

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C05050020

TO: Department of Enforcement
NASD

RE: **Raymond James & Associates, Inc.**, Respondent
[CRD No. 705]
and
Angelo Masut, Jr., Respondent
General Securities Representative
[CRD No. 1245245]

Pursuant to Rule 9216 of the NASD Code of Procedure, Raymond James & Associates, Inc., and Angelo Masut, Jr. 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 us alleging violations based on the same factual findings.

We 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our 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. We 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 our testimonial obligations or right to take legal or factual positions in litigation or other proceedings in which NASD is not a party.

We also understand that our 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:

Raymond James & Associates, Inc. has been a member of NASD since August 31, 1962. During all periods mentioned herein, Raymond James & Associates, Inc. was a registered broker-dealer with the United States Securities and Exchange Commission (the "Commission") and a member of NASD, which registration and membership remain currently in effect. Raymond James & Associates, Inc. has been the subject of relevant formal disciplinary action in the previous five years as follows:

On November 20, 2001, the New York Stock Exchange Hearing Board determined that the firm violated Exchange Rule 342 by failing to establish and maintain appropriate procedures for supervision and control, that the firm violated Rule 342(C) by establishing branch offices without prior exchange approval; that the firm violated Rule 440 and SEC Sections 17A-3 by failing to maintain and preserve required books and records; and that the firm violated Rule 472 by failing to have correspondence approved by a supervisory analyst and by failing to retain communications with the public. The New York Stock Exchange Hearing Board imposed the penalty consented to by the firm of a censure and a \$150,000 fine.

Angelo Masut, Jr. entered the securities industry on October 16, 1986 as a General Securities Representative of Merrill Lynch, Pierce, Fenner & Smith Incorporated, a member of the NASD. During all periods mentioned herein, *Angelo Masut, Jr. was associated with member firm Raymond James & Associates, Inc. and was registered with NASD under Article V of the By-Laws as a General Securities Representative.* Angelo Masut, Jr. is currently associated with Raymond James & Associates, Inc. and has not been the subject of formal disciplinary action in the past five years.

I.

WAIVER OF PROCEDURAL RIGHTS

We 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 us;

- 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, we 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.

We 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. We hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding in 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. On or about July 20, 2000, Angelo Masut, Jr. recommended and effected the exchange of three Alliance Gallery Variable Annuities for two AIG Ovation Plus Variable Bonus Annuities in three accounts (two IRAs and a trust account) of public customers IH and WH (husband and wife) in the amount of \$160,882.30 without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situation and needs. Specifically, the recommendation was unsuitable for the following reasons:
 - The annual costs associated with the AIG Ovation Plus Variable Annuities (the new contracts) were .545% higher than the costs associated with the Alliance Gallery Variable Annuities (the original contracts). In addition, the customers paid total surrender

charges of \$3,924.00 for the exchange. Despite the \$4,445.00 bonus paid by the new contracts, the additional annual costs and surrender charges combined to create no financial benefit for the customers. Assuming a 10.12% return over a 10- year period, the customers would earn \$12,199.02 more by maintaining their investments in the Alliance Gallery Variable Annuities.

- The sub-accounts invested in by the customers were exactly the same in the Alliance Gallery and AIG Ovation Plus Variable Annuities. Consequently, new investment options could not have provided a basis for the exchange.
- The exchange resulted in an extension of the surrender period by four and one-half years. (The customers were able to withdraw 10% of their investment each year penalty-free during all years of the contract.) Thus, rather than gaining penalty-free access to all their funds in 2002, the customers are not able to have penalty-free access to all their funds until 2007. At that time, the customers will be 82 and 80 years old.
- The stepped-up death benefit failed to provide a reasonable basis for the exchange. Each of the Alliance Gallery Variable Annuities would have received a stepped-up death benefit in less than three years.
- One exchange occurred in the IRA account of IH. Because this account already benefited from tax deferral, investment in the variable annuity could not provide additional tax advantages.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310(a) and 2110 by Angelo Masut, Jr.

2. On or around, July 20, 2000, Angelo Masut, Jr., in connection with his recommendation of variable annuity exchanges set forth in paragraph 1 of this document, omitted and misstated material facts regarding the costs and features of the AIG Ovation Plus Variable Annuities (new contract). Specifically, Masut failed to disclose that the costs for the AIG Ovation Plus Variable Annuities would be higher and would include a 0.10% ratchet-rider fee not present in the Alliance Gallery Variable Annuity (old contract). Furthermore, Masut misrepresented the length of time that the exchanges described in paragraph 1 would extend the surrender period. Masut told the customers that their current surrender period would be extended by 3½ years. Instead, the new surrender period of seven years extended the time by 4½ years for two of the annuities and 5 years for the third annuity.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Angelo Masut, Jr.

3. Between February 27, 1998 and September 30, 1999, Angelo Masut, Jr. recommended and effected a series of transactions that reallocated the accounts of public customers IH and WH from an investment mix of 9.2% cash, 59.6% fixed income and 31.3% equity to an investment mix of 2% cash, 3% fixed income and 95% equity. In February 1998, IH and WH were 73 and 74 years old and retired with a moderate risk tolerance. IH and WH had a modest annual income of \$25,000 (excluding bond income that ceased due to Masut's reallocation) and investment objectives that included liquidity, capital preservation, and income for living expenses. Angelo Masut, Jr. made the recommendations without having a reasonable basis for believing that the recommendations and resultant transactions were suitable on the basis of their financial situation and needs.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310(a) and 2110 by Angelo Masut, Jr.

4. On or about the time periods February 27, 1998 through September 30, 1999, and July 14, 2000 through on or about July 31, 2000, Raymond James & Associates, Inc., failed to maintain and enforce its written supervisory procedures to supervise the activities of Angelo Masut, Jr. and achieve compliance with NASD Conduct Rule 2310. Specifically, the Compliance Manual of Raymond James & Associates, Inc. required the following:

- that the Branch Manager evidence approval of the exchange of a variable annuity by signing the 1035 Exchange Form. Raymond James & Associates, Inc., did not require the Branch Manager, to sign the 1035 Exchange Forms for either exchange described in paragraph 1.
- that the firm withhold the registered representative's commission on the exchange of a variable annuity until the Branch Manager's signature is obtained. Despite the fact that the Branch Manager never signed the 1035 Exchange Forms, Raymond James & Associates, Inc. allowed Angelo Masut, Jr. to receive commissions on the exchanges in the amounts of \$1,398.21 and \$562.15.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 3010(b) and 2110 by Raymond James & Associates, Inc.

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

A censure against Raymond James & Associates, Inc. and a monetary fine in the amount of \$10,000 which is assessed against Raymond James & Associates, Inc.

A monetary fine in the amount of \$10,000 which includes disgorgement of commissions received by Masut of \$1,960.36 and a 10 business-day suspension of Angelo Masut, Jr. from association with any NASD member in any capacity.

In addition, Raymond James & Associates, Inc. and Angelo Masut, Jr. consent to a joint and several assessment of payment of restitution in the amount of \$3,924.00 to customers IH and WH listed on Attachment A, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from July 20, 2000, the date of the violative conduct, until the date this AWC is accepted by the NAC. The \$3,924.00 restitution represents the amount paid by customers IH and WH in surrender fees. Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to the NASD staff no later than 120 days after acceptance of this AWC. If for any reason Respondents cannot locate any customers identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondents shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customers are last known to have resided.

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

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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. We agree to pay any monetary sanctions imposed on us upon notice that

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this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.

- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we 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 us to submit it.

4/8/05
Date

Raymond James & Associates, Inc.

By: M. Thomas Hudson

Sr. Vice President
[Name and Title]

Reviewed by:

Maske P. Bourassa
Counsel for Respondent
Raymond James & Associates, Inc.

Date

Angelo Masut, Jr.,
General Securities Representative

Reviewed by:

Counsel for Respondent
Angelo Masut, Jr.

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Date

Raymond James & Associates, Inc.

By: _____

[Name and Title]

Reviewed by:

Counsel for Respondent
Raymond James & Associates, Inc.

April 18, 2005
Date

Reviewed by:

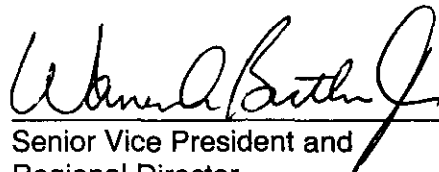
Ronald Shinder
Counsel for Respondent
Angelo Masut, Jr.

Angelo Masut, Jr.
Angelo Masut, Jr.,
General Securities Representative

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Accepted by NASD:

May 10, 2005
Date


Senior Vice President and
Regional Director

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

Attachment: Election of Payment Forms