

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EB 2005006401

TO: Department of Enforcement
NASD

RE: H. Rivkin & Co., Inc., Respondent
CRD No. 29459

Pursuant to Rule 9216 of NASD Code of Procedure, H. Rivkin & Co., Inc. ("Rivkin"), 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 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:

Rivkin has been a member of NASD since March 2, 1992. The firm employs *nine registered persons*. It makes inter-dealer markets and conducts a retail securities business. On July 8, 1999, Rivkin entered into an AWC with NASD in which it was censured and fined \$7,500 for violations of Exchange Act Rule 15c3-3 and NASD Conduct Rule 2110.

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 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.

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:

- A review of 217 of Rivkin's TRACE-eligible securities transactions executed from October 2004 through October 2005 revealed the following deficiencies:
 - 115 instances where trades were reported late;
 - 2 instances where trades were not reported; and
 - 12 instances where trades were reported with missing or inaccurate information.

Such acts, practices and conduct constitute separate and distinct violations of NASD Systems and Programs Rule 6230 by Rivkin.

- Furthermore, Rivkin failed to establish, maintain and enforce a supervisory system and written procedures relating to the reporting of TRACE-eligible securities that were reasonably designed to achieve compliance with the applicable rules and regulations.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010.

- NASD Conduct Rule 3011, which became effective on April 24, 2002, requires NASD members to develop and implement a written anti-money laundering ("AML") program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act ("BSA"), 31 U.S.C. §5311, et seq. and the regulations promulgated thereunder and conduct independent testing of its AML program for compliance. NASD issued numerous communications to its members regarding the requirement to have an AML program and that the requirement applied to all member firms. Among other things, NASD communicated the requirement in Notice to Members 02-21 in April 2002 to notify NASD members of this requirement and reiterated this requirement in subsequent Notices to Members 02-47 (August 2002), 02-50 (August 2002), 02-78 (November 2002), 02-80 (December 2002), and 03-34 (June 2003). Moreover, in February 2004,

Rivkin received notice from NASD that it had failed to conduct an independent test of its AML program.

During the time period from September 2003 through at least November 2005, Rivkin failed to provide for:

- Independent testing of its AML program; and
- A reasonably designed system and written procedures relating to the *monitoring of suspicious account activity*.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(a), 3011(c) and 2110 by Rivkin.

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

- Rivkin is censured and fined \$15,000.¹

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

¹ The fine shall be payable in two monthly installments of \$7,500 following the issuance of this AWC.

NOV-09-2006 12:58 From: H RIVKIN
11/08/2008 11:41 FAX

6897323999

Tel: 202 721 6571

P. 2/3
006/007

promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

H. Rivkin & Co., Inc.

11/9/06
Date

By: [Signature]
Harold J. Rivkin, President

Accepted by NASD:

11/27/2006
Date

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

[Signature]
Jonathan M. Prytherch
Senior Regional Attorney
NASD Department of Enforcement
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
(732) 396-2078

NASD District Director
Gary K. Liebowitz
Senior Vice President
NASD, District 9B
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
(732) 396-2000