

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005180501

TO: Department of Enforcement
NASD

RE: Everett H. Toms, Jr., Respondent
Associated Person
CRD No. 5123248

Pursuant to Rule 9216 of the NASD Code of Procedure, Everett H. Toms, Jr. ("Toms") submits *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, National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs 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 the 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 in which the NASD is not a party.

I also understand that my experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Toms has never been registered with NASD. On about April 3, 2006, Toms completed and signed a Form U4 seeking to become registered with Capital Brokerage Corporation ("CBC") as an Investment Company Products/Variable Contracts Limited Representative. CBC submitted Toms' Form U4 to NASD on April 6, 2006. On May 1, 2006, before Toms' registration became effective, CBC filed a Form U5 for Toms. Toms 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:

On about April 3, 2006, Toms completed a Form U4 by which he sought to become registered with CBC as an as an Investment Company Products/Variable Contracts Limited Representative. On April 6, 2006, CBC submitted Toms' Form U4 to NASD. In completing the Form U4, Toms answered "No" to Question 14A(1)(b), which asked if he had ever been charged with any felony. Toms, however, had been charged with a felony in August 1998. Accordingly, his answer to Question 14A(1)(b) was materially false and inaccurate. In completing the Form U4, Toms willfully failed to disclose that he had previously been charged with a felony.

Based on the foregoing, Toms violated NASD Conduct Rule 2110 and IM-1000-1.

- B. I also consent to the imposition, at a maximum, of the sanctions of a six-month suspension from association with any NASD member in any capacity and a \$5,000 fine.

The fine shall be due and payable either immediately upon re-association with a member firm following the six-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by NASD's staff.

III.

OTHER MATTERS

- A. I understand that I may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. I further 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 sanction imposed on me upon re-entry as noted above.
- 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 association 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 suspension. (See NASD Rule 8310 and IM-8310-1).
- E. I understand that this settlement includes a finding that I willfully failed to disclose a material fact on a Form U4, and that under Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and Article III, Section 4(f) of NASD By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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.

7/19/06
Date

Everett H. Toms, Jr.
Everett H. Toms, Jr.

Accepted by NASD:

August 28, 2006
Date

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

Thomas M. Huber
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