

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ~~0340400~~ C04050004

**To: Department of Enforcement
NASD**

**Re: Gary B. Davis
General Securities Representative
(CRD No. 1957954)**

Pursuant to Rule 9216 of the NASD Code of Procedure, I, Gary B. Davis (Davis), 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 the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA), pursuant to NASD Procedural 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 allegation 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.

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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:

I entered the securities industry in July 1989, when I associated with an NASD member. From March 26, 2002 through November 12, 2004, I was associated with Jesup & Lamont Securities Corp. (Jesup) as a research analyst and was registered with NASD as a general securities representative.

I am not currently associated with any NASD member or registered with NASD in any capacity. However, NASD retains jurisdiction over me pursuant to Article V, Section 4 of NASD By-Laws. I have not been the subject of prior formal disciplinary action by NASD.

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.

Furthermore, I specifically and voluntarily waive any right to claim bias or prejudice 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.

In addition, I specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural 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.

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II. ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the allegations or 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:

Background

Gary Davis was a Senior Security Analyst with NASD member Jesup & Lamont Securities Corporation. As a research analyst, Davis primarily followed small-cap biotechnology stocks and presented buy opportunities to a small group of institutional clients. Davis also used his research reports with some of his retail clients and provided his research reports, upon request, to other Jesup brokers for use with their institutional and retail clients. In addition, Davis provided his research reports to the companies subject to the coverage.

From January 2002 through September 2003, Davis wrote twelve research reports involving seven companies that are the subject of this disciplinary matter. All of these reports included a "buy" or "strong buy" recommendation.

Restrictions on Personal Trading by Research Analysts
NASD Conduct Rules 2110 and 2711(g)(2) and (3)

NASD Conduct Rule 2711(g)(3) prohibits a research analyst from purchasing or selling any securities in a manner inconsistent with the research analyst's recommendation in the most recent research report. All of the subject research reports written by Davis provided a "buy" or "strong buy" recommendation. After these research reports were issued, Davis, who maintained substantial positions in most of the companies he covered, both purchased and sold shares of the companies that he was covering. While Davis' purchases were consistent with the recommendations in his research reports, his sales were inconsistent with his recommendations. From October 8, 2002 through September 17, 2003, Davis executed 41 separate sales in seven different securities that were inconsistent with his "buy" or "strong buy" recommendations in his research reports. Davis sold a total of 215,657 shares and netted a profit of \$116,563.56. Through these sales, Davis violated NASD Conduct Rules 2110 and 2711(g)(3).

NASD Conduct Rule 2711(g)(2) prohibits a research analyst from purchasing or selling any securities issued by companies followed by the research analyst for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company. On four occasions, Davis purchased shares of companies that he was covering within the prescribed time period, in violation of NASD Conduct Rules 2110 and 2711(g)(2).

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Disclosure Requirements for Research Reports
NASD Conduct Rules 2110 and 2711(h)

NASD Conduct Rule 2711(h) mandates that certain disclosures that must be included in research reports. Davis failed to satisfy these disclosure requirements in his research reports, as follows.

Pursuant to NASD Conduct Rule 2711(h)(1)(A), a research report must disclose whether the research analyst has a financial interest in securities of the company covered by the research report. Davis failed to disclose that he owned shares of the subject companies in three research reports, in violation of NASD Conduct Rules 2110 and 2711(h)(1)(A).

Pursuant to NASD Conduct Rule 2711(h)(4), a research report must define the meaning of each rating. Davis failed to define the "strong buy" recommendation in the three research reports, in violation of NASD Conduct Rules 2110 and 2711(h)(4).

Pursuant to NASD Conduct Rule 2711(h)(6), a research report must include a sufficient price chart. Davis failed to include a sufficient price chart in six research reports, in violation of NASD Conduct Rules 2110 and 2711(h)(6).

Pursuant to NASD Conduct Rule 2711(h)(7), a research report must include a valuation method used to determine a price target and a disclosure of the risks that may impede the achievement of the price target. Davis failed to include this information in six research reports, in violation of NASD Conduct Rules 2110 and 2711(h)(7).

Pursuant to NASD Conduct Rule 2711(h)(8), a research report must disclose whether the NASD member issuing the report is making a market in the securities of the company covered by the research report. Davis failed to disclose that Jesup was a market maker for the companies covered in the two research reports, in violation of NASD Conduct Rules 2110 and 2711(h)(8).

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

1. a six-month suspension from association with any NASD member in any capacity;
2. a concurrent 18-month suspension from association with any NASD member as a research analyst (Series 87), as defined by NASD Membership and Registration Rule 1050; and
3. a fine of \$130,000, which includes disgorgement of Davis' profits of \$116,563.56 from his trading activity that was inconsistent with the recommendations in his research reports. This fine shall be due and payable either immediately upon reassociation with an NASD member 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 staff.

Sent By: NASD;

Received: 12/21/04 8:07AM;

02/13/2013 15:01 FAX 15165714000

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Jan-26-05 1:29PM;

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COUNTY EXECUTIVE

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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 agree to pay any monetary sanctions imposed on me upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which I propose to pay any fine imposed.
- 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 barred or 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 bar or suspension. (See NASD Procedural Rule 8310 and IM-8310-1.)

I certify that I have read and understood 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.

December 20, 2007
Date

Gary B. Davis
GARY B. DAVIS

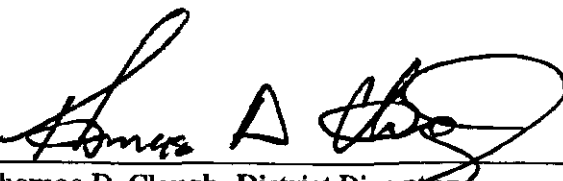
Reviewed by:

William J. Cunningham III
William J. Cunningham III
Counsel for Gary B. Davis

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Accepted by NASD:

January 25, 2005
Date



Thomas D. Clough, District Director
Signed on behalf of the Director of ODA, by
delegated authority