

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0401110003

TO: Department of Enforcement
NASD

RE: Chase Investment Services Corp., Respondent
CRD No. 25574

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent Chase Investment Services Corp. ("CISC" 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.

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

CISC 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:

CISC has been an NASD member since 1990. The firm has 2,456 active branches with 10,674 registered/associated employees. CISC is a full service brokerage firm, offering a variety of securities products, including 529 plans, mutual funds, stocks, bonds, managed portfolios, retirement services and fee-based brokerage accounts. Its principal offices are located in Chicago, Illinois. The firm has no prior relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

CISC 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 CISC;
- 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, CISC 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.

CISC 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

CISC 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

From January 2002 through the end of August 2004, CISC sold \$134,019,197 of 529 college savings plans ("529 plans"). During this period, CISC failed to establish and maintain procedures, including written supervisory procedures, that were reasonably designed to achieve compliance with suitability obligations as they related to the sale of 529 plans. Accordingly, CISC violated Municipal Securities Rulemaking Board ("MSRB") Rule G-27.

Facts

A. College Savings Plans

529 plans are tax-advantaged investment programs designed to help parents and others pay for qualified higher education costs. The name is derived from the section of the Internal Revenue Code governing the plans. Each of the fifty states, and the District of Columbia, currently has at least one type of 529 plan. All 529 plans offer the same federal tax advantages, including tax deferral on earnings. However, each state's 529 plan offers different state income tax benefits. For example, approximately half of the states offer a tax benefit based on investments by residents in the state's 529 plan. In addition, each plan has different costs and expenses.

B. CISC's Sales of 529 Plans

From January 2002 through the end of August 2004, CISC sold over \$134,019,197 of 529 plans.¹ The firm received approximately \$4.2 million from these sales in the form of dealer concessions.

¹ CISC offered five 529 plans: Alliance CollegeBoundFund (RI), Putnam CollegeAdvantage (OH), JP Morgan Higher Education Plan (RI), Franklin Templeton 529 College Savings Plan (NJ), and Upromise/Columbia New York 529 College Savings Plan (NY). The plans became available on the following dates: Alliance – December 2000; Putnam – December 2000; JP Morgan – July 2002; Franklin Templeton – August 2003; and Columbia – December 2003. During this period, CISC also had the following 529 plans: Fidelity Advisor College Investing Plan (NH), American College America (VA), and

C. CISC's Lack of Specific Procedures Related to the Sale of 529 Plans

From January 2002 through August 2004, CISC failed to have specific procedures or training in place addressing the sale of 529 plans, including specific procedures governing suitability requirements.

The failure to adopt specific 529 procedures continued despite the fact that CISC was aware, as early as October 2003, that its procedures relating to the sale of out-of-state 529 plans may have been deficient. During this time, CISC sold over \$134 million in 529 plans.

Thus, prior to September 2004, CISC failed to provide specific criteria or guidance to the firm's registered representatives for use in making suitability determinations when recommending 529 plans, such as requiring that registered representatives appropriately consider all relevant factors when recommending the purchase of a 529 plan, including tax benefits, investment performance, investment choices, and fees and expenses, as well as whether the purchase of a 529 plan was appropriate in the first instance. CISC also failed to establish specific criteria or guidance for supervisors to use when reviewing sales of 529 plans by registered representatives.

Violations

From January 2002 through August 2004, CISC failed to establish and maintain supervisory systems and specific procedures reasonably designed to achieve compliance with suitability obligations relating to the sale of 529 plans.

During this period, when CISC sold over \$134 million of 529 plans, the firm failed to establish and maintain adequate procedures relating to the sale of 529 plans. CISC also did not have effective procedures, prior to September 2004, relating to documenting its suitability determinations for the sale of 529 plans.

529 plans are municipal securities. As a result, when offering and selling 529 plans, member firms must comply with the applicable rules of the Municipal Securities Rulemaking Board. MSRB Rule G-27 requires that member firms supervise the conduct of the municipal securities activities of the firm and its associated persons to ensure compliance with MSRB rules and the federal securities laws, and that firms adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that municipal securities activities are in compliance. CISC's conduct, as described above, was in violation of MSRB Rule G-27.

Oppenheimer Scholar's Edge (NM). These three plans were non-approved plans or plans in which registered representatives were not allowed to solicit but could complete an application for a client, if the client specifically requested the plan.

Sanctions

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

1. A censure; and
2. A fine of \$500,000; and,
3. Payment of approximately \$288,500 in remediation, in accordance with a schedule to be provided by the Department of Enforcement, to compensate certain customers who, during the period from January 2002 through August 2004, purchased a 529 plan from CISC sponsored by a state other than the customer's state of residence, at a time when CISC did not have adequate procedures in place relating to suitability determinations for the sale of 529 plans.

Satisfactory proof of payment or of reasonable and documented efforts undertaken to effect such payment shall be provided to the NASD staff no later than 120 days after the schedule is provided by the Department of Enforcement. If for any reason CISC cannot locate any customer identified in the schedule after reasonable and documented efforts within such period, or any such additional period agreed to by the staff, CISC shall forward any undistributed payment and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state or country in which the customer is last known to have resided.

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

III.

OTHER MATTERS

- A. CISC 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. CISC 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. CISC agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.

- C. CISC 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.

CISC 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 CISC to submit it.

7/5/06
Date

Chase Investments Services Corp.
Respondent

By: [Signature]

Reviewed by:

[Signature]
Dennis E. Glazer, Esq.
Sheldon L. Pollock, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

Counsel for CISC

Accepted by NASD:

11/06/06
Date

[Signature]
James E. Day, Chief Counsel
NASD Department of Enforcement

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