

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A2004001301

TO: Department of Enforcement
NASD

Re: Berean Capital Incorporated ("Berean")
(CRD No. 24915)
and
Dudley Brown, Jr.
General Securities Principal
(CRD No. 1344090)

Pursuant to Rule 9216 of NASD Code of Procedure, Berean Capital Incorporated ("Respondent" or "Berean") and Dudley Brown, Jr. ("Respondent" or "Brown") 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") 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 Respondents; and,
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondents;
 - b. this AWC will be 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 Rules 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 allegations 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 or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understands that Berean's and Brown's 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:

Berean Capital Incorporated became registered as a broker-dealer on October 3, 1989 and became registered with the Securities and Exchange Commission ("SEC") on August 17, 1989 and is an MSRB Member. Its registration as a broker-dealer and membership with NASD and the SEC remain in effect. Berean has conducted and conducts a general securities business on a fully disclosed basis and is an underwriter for municipal bonds.

On August 4, 2004, a Letter of Acceptance, Waiver and Consent was accepted by NASD in Matter No. C8A040072, under which the Member and Dudley Brown, Jr. were found to have violated NASD Conduct Rules 1017, 2110 and 3010 in that the Member, acting through Brown, opened five branch offices that structured public municipal offerings, while failing to obtain prior approval of NASD as required under the terms of its Membership Agreement with NASD; failed to designate Offices of Supervisory Jurisdiction for the five branch offices; and failed to establish and maintain and enforce adequate written supervisory procedures for that aspect of the Member's business.

On June 20, 2002, a Letter of Acceptance, Waiver and Consent was accepted by NASD, in Matter No. C8A020040, under which the Member and Brown were found to have violated NASD Conduct Rules 1031 and 2110 in that the Member, acting through Brown, permitted an employee to be registered as a General Securities Representative with the Member while he was not active in the Member's investment banking or securities business and was not functioning as a representative. The Member and Brown were fined \$5,000, jointly and severally.

Dudley Brown, Jr. entered the securities industry on March 20, 1985 as a General Securities Representative of a member of NASD. On June 18, 1991, Brown became registered in such capacities with the Member. On June 22, 1991, Brown became registered as a General Securities Principal, and on September 26, 1994, he became a Municipal Securities Principal of the Member. Since 1991, Brown has also been the owner and President of the Member. Brown is currently registered with the Member in such capacities. NASD sanctioned Brown in the disciplinary actions noted above.

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 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, 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. The Rules of the Municipal Securities Rulemaking Board ("MSRB") that are enforced by NASD, provide investor protection and market integrity by ensuring a level playing field for all municipal market participants, including dealers, retail investors and institutional investors.

MSRB G-14 VIOLATIONS

2. During the relevant time period, MSRB Rule G-14 required all brokers, dealers and municipal securities dealers (collectively “dealers”) to report trades to MSRB by midnight of the trade date and the MSRB published data about all reported municipal securities transactions, including, but not limited to, time of trade, price and volume information, on the day after the trade date. If municipal trade data is unavailable or incorrect because trades were not reported in a timely manner or included erroneous data, dealers and investors alike, experience harm because they cannot obtain an accurate picture of market activity and prices. Late or inaccurate transaction data may hinder a dealer’s ability to price municipal securities accurately for customers, and, in turn, interferes with an investor’s decision-making process.¹

Additionally, accurate and timely municipal trade reporting forms the primary audit trail for regulators to conduct surveillance for potentially manipulative practices, as well as detect sales practice violations and other violations of the federal securities laws and MSRB rules.

3. During the period from on or about January 31, 2002 through January 31, 2004, Berean executed 36 customer transactions in municipal securities, of which 29 (80.5%) contained reporting deficiencies that included 25 transactions that were reported late; 10 transactions that were reported with inaccurate times; and 3 transactions with no time reported. In addition, 11 transactions were not reported at all.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-14 by Berean, acting through Brown.

MSRB G-37 VIOLATIONS

4. MSRB Rule G-37 provides, in pertinent part, that brokers, dealers and municipal securities dealers are prohibited from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers; and also requires brokers, dealers and municipal securities dealers to

¹ Since 1994, NASD and the MSRB have repeatedly advised dealers of their responsibility to report transactions accurately. See “Enforcement Initiative,” *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35; *NASD Regulatory and Compliance Alert*: “Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms” (Winter 2000); *NASD Regulatory and Compliance Alert*: “Municipal Securities Transaction Reporting Compliance Information” (Spring 2001); and *NASD Notice to Members 03-13*: “MSRB Rules G-12 and G-14” jointly issued with the MSRB in March 2003 as *MSRB Notice 2003-7*. The MSRB has also advised dealers of their responsibility to ascertain the market value of municipal securities they trade so their customers receive prices that are reasonably related to the market value of the securities (See *MSRB Notice 2004-3*: “Review of Dealer Pricing Responsibilities,” January 26, 2004).

disclose certain political contributions², as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a broker, dealer or municipal securities dealer. The purpose and intent of Rule G-37 are to ensure that high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors and the public interest.

5. Berean, acting through Brown, engaged in municipal securities business with an issuer within two years after a contribution made by a municipal finance professional of the Firm to an official of that issuer, in that on August 31, 2001, Berean made a \$500 contribution to Darlene Green, the Comptroller for the City of St. Louis and head of the Department of Finance that directs the city's debt financing. Berean purchased \$50,000,000 of Tax and Revenue Anticipation Notes from the City of St. Louis on June 18, 2003, before the expiration of two-year period during which Berean was prohibited from engaging in that business.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-37(b)(i) by Berean, acting through Brown.

6. From January 1, 2002 to December 31, 2004, Berean, acting through Brown, failed to file MSRB Forms G-37/38 to disclose certain political contributions that were discovered by NASD, whereupon Berean filed amended MSRB Forms G-37/38 to report the political contributions. Specifically, Berean, acting through Brown failed to disclose three political contributions to Rod Blagojevich, the current Governor of Illinois, including a \$5,000 contribution to Blagojevich in the Third Quarter 2003, a \$5,000 contribution to his gubernatorial campaign in the Second Quarter 2002, and a \$2,000 contribution to his gubernatorial campaign in the First Quarter 2002. Once NASD notified Berean of these failures, Berean filed amended MSRB Forms G-37/38 as noted above, however, these three forms were filed 130, 677 and 769 days after they were required to be filed. In addition, Berean, acting through Brown failed to include a disclosure of one political contribution in the amount of \$2,500 to Joan Pratt, the Comptroller of the City of Baltimore, Maryland. Once NASD notified Berean of this failure, Berean filed an amended MSRB Form G-37/38 disclosing the contribution, however, the form was filed 130 days after it was required to be filed.
7. Berean, acting through Brown, also failed to file MSRB Form G37/38 to disclose Berean's participation in a City of Chicago negotiated municipal underwriting for the quarter ending September 30, 2002. Berean filed an amended MSRB Form G-37/38, however, the form was filed 78 days after it was required to be filed.

² MSRB Rule G-37(e)(i) provides, in pertinent part that each broker, dealer or municipal securities dealer shall by the last day of the month following the end of each calendar quarter, send to the Board Form G-37/G-38 setting forth information about contributions to officials.

Such acts, practices and conduct described above constitute separate and distinct violations of MSRB Rule G-37(e)(i) by Berean, acting through Brown.

MSRB G-8 VIOLATIONS

8. MSRB Rule G-8 requires that brokers and dealers and municipal securities dealers make and keep current books and records, including the time of execution for inter-dealer municipal securities transactions and the time of entry for customer transactions.
9. During the period of April 1, 2002 through January 6, 2004, Berean, acting through Brown, failed to prepare and maintain accurate order memoranda for 43 of 65 transactions, in that 25 inter-dealer memoranda failed to include the time of execution; of 18 customer order memoranda, none indicated the time of receipt of the customer order, and 8 of the customer order memoranda also did not include the time of execution.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-8 by Berean, acting through Brown.

MSRB G-27 VIOLATIONS

10. MSRB Rule G-27 requires that each dealer engaging in municipal securities transactions have a supervisory system and procedures in place reasonably designed to achieve compliance with the federal securities laws and MSRB Rules, including G-14 and G-37. Ultimate responsibility for transaction reporting rests with the dealer that effected the trade. Clearing firms that submit transactions for their correspondent firms also have responsibility for those aspects of the reporting process under their control.³
11. Berean's written supervisory procedures designated Brown as being responsible for compliance with MSRB Rule G-37, including specifically referencing the filing of Forms G-37 to report Berean's participation in a negotiated underwriting of municipal securities.
12. Berean, acting through Brown, failed to implement or enforce its written supervisory procedures that prohibited Berean from engaging in municipal business with an issuer within two years after contributions by the firm, or any municipal finance professional to an official of the issuer; and failed to enforce its written supervisory procedures for the accurate and timely filing of Forms G-37.

³ Information regarding each dealer's compliance with MSRB Rule G-14 and how it is performing in relation to other reporting dealers is available for review through the MSRB's Dealer Feedback System, which allows dealers to self-monitor their trade reporting performance, including, but not limited to, the accuracy of information reported concerning transactions the dealer submitted through a clearing firm or service bureau and/or transactions the dealer submitted for other dealers, and take appropriate steps to ensure compliance with the requirements of MSRB Rule G-14.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-27 by Berean, acting through Brown.

VIOLATIONS OF NASD RULES 2711 AND 2110

13. From February 10, 2003 through February 10, 2004, Berean published 20 research reports that were subject to NASD Conduct Rule 2711(h), which mandates that certain disclosures must be included in research reports, including, among other things:
- (a) the definition of the meaning of each rating that is consistent with its plain meaning, used by the Member in its research reports, that Berean failed to disclose on seven of 20 research reports;
 - (b) current information of the Member's distribution of ratings, such as the percentage of all securities rated by the Member that would be assigned ratings of "buy," "hold/neutral," or "sell," the percentage of subject companies within each of these three categories for whom the Member provided investment banking services within the previous 12 months, which information must be current, that Berean did not disclose in 20 of 20 research reports;
 - (c) the valuation methods used to determine a price target that must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target, that Berean did not provide in 6 of 20 research reports;
 - (d) a disclosure if the Member was making a market in the subject company's securities at the time the research report was published, that Berean failed to accurately disclose in 20 of 20 research reports; and
 - (e) the disclosures must be presented prominently, clearly and comprehensively on the front page of research report, or the front page must refer to the page on which the disclosures are found, that Berean failed to provide in 20 of 20 research reports.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2711(h) and 2110 by Berean, acting through Brown.

14. NASD Conduct Rule 2711(h) also requires Members to maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements of Rule 2711. The records must be maintained for three years from the date of the research analysts' public appearance.
15. Berean failed to prepare and maintain records of the public appearances of research analyst VR, who appeared on Bloomberg Television's "Morning Call" program on November 18, 2003 and December 10, 2003, in that Berean did not

maintain a copy of VR's television appearances, and did not prepare and maintain a record of the review of VR's television appearances to determine whether the required disclosures had been made, in violation of NASD Conduct Rule 2711(h).

16. NASD Conduct Rule 2711(f)(5) provides, in pertinent part that, if a Member intends to terminate its research coverage of a subject company, notice of this termination must be made, and the Member must make available a final research report on the subject company using the means of dissemination equivalent to previous reports. The final report must be comparable in scope and detail to prior research reports on the subject company and must include a final recommendation or rating.
17. Berean failed to provide notice of termination of coverage and failed to make available a final research report on seven subject companies that its research analyst covered during the period of July 9, 2002 through March 1, 2004, in violation of NASD Conduct Rules 2711(f)(5) and 2110 by Berean, acting through Brown.
18. Berean, acting through Brown, failed to prepare and maintain, and to enforce its written supervisory procedures in that:
 - a) it failed to evidence the submission by a senior officer of the annual attestation to NASD for the year 2002 that the member firm had adopted and implemented written supervisory procedures reasonably designed to ensure compliance with NASD Conduct Rule 2711;
 - b) it failed to prepare and maintain adequate supervisory procedures for the issuance of a final report upon the termination of coverage for subject companies for which Berean's research analyst provided research coverage, as required by NASD Rule Conduct 2711(f)(5); and
 - c) failed to adequately supervise the dissemination of research reports that contained disclosure deficiencies described in Paragraph 12 above.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2711, including 2711(i), and 2110 by Berean, acting through Brown.

SEC REGULATION AC AND NASD RULES 2110 AND 3010

19. SEC Rule 17a-4 and Regulation AC require that certain disclosures must be included in research reports, including an Analyst Certification that has been required as of April 14, 2003, that attests that all of the views expressed in the research reports accurately reflect the research analyst's personal views about any and all of the subject companies and the disclosure of whether the analyst's compensation was directly related to the research. SEC Regulation AC also requires the Member to promptly notify NASD in writing if and when an analyst fails to provide certification in connection with public appearances.

20. During the period of April 24, 2003 through February 10, 2004, Berean failed to ensure compliance with Regulation AC; Berean disseminated 20 research reports all of which failed to include an Analyst Certification; and Berean failed to promptly notify NASD in writing that research analyst VR did not provide the required Analyst Certification in connection with two public appearances on November 18, 2003 and December 10, 2003 on Bloomberg Television.

Such acts, practices and conduct constitute separate and distinct violations of SEC Regulation AC and NASD Conduct Rules 2110 and 3010.

- B. Respondents also consent to the imposition, at a maximum, of the sanctions of:
1. a censure; and
 2. a joint and several fine of \$100,000.

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 has attached an Election of Payment Form 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.

Respondents certify that a duly authorized officer 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 Respondents to submit it.

11/21/05
Date

Berean Capital Incorporated

Dudley Brown Jr.
By DUDLEY BROWN JR
Its PRESIDENT

Dudley Brown, Jr.

Dudley Brown Jr.

Reviewed by:

Counsel for Respondents

Accepted by NASD:

December 27, 2005
Date

Signed on behalf of the
Director of ODA by delegated authority

Pamela Shu

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