

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002714501

TO: Department of Enforcement
NASD

RE: James W. Brophy, Respondent
General Securities Representative
CRD No. 1144654

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 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:

James W. Brophy entered the securities industry in October 1999 and became registered with an NASD member as an investment company and variable contracts products representative in February 2000. In May 2000, Brophy became associated with Ameriprise Financial Services, Inc. (f/k/a American Express Financial Advisors, Inc.) and became registered as a general securities representative in June 2000. Brophy remained registered with Ameriprise until October 2004. He is not currently registered with an NASD member; he has no 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:

In February 2004, James W. Brophy recommended that customer NS withdraw the bulk of her funds from her fee-based account at Ameriprise to purchase a variable annuity, so that NS could purportedly save money spent on annual expenses and management fees. NS' investment objectives including maintaining liquidity of her funds to satisfy an annual premium payment of \$10,000 for a variable universal life policy purchased several years earlier. NS followed Brophy's recommendation and purchased a variable annuity for \$60,000, leaving approximately \$19,000 in her account to fund the VUL premiums.

Brophy's recommendation ignored NS' investment objective of liquidity, and did not offer significant cost savings to NS. As a result, in her second year of ownership of the variable annuity, NS would have been forced to incur penalties for early liquidation of funds from the variable annuity needed to satisfy the yearly premium payment for the variable universal life policy. Such acts, practices and conduct by Respondent Brophy violate NASD Conduct Rules 2310 and 2110.

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

A suspension from association with any NASD member in all capacities for 15 business days. No monetary sanctions are imposed due to Respondent Brophy's bankruptcy filing in 2005. The sanctions 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 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.

9-10-06

Date

James W. Brophy
James W. Brophy

Reviewed by:

Counsel for Respondent

Accepted by NASD:

9/20/2006
Date

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

Joel R. Beck, Regional Counsel
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NASD District Director

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