

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0400790002

TO: Department of Enforcement
NASD

RE: A.G. Edwards & Sons, Inc.
One North Jefferson
St. Louis, Missouri 63103
BD No. 4

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent A.G. Edwards & Sons, Inc. ("Edwards" or "the firm") 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 it alleging violations based on the same factual findings.

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

Edwards also understands that its 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:

A.G. Edwards & Sons, Inc. is a full service firm and has been a member of the Association since 1939. Based in St. Louis, Missouri, it currently has over 1000 offices.

I.

WAIVER OF PROCEDURAL RIGHTS

Edwards 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 it;
- 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 ("SEC") and a U.S. Court of Appeals.

Further, Edwards 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.

Edwards 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

A. Findings

Edwards hereby accepts and consents, 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

Between June 1994 and August 1999, Edwards included in its customer agreements, an attorney's fee clause, which provided that the customer would be responsible for Edwards' costs and attorney's fees in the event the customer brings a claim against the firm, regardless of whether or not the customer is successful in pursuing the claim. For customers who opened accounts during that time period and have not changed the accounts sufficiently to require a new customer agreement, that agreement and attorney's fees provision remain applicable to any disputes which arise.

This attorney's fees provision in Edwards' customer agreements has a chilling effect on customers considering or pursuing claims against the firm. As a result, this provision of the firm's customer agreements violates NASD Conduct Rule 2110 and IM-3110(f)(4), which states, "No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award."

The Customer Agreement

Edwards includes in its customer agreements an attorney's fee provision. In the standard customer agreement used by the firm for accounts opened between June 1994 and August 1999, the first clause of that section provides for the recovery of attorney's fees in the event the firm must pursue a collection action against the customer. The section contains an additional clause, which relates to attorney's fees and costs in the event the customer pursues a claim against the firm. The relevant provision reads:

Attorney's fees. You [the customer] shall be solely responsible for any expense, including attorney's fees, incurred by Edwards in collection of a deficit from you. You will also be solely responsible for any expense, including attorney's fees, incurred by Edwards in defense of an action brought by you seeking rescission of any agreement between you and Edwards or to recover damages for the actions of Edwards or its employees.

For customers who opened accounts between June 1994 and August 1999 and have not changed the accounts sufficiently to require a new customer agreement, the above-referenced agreement and attorney's fees provision remain applicable to any disputes which arise. The attorney's fees clause had and continues to have a potential and actual chilling effect, which could prevent customers from bringing valid claims or settling claims for reduced amounts, since the clause provides for the customer paying Edwards' fees and costs in claims brought against the firm, regardless of whether the firm wins or loses. The clause does not contain any language providing for the recovery of attorney's fees by the customer in any situation. A customer, whose relationship with the firm is covered by the agreement and is considering pursuing a valid claim, is faced with the prospect of potentially winning a case on the merits, but still having to pay the firm's costs, which could exceed the amount awarded to the customer in damages.

Resulting Rule Violations

Conduct Rule IM-3110(f)(4) states, "No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award." By virtue of an arbitration clause contained in Edwards' customer agreement, customer claims against the firm are routinely brought in arbitration, rather than in court. Accordingly, the attorney's fees clause contained in the standard customer agreement used by the firm for accounts opened between June 1994 and August 1999, limits the ability of customers to bring claims in arbitration, in violation of NASD Conduct Rules IM-3110(f)(4) and 2110.

B. Sanctions

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

1. A censure; and
2. A fine of \$10,000; and
3. Edwards shall, within 30 days of the acceptance of the AWC, provide the staff of DOE a report attesting that it has given notice to all customers whose relationship with the firm is still controlled by any agreement containing the clause at issue by letter that the firm will not take any action to enforce that clause and setting forth the details of notifications given to customers.

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

III.

CERTIFICATION

Edwards hereby certifies that, to the best of its knowledge and belief, A.G. Edwards & Sons, Inc. has not asserted the right to attorneys fees from a client in a defensive pleading on the basis of the attorneys fees clause which appeared in customer agreements between June 1994 and August 1999, which provided that the customer would be responsible for Edwards' costs and attorney's fees in the event the customer brought a claim against the firm regardless of whether or not the customer was successful in pursuing the claim.

IV.

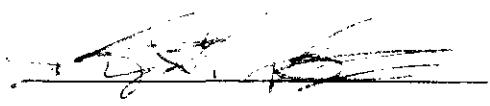
OTHER MATTERS

- A. Edwards understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it 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. Edwards agrees to pay any monetary sanctions imposed on it pursuant to the terms of this AWC.
- C. Edwards specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certifies on behalf of Edwards that I 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 me to submit it.

A.G. Edwards & Sons, Inc.

9-6-06
Date

By: 
Name: STEPHEN G. SNEERINGER
Title: SR VP & COUNSEL

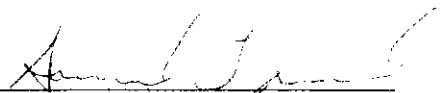
Reviewed by:



Counsel for Firm

Accepted by NASD:

September 25, 2006
Date



Director and Chief Counsel
Department of Enforcement
Signed on behalf of the Director of ODA.
by delegated authority