

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005683701

TO: Department of Enforcement
NASD

RE: Gary E. Hirth, Respondent
General Securities Representative
CRD No. 2830464

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:

Gary E. Hirth entered the securities industry in December 1996 as a General Securities Representative of a member of NASD. On July 17, 2006, Gary Hirth was discharged from the same member firm. Gary Hirth is not currently registered or associated with a member firm. Gary Hirth has not previously been the subject of any disciplinary action by NASD, the Securities and Exchange Commission, other self-regulatory organizations or any state regulator.

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:

1. Failure to Update Form U-4

- a. On or about December 18, 2003, while registered as a General Securities Representative with an NASD member firm, Gary Hirth was the subject of an Indictment which charged him with aiding and abetting the preparation of a false tax return, a Class E felony in violation of Title 26, United States Code, Section 7206(2)(“the felony”). On or about October 19, 2004, Gary Hirth entered a guilty plea in the United States District Court, District of Arizona with respect to the felony charge in the Indictment and on or about August 29, 2005, Gary Hirth was convicted of the felony and was sentenced.
- b. From on or about December 18, 2003, through the present, Gary Hirth willfully failed to update his Uniform Application for Securities Industry Registration or Transfer (“Form U-4”) to disclose material information. Specifically, Gary Hirth failed to amend his Form U-4 to answer “yes” to items 14A(1)(a) and (b), which asked whether he had ever “been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony” or whether he had been charged with any felony. Gary Hirth’s willful failure to amend his Form U-4 to answer “yes” to both questions resulted in an inaccurate and false Form U-4.
- c. The foregoing conduct constituted separate and distinct violations of NASD By-Laws, Article V, Section 2, NASD Membership and Registration Rule IM-1000-1, and NASD Conduct Rule 2110 by Gary Hirth.

2. Engaging in the Securities Business while Statutorily Disqualified

- a. From the time Gary Hirth was convicted of the felony on August 29, 2005, until he was discharged from his employer member firm on July 17, 2006, Gary Hirth functioned as an associated person of the member firm and engaged in a securities business, though he was statutorily disqualified, in contravention of Article V, Section 1 of the NASD By-laws.

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b. The foregoing conduct constituted separate and distinct violations of NASD By-Laws, Article V, Section 1 and NASD Conduct Rule 2110 by Gary Hirth.

3. Failure to Respond to Information Request

a. On August 22, 2006, NASD sent Gary Hirth a request for documents and information, pursuant to Procedural Rule 8210, to further its investigation into whether he may have violated certain NASD Conduct Rules including, but not limited to, Rules 3030, 3040 and 2110. His response was due on September 5, 2006. On August 30, 2006, Gary Hirth sent a letter to NASD advising that he was not going to provide the information and documents that had been requested on August 22, 2006. To date, he has not provided any of the requested documents and information. As such, Gary Hirth failed to provide information and documents requested by the staff pursuant to Procedural Rule 8210.

b. The foregoing conduct constituted separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Gary Hirth.

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

A bar from association with any member of 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.

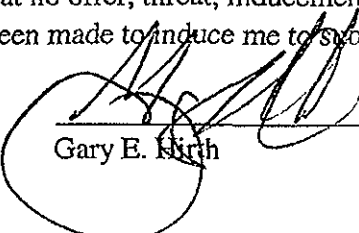
III.

OTHER MATTERS

A. I understand that 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.

2/14/07
Date



Gary E. High

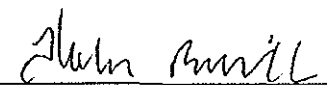
Reviewed by:

Counsel for Respondent

Accepted by NASD:

3/23/07
Date

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



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