

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005132301**

RECEIVED
2006 DEC 31 AM 11:11
REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Michael James Kazacos, Respondent
General Securities Representative
CRD No. 708547

Pursuant to NASD Rule 9216 of FINRA's 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

On May 22, 1980, Kazacos became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as a General Securities Representative. From January 16, 1985 to January 1, 2007, Kazacos was registered in that capacity through Morgan Stanley DW Inc. ("MSDW") and worked in the firm's Rochester, New York branch office. Kazacos is not currently associated with a member firm. He has no disciplinary history.

OVERVIEW

From at least 1998 through 2002, Kazacos solicited brokerage business from retirees and potential retirees of Eastman Kodak Company ("Kodak") and other large companies in the Rochester, New York area representing to customers that they could earn returns of 10% each year while failing to disclose certain risks.

000165055 2011

At retirement planning seminars, and in follow-up meetings, Kazacos presented an investment strategy in which he told customers they would earn those 10% returns and withdraw the same amount for living expenses without tax penalty and without reducing their principal. Kazacos' statements encouraged a number of individuals to move their retirement accounts to MSDW. Some of them also decided to retire sooner than they would have otherwise done.

Once the retirement accounts were opened with Kazacos, he implemented unsuitable investment strategies (e.g., over-concentration in equity-oriented mutual funds and unsuitable variable annuity transactions) that depleted the principal in the accounts. As a result of Kazacos' unsuitable recommendations and strategies, several customers suffered market losses. Some customers had to return to work.

Based on this conduct, Kazacos violated NASD Conduct Rules 2330(e), 2310, 2110 and IM-2310-2.

FACTS AND VIOLATIVE CONDUCT

Kazacos' Representations in Soliciting Retirement Accounts

From at least 1998 through 2002, Kazacos solicited business from retirees and potential retirees of Kodak and other large companies in the Rochester, New York area by holding retirement planning seminars. Many of the customers who invested with Kazacos were in their mid-50s.

Kazacos' presentation at the seminars and during follow-up meetings with customers featured, among other things, a discussion about the benefits of utilizing Internal Revenue Service Section 72(t) distributions to satisfy retirement income needs.

Section 72(t) permits individuals under 59½ years old to take penalty-free withdrawals from their IRA/retirement accounts provided certain conditions are satisfied. Kazacos also touted his 18 years experience as a financial advisor and his certified financial planner designation.

Kazacos represented to potential customers that they would earn returns of 10% each year and that those gains would enable them to withdraw the same amount annually without depleting their principal. Since many of the customers were in their early to mid-fifties, Section 72(t) provided the only vehicle for them to

withdraw money from their retirement accounts without penalty.¹ In meetings with customers, Kazacos prepared Section 72(t) calculations that were based on a 10% annual rate of return and 10% withdrawal rate to illustrate how the customers could satisfy their retirement income needs.

Kazacos failed to disclose to customers the following risks associated with his recommended investment strategy:

- while a 10% average annual return was potentially achievable over the long term, customer accounts were not likely to realize a 10% return each and every year;
- if customer accounts did not achieve the 10% annual rate of return, their 10% annual withdrawals would deplete their principal; and
- adverse market conditions could significantly impact the viability of their early retirement.

Kazacos' statements encouraged several individuals to move their retirement accounts to MSDW. Some of them also decided to retire sooner than they would have otherwise done. They were relying on income from their retirement accounts in order to pay living expenses.

Based on this conduct, Kazacos violated NASD Conduct Rules 2330(e) and 2110.

Kazacos' Investment Recommendations

Kazacos followed the same investment strategy with customers who moved their retirement funds to him. For example, during 1998-1999, he invested the retirement money of many of his customers in mutual funds, leaving some accounts with an unsuitably high concentration in equity funds.

In approximately 2000, Kazacos recommended that some customers invest in variable annuities. The variable annuities purchased were unsuitable for these customers because of their particular financial circumstances and needs and the annuities' high fees and surrender charges, which made them costly to liquidate during the surrender period.

Kazacos did not sufficiently disclose the benefits or disadvantages of the variable annuity investments to these customers. Kazacos also over-weighted the sub-

¹ Under that provision, individuals under 59-1/2 years old could make systematic withdrawals of funds from their qualified retirement plans without incurring the usual 10% early withdrawal penalty. Such withdrawals had to be taken as "substantially equal periodic payments" and had to be taken for five years or until the individual reached 59-1/2 years old, whichever was longer. The rules were revised in 2002, toward the end of the relevant period, to permit customers a one-time change in their distribution amount.

accounts with stock funds, thereby increasing the equity holdings for these customers and the related market risks.

Based on this conduct, Kazacos violated NASD Conduct Rules 2310 and 2110 and IM-2310-2 for making unsuitable mutual fund and variable annuity recommendations and NASD Conduct Rule 2110 for omitting material facts.

B. I also consent to the imposition of the following sanction:

- A bar from association with any member of FINRA in any capacity.

I understand that if I am barred or suspended from associating with any FINRA 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 FINRA 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.)

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to NASD IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA'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 National Adjudicatory Council ("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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. 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. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal

proceedings in which FINRA is not a party.

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; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

12/12/08
Date:

Michael J. Kazacos
Michael James Kazacos
Respondent

Reviewed by:

David Gourevitch
David Gourevitch, Esq.
Counsel for Kazacos
150 East 58th Street
34th Floor
New York, New York 10155
(212) 355-1300

Accepted by FINRA:

12/31/08
Date

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

M. J. Newman / 77
Michael J. Newman, Sr. Regional Counsel
Clarence E. Sanders, Senior Counsel
FINRA Department of Enforcement
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
(732) 596-2030; (202) 721-6557 (fax)