

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C05050006-AWC

TO: Department of Enforcement
NASD

RE: Robert J. Vitale, Respondent
General Securities Representative
CRD No. 2695384

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 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.

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:

Respondent Robert J. Vitale entered the securities industry in about July 1998. He was most recently registered with NASD member LH Ross & Company from May 2002 to July 2004. Respondent Vitale is not currently registered with an NASD member. He 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 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:

On five days during the period of April 22, 2003, through June 23, 2003, Respondent Vitale participated in fraudulent and deceptive devices and contrivances involving trading in a total of six stocks through the use of instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange. On these days, Vitale identified stocks that had declined in value during the course of the day and caused shares of the stocks to be purchased in LH Ross & Company, Inc.'s proprietary account in the afternoon after the stock had declined in price. Other brokers at the firm, led by Vitale, then sold the shares to retail customers at prices significantly higher than the then prevailing market prices. In many instances, the stock was placed in customer accounts through unauthorized trades. For his participation in this scheme, Respondent Vitale received funds from LH Ross & Company, Inc. in excess of his commissions receivable. By participating in this scheme, Respondent Vitale violated Section 10(b) of the Securities Exchange Act, Rule 10b-5 thereunder, and NASD Rules 2120, 2320, and 2110.

In connection with another NASD examination, NASD staff requested that Respondent Vitale appear and provide sworn testimony pursuant to NASD Procedural Rule 8210 on January 19, 2005. Respondent Vitale did not appear and testify as requested, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Based on the foregoing, Respondent Vitale violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Rules 2120, 2320, 2110 and 8210.

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

A bar from association with any NASD member in all capacities. 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

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 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.

2/1/05
Date

Robert J. Vitale
Robert J. Vitale

Reviewed by:
[Signature]
Counsel for Respondent

Accepted by NASD:

2/1/05
Date

[Signature]
Daniel J. Stefek, District Director
Atlanta District Office