

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. SAF2004026601**

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: J.P. Turner & Company, LLC (CRD 43177)

Pursuant to Rule 9216 of FINRA's Code of Procedure, Respondent submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Respondent J.P. Turner & Company, LLC ("J.P. Turner" or "Firm"), has been a member of FINRA¹ since July 21, 1997. The Firm is headquartered in Atlanta, Georgia and has approximately 151 branches located throughout the United States. J.P. Turner currently employs 481 registered representatives and derives most of its revenues from retail business.

¹ References to FINRA in this AWC also include NASD.

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OVERVIEW

During the review period of January 2002 through March 2005 ("review period"), J.P. Turner failed to have a supervisory system, including written procedures, reasonably designed to ensure that its registered representatives charged its customers reasonable commissions on equity securities transactions. The Firm's supervisory system and written procedures failed to provide adequate guidance to its registered representatives on how to consider the relevant factors set forth in IM-2440(b) to determine a fair commission or mark-up on an equity securities transaction. Under J.P. Turner's system and procedures, brokers had discretion to establish the commission on equity securities transactions, limited only by whether the price of the security was above or below \$25 per share. On all equity securities transactions in which the price of the security was below \$25, registered representatives were allowed to charge up to 4.5%, while they could only charge up to 3.5% if the price of the security was above \$25. During the review period, 91% of the Firm's equity securities transactions involved securities priced below \$25 per share.

The above constitutes violations of NASD Conduct Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

A. FINRA's Fair Pricing Rule

NASD Conduct Rule 2440 provides that, in "over-the-counter" transactions,

if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances... If he acts as agent for his customer, the member shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances...

Since 1943, NASD has had a policy pursuant to which five percent is the guideline to determine whether mark-ups are excessive. The Board of Governors has made clear, however, that the "5% Policy" is a guide, not a rule. IM-2440(a)(1). A mark-up pattern of 5% or even less may be considered unfair or unreasonable under the policy set forth in IM-2440. IM-2440(a)(4). The policy set forth in IM-2440 applies equally to commissions on agency trades and to mark-ups or mark-downs on principal transactions. Notice To Members 93-81.

The percentage of the mark-up is only one of the factors to be considered in determining fairness. IM-2440(a)(5). IM-2440(b) identifies seven other factors that members should take into consideration in determining the fairness of a mark-up. The first factor is the type of security involved. As is noted in the Interpretive Memo, a

higher percentage is generally appropriate for common stock transactions than for bond transactions. IM-2440(b)(1). The second factor is the availability of the security in the market. How actively the security is traded, the effort and cost needed to buy or sell the security, or any other unusual circumstances involving acquiring or selling the security may have a bearing on the mark-up. IM-2440(b)(2). The third factor is the price of the security, and the fourth factor is the size of the transaction. Lower priced securities and transactions that involve a small amount of money may justify higher mark-ups because of handling costs. Conversely, higher priced securities and larger transactions should have lower mark-ups. IM-2440(b)(3).

The fifth factor is whether disclosure to the customer is made before the transaction is effected, although "[d]isclosure itself ... does not justify a commission or mark-up which is unfair or excessive in light of all other relevant circumstances." IM-2440(b)(5). The sixth factor is the pattern of the member's mark-ups. "While each transaction must meet the test of fairness...particular attention should be given to the pattern of a member's mark-ups." IM-2440(b)(6). And the seventh factor is the nature of the member's business. The cost of providing services to customers may be considered in determining the fairness of mark-ups. IM-2440(b)(7).

B. Supervision

NASD Conduct Rule 3010 requires firms to establish and maintain a supervisory system, including written procedures, to supervise the activities of their registered representatives and associated persons, that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA Rules.

J.P. Turner Failed To Establish and Maintain A Supervisory System, Including Written Procedures, Reasonably Designed to Achieve Compliance With FINRA's Fair Pricing Rule

Between 2002 and 2005, J.P. Turner failed to have a supervisory system, including written procedures, reasonably designed to ensure that its registered representatives charged its customers reasonable mark-ups and commissions on equity securities transactions in violation of NASD Conduct Rules 3010 and 2110.

Approximately one-half of J.P. Turner's revenues come from commissions on agency transactions. J.P. Turner's written procedures failed to provide adequate guidance to its registered representatives on how to consider the relevant factors in determining a fair commission or mark-up on an equity securities transaction. J.P. Turner's written supervisory procedures listed the factors enumerated in IM-2440, only in a section of the procedures dedicated to *principal* transactions. The Firm failed to reference the factors in the section of the procedures addressing *agency* transactions. In addition, the Firm listed the factors without providing any detail on how to apply each factor.

J.P. Turner did not reasonably ensure that its registered representatives charged fair and reasonable commissions or mark-ups by properly taking into consideration the

factors set forth in IM-2440. Under the Firm's system and procedures, brokers had discretion to establish the commission on equity securities transactions, limited only by whether the price of the security was above or below \$25 per share. On all equity securities transactions in which the price of the security was below \$25, registered representatives were allowed to charge up to 4.5%, while they could only charge up to 3.5% if the price of the security was above \$25. During the review period, 91% of the Firm's equity securities transactions involved securities priced below \$25 per share.

Pursuant to the Firm's WSPs, the trading manager had the supervisory responsibility for reviewing and approving trades for fair and reasonable charges. Such reviews were limited to reviewing the transactions to ensure that the commissions charged did not exceed the Firm's 3.5% and 4.5% guidelines. The Firm utilized reports that captured only transactions exceeding the guidelines provided for in the Firm's commission schedule. As a result, J.P. Turner failed to establish and maintain a supervisory system, including written procedures, to supervise the activities of its registered representatives and associated persons, that was reasonably designed to achieve compliance with NASD Conduct Rule 2440.

Conclusion

As set forth above, J.P. Turner violated NASD Conduct Rules 3010 and 2110 by failing to establish and maintain a supervisory system, including written procedures, reasonably designed to ensure that its customers were charged fair prices in securities transactions.

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:
1. A censure;
 2. A fine of \$250,000;
 3. An undertaking that the Firm shall:
 - a. Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to NASD Conduct Rule 2440.
 - b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
 - c. Cooperate with the Independent Consultant in all respects, including by providing staff support. J.P. Turner shall place no restrictions on the Independent Consultant's communications with

FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by Independent Consultant in connection with its engagement. Once retained, J.P. Turner shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval;

- d. Further retain the Independent Consultant to, at the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this AWC, submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures and training relating to NASD Conduct Rule 2440; (ii) a description of the review performed and the conclusions reached; and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training.
- e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any employment, consultant, attorney-client, auditing or other professional relationship with J.P. Turner, or any of its present or former affiliated, directors, officers, employees or agents acting in their capacity. Any firm with which the Independent Consultant is affiliated in performing his duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with J.P. Turner or any of its present or former affiliated, directors officers employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- f. Within 60 days after delivery of the Written Report, J.P. Turner shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternate procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Consultant's ultimate determination with respect to any proposed

alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

- g. Within 30 days after the issuance of the later of the Consultant's Written Report or written determination regarding alternative procedures (if any), J.P. Turner shall provide FINRA staff with a written implementation report, certified by an Officer of J.P. Turner, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Consultant's recommendations.
- h. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("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 FINRA Rule 9143 or the separation of functions

prohibitions of FINRA 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.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent 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 FINRA, nor does it reflect the views of FINRA or its staff.

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; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Date

9/5/08

Respondent

J.P. Turner & Company, LLC

By: DEAN VERNOIA

C.O.O

Reviewed by:

Alan M. Wolper

Counsel for Respondent

Locke Lord Bissell & Liddell LLP

The Proscenium, Suite 1900

1170 Peachtree St., NE

Atlanta, GA 30309

Accepted by FINRA:

10/29/08
Date

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



Samuel L. Israel
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Counsel
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