

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005642201

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: Eugene Roy Umhafer
(CRD No. 1076841)

Pursuant to Rule 9216 of NASD Code of Procedure, Eugene Roy Umhafer ("Umhafer") 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 Umhafer alleging violations based on the same factual findings.

Umhafer understands 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, his submission will not be used as evidence to prove any of the allegations against Umhafer; and
3. If accepted:
 - a. this AWC will become part of Umhafer's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Umhafer;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Umhafer's 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. Umhafer 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 Umhafer's

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testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Umhafer also understands that his 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:

Umhafer first became registered with NASD as an Investment Company and Variable Contracts Products Representative in December 1982 through member firm NYLife Securities, Inc. (BD No. 5167) ("NYLife Securities"), an affiliate of New York Life Insurance Company ("collectively, "NYLife"). He remained registered with NASD through NYLife Securities until November 2, 2005. Umhafer has not been registered with any NASD member since that time.

Umhafer does not have any disciplinary history with NASD or any other self-regulatory organization, the U.S. Securities and Exchange Commission, or any state securities regulator.

I.

WAIVER OF PROCEDURAL RIGHTS

Umhafer specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against him;
- 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, Umhafer specifically and voluntarily waives 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.

Umhafer further specifically and voluntarily waives 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. Umhafer hereby accepts and consents, 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:

From January 1997 through June 2006, while registered with NASD as an Investment Company and Variable Contracts Products Representative through member firm NYLife Securities, Umhafer:

- accepted, endorsed and deposited into his own bank account at least six checks (totaling more than \$2,500) received from NYLife insurance customer SS made payable directly to him;
- received those six checks from SS with the understanding that he would use the funds to pay SS's interest payments on loans against his two whole life insurance policies (arising from his borrowing against the cash values of the policies to pay the premiums on those policies);
- purportedly used the funds deposited into his bank account to purchase money orders which he claimed he sent to NYLife's Central Service Office for purposes of paying the interest payments on SS's loans; and
- failed to follow up and ensure that the money orders which he allegedly purchased with SS's funds were received by the Central Services Office and that SS's funds were properly being applied to his outstanding loan balances during the time period in question.

NYLife never received the money orders allegedly purchased by Umhafer with the commingled funds.

By reason of the foregoing, Umhafer violated NASD Conduct Rule 2110.

B. Umhafer also consents to the imposition, at a maximum, of the following sanctions:

- A bar from associating with any NASD member firm in any capacity.

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

Umhafer understands that if he is barred or suspended from association with any NASD member, he becomes 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, he 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.)

Umhafer certifies that he has read and understands all of the provisions of this AWC and has 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 Umhafer to submit this AWC.

7/27/07
Date

Eugene Roy Umhafer
Eugene Roy Umhafer

Accepted by NASD:

9/4/07
Date

Jon S. Batterman
Jon S. Batterman
Deputy Regional Chief Counsel
NASD-District 10
Department of Enforcement

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

NASD Deputy District Director

Patricia Cappeto

NASD, District 10 (Long Island)

Two Jericho Plaza, 2d Floor

Jericho, New York 11753