Pilot Plus accounts. NatCity produced a monthly report of asset-based fee accounts that generate sales commissions. Commission processing personnel then performed a manual review of the report and notified the compliance department if it identified accounts that had transactions with sales charges. Also, in 2004, NatCity requested regular reports from its clearing firm to review the transactions and charges in the Pilot Plus accounts.

#### **The violation**

Between 1999 and 2003, there were more than 80,000 transactions in Pilot Plus accounts. In 175 of those transactions, customers incurred an improper transaction-related charge in addition to the annual fee. In connection with those 175 transactions, the Member received fees of \$79,379.95 from 157 fixed income transactions and \$2,312.05 from 18 equity transactions, for a total of \$81,692.00 in fees that should not have been charged.

In connection with the imposition of the transaction fees in the fee-based accounts, NatCity failed to establish and maintain a supervisory system reasonably designed to review and monitor its fee-based brokerage business to ensure that fees were not improperly assessed in its fee-based Pilot Plus accounts.

The above failure to establish, maintain and enforce written procedures and to implement an effective supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and with the applicable rules of NASD, constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure and fine of \$50,000.

NatCity has provided NASD with sufficient documentary proof that it has fully reimbursed with interest those customers who maintained Pilot Plus accounts and were improperly charged on a transaction basis.

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

III.  
OTHER MATTERS

- A. NatCity 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. NatCity 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. NatCity agrees to pay any monetary sanctions imposed 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 it proposes to pay any fine imposed.
- C. NatCity 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.

NatCity 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 NatCity to submit it.

7-12-05  
Date

Steven C. Power  
Respondent

NatCity Investments, Inc.

By: STEVEN C. POWER,  
[Name and title] PRESIDENT

Reviewed by:

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Counsel for Respondent

Accepted by NASD:

August 15, 2005  
Date

  
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Carlotta A. Romano  
Senior Vice President and  
Regional Director

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