

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050022712-01

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: John W. Eugster, Respondent
CRD No. 2776666

Pursuant to Rule 9216 of NASD Code of Procedure, I [or Respondent] 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:

I entered the securities industry in March 1996 as an associated person of a member of NASD and first became registered as a representative in January 1997. I have been continuously registered with members of NASD since my first association and am presently registered with an NASD member. At the time of the conduct described in Part II hereof, I was registered with Wachovia Securities as a general securities representative. I have not previously been the subject of disciplinary action by NASD, the Securities and Exchange Commission, a state securities regulatory body or a self-regulatory organization.

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:

1. Between June 1, 2005, and June 30, 2005, Respondent Eugster participated in a private securities transaction for compensation without providing to Wachovia Securities the prior written notice required by NASD Conduct Rule 3040 and without receiving written permission from the firm to participate, in that he:

a. discussed with persons known to him, some of whom were also Wachovia customers, that he intended to invest in a private placement of preferred stock issued by a private company ("Series H Placement") offered through an NASD member with which he intended to become registered before the offering closed;

b. facilitated the formation of a Limited Liability Company (LLC), became the managing member of the LLC and, in that capacity, accepted as LLC members other individuals who wished to participate in the Series H placement;

c. facilitated the purchase of securities in the Series H placement by the LLC; and

d. in connection with the foregoing, knew that the LLC agreement provided that, as managing member, he was entitled to receive a portion of the profit, if any, realized by the LLC at such time as the securities purchased in the Series H placement became eligible to trade and were distributed by the LLC *pro rata* to its members.

2. The foregoing conduct constituted a violation of NASD Conduct Rules 3040 and 2110 by Respondent Eugster.

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

1. A fine in the amount of \$10,000.00;
2. A suspension from association with any member of NASD in any capacity for a period of two months; and
3. A requirement to demonstrate to NASD staff, not more than 60 days after the date upon which this AWC is accepted, that:
 - a. Respondent Eugster has relinquished his entitlement to any portion of any profit realized by the LLC upon the distribution to its members of securities acquired in the Series H placement; and,
 - b. Any document pertaining to the LLC requiring revision or amendment in order to effectuate Respondent Eugster's relinquishment of his entitlement to any portion of such profit has been revised or amended, as evidenced by the submission to NASD of such document(s) in their original and revised or amended forms.

The fine and suspension imposed herein shall be effective on a date set by NASD staff.

III.

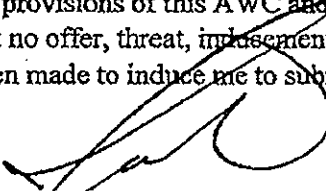
OTHER MATTERS

- A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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. I agree to pay any monetary sanctions imposed on me upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which I propose to pay any fine imposed.
- C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. I understand that if I am 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, during the period of the suspension. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the suspension. (See NASD Rule 8310 and IM-8310-1.)

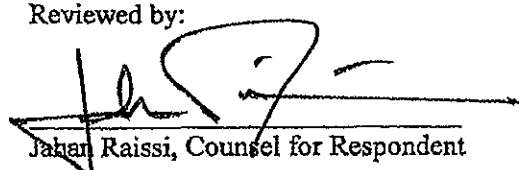
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

5-4-07

Date


John W. Eugster

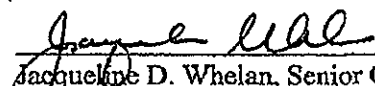
Reviewed by:


Jahan Raissi, Counsel for Respondent

Accepted by NASD:

06/05/2007
Date

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


Jacqueline D. Whelan, Senior Counsel
NASD Department of Enforcement
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NASD District Director
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