

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005000880301

TO: Department of Enforcement
NASD

RE: Scott M. Zimmerman, Respondent
General Securities Representative
[CRD No.1851588]

Pursuant to Rule 9216 of NASD Code of Procedure, I 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 allegation 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:

Scott M. Zimmerman ("Zimmerman") entered the securities industry in 1988 as a variable contracts products representative of a member of NASD. He was subsequently registered as a general securities representative and principal and was registered with MidSouth Capital, Inc. ("MidSouth") from September 2001 until February 2005. Zimmerman was the subject of a disciplinary action by the NASD in December 2004 (C9A040060). Pursuant to a settlement he was found in violation of NASD Rules 2310, 2110 and IM-2310-2 for making unsuitable recommendations and was fined \$5,000, ordered to pay disgorgement of \$15,576 and suspended from association with any NASD member firm in any capacity for three months. Zimmerman was also the subject of a Consent Order (No. ENSC-00353) issued by the State of Georgia on June 2, 2005 in which he was ordered to cease and desist from violating the Georgia Securities Act and barred from association with any broker or investment advisor in Georgia.

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 prejudice 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 allegations or 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:

In April 2002 Zimmerman founded the Get Long?, L.P.P. ("Get Long"), a private limited partnership, to invest in securities. The general partner of Get Long was Z Capital Management, LLC, a limited liability company controlled by Zimmerman.

Beginning in April 2002 and continuing into 2003, Zimmerman offered and sold units of Get Long, raising over \$2.2 million from 19 individuals (18 of whom were existing clients of MidSouth). Zimmerman prepared and disseminated to investors a "Subscription Agreement" and a brochure entitled "'The Get Long? L.P.P.' Fund, A Private Fund for Superior Returns." The subscription agreement and brochure contained numerous misrepresentations including but not limited to:

- i) Get Long is a "hedge fund" organized to downsize risk;
- ii) Get Long is managed purely by science utilizing the power of size and risk control to achieve consistent superior returns and minimal volatility;
- iii) The primary aim of Get Long is to reduce volatility and risk while attempting to preserve capital; and,
- iv) A model portfolio for Get Long shows a 51.696% return for a seven month period compared to a -2.09% return for the S&P 500.

Get Long was a client of MidSouth and engaged in frequent trading through an account managed by Zimmerman. Zimmerman provided investors with monthly account statements and newsletters. Zimmerman represented that Get Long had positive returns when it had suffered substantial losses. In particular, he represented that Get Long had assets over \$3.0 million in December 2003 but by February 2004, when he left MSC the assets of Get Long were less than \$400,000.

Zimmerman further sent investors newsletters and posted them on his website "www.getlong.com." These newsletters contained exaggerated, unwarranted and/or misleading statements concerning, among other things, the performance of Get Long compared to the S&P 500, the accuracy of market predictions, the purchasing of insiders compared to sales, the effectiveness and understanding of trading strategies, and indicators of market peaks. Zimmerman knowingly or recklessly made the misrepresentations noted above to investors and prospective investors in Get Long.

In view of the foregoing, Zimmerman violated NASD Conduct Rules 2110, 2120 and 2210(d) by creating and providing misleading offering materials, monthly statements and newsletters to investors.

In February 2005, MidSouth filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Zimmerman. Also in February MidSouth received complaints from customers of Zimmerman regarding the Get Long fund. The Atlanta District office of the NASD opened an investigation concerning these allegations.

During the course of the NASD's investigation, it sought sworn testimony from Zimmerman. Specifically, on June 13, 2005, the NASD sent Zimmerman a letter requesting his appearance for an on-the-record sworn statement at the NASD offices in Atlanta, Georgia. Zimmerman's testimony was requested pursuant to NASD Procedural Rule 8210 and was set for June 24, 2005. Zimmerman appeared with counsel as requested but refused to answer specific questions regarding his involvement with the Get Long fund, among other things.

Such failure to testify fully as requested constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Zimmerman.

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

A bar from association with any NASD member in any capacity,

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 certify 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.

10/25/05
Date

Scott Zimmerman
Scott Zimmerman, Respondent

Reviewed by:

Barry L. Anderson
Barry L. Anderson, Esquire
The Anderson Law Firm, LLC
One Securities Center, Suite 400
3490 Piedmont Road, NE
Atlanta, Georgia 30305

Counsel for Respondent

Accepted by NASD:

12/1/05
Date

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

William Brice La Hue
William Brice La Hue
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