

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. E9B2004004801**

TO: Department of Enforcement  
NASD

RE: Gabelli & Company, Inc., Respondent  
BD No. 7353

Pursuant to Rule 9216 of NASD Code of Procedure, we 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 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 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 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. we 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 finding 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 or factual positions in litigation or other legal proceedings in which NASD is not a party.

We also understand that our 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:

Gabelli & Company, Inc. ("Gabelli") has been a member of NASD since on or about February 28, 1977. At all times referenced herein, Gabelli's main office was located in Rye, New York. Gabelli has no relevant disciplinary history.

I.

**WAIVER OF PROCEDURAL RIGHTS**

We 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, we specifically and voluntarily waive any right to claim bias or prejudice 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.

We 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. We 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:

For the period from on or about November 1, 2002 through on or about September 17, 2004, a review of 58 randomly selected TRACE-eligible securities transactions revealed nine instances where Gabelli reported trades late. Additionally, in each of those 58 TRACE-eligible transactions, Gabelli did not report the yield or capacity.

Based on the foregoing, Gabelli violated NASD Systems and Programs Rule 6230 and NASD Conduct Rule 2110.

During the same period, Gabelli failed to establish, maintain and enforce a supervisory system and written procedures relating to the trading of TRACE-eligible securities that were reasonably designed to achieve compliance with the applicable rules and regulations.

Based on the foregoing, Gabelli violated NASD Conduct Rules 3010 and 2110.

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

A censure and a fine in the amount of \$17,500.

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

## III.

### OTHER MATTERS

A. We 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. We 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. We 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.

We 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.

Date: 2/9/06

Gabelli & Company, Inc.

By: [Signature]

Title: Chairman

Accepted by NASD:

3/6/06  
Date

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

Paul D. Taberner

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