

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0400370005

TO: Department of Enforcement
NASD

RE: Craig L. Josephberg, Respondent
CRD No. 2709288

Pursuant to Rule 9216 of the NASD Code of Procedure, Craig L. Josephberg 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 Josephberg alleging violations based on the same factual findings.

Josephberg 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 Josephberg; and
3. If accepted:
 - a. this AWC will become part of Josephberg's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Josephberg;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Josephberg'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. Josephberg 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 Josephberg's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a

party.

Josephberg also understands that his experience in the 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:

Josephberg was registered as a general securities representative in the Park Avenue, New York branch of Paulson Investment Company, Inc. ("Paulson"), a Portland-based broker-dealer, from January 2003 to December 2003. He first entered the securities industry in December of 1995 with CIBC World Markets in New York, New York as a general securities representative. Prior to joining Paulson, Josephberg was registered as a general securities representative with two other firms - Prudential Securities, Inc. and CIBC World Markets. Since leaving Paulson, Josephberg has been registered with Maxim Group, LLC as a general securities representative.

I.

WAIVER OF PROCEDURAL RIGHTS

Josephberg 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 him;
- 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, Josephberg 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.

Josephberg 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

Josephberg 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 fact or law, to the entry of the following findings by NASD:

Summary

Between March 2003 and September 2003, respondent Craig L. Josephberg opened approximately twenty-eight accounts for seven hedge fund clients at Paulson for the purpose of market-timing mutual funds. During this time, Josephberg received increasing numbers of account blocks and trade rejects from mutual funds that were monitoring his clients' market-timing activities for excessive market timing. In an effort to hide from mutual funds that monitored for brokers that engaged in excessive market timing, Josephberg requested new broker codes for his market-timing account.

Paulson's President was aware of Josephberg's market-timing activities and on July 31, 2003 granted Josephberg's requests for new broker codes. Thereafter Josephberg executed approximately twenty-four trades with the new broker codes in mutual funds that had already blocked a trade he had attempted to execute with his pre-existing broker codes. As a result, Josephberg was able to trade for clients in funds that may have been monitoring for, and may have rejected trades associated with, his pre-existing broker codes. These trades generated approximately \$34,000 in profits for Josephberg's clients. In addition, Josephberg processed sixteen trades in a mutual fund after that fund had blocked his broker code from placing any further trades. These trades generated approximately \$86,000 in profits for Josephberg's clients. By requesting and then using additional broker codes for the purpose of hiding his identity from mutual funds, and by trading in a mutual fund with a broker code that the mutual fund had blocked Josephberg violated NASD Rule 2110, which requires registered persons to adhere to high standards of commercial honor and just and equitable principles of trade.

Background

Unlike securities listed on an exchange, the NAV of most mutual funds currently is calculated only once per day, based upon closing prices at 4:00 p.m. Eastern Time. This regimen for determining NAV provides market timers the opportunity to engage in arbitrage based on market information not reflected in that day's net asset value. To do this, market timers typically buy and sell shares in mutual funds on a short-term basis, realizing quick gains and then retreating to the previous market position. Market timing is not illegal *per se*. It can harm mutual fund shareholders, however, because it can dilute the value of their shares, by, among other things, removing profits that would otherwise be shared by all the shareholders, requiring the fund to keep a larger percentage of highly liquid assets to cover redemptions, or by increasing the transaction costs for the fund. Long-term fund investors may ultimately bear the burden of paying these costs. In addition, trading profits obtained by market timers can result in losses to long-term mutual fund shareholders.

Many mutual fund companies monitor trading activity for market timing and attempt to enforce restrictions and limitations on market timing through written and oral communications, or notices, blocking or rejecting trades. The notices vary from reminders as to the fund company's market timing policies and procedures, to warnings that an account is permitted one more transaction, to absolute restrictions from effecting additional transactions in the securities of that fund company ("block notices").

At times, market timers employ a number of strategies to attempt to avoid detection and continue market timing after a mutual fund has attempted to prevent future trading activity. These strategies include using different names and broker code numbers. Market timers undertake these efforts in an attempt to gain more market timing capacity, or increased access to market timing opportunities in any given fund company.

Josephberg Engaged In Deceptive Market Timing

In January 2003, Josephberg opened the first market-timing account for a hedge fund client at Paulson. Josephberg's market-timing business grew until he had a total of twenty-eight market-timing accounts, managed by seven hedge funds. These accounts were opened for the express purpose of market timing and they managed a total of approximately \$39 million in assets in Josephberg's accounts. In total, Josephberg processed over 1,300 trades in over forty fund families for these clients.

Between March and September 2003, mutual fund companies rejected an increasing number of trades from Josephberg's accounts for excessive market timing. In many of these trade rejects, the mutual fund companies warned Paulson that market timing was detrimental both to the management of the fund and long-term shareholders and was not a proper investment purpose. In addition, some of the trade rejects sent by the mutual funds identified Josephberg's broker code and the broker name that was assigned to the account. By May 1, 2003, mutual funds rejected six trades submitted by Josephberg for excessive market timing.

In May 2003, Josephberg approached a hedge-fund client about ways to increase his market-timing business with the client. He took notes based upon his conversations with the client. His client told Josephberg that a way to "prolong the relationship" between Josephberg and the client was to "hide" broker codes.

Shortly after his conversations with his client about ways to increase its business with him, Josephberg requested new broker codes from the President of Paulson. Josephberg requested the new broker codes in part to hide from mutual funds that monitored for brokers that engaged in excessive market timing. In the meantime, Josephberg's market-timing business increased, as did the communications from mutual funds restricting the market timing of his clients.

On July 31, 2003, Paulson's President granted Josephberg's request for new broker codes. Josephberg was then provided a new broker code that he shared with a junior broker, who performed administrative duties and received a small portion of commissions generated with trades executed under the new broker code. In addition, Josephberg was also assigned a new broker name for these codes - GLARCEJOY - that consisted of Josephberg's first name, combined with the first name of a junior broker, and then spelled backwards.

Josephberg made approximately twenty-four trades with these new joint broker codes and broker names in mutual funds that had already blocked a trade processed by Josephberg with his pre-existing broker codes and broker names. As a result, Josephberg was able to trade in funds that may have been monitoring for, and may have rejected trades associated with, his old broker code. These trades generated approximately \$34,000 in profits to his clients. By requesting and using additional broker codes for the purpose of hiding his identity from mutual funds, Josephberg violated NASD Rule 2110, which requires registered persons to adhere to high standards of commercial honor and just and equitable principles of trade.

In addition, one mutual fund company rejected a trade placed by Josephberg for market-timing activity and specified that it would "no longer allow trades placed" by his broker code. This block was sent by wire to Paulson's home office in Portland, which then forwarded the block to the Park Avenue branch. Contrary to the block notice, Josephberg continued to use the code to trade in the mutual fund. He placed sixteen more trades in the mutual fund company for a client, earning that client approximately \$86,000 in profits, after the fund had sent the notice blocking Josephberg's code from placing any more trades in the mutual fund.

Sanctions

Josephberg consents to the imposition, at a maximum, of the following sanctions:

1. A fine of \$15,000.
2. A suspension from association with any member firm in any capacity for 35 days.

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

III.

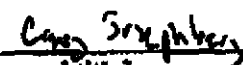
OTHER MATTERS

- A. Josephberg understands that he may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Josephberg understands that he 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. Josephberg agrees to pay any monetary sanctions imposed on him upon notice that this AWC has been accepted and that such payments are due and payable, and he has attached an Election of Payment form showing the method by he proposes to pay any fine imposed.
- C. Josephberg specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certifies that he has read and understands all of the provisions of this AWC and 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 him to submit it.

Date: _____


Craig L. Josephberg
Respondent

By: 
[Name and title]

Reviewed by:

Melvin A. Brosterman, Esq.
Stroock & Stroock & Lavan, LLP

Accepted by NASD

7/18/06
Date


Department of Enforcement
on behalf of the Director of ODA, pursuant
to delegated authority