

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005003642901

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: Richard A. Daniels, Respondent
Registered Representative
CRD No. 60736

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:

Richard A. Daniels ("Daniels") entered the securities industry in January 1989 as a General Securities Representative with Lincoln Financial Distributors, Inc. ("Lincoln Distributors"), a NASD member. Between March 1999 and December 2005, Daniels was registered in the same capacity with Lincoln Financial Advisors Corporation (Lincoln Advisors"), a member of NASD. Daniels is not currently registered with an NASD member.

On September 6, 1979, the U.S. District Court in the Northern District of Ohio issued a Permanent Injunction, pursuant to which Daniels was fined \$5,000 and barred from the securities industry. The SEC had filed a complaint alleging that Daniels, among others, sold securities in the form of furniture and office equipment lease agreements in violation of Sections 5(a), 5(c) and 17(a) of the Securities Exchange Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The SEC lifted the bar on or about January 24, 1989.

On January 23, 1980, NASD revoked Daniels' registration, pursuant to Article V, Section 2 of NASD's Rules of Fair Practice, for failure to pay a \$5,000 fine in NASD Case No. C-190. The revocation of registration was rescinded on October 20, 1987, after Daniels paid the fine.

On March 31, 1983, Daniels was convicted of two felony counts of mail fraud in the U.S. District Court in the Northern District of Ohio for using the mails in interstate commerce to sell unregistered securities. Daniels was placed on probation for five years and fined \$5,000.

On March 22, 2006, the Ohio Division of Securities revoked Daniels' registration to sell securities in the State of Ohio after finding that Daniels misappropriated approximately \$2.1 million from nine of his Lincoln Advisors clients or prospective clients by defaulting on promissory notes that he sold to them, and/or by embezzling money directly from their securities accounts at Lincoln Advisors or other firms. The promissory notes that Daniels sold to his clients were in an Ohio corporation organized by him, named First Capital Group, and in other entities he created.

On July 12, 2006, Daniels was convicted of one felony count of securities fraud in the U.S. District Court in the Northern District of Ohio. Daniels, from in or about late 1997, through in or about December 2005, unlawfully, willfully and

knowingly, by the use of the means of instrumentalities of interstate commerce, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in contravention of Title 15, United States Code, Section 78j(b) and 78ff, United States Code, Title 17, Code of Federal Regulations, Section 240.10b-5. Daniels was sentenced to 82 months in prison. On October 30, 2006, the Court ordered Daniels to pay \$3,120,506 in restitution to Lincoln Advisors.

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:

Securities Fraud

1. From in or about 1997, through in or about December 2005, Daniels sold unregistered securities in the form of promissory notes to at least nine different investors for approximately \$2,254,138. The securities did not have the represented purpose of generating extraordinarily profitable returns for investors, but rather had the purpose of promoting an illegal "Ponzi" scheme and supporting Daniels' personal debts and expenses.
2. Daniels pooled the investor funds in the FCG accounts he controlled. Rather than investing all of the investors' funds, Daniels used the funds to:
(a) pay purported interest, principal and other compensation due under the terms of the securities to other existing investors; (b) pay off investors to dissuade them from contacting Lincoln Advisors; (c) pay business expenses necessary to promote the "Ponzi" scheme; and (d) pay Daniels' personal debts and expenses.
3. To induce the customers to purchase the promissory notes, Daniels falsely represented, orally and in writing, that their funds would be invested and used to purchase interest bearing promissory notes from First Capital Group Inc. ("FCG"), a company that Daniels formed and incorporated in 1997. Daniels falsely represented that the investments would generate rates of return from between 4 and 7 percent. In fact, Daniels knew that the substantial portion of investor proceeds would not be used in that manner, but rather used to perpetuate the fraudulent "Ponzi" scheme and to pay his personal expenses.
4. To induce the customers to purchase the promissory notes, Daniels represented that the FCG promissory notes were low to zero risk. In fact, beginning as early as in or about 1997, and continuing through in or about December 2005, those investments had insufficient assets on deposit with which to pay investors.
5. After receiving investor funds, Daniels provided some of the investors with a one-page FCG promissory note. Investors rarely received other written information regarding their investment. The FCG notes did not state any risk associated with FCG or financial information about Daniels or FCG. The notes were signed by Daniels on behalf of FCG. In some instances, Daniels forged the

name of a non-existent individual, "Tom Massey," on the notes, in order to lend legitimacy to the scheme and conceal Daniels' sole involvement in the investment fraud scheme.

6. Daniels would falsely represent that the investors were achieving returns on their investments, both orally and in writing, causing most investors to "roll-over" their existing investment and lull them into the belief that their investments were making money. In order to conceal the fraudulent scheme, Daniels provided investors fictitious account statements, through the U.S. mails, reflecting positive investment performance, when in truth and in fact, none of the money was ever invested as stated.

7. In order to promote the scheme, Daniels would embezzle funds from existing clients of Lincoln Advisors who had legitimate securities accounts on which Daniels was the sales representative of record. Daniels would forge the signature of the investors on withdrawal requests and wire transfer authorizations. Daniels did not disclose this to Lincoln Advisors or to the clients, and in order to avoid detection, Daniels used Lincoln Advisor client accounts that had very little activity.

8. For investors with existing IRAs, Daniels created accounts at Mid-Ohio/Equity Trust by forging investors' signatures on all of the account opening forms. In order to conceal the scheme, Daniels would list his own address as the address of record and his bank account information for the accounts, causing Mid-Ohio/Equity Trust to send investor account statements through the U.S. mails directly to Daniels. Daniels would then forge the investors' names on fund transfer requests to have the investors' money sent from their existing IRAs to Mid-Ohio/Equity Trust. Daniels then completed and forged investors' names on a Direction of Investment form at Mid-Ohio/Equity Trust, which directed Mid-Ohio/Equity Trust to purchase promissory notes from FCG. Mid-Ohio Equity Trust would then wire funds from the investors' accounts into an account controlled by Daniels. Daniels would then place an FCG promissory note into the Mid-Ohio /Equity Trust accounts he set up and would pay the maintenance fees for these accounts using the investors' money. Several of the investors did not realize that they were invested in promissory notes issued by FCG, due to the steps that Daniels had taken to conceal the scheme.

9. As part of the scheme, Daniels would target investors who maintained life insurance policies at various locations and would convince them to consolidate their policies and place them with Daniels at Lincoln Advisors. To consolidate their policies, Daniels urged investors to cash-out their current life insurance policies and forward the cash to him. In at least one instance, Daniels forged an investor's signature to a withdrawal application and caused the check to be sent directly to him. Daniels would then deposit the cash value checks in an account controlled by him.

10. While Daniels occasionally paid some interest to investors, it was only a portion of the monies owed to many investors. To lull such investors into deferring their compensation, Daniels repeatedly promised payments upon stated dates and persuaded investors to roll-over" existing overdue investments into new, equally fraudulent or worthless investments. In fact, at the time those representations were made, most of the investors' funds had already been misappropriated.

11. The acts, practices and conduct described above constitute separate and distinct violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2330(a).

Failure to Respond

12. On or about May 23, 2006 and again on June 8, 2006, NASD staff, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, sent a written request for information concerning the allegations set forth in the paragraphs above. On July 6, 2006, NASD received a letter from Daniels, in which Daniels stated that he "acted absolutely alone with respect to the perpetration of this matter since its inception." However, upon advice of counsel, Daniels declined to respond to NASD's two written requests, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

- B. I consent to the imposition, at a maximum of the sanction of a bar from association with any member of the NASD 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 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.

10/14/07
Date

Richard A. Daniels
Richard A. Daniels
Registered Representative

Reviewed by:

Counsel for Respondent

Accepted by NASD:

12/4/07
Date

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

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