

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050000292-04**

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

RE: David A. Noyes & Company
Broker-Dealer
CRD No. 205

Russell Warren Bauman
Registered Representative and Principal
CRD No. 15099

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, David A. Noyes & Company (the "firm") and Russell Warren Bauman ("Bauman") (together the "Respondents") submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** Respondents hereby accept and consent, 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

The firm has been a FINRA member since 1939 and its registration remains in effect. The firm has no relevant disciplinary history.

Bauman entered the securities industry in October 1968. During the period relevant to this matter he was, and currently he is, a Registered Representative, General Securities Principal, General Securities Sales Supervisor, and Branch Office Manager of the firm's Indianapolis branch office. In 1997, Bauman was sanctioned by the NYSE for failing reasonably to supervise a registered representative of his firm, who was suspended for two and a half years for engaging in excessive trades, unsuitable trades, and improper discretionary trading. Bauman was fined \$10,000 and received a two week suspension in all supervisory capacities.

FACTS AND VIOLATIVE CONDUCT

This matter arises from the staff's investigation of an unusually heavy concentration of retail sales in the common stock of a junior gold mining company from January through December 2004 (the "review period") by a registered representative at the firm's Indianapolis branch office. During the review period, the registered representative engaged in fraudulent sales practices by omitting material information, making material misrepresentations, and engaging in unauthorized trades when recommending and selling the common stock of the company, a speculative OTCBB security, to a number of the firm's customers. The registered representative, along with two other registered representatives at the firm, also engaged in unauthorized outside business activity.

During the review period:

1. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning recommendations to customers in OTC Equity Securities, review of active accounts, communications with the public, advertising, institutional sales material, and customer correspondence. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph violates NASD Conduct Rules 2110 and 3010.
2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning approval of new accounts, memoranda of brokerage orders, and recommendations of speculative, low-priced securities. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement as to how often person(s) responsible for supervision with respect to the applicable rules should take the required supervisory step(s) and (2) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph violates NASD Conduct Rules 2110 and 3010.
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning reviews and

supervision of outgoing correspondence, outside business activities, discretionary customer accounts, fee based accounts, open orders, and the activities of the Branch Office Manager. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement as to how the completion of the required step(s) included in the applicable written supervisory procedures should be documented. The conduct described in this paragraph violates NASD Conduct Rules 2110 and 3010.

4. Bauman, in his capacity as Branch Office Manager, failed to supervise reasonably the activities of a registered representative under his supervision, so as to detect and prevent violations of NASD Rules 2110, 2120, 2315, 3030, Section 10(b) of Securities Exchange Act of 1934 and Rule 10b-5; and failed to supervise reasonably the activities of two other registered representatives at the firm, so as to detect and prevent violations of NASD Rules 2110 and 3030. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

B. Respondents also consent to the imposition of the following sanctions:

For the firm, censure, a fine of \$40,000, and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs I A 1-3. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the firm shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in this paragraph; and, (3) the date the revised procedures were implemented.

For Bauman, suspension for seventy-five days in all principal capacities, a fine of \$10,000, and completion of eight hours of FINRA-sponsored continuing education in supervision.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. They have submitted an Election of Payment form showing the method by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

Respondents understand 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 NASD Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against them; and
- C. If accepted:
1. this AWC will become part of Respondents' permanent disciplinary record, and may be considered in any future actions brought by FINRA or any other regulator against them;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' disciplinary records;
 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. Respondents 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. Respondents 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 Respondents' rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Each Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Respondents understand that they 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. Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have agreed to the AWC's 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 Respondents to submit it.

5/30/08
Date

Respondents:

Russell Warren Bauman
Russell Warren Bauman

5/30/08
Date

David A. Noyes & Company

By: Robert L. Chan

Title: Secretary

Reviewed by:

Paul Bonafide
Counsel for Respondents
Paul Bonafide
Paul Bonafide

Accepted by FINRA:

June 27, 2008
Date

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

Richard Waller
~~Cameron Funkhouser~~ Richard Waller
Senior Vice President
Department of Market Regulation