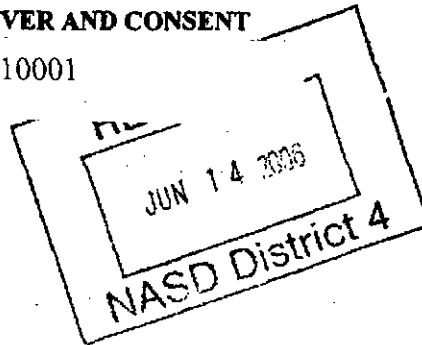


**NASD  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

No. 2005002810001

**To: Department of Enforcement  
NASD**

**Re: Brian E. Davis  
Investment Company and  
Variable Contracts Representative  
(CRD No. 2334949)**



Pursuant to Rule 9216 of the NASD Code of Procedure, I, Brian E. Davis (Davis), 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 the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA), pursuant to NASD Procedural 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:

Davis entered the securities industry on March 12, 1993. From March 12, 1993 through July 23, 2004, Davis was associated with NASD member Thrivent Investment Management Inc. as a sales representation and was registered with NASD as an investment company and variable contracts representative. From July 27, 2004 through December 2, 2005, Davis was associated with NASD members Metropolitan Life Insurance Company and Metlife Securities Inc. as a sales representation and was registered with NASD as an investment company and variable contracts representative.

Davis is not currently associated with any NASD member or registered with NASD in any capacity. However, NASD retains jurisdiction over Davis pursuant to Article V, Section 4 of NASD By-Laws. Davis has not been the subject of prior formal disciplinary action by NASD.

#### **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.

Furthermore, 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.

In addition, I specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural 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:

### **Conversion of Customer Non-Securities Funds** **NASD Conduct Rules 2110**

1. On November 30, 2002, while associated with Thrivent, Davis accepted a check for \$2,892.79 from customer F.E. The check was intended to be payment for an extension of a universal life insurance contract for customer F.E.
2. Davis did not extend the universal life insurance contract as directed by customer F.E. Instead, Davis deposited the check into his personal bank account and converted the \$2,892.79 to his personal use and enjoyment.
3. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 on the part of Davis.

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

1. 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 NASD 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 Procedural Rule 8310 and IM-8310-1.)

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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.

June 23, 2006  
Date

Brian E. Davis  
BRIAN E. DAVIS

Reviewed by:

NA  
Counsel for Brian E. Davis

Accepted by NASD:

6.20.06  
Date

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

James M. Stephens  
James M. Stephens, Regional Counsel

NASD District Director

Thomas D. Clough  
120 West 12<sup>th</sup> Street, Suite 800  
Kansas City, MO 64105  
(816) 802-4700