

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A20040071-01

TO: Department of Enforcement
NASD

RE: Cabrera Capital Markets, Inc.
Broker-Dealer
CRD No. 10081

Pursuant to Rule 9216 of NASD Code of Procedure, Cabrera Capital Markets, Inc. ("Respondent") 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 it 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 it; and
3. If accepted:
 - a. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about its 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects its 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 understand 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:

Cabrera Capital Markets, Inc. ("Member") became a member of NASD on August 13, 1981 and became registered with the Securities and Exchange Commission ("SEC") on August 12, 1981. The Member primarily engages in corporate equity securities, trading for their own account and municipal underwritings. The Member's membership with NASD and registration with the SEC remain currently in effect. The Member has no prior disciplinary history.

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 it;
- 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 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:

MSRB Rule G-14 Violations

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.

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.¹ 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.²

¹ Since January 31, 2005, MSRB Rule G-14 requires dealers to report trades to MSRB within 15 minutes after trade execution and MSRB publishes data about all reported municipal securities transactions within minutes after trade execution.

² 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).

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

1. During the period from on or about July 1, 2004 through September 30, 2004, Respondent failed to timely report 17% (8 of 47) of its municipal securities transactions to the MSRB.
2. During the period from on or about July 1, 2004 through September 30, 2004, Respondent reported 25.5% (12 of 47) of its municipal securities transactions to the MSRB with inaccurate execution times.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-14 by Respondent.

MSRB Rule G-27 Violations

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. 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

3. Respondent failed to prepare adequate written supervisory procedures addressing the reporting requirements under MSRB Rule G-14, and failed to implement an adequate supervisory system reasonably designed to monitor accurate reporting pursuant to MSRB Rule G-14.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-27 by Respondent.

³ Information regarding each dealer's compliance with MSRB 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 G-14.

NASD Rules 1050 and 2110 Violations

NASD Rule 1050 was amended effective March 31, 2004 to require research analysts to qualify through examination. Persons who were already functioning as research analysts were granted a one-year grace period within which to meet the registration requirements, provided the employing member firm where they were associated applied for the research analyst registration within 60 days of the effective date of the new requirement, which was May 31, 2004.

4. Respondent failed to apply for the research analyst designation for its research analyst, KB, by May 31, 2004.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Rules 1050 and 2110 by Respondent.

NASD Rules 2711 and 2110 Violations

NASD Conduct Rule 2711(i) provides, in pertinent part, that each Member subject to NASD Conduct Rule 2711 must adopt and implement written supervisory procedures reasonably designed to ensure that the Member and its employees comply with the provision of the research analyst rule.

5. Respondent failed to adopt and implement written supervisory procedures reasonably designed to ensure its research activities conducted from February 1, 2003 through July 31, 2004, were in compliance with NASD Rule 2711.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Rules 2711 and 2110 by Respondent.

SEC Regulation AC and NASD Rule 2110 Violations

SEC Rule 17a-4 and Regulation AC require that certain disclosures must be included in research reports, including an Analyst Certification, which requires an attestation 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. The Analyst Certification has been required since April 14, 2003.

6. During the period of May 2003 through July 2004, 100% (15 of 15) of the research reports disseminated by Cabrera failed to include the required Analyst Certification by its research analyst, KB.

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

- B. Respondent also consents to the imposition, at a maximum, of the sanctions of:
1. a censure; and
 2. a fine in the amount of \$22,500.

The sanctions 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 Corrective Action Statement. This Corrective Action 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 it 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 Respondent proposes 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 a duly authorized representative 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 it to submit it.

11/8/05

Date

Cabrera Capital Markets, Inc.



By: ROBERT AGUILAR

Its: CHIEF OPERATING OFFICER

Reviewed by:

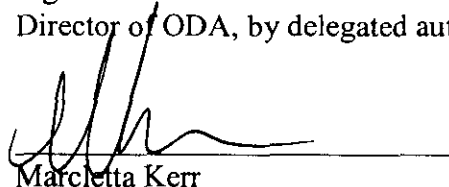
James D. Vallejo
Counsel for Respondent

Accepted by NASD:

11/23/05

Date

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



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NASD District Director

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Attachment: Election of Payment Form