

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A2005007701

TO: Department of Enforcement
NASD

RE: Fifth Third Securities, Inc.
(CRD No. 628)

Pursuant to Rule 9216 of NASD Code of Procedure, Fifth Third Securities, Inc., (hereinafter referred to as "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 Respondent 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 Respondent; and,
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent'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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

000005089 2001

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 is as follows:

Fifth Third Securities, Inc. ("Fifth Third" or "Member") became registered as a broker-dealer on September 11, 1939 and its registration as a broker-dealer and membership with NASD remain in effect. Fifth Third has conducted and conducts a general securities business and is an underwriter for municipal bonds. Within the last five years, Fifth Third's disciplinary history includes:

An AWC that was issued on February 26, 2002 for Continuing Education Regulatory Element, with a fine of \$15,000;

An AWC that was issued on November 17, 2003 for violations of MSRB Rules G-14 and G-27 for failing to report the correct time of execution to MSRB in transactions for which the firm had recording and reporting obligations, with a censure and a fine of \$20,000;

A cease and desist order and fine by the Securities and Exchange Commission, for 14 political contributions during 1997 through 2001, made by officers of two banks affiliated with Fifth Third. Although those contributions triggered a two-year ban on Fifth Third's municipal securities business with certain units of state and local government in the State of Ohio ("the Issuers"), Fifth Third sought and was selected to participate in 24 municipal securities transactions offered by the Issuers. Despite the bans on municipal securities business with the Issuers, Fifth Third engaged in these transactions totaling \$2.3 billion and earned approximately \$1,000,000 for which it was ordered to pay a civil penalty of \$1,000,000.

An AWC that was issued on May 2, 2005 for violations of Article V, Section 3 of NASD By-Laws and NASD Conduct Rule 2110 for late filings of 152 Forms U-5 from February 2002 until July 2003; and violations of a failure to enforce its written supervisory procedures to ensure the timely filing of Forms U-5 in violation of NASD Rules 2110 and 3010(b); and violations of MSRB Rule G-36 for failing to file Forms G-36 for 19 municipal underwritings within 10 business days after the final agreement to purchase; and failing to ensure compliance with MSRB rules and requirements in violation of MSRB Rule G-27(c), with a censure and a fine of \$79,750.

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:
 - 1. During the relevant time period, MSRB Rule G-14 required all brokers, dealers and municipal securities dealers (collectively "dealers") to report trades to MSRB within 15 minutes of the time of execution¹ 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

¹ On January 31, 2005, the reporting requirement changed from midnight of the date that the trade was executed, to within 15 minutes of the trade.

securities accurately for customers, and, in turn, interferes with an investor's decision-making process.²

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.

2. During the period from on or about July 1, 2005 through September 30, 2005, the Member executed 60 customer transactions in municipal securities, of which 5 (8.33%) were not timely reported, in that they were not reported to the Municipal Securities Rulemaking Board ("MSRB") within 15 minutes of the time of execution; and two trades were reported with incorrect times of execution; and 3 of 60 (5%) municipal securities transactions were reported to MSRB in error.

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

3. Article V, Section 2 of NASD's By-Laws provides that all applications for registration (Form U-4) filed with NASD must be kept current. Furthermore, all amendments to the application shall be filed with NASD no later than 30 days after learning of the facts or circumstances giving rise to the amendment.
4. From September 1, 2003 through October 16, 2005, Respondent failed to timely amend the Form U-4 for two registered representatives to disclose customer complaints, in that two customer complaints were disclosed 94 days and 343 days late, in violation of Article V, Section 2 of NASD By-Laws and NASD Conduct Rule 2110.

Such acts, practices, and conduct constitute separate and distinct violations of Article V, Section 2 of NASD's By-Laws and NASD Conduct Rule 2110 by the Member.

5. During the period from on or about July 1, 2005 through September 30, 2005, the Member acted as an underwriter in primary offerings of municipal securities and was required to file or cause to be filed Forms G-36(OS) reports with the MSRB

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).

in connection with those filings. The Form G-36 must be submitted to MSRB within one business day after receipt of the final official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities.

6. The Member filed 441 Forms G-36(OS) with the MSRB during this time period of which 21 were not timely submitted in that they were late by between one and 186 days late.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rule G-36 by the Member.

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

1. Censure of the Member; and
2. a fine of \$25,000.

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

III.

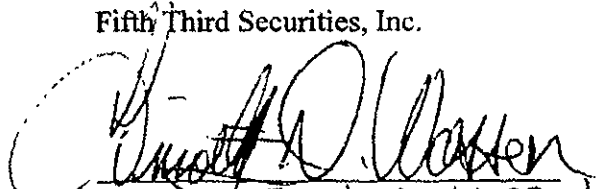
OTHER MATTERS

- 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 also 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 it upon notice that this AWC has been accepted and that such payments are due and payable and has attached Election of Payment forms showing the method by which it 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 individual has read and understands all of the provisions of this AWC and it 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 the AWC.

Fifth Third Securities, Inc.

02.26.07
Date


By Timothy D. Wasson
Its Chief Compliance Officer

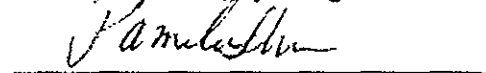
Reviewed by:


Counsel for Respondent

Accepted by NASD:

3-29-07
Date

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


Pamela Shu
Regional Counsel
NASD Department of Enforcement
55 West. Monroe Street
27th Floor
Chicago, IL 60603

NASD Regional Director

Carlotta A. Romano
Senior Vice President and Regional Director
55 West. Monroe Street
27th Floor
Chicago, IL 60603