

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E9A2004003801

TO: Department of Enforcement
NASD

RE: Commerce Capital Markets, Inc. Respondent
CRD No. 6940

Vincent J. Stafford, Respondent
CRD No. 501262

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondents Commerce Capital Markets, Inc. ("CCMT") and Vincent J. Stafford ("Stafford") (collectively called "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. 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 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 Respondents' permanent disciplinary record and may be considered in any future actions brought by 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 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. 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 our testimonial obligations or right to take legal positions in litigation in which NASD is not a party.

Respondents also understand that our experience in the securities industry and our disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

CCMI has been an NASD member since December 1976 and conducts a general securities and municipal securities business. It is an indirect subsidiary of Commerce Bancorp, Inc. ("Commerce"). CCMI has no relevant disciplinary history.

Stafford first became registered with NASD in December 1975 as a Municipal Securities Principal. Stafford has been associated with CCMI since at least December 1975 and was the President of CCMI from at least December 1979 to July 2004. Stafford has no disciplinary history.

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 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 alleged violations, 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 adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. Summary

CCMI committed violations of Municipal Securities Rulemaking Board ("MSRB") Rule G-37, which is designed to, among other things, reduce conflicts of interest in the awarding of municipal securities business to dealers. From 1999 through 2002, municipal finance professionals ("MFPs") at CCMI contributed virtually all of the funds received by Political Action Committee FED ("FedPAC"), a political action committee ("PAC") established by Commerce. Stafford and other CCMI senior officers solicited some of their contributions.

Using funds contributed by those MFPs, FedPAC made contributions to a state official (the "Official") in connection with his 2000 and 2002 political campaigns for federal office. The Official had the ability to directly or indirectly influence the awarding of municipal securities business by the Issuer. Subsequently, in 2002 and 2003, CCMI was selected to serve as the senior manager or sole underwriter for negotiated municipal securities offerings conducted by the county in which the Official served (the "Issuer"). The offerings totaled approximately \$171 million and resulted in approximately \$533,000 in fees and profits for CCMI.

CCMI did not report to the MSRB the contributions FedPAC made to the Official. Moreover, from 1999 through 2002, CCMI did not maintain any records of the contributions FedPAC was making, including the contributions to the Official. In addition CCMI did not have adequate internal policies, systems or procedures relating to political contributions by its MFPs.

2. Regulatory Background

MSRB Rule G-37 became effective on April 25, 1994. NASD has noted that G-37 “is designed to reduce conflicts of interest, as well as the appearance of conflicts of interest, in the awarding of municipal securities business to dealers.” *NASD Notice to Members 96-54* (August 1996). MSRB Rule G-37(b) provides, in pertinent part, that “[n]o broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: i) the broker, dealer or municipal securities dealer; [or] (ii) any municipal finance professional associated with such broker, dealer or municipal securities dealer.” According to MSRB Rule G-37(d), “[n]o broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.”

In 1996, the MSRB advised that depending upon the facts and circumstances, contributions to a nondealer associated PAC might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official. *See MSRB Interpretation to Rule G-37* (Aug. 6, 1996). In 2003, which was subsequent to the violations alleged herein, the MSRB confirmed this position by advising that Rule G-37 was designed not only to address direct contributions by brokers, dealers, municipal securities dealers and MFPs to issuer officials, or to PACs controlled by the dealer or MFPs, but also to prohibit those parties from using conduits, such as non-dealer controlled PACs, to make the same payments if the contributions could not have been made directly without triggering the Rule G-37 ban on business. *See MSRB Notice Concerning Indirect Rule Violations: G-37 and G-38* (Aug. 6, 2003). The MSRB has also advised brokers, dealers, municipal securities dealers and MFPs to “inquire” of non-dealer controlled PACs and other entities how they will use contributed funds to determine, among things, whether their contributions will be used to make payments to any issuer official. *See MSRB Interpretation to Rule G-37* (Aug. 6, 1996).

Pursuant to MSRB Rule G-8(a)(xvi)(F), every broker, dealer and municipal securities dealer shall make and keep current records concerning certain political contributions. Such records must reflect, among other things, “the contributions, direct or indirect, to officials of an issuer” with the exception of certain contributions made by municipal finance professionals not in excess of \$250. MSRB Rule G-37(e)(i) requires a municipal securities dealer to report certain political contributions to the MSRB. The MSRB has advised that G-37(e)(i) requires a municipal securities dealer to report all direct and indirect contributions required to be recorded under MSRB Rule G-8(a)(xvi). *See MSRB Interpretation to Rule G-37* (May 24, 1994).

Each broker, dealer and municipal securities dealer must also supervise the conduct of the municipal securities activities of the dealer and its associated persons to ensure compliance with MSRB rules. MSRB Rule G-27 states, “[e]ach dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons

are in compliance [with MSRB rules].” As the MSRB recently confirmed, the dealer should have reasonable supervisory procedures to prevent it, and its MFPs, from using payments to non-dealer controlled PACs to contribute indirectly to an official of an issuer, which should include performing adequate due diligence before allowing any of its MFPs to make payments to a PAC to ensure that the PAC will not use the money for the support of issuer officials. *See MSRB Notice 2005-36 (June 21, 2005).*

3. Political Contributions to the Official and CCMI Role in Issuer Offerings

Between January 1, 1999 and December 31, 2002, FedPAC received contributions of \$203,450. Virtually all of the contributions made to FedPAC during this period were made by 67 MFPs at CCMI. Stafford and other CCMI senior officers solicited some of their contributions. In soliciting some contributions, CCMI senior officers advised the firm’s MFPs about the opportunity to make contributions to FedPAC and discussed the anticipated dollar amounts for some contributions.

Between 2000 and 2002, FedPAC made two contributions totaling \$15,000 to the Official in connection with his political campaigns for federal office.¹ CCMI did not report to the MSRB these contributions. Moreover, from 1999 through 2002, CCMI did not maintain any records of the contributions FedPAC was making, including the contributions to the Official.

Subsequently, in 2002 and 2003, CCMI was selected to serve as the senior manager or sole underwriter for four negotiated public bond offerings conducted by the Issuer. The offerings totaled approximately \$171 million and resulted in approximately \$533,000 in fees and profits for CCMI.

4. Violations Found

Between 2000 and 2002, the firm’s MFPs made contributions through FedPAC to the Official. Following this contribution, CCMI was prohibited from engaging in any municipal securities business with the Issuer or a period of up to two years. The firm, however, violated this ban by participating in negotiated underwritings involving the Issuer in 2002 and 2003. Moreover, CCMI failed to report to the MSRB the contributions that the firm’s MFPs made through FedPAC to the Official. As a result, CCMI violated MSRB Rule G-37.

CCMI did not make and keep current records of the contributions that its MFPs made through FedPAC to the federal campaigns of the Official. As a result, CCMI violated MSRB Rule G-8(a)(xvi)(F).

¹ The Official’s campaign returned \$5,000 of these funds to FedPAC in 2002.

From at least 1999 through 2002, CCMI, acting through Stafford, did not establish and maintain a supervisory system and procedures reasonably designed to ensure compliance with MSRB Rule G-37. CCMI did not have certain internal policies, systems or procedures relating to political contributions by its MFPs. Specifically, CCMI had no system or procedures to track contributions by FedPAC after receipt of the funds from the firm's MFPs. Moreover, it did not take reasonable steps, such as making inquiries to FedPAC concerning how the funds would be used, before permitting any contributions. Consequently, the firm did not monitor contributions made by its MFPs to the Official through a conduit, FedPAC. As a result, CCMI and Stafford violated MSRB Rule G-27.

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

CCMI shall be censured and fined \$600,000.

Stafford shall be fined \$10,000 and suspended from association with any member firm in a municipal securities principal or supervisory capacity for 90 calendar days.

In addition, CCMI shall undertake to review its procedures regarding political contributions and prohibitions on municipal securities business for compliance with MSRB Rule G-37. Within 180 days of the issuance of this AWC (unless otherwise extended by NASD staff), an officer of CCMI will certify to NASD in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with MSRB Rule G-37.

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

III.

OTHER MATTERS

A. Respondents understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 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 right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondents certify that we 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.

Commerce Capital Markets, Inc.

12/8/05
Date

12/8/05
Date

By:

Stanley A. Oregon, President

By:

Vincent J. Stafford

Reviewed by:

[Signature]
Counsel for Respondents

Accepted by NASD:

12-22-05
Date

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

By:

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