

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0401100001

TO: Department of Enforcement
NASD

RE: Edward D. Jones & Co., L.P., Respondent
Member Firm
(CRD No. 250)

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent Edward D. Jones & Co., L.P. ("Respondent" or "Edward Jones") 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.

Respondent 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 Respondent's 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 Respondent's 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. Respondent 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 Respondent's testimonial obligations or right to take legal or factual

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positions in litigation or other legal proceedings in which NASD is not a party.

Respondent 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:

Edward Jones is a full-service broker-dealer and has been registered with NASD since October 16, 1939. Edward Jones' relevant disciplinary history includes the following: On December 22, 2004, in related proceedings brought by the Securities and Exchange Commission, NASD and the New York Stock Exchange, the Firm was censured and ordered to pay \$75 million in disgorgement and civil penalties for failing to adequately disclose to customers information relating to revenue sharing programs with seven preferred mutual fund families. The NASD settlement also related to the Firm's improper favoring of the sale of its preferred families of mutual funds on the basis of brokerage commissions received, the holding of unlawful sales contests involving the Firm's preferred mutual fund families, and the failure to adequately supervise the sale of preferred family mutual funds and 529 college savings plans. *See Securities and Exchange Act of 1934 Release No. 34-50910 (December 22, 2004); In Re Edward D. Jones & Co., L.P., Letter of Acceptance Waiver and Consent, Disciplinary Proceeding No. CAF040115 (December 22, 2004).*

On August 8, 2005, in a separate but related action, the Missouri Securities Division fined the Firm \$1.5 million, pursuant to a settlement agreement and consent order, for the Firm's failure to adequately disclose to customers information relating to revenue sharing program arrangements involving certain mutual fund companies.

In September 2004, NASD censured and fined the Firm \$200,000 for failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to deter and prevent unsuitable recommendations involving margin loans in client accounts as a result of its bonus plan, which indirectly encouraged the Firm's representatives to recommend margin loans to customers. *In Re Edward D. Jones & Co., L.P., Letter of Acceptance Waiver and Consent, Disciplinary Proceeding No. C07040079 (September 23, 2004).*

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 and a U.S. Court of Appeals.

Further, Respondent 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.

Respondent 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

Edward Jones (the "Firm") 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:

A. Summary

From January 1, 2002 through December 31, 2004, ("the relevant period"), Edward Jones failed to provide certain investors the opportunity to purchase Class A shares of certain mutual funds at net asset value ("NAV"). In particular, certain mutual funds offered "NAV Transfer Programs" that allowed investors to purchase Class A shares at NAV and not pay any sales charges, if the customer invested proceeds from the redemption of shares of a fund of another mutual fund family within specified time frames and previously had paid either a front-end or back-end sales charge.

During the relevant period, Edward Jones failed to exercise reasonable due diligence to identify the essential terms and conditions of all NAV Transfer Programs offered by the mutual funds that it sold, and failed to establish, maintain and enforce a system and procedures to ensure that all of its customers received NAV pricing under available NAV Transfer Programs when appropriate. As a result, some investors who were eligible to purchase Class A shares under NAV Transfer Programs (1) purchased Class A shares and incurred front-end sales

charges that they should not have paid, and/or (2) purchased other share classes of these mutual funds and thereby became subject to back-end sales charges, also known as contingent deferred sales charges ("CDSCs"), as well as higher ongoing distribution and service fees ("Rule 12b-1 fees" or "fees"), typically associated with share classes other than Class A.

B. Mutual Fund Share Classes

Most mutual funds offer three classes of shares to individual investors: Class A, Class B, and Class C shares. Some mutual funds also offer additional mutual fund share classes with fee structures similar to Class A, B and C shares. Investors who purchase Class A shares pay a sales charge at the time of purchase, which is referred to as an initial sales charge, or front-end load. Investors who purchase Class B shares incur a sales charge upon redemption of their Class B shares, which is referred to as a Contingent Deferred Sales Charge (CDSC), or back-end sales load, if they redeem their Class B shares prior to the expiration of the holding period specified in the prospectus. Investors also may purchase Class C Shares, which typically do not require the payment of an initial sales charge, but may require the payment of a CDSC, if the shares are not held for at least one year. In addition to these sales charges, all classes of shares are subject to Rule 12b-1 fees, but these fees are higher for Class B and C shares than for Class A shares. Also, over a period of time, Class B shares ultimately convert to Class A shares (thereby resulting in reduced Rule 12b-1 fees after conversion), while Class C shares do not. Therefore, the purchase of Class A shares at NAV, through an NAV Transfer Program or otherwise, will result in the lowest costs and is always advantageous to the investor.

C. Purchases of Class A Shares at NAV

When purchasing Class A shares, investors typically purchase the shares at the "public offering price," which is the NAV plus the initial sales charge. Most mutual funds, however, offer investors the opportunity to purchase Class A shares at NAV – without paying an initial sales charge – under certain circumstances. For example, mutual funds that sell Class A shares usually offer sales charge discounts at certain levels of investment, commonly referred to as "breakpoints." While the terms and conditions of these discounts vary among different mutual funds, most mutual funds allow investors who invest \$1 million or more to purchase the shares at NAV, so long as these shares are held for at least one year. Other examples of NAV opportunities include those provided by mutual funds to retirement plans, employees of broker-dealers, and employees of the mutual fund companies and their affiliates.

During the relevant period, some mutual funds offered investors the opportunity to purchase Class A shares at NAV through NAV Transfer Programs, regardless of the amount invested. Under these programs, an investor purchasing Class A shares using proceeds from the redemption of shares of a fund of another mutual fund family was eligible to purchase Class A shares at NAV, provided that the investor paid an initial sales charge or CDSC on the redeemed shares and that the qualifying redemption occurred sufficiently close in time to the new purchase. While the precise terms of each NAV Transfer Program varied from fund to fund, if the prior redemption qualified under an NAV Transfer Program, the investor was entitled to purchase Class A shares without paying an initial sales charge. An investor who purchases Class A shares with a sales load, when he qualified for a purchase at NAV, generally

will pay up to 5.50% of his purchase prices in sales charges that he did not have to incur.

In addition, a customer who purchases Class B or Class C shares, when they would have qualified for the purchase of A shares through an NAV Transfer Program, will pay both higher ongoing Rule 12b-1 fees, and potentially, sales charges upon the sale of the fund shares (CDSC). Therefore, if the investor qualifies under an NAV Transfer Program, there would be no reasonable basis for the investor to purchase Class B or Class C shares.

D. Edward Jones' Failure to Identify All Available NAV Transfer Programs

During the relevant period, the Firm failed to establish, maintain and enforce adequate systems and procedures reasonably designed to identify, and ensure that customers received the benefit of, all NAV Transfer Programs offered by the mutual funds that it sold to customers. The Firm lacked systems and procedures to independently review and evaluate, for all mutual funds sold by the Firm, whether each fund currently offered an NAV Transfer Program. While the Firm was knowledgeable regarding the NAV Transfer Programs, if any, offered by its seven preferred mutual fund families, it did not adequately make inquiry regarding, or otherwise identify, the NAV Transfer Programs offered by other fund families sold by the Firm.¹ For those four preferred fund families that offered NAV Transfer Programs, the Firm provided information about the NAV Transfer Programs to its sales force and encouraged, but did not require, representatives to give the benefit to their customers.² In addition, the Firm utilized a trade entry system that enabled representatives to record when a trade was priced at NAV pursuant to an NAV Transfer Program. However, the Firm failed to identify numerous other fund families that offered NAV Transfer Programs during the relevant period. Thus, the Firm's systems and procedures did not adequately ensure that all customers eligible for NAV pricing under an available NAV Transfer Program received the benefit in all instances.

E. Actual and Potential Harm to Investors

Total mutual fund sales by Edward Jones during the relevant period were approximately \$81 billion. Edward Jones sold over 118 families of mutual funds, and had total mutual fund sales revenue of over \$2.3 billion during this period (\$594 million in calendar year 2002; \$817 million in calendar year 2003; and \$948 million in calendar year 2004).

During the relevant period, Edward Jones sold a number of fund families that offered NAV Transfer Programs. For example, Edward Jones sold each of the following fund families, which offered an NAV transfer program during all or part of the relevant period and had sales as noted: Lord Abbett (\$9.3 billion total sales); Hartford (\$4.5 billion total sales);

¹ During the relevant period, over 95% of the Firm's sales of mutual funds were sales of the Firm's seven preferred mutual fund families.

² On March 16, 2004, Edward Jones changed its internal policy regarding discretionary application of NAV Transfer Program benefits and issued a firm-wide Compliance Alert that instructed representatives to give all qualifying customers the benefit of available NAV Transfer Programs.

Putnam (\$2.7 billion total sales); and Goldman (\$2.1 billion total sales).³

While not every investor purchasing mutual funds offering NAV Transfer Programs during the relevant period qualified for NAV pricing, Edward Jones's system and procedures did not adequately ensure that such pricing was given in all instances when appropriate. Edward Jones estimates that remediation payments to investors for the relevant period will be approximately \$25 million, plus interest.

F. NASD Rule Violations

During the relevant period, Edward Jones failed to establish, maintain and enforce a supervisory system and procedures reasonably designed to identify all opportunities for investors to purchase mutual funds at NAV under available NAV Transfer Programs, and ensure that all investors received the benefit of available NAV Transfer Programs. By reason of the foregoing, Edward Jones violated NASD Conduct Rules 3010 and 2110.

Sanctions

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

1. A censure.
2. A fine of \$250,000.
3. Edward Jones agrees to the following undertakings:
 - a. Edward Jones will provide remediation to clients who purchased shares of mutual funds during the period January 1, 2002 through the Notice of Acceptance of this AWC, and qualified for, but did not receive, the benefit of an NAV Transfer Program (each such purchase, a "Qualifying NAV Purchase").⁴
 - i. For each client who paid an initial sales charge, Edward Jones shall refund the sales charge paid, plus interest from the date of the purchase through the payment date at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (the "IRS Rate").
 - ii. For each client who purchased a class of shares other than Class A, Edward Jones shall make a cash payment to the client sufficient to place the client in a substantially equivalent financial position to the position such client would have been in with respect to the Qualifying NAV Purchase had the investor purchased Class A shares at NAV rather than

³ Total sales numbers reflect gross sales by Edward Jones in these funds, including sales that may not have qualified for NAV pricing.

⁴ Eligible purchases for which a client used proceeds of qualifying redemptions totaling less than \$2,000 are excluded and shall not be deemed "Qualifying NAV Purchases."

another class of shares, plus interest from the date of purchase through the payment date at the IRS Rate.

- b. Edward Jones will provide remediation pursuant to Section 3.a. above in accordance with a methodology not unacceptable to NASD staff (the "Remediation Methodology"). The Remediation Methodology will be provided in writing to NASD staff prior to retaining the Third Party Examiner, as described in Section 3.c. below.
- c. Edward Jones shall:
 - i. Within 60 days from the Notice of Acceptance of this AWC, retain a Third Party Examiner, not unacceptable to NASD staff, to assess the Firm's remediation and provide a report to NASD staff as set forth in Section 3.h. below;
 - ii. Provide a copy of this AWC and a copy of the Remediation Methodology, in the form accepted by NASD staff, to the Third Party Examiner upon the retention of the Third Party Examiner by the Firm;
 - iii. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Third Party Examiner; and
 - iv. Cooperate with the Third Party Examiner in all respects in order to fulfill its obligations under this AWC, including by providing staff support. Edward Jones shall place no restrictions on the Third Party Examiner's communications with NASD staff and, upon request, shall make available to NASD staff any and all communications between the Third Party Examiner and Edward Jones and documents reviewed by the Third Party Examiner in connection with his or her engagement under this AWC. Once retained, Edward Jones shall not terminate this engagement without the NASD staff's written approval. Edward Jones shall not be in and shall not have an attorney-client relationship with the Third Party Examiner and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Third Party Examiner from transmitting any information, reports or documents to NASD relating to this engagement.
- d. Within 60 days from the Notice of Acceptance of this AWC, Edward Jones shall submit to NASD for review a sample letter notifying clients of remediation payments. The letter shall not be unacceptable to NASD.
- e. Within 60 days from the Notice of Acceptance of this AWC, Edward Jones shall designate and train staff (the "Response Team"), to field and respond to client inquiries in connection with this AWC and the remediation process pursuant to this AWC.

- f. Within 210 days from the Notice of Acceptance of this AWC, Edward Jones shall complete the remediation process.
- g. Within 240 days following the Notice of Acceptance of this AWC, Edward Jones shall file a report with NASD, and simultaneously provide a copy to the Third Party Examiner, certified to, and signed by, an officer of Edward Jones who is registered with NASD at the time of the certification (the "Initial Report"), providing a detailed description of the following:
 - i. The remediation process, including the identification of, and payment to, clients eligible for remediation, pursuant to Section 3.a. above, and the application of the Remediation Methodology to identify Qualifying NAV Purchases and to calculate payments to clients;
 - ii. All Qualifying NAV Purchases, in the format of a Microsoft Excel spreadsheet, including each client's name, contact information and account number, the trade date, fund name, fund symbol, number of shares purchased, the gross principal amount invested for each Qualifying NAV Purchase, and the total dollar amount of restitution provided to each client;
 - iii. The staffing of the Response Team to field and respond to client inquiries, including, the number of individuals on the response team, the training of these individuals, how and by whom the response team was supervised, what tools and information were used to respond to client inquiries, and how the Firm maintained a record of all client inquiries; and
 - iv. A list of all clients and investors who contacted the Response Team concerning remediation.
- h. The Third Party Examiner will utilize the Remediation Methodology to assess the Firm's implementation of the remediation process. Within 300 days after the date of Notice of Acceptance of this AWC, Edward Jones shall require the Third Party Examiner to submit to the Firm and NASD staff a report (the "Final Report"), which shall address, at a minimum, (i) the Third Party Examiner's assessment of the Firm's performance of the remediation process, as reflected in the Initial Report, including the identification of, and payment to, clients eligible for remediation, and whether such performance was consistent with the Remediation Methodology, and (ii) a description of the review performed and the conclusions reached.
- i. For good cause shown, and upon receipt of a timely written request from Edward Jones, NASD staff may extend any of the dates set forth above.

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

III.

OTHER MATTERS

- A. Respondent 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. Respondent agrees to pay any monetary fine imposed on them 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 it proposes to pay any fine imposed. Respondent also agrees to comply with the restitution order discussed above and pay the restitution amounts in accordance with the terms of the undertakings set forth above.
- C. Respondent 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.

Respondent certifies that it 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 it to submit it.

EDWARD D. JONES & CO, L.P.

Date 9/15/06

By:

Name:

Title:

[Signature]
JAMES A. TRIARIV, Jr
General Counsel

Reviewed by:

[Signature]
Name: Leo J. Asaro
Counsel for Respondent Bryan Cave LLP

Accepted by NASD:

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

Date 12/11/06

[Signature]
Katherine A. Malfa
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NASD Enforcement
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