

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050002046

TO: Department of Enforcement
NASD

RE: Kimberly P. Hardaker, Respondent
General Securities Principal and General Securities Representative
CRD No. 1816093

Pursuant to Rule 9216 of NASD Code of Procedure, I, Kimberly P. Hardaker ("Hardaker"), submit 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 me alleging violations based on the same factual findings.

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

I also understand that my 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:

Hardaker obtained her General Securities Representative (Series 7) license in 1988 and her General Securities Principal (Series 24) license in 1997. From June 2004 until her termination in January 2005, Hardaker was associated with Euro Pacific Capital Inc. ("Euro Pacific") and was the sole registered principal at a Euro Pacific Office of Supervisory Jurisdiction. From March 15, 2005 through the present, Hardaker has been associated with another NASD member firm as a General Securities Representative and General Securities Principal. Hardaker does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I 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.

I further specifically and voluntarily waive 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. I 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 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:

STATEMENT OF FACTS

From late October through early November 2004, while working as a registered principal at Euro Pacific, Hardaker solicited customers, by telephone, to purchase shares in Mitra Adiperkasa TBK PT ("Mitra"), an Indonesian company. Without the knowledge or approval of her broker-dealer, Euro Pacific, Hardaker directed her clients to either send her checks payable to HITS, LLC ("HITS"), or to wire transfer funds directly to a HITS account at a United States bank. HITS was a limited liability company wholly owned by Hardaker.

Checks and wire transfers totaling \$543,630, from 40 Euro Pacific customers, were transferred and deposited into HITS' bank account, where they were commingled with unrelated funds. Hardaker, through HITS, then wired the customer funds to HITS' brokerage account at UOB Kay Hian (Hong Kong) Limited ("UOB"), a Hong Kong broker-dealer. On November 4, 2004, she used the funds to purchase 7,500,000 shares in Mitra's Initial Public Offering and held those shares in HITS' brokerage account at UOB. Hardaker then resold 6,799,000 of the 7,500,000 shares to the 40 customers.

Hardaker created confirmation statements purporting to show the share price and number of shares that each customer purchased. She then mailed the statements to the customers. Although the confirmation statements made it appear as though HITS and the Hong Kong broker-dealer were the introducing firms and each customer had legal title to his shares, in fact, the Mitra shares were unsegregated and held in HITS' brokerage account at UOB. The confirmation statements also failed to disclose that Hardaker had marked up, by approximately 14%, the Mitra shares that she sold to the 40 customers.

THE VIOLATIONS

1. Operating an Unregistered Broker-Dealer
Exchange Act § 15(a)(1) [15 U.S.C. § 78o(a)(1)];
NASD Conduct Rule 2110

By virtue of the conduct described above, HITS, acting through Hardaker, acted as a broker-dealer. But neither HITS nor Hardaker is registered with the United States Securities and Exchange Commission as a broker-dealer with the United States Securities and Exchange Commission pursuant to Section 15 of the Securities and Exchange Act of 1934.

These acts, practices, and conduct constitute separate and distinct violations of Section 15(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(a)(1)] and NASD Conduct Rule 2110 by Hardaker.

2. Private Securities Transactions
NASD Conduct Rules 3040 and 2110

In November 2004, Hardaker participated in a private securities transaction involving the offer and sale of 6,799,000 shares of Mitra to 40 Euro Pacific customers, and received compensation of more than \$69,000. She effected these transactions without prior written notice to, and receiving prior written approval from, Euro Pacific.

These acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 3040 and 2110 by Hardaker.

3. Misuse of Customer Funds
NASD Conduct Rules 2330 and 2110

In November 2004, Hardaker received \$543,630 from 40 Euro Pacific customers for the purchase of Mitra shares. Hardaker commingled those monies with unrelated funds in a HITS bank account. She then transferred the funds and commingled them in a HITS account at UOB. This improper use of funds subjected customer funds to a risk of loss.

These acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2330 and 2110 by Hardaker.

4. Fictitious Confirmation Statements
NASD Conduct Rule 2110

In December 2004, Hardaker created and mailed documents, purporting to be confirmation statements ("confirmations"), to 40 Euro Pacific customers to evidence their purchases of Mitra shares. The documents had the appearance of being issued by UOB and HITS. But UOB was uninvolved in the issuance of the confirmation statements and HITS was not a registered broker-dealer. In actuality, (i) Hardaker created and mailed the confirmations; (ii) the shares were held in HITS' account at UOB; and (iii) UOB was unaware of any change in ownership or title to the shares.

The foregoing conduct constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Hardaker.

5. Undisclosed Excessive Markups
NASD Conduct Rules 2120 and 2110

In November 2004, Hardaker, through HITS, purchased 7.5 million shares of Mitra at a cost of \$0.06967 per share. Hardaker promptly resold 6,799,000 of the 7.5 million shares to 40 customers at a price of \$0.07967 per share plus "transaction costs" ranging between \$20.63 and \$412.50. Hardaker failed to disclose on the confirmation statements she provided to customers that the price of the shares included a one-cent per share markup, i.e., a markup of more than 14%. Instead, the confirmation statements simply quoted a "unit price" of "0.07967."

These acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2120 and 2110 by Hardaker.

B. I also consent to the imposition, at a maximum, of the following sanctions:

A bar from associating with any NASD member in any and all capacities.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

III.

OTHER MATTERS

A. I understand that if I am barred or suspended from associating with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

I have certified 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.

08/26/06
Date

Kimberly P. Hardaker
Kimberly P. Hardaker

Reviewed by:

Paul A. Kroeger
~~Steven J. Insel~~ Paul A. Kroeger
Counsel for Respondent
Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067

Accepted by NASD:

10/3/06
Date

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



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