

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. NO. E8A2005012902

TO: Department of Enforcement
NASD

RE: Leonard and Company
Member
CRD No. 36527

James Currier
General Securities Principal
CRD No. 2070654

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REGISTRATION & DISCLOSURE

Pursuant to Rule 9216 of the National Association of Securities Dealers, Inc., ("NASD") Code of Procedure, Leonard & Company ("Member") and James Currier (collectively referred to as 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. Donald M. Leonard, who was a named Respondent, also was involved in the events at issue in this AWC as the Member's President and sole director, but died on August 5, 2007 and is no longer a Respondent to this AWC. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against us alleging violations based on the same factual findings.

We 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 the 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by the NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our 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,

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- 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects our testimonial obligations or right to take legal positions in litigation in which the 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:

Leonard & Company ("Member") became a member of NASD, and registered with the Securities and Exchange Commission ("SEC") on September 27, 1994. The Member conducts a general securities business on a fully disclosed basis. The Member's membership with NASD and registration with the SEC currently remain in effect.

On November 28, 2005, NASD accepted a Letter of Acceptance, Waiver and Consent from the Member which contained findings that the Member violated NASD Conduct Rules 2110, 3010 and 3070(b) and Article V, Sections 2(c) and 3(b) of NASD By-laws, when it: received notice of customer complaints, arbitration claims and settlements that were reporting requirements, but the Member failed to promptly report the events; and, failed to enforce its written supervisory procedures to ensure compliance with NASD Conduct Rule 3070(c) and Article V Section 2(c) and 3(c) of NASD By-Laws. Pursuant to the Letter of Acceptance, Waiver and Consent, the Member was censured and fined \$40,000. The Member was also subject to other disciplinary actions.

James Currier entered the securities industry in October 1990 as a General Securities Representative of a member of NASD. In May 1997, he became registered as a General Securities Principal with another member of NASD. On November 28, 2005, NASD accepted a Letter of Acceptance, Waiver and Consent from James Currier which contained findings that he violated NASD Conduct Rules 2110, 3010, 3070(b) and Article V, Sections 2(c) and 3(b), as is more fully set forth above regarding the disciplinary history of the Member. For those violations, he was fined \$5,000 and suspended for ten business days in a principal capacity. He was also required to re-qualify as a principal. In September 2006, he successfully re-qualified as a General Securities Principal.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waives the following rights granted under the NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

Summary of the Private Placement Memoranda

1. Between September 2001 and January 2003, the Member engaged in a private placement self-offering of preferred shares of "Leonard Financial Corporation" doing business as "Leonard & Company," pursuant to three separate private placement memoranda (PPMs), the dates of which were September 10, 2001 for Series A, April 4, 2002 for Series 2 and January 7, 2003 for Series 3. The sales of

the preferred shares were made using the means or instruments of transportation or communication in interstate commerce.

2. The September 10, 2001 private placement offering (Series A Offering) sought to raise \$1 million through the issuance of 10,000 shares of cumulative preferred, non-voting, non-convertible stock of Leonard & Company at \$100 per share. The minimum investment was \$50,000 (500 shares) and provided for a 15% annual dividend payable semiannually in April and October, with the first payment on April 1, 2002. The first sale for the Series A Offering took place on September 28, 2001, and the last sale occurred on March 28, 2002.

3. The April 4, 2002 private placement offering (Series 2 Offering) also sought to raise \$1 million through the issuance of 10,000 shares of cumulative preferred, non-voting, non-convertible stock at \$100 per share. The minimum investment was also \$50,000 and provided for an 11% annual dividend payable semiannually in January and July, with the first payment on July 1, 2002. The first sale of the Series 2 Offering took place on April 30, 2002, and the last sale occurred on December 27, 2002.

4. The January 7, 2003 private placement offering (Series 3 Offering) sought to raise \$3 million through the issuance of 30,000 shares of cumulative preferred, non-voting, non-convertible stock at \$100 per share. The minimum investment was the same as the previous offerings and provided for a 10% annual dividend payable semiannually in May and November with the first payment commencing on May 1, 2003. The first sale took place on January 22, 2003 and the last one on October 29, 2004.

5. All three PPMs provided that the preferred stock had not been registered under the Securities Act of 1933, or the Michigan Securities Act, or approved by the Securities and Exchange Commission (SEC) or the Michigan Department of Consumer & Industry Services, Office of Financial & Insurance Services. Additionally, the PPMs provided that each offering was made pursuant to claims of exemption from registration. Specifically, they provided that the offerings were exempt pursuant to Rule 147 of the Securities Act of 1933, and Section 402(b)(9) of the Michigan Securities Act. As such, none of the offerings were registered with the SEC or with the State of Michigan.

6. All three PPMs provided that there was no public market for any of the preferred shares, that they could not be resold unless and until they were registered or made subject to an exemption and that they could not be sold or transferred to any person who was not a bona fide resident of the State of Michigan, for a period of nine consecutive months from the date of the last sale under any particular offering.

7. With regard to distribution of the preferred shares, the Series A Offering provided that they were to be sold directly by the Member through its officers, Donald Leonard and Jim Currier, without any other placement agent. The Series 2 and Series 3 Offerings provided that the preferred shares were to be sold directly by the Member through its officer, Donald Leonard, without any placement agent.

8. All three PPMs provided that the Member's officers would not receive any commissions or other remuneration in connection with the sale of the preferred shares and that the funds raised were to be placed into the Member's bank account immediately upon acceptance of the purchaser's subscription agreement, and would be available for the Member's use.

9. All three PPMs provided that the parent company, the Donald M. Leonard Investment Company, would pay the expenses of the Member and be reimbursed through a monthly management fee. In Series A and Series 2, the memoranda did not specify the amount of the management fee, while in Series 3, the memorandum stated the monthly management fee would be \$100,000.

10. All three PPMs provided that the proceeds of the offering were to be used for "Capital Expenditure/Office Expansion," "Debt Retirement," and "Short-Term Working Capital."

Total Funds Raised and Integration of the Offerings

11. The Member raised \$785,000 based on sales to twelve investors for Series A, \$1,125,000 based on sales to twelve investors for Series 2 and \$3,840,000 based on sales to forty-nine investors for Series 3. Although the Series 2 and 3 offerings were oversubscribed, 11,250 and 30,840 shares sold, respectively, the Member did not exceed the allowed number of shares, 10,000 and 30,000, respectively, due to the timing of redemptions and sales.

12. The Series A Offering, the Series 2 Offering and the Series 3 Offering were integrated and treated as one offering inasmuch as the sales were part of a single plan of financing, were made at or about the same time, involved the same class of security and same type of consideration, and were made for the same general purpose.¹

Violation of Section 5 of the Securities Act of 1933

13. Sections 5(a) and 5(c) of the Securities Act of 1933 prohibit the sale of any security unless a registration statement is in effect with regard to that security or an exemption from registration is available.

14. Although none of the offerings described above were registered, none qualified for an exemption from registration. Specifically, the offerings failed to qualify for the intra-state exemption because on eight separate occasions, the Member made sales of the preferred shares to investors who were domiciled outside the State of Michigan. Further, none of the offerings qualified for a Regulation D exemption because the Member sold shares, on at least two occasions, to non-accredited investors without providing them with the financial information required under SEC Rule 502.

15. Such acts, practices and conduct constitute separate and distinct violations of Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110 by the

¹ See 17 C.F.R. § 230.502(a)

Member.

Negligent Misrepresentations and Payment of Commissions

16. In August 2001, prior to the Series A Offering, the Member intended to distribute the preferred shares directly through Donald Leonard and Jim Currier, without the need for a placement agent and without the payment of any commissions or remuneration. As previously noted above, the PPMs confirmed this plan by stating that the preferred shares were to be sold directly by the Member through Donald Leonard and/or Jim Currier, without any other placement agent, and without any payment of commissions or other remuneration in connection with their sale.

17. In September 2001, after the Series A Offering, Donald Leonard approached several of the firm's registered representatives and requested their assistance in distributing the preferred shares. As a result, twelve of the Member's registered representatives sold preferred shares to the public, and were paid finders' fees of between 3% and 5% of the face value of the preferred shares they sold. The total amount of remuneration paid was \$188,675.

18. After the plan of distributing the preferred shares changed, the Member, acting through Donald Leonard and Jim Currier, did not amend the private placement memoranda for the Series 2 Offering and the Series 3 Offering.

19. By failing to disclose to investors in the PPMs that remuneration in the form of finders' fees was being paid to registered representatives of the Member in connection with the sale of preferred shares sold under Series 2 and Series 3, the Member, acting through Donald Leonard and Jim Currier, made negligent misrepresentations, in violation of NASD Conduct Rule 2110.

Negligent Misrepresentations and the Member's Operating Expenses

20. As noted above, the Series 2 and Series 3 Offerings disclosed that the proceeds of the offerings would be used, in part, for "Debt Retirement." The PPMs, however, failed to provide any information about the debt that was to be retired.

21. Also as mentioned above, the Series 2 and Series 3 Offerings disclosed that the parent company would pay the Member's operating expenses and be reimbursed by means of a monthly management fee. The PPMs, however, failed to provide any information about the past operating expenses that had never been repaid to the parent company.

22. Based on a review of the PPM, a reasonable investor would have concluded that the Member's monthly cash flow was sufficient to meet its operating expenses, and that the Member would not have to borrow funds to pay its operating expenses.

23. In fact, a substantial portion of the proceeds were used to retire debt related to the Member's operating expenses.

24. The failure to disclose in the PPMs that the proceeds of the offering would be used to pay past operating expenses was a material omission inasmuch as a reasonable investor would be unable to determine that the Member's cash flow was insufficient to meet the Member's operating expenses.

25. By failing to disclose the existence of the past unpaid operating expenses, the Member, by and through Donald Leonard and Jim Currier, made a material omission and negligently misrepresented to the investors that the Member's cash flow was sufficient to meet its operating expenses, in violation of NASD Conduct Rule 2110.

Negligent Misrepresentations and the Member's Financial Condition

26. The Member's balance statements dated December 31, 2001 in the Series 2 Offering and December 31, 2002 in the Series 3 Offering reflect advances made by the Member to the parent company resulting in receivables in the amounts of \$600,000 and \$1.8 million, respectively.

27. By including these receivables in the 2001 and the 2002 balance statements, the Member increased its assets substantially, from approximately \$500,000 to \$1.1 million, and from approximately \$700,000 to \$2.5 million, respectively.

28. The PPMs, however, failed to provide any background or financial information about the parent company, and failed to inform the investor that the parent company did not engage in any business or generate its own income.

29. The failure to disclose the financial condition and nature of the parent company was a material omission, such that a reasonable investor would not be able to determine that the parent company was unlikely to have the ability to repay the advances back to the Member in the foreseeable future.

30. By failing to disclose that these advances might not be repaid, the Member, by and through Donald Leonard and Jim Currier, negligently misrepresented a material aspect of the Member's financial condition, in violation of NASD Conduct Rule 2110.

Failure to File Offerings with NASD

31. NASD Rule 2710 requires that no person associated with a member participate in any manner in any public offering of securities unless documents used in the offering of the securities to the public, such as registration statements, offering circulars or offering memorandum, are filed with and reviewed by NASD.

32. The Member did not qualify for a claimed exemption under Rule 2710 and failed to submit any documentation about the public offering of the preferred shares to NASD prior to their sales.

33. Such acts, practices and conduct constitute separate and distinct violations of

NASD Conduct Rules 2110 and 2710 by the Member.

Failure to Follow Conflict of Interest Rules

34. NASD Rule 2720 prohibits member firms or people associated with member firms from participating in the distribution of a public offering of debt securities issued by a company if the member has a conflict of interest with the company.

35. Since Leonard & Company is the issuer of the preferred shares, Rule 2720 requires that one or more of the following criteria be met prior to offering the security:

a. The price at which an equity issue is to be distributed to the public is established at a price no higher than that recommended by a qualified independent underwriter, which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto;

b. The offering is of a class of equity securities for which a bona fide independent market exists as of the date of the filing of the registration statement and as of the effective date thereof; or,

c. The offering is of a class of securities rated Baa or better by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the Association.

36. The preferred shares were unrated debt offerings, and therefore, none of the criteria listed above were met.

37. NASD Rule 2720(d) also requires that disclosures be made about the offering, such as: the date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released; that the offering is being made pursuant to the provisions of this Rule; that the offering is either being made by a member of its own securities or those of an affiliate, or those of a company in which the member or its associated persons, parent or affiliates own the common stock, preferred stock or subordinated debt of the company; the name of the member acting as qualified independent underwriter, if any; and that the member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

38. The Member did not qualify for a claimed exemption under Rule 2720, and neither Leonard & Company nor Donald Leonard made the written disclosures described above to the investors in the PPMs.

39. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2720 by the Member.

Books and Records Violations

40. SEC Rules 17a-3(a)(8) and 17a-4(b)(1) require that members obtain and retain, among other things, copies of confirmations of all purchases and sales of securities, for a period of three years.

41. Despite the requirement described above, the Member failed to obtain and retain eight subscription agreements with regard to the sale of the preferred shares of Leonard & Company.

42. Such acts, practices and conduct constitute separate and distinct violations of SEC Rules 17a-3 and 17a-4 and NASD Conduct Rules 2110 and 3110 by the Member.

Failure to Maintain a Reasonable Supervisory System and Written Supervisory Procedures

43. NASD Rule 3010(a) requires that a member establish and maintain a system to supervise the activities of each representative that is reasonably designed to achieve compliance with applicable securities laws and regulations.

44. NASD Rule 3010(b) requires that a member establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

45. The written supervisory procedures in effect between August 2001 and October 2004 failed to address the procedures the Member should follow with regard to the preparation and sale of private offerings.

46. Between August 2001 and October 2004, the Member's employees and outside counsel did not have, or exercise, adequate expertise with regard to the preparation of private placement memoranda and did not provide any training to their representatives who were asked to sell private offerings.

47. Between August 2001 and October 2004, the Member, acting through Donald Leonard and James Currier, failed to maintain a reasonable supervisory system and failed to develop reasonable written supervisory procedures relating to the creation and development of the private placement memoranda described above, and the training of representatives who solicited potential investors and sold them shares of the private offering, in violation of NASD Rules 2110 and 3010.

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

Leonard & Company is hereby censured and fined \$100,000.

James Currier is suspended for 10 business days in all principal capacities.

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 us upon notice that this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any other right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

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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 us to submit it.

Leonard and Company

Date

By: Dan B. French Jr.

Its: President: CEO

James Currier

Date

Reviewed by:

Counsel for Respondents

Accepted by NASD:

3/20/08

Date

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

RA March

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